TTIP: EU Commission unveils replacement for controversial ISDS

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Rapporteur Bernd Lange says plans are 'nail in the coffin for ISDS', but the Greens insist the Commission is ignoring 'widespread concern'.

European trade Commissioner Cecilia Malmström revealed plans for a new investor protection system, as an alternative to the highly controversial ISDS.

Proposals for an ISDS (investor-state dispute settlement mechanism) system were introduced during transatlantic trade and investment partnership (TTIP) talks, angering both MEPs and civil society.

ISDS would have allowed companies to battle it out with national governments before private courts, prompting fears that businesses would hold too much power over legislators.
Malmström has now announced plans for an investment court system to replace ISDS in all future EU investment negotiations. It will be composed of a first instance tribunal and an appeal tribunal, led by publicly appointed judges. Investors would only be allowed to take governments to court under strict conditions, for example in case of gender or racial discrimination.

The Swedish official said, “EU investors are the most frequent users of the existing model, which individual EU countries have developed over time. This means that Europe must take the responsibility to reform and modernise it. We must take the global lead on the path to reform."

MEPs had called for a reformed ISDS in a resolution approved last July, with the text demanding "publicly appointed, independent professional judges [in] public hearings".

Parliament's rapporteur on TTIP, Bennd Lange, noted that, “the new proposal from the European Commission is the only way forward in trade policy, and the last nail in the coffin for ISDS.”

European People's Party group shadow rapporteur Godelieve Quisthoudt-Rowohl insisted that, "the proposal clearly addresses the worries of EU citizens expressed over the last few months. The new provisions will protect and guarantee member states' right to regulate and provide for a fresh and up-to-date system of investment protection and dispute settlement."

European Conservatives and Reformists group shadow Emma McClarkin expected to, "continue to see the usual reflex negativity and scare-mongering from the old fashioned protectionist lobby, but I hope these new blueprints can help to allay some of the legitimate concerns that have been expressed, and allow negotiations for a comprehensive and balanced TTIP deal, that we know will add jobs and grow the economy, to continue."

Marietje Schaake, Alliance of Liberals and Democrats for Europe shadow rapporteur, said, "it is good that the Commission wants to make the transition to a transparent system in the negotiations on more economic cooperation with the US. A trade agreement must not undermine democracy, and cannot be a backdoor for companies to change legislation."

She also urged Malmström to, "increase the pressure on the American negotiators – we need to know whether they are prepared to follow European leadership in the area of investment protection."

The Commissioner is due to travel across the Atlantic next week for the next round of TTIP talks.

However, Greens/European Free Alliance group shadow rapporteur Yannick Jadot was extremely critical of the proposed investment court system, accusing the EU trade chief of "trying to force through some form of private court for corporations, instead of responding to the widespread concerns with ISDS and shelving it."

"Instead of continually trying to kowtow to demands by the US, the Commission should be pushing forward the interests of European public authorities and heeding the very clear signals from the public
on this matter”, he added.

Campaign group Transport and Environment’s Cécile Toubeau was equally unimpressed, commenting, “the EU cannot hide behind a name change when the flaws of the investment court system remain the same. Citizens will continue to unfairly shoulder private risks taken by foreign investors, while lawmakers will be deterred from regulating in the public interest.”

The Commission will now enter into talks with Parliament and Council to hash out a deal on the proposed court system.

About the author

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