

T&E position on Multilateral Investment Court

April 2018, UNCITRAL Working Group III

The pressure of civil society forced the European Commission to rethink its approach on investor-state-dispute-settlement (ISDS), resulting in the reformed investment court system (ICS), and the current multilateral investment court (MIC). The purported added value of the MIC is to render investment protection more transparent and accountable, and put an end to the controversial ISDS.

- The right to regulate must be safeguarded

The real threat to the environment will remain unless *substantial provisions* on investment are changed. The work on the court and on the substance of investment protection must go hand in hand. Reform must include the right regulate, public policy carve-out clause to pursue sustainable development objectives.

- A holistic approach to investment protection

Only a comprehensive reform subjecting all current and future agreements to the jurisdiction of the multilateral investment court will ensure the relevance and credibility of the new court. The reform should address so-called “**treaty shopping**”, and the problematic practice of out-of-court settlements which are closely related to the ISDS’s lack of transparency.

- Legitimate public consultation for citizens and transparent negotiations

A public debate and global public consultation on the necessity and desirability to establish the MIC is essential. Moreover, fully transparent negotiations for a convention to establish the multilateral investment court must be conducted, open to all stakeholders from the very beginning.

- Establishment, financing and appointment of judges

In order to put an end conflicts of interests, judges must be employed full-time and receive a fixed remuneration. They should be experienced, qualified and selected by an independent body. Any kind of financing of the multilateral investment court must be transparent and held accountable. Third party funding of investors and claims must be banned.

- Ensuring legality and access to justice

Fundamental concerns about the compatibility of the multilateral investment court with EU law remain. For increased legal certainty, the Commission must request the opinion of the Court of Justice of the EU (CJEU) before establishing such a new international court.

The relationship between domestic courts, individuals and the multilateral investment court also needs to be clarified. The exhaustion of domestic legal remedies is not addressed, neither is the impossibility for individuals to make their voices heard or to lodge counterclaims in investment tribunals. Therefore, meaningful access to justice clauses to counterbalance the current one-sided system must be included in any convention establishing the MIC.

For more information:

Cecile Toubeau, Director, Better Trade and Regulation, Transport & Environment
cecile.toubeau@transportenvironment.org, Tel: +32 (0)475 226 997