

Grand majority of Parliament votes in favor of a regulation on investor-state lawsuits

Greens criticize the result sharply

Investor-state dispute settlement (ISDS) has come into the focus of critics since the start of negotiations on a free trade agreement with the US (TTIP). ISDS means that foreign investors can sue the states hosting their investments in front of international courts when they see their rights and profit expectations violated. Often it is environmental or social legislation of a state which investors claim to be in violation of their investment expectations. Currently, for example, Vattenfall is suing the German federal government for 3 billion euros because of the German nuclear phase-out. Since Lisbon, the EU has gained the competence on investment policy, and thus also on ISDS policy. This Regulation establishes rules on whether EU or Member States act as a defendant in ISDS proceedings and who pays in the case of successful investor claims.

Greens are against the inclusion of ISDS in trade agreements, as the EU is currently planning in the agreements with Singapore, Canada and the United States. We demand also a revision of the myriad of bilateral investment agreements between Member States and third countries which in many cases contain ISDS. However, we were defeated in the INTA Trade Committee on our proposal that the ECJ be assigned the function of a filter to decide on the admissibility of a claim before it can be taken up by an international arbitration tribunal. However, in the legally non-binding considerations of the Regulation, we were able to establish that foreign investors as a rule should not have any greater rights than domestic investors, which would indeed mean that ISDS is ruled out. This is a strong criticism of ISDS but unfortunately will not have any legal consequences.

Moreover, in the negotiations for this Regulation the position of the Member States has largely prevailed. Greens think that the outcome violates the Lisbon Treaty and the competence of the Union with regard to investment policy. Member States will have ample discretion to defend themselves and settle cases, even if the reason for the claim is a EU Regulation. Moreover, ISDS creates case law which will prejudice the future of the EU investment policy. Therefore, before the voting took place, Ska Keller as the Green shadow on the Regulation asked to postpone the vote, seconding a similar request put forward by the GUE Group.

Already several EU Member States have been sued under the financial crisis of international investors. The new Directive does not go to these problems but complicates the responsibilities even further. After pressure from us Greens and the public, the Commission has launched a consultation on ISDS in the TTIP. We criticize sharply that the Commission and the Council adopted Regulation ISDS now wanted to press

as fast without at least wait until the end of the consultation.

For all these reasons, Greens voted against the Zalewski Report.

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