

Press Release

European Commission TTIP proposal for an Investors' arbitration court dismissed as ISDS2.0

Brussels, 12 November 2015.

Public health groups, including EPHA, EHN and EASL¹ consider that the proposed changes to investor arbitration in TTIP are insufficient to stop companies attacking governments on public health laws, such as those for plain tobacco packaging or transparency of clinical trials.

The European Commission (DG TRADE) has today published its revised proposal for an Investment Court System (ICS) which aims to replace the highly controversial investor-to-state dispute settlement (ISDS) mechanism in all ongoing and future EU investment negotiations, including the EU-US TTIP talks.

While the proposal to establish an Investor Court System attempts to make some improvements to the existing system in response to criticism from the European Parliament², the public outcry during the consultation and recent mass protests against ISDS, it does not address the fundamentally flawed, intransparent and potentially biased nature of arbitration. The proposal fails to adequately address the key concerns of the public health community, as it still does not guarantee that governments' right to regulate to protect public health would be put ahead of the commercial interests of companies selling health-harmful products, including tobacco.

“Largely semantic changes from arbitration to Tribunal will not convince us to support a fundamentally biased system with a long track record of being used and abused – most frequently by the tobacco industry – to abort public health policies. A partial reform of the existing ISDS will lead to the institutionalisation of arbitration rather than its elimination.” said Nina Renshaw, EPHA Secretary General and Member of the Commission’s TTIP Advisory Group.

“This is particularly worrying since the Commission’s proposal does not require exhaustion of domestic remedies as would be normal according to generally recognised rules of international law.” stated Susanne Løgstrup, Director of the European Heart Network (EHN), Member of the Commission’s TTIP Advisory Group.

EPHA has published a [position paper](#)³ in response to today’s ICS proposal, which concludes: “Any form of Investor-to-State Dispute Settlement (ISDS) or parallel Investment Court System (ICS) is not necessary between trading blocs with stable democracies, mature established Court systems and legislature. The ICS proposal does not address fundamental flaws of ISDS. The ISDS/ICS Chapter should be removed from the EU-US TTIP negotiations.”

¹ The European Public Health Alliance (EPHA), the European Heart Network (EHN) and the European Association for the Study of the Liver (EASL) are health NGOs which have delegated members to the Commission’s TTIP Advisory Group.

² „to ensure that foreign investors are treated in a non-discriminatory fashion while benefiting from no greater rights than domestic investors, and to replace the ISDS system with a new system for resolving disputes between investors and states which is subject to democratic principles and scrutiny, where potential cases are treated in a transparent manner by publicly appointed, independent professional judges in public hearings and which includes an appellate mechanism, where consistency of judicial decisions is ensured the jurisdiction of courts of the EU and of the Member States is respected, and where private interests cannot undermine public policy objectives;” <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT-TA+P8-TA-2015-0252+0+DOC+XML+V0//EN>

³ <http://www.epha.org/6447>

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The European Public Health Alliance (EPHA) is a change agent – Europe's leading NGO advocating for better health. We are a dynamic member-led organisation, made up of public health NGOs, patient groups, health professionals, and disease groups working together to improve health and strengthen the voice of public health in Europe. EPHA is a member of, among others, the Social Platform, the Health and Environment Alliance (HEAL), the EU Civil Society Contact Group and the Better Regulation Watchdog. <http://www.epha.org/>

The European Heart Network (EHN) is a Brussels-based alliance of heart foundations and likeminded non-governmental organisations throughout Europe, with member organisations in 25 countries. The EHN plays a leading role in the prevention and reduction of cardiovascular diseases, in particular heart disease and stroke, through advocacy, networking, capacity-building and patient support, so that they are no longer a major cause of premature death and disability throughout Europe.

<http://www.ehnheart.org/>

The European Association for the Study of the Liver (EASL) is a membership organisation for hepatology health professionals based in Geneva (Switzerland). EASL currently has just over 4,000 members from over 100 countries. The EASL annual congress now attracts over 10,000 participants and is the biggest medical liver congress in the world. EASL will celebrate its 50th anniversary in 2015. <http://www.easl.eu/>

For further questions, please contact:

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