



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate F - WTO, Legal Affairs and Trade in Goods
Dispute Settlement and Legal Aspects of Trade Policy

Brussels, 3 April 2017

F.2 [REDACTED] (2018) 5135829

MEETING REPORT

Subject: Meeting with stakeholder, Both ENDS, regarding the public consultations on a multilateral reform of investment dispute resolution

[REDACTED] met with [REDACTED], [REDACTED] of Both ENDS. Both ENDS is a Dutch organisation dealing with policies and investments that have a direct impact on environment, agriculture, indigenous people and their livelihood.

Overall, the stakeholder was in favour of the establishment of a multilateral investment court, but he also raised some comments that can be summarised as follows:

- The multilateral reform should encompass a reform of the substantive rules creating obligations for investors and rights for States.
- The political set-up of the court should allow for flexibilities and changes.
- Third party rights should be enhanced as much as possible (e.g. when the interests of indigenous communities are affected).
- The jurisdictional clause of the court should be broad, including contract claims (but he is not happy with the umbrella clause).
- The applicable law clause should also be broad, encompassing human rights and international environmental law. Additionally, since the EU is designing this project, it would be advisable to prevent in the future cases like *Micula v. Romania*, by establishing some form of exception for EU competition rules.
- The convention establishing the court should provide for a filter mechanism for claims when the investment is linked to corruption. In addition, the convention should provide for the possibility to establish that a claim is inadmissible in case of non-application or violation of certain international instruments, such as the OECD Guidelines for Multinational Enterprises.
- The model of the New York Convention should be followed for enforcement, adding "corruption" as a ground to set aside the enforcement of the award or an "opt-out"

mechanism for States not to recognise the enforcement of awards in certain cases (e.g. bribery, corruption, child labour, etc.).

- Transparency rules should be enhanced also as regards State-to-State dispute settlement and contract-based disputes.

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C.c.:

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