



Meeting with ClientEarth

Meeting date and place

Meeting held on 27/01/2020 15:00

Participating organisation(s) & representative(s)

-- ClientEarth (TRN: 96645517357-19) **Participant.**

Main issues discussed

On Monday 27 January 2020, a meeting between ClientEarth representatives and DG FISMA officials took place at DG FISMA premises. The meeting was requested by ClientEarth to mainly discuss Investor to State Disputes before arbitration courts (ISDS), as well as possible future COM initiatives on investment protection in the EU.

ClientEarth explained its commitment to ensure that public interest - namely environmental and climate considerations - are taken into account in EU trade and investment policies, both in intra-EU and extra-EU contexts.

ClientEarth argued that allowing investors to sue EU Member States before arbitral tribunals (ISDS) risks halting the adoption and implementation of measures on climate. They sustained that investment disputes should be brought before national courts, which are aware of and more sensible to environmental choices of governments.

On the agreement for the termination of bilateral investment treaties between EU Member States (intra-EU BITs), ClientEarth asked about the timeline for the signature and ratification of such agreement and about the fate of pending arbitral procedures.

ClientEarth also enquired about the intra-EU applicability of the Energy Charter Treaty (ECT), following the Achmea judgment. They considered the situation to be in a deadlock as on the one side there are still arbitral awards rendered on the basis of the ISDS clause under the ECT and on the other side there is currently no consensus among Member States to take steps that can effectively prevent those arbitration cases for the future.

Forward looking, ClientEarth suggested the following to be included in future investment initiatives (and namely ECT modernisation):

- Compulsory exhaustion of local remedies before disputing in front of a supranational body
- Creating links with EU climate law and/or Paris agreement;
- Denial of benefits preventing investors investing in non-sustainable activities to be protected (by ECT);
- A dispute settlement body for climate related disputes.

Directorate or unit

FISMA

Internal participants

	FISMA	()@ec.europa.eu	Participant.
	FISMA	()@ec.europa.eu	Participant. Requested for.
	FISMA	()@ec.europa.eu	Participant. Notetaker.

Author(s) of minutes

Validator and validation date

validated the minutes on 06/05/2020 20:00