



EUROPEAN COMMISSION
Directorate-General for Trade

Directorate B - Services and Investment, Intellectual Property and Public Procurement
Investment

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Trade B2/ /2428617

NOTE TO THE FILE

**Subject: Meeting with the Confederation of Finnish Industries (EK) on ISDS/TTIP
03 July 2014, CHAR 05/218**

Participants:

EK:

COM: I

Meeting held at the request of the Finish Industries Confederation (EK) representatives who exposed to COM their views and their main concerns on the ongoing TTIP negotiations.

- On the Public Consultation: they welcomed the consultation, underlining their pragmatic attitude towards it, but they feared the spillover effect that the outcome of the consultation might have on other agreements beyond TTIP.
- On MS BITS: they sought reassurance that EU future BITs will at least be based on MS BITs standards, if not on higher ones, and thus pointed out the necessity to include ISDS as an indispensable mechanism in the TTIP.
- EK agrees with COM's endeavours to introduce balanced provisions in the draft text; in this respect FIC supports the introduction of clarifications but warned against closed lists (eg as in FET) which limit too much the room for interpretation on a case by case basis.
- EK is however opposed to allowing retroactive binding interpretations of the agreement by the parties, or binding interpretations while an ISDS case is ongoing.
- As regards the "loser pays" principle, EK appreciates the intention to curb frivolous claims, but considers that the application of the principle beyond the dismissal of these may prove counterproductive.

- EK also sought explanation of the intended provisions on parallel claims, especially as regards the room for local action before triggering the fork-in-the-road.

COM explained that the consultation is specifically aimed at TTIP, although it is also true that policy-wide conclusions may also be drawn. COM confirmed the importance of ISDS which, even as a tool of last resort, is aimed at ensuring both investment protection and the respect of the public policy space. In any case, the future EU agreements, like CETA, will ensure at least as high a level of protection as the existing MS BITs, while being more detailed and transparent. With regard to ISDS, the rules in EU agreements are much more precise in order to ensure clarity and to avoid abuses such as 'treaty shopping'.

EK raised the cost issue, especially with regard to frivolous and parallel claims, and pointed out that SMEs are de facto sanctioned by the financial burden as compared to MNCs. COM explained that the cost dimension is as a matter of fact an instrument that prevents the abuse of ISDS by investors, and that the "loser pays" provisions are useful in that any investor that has a solid case should expect to be able to recover their legal costs.

Finally, EK underlined that the definition of FET certainly implies an interpretative margin of manoeuvre but which should not fall into legal uncertainty, and sought clarification as to what is understood to be an investor's legitimate expectations. COM noted that a mere reference to customary international law is considered far too vague hence the need to provide in the agreements clear, more detailed guidance as to what the parties understood as FET

COM invited EK to respond to the TTIP consultation, as the interest of the COM is to have a wide participation from all sides of the EU civil society. It invited EK to provide any useful information with respect to the barriers Finnish investors encounter in the US in general and also at the Sub-federal level.

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