

The European Parliament Says Yes to TTIP

On 9 June, the European Parliament was scheduled to vote on TTIP. The text adopted would then go as a recommendation to the European Commission. However, at the last minute, the President of the Parliament, the German MEP Martin Schultz, decided to postpone the vote.

At issue was a serious disagreement among MEPs over the controversial Investor State Dispute Settlement (ISDS) which would allow corporations to sue governments in special tribunals over policies they disliked. In the months previous to this, a record-breaking 2.5 million EU citizens had [signed a petition](#) rejecting TTIP. And the Commission had received the highest ever number of responses to a consultation on ISDS – 150,000, of which close to 100% rejected ISDS. There were protests across Europe and tens of thousands' of emails were



flooding every MEP on this issue alone. MEPs were responding to this pressure from their constituents and it was unclear how the vote would go especially among the centre-left S&D group, one of the two main groups in the parliament. At the same time, the conservative groups were pushing hard for ISDS.

Martin Schultz then made use of rule 175 of the parliament's [Rules](#) of Procedure to postpone the vote.

"What we should have is a strong text by the European Parliament and what we should avoid is that Parliament adopts a resolution which is neither here or there, or, even worse, is not able to adopt a resolution" Schulz [said](#).

His fellow German MEP, Bernd Lange, who chairs the International Trade

Committee which prepared the draft text on TTIP, [said](#)

"We will use the additional time we gained to work towards reaching a stable majority for the TTIP-resolution"

And this is what they did. The leaders of the two main groups in the parliament got together and agreed a compromise text on ISDS. The task was to preserve ISDS while appearing to respond to the claims of those who opposed it. Some sleight of hand was needed here. And the Trade Commissioner, Cecilia Malmström, had already [suggested](#) how to do this - draw attention away from the core meaning of ISDS, the special right of corporations to sue elected governments, and focus on the institutional mechanism for doing this, namely, the special private tribunals.

ISDS Out then Back In

The [original text](#) by Bernd Lange presented to INTA in February 2015 had explicitly excluded ISDS:

'1.d.(xiv) ... such a mechanism is not necessary in TTIP given the EU's and the US' developed legal systems; a state-to-state dispute settlement system and the use of national courts are the most appropriate tools to address investment disputes;'

The INTA then debated and amended the [document](#) to present to the Parliament in June. In the new section on ISDS, the committee dropped its 'state-to-state' proposal and proposed instead to build on 'the concept paper recently presented by Commissioner Malmström to INTA', proposing (1.d.xv):

'a permanent solution 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;
– in the medium term, a public International Investment Court could be the most appropriate means to address investment disputes.'

The new text no longer rejected ISDS. But an 'international investment court' would replace the arbitration tribunals 'in the medium term'. However, in what appears to be a typical fudge, the document still proposed 'to trust the courts of the EU and of the Member States and of the United States to provide effective legal protection'. This new amendment was not acceptable to many in the S&D group because it had reinstated ISDS, albeit in the form of an international court.

At the same time, the provisional nature of this court and the insistence on 'effective legal protection' from the existing legal system was unacceptable to the conservative and liberal groups who favoured ISDS.

The US had also let it be known that it [wouldn't accept](#) the proposal for an international court. This was the situation when Martin Schultz postponed the vote.

The ISDS Compromise

The new [compromise amendment](#) (2.d.xv) agreed between the two main groups in the weeks that followed did indeed preserve what was essential for ISDS, namely giving corporations the right to a special parallel legal system in which they would receive 'fair and equitable treatment and protection against direct and indirect expropriation, including the right to prompt, adequate and effective compensation'. The private tribunals, however, would go. The amendment proposed 'to replace the ISDS system with a new system for resolving disputes between investors and states'. The new system would be 'transparent' and 'public' with the right of governments to appeal. Unlike the original text which had proposed an 'international investment court', the compromise amendment made no mention of any specific institutional form.

Gianni Pittella, the leader of the S&D group in the European Parliament, [proclaimed](#), "ISDS is dead". And this was how the new deal was presented to S&D members and to the wider public. The citizens had been listened to. Parliament had rejected ISDS. However, the Left group in parliament (Gue/NGL) wasn't impressed. Nor were many S&D MEPs, including those from Labour. They had intended supporting an amendment which completely rejected 'the inclusion of investor-state dispute settlement (ISDS) in TTIP, as other options to enforce investment protection are available, such as domestic remedies'.

However, Martin Schultz had other tricks up his sleeve. When Parliament met on 8 July to vote on the final text, Schultz again invoked procedural rules to disallow any amendments on ISDS other than the compromise amendment. The rules provide that the President can accept the tabling of a compromise amendment on any part of a text that has been the subject of amendments. If a compromise amendment is tabled, it is voted first. If it is adopted, all other amendments to the same passage fall. Thus none of the other amendments that were more critical of or rejected ISDS could be put to the vote. Schultz was [accused](#) by a representative of the Greens of having "twisted the meaning of parliament's rules of procedure to fit his political goals".

The full text with the compromise amendment won [a large majority](#) with 447

votes for and 229 against. But the S&D group was split. Since, in their view, the amended text still included ISDS, all Labour MEPs voted against the full document. As did all the French, Belgian, Dutch and Bulgarian members of S&D. All the Germans voted in favour, as did most of the southern and eastern European S&D MEPs. The Left and the Greens voted against, also the right-wing group (EFDD) of which UKIP is a member. All other groups voted in favour, with MEPs following the lead of their group.

This vote in July has dented the hopes of many that the European Parliament could be the way to defeat TTIP. It is ironic that all the German MEPs from the SPD voted in favour. Germany is the only country in the EU in which a majority of the population (53%) opposes TTIP.

The CETA Problem

But MEPs now face another ISDS problem. Having opted, however vaguely, for a 'new system' and having apparently rejected the old ISDS, they will soon be asked to ratify the free-trade deal with Canada (CETA) that has already been negotiated. But CETA contains the old ISDS. And, as we know from the Philip Morris case, where the tobacco giant sued Australia from its Hong Kong subsidiary, a US corporation doesn't have to be on its home turf to launch a suit against foreign governments. Most US corporations have branches in Canada. Shutting the stable door in TTIP while leaving it open in CETA would be a self-defeating strategy. MEPs now must demand a reopening of the negotiations with Canada.



On July 21st, the Canadian company Gabriel Resources [sued the Romanian government](#) which was blocking its attempts to build Europe's largest open-pit gold mine in Romania's Carpathian Mountains.

Unfortunately, campaigning and public awareness of the free-trade threat only really took off in Europe when the US became involved. But the free-trade deal with Canada, already negotiated but not ratified, contains all those features which campaigners find objectionable in TTIP. Let's take just one example – genetically modified food. In its Questions and Answers page on TTIP, the Commission [assures](#) us that

'The EU basic law on GMOs - including the European Food Safety Authority's (EFSA) safety assessment and the risk management procedure - is not up for negotiation. It will not change as a result of TTIP.'

But in CETA, the the EU and Canada [agreed](#) on:

- '- promoting efficient science-based approval processes for products of biotechnology;
- cooperating internationally on issues related to biotechnology such as low level presence of genetically modified organisms;
- engaging in regulatory cooperation to minimize adverse trade impacts of regulatory practices related to biotechnology products.'

The issue here is not just existing GMOs but new biotech techniques and the rise in the number of products falling within the scope of GMO legislation. In June, EU member states gave their backing for [plans to overhaul](#) rules on approving GM crops for cultivation that would give national governments more autonomy in making decisions. Canadian agribusiness certainly understood the text in CETA about minimising the adverse trade impacts of GMO regulations. The Canadian Canola Growers Association, which boasts of using 'innovative farming technologies, including biotechnology', [announced](#) that they 'look forward to the EU adopting more timely and science-based policies related to the approval of biotech traits'.

Commission promises about TTIP are meaningless in view of what has already been agreed in CETA.

Public Services

Before the aborted vote on TTIP in June, the Parliament's Committee on Employment and Social Affairs had proposed an explicit and detailed text on the exclusion of public services from TTIP which

'should apply whether the services in question are organised as a monopoly, operating under exclusive rights or otherwise, and whether

publicly or privately funded and/or provided ... the full scope for the re-nationalisation and re-municipalisation of services must be safeguarded'.

The International Trade Committee rejected this.

In the debate in July, the parliament rejected a Left amendment, supported by Labour MEPs, according to which negotiations would follow a 'positive list approach' (only services explicitly listed could be considered for privatisation) and governments would 'retain the option of reassuming public control over liberalised services of general economic interest'.

The text adopted proposed a 'hybrid list approach' (both positive and negative listing) but explicitly called for the exclusion of public services 'including but not limited to water, health, social services, social security systems and education', adding that 'this exclusion should apply irrespective of how the services are provided and funded'. It also demanded 'enough flexibility to bring services of general economic interest back into public control'.

On issues other than ISDS, the document adopted in July was the same as what had been proposed by INTA for the June meeting and which has already been examined in a [previous update](#) on the KONP website.

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