

German Judges Reject the Investor Court System



The German Association of Magistrates (Deutscher Richterbund) has [issued a statement](#) rejecting the European Commission's proposal for an Investor Court System (English translation [here](#)). This is the Commission's response to the massive opposition in European society to ISDS. The special privilege for corporations to challenge government decisions is retained but the tribunals are to be public and decisions can be appealed against.

The statement from the German judges was reported in the English-language [EU Observer](#). The campaign group SomeOfUs reported this in an email as: 'a German court just ruled that the planned investor court is illegal.' This was a mistake since what was involved was a statement by a civil association and not a decision by a court.

The statement by the German judges said that it was a mistake to claim that judicial systems in the EU were unable to offer adequate investment protection: 'The Deutscher Richterbund sees no necessity for the creation of a special court for investors. Member states of the European Union are law-based states which offer and guarantee access to the state judicial system to all litigants.'

The judges also objected to the fact that the rights given to corporate claimants in the TTIP treaty went beyond normal investments in business and extended into the areas of social legislation and tax law. The judges also doubted whether the European Union had the competence to agree on such a system for the Union and for member states since it would seriously limit the legislative competence of governments and make a fundamental change to established judicial systems.

They also claimed that the proposed system for the selection of judges 'does not satisfy international demands for the independence of courts'. The Commission's proposal that ICS judges are to be chosen from among experts in international law and international trade law, with experience in the arbitration of international trade disputes, 'severely restricts the circle from which arbitrators are chosen'. The ICS court is, in reality, 'not an international court but a permanent arbitration tribunal'.

The tenure and payment for these arbitrators also casts doubt on the claims for independence: 'The length of tenure, 6 years, with the possibility of an extension' as well as the retainer fees and daily fees for both the tribunal and the appeals tribunal (Art. 9.12 and 10.12) 'cast doubt on whether the criteria for professional and financial independence of judges in an international court have been fulfilled.'

This statement by German judges is a serious challenge to any proposal for a special court for investors. The Commission responded to the initial protests against ISDS by dropping some of its most doubtful aspects, secrecy and no appeal. What's needed now is to continue the protest to force it to drop the whole idea altogether.

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