Europe's own ISDS is being planned behind closed doors

The Investor State Dispute Settlement (ISDS) has probably aroused more opposition to TTIP in Europe than any other aspect of this corporate-friendly treaty. Millions of EU citizens have signed petitions against it and its inclusion in the TTIP treaty even divided the normally compliant European Parliament. For many, the problem was that ISDS would allow US corporations to sue European governments over democratically agreed policies that would stand in the way of greater corporate profit. But now a whole new ISDS threat has raised its head – an ISDS that operates within the European Union's own cross-border trade, an EU-wide ISDS, an investment protection mechanism that would allow corporations in one EU member state to sue governments in other member states across the EU.

This is precisely the proposal that has come from some of the EU's most aggressively neoliberal states – Germany, Austria, France, The Netherlands and Finland. This proposal was put to the EU's Trade Policy Committee in April 2016. The five states are referred to in the leaked document as 'the Delegations'.

The background to this is the proposal to phase out existing bilateral investment treaties (BITs) between individual EU member states. Most of these were signed in the 1990s when EU member states signed BITs with many Central and East European and Mediterranean governments. At that time they were simply BITs between EU Member States and third countries. But, with the accession to the EU of 12 new countries (majority from Central and Eastern Europe) in 2004 and 2007, there now existed a large number of BITs between EU Member States. To maintain the protection of corporate investments that existed in many different forms in these BITs, Germany and the other four states are proposing an EU-wide ISDS in order to make sure that 'the phasing out of intra-EU BITs do not result in any gaps in the protection of cross-border investment within the internal market' (par 6).

What is really disgraceful about this proposal is that these government leaders have experienced the widespread popular opposition to ISDS in TTIP and are still intent on imposing it on the the EU regardless of what happens to TTIP. In fact, having got their teeth into ISDS in the TTIP negotiations, they are embracing it for their own citizens: 'The wording of such principles should be as precise as the EU investment policy developed for TTIP' (par 8).

These proposals were no doubt drawn up in consultation with the EU's corporate elite. Within days of the proposal being put to the EU Trade

Committee, the EU business group, Business Europe, put this on their website:

'In this context, BUSINESS EUROPE is in favour of reinforcing investment protection provisions in the single market and developing a Union-wide dispute settlement mechanism.' Business Europe, 14 April 2016

There were investment protection clauses in the trade treaties signed at the time with the ex-communist countries which allowed them to sue other European governments. The EU should have abolished these investment protection clauses when these countries became part of the EU's single market. Instead, they are extending them to the whole of the EU, creating the potential for a bonanza of corporate claims against European governments that will further undermine support for the EU among its citizens. It would also be a bonanza for the corporate lawyers that arbitrate such disputes.

This is clearly a matter that concerns the internal politics of the EU. But these five governments are ignoring the EU's political institutions, not to mention, other member-state governments and their citizens, and have presented this proposal to the International Trade Committee as if it were simply a matter of external trade relations.