

Abstract

European Commission's Reform Proposal Concerning The Investment Dispute Settlement Mechanism: Comparative Analysis

In November 2015, during negotiations with the USA about the investment chapter of TTIP, the European Commission presented US delegates with a text which significantly differs from the traditional model of ISDS. Commission's reform proposal is a reaction to the current criticism directed towards the legitimacy of investment arbitration and to the demands for its thorough reform or even removal from the TTIP draft text. The Commission introduced the proposal after the public consultation opened in connection with the criticism of ISDS attracted significant public interest.

This thesis aims to analyze the Commission's proposal and determine whether the Commission has introduced a sound proposal which would be capable of replacing the traditional concept of ISDS. The thesis further examines whether there are smaller or larger differences between the Commission's proposal and traditional ISDS and whether the Commission could have taken a different approach to some issues.

After the first chapter dedicated to the criticism of investment arbitration and the results of the public consultation, the thesis analyses the Commission's proposal. Most attention is given to its procedural aspects, describing the proceedings before the permanent investment court that the Commission proposes to establish. The thesis identifies as most problematic the procedure to appoint judges and the fact that the parties to the dispute are not able to influence the composition of the division which is hearing their case.

The third chapter contains a comparative analysis of the Commission's proposal and the dispute settlement mechanisms used in the WTO and the TPP. The part dedicated to the WTO mainly deals with the proceedings before the WTO panels and the Appellate Body and with the statistics which enable a comparison between the ISDS and WTO regimes. In the part describing TPP, the thesis focuses on the mechanisms used in the traditional concept of ISDS to regulate the issues of conflict of interest or to enable review of arbitral awards. Based on these comparisons, the thesis suggests some possible improvements to the Commission's reform proposal.