Education International
Internationale de l'Education
Internacional de la Educación

http://www.ei-ie.org

EUROPEAN REGION-ETUCE

President
Christine BLOWER

Vice-Presidents
Odile CORDELIER
Walter DRESSCHER
Paula ENGWALL
Andreas KELLER
Galina MERKULOVA
Branimir STRUKELJ

5, Bd du Roi Albert II, 9th
1210 Brussels, Belgium
Tel +32 2 224 06 91/92
Fax +32 2 224 06 94
secretariat@csee-etuce.org
http://www.csee-etuce.org

European Director
Martin RØMER

Treasurer
Mike JENNINGS

ETUCE
European Trade Union Committee for Education
EI European Region

ETUCE report on EU regulation setting out rules of managing ISDS (Investor-State Dispute Settlement) in EU investment agreements

The European Commission published on 28 August 2014 regulation No 912/2014 adopted on 23 of July 2014 establishing a framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals established by international agreements to which the European Union is party. The European Commission also issued a press release. According to the European Commission, the regulation is an important step towards creating a comprehensive EU investment policy. Under the Lisbon Treaty, investment is part of the EU's Common Commercial Policy, which is an exclusive EU competence. The regulation defines whether the European Commission or the Member States shall defend challenges under ISDS. It also sets out principles for whether the costs and compensations shall be paid by the European Commission or the Member State. The regulation will enter into force on 17th September. The EU has until now no EU trade agreements that include an ISDS mechanism. Nevertheless, the EU is part of the Energy Charter Treaty. This treaty contains investment protection and ISDS. Recently, Russia was ordered to pay $50 billion in damages under the Energy chapter. This is the highest amount ever awarded. The European Commission is aiming to include ISDS in a number of investment and trade agreements currently being negotiated, including the free trade agreements with Canada and the US.

Regulation No 912/2014 notes that *"Investor-to-state dispute settlement can result in awards for monetary compensation. Furthermore, significant costs for administering the arbitration as well as costs relating to the defence of a case will inevitable be incurred in any such case."* It also states that *"Union agreements should afford foreign investors the same high level of protection as Union law and the general principles common to the laws to the laws of the Member States grant to from within the Union, but not a higher level of protection. Union agreements should ensure that the Union's legislative powers and right to regulate are respected and safeguarded."*

These two obligations of "the right to regulate" and "the equal level of protection given to domestic and foreign investors" are not fulfilled in ISDS mechanisms, and consequently ETUCE opposes the inclusion of ISDS with US and Canada. More details are included in the ETUCE response to the European Commission's public consultation on MODALITIES FOR INVESTMENT PROTECTION AND ISDS IN TTIP.

In the regulation, the European Commission shall submit a first report by 18 September 2019 on the operation of the regulation including the listing of claims, related proceedings and rulings, and the financial impact on the budget of the Union. Every 3 year such a report shall be submitted by the European Commission. In addition, the European Commission shall also submit an annual report including a list of requests for consultations from claimants, claims and arbitration rulings to the European Parliament and the Council.