

1. RESPONDENT DETAILS

1.1. Type of respondent -single choice reply- (compulsory) I am answering this consultation on behalf of a company/organisation

Your details - Companies/Organisations

1.1.1. My company's/organisation's name may be published alongside my contribution. -single choice reply- (compulsory) Yes

1.1.2. Company/Organisation name: -open reply- (compulsory) A group of 120 academic experts in trade and investment law, EU law, international law and human rights, constitutional law, private law, political economy and other fields
Academic

1.1.5 What is your profile? -single choice reply- (compulsory)

1.1.5.1. If you are a company, what is the size of your company? -single choice reply- (compulsory)

1.1.5.2. If you are a non-governmental organisation, how many members does your organisation have? -single choice reply- (compulsory)

1.1.5.3. If you are a trade association, how many members does your association have? -single choice reply-(compulsory)

1.1.5.4. If you are a trade association representing businesses, please provide information on your members (number, names of organisations). -open reply- (compulsory) 1.1.5.5. If you are an organisation representing several non-governmental organisations, please provide information on your members (number, names of organisations). -open reply- (compulsory)

1.1.5.6. If you replied "other", please specify: -open reply- (compulsory)

1.1.6. In which country are the headquarters of your company/organisation located? -single choice reply- (compulsory) In one of the EU28 Member States

1.1.6.1. Please specify which Member State: -single choice reply- (compulsory) Belgium

1.1.6.2. If you replied "other", please specify: -open reply- (compulsory)

Your details - Individuals

1.1.1. My name may be published alongside my contribution -single choice reply- (compulsory)

1.1.1.1. Contact person -open reply- (compulsory)

1.1.2. If you are answering as a citizen/individual, please specify: -single choice reply- (compulsory)

1.1.2.1. If you replied "EU citizen", please specify from which Member State: -single choice reply- (compulsory)

1.1.2.1. If you replied "other", please specify: -open reply- (compulsory)

Yes

1.2. Your contribution

I agree for my contribution to be made public on the European Commission's website -single choice reply- (compulsory)

1.3. What is your main area/sector of activity/interest? -open reply- (compulsory) trade and investment law, EU law, international law and human rights, constitutional law, private law, political economy

1.4. Registration: Are you registered in the EU's transparency register? -single choice reply- (compulsory) No

1.5. Have you already invested in the USA? -single choice
reply- (compulsory)

No

A. Substantive investment protection provisions

Question 1: Scope of the substantive investment protection provisions

Question:

Taking into account the above explanation and the text provided in annex as a reference, what is your opinion of the objectives and approach taken in relation to the scope of the substantive investment protection provisions in TTIP?

If you do not want to reply to this question, please type "No comment".

-open reply- (compulsory)

1) Sovereign debt instruments In light of the reasoning of (majorities of) the Tribunals in the recent *Abaclat* and *Ambiente* cases, it is clear that the definition of 'investment' proposed by the Commission will not suffice to exclude acquisitions of sovereign debt instruments, including those on secondary markets. It could, perhaps, be argued that the provisions of prudential carve-outs and safeguard measures discussed under Question 5 stand against claims brought by (speculative) investors in, for example, Greek government bonds complaining about 'haircuts' and the general handling of the sovereign debt crisis in the Eurozone. But the prudential carve-out only allows measures to ensure the integrity and stability of a party's financial system in so far as these measures are 'not more burdensome than necessary to achieve their aim', and the safeguard clause only allows 'strictly necessary' measures in exceptional circumstances of serious difficulties for the operation of the economic and monetary union. It will, hence, fall on arbitration Tribunals to decide whether the measures involved were 'necessary', a task that should not properly be assigned to such bodies. In light of the social misery and hardship the sovereign debt crisis has brought, it requires little discussion to conclude that the mere thought of speculative investors in government bonds seeking damages before investment arbitration Tribunals is utterly unacceptable. The only appropriate way of excluding this possibility is clearly and unequivocally to exclude acquisitions of sovereign debt from the definition of 'investment.'

2) 'Substantial business activities' The requirement to have 'substantial business activities' in the home country may become a useful check against 'forum shopping'. Yet it also highlights that the problem of forum-shopping originates in the refusal of the majority of arbitrators to pierce the corporate veil, or otherwise put reasonable limits on manipulation of corporate chains of nationality by claimants. That this reference is even necessary should prompt the parties to reconsider their confidence in the system. If the Commission really wants to avoid abuse, moreover, it is surely not enough to focus on the extent of claimant activities in the home country. The reference text defines 'a covered investment' as an investment 'owned or controlled' by an investor of the other Party. But 'investment' itself is defined broadly and includes, for example, any equity stake, corporate bonds, loans and indeed 'any other kinds of interest in an enterprise.' Given the realities of modern financial markets, including equity and bond markets, it is difficult to imagine any company of any size and importance on either side of the Atlantic in which there is no financial 'interest' at all on the other side. It cannot be desirable to allow any US holder of a corporate bond issued by a European company to launch an investor-state claim against the home state of that European company.

3) 'In accordance with applicable law' The Commission is worryingly confident about the reference to investments 'made in accordance with applicable law.' This, it is said, 'has worked well' and has a 'proven track record' in enforcing duties of investors. Yet the Commission offers no references to support the claim and the strategy is unlikely to deliver what the Commission seems to expect. It should at the very least be amended to make clear that investors are expected to respect the law of the host country for the duration of the investment. In any event, the claim of a 'proven track record' does not explain why the provision is not more explicit about what is expected of investors before they can launch a claim. References to an absolute prohibition of any form of bribery and an absolute obligation to respect human rights as they are reflected in the law of the host country and in international law would seem to be the bare minimum. Where the applicable law does not – for reasons inherent to the race for foreign capital on the part of host states – provide adequate protection, the applicable law clause should not shield the private investor from liability for human rights violations. According to the Commission, the reference 'has allowed ISDS tribunals to refuse to grant investment protection to investors who have not respected the law of the host state when making the investment.' It seems obvious that the clause should not 'allow' but oblige tribunals to refuse investment protection in such circumstances.

Question 2: Non-discriminatory treatment for investors

Question:

Taking into account the above explanations and the text provided in annex as a reference, what is your opinion of the EU approach to non-discrimination in relation to the TTIP? Please explain.

If you do not want to reply to this question, please type "No comment".

-open reply- (compulsory)

1) MFN and Investor-State Arbitration The reference text usefully excludes access to investor-state arbitration from MFN, contrary to numerous contentious holdings in investment arbitration starting with *Maffezini*. That this reference is necessary should also give the parties reason to reconsider their confidence in the system. The reference also does not extend to the arbitrators' practice, which the Commission claims to want to avoid, of importing new substantive standards (beyond dispute settlement provisions) from other treaties. To be safe, the treaty should make very clear that MFN applies only to domestic regulatory treatment of foreign investors

and not to any other treaty. 2) Article XX GATT The incorporation of Article XX GATT, according to the Commission, ‘allows the Parties to take measures relating to the protection of health, the environment, consumers, etc.’ To that end, the CETA reference text usefully emphasizes that Parties share an understanding of Article XX (b) GATT as including environmental measures and of Article XX (g) GATT as including measures aimed at the protection of living exhaustible natural resources. However, this importation of Article XX GATT also includes the proportionality test under the provision’s chapeau. Investment arbitrators will hence decide what is ‘necessary’ for the protection of health, the environment, consumers etc., an assessment which involves a process of ‘weighing and balancing’ which begins with an assessment of the relative importance of the interests or values that the challenged measures intend to pursue, and further includes an inquiry into the contribution the contested measure makes towards the stated objectives, and a determination as to whether the measure’s restrictive effect is proportionate to its effect towards the protection of those interests and values. This interpretation is contentious enough in inter-state litigation before the WTO Appellate Body, a serious judicial institution: it involves, after all, a judicial determination of the ‘relative importance’ of such values or interests as the environment, consumer safety, or public health. It is clear that the test is bound to lead to serious trouble when administered by investment arbitration tribunals tasked with striking ‘a balance’ between an individual company’s economic interests and the democratic collective choice of a body politic. In any event, the incorporation of Article XX GATT will not safeguard adequately a ‘right to regulate’. Indeed, a public policy exception clause modeled on Article XX GATT creates a perception that regulatory action which restricts investor rights is prima facie inconsistent with these rights unless the respondent State can discharge the burden of proving that its measures come within the exception. To safeguard a right to regulate of states would require a clear and unequivocal statement of the right in the treaty alongside the many elaborate rights and protections of foreign investors, which would place the burden of proving an infringement upon the claimant investor.

Question 3: Fair and equitable treatment

Question:

Taking into account the above explanation and the text provided in annex as a reference, what is your opinion of the approach to fair and equitable treatment of investors and their investments in relation to the TTIP?

If you do not want to reply to this question, please type "No comment".

-open reply- (compulsory)

1) FET The traditional understanding of the FET standard was systematic: under normal circumstances, foreign investors are not entitled to different, let alone better, treatment than domestic investors. The FET standard was seen as a back-up standard, operating only in the exceptional circumstances where the political and legal systems of the host country disintegrate to such an extent that the non-discrimination norm fails to protect investors from outrageous governmental behavior that is shockingly insufficient as measured by international standards. In the hands of investment arbitrators, the standard has been radically transformed into an autonomous source of wide-ranging obligations for governments. As summed up by one tribunal, the standard is now understood to demand ‘consistent and transparent behavior, free of ambiguity that involves the obligation to grant and maintain a stable and predictable legal framework necessary to fulfill the justified expectations of the foreign investor.’ The Commission rightly seeks to curtail this unwarranted interpretation. The idea is to propose a closed list of basic obligations, and to insert a separate clause that purports to limit the doctrine of ‘legitimate expectations’ to instances where those expectations are generated by specific representations, which need not be in writing, made by the host state in order to induce the investment upon which the investor relied when making the investment. History suggests that the Commission’s approach is unlikely to have the desired effect. States have tried before to curtail the expansive interpretation of FET by explicitly stipulating that it does not require treatment that goes beyond the customary international law minimum standard of treatment of aliens and does not create additional substantive rights. These efforts, however, have turned fruitless in the face of Tribunals’ insistence that, for example, ‘in fact, the Treaty standard of fair and equitable treatment and its connection with the required stability and predictability of the business environment, founded on solemn and contractual commitments, is not different from the international law minimum standard and its evolution under customary law.’ If this line of reasoning is continued, Tribunals will likely consider the doctrine of ‘legitimate expectations’ to flow from – and give meaning to – components of the various ‘basic obligations’ that the Commission proposes, such as ‘due process’ and the prohibition of ‘arbitrariness.’ In that case, the Commission’s efforts to remove the risk of expansive interpretations of the FET standard and the concept of an investor’s ‘legitimate expectations’ will have very little effect. 2) Contract claims More problematic still, the Commission apparently suggests that the widespread tendency in investment law to elevate any breach of contract to a breach of treaty obligations is, by and large, a good idea. By assuming authority over contractual disputes that are subject to their own contractually-agreed forum for dispute settlement, numerous investment treaty tribunals have disregarded principles of party autonomy, sanctity of contract, and avoidance of duplicate litigation which are the hallmarks of arbitration or adjudication generally. The Commission’s text does nothing to address this challenge to markets based on legal equality of all investors and contracting parties, domestic or foreign. The proposal seeks to exclude only ‘ordinary contractual breaches, like the non-payment of an invoice.’ From the systematic point of view described above, there is no justified reason at all to consider contractual claims under the investment treaty unless the breach amounts to a breach of one the ‘basic obligations’; that is, denial of justice, manifest arbitrariness, targeted discrimination and so on.

B. Investor-to-State dispute settlement (ISDS)

Question 7: Multiple claims and relationship to domestic courts

Question:

Taking into account the above explanation and the text provided in annex as a reference, please provide your views on the

effectiveness of this approach for balancing access to ISDS with possible recourse to domestic courts and for avoiding conflicts between domestic remedies and ISDS in relation to the TTIP. Please indicate any further steps that can be taken. Please provide comments on the usefulness of mediation as a means to settle disputes.

If you do not want to reply to this question, please type "No comment".

-open reply- (compulsory)

1) Domestic proceedings 'As a matter of principle', the document states, 'the EU approach favors domestic courts.' There is nothing in the text, however, that suggests any action to further that principle. The referenced CETA text contains only a limited 'fork in the road' provision, not materially different from the one found in NAFTA or the US Model BIT. The provision does not oblige or even provide an incentive for investors to seek redress in domestic courts, but merely sets out to oblige investors to choose between domestic courts and international arbitration. As is the case with most such provisions, this one too is bound to prove of limited effect even for its limited purpose; for example, it excludes claims or proceedings initiated in domestic courts for monetary damages only, and not claims or proceedings seeking injunctions or declarations of unlawfulness, and it will not exclude (counter-)claims brought by investors in domestic proceedings for the purpose of preserving their rights and interests. The 'fork in the road' provision also, rightly, demands claimants to waive their rights to 'initiate any claim or proceeding seeking compensation or damages before a tribunal or court under domestic or international law with respect to any measure alleged to constitute a breach referred to in its claim to arbitration.' This, too, fails to exclude domestic proceedings or claims seeking redress other than monetary damages. Indeed, it allows foreign investors to pursue monetary remedies (not the primary remedy in domestic public law) under the treaty and non-monetary orders (not the primary remedy in investment treaty arbitration) in domestic courts. The waiver, moreover, ceases to apply the moment the arbitration tribunal rejects the investor's claim on any procedural or jurisdictional grounds, even when the claim is found to be frivolous and 'manifestly without legal merit.' This, it is submitted, severely undermines the intention as per Question 9 of preventing abuse of the arbitration system. But what of the 'matter of principle' of favoring domestic courts? The Commission explains the drawbacks of seeking redress in domestic courts as follows: 'It is often the case that protection offered in investment agreements cannot be invoked before domestic courts and the applicable legal rules are different. For example, discrimination in favour of local companies is not prohibited under US law but is prohibited in investment agreements. There are also concerns that, in some cases domestic courts may favour the local government over the foreign investor e.g. when assessing a claim for compensation for expropriation or may deny due process rights such as the effective possibility to appeal. Governments may have immunity from being sued. In addition, the remedies are often different. In some cases government measures can be reversed by domestic courts, for example if they are illegal or unconstitutional. ISDS tribunals cannot order governments to reverse measures.' If this is the extent of the problem, then the solution is fairly straightforward. The Commission should insist on the time-honored principle of exhaustion of local remedies, with the qualification that investors may be given the opportunity to make the case that domestic proceedings do not offer justice or are not reasonably-available according to a set list of criteria having to do with remedies, immunities, procedural rules, and other objective grounds. If there are grounds to believe that, in the course of domestic judicial proceedings, local companies or local governments have been 'favored' or 'due process rights such as the right to appeal' have been denied, the investors may be given the right to argue before investment arbitration tribunals that the treatment they have been given by the domestic judicial system falls short of the standards of treatment under the Treaty; for example, that it constitutes discrimination or 'denial of justice.' 2) Treaty shopping The CETA reference text also contains a provision seeking to prevent the pernicious phenomenon of 'Treaty shopping'. The language is extraordinarily weak, instructing the Tribunal to 'stay its proceedings or otherwise ensure that proceedings pursuant to another international agreement are taken into account in its decision, order or award.' If the Commission is serious about avoiding investors being grossly over-compensated and about ensuring consistency, it should seek to clarify what is expected of Tribunals to 'otherwise ensure' that parallel proceedings are 'taken into account.'

Question 8: Arbitrator ethics, conduct and qualifications

Question:

Taking into account the above explanation and the text provided in annex as a reference, please provide your views on these procedures and in particular on the Code of Conduct and the requirements for the qualifications for arbitrators in relation to the TTIP agreement. Do they improve the existing system and can further improvements be envisaged?

If you do not want to reply to this question, please type "No comment".

-open reply- (compulsory)

1) Conflicts of interest The Commission, rightly, has misgivings about the standards of ethical behavior and conflicts of interest that prevail in the investment arbitration regime. The reference text from CETA does not assuage the fears. While it envisages an unresolved or undisclosed code of conduct to be adopted by Parties, it relies for the time being on the International Bar Association Guidelines on Conflicts of Interest in International Arbitration. This instrument, despite being elaborated under the aegis of the IBA, is an act of self-regulation by and for the international arbitration community. The text puts the power to decide on challenges of arbitrators in the hands of the ICSID Secretary-General instead of a judicial official. In light of what was said above this is inappropriate. The Commission's stated intention is to introduce a code of conduct in the text of the new Treaty. It is so vague on the contents of this code that is difficult to come to any judgment. For example, even if the document mentions concerns arising from the fact that arbitrators often appear in various roles in different proceedings, the document falls short of proposing what is clearly the one single most important rule that is necessary: that arbitrators appointed in cases under the present Treaty may not themselves simultaneously be involved in any capacity other than as an adjudicator in any other investment arbitration, nor have any professional association – whether in the context of a law firm, Barrister's chambers, or any other similar relationship – with anyone who is involved as counsel or party-appointed expert in any investment arbitration. A few arbitrators self-impose this rule. Other arbitration systems, such as, for example the Court of Arbitration for Sport, have versions of this rule. Its absence in a process to review decisions by legislatures, governments, and courts in matters of profound importance to large numbers of people, at potentially vast cost to the public purse, is totally unacceptable. One consideration underlying this rule has its basis in the economic interests

involved with the (generously compensated) arbitrator appointments themselves. Here, the suspicion is that arbitrators, when they act as counsel, will appoint another arbitrator who may in turn in a subsequent case, when acting as counsel, appoint the first. This is certainly a concern, but the more important consideration sees to the economic interests involved with the representation of claimants: law-firms involved in this work have a clear interest in making sure that claims under investment treaties have a good chance of success, and, given the practice of working on contingency fees, a clear interest in higher rather than lower awards. It is imperative, from this point of view, to make sure that no one who stands to profit in any way from the income generated by the representation of parties to investment disputes acts as an arbitrator. More broadly, in a system where only one side, foreign investors, can bring claims, does not everyone – such as a retired judge – who works in the system and wants to continue doing so have an apparent economic interest to encourage more claims? Even with the most robust code of conduct, the absence of basic institutional safeguards of judicial independence undermines fundamentally the claims of investor-state arbitration to neutrality and impartiality.

Question 9: Reducing the risk of frivolous and unfounded cases

Question:

Taking into account the above explanation and the text provided in annex as a reference, please provide your views on these mechanisms for the avoidance of frivolous or unfounded claims and the removal of incentives in relation to the TTIP agreement. Please also indicate any other means to limit frivolous or unfounded claims.

If you do not want to reply to this question, please type "No comment".

-open reply- (compulsory)

The Commission proposes a kind of summary judgment system to provide ‘an early and effective filtering mechanism for frivolous claims.’ It seems unlikely that this approach will have any effect. Especially in light of the fact that the reference text instructs tribunals to consider the alleged facts to be true, arbitrators will have a hard time dismissing claims as ‘manifestly without legal merit’ under the necessarily vague and open-ended provisions of an investment treaty.

Question 10: Allowing claims to proceed (filter)

Question:

Some investment agreements include filter mechanisms whereby the Parties to the agreement (here the EU and the US) may intervene in ISDS cases where an investor seeks to challenge measures adopted pursuant to prudential rules for financial stability. In such cases the Parties may decide jointly that a claim should not proceed any further. Taking into account the above explanation and the text provided in annex as a reference, what are your views on the use and scope of such filter mechanisms in the TTIP agreement?

If you do not want to reply to this question, please type "No comment".

-open reply- (compulsory)

See above, under Question 1.

Question 11: Guidance by the Parties (the EU and the US) on the interpretation of the agreement

Question:

Taking into account the above explanation and the text provided in annex as a reference, please provide your views on this approach to ensure uniformity and predictability in the interpretation of the agreement to correct the balance? Are these elements desirable, and if so, do you consider them to be sufficient?

If you do not want to reply to this question, please type "No comment".

-open reply- (compulsory)

As an ‘additional safety-valve’, the Commission plans to introduce a system where the EU and the US can issue binding interpretations. The reference text from CETA further provides the possibility for the non-respondent State party to intervene in a dispute. From the consultation text, it appears that the Commission wants to combine these two elements. Where, in a given case, the non-respondent State agrees with the interpretation of the respondent State, ‘such interpretation is a very powerful statement, which ISDS tribunals would have to respect.’ For the parties to a Treaty that confers rights on private parties to intervene directly in an ongoing case and issue binding interpretations is a drastic measure. Above all, the planned clause raises once more the question: if the Commission has so little confidence in arbitration tribunals, why confer on them the highly sensitive task of ‘weighing and balancing’ States’ rights to regulate with the property rights of investors in the first place?

Question 12: Appellate Mechanism and consistency of rulings

Question:

Taking into account the above explanation and the text provided in annex as a reference, please provide your views on the creation of an appellate mechanism in TTIP as a means to ensure uniformity and predictability in the interpretation of the agreement.

If you do not want to reply to this question, please type "No comment".

-open reply- (compulsory)

The CETA reference text provides only for the possibility of setting up an Appellate Body. The other reference text is so short on detail on the envisaged appeal mechanism as to make meaningful comment impossible. In any event, the Commission's stated intention to introduce a bilateral appellate mechanism -- to ensure consistency and 'to correct errors' -- into the TTIP ISDS should be applauded, on condition that this profound power of review be assigned throughout the process to independent judges, not arbitrators. But yet again, the idea begs the question: if the Commission has so little confidence in arbitration tribunals, why allow them at all to review -- free from rigorous judicial oversight and checks against conflict-of-interest -- the decisions of legislatures, governments, and real courts? Moreover, the precise relationship between decisions of tribunals, the appellate mechanism and the existing court systems of the US, EU and Member States, will need clarification. It is entirely foreseeable that awards made by investment tribunals under the proposed treaty will have implications for domestic and EU legal rules and will generate appeals to relevant judicial bodies. Thus it is essential that negotiators clarify this important question.

C. General assessment

What is your overall assessment of the proposed approach on substantive standards of protection and ISDS as a basis for investment negotiations between the EU and US?

Do you see other ways for the EU to improve the investment system?

Are there any other issues related to the topics covered by the questionnaire that you would like to address?

If you do not want to reply to these questions, please type "No comment".

-open reply- (compulsory)

The Commission's consultation document is an extraordinary text. On the one hand, the document contains fierce (and, in our opinion, fully justified) criticism of the international investment treaty arbitration regime as it has developed over the last two decades or so in a rapidly expanding number of awards under some 2800 Bilateral Investment Treaties, NAFTA, and the Energy Charter. Both explicitly and implicitly, the document disapproves of widespread expansive interpretations of nearly every provision found in investment treaties: from Most Favored Nation to umbrella clauses, from National Treatment to Fair and Equitable Treatment, from indirect expropriation to threshold issues of corporate nationality. The document also implicitly condemns the investment arbitration community for its failure to police itself adequately in matters of ethics, independence, competence, impartiality, and conflicts of interest. By implication, the document acknowledges that the institutional design of investment arbitration has given rise to reasonable perceptions that the decision-making process is biased against some states and investors as well as various interests of the general public. In our view, the logical implication of the Commission's stance is to raise the key question that is not asked in the consultation document: why consider including investor-state arbitration in the TTIP at all? The rationale for bilateral investment treaties was traditionally linked to views about the potential impact on foreign investment of uncertainty caused by weak legal and judicial systems in host countries. While such a vision of failed statehood should in itself be examined further, it suffices to point out, in the context of the relationship between the US and the EU, that it is difficult to argue realistically that investors have cause to worry about domestic legal systems on either side of the Atlantic. Above all, with FDI stocks of over €1,5 trillion either way, it is implausible to claim that investors in fact have been deterred. Investor-state arbitration raises some profoundly troublesome political issues regardless of arbitrator discretion. Investor-state arbitration delivers undue structural advantages to foreign investors and risks distorting the marketplace at the expense of domestically-owned companies. The benefits to foreign investors include their exclusive right of access to a special adjudicative forum, their ability to present facts and arguments in the absence of other parties whose rights and interests are affected, their exceptional role in determining the make-up of tribunals, their ability to enforce awards against states as sovereigns, the role of appointing bodies accountable directly to investors or major capital-exporting states, the absence of institutional safeguards of judicial independence that otherwise insulate adjudicators in asymmetrical adjudication from financial dependence on prospective claimants, and the bargaining advantages that can follow from these other benefits in foreign investors' relations with legislatures, governments, and courts. At root, the system involves a shift in sovereign priorities toward the interests of foreign owners of major assets and away from those of other actors whose direct representation and participation is limited to democratic processes and judicial institutions. In our view, this public consultation offers a good opportunity for the European Union to reflect seriously on its competences in matters of FDI under the Common Commercial Policy. As the Consultation Notice mentions, EU Member States have some 1400 BITs in place. The vast majority of them are concluded with developing countries. There is little evidence linking the conclusion of the Treaties to increased flows of FDI, and there is little evidence that they contribute to other development goals, such as encouraging good governance. In our view, these Investment Treaties and their arbitration mechanisms are in clear tension with the values of Articles 2 and 3 of the TEU that the Union is to promote in its relations with the wider world. Instead of seeking to extend the system of investment arbitration to relations with the United States, the Commission should be working towards redefining its policy on Investment Treaties, both new and existing, in ways that make it compatible with the founding values of the European Union. This requires a clearer balancing between investor rights and responsibilities and the preservation of national policy space to ensure that the interests of other stakeholders such as workers, consumers and the wider community as a whole are upheld by government.