

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) Aqua Publica Europea - The European Association of Public Water Operators

Trade association representing EU businesses

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) 25 - 100

The members of the association are listed in the association website: www.aquapublica.eu

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)

Public Water Management

1.4. Registration: Are you registered in the EU's transparency register? -single choice reply- (compulsory) Yes

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)

EU's intention to improve the definition of "investor" to avoid abuse is welcomed. However, this improved definition can be effective only as long as it is coupled also with a clearer definition of what "substantial business activities" and investments are, to avoid too extensive interpretations by ISDS tribunals. In any case, decisions (at national or sub-national level) regulating the organization and provision of public services should not be affected by substantive investment protection provisions.

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)

EU's intention to prevent that MFN leads to import provisions from other agreements is welcomed. However, references to possible exceptions for certain policy domains or categories (environment, consumers, etc) are definitely too vague and insufficient to protect the right of states to regulate public services provisions. This is particularly worrisome if a negative list approach is adopted, whereby all sectors that are not expressly listed will be automatically included in the field of application of the agreement. APE opposes the negative list approach as this would limit the freedom of national and sub-national government to decide how to organise public services, something that is against the EU treaties (art 345 TFEU), and that could force liberalisation of services in provisions against public authorities willingness. What is more, European and national legislations already offer – via domestic courts - a largely sufficient protection for investments and against discrimination between domestic and foreign companies.

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)

No comment

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)

While the draft CETA does address the multiple-claims issue, it is not clear how recourse to domestic courts should be favoured. If the draft CETA is taken as a reference for TTIP, the proposed approach would be unsatisfactory with regard to the need of having a balanced access to ISDS (and thus avoiding discriminatory conditions for European companies)

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)

The inclusion of rules concerning the conduct of arbitrators in draft CETA is a positive development. However, it is impossible to assess the effectiveness of this approach in the framework of TTIP without knowing the exact contents of the code of conduct, especially with regard to the procedures to identify conflicts of interests (who, which entity will carry out the assessment? with which inquiring powers? Who will decide whether an arbitrator should be removed or who will decide whether the doubts raised by state regarding the arbitrator's independence are well-founded?).

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)

no comment

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)

no comment

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)

no comment

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)

no comment

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)

Most of the questions in this consultation questionnaire make reference to the draft text of the CETA, which has not been approved yet. What is more, it is impossible to know at this stage to which extent the CETA will be used as a base for the TTIP. Therefore, it is very difficult to say to what extent the commission's intentions to limit the drawbacks of the ISDS can be considered as a credible approach or just wishful thinking. More generally (and importantly), the consultation questionnaire does not raise the essential question as to whether the ISDS is a useful and desirable instrument in the framework of the TTIP. This kind of instrument was originally developed to ensure protection to investors in legal contexts characterized by high level of uncertainty. This is not certainly the case of European and EU member states legislations which already offer a high level of protection to investors (regardless of their national origin). As the European association of public water operators, we consider that recourse to ISDS will not improve in any way the investment flow between US and EU, may create discriminatory conditions for domestic companies and, above all, can lead to a limitation of states' right to decide how to organize the provision of public services.