

France makes U-turn on TTIP arbitration

Published: 27/02/2015

Euractive

Paris has warned French MEPs not to shut the door on Investor-State Dispute Settlement mechanisms by voting against ISDS.

In a letter to French MEPs, seen by EurActiv France, the French Secretariat General for European Affairs (SGAE) appears to have made a U-turn on the position so far defended by Mathias Fekl, the Secretary of State for Foreign Trade.

While Fekl has repeatedly expressed his government's opposition to the investor-state dispute settlement mechanism (ISDS), the SGAE is distancing itself from the anti-ISDS [Lange Report](#), currently under discussion in the European Parliament's International Trade Committee ahead of a vote on 6 May.

This report, written by the German MEP Bernd Lange, a member of the Socialists and Democrats (S&D) group in the European Parliament, argues against the need for a system of arbitration between investors and states.

"A state-to-state dispute settlement system and the use of national courts are the most appropriate tools to address investment disputes," the report states. This position is officially supported by the S&D group.

But in its memo addressed to French MEPs, the SGAE states that "although France believes the inclusion of an ISDS mechanism with the United States is not necessary, the proposed resolution settles the question in too categorical a way. It would be preferable to approach this delicate subject more carefully, and avoid setting a precedent, as the legal standards of some states are not equal to those in the United States".

The SGAE's document represents the official French position on the matter, and is addressed to all French MEPs, including those from the National Front. The French Representation to the EU has specified a set of voting guidelines for the MEPs, ahead of the committee and plenary votes.

Better an arbitration court than a system in the hands of the executive

The letter explains that France would prefer an international arbitration court to a national jurisdiction, in certain cases. Paris wants to avoid a European Parliament resolution that may create a precedent that would make any future recourse to arbitration mechanisms impossible.

A source inside the European Parliament told EurActiv that "the unspoken concern is that in the case of a trade agreement with a country like China, it could be counter-productive to categorically refuse an international court of arbitration". It would effectively make any future establishment of an international arbitration court impossible. But this argument, a favourite of the Commission, could just be an attempt to stop MEPs blocking out ISDS.

This is the opinion of Yannick Jadot, a French Green MEP. "This position is unclear: is France advocating a reform of the arbitration system to adapt it to TTIP, as with the agreement with Canada? Or is France really in favour of excluding it from the trade agreement?" he asked.

Positions confirmed on other questions

On many other points, the SGAE letter meticulously reiterates France's initial positions on the transatlantic trade pact. These include guaranteeing the exclusion of the audio-visual sector from the agreement, pushing for greater protection of sensitive sectors such as livestock, and improving procedural transparency, by proposing that documents be communicated securely and electronically, rather than placed in a room of the Commission. France also wants TTIP to cover financial services, a controversial proposal, as financial regulation is more draconian in the United States than in Europe.