**EESC backs criticism of investor-State dispute settlement (ISDS), and calls for a more holistic approach**

**Criticism raised by civil society mainly concerns questions about the legitimacy, consistency and transparency of this arbitration system. A new model for international investment governance needs to be developed, in order to fill the significant gap between the investment system on the one hand and effective protection of labour rights and the environment on the other.**

Investor-State dispute settlement (ISDS) is a mechanism in numerous free trade agreements and international investment agreements (IIA) for settling disputes concerning the implementation of investment protection agreements.

"The system has been the subject of much criticism from civil society," said the rapporteur general and EESC member **Christophe Quarez**, recalling the debates on the draft agreement between the EU and the US, namely the famous Transatlantic Trade and Investment Partnership (TTIP).

The own-initiative opinion [*Multilateral investor-State arbitration court: assessment of the UNCITRAL process and its achievements in light of civil society recommendations*](https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/multilateral-investor-state-arbitration-court-assessment-uncitral-process-and-its-achievements-light-civil-society)*,* adopted at the EESC's October plenary session, sets out to explore the situation regarding the reform and modernisation of this dispute settlement method – in which the European Commission is playing a central role – currently under discussion at the United Nations Commission on International Trade Law (UNCITRAL).

As Mr Quarez stressed: *The questioning through arbitration of democratic decisions on environmental, social or health protection has been widely criticised. Similarly, questions about the independence and legitimacy of the arbitrators, and the transparency and cost of the procedure, are often raised.*

The EESC reiterates the need to have a modern, effective and functioning international investment protection system with dispute resolution. At the same time, it regrets that international law does not require the exhaustion of domestic remedies.

That is why the Committee keeps reminding the Commission of its request to be more closely involved in its UNCITRAL work, encouraging the Commission to pursue the issue of the exhaustion of local remedies before any international referral. The current system discriminates against SMEs, given their limited financial resources. ISDS should be recognised as an extraordinary remedy.

Accordingly, the Committee stresses that, at this point, UNCITRAL activities should focus more on substantive issues rather than procedural ones – although still important. Among others, an important example of substantive issues is the vagueness and/or too far-reaching nature of the provisions on fair and equitable treatment (FET).

**The need for a holistic approach consistent with sustainable development and social justice goals**

The most frequently identified problems concern the lack of transparency in investment disputes, the lack of consistency and predictability of arbitration outcomes, the role and independence of arbitrators and ISDS clauses that contain vague and too far-reaching concepts may lead to legal uncertainty and potential misuse.

Current public perception sees that there is a significant gap between the protection of investments, which is legally binding, and the protection of human, social, environmental and health rights, which come under international systems that are either partially binding or not binding at all.

Like the European Parliament's Committee on International Trade (INTA), the EESC believes that EU investment policy should not only meet investor and recipient State expectations, but also the EU's wider economic interests, its external policy objectives, as well as its priorities, particularly those on environmental protection and the protection of fundamental human rights.

Achieving consistency between the EU's ambitious sustainable development goals, and the framework for reforming the ISDS model can help society tackle current challenges.

*The common objective is to find a balance between the protection of investments and the protection of the general interest*, emphasised Mr Quarez, adding that: *all stakeholders, including local residents, workers, trade unions, environmental and consumer groups, must be heard by the State/investor arbitration bodies.*

The EESC encourages the Commission to ensure that cross-cutting issues such as the chilling effects of ISDS, the exhaustion of local remedies and access of third parties such as local communities impacted by the investments are kept on the table and satisfactorily addressed.

For a multilateral ISDS reform process to make a real difference, the EESC considers it essential to take a more holistic approach to international investment governance, moving away from ad-hoc arbitration and not merely replacing ISDS arbitration with an investor-state court.