

Final intervention from Transport & Environment

May 2018

In order to avoid repetition of ClientEarth, Friends of the Earth International and Columbia Center on Sustainable Investment, whose interventions we support, and in the interests of brevity, we present our position on the public perception of investment protection mechanism. We deeply regret that what we see as the most important section of the working document discussed this week, is being rushed and curtailed.

We are talking about democracy, public policy development and public funds, at Transport & Environment, we really don't know what is more important than that.

- Holistic approach to reforming investment protection
 - Fundamental to safeguard not on the right but the duty of sovereign states to regulate in the interest of the public.
 - As such we believe that public policy carve out is a must!

- Ensuring legality and access to justice
 - We have talked a lot about the **rights** of investors, but very little about the **responsibilities** of investors.
 - There is a clear imbalance of access to justice particularly when you compare access for investors and access for individuals...
 - The Aarhus Convention grants the public rights regarding access to information, public participation and access to justice, in governmental decision-making processes on matters concerning the local, national and transboundary environment.
 - Many delegates in the room will be signatories to the Convention, however it unfortunately suffers from poor implementation, notably in Europe.

- We already made an intervention this week with regards to arbitrators, but will provide a recap of our intervention:
 - Transparent arbitrator roster
 - Code of conduct implemented with sanctions, option for arbitrators to be struck off due to lack of compliance

- Arbitrators to demonstrate experience in national law in areas such as: environmental / climate change / consumer law / labour and human rights / competition law.

A major and significant criticism of private arbitration is that it is secretive and held behind closed doors. This perception is driven by the simple facts of cases exposed by the international media.

Would there be a process whereby a **public consultations** could take place in a open, transparent and inclusive manner without prejudicing the outcome to feed into this process...