

Kluwer Arbitration Blog

Profiting from Anti-ISDS Propaganda

Nikos Lavranos (NL-Investmentconsulting) · Tuesday, October 11th, 2016

In the past two to three years the critics of investor-to-state dispute settlement (ISDS) have been tremendously successful in setting up an effective propaganda, which has managed to scare and misinform the general public, media, and politicians.

This propaganda has not only turned around once pro-ISDS countries like Germany, The Netherlands and France, but has also brought the TTIP negotiations regarding ISDS to a halt. And even the ratification process of CETA may still be disrupted by a no-vote of Member States' parliaments or domestic court proceedings.

But above all, the anti-ISDS groups have managed to convince the European Commission to turn its back on the 50 years long tested ISDS system and develop a proposal for a kind of hybrid semi-permanent court like body. This investment court system (ICS) proposal has even made it into CETA and the EU-Vietnam FTA and has been proposed to the US for inclusion in TTIP.

In short, one must admit that this track record is rather impressive, in particular if one believes in the altruistic motives of the anti-ISDS groups of making the world a better place by giving states control back, which they supposedly have lost.

But recent reports illustrate that these anti-ISDS groups have been actually profiting significantly from the hysteria which they have created around investment arbitration and trade/investment agreements generally.

Recently, an article by [Politico](#) revealed some interesting details, which illustrate how these NGOs have been profiting from their anti-ISDS campaign.

The following excerpts of the Politico article are worth quoting:

“TTIP has significantly contributed to the growth of our organization,” said Maritta Strasser, a leading activist from Campact, which has spearheaded German anti-trade protests. Last year, the NGO clocked up record funding of €7 million — more than three times than in 2012, the year before talks with Washington started.

The victors in this struggle have been Campact along with anti-TTIP NGOs Mehr Demokratie (More Democracy), Foodwatch and BUND. Millions of ordinary Germans donated to their campaigns and signed up to newsletters, turning mid-sized

groups into household names.

Campact more than doubled its staff since 2013, from 23 to 52 employees. Foodwatch, an NGO that previously focused on scandals in the food sector, increased staff in its Berlin and Paris offices by 62 percent since it engaged in the free-trade debate in mid-2014.

The funding model for NGOs is complex. U.S. officials have complained that the European Commission and even the German government partly fund NGOs such as BUND and Friends of the Earth through their budgets, even though they are strong anti-TTIP activists.”

Another recently published report by [borderlex](#) refers to a study by Matthias Bauer of ECIPE, which supports the impression that these anti-ISDS groups worked closely together with several small political parties from the left spectrum.

Again, it is worth quoting the main conclusions of this report

“ECIPE’s Bauer has built and analysed a dataset of 1500 “TTIP information events” organised throughout Germany between February 2015 and February 2016. Bauer has also examined online coverage of TTIP in Germany.

Bauer speaks of a “professionally orchestrated disinformation campaign initiated by an already well established network consisting of Attac Germany, the Forum Umwelt [an environmental group], the campaign organisation Campact and various Christian and environmental organisations”.

“The protest actions against TTIP were supported from the start by the parties Die Linke and – after its disappointing results in the German general election in 2013 – by the Die Grünen”, Bauer notes.

Die Linke are a hard-left splinter group of the SPD and Die Grünen Germany’s third largest party. Both have just above 60 MPs in the German Parliament, whereas the SPD has 198 seats and Angela Merkel’s centre-right group CDU/CSU has 310 representatives in Berlin.

Bauer notes that, when weighted according to the number of their voters in the Bundestag, Die Grünen, the SPD and die Linke have organised most public information meetings on TTIP.

Bauer notes that among the top 50 opinion shapers in Germany on TTIP, 11 are politicians from Die Grünen, 10 are representatives of environmental organisations close to Die Gruenen, 8 are politicians hailing from the SPD, 6 are politicians from Die Linke, 7 labour unionists, 6 from church groups, 2 from the centre-right CDU party, and 1 from the economically liberal FDP.

ECIPE’s Bauer explored the individual networks of leading TTIP opinion formers in Germany. For example, the MEP Sven Giegold, a leading Greens politician, is also

adviser to Attac Germany and to Campact, he is also a former Die Grünen delegate to attac, a member of Verdi, a public sector labour union, and member of the board of the protestant network Evangelischer Kirchentag, among others.

INTA's Bernd Lange for his part used to be a teacher of religion in German schools, a member of the union IG Metall and a member of the environmental organisation Naturfreunde.

The picture that emerges from these reports is that the anti-ISDS groups found and exploited a rather technical topic for their own pockets. Not only individuals, but also the European Commission, governments of Member States and political parties have generously supported the anti-ISDS groups in their campaign.

Indeed, it seems quite plausible that the European Commission and the governments of some Member States (in particular Germany but also the Netherlands and Austria) may have funded the anti-ISDS groups with the main aim of instrumentalizing them for the purpose of stirring up the critique against ISDS in order to advance the ICS proposal and other "reforms" contained in CETA.

This also removes any remaining credibility of the so-called TTIP public consultation organized by the European Commission. The fact that 97% of the 150,000 submissions who were against TTIP were prefabricated submissions by the very same anti-ISDS groups which are filling their coffers proved already that this public consultation was rather worthless.

The conclusion from all this is that the anti-ISDS groups have a good reason to continue their propaganda because it pays off nicely. In fact, they have already [targeted TISA](#) as the next horrible trade treaty, which must be eliminated sooner rather than later.

Making the general public and media aware of this hidden agenda should be an important task for the arbitration community in its efforts to balance the debate.

Indeed, EFILA has invited Johnny Veeder, QC to deliver the 2nd Annual Lecture on 9 November 2016 in Brussels exactly for the purpose of explaining the recent developments regarding CETA and TTIP in a more appropriate way than has so far been the case.

All information regarding the event can be found [here](#).

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