



# PEOPLE'S NEWS

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## What chance of stopping TTIP and CETA?



Could some competent body ask the EU Court of Justice for an opinion on whether the proposed Transatlantic Trade and Investment Partnership and the Comprehensive Economic and Trade Agreement (between the EU and Canada) are compatible with EU law, or whether the EU has the competence (legal right) to enter into such treaties?

Only major EU institutions and individual member-states can ask the ECJ for an opinion on a point of EU law in this case. Compatibility with, and competence under, the EU treaties can be two separate justifications for such a request.

EU officials have confirmed that they had no plan to also ask EU judges if rulings by international arbitration tribunals could undermine the ECJ's role as sole and supreme arbiter of EU law. Trade deals between the EU and non-EU countries, they say, would not result in international tribunals interpreting or applying EU law but depend rather on the provisions of the trade agreement itself.

Hence, in the opinion of the Commission,

the investment dispute settlement provisions (ISDS) in EU trade agreements with third countries are entirely consistent with EU law.

It is too early to ask for an opinion from the ECJ with regard to TTIP. An opinion can be asked only after a treaty is negotiated, but before it is in force.

CETA is at present undergoing "legal scrubbing" but will soon be past the point at which EU judges can be asked. So it looks as if there's no way out here unless the EU Parliament acts.

The Parliament would have to back a resolution by a majority to ask for an opinion. At the moment that would have a fair chance of passing, and would have the advantage of delaying TTIP and CETA, facilitating the growth of further opposition.



The final treaty would have to be approved by a majority in the EU Parliament, and there is some hope here. The three Sinn Féin members as well as Luke "Ming" Flanagan and Nessa Childers look as if they will oppose the agreements if they include ISDS. In the event that ISDS is removed the position is not so clear, and there is a real possibility that ISDS

may be sacrificed in the short term—given the emphasis placed on it by those opposed—in order to ensure acceptance of the treaties.

That leaves Seán Kelly (Fine Gael), who is a member of the Trade Committee and even wants the secret ISDS courts to be established in Ireland. He's a point man for the EPP on the committee, and he would be hard to budge. Brian Hayes, Deirdre Clune and Mairéad McGuinness are the other Fine Gael members. McGuinness is closely identified with the large farming community and must be open to pressure, given the potential loss to farmers.

Brian Crowley (Fianna Fáil) has a whopping majority but has shown that he is prepared to threaten to break with his party if necessary. He would probably be worth a strong lobbying effort. Marian Harkin would appear to be happy enough if there are schemes for compensating farmers for losses resulting from the deals. She will be a long time waiting, and so is also a potential ally.

The oft-repeated statements of the EU Commission that every member-state will have a say in accepting the treaties seems to point towards a vote in the Council of Ministers, where each member-state is represented. There is no doubt that there would be acceptance in that forum.

The new provisions in the Treaty of Lisbon for qualified majority voting in the EU Council of Ministers came into force last November. For making EU laws a qualified majority now consists of 15 of the 28 member-states, as long as those 15 represent 65 per cent of the total EU population of some 500 million people.

Under this system, Germany has 16 per cent of the aggregate vote (compared with 8 per cent under the previous system), Britain, France and Italy have 12 per cent each (compared with 8 per cent previously), while Ireland has 0.8 per cent (compared with 2 per cent before the Lisbon Treaty). Not much chance of significant Irish influence there!

And what are the chances of a referendum?

Well, the Government is not going to give us one voluntarily. That leaves recourse to the courts—an expensive business.

But in the “Declaration Concerning Primacy” of the Lisbon Treaty it is noted that, in accordance with well-settled case law of the ECJ, the treaties and the law adopted by the Union on the basis of the treaties have primacy over the law of member-states, under the conditions laid down by the said case law.

Furthermore, the Treaty on European Union under the Lisbon Treaty states that the Union will have legal personality, which alters the legal relationship between the EU and its member-states, allowing it to represent them in international negotiations. It also abolished the existing European Community, which Ireland joined in 1973, and transferred all its powers and functions to the constitutionally new European Union, to which the Lisbon Treaty gave legal personality. It made the EU an international entity in its own right, with its own legal personality and independent corporate existence, separate from (and superior to) its members.

So a legal case would at best delay the process, as it would have little chance of success, given the provisions of the Lisbon Treaty.

The best bet would be to persuade a couple of MEPs, the best possibilities being Marian Harkin and Brian Crowley.

So the answer to the question is, We'll only know when we try!

### **A safe pair of hands**

A former Fine Gael senator, Eugene Regan, has been nominated by the Government for appointment as a judge of the EU Court of Justice. From 1985 to 1988 he was a member of the cabinet of the EU commissioner Peter Sutherland, and from 2007 to 2011 he was a Fine Gael senator.

When people think of Peter Sutherland

they immediately link him with Goldman Sachs and his role as chairman of Goldman Sachs International. Regan has served as a non-executive director of the bank. In fact he is a non-executive director of twenty-seven separate Goldman Sachs funds, as well as retaining an interest in a number of asset management companies, one of which is based in the Cayman Islands.



When Regan contested the general election in 2007, Garret Fitzgerald endorsed his candidacy; so did Alan Dukes, the chairman-designate of Anglo-Irish Bank. These endorsements were no mean feat for a relatively unknown politician.

At the time Regan was a councillor in Dún Laoghaire. He had been elected to the council in 2004, having reputedly spent €45,000 to secure his election. This is about four times the average expenditure of candidates in that electoral area. But neither his money nor his connections convinced the good people of Dún Laoghaire to elect Regan to Dáil Éireann.

During the second referendum on the Lisbon Treaty in 2009, Regan said that the referendum campaign of 2008 had shown that the 50-50 requirement had destroyed informed debate. *“It ... would be my view, that the 50/50 rule as it is presently applied, and was applied in the Lisbon Treaty referendum, actually distorts the debate.*

*“I think the view is it would be very difficult to get any referendum through on any subject under the rules where you have to find in all occasions a 50/50 split between the yes and no arguments. It invites the most absurd argu-*

*ments and those to come forward to present an argument, if only to get on the telly.”*

The Supreme Court’s judgement in the Coughlan case ruled that party political broadcasts on both sides of a referendum debate should be given equal air time.

## Euro-zone governments have recovered less than half of bank aid



Reuters news agency writes that, according to the ECB’s latest economic bulletin, euro-zone governments have recovered about 40 per cent of the aid given to banks since the financial crisis, which is low by historical standards after this time.

Fully one-fifth of the increase in euro-zone government debt since 2008 is due to bank aid.

The ECB also warns that there are outstanding guarantees of 2.7 per cent of euro-zone GDP, posing an additional risk to public finances. Recovery rates are particularly low in Ireland, Cyprus and Portugal and are high in the Netherlands. The biggest debt increases on bank aid were in Ireland and Greece, both above 22 per cent, with France, Italy and Lithuania having the smallest, at less than 1 per cent.

The report is said to advocate “appropriate” bail-ins of shareholders and bondholders to reduce the future burden of bank aid on public finances.

## Survey shows decline in British support for staying in EU

A recent opinion poll has shown that the

number of British voters who would agree with staying in the European Union in a referendum has fallen after the government agreed to amend the wording of the question to be put to voters.

The prime minister, David Cameron, had promised a referendum on membership by the end of 2017. Earlier this month the government said it would change the wording of the question, which some had argued favoured the “in” camp, after a recommendation from the Electoral Commission.

Under the government’s original proposal, voters were to be asked to say Yes or No to the question “Should the United Kingdom remain a member of the European Union?” This was obviously a loaded question, as it would allow the campaign for staying in the European Union to brand itself as the more positive Yes camp.

The question has now been changed to “Should the United Kingdom remain a member of the European Union or leave the European Union?” When the the 2,006 adults surveyed were asked the modified question on 11–13 September by the polling company ICM, 43 per cent supported Britain’s continuing EU membership, while 40 per cent would opt to leave.

The previous survey, which asked people the old question a week earlier, found that 45 per cent wanted to stay in the bloc and 37 per cent favoured leaving.

### **Lie down with dogs and get up with fleas!**

Fine Gael is a founder-member of the European People’s Party, and in 2006 Enda Kenny was elected a vice-president, being re-elected again in 2009.

Jean-Claude Juncker, who since 1 November 2014 has been president of the EU Commission, is also a vice-president of the EPP.

Last week the chairperson of the EPP group in the EU Parliament, Manfred Weber, speaking

in Budapest, reflected the German government’s true standpoint on the asylum-seeker crisis. “The outer borders of the EU must be secured,” he declared. “The fence is there, for the time being, to channel the flow, to be able to supervise who crosses the border. I fully support this idea.”

That “borders must be secured and guarded” is also an “EPP standpoint.”

Highly fortified “border fences” have been in existence for years elsewhere along the EU’s outer borders—for example along the border separating Greece and Bulgaria from Turkey. Following his visit to Budapest, Weber went to the Hungarian “reception centre” in Bicske, which had been sharply criticised recently by human rights activists. “I have the impression that Hungary’s facilities meet European minimum standards,” declared the head of the EPP group.



But then the Hungarian Civic Alliance (Fidesz) also sits with Fine Gael in the EPP group. Its leader, Viktor Orbán (seen here with Enda Kenny), was elected a vice-president of the EPP in 2006, and re-elected on two occasions.

In a speech in July, Orbán pointed out: “What we have at stake today is Europe, the European way of life, the survival or disappearance of European values and nations, or their transformation beyond recognition ... We would like Europe [i.e. the EU] to be preserved for the Europeans.” This might, at the least, be labelled xenophobia.

No wonder Fine Gael and its Labour Party

mudguard adopted at first a hard line on refugees, a line softened only by the spontaneous response of ordinary decent Irish people.

Oh, and it may also be an election year.

### People's Movement on Facebook



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### TISA: TTIP on steroids

People are becoming more and more aware about the threats posed by the planned Trade in Services Agreement. TISA is one of the alarming new wave of trade and investment agreements founded on legally binding powers that institutionalise the rights of investors and prohibit government actions in a wide range of areas only incidentally related to trade.



Along with TTIP and CETA, it is being secretly negotiated on our behalf by the EU Commission, using powers it acquired in the Lisbon Treaty.

The participants in the talks include twenty-three governments, representing fifty countries, including Australia, Canada, Chile, Israel, Japan, South Korea, Mexico, New Zealand, Norway, Pakistan, Switzerland, Turkey, and the United States, as well as the European Union, representing its twenty-eight member-states.

TISA would also restrict a government's right to impose stronger standards in the public's interest. It would affect environmental regulations, the licensing of health facilities and laboratories, waste disposal centres, power stations, school and university accreditation, and broadcasting licences. It would also restrict a government's ability to regulate vital industries, including finance, energy, telecommunications, and cross-border data flows.

The agreement would specifically limit the ability of governments to regulate the financial services industry at precisely a time when the global economy is still recovering from a crisis caused by financial deregulation.



TISA would prevent governments from returning public services to public hands when privatisation fails, restrict national regulations on workers' safety, and limit environmental regulations, consumer protection and regulatory authority in such areas as the licensing of health facilities, power stations, waste disposal, and university and school accreditation.

The agreement would treat migrant workers as commodities and limit the ability of governments to ensure their rights.

Labour standards should properly be set by the tripartite International Labour Organisation and not be covered by trade agreements.

Incredibly, in the aftermath of the global financial crisis, TISA also seeks to further deregulate financial markets. We know that large corporate interests are heavily involved in the TISA negotiations.

Great efforts are being made to keep the TISA negotiations secret. With such high stakes for people and our planet, this is a scandal. Who in a democratic country will accept the fact of their government secretly agreeing to laws that so fundamentally shift power and wealth, bind future governments, and restrict their country's ability to provide for citizens?



TISA would apply to every possible means of providing a service internationally. This includes cross-border services (GATS mode 1), such as telemedicine, distance education, and internet gambling; consumption abroad (GATS mode 2) in such areas as tourism and medical tourism; foreign direct investment (GATS mode 3), such as a bank setting up a branch in another country or a transnational corporation providing municipal water or energy services; and the temporary movement of persons (GATS mode 4), such as when nurses, housekeepers or corporate executives travel abroad temporarily to provide services.

We will look in a little more detail at mode 4.

This mode of international trade in services applies to people. The term “legal persons” is used when referring to corporations. Under trade agreements such as TISA, the term “movement of natural persons” refers to services provided by nationals of one country who travel to another member country to provide a service.

In keeping with the general push for an ambitious agreement, there has been pressure from some participants for “highly improved” commitments on market access on the cross-

border movement of services providers as part of TISA.

Mode 4 commitments enable firms in one country to temporarily send their employees—including executives, consultants, nurses, construction workers, etc.—to another country for the purpose of supplying services. TISA would prohibit so-called “economic needs” tests, including labour market tests, unless these measures are expressly exempted in a country's schedule of commitments.

In most countries, before hiring temporary foreign workers a prospective employer is obliged to demonstrate that there is a shortage of suitably trained local workers. But under mode 4 commitments such economic needs tests are forbidden. Governments could not require, for example, that foreign companies conduct a survey of the labour market to first ensure that no local workers are available to perform the necessary work before engaging temporary foreign workers.



Mode 4 is a high priority for American services corporations. As a former high-ranking executive of Citibank, who serves as chairperson of the Coalition of Service Industries, explains: “It’s clearly a priority for lots of countries, and it’s clearly a sensitive issue in the United States ... But we expect the U.S. to engage on the issue, and we’re hoping that some progress can be made there.”

Significantly, mode 4 commitments provide

no path for workers to immigration, residence or citizenship in the host country: foreign workers must return to their country after the work is completed or when the term of their stay in the host country expires. This precarious situation makes such workers dependent on the good will of their employer; if they lose their employment they must immediately leave the host country.

Despite this, American negotiators have reported that there have been no proposals to include enforceable labour standards or the protection of labour rights in TISA.

Among the proposed agreement's most threatening characteristics are its "standstill" and "ratchet" provisions. The standstill obligation would freeze existing levels of liberalisation across the board, though some parties will undoubtedly try to negotiate limited exemptions in sensitive industries. TISA's ratchet clause requires that "any changes or amendments to a domestic services-related measure that currently does not conform to the agreement's obligations be made in the direction of greater conformity with the agreement, not less."

This provision—which has reportedly already been agreed to—would expressly lock in future liberalisation, which could never be reversed. Suppose, for example, that a TISA government implemented a system of private insurance for health services previously covered under a public health insurance system, at either the national or regional level. In the absence of a reservation that explicitly exempts the country's health insurance services, that government—or any future government—would not be able to bring those services back under the public insurance system without violating the agreement.

In addition, TISA would oblige governments to automatically cover all "new services," meaning those that do not even exist yet.

Worse: instead of being service suppliers, workers might be considered not as employees

of the person for whom they render a service but as employees of a third party, such as a manpower agency established in the home country of the migrant. To totally take the worker out of the labour laws of the host country, this agency would be considered the service supplier. It would then send its "employee," i.e. the migrant worker, to work in the premises of the real employer in the host country.

This agency thus becomes an unnecessary third party that is inserted between the migrant worker and the real employer, so giving birth to a triangular contract—obviously for no reason other than to shield unjustly the real employers from any of the responsibilities and risks of being an employer.

Not being considered employees, migrant workers sent abroad under mode 4 would also not be able to join a union, thus depriving them of workers' rights under various ILO conventions.

TISA supplements TTIP and is part of a general assault on our welfare and labour standards. It must be stopped!

### Public meeting: TTIP and the right to water



**Thursday 1 October, 7:30 p.m.**

**Knockmitten Youth and Community Centre,  
Monksfield Lawns, Clondalkin, Co. Dublin.**

**Speakers: Lynn Boylan MEP, Frank Keoghan (TEEU), Jimmy Doran (CPI). Chairperson: Paul Doran.**

## Commission's TTIP plan retains privileged corporate justice system

The EU Commission's modified plan for an investment court system under the proposed TTIP trade agreement continues to give foreign investors a privileged justice system for challenging EU standards on the environment, health, and social rights, the campaigning group Greenpeace has warned.



As long as the Commission is not prepared to reopen foreign investor privileges in the separate CETA agreement between the EU and Canada, the changes recently announced would be ineffective.

The EU commissioner for trade, Cecilia Malmström, recently said that she was not prepared to modify CETA, which contains a different mechanism for settling investment disputes. Corporations with a Canadian subsidiary could resort to private courts under CETA. The Commission recognises in the new plan that what it describes as "treaty shopping" is likely to be a problem, but it fails to clarify how its provisions for preventing it would actually work.

Greenpeace's EU legal strategist, Andrea Carta, said: "The EU-Canada agreement could work as a back door, allowing transnationals to circumvent any improvements against private corporate justice in TTIP."

In its plan, the Commission proposes the creation of a permanent investment court, as

well as an appellate (appeal) body, to rule on trade disputes between corporations and governments. These are improvements, said Greenpeace, but details are scant on how the courts would ensure independence from corporate interests, and how they would guarantee transparency. Fundamentally, these provisions would still allow foreign investors to circumvent existing EU and national court systems.

A Greenpeace trade expert, Jürgen Knirsch, said: "The Commission continues to back a two-speed justice system—a privileged justice for transnational corporations, to protect their private interests, and a basic justice for citizens and small and medium enterprises. Environmental, health and consumer protection remain at risk."

More than 2¾ million people in Europe have already signed a petition against TTIP, and 97 per cent of respondents to a public consultation by the Commission opposed the inclusion of private investment courts.

EU-US negotiations on private investment courts, under the mechanism known as ISDS, have been suspended since 2014. Malmström will meet the US trade representative, Michael Froman, in Washington on 22 September, and she is expected to attempt to restart negotiations on ISDS at the eleventh round of TTIP talks in Miami on 19–23 October.

Greenpeace calls on the Commission to permanently end negotiations on any form of ISDS. Even without an ISDS mechanism, it warns, TTIP and CETA are a serious threat for environmental protection on both sides of the Atlantic.