



# Lawyers subverting the public interest

## Lobby group EFILA's stake in investment arbitration

In January 2015 the European Commission published the first results of a public consultation with the highest number of responses in the history of the EU – more than 145,000 submissions by citizens. What had raised the interest and opposition of so many European citizens? A secretive legal system that had been virtually unknown to the general public a few years ago: the investor-state dispute settlement mechanism, or ISDS.

Within only a couple of years, ISDS had turned from a system known only to few legal specialists to the most hotly debated topic of the proposed free trade agreement between the EU and the US – the Transatlantic Trade and Investment Partnership, TTIP.

Critics have pointed out the many flaws of the ISDS mechanism that allow corporations to sue governments for regulations and laws passed to protect people's health and the environment.<sup>1</sup> Political groups in the European Parliament and national governments have called for the exclusion of ISDS from the EU-US trade agreement.<sup>2</sup>

The debate has not passed unnoticed by the law firms and corporate lawyers who are the main beneficiaries of the booming investment arbitration system and stand to gain if ISDS is included in TTIP. In response to the criticism of the ISDS system, a number of international arbitration law firms recently founded a think tank designed to protect the current ISDS system: The European Federation for Investment Law and Arbitration (EFILA).

While EFILA's stated aim is to "foster an objective debate"<sup>3</sup> around ISDS, the law firms that founded it and the individuals on EFILA's boards have clear vested interests in the current investment arbitration system – leading to serious doubts that its policy recommendations will be little more than pro-arbitration industry propaganda.

EFILA seems to be an exemplary case of a special interest group, trying to protect and expand a system highly beneficial to its members at the expense of the general public. A broad group of public interest advocates, ranging from consumer organisations and trade unions to environmental NGOs and public health groups, have spoken out against ISDS. Businesses, governments and academics, too, have called for the exclusion of ISDS from TTIP.<sup>4</sup> EFILA's position thus seems to solely represent the interests of the investment arbitration industry.

This briefing takes a closer look at EFILA, and the law firms and individuals linked to it, to show that EFILA represents an attempt by the arbitration industry to fend off public pressure and much-needed changes to the current system of international investment law.

Box 1

## What you need to know about investor-state dispute settlement (ISDS)

- States have signed more than 3,000 international investment treaties.
- These treaties give sweeping powers to foreign investors, including the power to directly file lawsuits against states at international tribunals in case of alleged violations of the treaties' property rights, usually circumventing local courts.
- Investor-state cases have mushroomed in the last two decades from a few cases per year in the early 1990s to over 50 new claims filed per year in 2012 and 2013. Globally, 608 investor-state disputes were known of at the end of 2014.<sup>5</sup>
- Cases have been brought against policies to reduce the harmful impact of smoking, Germany's decision to phase out nuclear energy or bans on fracking – a controversial and environmentally harmful method of gas drilling.
- The claims are decided by a tribunal of private lawyers, the arbitrators. Just 15 of them have decided 55% of all known investment-treaty disputes, according to 2012 figures.<sup>6</sup> A handful of them sit on the same tribunals, act as both arbitrators and lawyers for the parties in proceedings (counsel), and call on each other as witnesses in arbitration cases. This has led to growing concerns, including within the broader legal community, over conflicts of interest.

## EFILA – A who's who of the investment arbitration industry

On July 1 2014, the European Federation for Investment Law and Arbitration, EFILA, was established. It describes itself as a "think tank" and states as its goals the promotion of "knowledge of all aspects of EU and international investment law, including arbitration, at the European level" and that it "will foster an objective debate about the current system of investment arbitration."<sup>8</sup>

But EFILA is far from an objective voice. So far, EFILA has nine member organisations – anyone who pays an annual fee can become one. All of its members are international law firms specialising in investment arbitration or big companies that have successfully used arbitration against states. A closer look at their activities shows they have clear financial motivations for promoting ISDS.

Box 2

## Investment arbitration is big business for big law<sup>7</sup>

- Legal costs for investor-state disputes average over \$8 million, exceeding \$30 million in some cases.
- Insiders estimate that more than 80% of the legal costs end up in the pockets of the parties' lawyers, the counsel.
- The tabs racked up by elite law firms can be \$1,000 per hour, per lawyer, with whole teams handling cases.
- The lawyers who sit on the tribunals that ultimately decide the cases, the arbitrators, also earn handsome fees: at the most frequently used tribunal for investor-state claims, International Center for Settlement of Investment Disputes (ICSID), arbitrators make \$3,000 a day.

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## WHITE & CASE

### White & Case

**ISDS claim to fame:** ranked number one worldwide in an industry survey of the international arbitration capabilities of law firms.<sup>9</sup> In 2014, the firm was involved in 39 investor-state treaty claims. White & Case prides itself with having secured two of the largest ISDS compensation payments ever – one for a Canadian gold mining company against Venezuela and another for a Czech bank against the Slovak Republic – totalling a pay out of more than \$1.6 billion.<sup>10</sup>

## SHEARMAN & STERLING LLP

### Shearman & Sterling

**ISDS claim to fame:** considered the world's number three law firm in international arbitration, involved in 10 investor-state lawsuits in 2014.<sup>11</sup> Shearman & Sterling recently won more than \$50 billion in compensation for the former shareholders of the oil company Yukos – the largest sum ever awarded in an investment arbitration case – while running up a \$70 million bill for legal fees and expenses (detailed description in Box 3).



### Herbert Smith Freehills

**ISDS claim to fame:** the eighth most prominent law firm in international arbitration, active in 8 investor-state claims in 2014 alone.<sup>12</sup> Herbert Smith Freehills achieved what it calls “a groundbreaking successful arbitration claim”<sup>13</sup> where the Eurotunnel consortium forced a £30 million pay-out from the French and UK governments over their failure to “resolve problems relating to clandestine migrants.” The governments had to pay because they did not close down a hostel for migrants trying to enter the UK which was located close to the Eurotunnel operations.<sup>14</sup>



### Mannheimer Swartling

**ISDS claim to fame:** among the most important players in continental Europe.<sup>15</sup> Mannheimer Swartling acts as counsel to the Swedish energy giant Vattenfall which demands €4.7 billion in compensation for Germany's

democratic decision to phase out nuclear power (see Box 3).<sup>16</sup> Previously it had helped Vattenfall to successfully challenge water regulations for a coal power plant in Germany. The water regulations were lowered after an ISDS case with high compensation demands was filed.<sup>17</sup>

## Luther.

### Luther

**ISDS claim to fame:** a key player in the arbitration industry in Germany and has acted in high-profile cases. Luther participated as co-counsel with Mannheimer Swartling in both Vattenfall claims against Germany.

## Linklaters

### Linklaters

**ISDS claim to fame:** one of the world's largest law firms,<sup>18</sup> it is currently expanding its investment arbitration practice. In 2015 it shot up to the 25<sup>th</sup> place in a world-wide arbitration ranking.<sup>19</sup>

## ● NautaDutilh

### NautaDutilh

**ISDS claim to fame:** specialises in Dutch bilateral investment treaties, which are known to offer among the most expansive rights for corporations.<sup>20</sup> It was representing the insurer Eureko (now called Achmea) in a case against Poland over a privatisation-related claim which led to the highest known pay-out by an EU member state – more than €2 billion (see Box 3).



### Kubas Kos Galkowski

**ISDS claim to fame:** Polish legal firm, offers arbitration services.



### Achmea (formerly Eureko)

**ISDS claim to fame:** Dutch insurance company that won the largest settlement payout in a case against an EU member state – more than €2 billion – when it challenged Poland's refusal to fully privatise a partly state-owned health insurance provider (see Box 2).

**Box 3****Examples of high profile cases linked to EFILA members****Yukos v. The Russian Federation**

An ISDS tribunal ordered Russia to pay \$50 billion in compensation for expropriating the oil company Yukos – the highest known ISDS award ever rendered. The case was based on an alleged breach of the Energy Charter Treaty, a multilateral treaty with ISDS provisions for the energy sector. The arbitration panel ruled against Russia despite the fact that the country never ratified the treaty.

The law firm representing Yukos, Shearman & Sterling, is a member of EFILA and the two lead lawyers in the case, Emmanuel Gaillard and Yas Banifatemi, sit on EFILA's board. Shearman & Sterling charged almost \$70 million in legal fees and expenses. The European Court of Human Rights also ruled on the matter and awarded a much lower compensation of €1.9 billion to Yukos ex-shareholders, while Russia also had to pay €300,000 in legal costs for the claimant – a fraction of the amount it was charged with by the ISDS tribunal.<sup>21</sup>

**EUREKO B.V. v. Poland**

In a six-year-long ISDS case about the privatisation of a state insurance company, the Dutch insurer Eureko (now called Achmea) and Poland reached a settlement, in which Poland paid Eureko more than €2 billion – the highest known pay-out by an EU member state to a foreign investor.<sup>22</sup> The two law firms representing Eureko – NautaDutilh and White & Case – are EFILA members and one of Eureko's lawyers, Daniella Strik, is now the chairperson of EFILA's executive board.

**Vattenfall v. Germany**

Since 2012, the Swedish power company Vattenfall has been suing the German government over the decommissioning of two nuclear power plants in the context of the German nuclear phase-out following the Fukushima disaster. Both fault-prone reactors were already off line when the German parliament passed the law to phase out nuclear power. Vattenfall is claiming €4.7 billion in compensation. Like in the first investor-state claim that Vattenfall brought against Germany, the company is represented by EFILA members Luther and Mannheimer Swartling. EFILA's board member Richard Happ acts as counsel.

**EFILA's advisory and executive boards**

EFILA's executive and advisory boards are staffed with key figures from the investment arbitration industry (the Annex provides a full overview of the board members). They take leading roles, such as developing EFILA's position to the European Commission's consultation on ISDS in TTIP.<sup>23</sup>

While the executive board is almost exclusively composed of investment lawyers, there are several well-known arbitrators as well as representatives of the legal departments of oil multinational Shell, the French pharmaceuticals company Sanofi and the Dutch insurer Achmea on the advisory board. Several academics known

for their pro-arbitration positions have also joined the advisory board. Government officials from Hungary, Poland and Finland were also part of EFILA's advisory board. The Finnish member withdrew after public pressure against his involvement in a lobby outfit<sup>24</sup> and the other two stepped down shortly afterwards.

Some board members have professed strong support for the current investment protection system and criticised the weak reforms the EU has proposed. Their statements are a clear indication that EFILA is very unlikely to make a constructive contribution to meaningful reforms to the ISDS system:

- Richard Happ, member of EFILA's executive board and counsel at law firm Luther for Vattenfall's arbitration cases against Germany, strongly defends the

right of arbitration tribunals to overrule democratic decisions by national parliaments: **“A worrying side of this suspected campaign [against ISDS] is that it appears to argue that decisions by parliaments in democratic countries should be exempt from the scope of application of investment treaties. That is worrying because it reveals a superiority complex of ‘we can do no wrong.’”**<sup>25</sup>

- Nikos Lavranos, EFILA's general secretary and executive board member, explicitly supports the idea that democratically elected politicians should not be able to affect investors with their decisions: **“We want to stimulate modern types of investment and we don't want to create unnecessary policy spaces and other ways that host States can use to limit and to restrict investors.”**<sup>26</sup>

Many EFILA board members are users and practitioners of the investment arbitration system and therefore have direct financial interest in its continuation. Individuals who are members of EFILA's executive or advisory board were participants in at least 100 investor-state arbitration cases,<sup>27</sup> either as arbitrators or as counsel (see Annex). These numbers refer only to cases linked to individuals on the board and exclude other cases handled by law firms or arbitration houses to which those individuals belong.

Given that legal costs for ISDS cases average \$8 million, it is possible to estimate that at least 100 cases linked to individuals on EFILA's board have generated hundreds of millions of euro in legal and arbitration fees.<sup>28</sup> This approximate estimate indicates how deeply the individuals on EFILA's boards are involved in the current system of investment arbitration and how profitable the status quo has proven to be.

## Nikos Lavranos

Nikos Lavranos manages EFILA as its general secretary and represents EFILA in public. He was a senior policy advisor responsible for the bilateral investment treaties at the Dutch Ministry of Foreign Affairs for four years, until July 2014.<sup>29</sup> In this role, he was the chief representative for the Netherlands in the EU's Trade Policy Committee.<sup>30</sup> He already spoke in public on behalf of EFILA at a

conference for ISDS insiders when he was still officially employed by the Dutch Ministry of Foreign Affairs.<sup>31</sup> His case is given greater attention here because it serves as an example of the revolving door phenomenon, where government officials use their contacts and knowledge to take up lobby positions.

Interestingly, the Dutch investment treaties, which Lavranos helped to negotiate, are generally considered as some of the most investor-friendly in Europe. In conjunction with its company-friendly tax regime, the vaguely worded investment treaties are the reason why the Netherlands ranks second worldwide in originating arbitration claims.<sup>32</sup> The practice of channelling investments through favourable jurisdictions, called “treaty shopping”, is generally considered one of the abuses of the ISDS system.

When working for the Dutch government, Lavranos already held strong views in favour of the current arbitration system. In June 2012, while still working for the Ministry of Foreign Affairs, Lavranos gave a speech at the world's largest pro-arbitration conference, where he criticised attempts by the EU to reform the current investment treaty system: “The idea was that the EU, having the power to speak with one voice, could actually get a better deal. But what we have seen here, at this moment, is that because of other policy influences from the NGOs, from the EP, we're narrowing down and levelling down our investor protection.”<sup>33</sup>

More recently, Lavranos has called on the European Commission “to go back to basics”, meaning “providing the highest possible level of investment protection, maximum legal certainty and predictability and unrestricted access to ISDS.”<sup>34</sup>

After leaving his government position, Lavranos also joined Global Investment Protection AG in Zürich as Head of Legal Affairs. The consultancy advises companies in how to structure investments to have access to the most investor-friendly arbitration routes in case of “unreasonable governmental action” such as “regulatory and tax measures”.<sup>35</sup> Other services of the company include “pre-emptive lobbying and intervention” and developing funding strategies for investor-state claims.<sup>36</sup> Global Investment Protection commented on the appointment that “[with] Nikos Lavranos in our team we can offer investors hands-on knowledge on how to defend [investor assets] against destructive government interventions.”<sup>37</sup>

## EFILA's rejection of meaningful reforms to the investment arbitration system

EFILA's first public lobbying activity was a contribution to the European Commission's consultation on investment protection in TTIP.<sup>38</sup> The consultation attracted a total of 149,399 responses,<sup>39</sup> the highest number ever to participate in an EU consultation. Of those, at least 145,000 (97%) expressed a clear 'no' to the inclusion of such an ISDS mechanism, amongst them SMEs, local authorities and a group of 120 academics.<sup>40</sup>

EFILA's contribution shows that it opposes any meaningful reforms to the investment arbitration system. For example:

- EFILA dismisses the proposals outlined by the Commission "because they focus on maximum policy space [...] instead of investment protection." The lobby group opposes everything that "limits the rights of investors and the freedom of interpretation of arbitral tribunals".<sup>41</sup>
- According to EFILA, investment arbitrators should not only be able to order states to pay investors unlimited sums of compensation from taxpayer money, but should also have the power to order a state to "repeal the contested measure or modify the underlying law".<sup>42</sup>
- EFILA speaks out against limiting controversial investor rights such as 'fair and equitable treatment' and protection against indirect expropriation, which have become powerful catch-all clauses for investors attacking public interest measures. The 'fair and equitable treatment' standard in particular should continue to occupy "an empty space left by other investor protection instruments."<sup>43</sup> This kind of ambiguity in key investment law concepts has been acknowledged as one of the most dangerous elements in international investment treaties.<sup>44</sup>
- EFILA also supports "the importation of standards through the MFN-clause"<sup>45</sup>, a standard clause in investment treaties, which arbitrators have used like a "magic wand"<sup>46</sup> that allows investors in ISDS proceedings to import more favourable rights from other treaties signed by the host state.

This multiplies the risk of successful attacks against public policy and makes reforms in a given treaty irrelevant since they can be side-stepped.

- EFILA also "questions whether an appellate mechanism is suitable for ISDS" because "the lack of an appeal mechanism is one of the greatest advantages of arbitration." A proper appeal option based on an independent court could bring more coherent decisions and reign in arbitrator adventurism.<sup>47</sup>

While EFILA's position enshrined in far-reaching trade agreements such as TTIP would pave the way for more investor-state claims in the future, thereby growing the business of its members and board members, it is blatantly at odds with the sovereign rights, responsibilities and duties of states to regulate in the public interest, with due consideration for a much wider range of interests than those of foreign investors alone.

## Conclusion

The current ISDS system is detrimental to anyone but deep-pocketed foreign investors, the law firms representing them and arbitrators who are handsomely rewarded for partaking in cases. As this briefing has shown, almost all of EFILA's members, whether law firms or individuals on the boards, have a direct financial interest in safeguarding and expanding as much as possible the current investment protection system.

EFILA's attempt to present itself as a think tank aiming to promote a balanced debate must not be taken seriously. In its submission to the European Commission's consultation, EFILA has shown that its purpose is to defend investor privileges and the financial interests of the powerful investment arbitration industry.

It is questionable whether the European Union should listen to the advice of a lobby group that is profiting so much from a deeply flawed status quo when considering the future of investment protection. In the ongoing debate about the future of ISDS, and when considering reforms of and alternatives to the current system, European Commission officials and Members of the European Parliament should be cautious when EFILA knocks on their door.

Annex I<sup>48</sup>

## Individuals who are members of EFILA's executive board

**Yas Banifatemi**, partner at Shearman & Sterling (France)

Stakes in the arbitration system	She is a partner in one of the leading investment arbitration law firms worldwide. She has acted as counsel and arbitrator in numerous arbitration cases and was part of the team representing Yukos shareholders in the historic case against Russia.		
Known cases as arbitrator in investment disputes	<ul style="list-style-type: none"> <li>• Joseph Houben v. Burundi</li> <li>• China Heilongjiang International &amp; others v. Mongolia</li> </ul>	<ul style="list-style-type: none"> <li>• Michael Dagher v. Sudan</li> <li>• Mamidoil Jetoil Greek Petroleum v. Albania</li> </ul>	
Known cases as counsel in investment disputes	<ul style="list-style-type: none"> <li>• EDF v. Hungary</li> <li>• Ioan Micula and others v. Romania</li> <li>• SAUR International v. Argentina</li> <li>• Participaciones Inversiones Portuarias SARL v. Gabon</li> <li>• Marsk Olie, Algeriet A/S v. Algeria</li> <li>• Georg Gavrilovic and Gavrilovic d.o.o. v. Croatia</li> <li>• Hussain Sajwani and others v. Egypt</li> <li>• Yosef Maiman and others v. Egypt</li> <li>• Ampal-American Israel Corporation v. Egypt</li> <li>• Bawabet Al Kuwait Holding Company v. Egypt</li> </ul>	<ul style="list-style-type: none"> <li>• Orascom Telecom Holding SAE (OTH) v. Algeria</li> <li>• Orascom TMT Investments Sarl (formerly Weather Investments II) v. Algeria</li> <li>• Gazprom v. Lithuania (3 cases at different arbitration tribunals)</li> <li>• Hulley Enterprises Limited (Cyprus) v. Russian Federation</li> <li>• Veteran Petroleum Limited (Cyprus) v. Russian Federation</li> <li>• Yukos Universal Limited (Isle of Man) v. The Russian Federation</li> </ul>	

**Markus Burianski**, partner at White & Case (Germany)

Stakes in the arbitration system	He is a partner in one of the most prominent law firms in the world of investment arbitration.		
Known cases as arbitrator in investment disputes	N/A	Known cases as counsel in investment disputes	N/A

**Richard Happ**, partner at Luther Rechtsanwalts-gesellschaft mbH (Germany)

Stakes in the arbitration system	He is a partner at the law firm Luther, one of the most important German law firms in investment arbitration. It has represented Swedish energy company Vattenfall in the first-ever two cases against Germany. Happ is currently the counsel of several German investors that sued the Czech Republic in relation to a change in solar energy subsidies.		
Known cases as arbitrator in investment disputes	<ul style="list-style-type: none"> <li>• Al Bahloul v. Tajikistan</li> </ul>		
Known cases as counsel in investment disputes	<ul style="list-style-type: none"> <li>• Vattenfall v. Germany (No 1)</li> <li>• Vattenfall v. Germany (No 2)</li> </ul>	<ul style="list-style-type: none"> <li>• Inmaris v. Ukraine</li> <li>• Mr Jürgen Wirtgen, Mr Stefan Wirtgen, and JSW Solar (zwei) v. Czech Republic</li> </ul>	

**Stephen Jagusch**, partner at Quinn Emanuel Urquhart & Sullivan (United Kingdom)

Stakes in the arbitration system	Jagusch has been the lead counsel in several ISDS cases for his ex law firm Allen & Overy, representing, for example, a European telecommunications company in proceedings against the Republic of Senegal. Law firm Quinn Emanuel Urquhart & Sullivan is a relative newcomer in the investment arbitration practice, and has recently hired several high-profile arbitration figures in an effort to establish a bigger presence. Jagusch chairs the firm's arbitration practice.		
Known cases as arbitrator in investment disputes	<ul style="list-style-type: none"> <li>• RSM Production Company v. Republic of Cameroon</li> </ul>		
Known cases as counsel in investment disputes	<ul style="list-style-type: none"> <li>• Azpetrol v. Azerbaijan</li> <li>• Emmis International v. Hungary</li> <li>• AES Summit v. Hungary</li> <li>• Planet Mining v. Indonesia</li> </ul>	<ul style="list-style-type: none"> <li>• Churchill Mining v. Indonesia</li> <li>• Tza Yap Shum v. Peru</li> <li>• Millicom v. Senegal</li> <li>• Soufraki v. UAE</li> </ul>	

**Nikos Lavranos**, the secretary-general of the European Federation for Investment Law and Arbitration (The Netherlands)

Stakes in the arbitration system	He was a senior policy advisor responsible for the bilateral investment treaties at the Dutch Ministry of Foreign Affairs for four years until July 2014. In this role, he was the chief negotiator for the Netherlands and a representative in the EU's Trade Policy Committee. He is an outspoken proponent of investment arbitration.		
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Known cases as arbitrator in investment disputes	N/A	Known cases as counsel in investment disputes	N/A
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**Gerard Meijer**, partner at NautaDutilh (The Netherlands)

Stakes in the arbitration system	He is a partner at the Dutch law firm NautaDutilh, where he has headed the arbitration practice since 2006. He previously worked with law firms De Brauw Blackstone Westbroek and Freshfields Bruckhaus Deringer.		
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Known cases as arbitrator in investment disputes	N/A	Known cases as counsel in investment disputes	<ul style="list-style-type: none"> <li>• Adria v. Croatia</li> <li>• Balkan Energy v. Ghana</li> <li>• Yukos v. Russia (during appeal process in the Netherlands)</li> <li>• Eureko v. Poland (merit phase)</li> </ul>
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**Patricia Nacimienta**, partner at Norton Rose Fulbright (Germany)

Stakes in the arbitration system	She is a partner at a leading law firm in the investment arbitration world, where she specialises in investment arbitration, representing both states and investors. She was previously with White & Case. In 2007, the German government appointed her as one of four arbitrators to the panel of arbitrators at the International Centre for Settlement of Investment Disputes.		
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Known cases as arbitrator in investment disputes	N/A	Known cases as counsel in investment disputes	<ul style="list-style-type: none"> <li>• Anatolie Stati, Gabriel Stati, Ascom Group SA and Terra Raf Trans Trading Ltd v. Kazakhstan</li> <li>• ArcelorMittal v. The Czech Republic</li> <li>• ECE Projektmanagement v. The Czech Republic</li> </ul>
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**Jakob Ragnwaldh**, partner at Mannheimer Swartling (Sweden) – vice-chair of EFILA's board

Stakes in the arbitration system	Ragnwaldh is a well-known arbitration lawyer in Sweden. His law firm, Mannheimer Swartling, is described as being "at the top of the Swedish arbitration market" <sup>49</sup> and has advised companies and states in numerous investment cases.		
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Since 2010, Ragnwaldh is a board member of the Arbitration Institute of the Stockholm Chamber of Commerce. The number of investment disputes being administered at the Stockholm Chamber of Commerce has been growing, with 2014 being a record year.<sup>50</sup>

Known cases as arbitrator in investment disputes	N/A		
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Known cases as counsel in investment disputes	<ul style="list-style-type: none"> <li>• Europe Cement v. Turkey</li> <li>• EDF v. Hungary</li> <li>• Baltic Rail Services v. Republic of Estonia</li> </ul>	<ul style="list-style-type: none"> <li>• Cementownia v. Turkey</li> <li>• Ioan Micula, Viorel Micula and others v. Romania (annulment proceedings)</li> </ul>	
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**Daniella Strik**, partner at Linklaters (The Netherlands) – chair of EFILA's board

Stakes in the arbitration system	She has headed the litigation & arbitration practice of law firm Linklaters in the Netherlands since 2010. When she still worked for the Dutch law firm NautaDutilh, she represented Dutch insurer Eureko B.V. in the arbitration against Poland. She is a member of the executive board of the Dutch Arbitration Association.		
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Known cases as arbitrator in investment disputes	N/A	Known cases as counsel in investment disputes	<ul style="list-style-type: none"> <li>• Eureko BV v. Republic of Poland</li> </ul>
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**Matthew Weiniger QC**, partner at Herbert Smith Freehills (United Kingdom)

Stakes in the arbitration system	Weiniger is a partner at one of the top-ranked investment treaty arbitration firms and regularly works as a counsel in investment arbitration cases. He was one of the leading lawyers in the Eurotunnel consortium's case against France and the UK, in which they were forced to pay-out £30 million for failing to keep asylum seekers away from the Eurotunnel's premises.		
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Known cases as arbitrator in investment disputes	N/A		
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Known cases as counsel in investment disputes	<ul style="list-style-type: none"> <li>• Standard Chartered Bank v. Tanzania</li> <li>• 14 solar investors v. Spain</li> <li>• Charanne BV and Construction Investments v. Spain</li> </ul>	<ul style="list-style-type: none"> <li>• Eurotunnel v. France and UK</li> <li>• Aguas del Tunari v. Bolivia</li> <li>• Tallinna Vesi v. Estonia</li> </ul>	
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## Individuals who are members of EFILA's advisory board

### Professor Emmanuel Gaillard, partner at Shearman & Sterling (France)

Stakes in the arbitration system	Gaillard is considered part of the 15-person group of elite investment arbitrators, which have decided the majority of all known cases. He has also been a prolific counsel in investment-treaty cases. He represented Yukos in the high-stakes case against Russia. As a result of his double role of counsel and arbitrator, his impartiality has been questioned. <sup>51</sup>	
Known cases as arbitrator in investment disputes	<ul style="list-style-type: none"> <li>• L.E.S.I. S.p.A. and ASTALDI S.p.A. v. Algeria</li> <li>• Pey Casado v. Chile</li> <li>• Consortium Groupement L.E.S.I. - Dipenta v. Chile</li> <li>• ESAM shareholders v. Central African Republic</li> <li>• Binder v. The Czech Republic</li> <li>• Eastern Sugar B.V.(Netherlands) v. The Czech Republic</li> <li>• Rail World v. Estonia</li> <li>• Ares International v. Georgia</li> <li>• Cargill v. Poland</li> <li>• Lundin Tunisia B. V. v. Republic of Tunisia</li> <li>• Saba Fakes v. Republic of Turkey</li> </ul>	<ul style="list-style-type: none"> <li>• Global Trading Resource Corp. and Globex International, Inc. v. Ukraine</li> <li>• Telekom Malaysia Berhard (Malaysia) v. Ghana</li> <li>• MNSS B.V. and Recuperero Credito Acciaio N.V. v. Montenegro</li> <li>• Progas Energy Ltd. v. Pakistan</li> <li>• EZ (Czech Republic) v. Albania</li> <li>• Canfor Corporation vs. USA</li> <li>• Commerce Group Corp San Sebastian Gold Mines, Inc. v. Republic of El Salvador</li> <li>• Salini Costruttori S.P.A. v. Ethiopia</li> <li>• Toto Costruzioni v. Lebanon</li> <li>• Eurogas v. Slovakia</li> <li>• Kilic Insaat v. Turkmenistan (until resignation)</li> </ul>
Known cases as counsel in investment disputes	<ul style="list-style-type: none"> <li>• Participaciones Inversiones v. Gabon</li> <li>• Orascom TMT v. Algeria</li> <li>• EDF v. Hungary</li> <li>• OAO Gazprom v. Lithuania</li> <li>• SGS Société Générale de Surveillance S.A. (Switzerland) v. Philippines</li> <li>• Ampal-American Israel Corporation and others v. Egypt</li> <li>• Micula &amp; others v. Romania</li> </ul>	<ul style="list-style-type: none"> <li>• Plama Consortium Limited (Cyprus) v. Bulgaria</li> <li>• Yukos Universal Limited (Isle of Man) v. Russia</li> <li>• Hulley Enterprises Limited (Cyprus) v. Russia</li> <li>• Veteran Petroleum Limited (Cyprus) v. Russia</li> <li>• Orascom Telecom Holding SAE v. Algeria</li> <li>• Maersk v. Algeria</li> <li>• MHS Malaysian Salvors v. Malaysia (annulment phase)</li> </ul>

### Professor Hans van Houtte, independent arbitrator (Belgium)

Stakes in the arbitration system	van Houtte is a well known arbitrator. He has been part of at least 13 investor-state arbitration cases. In 2011, when the debate about investment arbitration began to take off in the EU, he "lamented the lack of an organised lobbying group for investment arbitration interests." <sup>52</sup> It is therefore not surprising that he is now a member of pro-investor lobby group EFILA.	
Known cases as arbitrator in investment disputes	<ul style="list-style-type: none"> <li>• Voltaic Network GmbH v. The Czech Republic</li> <li>• I.C.W. Europe Investments Limited v. The Czech Republic</li> <li>• Photovoltaik Knopf Betriebs-GmbH v. The Czech Republic</li> <li>• WA Investments-Europa Nova Limited v. The Czech Republic</li> <li>• Utsch M.O.V.E.R.S. International GmbH and others v. Egypt</li> </ul>	<ul style="list-style-type: none"> <li>• Gavazzi and Gavazzi v. Romania</li> <li>• Nova Scotia Power Incorporated v. Venezuela</li> <li>• Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada</li> <li>• Toto Costruzioni v. Lebanon</li> <li>• Saba Fakes v. Turkey</li> <li>• S&amp;T Oil Equipment and Machinery Ltd. and Valerian Simirica v. Romania</li> <li>• Československa obchodní banka, a.s. v. Slovakia</li> </ul>
Known cases as counsel in investment disputes	N/A	

### Mr Frank ter Borg, manager public affairs at Achmea (Netherlands)

Stakes in the arbitration system	He is in charge of Dutch insurer Achmea's communications strategy and public relations. Achmea (previously known as Eureko) has launched two controversial cases against Slovakia as a result of the government decision to reverse measures that liberalised the health insurance market and opened it to the private sector. Achmea also sued Poland after the government amended its decision to privatise Poland's largest insurance group. Ter Borg previously worked for the Dutch Ministry of Economic Affairs and the Dutch embassies in Warsaw and Moscow.		
Known cases as arbitrator in investment disputes	N/A	Known cases as counsel in investment disputes	N/A

**Mr Jean-Guy Carrier**, former secretary-general of the International Chamber of Commerce (Switzerland)

Stakes in the arbitration system	Between 2011 and 2014, Carrier was International Chamber of Commerce Secretary General. The International Chamber of Commerce is the largest business lobby group worldwide and acts as an arbitration forum to resolve investor-state disputes. He has made a career promoting trade liberalisation and investment protection.		
Known cases as arbitrator in investment disputes	N/A	Known cases as counsel in investment disputes	N/A

**Mr Alexander de Daranyi**, director – head of finance law at Sanofi (France)

Stakes in the arbitration system	Sanofi is a French pharmaceutical company that has been involved in several commercial arbitration cases. <sup>53</sup>		
Known cases as arbitrator in investment disputes	N/A	Known cases as counsel in investment disputes	N/A

**Ms Norah Gallagher**, senior lecturer at Queen Mary University of London (United Kingdom)

Stakes in the arbitration system	Ms Gallagher is an academic/practitioner specialising in international dispute resolution. She has been part of arbitration proceedings as secretary of the tribunal and currently serves as arbitrator in commercial disputes. She previously worked on international arbitration cases for the law firm Herbert Smith. The Queen Mary School of Arbitration, where she is based, regularly organises conferences sponsored by top investment law firms such as Freshfields and Clifford Chance. It also co-hosted EFILA's inaugural conference in January 2015. <sup>54</sup>		
Known cases as arbitrator in investment disputes	N/A	Known cases as counsel in investment disputes	N/A

**Ms Laura Halonen**, counsel at Lalive (Switzerland)

Stakes in the arbitration system	She works for one of the top-ranked international arbitration law firms and has acted as counsel in at least six investor-state cases. Lalive is, for example, representing tobacco giant Philip Morris in its controversial case against Uruguay over health warnings on cigarette packs. She previously worked for another well-known arbitration law firm Freshfields Bruckhaus Deringer.		
Known cases as arbitrator in investment disputes	N/A		
Known cases as counsel in investment disputes	<ul style="list-style-type: none"> <li>• Tulip v. Turkey</li> <li>• OKO v. Estonia</li> <li>• Libananco Holdings Co. Limited v. Republic of Turkey</li> <li>• RSM Petroleum v. Grenada</li> <li>• Eastern Sugar v. The Czech Republic</li> <li>• Mr Hassan Awadi, Enterprise Business Consultants, Inc and Alfa El Corporation v Romania</li> </ul>		

**Sir Francis Jacobs, KCMG, QC**, Professor at King's College London (United Kingdom)

Stakes in the arbitration system	Jacobs is an expert in European Union law and former Advocate General at the European Court of Justice. He does not seem to have much financial stake in the investment arbitration world except for his involvement as expert witness in investment arbitration cases such as Ioan Micula, Viorel Micula and others v. Romania.		
Known cases as arbitrator in investment disputes	N/A	Known cases as counsel in investment disputes	N/A

**Professor Loukas Mistelis, Clive M Schmitthoff**, Professor of Transnational Commercial Law and Arbitration at Queen Mary University of London (United Kingdom)

Stakes in the arbitration system	Mistelis combines research and teaching international arbitration with his role as arbitrator, counsel and expert witness in investment disputes. He has been on the International Centre for Settlement of Investment Disputes panel of arbitrators since January 2014, although it seems that he has not been appointed in any case yet. He acted as expert witness in the process of Argentina's request for annulment of the award in the case Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentina.		
Known cases as arbitrator in investment disputes	N/A	Known cases as counsel in investment disputes	• Krederi v. Ukraine

**Mr Davide Rovetta**, counsel at Grayston & Company – chair of the advisory board of EFILA

Stakes in the arbitration system	Mr Rovetta specialises in commercial arbitration and investment and public international law matters. He was previously employed by the European Commission Directorate-General for Taxation and Customs Union. His law firm, Grayston & Company, sponsored EFILA's inaugural conference in London.
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Known cases as arbitrator in investment disputes	N/A
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Known cases as counsel in investment disputes	N/A
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**Mr Arjan Waayer**, senior legal counsel at Shell

Stakes in the arbitration system	The interest of Shell in investment arbitration is confirmed by the fact that in 2012 the company set up a specialist team to handle all its litigation and arbitration globally. This team is part of the broader legal department, which employs around 600 lawyers. Shell has so far sued Nicaragua and Nigeria based on investment treaties.
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Known cases as arbitrator in investment disputes	N/A
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Known cases as counsel in investment disputes	N/A
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