

Why ask the court?

Making sure that the Investment Court System is compatible with EU law

With CETA, the Comprehensive Economic and Trade Agreement between the EU and Canada, the EU would introduce for the first time ever an investment protection system in an EU trade deal. While the principles of investment protection have been subjected to intense political debate, both within the Parliament and in civil society, important legal questions remain as to whether or not the Investment Court System (ICS) proposal is actually compatible with EU treaties.

Does the EU really have the legal competence to establish an investment court?

The Investment Court System proposed in CETA (ICS) would obtain judicial competence on a wide array of matters (e.g. civil law, general administrative law, social and tax legislation). It could examine questions of EU laws, hear claims and award damages against the EU and its Member States.

The EU and the Member States would have to submit to the jurisdiction of the ICS, which could alter the established court system in the EU.

ICS would be outside the institutional and judicial framework of the EU, not subject to any judicial review and would therefore deprive Member States' courts of their powers in relation to the interpretation and application of EU law (Article 19 TEU, Article 267 TFEU).

For the same reasons, the ECJ ruled in 2011 that the EU does not have the legal competence to establish a European Patent Court (Opinion n° 1/09).

Furthermore, ICS could also infringe on the Court of Justice of the European Union's exclusive jurisdiction to provide for a definitive interpretation of EU law and its exclusive jurisdiction to rule on non-contractual liability (article 340 TFEU).

Finally ICS could introduce discrimination between foreign and domestic investors, which could constitute a violation of the Treaties (articles 49, 54 and 56 TFEU).

The European Parliament can ask the Court

While MEPs will make their own political judgement on CETA when Parliament votes on consent, answering these legal questions requires the qualified outlook of the European Court of Justice (ECJ). But the Court can't take the initiative: MEPs must first agree to put the question to the Judges.

The European Parliament can obtain the opinion of the ECJ on such matters (Article 218 TFEU). Our rules of procedure (rule n°108) provide that 76 MEPs can propose a motion to the Parliament's plenary.

We are a cross-party group of MEPs, with diverging views on CETA and investment protection. However, beyond our political differences, we all believe that the rule of law should be upheld in all circumstances and that EU treaties must always be respected.

If you share our belief and want to make sure that the ICS is compatible with EU law, sign the draft motion and support it in plenary.