

In 2019, in Opinion 1/17, the EU's highest court (CJEU) ruled that the investment court (ICS) proposed in the EU-Canada trade deal was not illegal. Check out the legal analysis below.

The CJEU ruling in Opinion 1/17 clarified that the EU can enter into international agreements that provide for ICS as long as they do not lead to the EU abandoning existing levels of protection of the public interest. Is it accurate to claim that the CJEU seems to think that this would only be the case if the EU would be, in their words, "repeatedly compelled by the CETA Tribunal to pay damages"?

We have no way now of knowing how much in damages for 'lost' profit investors would get in compensation from the proposed investment court (ICS). Even if after a few years we decided to pull out of the ICS of CETA, the court would still stand for a 'sunset clause' period of twenty years.

How many years would it take the EU to withdraw from the ICS of CETA if the CETA ICS tribunal did repeatedly compel Ireland or the EU to "pay damages"?

For answers to these and similar questions, read on:

Full-text of the ECJ (CJEU) ruling on ICS not illegal: 'OPINION 1/17 OF THE COURT (Full Court), 30 April 2019':
<http://curia.europa.eu/juris/document/document.jsf?docid=213502&doclang=EN>

Europe and the World: A law review: 'Special issue: Reflections on Opinion 1/17 (CETA): A Europe and the World: A law review special issue': <https://www.scienceopen.com/collection/96582f17-70c6-459b-8e0a-8e4bccfe58d8>

Hogan Lovells on Lexology: 'The CJEU holds CETA's dispute resolution mechanism to be compatible with EU law':
<https://www.lexology.com/library/detail.aspx?g=34a5ed00-3f93-4100-97a6-635336079e35>

Ankersmit, L. (2020) **'Regulatory autonomy and regulatory chill in Opinion 1/17'** [2020] 4(1): 7. Europe and the World: A law review [21]. DOI: <https://doi.org/10.14324/111.444.ewlj.2020.25>. Available here:
https://www.scienceopen.com/document_file/70262072-57d6-4cbf-8466-864ebc8a192a/ScienceOpen/EWLR-4-7.pdf

Canadian Centre for Policy Alternatives: 'A Confident Opinion, a Looming Decision: The compatibility of the CETA investment court system with EU law', Natasha Jerome, April 2019'. Available at:
<https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2019/04/A%20Confident%20Opinion.pdf>