

ClientEarth: ISDS “may not be compatible with EU law”

In this report, ‘Legality of investor-state dispute settlement (ISDS) under EU law’, ClientEarth finds that ISDS, and by extension ICS, “may not be compatible with EU law”. Unfortunately, many of the matters they consider here were not looked at by the European Court of Justice (ECJ) when it ruled that the ICS of CETA was not illegal under EU law. Read the report here: <https://www.greenpeace.org/static/planet4-hungary-stateless/2018/10/45428ade-45428ade-2015-10-15-legality-of-isds-under-eu-law-ce-en.pdf>

The report commences thus:

“This study finds that including investor-state dispute settlement (ISDS) mechanisms in EU trade agreements may not be compatible with EU law, including the new 'Investment Court System' proposed by the Commission on September 16 2015.

ISDS mechanisms would set up an arbitration system outside of, but binding on, the EU judicial system. Such mechanisms would introduce an additional judicial relief within the EU legal order that is independent of the EU courts. It would, in effect, be a system that would enable foreign investors to sideline the EU courts and resort to claims that are not available to domestic investors.

EU law, and settled case-law of the European Court of Justice (ECJ), suggest that such a system of external judicial control may be incompatible with the EU legal order because it would (1) undermine the autonomy of the EU legal order and the powers of the EU courts in particular and (2) negatively affect the completion of the internal market, and more specifically the EU competition rules.”