

ClientEarth takes Commission to court over investor protection papers

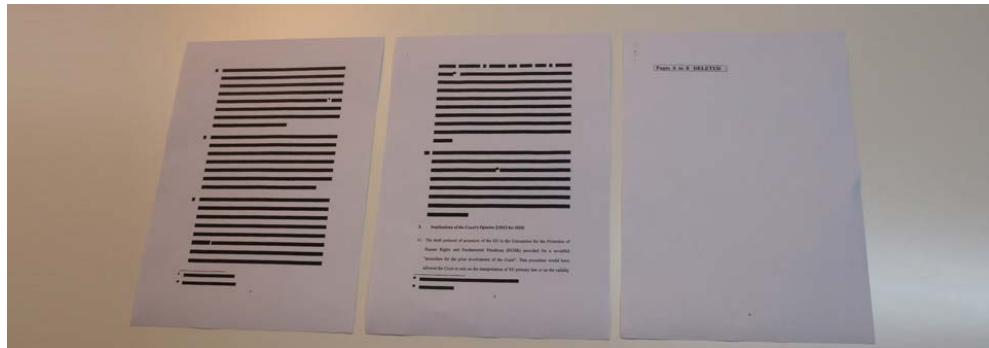
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ClientEarth has launched legal proceedings against the European Commission for [keeping secret official analysis of whether controversial investor rules in international trade agreements are legal](#).

The Commission has refused to disclose documents containing a purely legal discussion on the compatibility with EU law of investor provisions ISDS and ICS in trade agreements like TTIP and its Canadian equivalent, CETA.

Under EU transparency laws, the public has a right to see the documents. But the Commission refused access, saying disclosure of the legal reflections would undermine the Commission's negotiating position.

ClientEarth lawyer Laurens Ankersmit said: "Documents setting out the law are not strategic as they are not about negotiation tactics. The Commission is bound by the rule of law during trade negotiations, as at any other time. Disclosure of documents setting out these legal limits cannot weaken its negotiating position."



Sample pages of the redacted analysis submitted to ClientEarth by the Commission.

Investor-state dispute settlement (ISDS) and the Investment Court System (ICS) create special courts that are only available to industry, with for-profit judges who are not publicly accountable.

This makes ISDS and ICS a powerful legal tool against environmental law-making. For example, a future decision to cancel the Hinkley Point nuclear project could face an ISDS claim from investors.

It also sidelines national and EU courts in deciding on crucial matters affecting everyone's life, like the quality of our food, air and water.

[ClientEarth analysis shows this is not compatible with EU law](#). The [German Association of Judges](#) and the [European Association of Judges](#) have also expressed strong reservations about

the legality of ICS, and the Walloon Parliament has called for the Court of Justice of the EU to give an opinion on its compatibility with EU law.

Ankersmit added: “Investor protection in TTIP and CETA is surrounded with controversy. Publishing legal analysis and reflections on the compatibility with EU law would inform the public of the legal risks of trade agreements, and contribute to the on-going debate of whether European Court of Justice should rule on the legality of ISDS and ICS.”