



Presentation of the Study on

The investment chapters of the EU's international trade and investment agreements in a comparative perspective

European Parliament
INTA Committee Meeting
on 12.11.2015

Key findings I

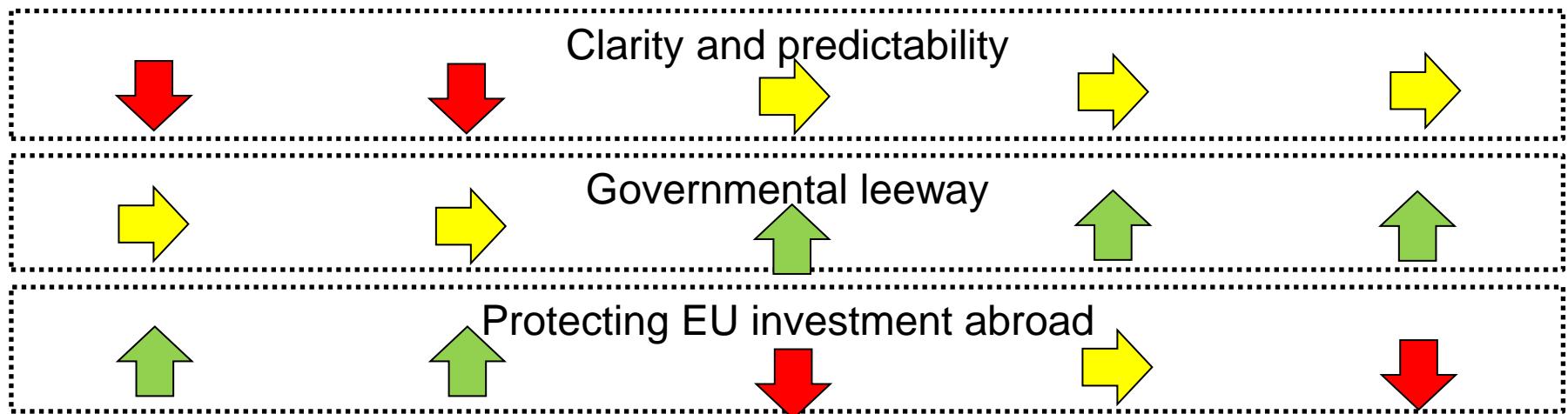
- Overall aim: to facilitate the Committee's task in assessing the EU's progress made in developing a balanced and forward-looking international investment policy
- **Agreements compared:**
 - **EU-Singapore Draft**
 - **EU-Canada Draft**
 - **Energy Charter Treaty (ECT)**
 - **USA-Lithuania BIT**
 - **Germany-Jordan BIT**
 - **[EU Commission's Sept. '15 Proposal on TTIP]**



Key findings II

Overall regulatory approach

| ECT | MS BITs | CETA | Singapore | TTIP Prop. |
|-------------------|---------|------|---------------------------------|------------|
| „Thin regulation“ | | | „More comprehensive regulation“ | |
| Blanket clauses | | | More detailed clauses | |

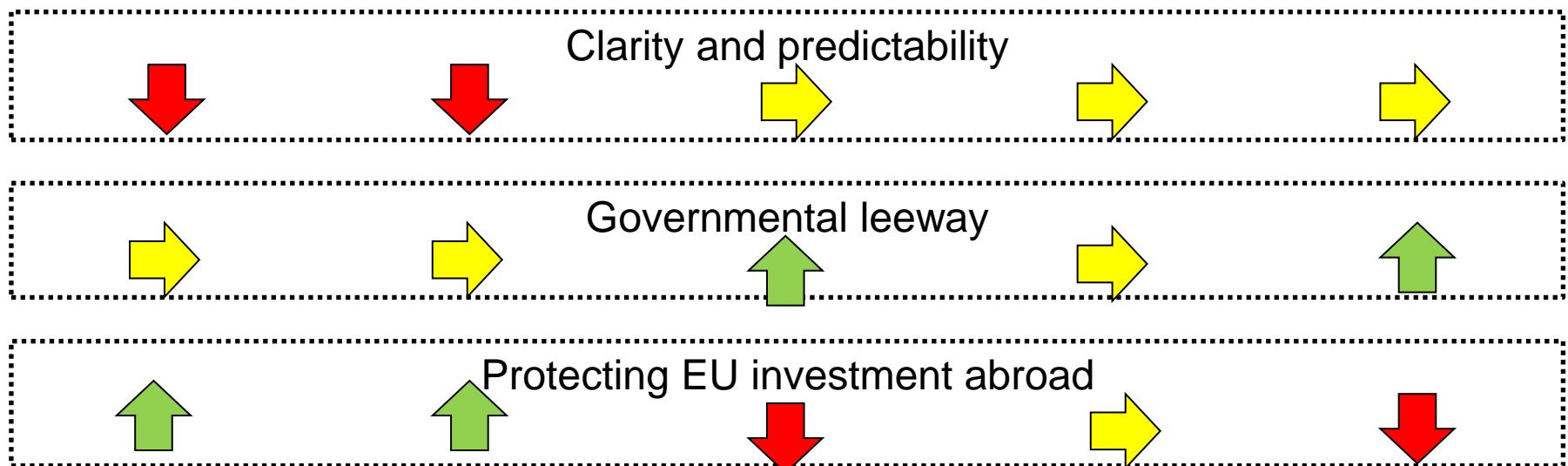




Key findings III

Substantive Standards I, e.g. - Fair and equitable treatment (FET)

| ECT | MS BITs | CETA | Singapore | TTIP Prop. |
|------------------------------|--|------|-----------|------------|
| „Blanket clauses“ / Open end | „Exhaustive list of protection categories“ | | | |

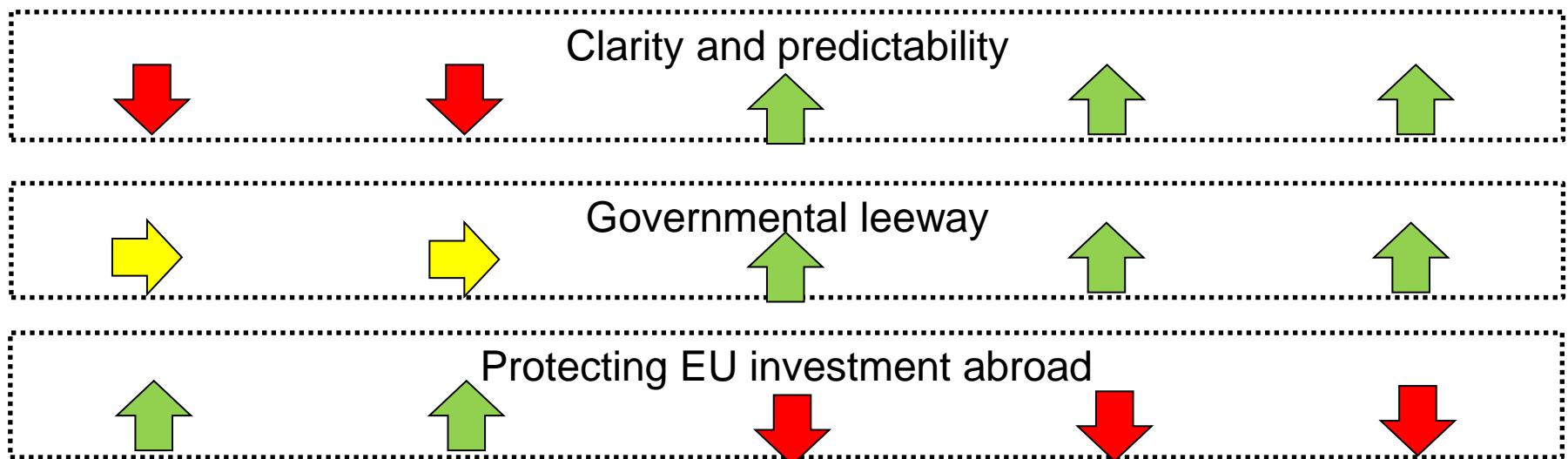




Key findings IV

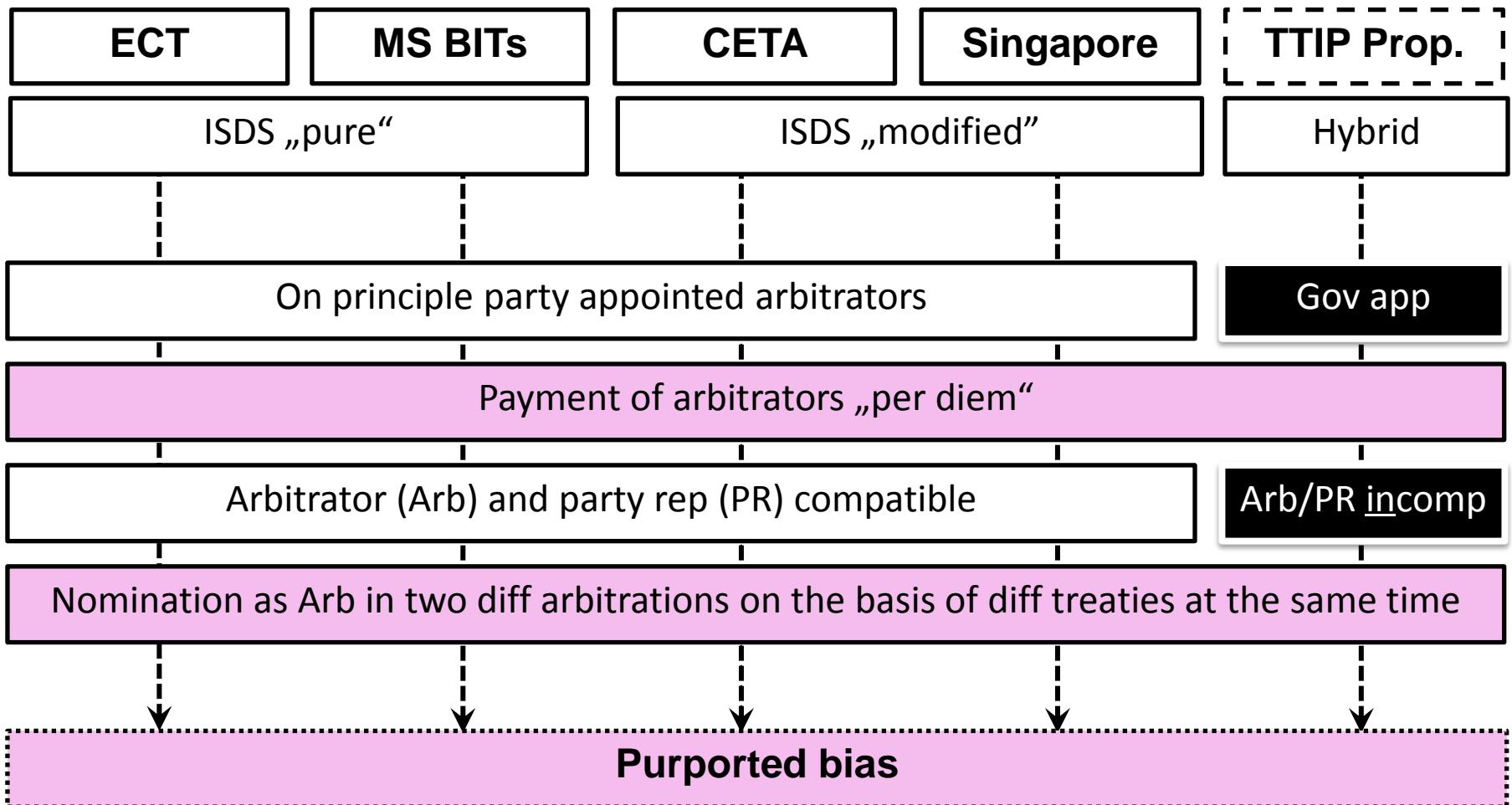
Substantive Standards II, e.g. - “indirect expropriation”

| ECT | MS BITs | CETA | Singapore | TTIP Prop. |
|------------------------------|---|------|-----------|------------|
| „Blanket clauses“ / Open end | Non-exhaustive list of factors to be taken into account | | | |



Key findings V

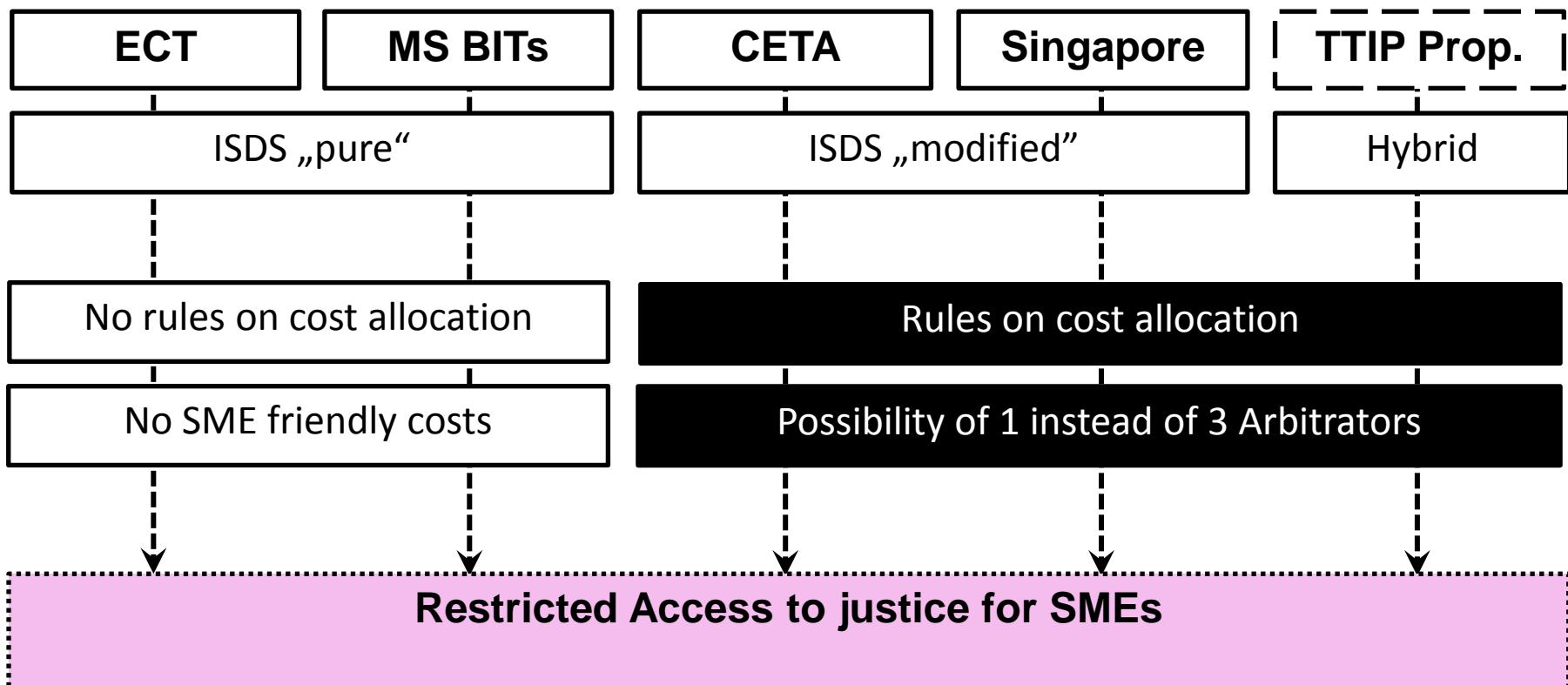
Procedural Standards I - „Systemic Partiality“?





Key findings VI

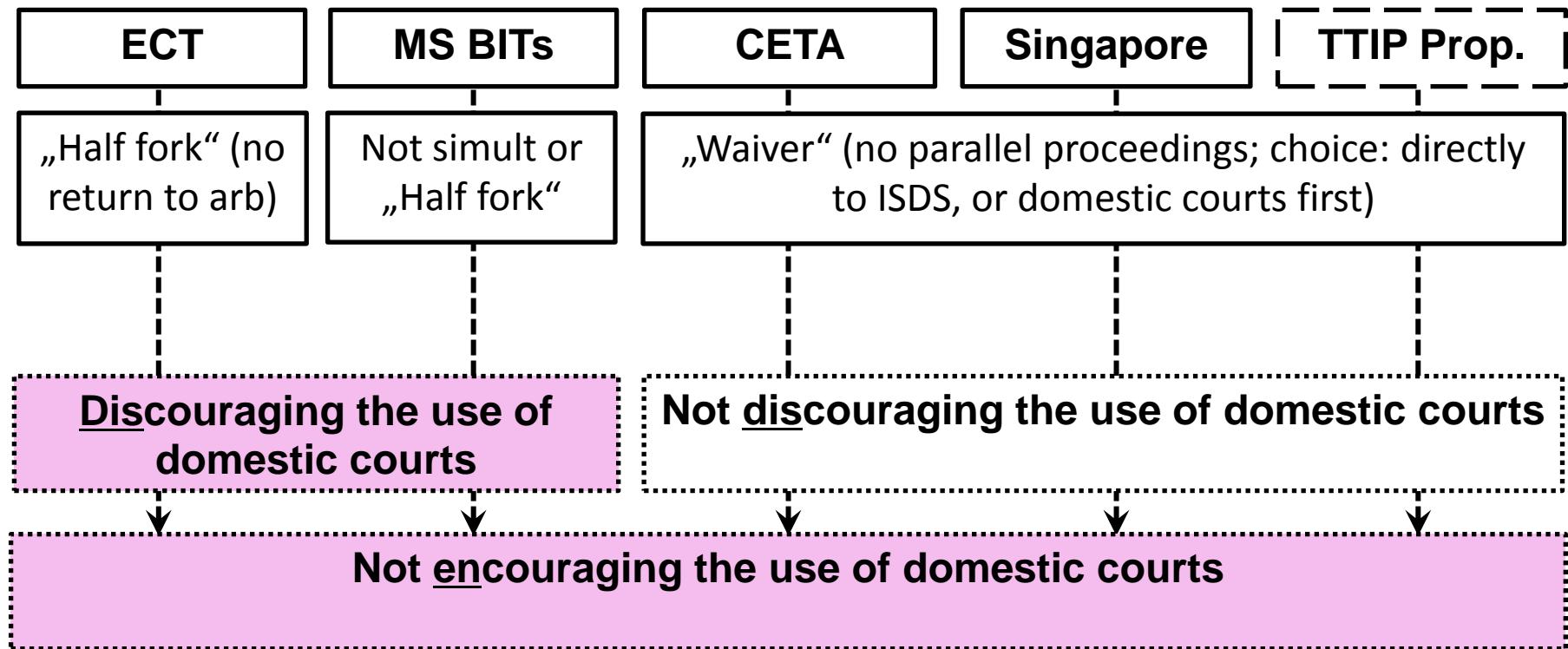
Procedural Standards II - Cost and Cost Allocation





Key findings VI

Procedural Standards II - ISDS and its relation to domestic courts



Prospects

EU's international investment policy at a crossroads

What is **needed** is a proposal for effective investment protection which has both a **realistic chance of realization** and which of the current regime **remedies the shortfalls**

Such proposal would in particular include,

- first, a more agreeable and flexible **combination of arbitral tribunals** with arbitrators **and a standing appellate mechanism** with real tenured judges,
- second, meaningful rules **facilitating access to justice by small and medium-sized enterprises**,
- third, with a view to create **more legitimacy**, the proposal would put **investment protection** in international agreements **in second place behind well-functioning domestic remedies**.

Proposals in this direction, e.g. Harnack-Hause Reflections, Essentials of a Modern Investment Protection Regime – Objectives and Recommendations for Action, at <http://tinyurl.com/qylvb78>

Thank you for your attention!

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