



KONINKRIJK BELGIË
Federale Overheidsdienst
Buitenlandse Zaken,
Buitenlandse Handel en
Ontwikkelingssamenwerking

CETA

BELGIAN REQUEST FOR AN OPINION FROM THE EUROPEAN COURT OF JUSTICE

On 27 October 2016, the Kingdom of Belgium reached an internal agreement between the Federal Government and the governments of the federated entities concerned regarding the signing of the EU-Canada Comprehensive Economic and Trade Agreement (CETA).

This agreement contains a national unilateral declaration regarding the Belgian conditions for signing CETA, for which the undertaking was made to request an opinion from the Court of Justice of the European Union (CJEU) regarding the compatibility of certain aspects of CETA with the European Treaties, in particular with regards to Opinion 2/15.

On 16 May 2017, the CJEU published its Opinion 2/15 regarding the EU-Singapore free trade agreement. Opinion 2/15 states that the EU does not have exclusive competence with regards to hearing disputes between investors and States. Furthermore, the CJEU confirmed that Opinion 2/15 only pertains to the question of competence, and not the question of the compatibility of a system of hearing disputes between investors and States with the European Treaties.

In light of this, the Kingdom of Belgium is requesting an opinion from the CJEU regarding the compatibility of Chapter 8 ("Investments"), Section F ("Resolution of investment disputes between investors and states") with the European Treaties, including basic rights. This concerns a new, reformed system of hearing disputes between investors and States, the so-called *Investment Court System* (ICS), which will consist of a Tribunal and an Appeals Body.

Specifically, the Kingdom of Belgium is requesting the CJEU to provide an opinion regarding the compatibility of the ICS with:

1) The exclusive competence of the CJEU to provide the definitive interpretation of European Union law

2) The general principle of equality and the 'practical effect' requirement of European Union law

3) The right of access to the courts

4) The right to an independent and impartial judiciary

Regarding the right to an independent and impartial judiciary, the Kingdom of Belgium wishes to obtain an opinion regarding the following aspects:

- the conditions regarding the remuneration of the members of the Tribunal and the Appeals Body.
- the appointment of members of the Tribunal and the Appeals Body.
- the release of members of the Tribunal and the Appeals Body.
- the guidelines of the *International Bar Association* regarding conflicts of interest in international arbitration and the introduction of a code of conduct for the members of the Tribunal and the Appeals Body.
- the external professional activities related to investment disputes of members of the Tribunal and the Appeals Body.

With its request for an opinion, the Kingdom of Belgium hopes to further clarify the legal framework in which CETA has been established, in accordance with the agreements which pertain to the signing of CETA by Belgium. The Kingdom of Belgium does not take any position itself regarding the questions which have been put to the CJEU.

The Kingdom of Belgium is conscious of the fact that certain aspects of the elaboration of CETA, and in particular the ICS, still need to be decided on by the Council of the European Union on the basis of a proposal by the European

Commission. This further elaboration may influence the regulatory framework for which the CJEU is requested to advise in this opinion request.

The Kingdom of Belgium is also conscious of the fact that the ICS is the first step towards the creation of a multilateral Investment Court which, in the long run, shall become the responsible legal institution to resolve conflicts between investors and states.

The provisions in CETA which are the subject of the Belgian opinion request to the CJEU are excluded from the provisional implementation of the Treaty. The provisions in question shall only enter into force when all Member States have ratified CETA in accordance with their national constitutional procedures.
