

## **A New Toy: Will the Establishment of a Multilateral Investment Court Weaken Investment Protection**

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### **Abstract:**

The European Commission project of a Multilateral Investment Court is being presented as the crowning moment in the reforms intended at bringing international investment law from the dark era of excessive investor protection to the bright future of states' benevolent regulatory powers. But will the creation of a permanent court really contribute to this aim? In other words, is a permanent court tasked with protecting investor rights likely to weaken these rights?

In this paper, I will try to answer this question by looking beyond the substantive rules a MIC is going to apply. As a starting point, I will analyze the procedural and institutional framework of the proposed court. In addition to allowing speculation on potential consequences of these arrangements, this will allow for a limited comparison with other international courts, particularly the European Court of Justice and the International Court of Justice. Based on the existing literature on these courts, I will try to establish whether (and if so, how) the factors that allowed them to develop law will play a role in MIC. Moreover, whether a potential judicial development is likely to err on the side of investment protection, or state regulatory power.

Finally, I will approach the problem from the institutional point of view, taking into account extrajudicial factors likely to affect the reasoning of MIC judges. This includes the imperative to preserve the court and expand its influence by safeguarding a steady influx of new cases. It also includes the prestige of the institution and the potential of increasing this prestige by further multilateralization – that is accession of new states to the system. I will analyze how these considerations are likely to influence MIC's decisions and, in particular, how they will be affecting the strength of investment protection.