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CETA, Investment Protection and the Basic Law

- Legal opinions of Jakob und Kollegen, Attorneys-at-Law

I. State of Proceedings

On 29 February 2016, the EU Commission published the official final text of the CETA treaty.[1] What happens now? The Federal Government expects the procedure to be as follows:

"When the translation of the final treaty text into all official EU languages is complete, the Commission will simultaneously submit the draft to the European Parliament (EP) and the European Council. The European Parliament may only formally approve it if a Council resolution exists, but may begin the review beforehand. A Council resolution on the signing and provisional application may come in the spring of 2016. Approval of the EP is obtained afterwards. Provisional application takes effect only after approval of the EP. While this is not prescribed by the Treaty on the Functioning of the European Union (TFEU), it is established practice. This ensures democratic legitimacy, since the provisional application concerns only the parts of CETA for which the EU holds exclusive jurisdiction, so that the appropriate parliamentary authority is the EP. This sequence was used with all recent free-trade agreements, which were mixed agreements. Provisionally applied, for example, were the agreements for tariff reductions and for public procurement from which EU companies were able to profit as soon as possible. Which parts of CETA provisional application specifically covers is still being reviewed by the European Commission and the member states. In the Federal Government's view, the rules on investment protection and investor-state dispute settlement procedures are excluded from provisional application in any case. Provisional application in the case of CETA could become effective in the first half of 2017.
The national ratification process may only begin after approval of the EP. The part of the agreement that falls under the jurisdiction of the member states may only take effect after ratification by all member states."[2]

II. Provisional Application

Art. 218 V TFEU[3] stipulates that international agreements of the EU can be made provisionally applicable before the approval of the European Parliament and possibly even

[1] http ://trade .ec.europa.eu/doclib/docs/2016/february/tradoc_ 154329.pdf.
[2] http://www.bmwi.de/DE/Themen/Aussenwirtschaft/Freihandelsabkommen/ceta.html.

before approval by the national parliaments. In that regard, the parliaments can be overplayed. Provisional application is determined by the corresponding Council resolution.

This instrument should also be used in the case of CETA. The Federal Government is assuming the following timetable: resolution on provisional application in the spring of 2016, followed by provisional application in the first half of 2017 (see above). But everything could move much faster. It is disputable whether CETA is a so-called mixed agreement (that member states must approve) or an EU-only treaty (that the EU can establish alone). It is possible that everything will move very quickly and bypass the parliaments (EU and Bundestag).

II. Investment Protection

1. Introduction

CETA transfers sovereignty from the legislature and judiciary to supranational structures. Before I go into the details, let me outline the basic structure of this procedure. The contract parties to CETA are the EU and Canada. However, the aforementioned sovereign rights concern not only the EU but also and particularly the sovereign rights of the member states of the EU, i.e. the state's liability to foreign corporations in the language of the treaty: investment protection and the corresponding judiciary, i.e. arbitration for investment disputes. Both of these areas are covered by the German Constitution (GG). Art. 14 III GG establishes the obligation to pay compensation for expropriation; Art. 19 IV 1 GG guarantees general legal protection before public authorities, and Art. 14 III 3 GG assigns disputes over the amount of compensation to the ordinary courts. CETA encroaches on this national domain, implements new state liability rules and subordinates them to an external court. To put it in legal terms: CETA is a contract (between the EU and Canada) at the expense of third parties (EU member states). Such a contract at the expense of third parties is only possible with the approval of the third party (see above regarding EU-only vs. mixed treaty). To what extent such approval is legally permissible and possible is then (also) determined by national constitutional requirements, i.e. by the German Basic Law (Grundgesetz or Constitution).

2. Supranational Parallel Constitution

The constitution governs so-called state liability law, i.e. to what extent public authorities may encroach upon private assets, whether and to what extent public authorities have to pay

[3] On the recommendation of the negotiator, the Council adopts a resolution to approve the signing of the agreement and its provisional application before it takes effect.

compensation, and how the affected parties may seek legal protection.[4]

The investment protection provided for in CETA implements a new **supranational parallel constitutional** order in addition to the Basic Law. It also establishes rules about the extent to which the state may encroach on investments (assets), what compensation it may be required to pay, and how legal protection is organised. Therefore, a **supranational justice system** is established: Foreign investors can claim compensation from the state in an international arbitration court for (alleged) unfair/unreasonable treatment of their investments.[5]

Investment protection does not concern a "simple law" but a fundamental constitutional question of whether the State is liable for any encroachment. With investment protection a **parallel constitution** is set up with a **parallel constitutional court** for a sub-sector.

3. Comparison German State Liability / Investment Protection

Both of these legal systems regulate the same legal area. The terminology is different: Under German law, it is called state liability. Under CETA, it is called investment protection. In fact, however, it is the same thing: Whether and how the state is liable for an encroachment. So, the question is: Are the rules virtually identical in substance, similar or fundamentally different? [6]

A detailed analysis is beyond the scope of this document, which is why I focus on two fundamental structural principles of German law on state liability and the special procedural characteristics.

- *Primary legal protection has priority.*

[4] Art. 14, 19 IV, 34 GG. One special characteristic is that recourse to the ordinary courts is guaranteed. Therefore, jurisdiction does not lie with the administrative courts, which are actually responsible for resolving public health questions, but the civil courts. This special characteristic is due to the historical mistrust of the administrative courts as administrative/state-related courts.

[5] Chapter 8 Section F.

[6] Schill argues in his report for the Federal Ministry of Economics that both sets of provisions essentially work the same way. Schill, *Auswirkungen der Bestimmungen zum Investitionsschutz*, available at: https://www.bmwi.de/BMWi/Redaktion/PDF/C-D/ceta-gutachteninvestitionssch utz,property=pdf,bereich =bmwi201 2,sprache=de,rwb=true.pdf. Krajewski takes a critical view of this in: Anmerkungen zum Gutachten des Dr. Stephan Schill, available at: https://www.gruene -bundestag.de/fileadmin/media/gruenebundestag de/themen az/EU USA Freihandelsabkommen /Thesenpapier Klageprivilegien in CETA.PDF.

The citizens affected by this must fight this illegal interference. This means that the courts review the legality of the intervention. If they considered it unlawful, the relevant act of law is repealed with no compensation awarded to the affected parties.[7] The underlying reasoning is as follows: The citizen is sufficiently protected by the opportunity to request primary legal protection and requires no compensation. Only if and when (as an exception) primary legal protection is not possible is compensation considered (secondary legal protection).

This system is based primarily on considerations of preserving "the budgetary prerogatives of Parliament to the broadest possible extent and, in view of the considerable financial burden involved for the public authorities, to reserve the decision to award compensation for legislative injustice to parliamentary legislators."[8] This means the lawmakers shall regulate compensation. If the law does not provide for compensation, there is no legal basis for compensation. However, such a law may be unconstitutional because legally defined interference without compensation may be excessive. The result of this is not that a claim to compensation is guaranteed but that relevant primary legal protection may be obtained and the law declared unconstitutional.

For the state, this system means significant legal security: It can wait for the judicial review without being exposed to financial risks. Moreover, the window of time for the review has clearly been limited: Administrative decisions can only be impugned within one month,[9] after which they are final.
Even a constitutional complaint is subject to a strict time limit, which is normally a month, but is one year in the case of constitutional complaints made directly against a law (which are only exceptionally permitted).[10] After these deadlines have passed, the legality of the government regulation is formally established. There is no longer any legal protection, primary or secondary.[11]

[7] This is based on the *Naßauskiesungsbeschluss* (gravel pit and ground water case) of the Constitutional Court, BVerfG of 15.07.1981 - 1 BvL 77/78, Rn. 120:
"If a citizen considers a measure aimed at him to be expropriation, he may only claim compensation if a legal cause of action exists for this. If it does not, he must ask the administrative courts to set aside the act of intervention. However, without the challenge, he cannot claim compensation that is not granted by law; lacking a legal basis, the courts may not award compensation." The *Naßauskiesungsbeschluss* refers to expropriation. Beyond expropriation, however, state liability law is governed by the principle of the pre-eminence of primary legal protection. For example, in reference to state liability, Section 839 III BGB (German Civil Code) expressly excludes compensation in cases in which the party concerned culpably neglects to seek primary legal protection.

[8] Quoted from the BGH (German Supreme Court), 16/4/2015 -Tl1 ZR 333/13, Rn. 43.

[9] §70 VwGO (Administrative Court Procedures Code).

[10] §93 BverfGG (Federal Constitutional Court Act).

[11] BVerfG of 15/07/1981 - 1 BvL 77/78, Rn. 121: *Läßt er den Eingriffsakt unanfechtbar werden, so verfällt seine Entschädigungsklage der Abweisung* ("If there is no appeal of the act of intervention, the compensation claim is forfeited").

On 26/03/2016, the Constitutional Court[12] agreed to consider the 13th Amendment to the Atomic Energy Act, i.e. the phase-out of nuclear power. A ruling is still pending. This "only" involves the constitutionality of the phase-out of nuclear power and not the state's potential liability. As I mentioned earlier, this cannot be considered under German state liability laws because of the pre-eminence of primary legal protection.

Parallel to the Constitutional Court hearings, the Swedish Atomic Energy Company (Vatenfall) sued Germany for EUR4.7 billion on the basis of the Energy Charter Treaty.[13] To put this amount in perspective, it represents approximately 1% of the entire German budget. This case entails a massive liability for the state.

The CETA system is similar to that of the Energy Charter: It is exactly the opposite of German state liability law. It provides only for secondary legal protection without establishing clear deadlines. This means that the regulation is in some ways fraught with liability risks for the state, with a structure that is foreign to German law.

- *The state is not liable for legislative injustices.*

It could be many years before there is a ruling on primary legal protection after the entire appeals process is exhausted and the case goes to the Constitutional Court. In the meantime, the parties involved could suffer significant losses, e.g. lost profits. Under the principle that "primary legal protection is preeminent," the parties involved can generally not claim compensation. However, this principle is not absolute but only applies to the extent that the alleged damages cannot be averted via primary legal protection. Is it conceivable in the aforementioned example of Vatenfall that, if primary legal protection is successful (i.e. the Constitutional Court rules that the 13th Amendment to the Atomic Energy Act is unconstitutional), claims will be made against Germany for lost profits incurred in the past? No, because a second principle limiting liability comes into effect here: The state is not liable for legislative injustices.

The only basis of liability would be so-called public liability.[14] Accordingly, the state is liable for breaches of its official obligations with third parties. The public safety obligations of public authorities are one example. The body responsible for a swimming pool must ensure proper supervision to avoid accidents (drowning). When this authority neglects this obligation, it incurs public liability. The official (public safety) obligation is to a third party: The sense and purpose of the official obligation is the protection of individual life.

[12] BvR 2821/l l, 1 BvR 321/12, 1 BvR 1456/12.

[13] Pia Eberhardt, Blair Redlin, Ceci le Toubeau, *Verkaufte Demokratie*, p.6, available at: http://corporateeurope.org/sites/default/fi les/verkaufte-demokratie.pd f.

[14] Art. 14 GG in conjunction with §839 BGB.

By contrast, the legislature is exclusively responsible for the community, not for individuals or identifiable groups. This means that the legislature has no official obligations to third-parties. It is not liable for its laws.[15]

CETA does not recognise this limitation. Legislation for the public sector thus becomes a process with economic risk. These risks could be considered in the legislation from the outset; social or environmental legislation could be then restricted or adjusted on the basis of a risk assessment. The economic risk could manifest itself with a considerable burden on the budget, which must be otherwise offset (e.g. by social cuts).

- Procedural Situation

Full-time judges trained in German law work in the German courts. This statement sounds banal, but loses its banality when compared to the arbitration proceedings provided for under CETA's proposed arbitration. Because this jurisdiction is governed by entirely different principles.

CETA does stipulate the formation of a fixed circuit of judges. However, these are not full-time but "stand-by" judges paid "stand-by" salaries so that they are readily available. They have another full-time occupation. Normally, these are lawyers from large commercial law firms.

Professional backgrounds shape a judge's perspective. A social welfare judge who has seen a lot of poverty and human misery in his many years of experience sees the world differently than a corporate lawyer who handles international acquisitions. Under CETA rules, "judges" are expected above all to be experts in international investment and trade law and demonstrate their experience in resolving international trade disputes. This job profile reduces the pool of candidates to those lawyers who already have experience in international arbitration. It ignores other essential qualifications, particularly in-depth expertise with the national legal issues involved. With this conditioning/orientation, there is an obvious risk that environmental laws will be seen through the (one-sided) prism of commercial law; matters of constitutional, administrative and environmental law may remain on the side lines. To illustrate, I want to contrast the jurisdiction of CETA with the German Constitutional Court. Most of the

[15] Ossenbühl/Comis, *Staatshaftung*, 2013, p. 105 f. Eine Ausnahme besteht dann, wenn das Gesetz sich wie ein Verwaltungsakt auf einzelne Personen bezieht.

Constitutional Court justices have an academic background in constitutional and public law. Many justices are former university professors.[16] The composition of the CETA court will be completely different.

The CETA court will be structurally biased in the sense of a one-sided liberal economic free-trade orientation.

4. Supranational Parallel Regulation in Investment Protection

Even in the area of investment protection, the Joint Committee (a CETA committee on which Canada and the EU are represented) has been assigned independent regulatory authority.[17]

Art. 8.10 (2) defines the acts of infringement that may result in liability for damages:

> A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 if a measure or series of measures constitutes:
>
> (a) denial of justice in criminal, civil or administrative proceedings;
>
> (b) fundamental breach of due process, including a fundamental breach of transparency, in judicial and administrative proceedings;
>
> (c) manifest arbitrariness;
>
> (d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief ;
>
> (e) abusive treatment of investors, such as coercion, duress and harassment; or
>
> (t) a breach of any further elements of the fair and equitable treatment obligation adopted by the Parties in accordance with paragraph 3 of this Article.

The flexibility clause under (t) is noteworthy. **The parties to the treaty may determine further breaches that result in liability for damages. The text of the CETA treaty does not establish any limit. This means that liabilities can be extended significantly beyond the actual text of the treaty. This may not involve a contract amendment or supplement,[18] so that the extension of liability could be undemocratically waved through at the European or national level without parliamentary approval.**

[16] The individual justices are listed with curriculum vitae on the Constitutional Court's website, see http://www.bundesverfassungsgericht.de /DE/Richter/richter node.htm1;ises sionid=3557BF9DOBODFCB9FB8 B998924424C6C.2 cid383.

[17] There are other assignments of responsibility that I won't go into detail about here. For example, Art. 2.4.(4) provides for the possibility of speeding up and expanding tariff reduction by decision of the Joint Committee. The same applies to the customs procedure, Art. 16. 14(4).

[18] Amendments and supplements are generally subject to the same ratification procedure as the initial contract. A simplified procedure only applies to changes to the Treaty annexes. See Art. 30.2.

The Committee on Services and Investment (one of the many CETA committees) is supposed to develop the appropriate recommendations and submit them to the Joint Committee for decision (Art. 8.10 (3)):

The Parties shall regularly, or upon request of a Party, review the content of the obligation to provide fair and equitable treatment. The Committee on Services and Investment, established under Article 26.2.1 (b) (specialised committees), may develop recommendations in this regard and submit them to the CETA Joint Committee for decision.

The Joint Committee then decides by consensus and its decisions become binding for the parties to the treaty.[19]

Here, it should be noted that CETA assigns the Joint Committee significant decision-making powers in a fundamental policy area – investment protection. It is therefore a "minor legislature" so that we are talking about supranational parallel regulation. Powers of interpretation are also associated with these regulations. The Joint Committee may specify the interpretation of the provisions of investment protection with binding effect for the arbitration courts.[20]

5. Summary

In short: Investment protection puts in place

- a parallel supranational constitution
- with a supranational parallel justice system
- and supranational parallel regulations

III Constitutional requirements for the transfer of sovereignty

1. Relevance of the Constitution

It is the EU that transfers sovereignty here. However, a transfer of nation-state sovereignty may only be permitted by the Constitution to the extent this would be permitted for Germany itself. Therefore, I will treat CETA as though Germany itself were a party to the

[19] Art. 26.3

[20] Art. 8.31 (3) Where serious concerns arise as regards matters of interpretation that may affect investment, the Committee on Services and Investment may, pursuant to Article 8.44.3(a), recommend to the CETA Joint Committee the adoption of interpretations of this Agreement. An interpretation adopted by the CETA Joint Committee shall be binding on a Tribunal established under this Section. The CETA Joint Committee may decide that an interpretation shall have binding effect from a specific date.

treaty and consider the following question: Should Germany even join such a treaty? If not, then Germany must not ratify CETA (although Germany is not a party to the treaty, only the EU is. Germany must ratify because it is a mixed treaty) and not contribute within the EU to the consummation of CETA (Council vote).

2. Conditions for the Transfer of Sovereignty

The state has internal and external authority. It exercises its external authority in its foreign policy. This includes the conclusion of international treaties with other countries. The Constitution governs external authority and international treaties in Art. 32 and 59 GG. Art. 32 governs collective powers in a federal state structure. External authority rests with the federal government not with the states. Art. 59 I GG governs the powers of the governmental organs: The Federal President represents the Federal Republic. He signs treaties, but only if the Bundestag approves it by law.

With the conclusion of an international treaty, the contracting state always resorts to its sovereignty to a certain extent. Contractual obligation takes the place of free and sovereign decisions in the scope of the treaty's application. This is indisputably included in the external powers.

However, CETA goes beyond this binding effect inherent in all international treaties and transfers sovereignty from the domain of the judiciary and the legislature. This is not part of the external authority. Because the Constitution has specific provisions that stipulate the following permissible realms and the conditions for the transfer of sovereignty:

- European Union (Art. 23 GG)
- Intergovernmental bodies (Art. 24 I GG)
- Collective security systems (Art. 24 II GG)
- International arbitration (Art. 24 III GG).

There is every indication that no transfer of sovereignty rights beyond these provisions is allowed. Obviously, the Constitution generally forbids a transfer of sovereignty and only allows it under the conditions of the aforementioned provisions. If a transfer of sovereignty is generally assumed to be permissible, however, this would not broaden the sense of Art. 23, 24 GG, it would void it.

Consequently, the federal government derives no authority from its general external powers to transfer sovereignty. Just because the federal government has the authority to enter into international treaties does not mean it is entitled to transfer sovereignty to an arbitration court,

for example. The same applies at the EU level. From its general external authority to conclude trade agreements, the EU cannot derive any power to transfer the material sovereignty of its member states to external supranational entities.

The EU "transfer options" (Art. 23 GG) are ruled out. Investment protection is not a new European right but a "supra-EU right." It is not the ECJ that decides on investment protection but supranational arbitration courts. The transfer option "collective security systems" (Art. 24 II GG) is obviously ruled out. What remains therefore is "international arbitration" (Art. 24 III GG) and "intergovernmental bodies" (Art. 24 I GG).

Arbitration, under Art. 24 III GG, looks like a "winner" at first glance. Upon second look, however, Art. 24 III GG, must be ruled out. Art. 24 III GG only governs arbitration between states. The Federal Republic may join a system of intergovernmental dispute settlement. However, investment protection under CETA is not about disputes between states but claims of private investors against states. A second look makes it clear that this does not fall under Art. 24 III GG.

"Intergovernmental bodies" as defined in Art. 24 I GG are bodies established under international treaties that have a minimum of corporate structures, i.e. at least one effective institution.
In this sense, it is conceivable that the Joint Committee and the Investment Tribunal could be seen as intergovernmental bodies. The current changes in CETA play a decisive role here in further institutionalising the arbitration court: The arbitration court should receive a certain fixed structure in which permanent judges are appointed.

Art. 24 I GG refers to "intergovernmental bodies" without further limitation. However, the term itself imposes a significant limitation: It must be an intergovernmental body on which Germany is a member.[21] Transferring German sovereign powers to an intergovernmental body of another country (e.g. the British Commonwealth) would obviously not be permissible under the Constitution. The treaty involves transferring it to intergovernmental bodies of the EU and Canada. Germany is not actually a member.

Does this indirect membership (through the EU) meet the requirements of Art. 24 I GG? Germany can assert direct influence on the EU. The situation would be comparable to membership on an intergovernmental body on which Germany can participate but has no veto power. However, there is one essential difference. With a direct membership, Germany has the sovereignty to decide about that membership and terminate it at any time. Indirect membership

[21] BeckOK GG/Heintschel von Heinegg, Art. 24 GG Rn. 15.

is different. Germany is not a contract party to CETA; Germany itself cannot withdraw from CETA, only the EU can. Germany could indeed work towards such a resolution within the EU Council and the European Parliament.[22] Organising the necessary majorities is difficult, however, and not within Germany's sovereign power. Art. 24 I GG does not cover such a broad relinquishment of sovereignty.

3. The "Reach" of a Transfer of Sovereignty

The conclusion is clear: There is no constitutional basis for the transfer of sovereignty in the context of investment protection. The reach, or scope of a transfer of sovereignty plays a role in determining the extent to which it is permissible under constitutional law. The conclusion that it is unconstitutional is already clear. The following considerations serve to verify and/or support this conclusion.

In the legal literature, there would appear to be consensus that external non-state arbitration in the domain of public law is only permitted to a limited extent. Authority for external courts to reject state laws would be an illegal encroachment by the private sector on the sovereignty of the state.[23]

The CETA arrangement appears to circumvent this constitutional question. Art. 8.31(2)[24] expressly states that no determination is made regarding the legality of a government regulation. Investment protection under CETA is limited to secondary legal protection, i.e. compensation for damages. Secondary legal protection is not left up in the air, however. Naturally, the Tribunal must review the substantive conditions, i.e. to determine whether an expropriation or, for example, the discriminatory treatment of an investor, has taken place. And with this substantive review, the Tribunal is acting in an area otherwise reserved for the Constitutional Court: The Tribunal determines whether laws are compatible with the provisions of investment protection. If not, there is a case for compensation. This is functionally equivalent to a review by the Constitutional Court to determine whether laws sufficiently protect property in accordance with Art. 14 GG.
From a functional standpoint (instead of a reduced and purely formal view), subordination to arbitration under CETA amounts to an external review of the legality of German state authority.

[22] At this point, the following should be noted: Even if it managed to achieve this difficult European withdrawal, CETA's investment protection law would remain in force for another 20 years, Art. 30.9(2).

[23] Groh/Khan, *Sind die Regelungen zur Schiedsgerichtsbarkeit verfassungswidrig?* Available at: http://www.bund-naturschutz.de/fileadmin/download/Umweltpolitik/Gutachten zu TTTPSchiedsgerichten.pdf.

[24] "The Tribunal shall not have jurisdiction to determine the legality of a measure alleged to constitute a breach of this Agreement under the domestic law of the disputing Party."

Otherwise, German law is only subordinated in this way to European law, and then with specific conditions and restrictions. The Constitutional Court has not surrendered its judicial authority within the European unification process, rather it has reserved the right to review European acts of law to determine (1) if they are compatible with the immutable substance of the Constitution (Art. 79 III GG, the so-called Eternity Clause) and (2) if they are covered by the principle of conferral or if the EU has acted *ultra vires*, i.e. exceeded its authority. The Constitutional Court recently applied this standard of review in its order for reference with respect to the government bonds purchased by the ECB.[25] The Constitutional Court put the matter before the ECJ. The ECJ found that the ECB's so-called OMT government bond purchase programme was lawful. Now the matter is back before the Constitutional Court.[27]

The German constitutional court system is aimed at protecting citizens from encroachment by the state, including any European encroachments, within the context of the limited judicial authority outlined above. However, the German constitutional court system has no real reference point for the reverse situation: protecting the state from encroachments by the private sector. There is no provision for the constitutional protection of the Federal Republic from encroaching Tribunal rulings. The result is unconditional surrender to an external arbitration court, a surrender that does not even exist under European law.

And this surrender has significant consequences. The fundamental ruling on Germany's state liability law in favour of the budget prerogative of parliament (pre-eminence of primary legal protection) has been turned on its head by CETA. The constitutional budget prerogative was not abolished as a result but was critically restricted. Budgets will always have to face unexpected burdens, e.g. with natural disasters. With the approval of CETA, the Bundestag would deliberately be laying "land mines that could go off any time during the financial year."[28]

4. Conclusion

Investment protection in CETA is unconstitutional.

V. Possible Proceedings before the Constitutional Court

The primary action being considered is a judicial review. It is directed against the act approving CETA.

[25] Ruling of 14 January 2014, 2 BvR 2728/13 u. a.

[26] C-62/14.

[27] The Constitutional Court heard oral arguments on this case on 16 February 2016. A final ruling is pending.

[28] Flesner, *Selbstermächtigung und Selbstentmachtung*, see: http://verfassungsblog.de/selbstermaechtigung-und-selbstentmachtung-einem-die-europaeische-union-und-der-investorenschutz-nach-ceta/

For the abstract judicial review, there must be an application from the federal government, one of the state governments and a quarter of the members of the Bundestag (Art. 93 I No. 2 GG).

The procedures could be initiated by way of interim relief in advance of the Bundestag vote passing the corresponding approval law (§32 BVerfGG). Because with CETA there is the impending provisional application.

[***signature***]

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