

Nagy on intra-EU BIT's after Achmea

Csongor István Nagy (University of Szeged, Faculty of Law) has posted on SSRN a paper titled *Intra-EU Bilateral Investment Treaties and EU Law after Achmea: 'Know Well What Leads You Forward and What Holds You Back'*, which appeared in 19(4) *German Law Journal* 2017, pp. 981-1016.

The abstract reads as follows.

This paper analyzes the compatibility of intra-EU bilateral investment treaties – intra-EU BITs – with EU law. The status and validity of intra-EU BITs gave rise to a heated debate in Europe, which culminated in the CJEU's recent controversial judgment in *Achmea*. This Article demonstrates that although the CJEU approached intra-EU BITs from the angle of federalism – where they are both redundant and illegitimate – the reality is that EU law does not provide for the kind of protection afforded by BITs. The paper gives both a positivist and a critical assessment of the *Achmea* ruling. It argues that the judgment should be construed in the context of the underlying facts and, hence, notwithstanding the CJEU's apparently anti-arbitration attitude, its holding is rather narrow. It gives an alternative theory on intra-EU BITs' fit in the EU internal market – based on European reality – showing that the complete invalidation of intra-EU BITs is flawed because the overlap between BITs and EU law is merely partial: BITs address a subject EU law does not. This Article's central argument is that intra-EU BITs accelerate the internal market and, hence, their suppression does not lead the European integration further, but holds it back. Finally, this Article argues that the prevailing pattern of investment protection is a global scheme that cannot be arrested through regional unilateralism as essayed by the CJEU.