CONSULTATION DOCUMENT

Prevention and amicable resolution of disputes between investors and public authorities within the single market

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudge the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.
You are invited to reply by 3 November at the latest to the online questionnaire available on the following webpage:

Please note that in order to ensure a fair and transparent consultation process only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published unless respondents indicate otherwise in the online questionnaire.

Responses authorised for publication will be published on the following webpage: https://ec.europa.eu/info/consultations/finance-2017-investment-protection-mediation_en#contributions
CONTENT OF THE CONSULTATION DOCUMENT

Public consultation on the prevention and amicable resolution of disputes between investors and public authorities within the single market

Purpose

The creation of a more predictable, stable and clear regulatory environment to incentivise investments is one of the key objectives of the third pillar of the Commission's Investment Plan for Europe. The Capital Markets Union (CMU) Action Plan is part of this third strand. The Communication on the Mid-Term Review of the CMU Action Plan further emphasises that a stable investment environment is crucial for encouraging more investment within the EU.  

As indicated in priority action 8 of the Mid-term review, the Commission will launch an Impact Assessment to explore whether an adequate framework for the amicable resolution of investment disputes should be set up. In parallel, the Commission is working on an Interpretative Communication to provide guidance on existing EU rules for the treatment of cross-border EU investments.

The focus of this public consultation is to inform the Commission’s impact assessment work on the need to develop amicable resolution and prevention methods for disputes between investors and public authorities. In addition, some questions will contribute to the work on the Interpretative Communication on existing EU rules for the treatment of cross-border EU investments.

The Bilateral Investment Treaties still in force amongst Member States (Intra-EU BITs) and the unlawful application of the Energy Charter Treaty (ECT) to intra-EU disputes by arbitration tribunals provide for arbitration as a binding dispute settlement mechanism. Awards rendered by those arbitration tribunals are usually not subject to judicial review by national courts and the Court of Justice. This poses serious legal issues and is one of the reasons why intra-EU BITs as well as the intra-EU application of the ECT by arbitration tribunals are considered incompatible with EU law.

The EU has the objective of exploiting the full potentials of amicable dispute resolution methods such as mediation while ensuring the respect of the right to an effective remedy and to a fair trial enshrined in Article 47 of the EU Charter of Fundamental Rights. Amicable resolution methods allow parties to find a consensual solution to a problem without the participation of a person with binding adjudicatory powers (such as a judge). The main focus of this consultation is on mediation, a specific method of amicable resolution that seems largely unexploited in solving disputes with public authorities. In the present context, "mediation" should be understood as any amicable method of solving or preventing disputes with the assistance of a neutral and independent third party.

Mediation could help to ensure a cost-effective and quick resolution of disputes between investors and public authorities. It could also prevent the existence of such disputes entirely. Another policy option which could be envisaged would be to establish a network of national contact points responsible for providing advice and information to investors about the legal environment relevant to their investment and intervening on their behalf with public authorities when complex legal or factual situations require such an intervention.

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Mediation may not be suitable for all disputes, in particular not for cases concerning the legality of generally applicable rules such as legislation. In some cases, there may be no legal scope for negotiated solutions, or the parties may lack incentives to seek amicable settlement. In some other cases both parties may be willing to find an amicable solution, e.g. when individual administrative acts are at stake and public authorities recognise that their actions have adverse effects on investments and have extensive discretionary power to remedy the situation, or when investors recognise that mediation could lead to a rapid and agreed solution between the parties. This could be of particular importance for SMEs whose investment decisions may be favoured by the possibility of reaching a consensual solution in a short time-frame. In any event, mediation shall remain only a voluntary option for the parties and shall not jeopardise their right to have access to a court.

Another important question to consider is the stage of the dispute at which mediation can be used. Mediation can be used when proceedings have already been brought to courts, but encouraging mediation even earlier on could be useful in preventing litigation of such disputes. In such early stages of the process, the purpose of mediation would be to fully understand the factual and legal circumstances of the case and the interests of all the parties concerned and to agree on a solution that would respect the applicable law. Such mediation procedures could even take place before a decision/act is adopted by the authority concerned. Instead of a formalised mediation process, one could also envisage an amicable intervention by a national investment contact point that would help the parties understand the national and EU legal rules applicable in their case as well as all underlying interests that need to be taken into account.

In this context, it is important to note that there is currently some degree of complexity and an apparent lack of awareness amongst a number of market participants, legal practitioners and the public authorities on the level of protection afforded to cross-border EU investors by EU law.

The single market and its fundamental freedoms guarantee that capital can circulate freely throughout the EU. Investors have the freedom to conduct a business, to invest in companies, and to provide services across borders. Investors enjoy rights deriving from the EU Charter of Fundamental Rights, notably the right to property, the freedom to conduct a business and the right to an effective remedy and to fair trial. The enforcement of those rights is guaranteed by national courts as ordinary judges of Union law, including through preliminary references. The Commission and the home State of the investor may also bring infringement proceedings to the Court of Justice. The case-law of the Court of Justice has been developed case by case. As a result, it is possible that business operators, legal practitioners and public authorities do not always have a full picture of the situation, including the extent of rights available to investors. Therefore, greater awareness on existing substantive EU standards is particularly important and the Commission will provide guidance on existing EU rules for the treatment of cross-border EU investments via an Interpretative Communication.

This consultation aims at gathering all stakeholders' views in particular on:

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2 In some Member States there are dedicated rules for mediation of disputes based on international investment treaties.
- the need for a clear EU amicable dispute resolution framework for preventing and solving disputes between investors and public authorities;
- the main desirable characteristics and options for an amicable dispute prevention/resolution framework for disputes between investors and public authorities;
- the impacts of the possible options;
- areas where more awareness about rights of cross-border EU investors is needed.

The questions included in this public consultation do not concern the application of Directive 2008/52/EC ("Mediation Directive"), which only applies to cross-border disputes arising in civil and commercial matters. Equally, the questions do not concern Directive 2013/11/EU on alternative dispute resolution for consumer disputes ("ADR Directive") that applies to contractual disputes between EU consumers and traders arising from the purchase of goods or services.

**Stakeholder mapping**

The following relevant stakeholder groups have been identified:

**Public authorities**: national governments, public administrations and national judiciaries have a major influence on the prevention and resolution of investment disputes, for domestic as well as cross-border investments. Their (lack of) action may underpin the very existence of a dispute prior to or in the course of the life-cycle of the investment. The Member States’ Expert Group on *intra-EU investment environment* will be closely involved in this process. Existing judicial networks (e.g. European Networks of Councils for the Judiciary) will also be consulted.

**Practitioners**: Although the consultation does not aim to single out any specific category of stakeholder, lawyers, arbitrators, and mediators with past or current experience in the amicable or alternative settlement of investment disputes may provide useful first-hand experience.

**Industry/business/associations/SMEs**: The views of operators potentially investing within the single market are important as they could have experience in dealing with investment disputes with public authorities and could benefit from a potential amicable resolution framework.

**Civil society**: NGOs active on investor protection and dispute-settlement issues in general, and on amicable resolution methods in particular, may have an interest in taking part in this consultation.

**Citizens/General Public**: The general public is the largest stakeholder group. Even if not directly affected by any potential framework, the nature of investment disputes potentially covered by the initiative may directly (e.g. rights of third parties to the dispute) or indirectly affect the general public.

**Context of the present consultation**

Methods of amicable dispute resolution such as mediation can save time and money for EU citizens in both civil and commercial cases following the implementation of the Mediation Directive.³

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In the international context, mediation is becoming more frequently used to solve disputes based on contracts with foreign investors or international investment treaties. Stakeholders and international organisations are increasingly advocating the use of mediation to solve investor to state disputes. For instance, the International Mediation Institute (IMI) has set up an Investor-State Mediation Task Force to offer practical guidelines for the use of mediation and determine competency criteria for mediators. The Task Force proposed in 2016 a set of such Competency Criteria for Investor-State Mediators. The ECT Secretariat also published a guide on Investment Mediation adopted by the Energy Charter Conference in July 2016.¹

Involving an independent third party such as a mediator in an amicable dispute resolution procedure has widely recognized benefits. For example, mediators can help to analyse all possible options for solving the dispute in a more constructive spirit.

During the mediation process, the public authorities would always have to take into account not only their own interests and the interests of the investors but also the interests of other third parties possibly affected by the case and the general interest. It is also clear that public authorities could not mediate on issues that are outside their competence. Any solution agreed would need to respect the applicable law.

In this context, the Commission is launching a public consultation to explore whether an adequate framework for the amicable resolution of investment disputes should be set up. The general objective of a possible initiative would be to improve the investment climate in the EU by providing effective tools for the (i) prevention and (ii) amicable resolution of disputes between EU investors and Member States with the help of an independent third party.

For more information or additional questions please contact:

fisma-investment-protection-mediation@ec.europa.eu

Relevant documents:

Inception Impact Assessment


GLOSSARY

**Amicable resolution:** should be understood as methods of dispute resolution that allow parties to find a consensual solution to a problem and do not involve participation of a person with binding adjudicatory powers (such as a judge). Such methods are not only used to resolve disputes, but also to prevent them. These methods not only include mediation, for example, but also direct negotiation, which does not involve the intervention of a neutral third party.

**Mediation:** any amicable method of solving or preventing disputes with the assistance of a neutral and independent third party. This definition is broad and encompasses all such methods, independently of how they are classified under some legal systems; for example, it covers conciliation.

**Settlement agreement:** a contract by which each party formally agrees to a solution, allowing parties to prevent a potential dispute or end an ongoing dispute.

**Compensation:** amount of money awarded in exchange for a loss.

**Investor:** a natural or legal person that seeks to make, is making, or has made an investment, such as direct investments, real estate investments, securities investments (e.g. in shares, bonds, bills, unit trusts). For a non-exhaustive definition of investment activities, please consult the definitions provided in the nomenclature annexed to Directive 88/361/EEC.

**BITs:** Bilateral Investment Treaties are international law agreements establishing rules for the promotion and protection of private investment by nationals and companies of one state in another one. **Intra-EU BITs** are bilateral investment agreements between EU Member States.
Public consultation on the prevention and amicable resolution of disputes between investors and public authorities within the single market

Fields marked with * are mandatory.
Introduction

The creation of a more predictable, stable and clear regulatory environment to incentivise investments is one of the key objectives of the third pillar of the Commission’s Investment Plan for Europe. The Capital Markets Union (CMU) action plan is part of this third strand. The Mid-term review of the CMU action plan further emphasises that a stable investment environment is crucial for encouraging more investment within the EU.

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Please note: In order to ensure a fair and transparent consultation process only responses received through our online questionnaire will be taken into account and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-investment-protection-mediation@ec.europa.eu.

More information:

- on this consultation
- on the protection of personal data regime for this consultation

1. Information about you

* Are you replying as:
  - a private individual
  - an organisation or a company
  - a public authority or an international organisation

* First name and last name:
Name of your organisation:

Name of the public authority:

Contact email address:
The information you provide here is for administrative purposes only and will not be published

Is your organisation included in the Transparency Register?
(If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. Why a transparency register?)

- Yes
- No

If so, please indicate your Register ID number:

Type of organisation:
- Academic institution
- Consultancy, law firm
- Industry association
- Non-governmental organisation
- Trade union
- Company, SME, micro-enterprise, sole trader
- Consumer organisation
- Media
- Think tank
- Other

Please indicate whether your organisation is either a Company or an SME, a micro-enterprise, or a sole trader:

- Company
- SME, micro-enterprise, sole trader

Please specify the type of organisation:

Type of public authority
- International or European organisation
- Regional or local authority
- Government or Ministry
- Regulatory authority, Supervisory authority or Central bank
- Other public authority
*Please specify the type of public authority:


*Where are you based and/or where do you carry out your activity?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Norway
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- Switzerland
- The Netherlands
- United Kingdom
- Other country

*Please specify your country:
* Field of activity or sector (*if applicable*):

at least 1 choice(s)

- Aeronautics and Space
- Agrofood
- Automotive Industry and Services
- Banking
- Chemicals
- Construction
- Energy
- Engineering
- Financial Services
- Legal and Consultancy
- Pharmaceuticals and Healthcare
- Transport and Logistics
- Textile
- Other
- Not applicable

* Please specify your activity field(s) or sector(s):


Important notice on the publication of responses

* Contributions received are intended for publication on the Commission’s website. Do you agree to your contribution being published?

(see specific privacy statement)

- Yes, I agree to my response being published under the name I indicate (name of your organisation/company/public authority or your name if your reply as an individual)
- No, I do not want my response to be published

2. Your opinion

2.1 Need for an EU framework on amicable dispute prevention and resolution
Question 1. Do you have any personal experience with using amicable dispute resolution methods such as mediation to prevent or resolve the following disputes with public authorities?

<table>
<thead>
<tr>
<th>Dispute Description</th>
<th>Yes</th>
<th>No</th>
<th>Don’t know / no opinion / not relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disputes with public authorities based on a contract and concerning an investment</td>
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<tr>
<td>Disputes with public authorities based on an international treaty and concerning an investment</td>
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<tr>
<td>Other disputes with public authorities concerning an investment</td>
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</tbody>
</table>

Question 1.1. Please briefly describe the dispute(s) with public authorities based on a contract and concerning an investment, mentioned in question 1 above:

700 character(s) maximum

Question 1.2. Please briefly describe the dispute(s) with public authorities based on an international treaty and concerning an investment, mentioned in question 1 above:

700 character(s) maximum

Question 1.3. Please briefly describe the other dispute(s) with public authorities concerning an investment, mentioned in question 1 above:

700 character(s) maximum
Question 2. Do you believe that mediation is/can be effective to prevent disputes with public authorities?

From 0 (not effective) to 5 (very effective)

- 0 (not effective)
- 1
- 2
- 3
- 4
- 5 (very effective)
- Don't know / no opinion / not relevant

Question 2.1. Please explain why you selected this answer to question 2:

300 character(s) maximum

Question 3. Do you believe that mediation is/can be effective to solve disputes with public authorities?

From 0 (not effective) to 5 (very effective)

- 0 (not effective)
- 1
- 2
- 3
- 4
- 5 (very effective)
- Don't know / no opinion / not relevant

Question 3.1. Please explain why you selected this answer to question 3:

300 character(s) maximum
Question 4. If you have any further comment on the use of mediation in preventing/resolving disputes between investors and public authorities, please include it here:

700 character(s) maximum

Question 5. Do you think that the options for mediation between public authorities and investors available in your Member State are:

NOTE: This question does not relate to cases in which there is a prior contract between an investor and a public authority that foresees an amicable dispute resolution method for disputes that arise under this contract or when the dispute can be qualified as a commercial dispute

<table>
<thead>
<tr>
<th></th>
<th>Fully sufficient</th>
<th>A good basis but could be further improved</th>
<th>Not sufficient</th>
<th>Don't know / no opinion / not relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>As regards scope of disputes covered</td>
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<tr>
<td>As regards clarity of conditions for the recourse to mediation</td>
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<tr>
<td>As regards clarity of the mediation procedure to be followed</td>
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<tr>
<td>As regards the freedom of choice by the parties of the mediator</td>
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<tr>
<td>As regards the possibility to receive compensation for losses according to a mediated settlement agreement</td>
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<tr>
<td>As regards the time needed to conclude the procedure and receive compensation</td>
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<tr>
<td>As regards transparency to third parties/public</td>
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</tbody>
</table>

Question 6. On average, if you have experience investing and have been faced with a dispute in another Member State, do you think that the options for mediation between public authorities and investors available in other Member States are:

NOTE: The question does not relate to cases when there is a prior contract between an investor and a public authority that foresees an amicable dispute resolution method for disputes that arise under this contract or when the dispute can be qualified as a commercial dispute
Please specify the Member State(s) where you faced a dispute:

- Austria  - Belgium  - Bulgaria  - Croatia
- Cyprus  - Czech Republic  - Denmark  - Estonia
- Finland  - France  - Germany  - Greece
- Hungary  - Ireland  - Italy  - Latvia
- Lithuania  - Luxembourg  - Malta  - Netherlands
- Poland  - Portugal  - Romania  - Slovak Republic
- Slovenia  - Spain  - Sweden  - United Kingdom

<table>
<thead>
<tr>
<th></th>
<th>Fully sufficient</th>
<th>A good basis but could be further improved</th>
<th>Not sufficient</th>
<th>Don’t know / no opinion / not relevant</th>
<th>It depends on the Member State</th>
</tr>
</thead>
<tbody>
<tr>
<td>As regards scope of disputes covered</td>
<td>○</td>
<td>○</td>
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<tr>
<td>As regards clarity of conditions for the recourse to mediation</td>
<td>○</td>
<td>○</td>
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<td>○</td>
<td>○</td>
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<tr>
<td>As regards clarity of the mediation procedure to be followed</td>
<td>○</td>
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<tr>
<td>As regards the freedom of choice by the parties of the mediator</td>
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<tr>
<td>As regards the possibility to receive compensation for losses according to a mediated settlement agreement</td>
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<td>As regards the time needed to conclude the procedure and receive compensation</td>
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<tr>
<td>As regards transparency to third parties/public</td>
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<td>○</td>
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</table>

Question 7. If you replied "It depends on the Member State" to the previous question, please specify in which Member States options for mediation are sufficient and in which they are not, and why:
Question 7.1. Please specify the Member State(s) in which Member States options for mediation are sufficient:

- [ ] Austria
- [ ] Belgium
- [ ] Bulgaria
- [ ] Croatia
- [ ] Cyprus
- [ ] Czech Republic
- [ ] Denmark
- [ ] Estonia
- [ ] Finland
- [ ] France
- [ ] Germany
- [ ] Greece
- [ ] Hungary
- [ ] Ireland
- [ ] Italy
- [ ] Latvia
- [ ] Lithuania
- [ ] Luxembourg
- [ ] Malta
- [ ] Netherlands
- [ ] Poland
- [ ] Portugal
- [ ] Romania
- [ ] Slovak Republic
- [ ] Slovenia
- [ ] Spain
- [ ] Sweden
- [ ] United Kingdom

Question 7.2. Please specify the Member State(s) in which Member States options for mediation are not sufficient:

- [ ] Austria
- [ ] Belgium
- [ ] Bulgaria
- [ ] Croatia
- [ ] Cyprus
- [ ] Czech Republic
- [ ] Denmark
- [ ] Estonia
- [ ] Finland
- [ ] France
- [ ] Germany
- [ ] Greece
- [ ] Hungary
- [ ] Ireland
- [ ] Italy
- [ ] Latvia
- [ ] Lithuania
- [ ] Luxembourg
- [ ] Malta
- [ ] Netherlands
- [ ] Poland
- [ ] Portugal
- [ ] Romania
- [ ] Slovak Republic
- [ ] Slovenia
- [ ] Spain
- [ ] Sweden
- [ ] United Kingdom

Question 7.3. Please explain your answers to question 7.1 and 7.2:

1000 character(s) maximum

Question 8. Do you believe that minimum rules for a framework on prevention and amicable resolution of disputes between investors and public authorities should be designed at EU or at national level?

- [ ] EU level
- [ ] National level
- [ ] Don’t know / no opinion / not relevant

Question 8.1. Please explain why you selected this answer to question 8:

500 character(s) maximum
2.2 Options for a framework on prevention and amicable resolution of disputes between investors and public authorities

Without prejudice for the outcome of the Impact Assessment, the following options to provide effective tools for the (i) prevention and (ii) amicable resolution of disputes between EU investors and Member States with the help of an independent third party could be envisaged at this stage:

**Option 1: Establishing an EU network of investment contact points within national administrations**

Such contact points could be used by investors before any formal dispute with national public authorities arises, in order to prevent the escalation of any issues and to inform the investors about their rights and existing remedies.

**Option 2: Creating an EU framework for mediation between investors and public authorities**

This Option aims to create an EU framework for mediation, which could be of a legislative or non-legislative nature. It could provide a basic legal framework that would allow mediation between investors and public authorities in all Member States. The Option would provide for rules for the appointment, qualifications, and independence, among other requirements, for the mediator; the scope of cases that can be subject to mediation; the enforcement of the mediated settlement; the rights of third parties; and the relationship with judicial proceedings.

**Option 3: In addition to a common framework regulating the procedure of mediation, creating permanent agencies in each Member State**

Option 3 would go further and envisage, in addition to the framework for mediation (Option 2), the creation of permanent agencies at the national level that would administer mediation services (for example, by establishing a registration system of mediators) or act as mediators.

**Option 4: In addition to a common framework, creating one EU wide Mediation agency**

Option 4 would envisage, in addition to the framework for mediation (Option 2), the creation of one EU-wide Mediation agency that would administer mediation services (for example, by establishing a registration system of mediators) or act as a mediator.
Question 9. Should an EU network of investment contact points within national administrations be established?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 9.1. Please explain how you would see the role of such contact points and of the EU network of these contact points:

1000 character(s) maximum
Question 10. Which of the characteristics below would be the most important for consideration in the design of an EU mediation framework?

From 0 (not important) to 5 (very important)

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>0 (not important)</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5 (very important)</th>
<th>Don't know / no opinion / not relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ability of the parties to freely choose a mediator amongst qualified /registered mediators</td>
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<td>Ability to choose a mediator from other Member States to help the parties communicate</td>
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<tr>
<td>Ability to choose a mediator experienced in the sector concerned by the dispute</td>
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<tr>
<td>Ensuring mediators are properly qualified</td>
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<td>High ethics/independence standards of the mediator</td>
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<tr>
<td>Existence of a specific agency providing mediation services at the national level</td>
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<tr>
<td>Existence of a specific agency providing mediation services at the EU level</td>
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<tr>
<td>Existence of a specific agency at national level that can administer mediation services</td>
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<td>Existence of a specific agency at EU level that can administer mediation services</td>
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<td></td>
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</tbody>
</table>
Question 11. Which of the characteristics below would be the most important for consideration in the design of rules for mediation?

From 0 (not important) to 5 (very important)

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>0 (not important)</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5 (very important)</th>
<th>Don’t know / no opinion / not relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clear rules on the types of disputes that can be covered by mediation</td>
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<td>Clear rules stating conditions under which investors and public authorities are able to engage in a mediation process</td>
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<tr>
<td>Clear rules stating conditions under which public authorities are able to commit to a settlement agreement, including when compensation is agreed upon</td>
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<td>Clear rules on confidentiality of the mediation procedure</td>
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<td>Clear rules on how to preserve the public interest</td>
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<td>Clear rules on how long the mediation process should last</td>
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<td>Rules on minimum public transparency requirements about initiation of a mediation procedure and its results</td>
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<td>Involvement of concerned third parties in the mediation process</td>
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<tr>
<td>Rules on enforcement of mediated settlement agreements</td>
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<tr>
<td>Rules on relationship with court proceedings (such as impacts of starting a mediation on time limits to start litigation)</td>
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<tr>
<td>Judicial review of mediated settlements</td>
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</tbody>
</table>
Question 12. Can you identify other desirable characteristics/options that you believe should be considered in the design of a possible EU mediation framework/rules for mediation?

700 character(s) maximum

Question 13. For which types of disputes between investors and public authorities should mediation be available as a method of resolution/prevention of disputes?

1000 character(s) maximum

Question 14. At what stage of proceedings should mediation procedures be available?

<table>
<thead>
<tr>
<th>Stage of Proceedings</th>
<th>Yes</th>
<th>No</th>
<th>Don’t know / no opinion / not relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before a decision/act is taken by the public authorities</td>
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<tr>
<td>At the stage of the internal review of the decision/act in case of appeal in front of the competent public authorities</td>
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<tr>
<td>Before undertaking litigation in court concerning the litigious decision/act taken by the public authorities</td>
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<tr>
<td>Once litigation has started and before the judgement</td>
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<tr>
<td>Once the litigious decision/act by the public authorities has been withdrawn (e.g. following a new decision/act or a court decision). In this case the objective of the mediation would to define the amount of compensation for losses, if any.</td>
<td></td>
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<tr>
<td>Other</td>
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</tbody>
</table>
**Question 14.1.** Please specify at what other stage of proceedings should mediation procedure be available?

*500 character(s) maximum*

**2.3 Potential impacts**

**Question 15.** Do you consider that access to an EU network of investment contact points to prevent disputes with public authorities could:

<table>
<thead>
<tr>
<th></th>
<th>From 0 (not important) to 5 (very important)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0 (not important)</td>
</tr>
<tr>
<td>Allow for better understanding of complex legal and economic circumstances of the case before the decision/act is taken or at the stage of internal administrative review.</td>
<td></td>
</tr>
<tr>
<td>Improve the investment climate</td>
<td></td>
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<tr>
<td>Be particularly beneficial for SMEs</td>
<td></td>
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<tr>
<td>Reduce the likelihood of litigation in front of the courts</td>
<td></td>
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<tr>
<td>Reduce expenditures by public authorities as fewer disputes might reach the litigation phase</td>
<td></td>
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<tr>
<td>Help preserve a long-term relationship between investors and Member States</td>
<td></td>
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<tr>
<td>Other reasons</td>
<td></td>
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</tbody>
</table>
Question 15.1. Please specify what other reasons:

500 character(s) maximum

Question 16. Do you consider that access to an EU mediation framework to solve/prevent disputes between investors and public authorities could:

From 0 (not important) to 5 (very important)

<table>
<thead>
<tr>
<th></th>
<th>0 (not important)</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5 (very important)</th>
<th>Don’t know / no opinion / not relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduce costs for investors linked to resolution of disputes</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Reduce costs for public authorities linked to resolution of disputes</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
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<tr>
<td>Allow for more flexibility when dealing with a dispute</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Allow for better understanding of complex legal and economic circumstances of the case</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Improve investment climate</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Be particularly important for SMEs</td>
<td>○</td>
<td>○</td>
<td>○</td>
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<tr>
<td>Reduce the likelihood of litigation in front of the courts</td>
<td>○</td>
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<tr>
<td>Ensure a consistent approach towards mediation between investors and public authorities across the EU</td>
<td>○</td>
<td>○</td>
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<tr>
<td>Reduce expenditures by public authorities as fewer disputes might reach litigation phase</td>
<td>○</td>
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<tr>
<td>Help preserve a long-term relationship between investors and Member States</td>
<td>○</td>
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<td>○</td>
<td>○</td>
<td>○</td>
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<tr>
<td>Other reasons</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
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</tbody>
</table>
Question 16.1. Please specify what other reasons:
500 character(s) maximum

Question 17. Under which option do you think the benefits mentioned above would be achieved in the most efficient manner?

From 0 (no impact) to 5 (strong impact)

<table>
<thead>
<tr>
<th></th>
<th>0 (no impact)</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5 (strong impact)</th>
<th>Don’t know / no opinion / not relevant</th>
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</thead>
<tbody>
<tr>
<td>EU mediation framework enabling mediation between investors and the relevant national authorities</td>
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<tr>
<td>Agencies at national level which could administer the mediation services or act as mediators</td>
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<tr>
<td>EU-wide mediation agency which could administer the mediation services or act as mediators</td>
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Question 18. For an action undertaken following one of the options above, no impacts on fundamental rights have been identified.

Do you consider that there could be an impacts on fundamental rights?

☐ Yes
☐ No
☐ Don’t know / no opinion / not relevant
Question 19. If you do consider that there could be an impact on fundamental rights, please specify which one, identifying it in relation to each specific option:

700 character(s) maximum

Question 20. For an action undertaken following one of the options above, no clear environmental impacts have been identified.

Do you consider that there could be any environmental impacts?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 21. If you do consider that there could be an impact on environmental impacts, please specify which one, identifying it in relation to each specific option:

700 character(s) maximum

Question 22. For an action undertaken following one of the options above, no social impacts have been identified.

Do you consider that there could be any social impacts?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 23. If you do consider that there could be an impact on social impacts, please specify which one, identifying it in relation to each specific option:

700 character(s) maximum
2.4. Clarification of existing rights of cross-border EU investors in EU law

The Interpretative Communication planned by the Commission will bring together and explain the existing EU standards for the treatment of cross-border EU investments. These standards include the rules on free movement of capital, freedom of establishment, and the principle of non-discrimination, as well as on the fundamental rights of investors and the general principles of EU law.

The Communication will help prevent Member States from adopting measures which would infringe EU law relevant for investments. At the same time, the Communication will help investors to invoke their rights before administrations and courts and will enable legal practitioners to consistently apply EU rules.

The purpose of this section is to identify the areas on which the communication should focus, either because they are where investors face biggest problems or because the existing rules are complex.

Question 24. What are the most important problems facing intra-EU investors that should be addressed in a guidance document? (e.g. difficulties in accessing the market, treatment after establishment, discrimination, expropriation, administrative wrongdoings, sudden and unexpected changes in the legal environment).

1000 character(s) maximum

Question 25. Which rules and principles protecting intra-EU investors create the highest degree of complexity and therefore require clarification as a priority? Does the complexity concern rules on free movement of capital and freedom of establishment, fundamental rights of investors (the right to property and the freedom to conduct business), or the general principles of Union law (the principle of non-discrimination, the principle of legal certainty, the protection of legitimate expectations)?

1000 character(s) maximum
3. Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here: