



EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

HORIZONTAL POLICIES

Free movement of capital and application of EU law

PUBLIC CONSULTATION DOCUMENT

AN INTRA-EU INVESTMENT PROTECTION AND FACILITATION INITIATIVE

Disclaimer

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

The views reflected on this consultation paper provide an identification 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 8 September 2020** at the latest to the **online questionnaire** available on the following webpage:

https://ec.europa.eu/info/publications/finance-consultations-2020-investment-protection_en

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/publications/finance-consultations-2020-investment-protection_en

INTRODUCTION

1. Background for this public consultation

Private investments are of key importance to create business and work opportunities and generate sustainable economic growth. They provide financing for companies, enabling them to develop and to scale up¹ to compete at EU or global level. They also help building new infrastructures, connecting remote communities and providing them with the facilities they need. Stable flows of investments ultimately allow people to have infrastructures, better choice of jobs, diversified products and services.

To meet the commitments related to climate change and digitalization in light of the strategic priorities set by the Commission (European Green Deal, Digital Single Market and an Economy that works for the people), **Europe will need to mobilise vast financial resources, mainly long-term, in the years to come.** In the climate and energy sector alone a yearly investment gap of €260 bn will need to be covered by private investments². Investment in innovation, especially through digitalisation, is recognised as the main driver of productivity, long-term prosperity and economic growth for advanced economies. Innovation requires inter alia systematic investment in research and development (R&D), for which the annual investment gap in the European Union is estimated at EUR 145 billion³.

The COVID-19 outbreak will severely affect investment plans and capital flows⁴. The very large detrimental economic impact of this crisis will require, amongst other measures, effective policies to offset the negative repercussions on investors' confidence and to encourage the investments needed to recover from the economic impact of the outbreak.

Cross-border investments within the EU play an important role to mobilise additional funding and make full use of the economic opportunities in the Single Market. The flow of investments towards the EU has however recently decreased, while cross-border capital flows intra-EU have not grown⁵. Evidence suggests that, among other factors⁶, **investors' low confidence in the rules protecting their cross-border investments, as well as in their effective enforcement, can play an important role in holding back citizens and businesses from investing in another Member State⁷.** A stable

¹ European start-up & scale up initiative: Only 3% of start-ups go on to scale up, but they are Europe's job creation champions, https://ec.europa.eu/growth/smes_en

² European Commission factsheet, Financing Sustainable Growth.

³ European Investment Bank (2019) "Accelerating Europe transformation".

⁴ Communication from the Commission: Coordinated economic response to the COVID-19 Outbreak, COM(2020) 112 final, available at: https://ec.europa.eu/info/sites/info/files/communication-coordinated-economic-response-covid19-march-2020_en.pdf

⁵ Analysis of developments in EU capital flows in the global context, Bruegel report, November 2019.

⁶ For example, market fragmentation, taxation and legal or operational barriers.

⁷ For example, World Bank Group (2018) "Global Investment Competitiveness Report, Foreign Investor Perspectives and Policy Implications"; Peres, Mihaela, Ameer Waqar, and Helian Xu, "The Impact of Institutional Quality on Foreign Direct Investment Inflows: Evidence for Developed and Developing Countries." *Economic Research*, 31(1):626-644: in terms of aggregate measures, the research found that an improvement of the regulatory and enforcement framework can raise FDI.

and predictable regulatory framework, effectively enforced in all Member States, is considered essential for an attractive investment climate. When investors are fully aware of investment opportunities in other Member States and can easily identify the rules or the competent public authorities in those Member States they are more likely to invest in another Member State.

As better explained in the following paragraphs, feedback gathered from some stakeholders and Member States suggest that the investment environment within the EU has been deteriorating. **The level of cross-border investments may further decrease if no action is taken**, especially following the economic impact of the COVID-19 outbreak. This risk exists in particular for investments related to the transformation of industry and energy sectors, as they usually involve investments in physical infrastructures that need to be financed over long periods of time and cannot be easily withdrawn or replaced. Small and Medium-sized Enterprises (SMEs), which represent 99% of European enterprises (in the non-financial sector) and account for two thirds of total employment in the EU⁸, may also be more vulnerable to State measures affecting their investments and may have more difficulties in knowing and asserting their rights in administrations or courts since they have less economic resources than bigger companies.

Considering the importance for the EU economy and society of ensuring increasing flows of capital in the internal market, in line with the Commission Work Programme of 2020, which foresees that “an initiative to strengthen intra-EU investment protection” will be presented in the Capital Markets Union Action Plan, and the Executive Vice President Dombrovskis’ mandate to explore ways to make cross-border investments easier (Mission letter, 10 September 2019), the **Commission** – as announced in the Communication *A New Industrial Strategy for Europe*⁹ - **is working towards a comprehensive policy on intra-EU investments with the view of better protecting and facilitating cross-border investments.**

An enhanced intra-EU investment environment, where clear rules are implemented in a coherent way, information is effortlessly available and services by public administrations are easily accessible is important to encourage people to invest across EU Member States.

The initiative aims at contributing to the achievement of the Capital Markets Union’s objective of fostering cross-border investments. Protection and facilitation measures that may be envisaged by the initiative will go beyond investments in financial instruments and may cover all cross-border investments, including, for example, the purchase of real estate properties.

This public consultation is the first step to prepare possible initiatives which the Commission is considering in this context. The consultation is addressed in particular to companies, associations or representative organisations, civil society representatives and private individuals. Member States authorities are also welcome to respond to the public consultation and they may be consulted separately on more targeted questions. For

⁸ Eurostat Statistics on small and medium-sized enterprises (data extracted in May 2018), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Statistics_on_small_and_medium-sized_enterprises&oldid=393463#General_overview

⁹ Communication from the Commission: New Industrial Strategy for Europe, COM(2020) 102 final, available at: https://ec.europa.eu/info/sites/info/files/communication-eu-industrial-strategy-march-2020_en.pdf

investments in sustainable activities, specific questions on investment protection and facilitation related to that field are provided in questions n. 74 and 75 of the public consultation on the Renewed sustainable finance Strategy, to which concerned stakeholders and citizens are invited to respond¹⁰.

2. The momentum created by the termination of intra-EU Bilateral Investment Treaties

The debate triggered by the termination of the intra-EU Bilateral Investment Treaties (intra-EU BITs) represents a **good opportunity to assess the current system of investment protection and facilitation within the European Union**. It also offers the possibility to assess whether certain aspects could be further improved or modernised to make the system more suitable for the changing investment environment.

In particular in the 1990's, Member States have encouraged cross-border investments by concluding Bilateral Investment Treaties with other European countries that have since joined the EU. In 2018 the Court of Justice (Case C-284/16, *Achmea*), stated that investor-State arbitration clauses included in those Treaties are incompatible with EU law.

After the judgement, Member States committed to terminate all intra-EU BITs by means of a plurilateral agreement or bilaterally in their Declarations of 15 and 16 January 2019. On 5 May 2020, 23 Member States¹¹ signed an agreement for the termination of intra-EU bilateral investment treaties. At the same time Member States called on the Commission to explore further actions aimed at better ensuring complete, strong and effective protection of investments within the European Union¹².

Some **EU investors have repeatedly raised concerns**. They claim that the investment climate has been deteriorating over the last years, notably because of sudden and unforeseeable changes in the regulatory framework or due to a loss of trust in the effective enforcement of their rights. Some investors also claim that due to the termination of intra-EU BITs there will no longer be a level playing field between third country investors in the EU (that can still rely on Member States extra-EU BITs and on EU international investment agreements with third countries) and EU investors within the EU¹³.

¹⁰ https://ec.europa.eu/info/consultations/finance-2020-sustainable-finance-strategy_en

¹¹ Signatories of the termination agreement are Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain.

¹² The texts of the Declarations are available at https://ec.europa.eu/info/publications/190117-bilateral-investment-treaties_en

¹³ In its Opinion 1/17 on the compatibility of the Investment Court System under the EU-Canada Comprehensive Economic and Trade Agreement (CETA) with EU law, the Court of Justice of the EU stated that there was no violation of the principle of non-discrimination between Canadian investors and EU investors investing in the EU as these were not in a comparable position. Only the investors of each treaty Party who invest in the territory of the other treaty Party are in comparable situations and they are treated equally under CETA (Opinion 1/17 of the Court of Justice of the EU, paras. 179-181).

Investors' concerns have persisted also after the Commission issued in July 2018 a Communication on the Protection of intra-EU investment¹⁴, in order to clarify EU law protecting investments throughout their life-cycle. In that Communication the Commission aimed to increase investors' confidence by recalling the most relevant substantive and procedural EU rules with reference to the Court's case law; especially that EU law offers a complete system of judicial remedies. The Communication thus helps to ensure that investors' rights are known and respected in all Member States. However, the Commission remains open to make the protection of investors in the EU even more effective, strong and adequate.

3. EU protection of investments

As recalled in the Communication on protection of intra-EU investment of 2018, EU rules on the protection of intra-EU investment can be found in the **EU treaties**, in the **Charter of Fundamental Rights** of the European Union, in the **general principles** of Union law, and in **sector-specific legislation**.

These rules allow EU citizens and companies inter alia to establish a business, to invest in companies, to import and export goods and to provide services across borders benefiting from objective, proportionate and non-discriminatory treatment across borders. Any investment falls into at least one of the fundamental freedoms (in particular the freedom of establishment and the free movement of capital) laid down in the Treaty on the Functioning of the European Union (TFEU), which prohibits measures which are liable to unduly prevent, hinder or discourage cross-border capital movements and payments. EU rules provide, for example, that investors from a Member State shall not be expropriated unless it is justified and proportionate. Moreover, even where expropriation is justified and proportionate, the Member State must adequately compensate the expropriated individual.

Single Market freedoms and fundamental rights granted to citizens and companies are not absolute, and public authorities may, under certain conditions, **restrict these rights (of individuals) with a view to pursuing other public interest objectives**, such as public health, the protection of the environment or the fight against tax evasion. Investment protection rules thus leave Member States sufficient policy space to protect legitimate public interests ("right to regulate"), and to take the measures necessary to achieve their commitments related, for example, to climate change and the transition to a more sustainable economy. However, the restriction must comply with the conditions laid down in EU law (including secondary legislation) and with the general principles of EU law such as legal certainty, legitimate expectations and principle of proportionality.

4. Responding to this consultation and follow up to the consultation

In this context and in line with the Better Regulation principles¹⁵, the Commission is inviting stakeholders to express their views on the identification of issues related to investment protection and facilitation cross border within the European Union and on the best way to improve the intra-EU investment environment. In particular, taking into account different needs that the type of investors (individuals, large companies, SMEs),

¹⁴ Communication on the protection of intra-EU investment, COM/2018/547 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A547%3AFIN>

¹⁵ European Commission, '[Better Regulation: Why and How](#)'

the duration of investments (short, medium or long term) and the field of investments may raise, the consultation is aimed at gathering feedback on strengths or weaknesses of the intra-EU system, as well as possible ideas and options to improve it. The questions included in this public consultation do not concern investments made by EU investors in third countries.

This consultation document contains **five separate sections**.

- I. The first section contains some general questions aimed at gaining inputs on respondents' familiarity with cross-border investments and linked issues.
- II. The second seeks feedback from stakeholders on rules to protect intra-EU investments.
- III. The third invites views on enforcement of intra-EU investment protection rules, including dispute resolution mechanisms and remedies when issues related to cross-border investments arise.
- IV. The fourth section contains some general questions to assess the overall EU investment protection framework (as presented in section two and three).
- V. The fifth section seeks views of stakeholders on measures to facilitate and promote cross-border investment.

The outcome of this public consultation will provide a basis for the Commission services to assess whether concrete and coherent action, by way of legislative and non-legislative measures is necessary.

This consultation is open until **8 September 2020**.

PUBLIC CONSULTATION

I. General questions

The general questions set out in this section aim at gathering information on EU citizens and companies' approach to and experience with cross-border investments.

Question 1: Have you ever invested or been involved in an investment process in another EU Member State?

- Yes
- No
- Not applicable

Question 1.1 (follow up): If yes, what was the investment made? (more than one answer possible)

- Direct investment (establishment of a company or participation in new or existing companies by acquiring a significant degree of influence, e.g. 10% or more of voting power)
- Portfolio investment (acquisitions of securities - e.g. shares, bonds - with the intention of making a financial investment without any intention to influence the management and control of the undertaking)
- Real estate
- Credit provided for commercial transactions, the provision of services or other financial loans
- Other (please specify)

Question 1.2 (follow up): If not, could you explain why? (more than one answer possible)

- I am/the company is only interested in my/its national market and do/does not want to invest cross-border
- I/the company want/s to invest cross-border, but it is too complex
- I/the company want/s to invest cross-border, but it is too costly
- I do not/the company doesn't know the rules and feel/s uncertain about the protection of my/its investment in another EU Member State.
- I am/the company is familiar with the rules, but do/does not trust the protection of my/its investment in another Member State
- Other (please specify)

Please specify/explain the reasons for your answer

Question 2: Do you consider that the protection offered by the investment regulatory framework within the EU has a negative impact on the decision to make a cross-border investment?

- Please choose one of the following answers:
- Investment protection framework has no impact

- Investment protection framework has a small impact
- Investment protection framework has medium impact
- Investment protection has a significant impact
- Investment protection is a factor that can have a major impact on cross-border investments decisions and can result in cancellation of planned or withdrawal of existing investments

Question 2.1 (Follow-up) (if the respondent considers there is a negative impact): which of the following you consider an obstacle to your cross-border investments? (More than one reply possible)

- Costs and burden of finding information on the legal framework regulating investments
- Costs and burden of finding market opportunities or possible business partners
- Uncertainties regarding the setting-up or exercise of activities linked to my cross-border investment (e.g. due to delays in administrative procedures or withdrawal of licences, expropriation, uncertainties about the protection of legitimate expectations)
- Different treatment of investments coming from other Member States compared to domestic investments when disputes arise
- Other (please specify)

II. Rules protecting investments within the European Union

This section contains questions regarding **specific rights granted to cross-border investors within the EU**. The aim is to understand the extent to which these rules are known and effectively enjoyed by investors. The reference to some specific rights is used as example but the section encourages respondents to provide additional information and/or refer to other rights in relation to which they have experienced or may want to report problematic issues.

According to prior information available to the Commission, some stakeholders consider that EU rules providing for investment protection rights are **scattered** in different legal instruments (sector-based legislation, case law etc.), are difficult to identify and therefore to enforce. As a result, in their view it is possible that investors, legal practitioners and public authorities do not always have a full overview of rights available to investors and might have difficulties to correctly and consistently apply them. Furthermore, some stakeholders suggest that there would be **shortcomings** in the protection of investments and that relevant EU rules are too general, resulting in large differences in implementation and application at national level.

For example, specific protection is provided by EU law to the right to property from direct and indirect **expropriation**. Pursuant to the Charter of fundamental rights of the European Union, expropriating measures can be lawful but have to comply with certain conditions (being justified and proportionate). In case their investments are expropriated by the Member State, investors are entitled to compensation even if the expropriation is lawful. However expropriation may take different forms and when investing abroad it may be less clear which rights and safeguards a person can rely on.

Additional protection is provided by the principles of legal certainty and legitimate expectations. According to the principle of **legal certainty** every measure of the administration having legal effects must be sufficiently clear and precise and must be drawn to the attention of the person concerned. This implies inter alia that, unless duly justified and proportionate, a measure cannot produce effects with regard to situations occurred prior to the date on which it entered into force or, for individual measures, to the date of its notification or publication (**non-retroactivity**). Directly applicable EU rules apply from their entry into force, with the result that they apply to the future effects of situations arising prior to that date¹⁶.

Economic operators cannot, in general, claim a **legitimate expectation** that an existing situation, which may be altered by the national authorities in the exercise of their discretionary power, will be maintained. However, an economic operator on whose part national authorities have, through precise, unconditional and consistent acts, created reasonable expectations about the fact that the current situation will not change (for instance through a favourable decision, an individual representation or an assurance regarding the stability of a specific situation) may – under certain conditions - rely on the principle of the protection of legitimate expectations.

In general, investment protection rights granted to citizens and companies are not absolute and need to leave Member States sufficient policy space to protect public interests (**right to regulate**) (although under certain conditions), and to take the measures

¹⁶ Judgment of 1 February 2019 *Milivojević*, C-630/17, EU:C:2019:123, paragraph 42.

necessary and appropriate to achieve overarching policy goals, such as public security or public health.

Public policy may however try to minimise the risks that arise from regulatory uncertainty or regulatory changes, including by providing transparency and policy stability. This may be done by Member States by taking into account the situation of affected investments when taking measures that negatively affect a cross-border investment.

As a general principle of EU law¹⁷ administrative actions should be carried out according to the principle of **good administration**. This means inter alia that competent national institutions should conduct a diligent and impartial examination of each situation and take into account all the relevant features of the case and interests involved. The principle plays an important role for ensuring a good investment environment, because national administrations are usually the first and most common interlocutor that investors face in a Member State when starting an investment or in the course of running their business. The right to good administration includes inter alia that affairs are handled impartially and fairly; the right to be heard before any individual measure which would affect him or her directly is taken; the right to access to documents and the obligation of the administration to give reasons for decisions.

Question 3: When investing in another Member State, which of the following rights and principles were you aware an investor can rely on? (more answers possible)

- Right to a compensation if the investment is expropriated
- Principle of legal certainty and legitimate expectations
- Right to good administration
- Other (please specify which rights you were aware to have beyond the ones listed when investing cross-border)

Question 3.1 (Follow-up): For which of these rights and principles do you think their content is clear?

- Right to a compensation if the investment is expropriated
- Principle of legal certainty and legitimate expectations
- Right to good administration
- Other (please specify which rights you were aware to have beyond the ones listed when investing cross-border)

Question 4: Do you think it would be useful to further specify what Member State measure can constitute investment expropriation?

- Yes
- No
- Don't know/no opinion

Please specify/explain the reasons for your answer

¹⁷ Judgment of 8 May 2019 *PI*, C-230/18, EU:C:2019:383.

Question 5: Do you think it would be useful to further specify the rights investors enjoy in case of investment expropriation (e.g. compensation)?

- Yes
- No
- Don't know/no opinion

Please specify/explain the reasons for your answer

Question 6: When investing cross-border, have you ever experienced problems with the adoption of a State measure which violates the principle of non-retroactivity (as defined above) or do you know about investors having experienced such problems?

- Yes
- No
- Don't know/no opinion

Please specify/explain the reasons for your answer

Question 7: Do you think it would be useful to further specify how to strike the right balance between the policy space that Member States need to have to protect public interests (“right to regulate”) and the minimum levels of protection that individuals need to have to plan their investments in a stable and predictable regulatory framework?

- Yes
- No
- Don't know/no opinion

Please specify/explain the reasons for your answer

Question 8: Do you think it would be useful to further specify under which circumstances legitimate expectations arise and qualify for protection?

- Yes
- No
- Don't know/no opinion

Please specify/explain the reasons for your answer

Question 9: Which measures could enhance transparency and mitigate the potentially negative impact of Member States’ policy changes on investments?

- Information to investors on the projected policy measures a reasonable time in advance
- Involvement of investors during the preparatory phase of the policy measures to discuss the impact on investment
- Measures enabling investors to adapt to new policies while avoiding substantial harm to investments (e.g. transitional measures)
- Other (please specify)

Please specify/explain the reasons for your answer

Question 10: Do you think it would be useful to further specify what the right to good administration implies for an investor investing in another Member State?

- Yes
- No
- Don't know/no opinion

Please specify/explain the reasons for your answer

Question 11: When investing cross-border, have you ever experienced any issue with national administration in relation to the right to good administration? Do you know about investors having experienced such issues?

- No
- Don't know/no opinion
- Yes, I was not involved in an administrative procedure that affected my investment. Please specify the circumstances [box]
- Yes, I was not granted access to information on procedures affecting my investments. Please specify the circumstances [box]
- Yes, the public authority adopted a measure negatively affecting my investment without explaining the reasons for such measure. Please specify the circumstances [box]
- Yes, for other reasons. Please specify the circumstances [box]

III. Improving enforcement of investment rules within the EU

This section seeks views on the enforcement of EU rules on investment protection when disputes arise between an EU foreign investor and the Member State where the investment is located, including dispute resolution mechanisms and remedies when issues related to cross-border investments arise.

Given the incompatibility of intra-EU BITs (including investor-to-state arbitration) from the date of entry into force of EU law, where necessary **all investors within the EU need to seek legal remedies for disputes related to their investments in national courts.** Pursuant to Article 19 (1) TEU Member States are obliged to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. Under Article 47 of the Charter, which is directly applicable, everyone has the right to an effective remedy and to a fair trial. National justice systems in the Union are subject to standards of independence, quality and efficiency, spelled out in case-law of the Court of Justice and of the European Court of Human Rights (ECHR). Some stakeholders have, however, raised concerns as to the enforcement of their rights based on the EU investment protection rules and some of these concerns merit to be further analysed by the Commission. They claim that the levels of effectiveness of the national enforcement systems vary much between Member States. They question the impartiality of national courts that may be influenced by national interests and suggest that there would be an added value in additional European solution to settle disputes between Member States and investors coming from other Member States. The options they put forward include out of court dispute resolution mechanisms and possible forms of binding investment dispute resolution mechanisms at EU level in relation to intra-EU investments. Some stakeholders have also pointed out that particular attention should be given to SMEs as they may have more difficulties in asserting their rights before national administrations or courts since they have less economic resources and less leverage than bigger companies.

Under EU law, **individuals once harmed by State measures breaching EU law have a right to reparation by the State.** For instance, under certain conditions, damages caused by State measures breaching EU law may give right to claim damages. The effective enforcement of this right may, however, be difficult when investing cross-border.

Question 12: Do you think the current system of enforcement of EU investment rules in Member States works adequately?

- Yes
- No
- Not always
- Don't know/no opinion

Please specify/explain the reasons for your answer and possibly indicate which MS you are referring to.

Question 12.1 (Follow-up): If not, do you think that better enforcement by the authorities and courts of the Member State where the investment is located would help to completely address the issue?

- Yes, it would address all enforcement concerns
- No, it would only partially address enforcement concerns
- Don't know/no opinion

Please specify/explain the reasons for your answer

Question 13: Or do you think that improving enforcement mechanisms at EU level would also be needed?

- Yes
- No
- Don't know/no opinion

Please specify/explain the reasons for your answer and possibly indicate which aspects could be improved

Question 13.1 (Follow-up): If yes, what type of EU body or mechanism would be suitable to settle cross-border investment disputes?

- EU ombudsman-like body (out of court mechanism where individual investors could file complaints against measures of the Member State where the investment is located)
- EU investment court as a common court of the EU Member States responsible for solving individual cross-border investment disputes (to be created by Member States on the model of the Unified Patents Court)
- Other (please specify)

Please specify/explain the reasons for your answer

Question 14: Would you have any other suggestion(s) to improve cross-border investment dispute resolution?

Please explain your suggestion(s)

Question 15: Would you have suggestion(s) on ways to ensure that legitimate interests of third parties (e.g. public interest considerations on climate change, environmental or consumers' protection) are better taken into account in cross-border investment disputes?

Please explain your suggestion(s)

Question 16: When investing in another Member State, which of the following remedies for breach of EU investment law by the State were you aware that an investor has?

- Provisional measures (interim relief)
- Annulment of national measures
- Request to interpret national law in a way that is consistent with EU law
- Disapply national provisions that are contrary to EU law
- Award damages
- Restitution (e.g. of the claimed good)
- Other (please specify)

Please specify/explain the reasons for your answer

Question 16.1 (Follow up): Have you ever experienced/Do you know about a situation where you/the investor claimed one of those remedies?

- Yes
- No
- Don't know/no opinion

Please specify/explain the reasons for your answer

Question 16.2 (Follow up): If yes, do you consider that the remedies available were appropriate?

- Yes
- No
- Don't know/no opinion

Please specify/explain the reasons for your answer

IV. General questions on the overall EU investment protection system

This section seeks views on the overall EU investment protection system provided both by specific rights (section 2) and their implementation when disputes arise (section 3).

Question 17: What is your overall assessment of the investment protection framework provided by EU law when investing in another Member State?

Please express your view by using the scale from 1 (poor) to 5 (very good)?

[1] [2] [3] [4] [5]

Please specify/explain the reasons for your answer

Question 18: Is there any specific aspect related to investments made or received by Small and Medium-sized enterprises (SMEs) that investment protection rules and mechanisms should take into account?

- Yes
- No
- Don't know/no opinion

If yes, please specify/explain which ones

Question 19: Is there any aspect related to cross-border investments, not covered by the questions in sections two and three, that you think should be better protected by EU law?

- Yes
- No
- Don't know/no opinion

Please specify/explain the reasons for your answer

Question 20: Do you think aspects of the current EU investment protection framework may need to be adapted to evolutions brought by digitalisation and new technologies (e.g. new ways of buying and selling assets, assets offered in a new form or new types of assets to be invested in, etc.)?

- Yes
- No
- Don't know/no opinion

If yes, please specify which aspects of the current framework are not adequate and the reasons for your answer:

Question 21: Do you think it would make it easier for investors to exercise their rights when they invest cross-border within the EU if more aspects of investment protection would be regulated for all Member States by EU legislation?

- Yes
- No
- Don't know/no opinion

Please specify/explain the reasons for your answer

V. Facilitating and promoting cross-border investments

This section is looking at the investment environment more generally and at measures that could facilitate investors' activities when they decide to invest in another Member State.

To attract and encourage cross-border investment, a range of promotion and facilitation measures can be envisaged. **Investment promotion** services make it easier to identify cross-border opportunities, while **investment facilitation** measures help implement planned investments and operate them smoothly. They include information on the business environment and legal framework, possible partners and location for investments in Member States, advice on the project (legal and financial), identification of relevant competent authorities and support in completing authorisation processes. In some cases, specific support is provided for strategic projects or priority sectors. Some problem prevention and solving mechanisms relating to individual problems and issues of general relevance may also be granted.

Investment promotion and facilitation measures and services have been developed both at national and EU level (besides the EU being strongly committed to promoting investment facilitation at the international level). Investment promotion agencies are set up in many Member States and provide a range of services to cross-border investors. The EU has also put in place a number of initiatives to facilitate investment in the Single Market such as the Your Europe portal¹⁸, the Single Digital Gateway¹⁹, SOLVIT²⁰ and InvestEU²¹. These tools provide information on EU law, facilitate the completion of key administrative procedures online, help resolve problems relating to the application of EU law and support investments in different policy areas, including R&D and innovation, SMEs financing, infrastructure, cultural sectors, social investment and skills, as well as promoting environmental, climate and social sustainability.

Feedback from stakeholders suggests that there may be a need to build further on these initiatives with a specific focus on cross-border investments in the EU.

Question 22: Do you think it is easy to obtain information on the rules, procedures and data relevant for cross-border investment in the EU (e.g. rights before public administration when applying for an authorisation to start an investment or if actions of public authorities negatively affect an existing investment, economic data)?

- Yes, it is easy, as all relevant information is available online and easily accessible
- To some extent, as all relevant information is not available or easily accessible online, is scattered across different sources or related only to some Member States. Please specify what is missing "[box]
- No, it is not easy, as no relevant information is available. Please specify the reasons [box]
- Other (please specify)

¹⁸ <https://europa.eu/youreurope/index.htm>

¹⁹ https://ec.europa.eu/growth/single-market/single-digital-gateway_en

²⁰ https://ec.europa.eu/solvit/index_en.htm

²¹ https://europa.eu/investeu/home_en

Question 23: How easy is it to identify potential projects, partners and financing sources once you are interested in cross-border investment in the EU and what measures could help?

- Yes, it is easy anywhere in the EU, based on the available information and tools
- To some extent, only for some EU countries (where we have business activities and our own business network)
- It is not easy, but investment promotion measures could help [please choose from the drop-down menu, multiple choice possible]:
 - Advice from investment promotion agencies on local partners
 - Help from business representatives (e.g. via Enterprise Europe Network)
 - Match-making tools online to identify prospective projects and partners in the EU
 - Events where we can meet prospective partners or finance providers from the EU
 - Other (please specify) [box]
- No, it is not easy, and investment promotion measures cannot help.

Question 24: Do you think it would be useful to have specific measures focusing on cross-border investment facilitation?

- No. All necessary measures and standards are in place or will soon be implemented (e.g. the Single Digital Gateway, which covers information and procedures on starting, running and closing a business).
- To some extent. Whilst all necessary measures and standards are in place (or will soon be implemented, e.g. the Single Digital Gateway), their effective application in practice differs per Member State.
- Yes. Even though many measures are already in place or will soon be implemented, there is need for additional facilitation measures for cross-border investments. Please specify from the drop-down menu (multiple choice possible)
 - Further consolidating the relevant information specific to cross-border investments in one place (e.g. when implementing the Digital Single Gateway)
 - Identifying an investment contact point per Member State to provide information on rules and measures protecting and facilitating cross-border investments
 - Access to advice and support for implementing specific cross-border investments (e.g. advice from an “investment contact point” for completing procedures and requirements)
 - Making it possible to complete more procedures online. If yes, please specify which ones if not covered by the Single Digital Gateway Regulation [hyperlink]
 - Speeding up administrative procedures
 - Simplifying procedures and requirements for investors. If yes, please specify which ones [hyperlink]

- Other measures [box]
- Other (please specify) [box]

Question 25: Do you think it is easy to provide feedback on problems of general relevance to the investment environment for follow-up by the competent authorities at EU or national level?

- Yes, there is a mechanism to provide structured feedback to authorities and there are follow-up possibilities, accessible to all stakeholders
- To some extent: There is no established mechanism for dialogue, feedback and follow-up by the government, but it is possible to provide feedback on an informal basis
- Partially: There is a mechanism for dialogue and to provide structured feedback to authorities and there are follow-up possibilities, but they are not accessible to all stakeholders (depending on size of investment, sector, etc.).
- No and there is need for changes in this field. Please specify how from the drop down menu (multiple choice possible):
 - Regular workshops on intra-EU investment environment involving stakeholders and public authorities at EU level.
 - Providing possibilities for a regular dialogue between stakeholders and competent authorities on the national investment environment in Member States.
 - Establishing a feedback channel (e.g. electronic) for stakeholders to report specific concerns related to the intra-EU investment environment at EU level.
 - Establishing a feedback channel (e.g. electronic) for stakeholders to report specific concerns on the national investment environment to competent authorities in Member States.
 - Establishing a mechanism for follow-up to reported general concerns by stakeholders at EU level.
 - Establishing a mechanism for follow-up to reported concerns by stakeholders at national level (e.g. by administrative authorities).
- Other (please specify).

Question 26: Have you used SOLVIT or other mechanisms which help prevent or resolve individual problems with cross-border investments in an amicable way with public authorities?

- Yes, I have used SOLVIT and it helped solve my problem.
- Yes, I used another mechanism and it helped solve my problem. Please specify which one [box].
- Yes, I tried, but SOLVIT or other existing problem solving mechanisms did not solve my problem. Please specify why [box].
- No, because I was not aware of SOLVIT or other relevant problem-solving mechanisms.
- No, I did not even try, because I think that SOLVIT and other problem solving mechanisms are not suitable to solve my problem. Please specify why [box].
- Other, please specify [box].

Additional information

Are there any other relevant issues related to investment protection and facilitation that you would like to bring to the attention of the European Commission:

Please comment as appropriate:

[insert box 2,000 character(s) maximum]