

## Prospective Framework on Intra-EU Investment Protection

Codify substantive rights and improve enforcement

Comments of Deutsches Aktieninstitut on the EU Commission consultation “Cross-border investment within the EU – clarifying and supplementing EU rules”,  
8 September 2020

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## Introduction

Deutsches Aktieninstitut welcomes the opportunity to comment on the public consultation of the European Commission for an intra-EU investment protection and facilitation initiative, published on 26 May 2020, see [here](#).

We represent cross-sectoral, capital-markets oriented companies that invest to a large extent within the European Union. Prerequisite for companies to invest or increase their investments within the European Union is the existence of a sound legal framework that protects the investments in the host state. This relates to substantive rights against arbitrary state measures as well as to the enforcement of those rights. We believe that improvement needs to be made to ensure that companies will continue to create business and work opportunities as well as to generate sustainable economic growth via their investments.

Below can be found a selection of responses of Deutsches Aktieninstitut to the public consultation that has been submitted to the EU-Commission on 8 September 2020. We therein explain, why improvements need to be made and suggest solutions to the matter at hand.

### I. General questions

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

- Yes
- No
- **Not applicable**

**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)**

Since the Achmea ruling and the termination of existing intra-EU bilateral investment treaties, the investment climate within the Single Market has been deteriorating. However, this applies only to EU based investors. In the absence of BITs, there is a loss of mechanisms available to EU investors for the effective enforcement of their rights, while at the same time non-EU companies and third-party investors can continue to rely on international investment dispute settlement under existing trade and investment agreements.

The removal of a level playing field has led to a situation in which third-country investors enjoy an overall higher level of investment protection than EU investors. This applies inter alia to the efficiency, impartiality and effectiveness of dispute settlement procedures.

Moreover, while EU investors can no longer rely on intra-EU BITs, they can continue to enforce their rights under existing extra-EU BITs outside of the Single Market. This leads to a dangerous imbalance favouring third-party over EU investments made in the Single Market while at the same time providing EU investors with an incentive to direct their investments outside

of the EU rather than investing cross-border in another EU Member State due to the differences in investment protection and enforcement of rights.

## II. Rules protecting investments within the European Union

**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*

Even though the principle of what constitutes a measure of investment expropriation has already been stated by the CJEU or by the legislation of numerous Member States, there are still significant discrepancies between Member States and EU law tends to be paradoxically less specific than rules enshrined in bilateral investment treaties, including those concluded with third countries. This gives third country investors an unfair advantage over EU companies when investing in the Single Market.

In particular, measures of indirect expropriation (measures by a Member State having an equivalent effect to direct expropriation) are not always clearly defined. It would thus help, if measures could be further specified, preferably on EU level, to establish a harmonized notion of indirect expropriation measures throughout Europe to the benefit of EU investors.

However, a reliable, efficient and independent mechanism for the enforcement of these rules is even more important. Relying on the enforcement of existing EU rules and principles through national courts does not solve problems of efficiency, impartiality, etc. faced by investors when bringing litigation before some national courts. Thus, while further specifications of legal principles can facilitate a uniform application of EU rules, it cannot replace the need for an effective enforcement mechanism at EU level.

**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*

Also regarding the right for compensation, discrepancies between Member States exist. To enhance legal certainty for investors throughout Europe, it would be helpful to not only codify existing CJEU case law, but to even further specify compensation rights at EU level. EU legislation should outline clear boundaries that Member States do not excessively deviate from EU substantive criteria or attempt to limit the right for compensation.

As regards to the right for compensation this relates for example to:

- Right to be paid without delay
- fair market value of expropriated investment at the time immediately before the expropriation took place (not taking into account the fact that the intended expropriation would have become known earlier)
- fair market value being determined by reference to asset value and going concern value (be fully realisable and freely transferable without delay to the country designated by the investor)
- Right to interests at a “commercially reasonable rate” from the date of expropriation until the date of payment (on this the EU legislation could be more specific as determined in the EU directive on payment delays in commercial transactions).

Compensation should comprise lost income such as benefits that could have been legitimately expected from the regular utilization of a facility.

**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**

**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*

Deutsches Aktieninstitut understands the need of Member States to being able to change laws when necessary to protect public policy objectives (protection of public health, social services, public education). It should however not be underestimated that also those legitimate measures can have a detrimental impact on investments. Also then, companies must be guaranteed a high level of protection of their investments.

This applies in particular, albeit not exclusively, to investments in physical infrastructures that need to be financed over long periods of time and cannot be easily withdrawn or replaced.

The EU Commission should therefore consider to 1) specify, when such a measure is still legitimate and when it constitutes an excessive action. 2) It should be clarified that also in the event of a lawful expropriation that causes significant damages, investment protection exists. 3) it should be defined, under which conditions and to what extent damages shall be compensated.

**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*

The principle of legitimate expectations is subject to different interpretations and implementation across Member States. This principle is however especially important for claims for a compensation. The divergence decreases the level of investor protection within the EU and makes the EU a less attractive investment destination for EU investors. A harmonised and specified notion of the extent to which measures interfere with the distinct and reasonable expectations of the investors arising out of the investment would thus be useful.

The principle of legitimate expectations also applies again in particular to long-term investments in physical infrastructure. The long-term horizon of these investments makes it often necessary for investors to rely on expectations arising from the specific host state's conduct, i.e. oral or written commitments made by the host state relating to an investment. It would thus

be helpful to put in place a harmonised and specified notion of the extent to which measures interfere with the distinct and reasonable expectations of investors and how this relates to claims for compensation.

**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*

Policy changes can have a significant impact on investment projects and can even be detrimental to the investment. It is thus of utmost importance that investors are being informed and included at an early stage in the political/administrative decision making process. They need to be able to make their concerns being heard in a formal consultation process. The policy change should furthermore go hand in hand with a thorough impact assessment that is evidence-based and gives room to comment.

Last, if negative impacts cannot be avoided or mitigated, public authorities should provide for transitional measures in order to let investors adjust to the policy changes.

**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*

The principle of good administration is regularly used in broad terms without reference to concrete rights stemming thereof. Thus, we believe that

specifications could help investors to better benefit from the general clause. This relates e.g. to the treatment of requests of investors before national administration. It includes amongst others non-discriminatory handling of the request, due information on the progress of the request, transparency on the criteria for decision taking, right to being heard and information about the rights to contest the decision.

**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

**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.*

The 2020 EU Justice Scoreboard showed again very significant divergences between Member States regarding the quality, efficiency and independence of the justice systems. Unlike specialised arbitration courts, national courts often lack expertise in investment protection cases; many judges do not have sufficient knowledge on EU and investment law. Furthermore, they are often overwhelmed with workload, leading to overly-lengthy procedures, which

deprives investors of timely compensation: For instance in Italy and Portugal, court of first instance procedures in public law cases lasted on average nearly 1000 days in 2018<sup>1</sup>. Moreover, in some Member States national courts face criticism as regards to their independency and impartiality, which can also be to the detriment of European investors. Surveys and studies such as the World Justice Report<sup>2</sup>, the Corruption Perception Index<sup>3</sup> and Ease of Doing Business<sup>4</sup> confirm that there is still a lack of legal protection and judicial independence as well continuous discrimination and corruption in several EU Member States.

The Commission itself is criticizing this and requests the Member States to improve their national legal systems, for example in the country specific recommendations<sup>5</sup> or within the rule of law proceedings concerning Poland and Hungary or the verification proceedings against Bulgaria and Romania<sup>6</sup>.

Since many of the problems described above are of a structural nature and cannot be changed easily or quickly, the European Commission should consider possible forms of binding investment dispute resolution mechanisms at EU level.

<sup>1</sup> EU Justice Scoreboard“ from 2020, [https://ec.europa.eu/info/sites/info/files/justice\\_scoreboard\\_2020\\_en.pdf](https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2020_en.pdf)

<sup>2</sup> See World Justice Report from 2020, <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020>

<sup>3</sup> See Corruption Perception Index from 2019, <https://www.transparency.org/en/cpi/2019/results>

<sup>4</sup> See Ease of Doing Business rankings from 2020, <https://www.doingbusiness.org/en/rankings>

<sup>5</sup> See eg the country specific recommendations for Poland, Hungary and Romania from 2019, [https://ec.europa.eu/info/publications/2019-european-semester-country-specific-recommendations-commission-recommendations\\_en](https://ec.europa.eu/info/publications/2019-european-semester-country-specific-recommendations-commission-recommendations_en)

<sup>6</sup> See e.g. EU Communication on Polish judicial system from 10 October 2019, referring Poland to the European Court of Justice: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_6033](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6033). On the Cooperation and Verification Mechanism for Bulgaria and Romania: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en).

**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*

Better enforcement standards in Member States will only partially improve the situation. First of all, it is questionable, whether during and after the COVID-19 crisis, sufficient budgetary means will be available to better staff and train national courts. Also, Member States might have diverging understandings of what constitutes “better enforcement”. A European solution would in contrast establish a level playing field for enforcement for all EU investors. Last, some Member States face structural issues as regards to their judiciary system. It will take a long time to reform such a system. Some Member States might simply be lacking political will for reform.

Last, if European investors have to revert to national courts, a competitive disadvantage towards third country investors would be caused: The latter would be able to make use of dispute resolution mechanisms under bilateral investment protection treaties of EU Member States with third countries or EU trade agreements with third countries.

**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*

National courts in many Member States are not currently nor will they be in the near future capable to deliver independent, swift and uniform proceedings in EU cross-border investment cases. Whilst the EU can support Member States in trainings or by harmonising procedural standards, it would still not remedy the lack of expertise of judges in investment cases and would not smoothen the length of proceedings. Harmonisation will also not be

enough for Member States with significant structural deficiencies of their national judiciary.

We therefore ask the Commission that dispute resolution should be managed by an independent, specialised EU body that is dedicated to intra-EU investment disputes.

**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*

Deutsches Aktieninstitut believes that the establishment of a new EU court possibly modelled after the Unified Patent Court or a specialised ECJ court chamber (Art 257 TFEU) dedicated to intra-EU investment disputes would have significant advantages compared with procedures before national courts:

- (1) There would be guaranteed independence from executive interference of the host state.
- (2) The court or chamber would be comprised by experts for investment disputes, who will provide profound knowledge in EU law when it comes to EU cross-border investment protection cases.
- (3) Such jurisdiction would ensure a more rapid examination of referred litigations. Such rapid examination is key for business continuity whatever the outcome of the judicial process. A specialised court at EU level could also use English as the main language for proceedings, avoiding the need for lengthy and costly translation services which is often needed with similar proceedings at national level. This would reduce the burden on investors, especially for SMEs.
- (4) A jurisdiction on EU level would establish harmonised standards for investment protection proceedings that would have to be applied on a EU wide basis. It would thus remedy discrepancies that arise from

diverging legal opinions of national courts in a much more efficient way than via preliminary rulings or lengthy infringement procedures.

- (5) An EU mechanism would guarantee that the requirements of the ECJ in its “Achmea” judgement are respected, as the ECJ would naturally hold ultimate jurisdiction over such an EU body / chamber.

The need for effectiveness implies that determinations by the dispute settlement body are binding for both parties, even though they could be challenged before an appeal body. The specialised jurisdiction would hear all or most investors/host states litigations and would be given the ability to use expedited proceedings in order to sort out rapidly pending disputes.

Last, we also support the establishment of an EU ombudsman-like body as mediation can be helpful in de-escalating the situation in order to potentially avert judicial proceedings. We however deem that the creation of an EU ombudsman-like body only makes sense, if it is supplementary to the establishment of a new EU court / specialised ECJ court chamber. On a stand-alone basis, the EU ombudsman-like body would not provide the necessary binding power that comes with a judicial body. We thus suggest the EU ombudsman-like body to be an instance of first recourse for investors seeking mediation. The Ombudsman body should have a clearly defined time period in which agreement between the parties can be found, upon which action will be transferred automatically to a supranational court system in case of lack of an out-of-court settlement by the end of this period. .

In addition, we urge the EU Commission to also look at ways on how to ensure that rulings at EU level can be properly enforced in Member States. To this end, consideration should be given to the possibility of introducing an instrument that can guarantee a degree of conditionality vis-à-vis Member States. Current discussions on linking the provisioning of EU funds to pre-determined political criteria, such as respect for the rule of law, should be extended in a such way as to take account of a number of substantial rights guaranteed to investors under the EU treaties and the EU Charter of Fundamental Rights.

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

*Please explain your suggestion(s)*

A two-staged process could be envisioned, in which at first instance an Ombudsman system at EU level could be used for out-of-court dispute settlement in cross-border investment cases.

This first stage should, however, be clearly restricted in time – taking e.g. 4 weeks to try and arrive at a mutually agreed settlement. If agreement cannot be found, the case should be transferred automatically to a specialised EU investment court or a specialised investment chamber of the CJEU, to guarantee proper enforcement of rights if needed.

**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)*

Investor-State disputes are bilateral proceedings, not plurilateral proceedings. The proceedings should thus be limited to the two parties - investor and state. Moreover, the state represents per definition the public interest and hence public interest considerations eg on climate change, environmental or consumers' protection that affect third parties. Last, a fair trial could not be guaranteed if on default, third parties were to be admitted in support of the state in investor-state proceedings. It would from the beginning create an imbalance to the detriment of the investor.

**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*

These remedies have been recognised either at the EU level via the case law of the CJEU or/and in Member States legal order. Unfortunately, it can be

observed that in practice, not many of those remedies are being applied by Member States courts.

#### IV. General questions on the overall EU investment protection system

**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*

Whereas core principles such as freedom of capital movement, freedom of investment, equal treatment, legitimate expectations and right to good administration are anchored in EU treaties and Member States legal traditions, their concrete implementation in the context of cross-border investment is still subject to many discrepancies from a Member State to another leading to legal uncertainty, uneven protection and; in some member State to unfair treatment for foreign investors. Investors' substantive rights are not sufficiently specified and duly protected in a number of Member States.

When it comes to legal enforcement, mediation and litigation over damages resulting from governmental or legislative measures are still not properly handled in many Member States. In a majority of Member States, judicial proceedings are slow in comparison with business cycles, depriving investors from a timely compensation. In addition, a number of Member States do not yet guarantee a fair and equitable treatment to investors originating in another Member State. Litigations are often treated in a biased manner since the judicial system is exposed to interferences by the executive branch. As explained above, national courts prove often insufficiently specialised in this type of litigation.

**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**

**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*

There is a difference between portfolio investments, which can be quickly disposed of, and investments in physical infrastructure which are long-term by definition.

There is need for special safeguards for physical infrastructure investment due to the long-term lock-in effect.

**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**

**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*

As stated above, EU-level legislation is required to cater for more legal certainty for EU investors. Consequently, substantive rights should be codified, specified and further developed. Substantive rights guaranteed to EU investors should result, as a starting point, in offering an equivalent level of protection as granted under the EU most recent investment protection chapters of EU bilateral FTAs or EU bilateral investment treaties with third

countries (for instance: EU-Mexico FTA). Beyond this basic level of investment protection, EU legislation on intra-EU investments should even be more specific/extensive than stipulated under these external agreements as EU cross-border investments and their protection touch the very core of the single market. Essential pillars of such an EU legislation should be the definition of direct and indirect expropriation, the clarification on the eligibility for the restitution and compensation, as well as principles and methods to evaluate damages and calculate due compensation.

In addition and most importantly, an EU-level settlement mechanism is required to improve the independence and efficiency of dispute settlement proceedings over damages resulting from governmental or legislative measures. It would also create a level playing field in terms of enforcement with third country investors that benefit from dispute resolution mechanisms enshrined in bilateral investment protection treaties or EU trade agreements. This would ultimately benefit Europe as investments in the EU would be deemed to be more attractive for EU investors.

#### V. Facilitating and promoting cross-border investments

**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)

While the main EU initiatives contain enough information to facilitate investments in general, it is difficult to find any references to specific FDI laws and regulations regarding public administration in the respective Members States (e.g. in YourEurope portal) as well as procedures for circumstances negatively affecting existing investments

**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.**

For some common issues of institutional investors SOLVIT is not able to give relevant guidance. "SOLVIT cannot help: if your company is having problems with another company; if you have a consumer-related problem; if you are seeking compensation for damages; if you take your case to court", see <https://ec.europa.eu/solvit/what-is-solvit/#:~:text=SOLVIT%20cannot%20help%3A,have%20a%20consumer%2Drelated%20problem>

## Contact

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Maximilian Lück  
Head of EU Liaison Office  
Deutsches Aktieninstitut e.V.  
Rue Marie de Bourgogne 58  
1000 Bruxelles  
Phone +32 2 7894101  
Fax + 49 69 92915-12  
lueck@dai.de

Jessica Göres  
Policy Advisor Sustainability  
Deutsches Aktieninstitut e.V.  
Senckenberganlage 28  
60325 Frankfurt am Main  
Phone + 49 69 92915-39  
Fax + 49 69 92915-12  
goeres@dai.de  
[www.dai.de](http://www.dai.de)