



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.

As indicated in priority action 8 of the Mid-term review communication, 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.

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

* Name of your organisation:

BETTER FINANCE

Contact email address:

The information you provide here is for administrative purposes only and will not be published

maczynska@betterfinance.eu

* 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:

24633926420-79

* 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

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

Belgium

* 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



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?

	Yes	No	Don't know / no opinion / not relevant
Disputes with public authorities based on a contract and concerning an investment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Disputes with public authorities based on an international treaty and concerning an investment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other disputes with public authorities concerning an investment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Experience proves that mediation is not effective for preventing collective disputes between small investors and public authorities.

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

To be effective mediation:

- 1) must be fully independent (now it's difficult to find private law experts not funded at least partially by the industry)
- 2) shouldn't require individual investors to prepay for mediation as in general they don't have the financial resources for such a pre-payment

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

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

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:

- | | | | |
|------------------------------------|---|-----------------------------------|--|
| <input type="checkbox"/> Austria | <input type="checkbox"/> Belgium | <input type="checkbox"/> Bulgaria | <input type="checkbox"/> Croatia |
| <input type="checkbox"/> Cyprus | <input type="checkbox"/> Czech Republic | <input type="checkbox"/> Denmark | <input type="checkbox"/> Estonia |
| <input type="checkbox"/> Finland | <input type="checkbox"/> France | <input type="checkbox"/> Germany | <input type="checkbox"/> Greece |
| <input type="checkbox"/> Hungary | <input type="checkbox"/> Ireland | <input type="checkbox"/> Italy | <input type="checkbox"/> Latvia |
| <input type="checkbox"/> Lithuania | <input type="checkbox"/> Luxembourg | <input type="checkbox"/> Malta | <input type="checkbox"/> Netherlands |
| <input type="checkbox"/> Poland | <input type="checkbox"/> Portugal | <input type="checkbox"/> Romania | <input type="checkbox"/> Slovak Republic |
| <input type="checkbox"/> Slovenia | <input type="checkbox"/> Spain | <input type="checkbox"/> Sweden | <input type="checkbox"/> United Kingdom |

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

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

BETTER FINANCE prefers option no. 4, i.e. the creation of one EU-wide Mediation Agency, as in our opinion it would provide maximum independence of the mediator, assuming that the Agency acts as a mediator itself.

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)

	0 (not important)	1	2	3	4	5 (very important)	Don't know / no opinion / not relevant
Ability of the parties to freely choose a mediator amongst qualified /registered mediators	<input type="radio"/>						
Ability to choose a mediator from other Member States to help the parties communicate	<input type="radio"/>						
Ability to choose a mediator experienced in the sector concerned by the dispute	<input type="radio"/>						
Ensuring mediators are properly qualified	<input type="radio"/>						
High ethics/independence standards of the mediator	<input type="radio"/>						
Existence of a specific agency providing mediation services at the national level	<input type="radio"/>						
Existence of a specific agency providing mediation services at the EU level	<input type="radio"/>						

Existence of a specific agency at national level that can administer mediation services	<input type="radio"/>						
Existence of a specific agency at EU level that can administer mediation services	<input type="radio"/>						

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)

	0 (not important)	1	2	3	4	5 (very important)	Don't know / no opinion / not relevant
Clear rules on the types of disputes that can be covered by mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Clear rules stating conditions under which investors and public authorities are able to engage in a mediation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Clear rules stating conditions under which public authorities are able to commit to a settlement agreement, including when compensation is agreed upon	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Clear rules on confidentiality of the mediation procedure	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clear rules on how to preserve the public interest	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clear rules on how long the mediation process should last	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Rules on minimum public transparency requirements about initiation of a mediation procedure and its results	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Involvement of concerned third parties in the mediation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on enforcement of mediated settlement agreements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Rules on relationship with court proceedings (such as impacts of starting a mediation on time limits to start litigation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Judicial review of mediated settlements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Mediation should be available for cases of Member States hurting retail investments by changing the rules on which basis the investments were made (tax rules for example).

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

	Yes	No	Don't know / no opinion / not relevant
Before a decision/act is taken by the public authorities	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
At the stage of the internal review of the decision/act in case of appeal in front of the competent public authorities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Before undertaking litigation in court concerning the litigious decision/act taken by the public authorities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Once litigation has started and before the judgement	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
-------	-----------------------	-----------------------	-----------------------

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:

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

	0 (not important)	1	2	3	4	5 (very important)	Don't know / no opinion / not relevant
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.	<input type="radio"/>	<input checked="" type="radio"/>					
Improve the investment climate	<input type="radio"/>	<input checked="" type="radio"/>					
Be particularly beneficial for SMEs	<input type="radio"/>	<input checked="" type="radio"/>					
Reduce the likelihood of litigation in front of the courts	<input type="radio"/>	<input checked="" type="radio"/>					
Reduce expenditures by public authorities as fewer disputes might reach the litigation phase	<input type="radio"/>	<input checked="" type="radio"/>					
Help preserve a long-term relationship between investors and Member States	<input type="radio"/>	<input checked="" type="radio"/>					
Other reasons	<input type="radio"/>	<input checked="" type="radio"/>					

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)

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

Reduce costs for investors linked to resolution of disputes	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>				
Reduce costs for public authorities linked to resolution of disputes	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>				
Allow for more flexibility when dealing with a dispute	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>				
Allow for better understanding of complex legal and economic circumstances of the case	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>				
Improve investment climate	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>				
Be particularly important for SMEs	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>				
Reduce the likelihood of litigation in front of the courts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensure a consistent approach towards mediation between investors and public authorities across the EU	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>				
Reduce expenditures by public authorities as fewer disputes might reach litigation phase	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Help preserve a long-term relationship between investors and Member States	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>				
Other reasons	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>				

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)

	0 (no impact)	1	2	3	4	5 (strong impact)	Don't know / no opinion / not relevant
EU mediation framework enabling mediation between investors and the relevant national authorities	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Agencies at national level which could administer the mediation services or act as mediators	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

EU-wide mediation agency which could administer the mediation services or act as a mediators



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 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 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

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

Discrimination (for example as regards national tax rules), expropriation.

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:

Useful links

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

[Consultation details \(https://ec.europa.eu/info/consultations/finance-2017-investment-protection-mediation_en\)](https://ec.europa.eu/info/consultations/finance-2017-investment-protection-mediation_en)

[Specific privacy statement \(https://ec.europa.eu/info/sites/info/files/2017-investment-protection-mediation-specific-privacy-statement_en.pdf\)](https://ec.europa.eu/info/sites/info/files/2017-investment-protection-mediation-specific-privacy-statement_en.pdf)

Contact

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