

SUMMARY

OF THE REPLIES TO THE COMMISSION QUESTIONNAIRE ON THE SUBSTANTIVE NATIONAL STANDARDS OF PROTECTION FOR CROSS-BORDER INTRA-EU INVESTMENTS

1 INTRODUCTION

A first questionnaire on the substantive standards of protection for cross-border intra-EU investments was sent to the Member States via the Expert Group on intra-EU investment environment in 2017. Eighteen Member States (AT, BG, CY, CZ, DE, DK, EL, ES, FI, FR, LT, LV, PL, PT, RO, SI, SK, SE) replied to that 2017 questionnaire.

A second questionnaire was sent to Member States in May 2020. Nineteen Member States (BE, BG, CZ, DE, EE, EL, ES, FI, FR, HU, LT, LV, NL, MT, PL, PT, RO, SE, SK) have replied to that second 2020 questionnaire.

The following summary focuses on the most recent replies to the 2020 questionnaire, while taking account also of replies to 2017 questionnaires, where relevant. The overview follows the structure of the 2020 questionnaire.

It provides an indicative overview of the types of rules in place in Member States. It is not complete as it does not include the legal frameworks of those Member States that have not replied and it is based on the written replies received. Given that the replies from Member States show different degrees of detail, a detailed comparison for each and every type of rule was not feasible.

Where Member States are explicitly mentioned or listed as having certain rules serves illustrative purposes. Thus, if the name of a Member State is *not* mentioned under a specific section, this does not necessarily mean that the framework of that Member State does not have such a rule in place.

1 GENERAL LAW PRINCIPLES THAT PROTECT INVESTMENTS UNDER NATIONAL LAW

How is the principle of legal certainty applied in your Member State in relation to cross-border investments and in what ways does your national legal framework protect investors against retroactive effects of state measures that may negatively affect investments?

The replies to the 2020 questionnaire confirm the 2017 findings that in all responding Member States the principle of legal certainty is a constitutional or, where not explicitly codified, a

fundamental principle developed by the national courts. Nearly half of the replies indicate that the principle of legal certainty is closely linked to the principle of rule of law.

In all responding Member States, the prohibition of retroactive application of laws is the general rule. The conditions that may lead to the exception to the general rule are as follow: for some Member States, the exception requires the attainment of reasons of public interest (e.g. BE); for some others a justification by a legal measure (e.g. DE, LV).

In some Member States, (e.g. LV), the national courts have developed this idea further and established that while the principle of legal certainty does not preclude the state from changing the legal environment, it imposes on the state the obligation to ensure stability of established legal relationships, and requires to take into account already established rights and interests of the individual. The state needs to balance the interests of the individual against the necessity to change the applicable legal environment.

In a number of responding Member States, as a general rule, it is prohibited to apply administrative acts in a retroactive manner (e.g. AT, BE, ES, FI, PT, NL). The conditions that may lead to the retroactive application of administrative acts constitute an exception to the general rule and are outlined as follow: in several Member States' responses, retroactive application is only possible when the law explicitly provides so (e.g. AT, BE); in few Member States retroactive application is possible on an exceptional basis with one Member State requiring that no favourable decisions can be reversed without going through specific proceedings or even with the compulsory intervention of the court (e.g.ES); in one Member State administrative decisions can apply retroactively if public interest is at stake and necessity and proportionality of the administrative act are granted (e.g. PT). In one Member State, administrative decisions cannot have retroactive effect (e.g. FI).

How is the protection of legitimate expectations framed in your national legal system and in what ways does your national legal system protect acquired rights, also with regard to a cross-border investor and actions taken by him in good faith in relation to his investment?

The legal orders of almost all replying Member States know the principle of protection of legitimate expectations: some directly through their constitution or laws, others indirectly as inferred from the general principle of the EU. In most replying Member States, the principle of legitimate expectations is a corollary of the principles of legal certainty and of the principle of legality/rule of law.

Some Member States regulate the specific circumstances under which an expectation deserves protection (e.g. DE, EE, PT, SK); one Member State replied that all the circumstances surrounding the concrete case should be taken into account (ES), a few Member States have the practice to adopt transitory provisions into new legislation to safeguard any acquired rights

under the old regime (e.g. MT). Some Member States lack explicit legislation on legitimate expectations (e.g. BG, FI, and SE).

In the Netherlands, this principle is not codified but recognized in jurisprudence, as part of principles of good governance. This does not imply that the legal protection is weaker than in Member States where this principle is codified.

It seems that in general, in replying Member States the principle of legitimate expectations is meant to protect individual's justified/good faith reliance in the validity of acquired rights (e.g. AT, CZ, DE).

2 TRANSPARENCY OF THE LEGISLATIVE PROCESS FOR CROSS-BORDER INVESTORS

How does the framework for your national legislative/rule making process ensure sufficient transparency of the legislative/rule making process?

All responding Member States have rules in place to make legislative proposals transparent and accessible to the public. The most common measure is to put legislative proposals as well as the information on the national parliamentary work online.

Some Member States have very comprehensive specific legislations and rules in place to ensure not only a high level of transparency of the legislative process, but also to ensure a high degree of openness and to allow for the participation of the general public as well as stakeholders very early on and throughout the whole in the process (see II.2 below).

How can individuals including cross-border investors contribute to the national legislative/ rule making process and make their voices heard therein?

Besides the “classical” way of approaching members of Parliament or national stakeholder associations (which may have their limitations for foreign investors, as national members of Parliament or national associations might not necessarily pick up the arguments of those foreign investors), some Member States have more developed participative tools (usually available online, e.g. like in CZ, MT, NL, PT, RO, SK) that allow cross-border investors to make their voices heard.

Several responding Member States launch a public consultation process even before a draft legislation is written (e.g. EE, ES), some other Member States organize consultations of the public on the first draft before it is introduced in the national parliament (e.g. ES, NL, PL, LT, SK).

An innovative tool is reported by LV: since 2013, the LV State Chancellery in close collaboration with NGOs introduced a new type of public participation, the so-called “green papers”. State institutions are obliged to publish policy documents and draft legislative acts at

least 14 days before initiating the legislative process, and to invite NGOs, independent experts and other stakeholders to express their views regarding the proposed legislative act or policy.

Another example is EE legislation, which foresees that draft legislation must be accompanied by a table showing opinions and proposals made during a public consultation, explaining to which extent those opinions were taken on board, and give the reasons why comments were not taken into account.

Does the framework for your national legislative/rule making process foresee an assessment of the impacts the planned national measure will have on the interests of stakeholders, including cross-border investors? If yes, please explain how the assessment is taken into account.

Many Member States foresee the preparation of a regulatory impact assessment, which is published together with the draft legislation (e.g. CZ, NL, PL, SE, EE, ES, LT, SE, SK). Among other things, these impact assessments analyse the entities/groups positively and negatively affected by the draft legislation, such as additional burdens for companies, effects on competitiveness of the economy, impacts on entrepreneurs and SMEs etc.

It appears from Member States' replies that such an impact assessment is not only highly relevant for the openness and transparency of the legislative process itself, but is also relevant if a passed legislation is challenged in courts and the national courts have to assess the soundness and legality of the decisions and arbitrages made by the national legislators.

What types of adaptation or mitigating measures does your national legal framework foresee where the planned legislation/rule might unduly negatively impact investments including cross border investments? (e.g. transitional period, compensation or other)?

The two most commonly cited measures to mitigate negative impacts/restrictions of rights are transitional periods and compensations for financial losses. Some Member States (e.g. CZ, PL) establish rules for the period between the promulgation of a law and the time the law takes legal effect (*vacatio legis*); a few Member States make provision for ad hoc mitigation measures (e.g. CZ, SK).

NL has specific provisions in place on how to design transitional measures in exceptional cases in the light of the general legal principles. PL mentioned specific considerations (as part of the guidelines for impact assessment and public consultations in governmental legislative process) applied to SMEs, such as partial or full exemption of SMEs from planned regulations, exemption from fees or their reduction, longer transitional periods for adaption to new regulations, direct financial support, simplified reporting obligations, information, education, training etc..

What are the procedures in your national legislative/rule making process that ensure compatibility of the planned legislation/rule with EU law?

In most Member States, the check of the compatibility of the draft is in-built in the legislative process and the assessment is made by the responsible national administrations/ministries (e.g. DE, ES, LT, NL, PL, SK).

In some Member States, independent bodies external to the government may be involved, like the SE council on legislation and the Dutch Advisory Board on Regulatory Burden in the NL. In the NL, the explanatory memorandum contains an “integral assessment framework”, compiling all relevant aspects gathered during the drafting process, including the question of compatibility with EU law and a Draft Bill is checked by the Highest Administrative Court (the Council of State) on compatibility with EU and international law obligations. EL in 2019 established a Committee for the Quality Assessment of the Law-making Process, an independent, interdisciplinary advisory body which, among other tasks, examines the compatibility of the proposed regulation with the EL constitution, EU law, International Law and the European Convention on Human Rights.

3 THE RIGHT TO PROPERTY AND THE APPLICABLE NATIONAL REGIME ENSURING FAIR COMPENSATION IN CASES OF EXPROPRIATION

What are the rights granted to the owner of the property right in your Member State in case of an expropriation justified in the public interest?

The replies to the 2020 questionnaire confirmed the 2017 findings that the right to property is protected under all the constitutions of the replying Member States. Formal or “direct” expropriations (state measures that include a formal transfer of ownership/title from the individual to a state authority) must be based on law, must be proportionate and justified in the public interest.

It appears from most replies that the national rules and procedures in place to regulate cases of “direct” expropriation are mainly applicable to expropriation of privately owned land/immovable property, for example if the land is needed for the building of public infrastructures such as motorways or airports.

In all replying Member States, the national framework foresees that the “directly” expropriated owner must receive a compensation for his loss. Definition of that compensation seems to vary between Member States, and is defined in different Member States as either “full”, “fair” or “just” compensation (just not necessarily meaning full market value, see for example MT under III.3.).

Many Member States also pointed to the 1st protocol to the European Convention on Human Rights as a compensation regime distinct from their national law.

Does your legal system explicitly recognise cases of “indirect expropriation” (i.e. measures that do not formally constitute expropriation but that de facto have effects analogue to expropriation)?

It appears that no responding Member State explicitly recognizes in the concept of “indirect expropriation” in its national law.

In some Member States, the constitutional courts have developed similar concepts, for example as a restriction to the right to property that may give rise to compensation (e.g. AT, DE, FR).

Other Member States explain that in their legal framework, such cases would be addressed under more general principles of law. For example, in BE a restriction imposed on an investor leading to situations where the investor can no longer operate its business could be challenged by the investor as excessive under the proportionality principle; in SK cases of indirect expropriation could be covered by the principles governing enforced restrictions on ownership.

In your Member State, what are the parameters for the calculation of the compensation due and what is the applicable interest rate (for example is it based on the replacement value, the fair market value, would compensation include going concern or consequential damages, and are compounded interests included)?

Based on the Member States’ replies to the questionnaire received, there are obvious differences among the Member States regarding the amount of compensation due in case of lawful expropriation and the parameters taken into account to determine it.

Some Member States (e.g. BE, CZ, EE, EL, NL, HU, RO) provide for full compensation, covering any damage incurred by the owner of the expropriated property, while other Member States provide for equivalent (BG), fair (LV, PT), just (DE, LT), due (ES) or adequate compensation (SK). The amount of compensation due also varies, taking into account the equivalent (BG), increased fair (SE) or full market value (FI) of the expropriated property at the time of the expropriation, whereas in some cases interests (e.g. LT) and loss of profits (e.g. LV) are also covered. Other Member States also provide for the possibility of a replacement in kind of the expropriated property, if the owner prefers it (e.g. PL).

The amount of compensation due in cases of lawful expropriation is also determined differently in different Member States. For example, in BE, PT and ES, compensation is determined following a negotiation process with the person, whose property is expropriated, or by the competent administrative authorities (e.g. HU, ES and PT should negotiations with the owner fail) or by experts entrusted with the task (e.g. RO, SK) or national courts (e.g. BE, RO and SK, should the owner be dissatisfied with the amount of compensation determined). In NL, Courts can appoint independent experts to calculate the right amount of compensation due. In other Member States, like EL, compensation is determined directly by the competent national courts.

At the same time, most of the Member States that replied to the questionnaire do not distinguish between lawful and unlawful expropriation or specify the kind of remedy (restitution or compensation). They also do not specify the amount and calculation parameters to be taken into account for the determination of compensation in cases of unlawful expropriation.

As for interest rate, a few Member States specify the rate, e.g. a fixed rate of 8% in MT or the applicable rules in this respect, e.g. the respective Civil Code provisions in HU. A few Member States specify the moment from which interest is due, e.g. the time when the expropriation decision has reached administrative finality in HU. Many Member States do not specify the rules in this respect in their replies.

In your Member State, are there specific procedural rules regarding the payment of compensation and are there related deadlines?

Some Member States (e.g. BE, FR, NL) replied that the expropriation procedure consists of an administrative phase and a judicial phase. Not all Member States provide information in response to this question.

With regard to the deadlines for the payment of compensation: EE replied that the payment should occur before the public authority takes over the property; whereas other Member States mentioned: done at once and within 14 days from the moment when the decision of expropriation is subject to execution and when there was a separate decision on compensation – at once within 14 days from the day when the decision on the payment of compensation became final (PL); 15 days following the final expropriation decision (HU); no later than 3 months from the date of the decision establishing the amount of compensation (RO, MT, SE).

4 NATIONAL REGIMES ENSURING EFFECTIVE REMEDIES AGAINST OTHER STATE MEASURES THAN EXPROPRIATIONS WHERE THOSE MEASURES INFRINGE RIGHTS GRANTED TO INVESTORS UNDER THE EU INVESTMENT PROTECTION FRAMEWORK

Under the legal framework of your Member State, what are the remedies available to a cross-border investor in case of an infringement by the State/a national authority of their rights granted by EU law in relation to the cross-border investment? (e.g. restauration of the full protection under the primary rule and removal of the illegal measure and its consequences , restitutio ad integrum, full reparation, damages for consequential losses, damages for future losses)

As already mentioned during the 2017 survey, in the vast majority of Member States that do not have a specific legal regime for foreign investors, the remedies for foreign investors are the same as for any EU individual or citizen. However, several responding Member States do have specific investment laws (e.g. EL, LT).

More specifically, what are the remedies available to a cross-border investor in your Member State where a national legislative act unlawfully impairs his rights?

It appears that in most responding Member States, it is not possible to directly challenge the legality of a national legislative act. The individual/investor can challenge before the national courts the individual administrative act of a Member States body that is based on the challenged legislation.

However, it seems that under strict conditions, in a small number of Member States, it is possible for an individual/investor to directly challenge the legality of a legislation before the constitutional court (e.g. PL, DE).

In MT, the constitution provides for an “*actio popularis*”, that under certain conditions also seems to allow to directly challenge a legislative act that infringes EU law.

Does the legal order of your Member State provide for a specific claim/legal procedure in cases where individuals/investors seek reparation for damages/losses resulting from the adoption of a legislative act (see above question) and is that procedure also available to a cross-border investor (legal standing of individuals including foreign EU investors)?

It seems that in most Member States, there is no such remedy, as public liability claims are based on the principles of tort law and sanction the wrongdoing (tort/fault) of individuals in the exercise of their state powers. Such a liability against the state does not apply to acts of the parliament or to acts of the national government, unless these acts have been annulled by a court (e.g. SE).

Once a law has been annulled by the national courts (for example because it breaches EU law), the investor can launch civil proceedings before a national civil court (e.g. PL). In SE, when an individual or an entity wants to claim damages from the government, it can chose to either go to the courts, or to have the case settled by Justice Chancellor (JK). The claim settlement at the JK is done on a voluntary basis and if the individual is not satisfied with the JK decision, it still can bring the case to court. In contrast, in DE, as a rule, compensation for damages resulting from a legislative act that has been annulled by a responsible court cannot be claimed before a court. Compensation for damages caused by legislative acts must first be regulated in another legislative act.

In how many cases has your Member State been a respondent in a State liability claim for damages caused by a national measure in breach of EU law (“Francovich based claim”) and in how many cases have damages been awarded? (please add case references if possible)

Most responding Member States do not seem to have overviews/statistics as to their numbers of “*Francovich* based claims” and do not seem to be in a position to answer that question. However, to give an indication of the frequency, PL could report around 20 cases of damage claims specifically against the adoption of a legislative act incompatible with the PL constitution, International Law or EU law for the period of 2019, in addition to an undetermined amount of cases where conformity of national measures with EU law was examined as one of the elements of the proceedings.

Does the legal order of your Member State provide a procedure to seek judicial interim protection from a challenged state measure (for example because the state measure is allegedly in breach of EU law), for example in case the execution of that state measure is likely to cause imminent and irreversible damage to the investment?

Most replying Member States seem to provide some possibility of interim protection, for instance in the form of an injunction, temporary measures, suspensory effect of the challenged measure which the claimant can seek before the responsible national court (e.g. BG, CZ, DE, FR, ES, FI, EE, HU, LV, NL, PL, PT, SK and MT). Not all Member States provide information in response to this question.

Most Member States refer to interim measures regarding administrative measures, but some Member States also specify that their laws provide for interim measures regarding challenged judicial decisions (e.g. BG) and legislative measures (e.g. SK). For instance, the Constitutional Court may suspend application of law in case it threatens human rights or there is a threat of great economic damage (SK).

In DE, except in the cases defined by law, if an investor challenges an administrative decision in the pre-judicial administrative review, this suspends the enforceability of the administrative act until the court renders its final decision. While it seems that in some Member States interim measures are not generally available, in some areas, a challenged decision of an authority cannot be enforced during the trial on the legality of the decision (e.g. SE).

Some Member States distinguish between individual and general administrative acts and rules on interim measures may differ in these scenarios. For instance, challenging an individual administrative act suspends its application (subject to some exceptions) while the challenge of a general one does not suspend its enforcement, unless the court rules the opposite (e.g. BG).

Some Member States refer to specific conditions for interim protection against state measures to be granted, such as disproportionate prejudice to the person affected (e.g. MT, HU), or requirement of a security (e.g. HU, SK). One responding Member State specifies that interim measures are adopted in expedited judicial proceedings (e.g. DE), while most responding Member States do not specify whether expedited proceedings for interim are available.

The possibility to seek effective interim protection can be impaired in cases where the investor has no legal standing to challenge a directly applicable general rule before the responsible national court (see IV.1.1 and IV.1.2.).

5 THE GOOD ADMINISTRATION PRINCIPLE APPLICABLE IN YOUR MEMBER STATE

The good administration principle is generally implemented in national laws. Its implementation is often accompanied by other related principles such as legality, equality before the law, duty of care, impartiality, effectiveness, transparency and good governance.

Does the legal order of your Member State provide specific rules that ensure the right to be heard before administrative authorities when taking individual measures affecting investments including cross-border ones?

Some national laws ensure the affected persons the *possibility* to provide views during administrative proceedings (e.g. BE, SE, BG, FR). Different rules are put in place to facilitate such submissions: for instance, notification of commencement of procedure (e.g. BG, FR); enabling access at all stages of the procedure (e.g. BE, HU), acceptance of submission in suitable form, including oral submissions (e.g. BE); opportunity to submit evidence and provide statements or written objections (e.g. BG, LV, SK); permission to use mother tongue or intermediary language (HU).

A number of Member States' laws contain a requirement for competent authorities to ask for input and to invite individually affected persons to express views in particular as regards unfavourable decisions (e.g. DE, EL, LV, EE, NL). This can be accompanied by an obligation on the authority to ascertain the facts on its own initiative (e.g. NL, SK, CZ);

The right to be heard can be specified by further requirements regarding the procedure: the right of access to information and administrative documents (e.g. EL, BG); a requirement to consider the views of the affected person in the reasoning of the decision (see V.2 below), conduct proceedings without unnecessary costs to the parties (e.g. CZ)

Certain exceptions to the right to be heard are provided in some national laws on different grounds: no necessity (SE); urgency, security grounds (e.g. LV, PT); when parties already submitted evidence before (PT). Additional requirements may apply in case competent authorities invoke an exception, such as the need to state reasons for any exception to hearing (PT).

Some national laws also provide for specific rules on the right to be heard of third parties unfavourably concerned by an administrative decision during the proceedings or by means of legal standing to bring an action for judicial review of a decision that has an impact on third parties not involved in proceedings (e.g. LV, LT, PT); special rules on public consultation when number of third parties is too high (e.g. PT).

Does the legal order of your Member State provide specific rules on the obligation to motivate an administrative decision (that might have a negative impact on an investment)?

Member States' laws generally contain a requirement to motivate individual administrative decisions, especially where the rights of interested parties are affected unfavourably, with some limited exceptions to this rule in different Member States. Requirements on motivation of administrative decisions of general application also exist in some Member States (e.g. FR, BG, RO).

The rules differ as regards the approaches to ensure the quality of the decision and content of the motivation, in particular for unfavourable individual decisions. A number of national laws provide general requirements on the quality of the motivation, e.g. that the decision is comprehensible, with sufficient reasoning and clarity on the basis of which the decision was based (e.g. BE, MT, SE, NL, BG). A number of national laws specify further the elements the decisions should include, notably the factual and legal grounds on which the decision is based (e.g. EE, PL, BG, SK, NL, HU). Further elements in some Member States include consideration of the views of the person concerned in the motivation of the decision (e.g. LV, EL, SK, HU); elaborating on considerations of necessity, suitability, proportionality of the decision (LV), stating clearly rights and duties, next steps or possibilities of appeal (e.g. LT, CZ, HU); lacking or poor quality of reasoning is ground for annulment (BG); a requirement on consistency with similar decisions as there must not be unsubstantiated differences in decisions on similar cases (CZ); requirement to indicate the procedural costs accrued (HU).

Some national laws contain exceptions to the requirement to motivate decisions, which vary as regards the grounds: no significant impact of decision (SE); security (PL, LV); urgency (LV), if a previous decision on same matter has been issued in previous two years (PT).

Is a tacit refusal by administrative authorities possible under your national law? If yes, in which cases?

Tacit refusal is possible in some Member States in general (e.g. BE, MT, BG). In other Member States it is possible in specific scenarios (e.g. SE, PT, SK, HU). Furthermore, HU for instance distinguishes between "legitimate silence" which can be exercised in specified cases and "illegal silence", when the authority exceeds the administrative time limit, without triggering automatic rejection of the application. Tacit refusal is not possible in other Member States (e.g. DE, LV, EE, LT, NL, PL). Some Member States for instance, have introduced tacit consent as a general principle (e.g. FR) with tacit refusal being the exception (e.g. FR).

Does the legal order of your Member State provide for specific timeframes for administrative decisions? Are there rules in the event that an administrative authority does not decide in a given timeframe? (e.g. an authorisation request that has not been formally refused within six month is deemed by law to have been granted/refused)?

National laws generally provide for a *reasonable time* requirement for the completion of administrative procedures. A number of Member States specify concrete time-frames, which may apply to administrative decisions in general or to specific types of decisions. Member States provide for different safeguards to ensure that this general requirement is implemented.

A number of Member States indicate that the general timeframe for adoption of administrative decisions is between one week and one month (e.g. LT, LV, PL, PT, BG, SK). The time-frame in other Member States varies between 6 weeks (NL) or 2 months (FR, MT, HU, PT for complex cases) and up to 6 months (SE). Some Member States seem to have different time-frames depending on decision types (RO).

It should be noted though that some Member States have also put in place specific shorter time-frames for certain types of procedures or administrative decisions, such as authorisations. They include for instance, decisions on authorisations for strategic investments (EL - 45 days), permits (EE - 30 days), and requests for information and certificates or other documents (EL - 60 days). Summary procedures may take significantly shorter compared to regular ones (HU - 8 days instead of 2 months); automatic decision making (HU - 24 hours).

Some specific rules on extension exist: e.g. by the same period (30 days) or by decision of appellate administrative body (SK).

The consequences of delay differ and the next steps the affected person can take include: right to request response (e.g. SE, PT), which should be due within a shorter predefined period (SE); absence of response within prescribed time-frame is tacit refusal which can be challenged in court (e.g. MT, BG); tacit approval in general (e.g. EE) or in exceptional cases (e.g. BG); administration to indicate alternative deadline to person concerned (BE); action for damages (PL, MT); right to administrative or judicial review (BG, DE, MT, PT, FR, SK); file a complaint with a specialized administrative body (PT).

In your Member State, is an explicit decision by the competent administrative authority (where relevant, after hierarchical administrative review) a precondition for an investor/individual to seek judicial redress?

An explicit decision can be a precondition for an appeal for instance in SE, with special requirements for authority to issue a decision within a given time-frame. In HU for instance, in case of delay the competent authority has to reimburse the party the amount corresponding to the fees or charges payable for carrying out the procedure or, in their absence, pay a predefined amount to the applicant party who is also exempted from paying any procedural costs. In other Member States actions for judicial review (or administrative appeal if relevant) can also be brought in the absence of a decision on grounds of failure to act (e.g. DE, LT, LV, NL, EE, SK, CZ, HU). An alternative solution is empowering another administrative authority to take the decision (e.g. EL, HU) or lodging a complaint with an independent body, such as Ombudsman (SE).

6 NATIONAL DISPUTE PREVENTION/OUT-OF-COURT DISPUTE RESOLUTION MECHANISMS

In your Member State, is there a national body or problem-solving mechanism (including national investment promotion agencies) which can provide support to investors in preventing/resolving disputes with the national administration in individual cases in the pre-litigation phase? - If yes, please describe its way of functioning and its powers.

Some Member States refer to SOLVIT as the most relevant mechanism in this context (e.g. SE, DE).

A number of Member States provide for other specific mechanisms (e.g. negotiation, mediation, conciliation) to prevent/resolve disputes between investors and national administrations in the pre-litigation phase, possibly restricted only to some areas where administrative settlement is possible (e.g. LV, ES, BE, EL). In other Member States, out-of-court settlement may be allowed under the general legal framework (e.g. DE, LV, FR, HU, PT). Relevant out-of-court mechanisms do not seem available for administrative disputes in other Member States (e.g. LT, PL, SE, MT).

Some Member States provide additional investment specific mechanisms, which differ in respect of their competences, functions and level of sophistication. In some Member States, the national investment promotion agencies can play an intermediary role and help settle disputes with other competent authorities. This includes for instance a specialised Ombudsman service for investors in EL. Another type of support is intermediary assistance in communication with competent authorities (e.g. BE, DE, LT, PL, EE, SK). In some Member States, there are services within the competent Ministry that may act as an intermediary in case of potential disputes with public bodies (e.g. CZ, RO).

In your Member State, is there a feed-back mechanism and/or a follow-up mechanism in case it becomes apparent from the nature or the number of individual cases that there is a more general concern with some rules/ (any type of structured dialogue with investors/stakeholders or feedback on local/regional investment environment issues to responsible national ministry)?

Some Member States refer to specific institutionalized mechanisms for regular feedback and follow-up. These mechanisms differ as regards the set-up, participants and tasks, but in general aim to enable the collection of feedback on practical investor concerns, possibly also facilitating the follow-up to the identified issues. The different mechanisms include for instance: involvement of umbrella organizations in legislative processes as long as their fields of interest are affected (e.g. DE, BG); analysis and follow-up to statistics on recurring

problems from SOLVIT (e.g. DE, NL); systematic collection of information on difficulties investors face and organising “after care events” for dialogue between investors and political actors (EL); structured dialogue by investment promotion agency with investors including regular three-monthly reports and an annual report (BG); high level meetings of foreign investors and the government (LV); the “national economic council” - a round table format for structured dialogue between competent authorities and specified stakeholder organisations and tripartite social dialogue (BG); permanent monitoring investment committee, supporting projects considered especially relevant for the national economy (PT) and ad hoc discussions on specific concerns (SK).

Some Member States do not indicate institutionalized structured feedback and follow-up mechanisms, which investors could use to report general concerns to the government on a regular basis (e.g. BE, SE, NL, PL, CZ, RO, HU). Some of these Member States specify that they have designated contact points, e.g. in the competent ministries, which investors can contact informally (e.g. RO, CZ).

