



EUROPEAN COMMISSION

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

Director General

Brussels,

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European Banking Federation
Avenue des Arts 56,
1000 Brussels

Subject: Future of EU investment protection mechanism

Dear ,

I refer to your letter dated 3 July 2019, in which you express your concerns about the termination of the intra-EU BITs and about the future efficiency of intra-EU investment protection in the absence of the investor to State dispute settlement mechanism through arbitral tribunals previously foreseen in those investment treaties.

The Commission is very mindful of the need to safeguard a favourable investment climate to encourage cross-border investments within the EU.

The Commission services are contributing to the follow-up to the commitment expressed by Member States in the political declarations of 15 and 16 January 2019 to intensify discussions *"with the aim of better ensuring complete, strong and effective protection of investments within the European Union"*.

In this regard, we are reaching out to all relevant stakeholders. A first workshop on investment protection took place in December 2018 and we are planning to organise another workshop during this year.

As stated in the Commission Communication on the protection of intra-EU investments of July 2018, EU law provides investors with a high level of protection, as well as a number of judicial remedies available to investors before national courts.

To examine more closely the functioning of national justice systems, the Commission publishes the annual EU Justice Scoreboard, which looks at a range of indicators to assess their independence, quality and efficiency. It is part of the EU's toolbox to strengthen the rule of law

by contributing to ensure that justice reforms respect EU law and European standards on the rule of law.

The effective functioning of justice systems and the full respect for the rule of law have also been identified since a number of years as a priority for structural reforms in the context of the European Semester. The EU Justice Scoreboard feeds the country specific analysis in the context of the European Semester and helps Member States to improve their national justice systems. Alone this year, the Commission has proposed country-specific recommendations concerning the effective functioning of justice systems, including the independence of the judiciary to seven Member States. On 3 April 2019, the Commission also adopted a Communication on further strengthening the rule of law within the Union which takes stock of the state of play and looks at possible next steps.

At the same time, the Communication acknowledges that EU law may not solve all problems investors may face in their activities. Currently, the expert group on intra-EU investment environment composed of representatives from Member States is the forum to discuss how the investment climate and investment protection can be improved.

The discussions with Member States and investors as well as other stakeholder will include further reflections on whether there is a need for EU action, and namely for new alternative dispute settlement mechanisms in line with EU law. The result of these reflections will feed into the work of the next Commission.

In the framework of this ongoing reflexion process, my services remain at your disposal to discuss your note and the future of EU investor protection with you in more detail.

Yours sincerely,

Olivier GUERSENT

Contact:

[Redacted contact information]

