



Capital Markets Union: Commission provides guidance on protection of cross-border EU investments

Brussels, 19 July 2018

The Commission has today issued guidance to help EU investors to invoke their rights before national administrations and courts and to help Member States to protect the public interest in compliance with EU law.

Today's [Communication](#) aims to strengthen the business environment for EU investors. This is a crucial element in supporting more investment in the EU Single Market. EU law does not solve all problems investors may face in their activities. However, the Communication clarifies that EU law protects EU investors' rights, and investors can enforce these rights before national administrations and courts.

EU investors can no longer rely on intra-EU bilateral investment treaties ('intra-EU BITs'). As the Commission has consistently stated, these treaties are illegal as they overlap with the EU single market rules and discriminate between EU investors. In a recent judgment (on the [Achmea](#) case), the Court of Justice of the European Union confirmed that investor-State arbitration in intra-EU BITs is illegal. Following this judgment, the Commission has intensified its dialogue with all Member States, calling on them to take action to terminate the intra-EU BITs.

Valdis Dombrovskis, Vice-President in charge of Financial Stability, Financial Services and Capital Markets Union said: *"Boosting investment is a key priority of the Capital Markets Union. EU law strikes the right balance between protecting the rights of EU investors and enabling governments to regulate in the public interest. There is no place in the Single Market for bilateral investment treaties between Member States. Today's Communication sends a strong signal that EU law already protects investors. They can therefore remain confident when investing within the EU."*

Jyrki Katainen, Vice-President responsible for Jobs, Growth, Investment and Competitiveness said: *"We want to encourage investment within the European Union. Investors need to be able to count on a predictable, stable and clear regulatory environment. By clarifying the rights that EU investors enjoy when they operate within the Single Market, the Communication adopted today will help ensure those rights are known and respected in all Member States. I trust that this will increase investors' confidence and improve further the investment climate in the European Union"*.

Today's Communication clarifies that:

- The **free movement of capital, services, goods and workers in the EU Single Market are fundamental freedoms for EU individuals**. They give companies and citizens the right to establish a business, invest in a company and provide services and goods across European borders. EU investors are also protected by general principles of non-discrimination, proportionality, legal certainty and protection of legitimate expectations. EU law also recognises fundamental rights, such as the right to conduct a business, the right to property and the right to effective judicial protection. EU rules protecting investors can be found in the EU Treaty, in the Charter of Fundamental Rights of the European Union, in the general principles of Union law, and in extensive sector-specific legislation;
- **Investor-State arbitration between a Member State and an investor from another Member State is incompatible with EU law**, including through 'intra-EU BITs', as the European Court of Justice recently held in the recent judgment in the *Achmea* case. In that case the Court considered that investor-State arbitration clauses in EU bilateral investment treaties are not compatible with EU law and that they do not have legal effect. The *Achmea* judgment is also relevant for the application of the Energy Charter Treaty between EU Member States. In the Commission's view that Treaty cannot be used as a basis for dispute settlement between EU investors and EU Member States. EU law already offers a comprehensive and effective legal framework, including remedies, to intra-EU investors when they invest in another Member State;
- At the same time, **EU law allows for markets to be regulated to pursue legitimate public interests such as public security, public health, social rights, consumer protection or the preservation of the environment**, which may have negative consequences for investors. Public authorities of the EU and in the Member States have a duty and a responsibility both to protect investment and to regulate markets. Therefore, the EU and Member States may take legitimate

measures to protect those interests. However, they can do so only in certain circumstances and under certain conditions, and in compliance with EU law.

Today's Communication will help to prevent Member States from adopting measures that infringe EU rules and assist investors in invoking their rights before administrations and national courts. It will also help legal practitioners to apply EU rules.

Background

A key objective in the [Investment Plan for Europe](#) is to create a more predictable, stable and clear regulatory environment to promote investments. As part of this work, the [Capital Markets Union \(CMU\) Action Plan](#) and its [Mid-term Review](#) emphasised that a stable business environment is crucial for encouraging more investment within the European Union. The Commission is committed to improve and develop further the internal market rules and their functioning. To that end, it has presented a number of legislative proposals, some of which have already been adopted by the EU legislator.

The protection of EU investors' rights is guaranteed by national courts and the European Court of Justice as well as by the Commission, in particular through the infringement procedures.

For More Information

[Press Release](#)

[Question and Answer](#)

[Link to the Communication](#)

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