DIHK Survey on the Need of Intra-EU Investment Protection in Central and Eastern Europe – Country Reports under participation of the German Chambers of Commerce Abroad, Chambers of Commerce and Industry and Enterprises

Who we are:
As the umbrella organisation of the 79 Chambers of Commerce and Industry (IHK) in Germany, the Association of German Chambers of Commerce and Industry (DIHK) represents 3.6 million companies of all sizes and sectors (exempted are crafts, liberal professions and agricultural businesses). They are by law members of a Chamber of Commerce and Industry. The DIHK thus represents the collective interest of German business. The DIHK also coordinates the network of the 130 chambers of commerce abroad, delegations and representative offices of German business in 90 countries worldwide (AHK). IHKs and AHKs contributed actively to this position paper and the survey attached. The DIHK is registered in the transparency register of the European Commission (No. 22400601191-42).

Summary
Enterprises wishing to make cross-border investments in the EU Single Market must overcome numerous obstacles: On the one hand, there are bureaucratic and cost-intensive impediments that are comparable to bureaucracy in Germany. On the other hand, there are discriminations compared with domestic companies, unfair treatment and deficiencies in national legal protection, as shown in this survey carried out in 2017 among the German Chambers of Commerce Abroad (AHKs), Chambers of Commerce and Industry (IHKs) and Enterprises for those Central and Eastern European EU Member States, with which Germany currently has a bilateral investment protection agreements (intra-EU BITs).

The conclusion is that the freedom of establishment and the free movement of capital in the EU internal market are far from being fully realised. Although the application of EU law, legal certainty and the efficiency of legal systems have improved in most Member States concerned, they are often still inadequate: a lack of legal certainty due to frequent, sometimes retroactive legislative changes; violations of EU or national law by the administration; unreasonable civil servants and government officials not willing to dialogue and to apply international and EU law; lengthy administrative and judicial proceedings during which investors are hardly informed; inefficient and badly equipped courts; discrimination and a lack of transparency in public procurement; a lack of political independence and reservations against foreign investors; corruption especially in administrations, but sometimes also in courts. All this worries investors even if other location factors and the expected business opportunities also play an important and often more important role.
The **intra-EU BITs**, especially in Central and Eastern Europe, are, therefore, **still important** for German enterprises. With the investor-state arbitration tribunals, they do not only provide a **suitable dispute settlement mechanism** to solve complex disputes quickly, effectively and with high quality results. They are particularly important because of their **preventive effect**: since the investor could initiate arbitration, if necessary, there is an additional incentive on the part of the state to act fairly and lawfully and also to improve its own legal system and the rule of law. In addition, the enterprise has a better negotiating position, so that a **solution can often already be reached through negotiations** without the need of arbitration proceedings, which otherwise would not be achieved. Investor-state arbitration is, thus, a door opener for **constructive dialogue** and leads to a more rational debate on the part of state authorities. Often, enterprises are supported by national embassies and chambers of commerce abroad, whereas the **EU Commission helps only to a limited extent** for political reasons.

The **termination** of the intra-EU BITs could put investors in great trouble and lead to a **negative impact on the investment climate**. The only alternative could be an **EU-wide investment protection agreement** or a similar **dispute settlement mechanism**. However, this would have to be **binding and similarly effective**. The decisions must be enforceable. A European arbitration mechanism could be advantageous compared to the existing investor-state arbitration if it was **faster and less expensive** than before, particularly for SMEs.

**Country Reports**

**Bulgaria**

- The Intra-EU BITs are considered very important for protecting existing investments and attracting new ones. Their preventive effect is of great importance. They provide additional legal protection and help particularly as a last resort in the negotiations, when ministries and authorities act in a grossly illegal manner.

- The national legal system of Bulgaria currently does not provide adequate replacement; it is not efficient. The judiciary in Bulgaria is uncertain and unstable. Judges are not sufficiently qualified and not independent. There are unequal and contradictory case law and corruption.

- In particular, when local enterprises are well connected with the local authorities and courts, policies are sometimes deliberately taken against foreign undertakings and the local business is preferred, often for specious reasons, for example awarding concessions or concerning competition law issues. In many cases, the national courts do not help, because the judges there are also bribed.

- For political reasons, the EU Commission is very reluctant to commit itself to support individual companies in case of infringements – unlike the German Embassy, the German Foreign Office and the Federal Ministry of Economics, which accompany the proceedings as observers and in some cases also support the enterprises in negotiations with the government.
In addition, frequent legislative changes lead to legal uncertainty, even if they are rarely retroactive. Improving the rule of law is seen as a prerequisite for more investment.

From the business’ point of view, decisive steps are needed to implement a judicial reform, to improve the quality of administrative services, to improve transparency in public procurement and to combat corruption. An association of chambers with the participation of the German AHK demanded in an open letter an effective implementation of the judicial reform and, particularly, highly qualified and independent judges.

This assessment is also confirmed by the EU Commission’s report on Bulgaria’s progress in the framework of the Cooperation and Verification Mechanism (COM (2017) 43 v. 25.1.2017). It notes that, despite some progress in the implementation of the judicial reform, major challenges remain and that particularly the implementation of the national anti-corruption strategy is still at an early stage.

The abolition of intra-EU BITs will certainly leave a negative impact on the investment climate.

Key figures:

- **AHK Economic Outlook 2017**: Enterprises are still dissatisfied with the ineffective public administration (53 % dissatisfied or very dissatisfied), the lack of legal certainty (60 %), ineffective combating of corruption and crime (90 %), the lack of transparency in public procurement (75 %) and the unpredictability of the economic policy (58 %). All these are obstacles which are highlighted once again by the enterprises and which put Bulgaria on one of the last places in Central and Eastern Europe. Nevertheless, 90 % of the undertakings interviewed would invest again in Bulgaria. 47 % of the enterprises plan for more capital expenditure in 2017.

- **World Justice Project Rule of Law Index 2016**: Rank 53, with particularly low scores in the area of corruption; there is not a single sector where Bulgaria is in the top third

- **Corruption Perceptions Index CPI 2016**: Rank 75 with consistent bad score over the last few years

- **Global Competitiveness Index 2016-2017**: Rank 97 in the sector institutions

- **UNCTAD Investment Dispute Settlement**: 8 cases, 7 of them from EU countries

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1 The AHK Economic Outlooks are held in parallel in 15 CEE countries each February. A majority of the participating companies belong to the category of SMEs with less than 250 employees. More information can be found on the websites of the AHKs, which can be found at [www.ahk.de](http://www.ahk.de).


Croatia

- For companies, an effective legal system, effective courts and procedures as well as the fight against corruption are fundamentally important issues. They are in demand, even if other location factors such as taxes, levies and professionals are more important for the investment decision and even if bureaucratic obstacles disturb more in daily business.

- Satisfaction with legal certainty and the effectiveness of judicial proceedings has increased. Judicial proceedings get faster and better. However, the topic is still in the lower third of the satisfaction scale.

- Public administration is ranked lowest among all location factors. The reasons are complex administrative structures with a lack of coordination between the different administrative levels and sometimes lengthy licensing procedures. Business calls for an administrative reform, a simplification of regulations and an acceleration of licensing procedures.

- A major problem is the frequent introduction of new laws or changes to existing regulatory measures; this often causes uncertainty, e.g. in case of taxation and spatial planning, even if the rules are in general not applicable retrospectively. The unpredictability of economic policy is criticised; enterprises want more regulatory stability and reliability.

- Intransparent tenders sometimes create problems for undertakings; sometimes they have the impression that they have already been formulated for a specific – local – provider. There is already an initiative for more transparency, together with other chambers.

- There is no experience of concrete discrimination. In general, laws apply equally. However, distortions of competition are reported to the benefit of state-owned enterprises, which would hinder foreign investment. Furthermore, Croatia is accused that the regulations on stock exchange regulation would not be enforced to the detriment of German companies.

- Corruption is a factor that slows down business development. However, there are also reports, e.g. from contractors, which never had to pay anything. Also inside courts corruption is rare.

Key figures:

- **AHK Economic Outlook 2017**: In addition to the high tax burden and the tax system and authorities the public administration, corruption and the unpredictability of economic policy continue to be considered as a brake on business development. At the same time, 80 % of the undertakings interviewed would invest in Croatia again. Around 47 % of the enterprises said that their capital expenditures are rising.

- **World Justice Project Rule of Law Index 2016**: Rank 39

- **Corruption Perceptions Index CPI 2016**: Rank 55

- **Global Competitiveness Index 2016-2017**: Rank 89 in the sector institutions

- **UNCTAD Investment Dispute Settlement**: 8 cases, 7 of them from EU countries
Czech Republic

- The location factors legal certainty, combatting corruption, public administration and transparency of public procurement are not good in the Czech Republic. However, from the point of view of many foreign investors they are balanced with other factors such as the central location, lower costs and tax benefits.

- Discrimination against foreign investors is rather uncommon and limited to few cases.

- There were difficulties particularly in the photovoltaic industry. Support for renewable energy, which was also supposed to attract foreign investment, was not granted as promised. The Commission even helped in this: first, it did not consider funding of renewable energies as state aid, but later after the investments had been made it changed its view, thus protecting the Czech Republic's approach depriving investors of their investment. It did not concern only foreign investors. Nevertheless, numerous complaints are being filed, especially by foreign investors.

- The investment protection agreements are appreciated, particularly for its preventive effect. Unfortunately, they had to be used on a large scale for arbitration proceedings as the Czech government acts illegally against investors.

Key figures:

- **AHK Economic Outlook 2017**: As regards legal certainty (2.62), corruption (2.27), public administration (2.40) and public procurement transparency (2.35) companies are dissatisfied; only the predictability of economic policy (3.20) is evaluated slightly better (numbers are based on a scale of 1 = dissatisfied to 5 = very satisfied, unlike in other surveys). However, the willingness to invest is rather rising (41 %). 93 % would invest again in the Czech Republic. Overall, the Czech Republic is one of the top 3 investment locations among the CEE states.

- **World Justice Project Rule of Law Index 2016**: Rank 17

- **Corruption Perceptions Index CPI 2016**: Rank 47

- **Global Competitiveness Index 2016-2017**: Rank 54 in the sector institutions

- **UNCTAD Investment Dispute Settlement**: 34 cases, 29 of them from EU countries

Estonia

- In Estonia, enterprises are relatively satisfied with the legal system and the public administration.

- The AHK has no experience with unequal treatment of foreign investors. The government is very interested in foreign investors.

- Corruption is not a big problem.

- New regulations are frequent; however, retroactive changes are no problem for the enterprises.
Individual cases in which legal violations occur cannot be ruled out. Investment protection is not a big issue.

Key figures:

- **AHK Economic Outlook 2017**: Regarding the legal certainty (2.13), the predictability of the economic policy (3.18), corruption (2.33), the public administration (2.52) and the transparency of public procurement (2.64) companies are still relatively satisfied (numbers are based on a scale from 1 = very good to 5 = poor). But the tendency is going down again, in particular concerning the predictability and the public administration. The willingness to invest is not quite as great as in the previous year. Only 83 % of companies would invest again in Estonia – 10 percentage points less than last year.

- World Justice Project Rule of Law Index 2016: Rank 14
- Corruption Perceptions Index CPI 2016: Rank 22
- Global Competitiveness Index 2016-2017: Rank 23 in the sector institutions
- UNCTAD Investment Dispute Settlement: 4 cases, 3 of them from EU countries

**Greece**

- Intra-EU BITs are considered very important for protecting existing investments and attracting new ones. They provide additional legal protection and help particularly as a possible last resort in negotiations, when ministries and authorities act in a grossly illegal manner.

- The national legal system currently does not provide adequate replacement. It is not efficient, the judges are overburdened and judicial proceedings take years. Even if there are attempts at reform, experience must be gained first.

- Arbitration clauses are already regularly included in contracts. In the event of a termination of the intra-EU BITs, enterprises would probably try even more to agree on arbitration and mediation clauses. The AHK has set up an arbitration and mediation body to provide enterprises with an alternative dispute resolution mechanism.

- In addition, legislative changes lead to legal uncertainty; they are partly retroactive, e.g. in tax and energy law. For example, the feed-in tariffs in the photovoltaic sector have subsequently been sharply reduced, which has led to numerous legal disputes.

- The EU Commission usually does not intervene in case of infringements. At most, it makes recommendations.

- Furthermore, oligarchs often make it difficult for foreign investors to gain access to the market. Many times, they are preferred in tenders, in some cases the tenders are tailored directly to them. Foreign companies often look for local partners to help them entering the Greek market. For SMEs it is even harder in that respect.
Corruption is less common in courts, even though the pressure on judges is considerable due to the low salaries and work overload.

If the intra-EU BITs should be removed, it would be useful to replace them with an EU mechanism to avoid the loss of an effective instrument of legal protection.

Key figures:

- World Justice Project Rule of Law Index 2016: Rank 41
- Corruption Perceptions Index CPI 2016: Rank 69
- Global Competitiveness Index 2016-2017: Rank 23 in the sector institutions
- UNCTAD Investment Dispute Settlement: 3 cases, 2 of them from EU countries

Hungary

German and other foreign companies are still dissatisfied with legal certainty. The location factors predictability of economic policy, combatting corruption, public administration and the transparency of public procurement are partly considered even worse than before. In addition, concerns over political and social stability and the development of the rule of law have been arising during the last years.

In recent years there have been repeated cases of legislative interventions that de facto deprived German enterprises of their business foundations (for example, in the area of municipal waste management, pharmacy chains, land ownership).

Although such cases were generally addressed towards the European Commission, this was not always successful. Also, when the Commission decided to pursue infringement proceedings, as concerning the acquisition of agricultural land, there was little progress. In fact, the Commission has virtually no power to influence Hungary if it refuses to transpose EU law.

In the future, due to the public rhetoric of the Hungarian Government (for example, the government's PR campaign called “Stop Brussels”), it is unlikely that EU legislation will be implemented in the future fully and timely. Rather, the rule of law and democracy seem more and more in danger. This worries investors.

Several arbitration proceedings against foreign companies are currently pending against Hungary. Investment protection agreements are often the only means of pressure that helps in negotiations. The continuation of investment protection agreements is, therefore, considered very important.

Key figures:

- AHK Economic Outlook 2017: As regards legal certainty (3.38), predictability (3.66), corruption (4.12), public administration (3.26) and transparency of public procurement (3.93) companies are very dissatisfied (numbers are based on a scale from 1 = very satisfied to 5 = dissatisfied).
These location factors are at the end of the scale. The trend in recent years is slightly positive. However, compared to 2005, the balance sheet is negative. Nevertheless, the willingness to invest is rather rising (40%). 81% would invest again in Hungary.

- World Justice Project Rule of Law Index 2016: Rank 49, predominantly only evaluations in the middle third
- Corruption Perceptions Index CPI 2016: Rank 57
- Global Competitiveness Index 2016-2017: Rank 65 in the sector institutions
- UNCTAD Investment Dispute Settlement: 14 cases, 13 of them from EU countries

Latvia

- Enterprises are dissatisfied with the public administration, the lack of legal certainty, corruption, the lack of transparency in public procurement and the unpredictability of economic policy.
- For enterprises, which are obtaining initial information about Latvia to settle there, the issue of effective legal protection is less significant than other location factors.
- For investors who encounter difficulties, however, the possibility of arbitration is of great importance. Intra-EU BITs are considered very important for the protection of existing investments. Their preventive protective effect is particularly important. They provide additional legal protection and help particularly as a last resort in negotiations, when ministries and authorities act in a grossly illegal manner. In several cases undertakings could be helped.
- Unfair and unequal treatment are not very common, but they exist, e.g. in competition law and in public procurement.
- Legal proceedings often take a long time; there is a lack of well-trained judges.
- Corruption is unfortunately also prevalent in the courts, in the civil courts more than in the administrative courts.
- Interim legal protection and insolvency law are sometimes abused to force competitors out of the market.
- The European Commission does not support in cases where internal market law is not properly implemented and investors at disadvantage.
- Arbitration clauses are an issue for enterprises. However, there are doubts on the qualification of local arbitrators.

Key figures

- **AHK Economic Outlook 2017**: As regards legal certainty (3.17), the predictability of economic policy (3.53), corruption (3.69), the public administration (3.49) and the lack of transparency in public procurement (3.64) enterprises remain dissatisfied (numbers are based on a scale from
Berlin, 1. November 2017

1 = very good to 5 = poor). These location factors are at the bottom of the satisfaction scale. The tendency in the last three years is negative. Only 78% of the enterprises interviewed would invest again in Latvia. At the same time, however, the willingness to invest is rising (44%).

- World Justice Project Rule of Law Index 2016: no information
- Corruption Perceptions Index CPI 2016: Rank 44
- Global Competitiveness Index 2016-2017: Rank 64 in the sector institutions
- UNCTAD Investment Dispute Settlement: 7 cases, 4 of them from EU countries

Lithuania

- While legal certainty is evaluated better in Lithuania, enterprises remain dissatisfied with the public administration, corruption, the lack of transparency in public procurement and the unpredictability of economic policy.
- For companies obtaining initial information about Lithuania to settle there, the issue of effective legal protection is less significant than other location factors.
- For investors who encounter difficulties, however, the possibility of arbitration is important. Intra-EU BITs are considered important for Lithuania for the protection of existing investments. Their preventive effect is of great importance. They provide additional legal protection and help particularly as a last resort in negotiations, when ministries and authorities act in a grossly illegal manner.
- Unfair and unequal treatment is not very common. Often, public authorities want foreign suppliers because they expect the quality to be higher. Nevertheless, in individual cases there is also discrimination. In public procurement, foreign companies often use joint ventures with local enterprises in order to use their knowledge of local conditions, but also to prevent discrimination.
- Legal proceedings often take a long time. There is a lack of well-trained judges.
- Corruption is unfortunately still a problem.
- Arbitration clauses are an issue for undertakings, but local arbitration is not yet well developed.

Key figures:

- **AHK Economic Outlook 2017**: As regards legal certainty (2.83), the predictability of economic policy (3.21), corruption (3.40), the public administration (3.08) and the lack of transparency in public procurement (3.52) companies remain dissatisfied (numbers are based on a scale from 1 = very good to 5 = poor). These location factors are at the end of the satisfaction scale. The trend over the last three years has been stagnating to negative, especially with regard to corruption and public procurement. Nevertheless, 88% of the undertakings would invest again in Lithuania. At the same time, the willingness to invest is rising (49%).
− World Justice Project Rule of Law Index 2016: no information
− Corruption Perceptions Index CPI 2016: Rank 38
− Global Competitiveness Index 2016-2017: Rank 51 in the sector institutions
− UNCTAD Investment Dispute Settlement: 5 cases, 3 of them from EU countries

Poland
− Business remains dissatisfied with regard to legal certainty, the predictability of economic policy and the transparency of public procurement. In addition, concerns over political and social stability and the development of the rule of law have been arising during the last years.
− The efficiency of the local legal systems is an important location factor for investors of all sizes. For larger medium-sized enterprises to large investors, investment protection plays a role in the investment decision, especially the preventive effect of BITs. For SMEs, on the other hand, they have little or no relevance to the investment decision and choice of location, not least because of the lack of knowledge about the problems that might arise and about the opportunities afforded by investment protection.
− Expropriations are not known. Discrimination is occasionally discussed, for example, in relation to a bill introducing a tax on retail sales above a certain annual net turnover or with a certain sales area. This would mainly affect foreign groups of companies. However, an intervention by the European Commission helped here.
− The lack of efficiency of the Polish courts is a fundamental problem. Lengthy proceedings are common. They are above average in civil proceedings involving foreign investors. In the field of private construction law, this has led to payment defaults or delays and thus to a risk of insolvency for German enterprises. A targeted approach against German investors is, however, regularly not visible.
− In principle, strengthening arbitration is welcomed. ISDS has also been widely used in the past. An EU-wide investment agreement is considered a useful solution.

Key figures:
− **AHK Economic Outlook 2017**: With regard to legal certainty (2.75), the predictability of economic policy (2.24), corruption (3.01), the public administration and the transparency of public procurement (2.80), enterprises are dissatisfied (figures are based – unlike the other surveys – on a scale of 1 = dissatisfied to 5 = very satisfied). Nevertheless, 95.6 % of companies would invest in Poland again. This puts Poland among the first in terms of investment attractiveness among CEE countries.
− **World Justice Project Rule of Law Index 2016: Rank 22**
− **Corruption Perceptions Index CPI 2016: Rank 29**
Global Competitiveness Index 2016-2017: Rank 65 in the sector institutions

UNCTAD Investment Dispute Settlement: 23 cases, 15 of them from EU countries

Romania

According to the AHK Romania German companies attach particular importance to the fight against corruption and the rule of law. AHK member companies emphasise time and again that predictability, stability, transparency and legal certainty are important in order to maintain confidence in the location and to plan and implement further investments. An efficient legal system – in terms of legal protection against business partners, but also against interference by the state – is important to companies: Experience has shown that investors search for information before they get involved in Romania, in particular with regard to legal certainty.

With the new political leadership since autumn 2016, the uncertainty and unpredictability in economic life has increased according to the Economic Outlook 2017 of the AHK Romania. Confidence in the government has diminished and with it the hope that the necessary steps will be taken to promote reforms such as the modernisation of administrative structures and the continuation of the fight against corruption.

In terms of corruption, the Romanian legal system and the judiciary have made further progress in recent years. The measures and developments, e.g. the condemnation of high-level political decision-makers and the commitment of the relevant institutions had led to positive reports under the Cooperation and Verification Mechanism (CVM) and also changed the perception of businesses positively. However, envisaged legislative changes question whether the newly elected government has the will to continue combatting corruption without compromise. This leads to a strong uncertainty among German investors. 62 % of the enterprises were dissatisfied or very dissatisfied with the fight against corruption (only 26 % in 2016) and the number of satisfied respondents dropped to 17 % (2016: 28 %).

With regard to the public administration, there is also room for further improvement with 49 % of dissatisfied respondents.

As regards legal certainty, no improvements can be reported. Frequent and unexpected legal changes over the past two years, including in retail and waste management, and in tax and criminal law have led to concerns. More than two-thirds of German companies are now dissatisfied with the predictability of economic policy. The companies are dissatisfied because of the political instability and the resulting change of contact persons. In addition, the bureaucracy and the slow processing of applications still cause many problems. In the area of renewable energy promotion, there have also been cuts in recent years that make investments unprofitable. Their legality has been questioned and is subject to legal proceedings and arbitration. However, this affects all economic operators without discrimination. Targeted discrimination against German enterprises is not known.
With regard to the transparency of public procurement, half of the companies are still dissatisfied. The AHK hopes that a new law will create a clear and fair framework for awards in the future and improve the situation for companies. So far, however, undertakings have not been changed to a more positive evaluation.

In general, arbitration tribunals are considered useful, even if the local legal protection system is not seen as inefficient as in other CEE states.

In recent years, there have been several arbitration procedures – partly with success (Eurofood, Micula), partly without (Rompetrol). In the field of renewable energy, several companies have taken legal action.

Key figures:

- **AHK Economic Outlook 2017 (Results of the Survey):** Mostly dissatisfied are the enterprises in particular with regard to the predictability of economic policy (69 % dissatisfied or very dissatisfied), legal certainty (52 %) and – more recently – the fight against corruption (62 %). In terms of the transparency of public procurement 49 % are dissatisfied or very dissatisfied and 48 % concerning the public administration. Only 37 % of enterprises expect their capital expenditures to rise, while 21 % anticipate a negative trend. After all, 88 % of companies would invest in Romania again.

- World Justice Project Rule of Law Index 2016: Rank 32
- Corruption Perceptions Index CPI 2016: Rank 57
- Global Competitiveness Index 2016-2017: Rank 92 in the sector institutions
- UNCTAD Investment Dispute Settlement: 13 cases, 8 of them from EU countries

**Slovakia**

- The location factors of legal security, public administration, predictability of economic policy, combating corruption and transparency in public procurement have been lagging behind for many years. The tendency of the last years is also negative. Although Slovakia is open to foreign investors and even if other location factors speak in favour of Slovakia, this makes investment difficult.

- Judicial proceedings take a long time, even if the legal situation is relatively clear.

- When crimes are committed against foreign companies, criminal proceedings do not provide protection as they too are not effectively pursued by the investigative authorities. Instead, enterprises have the impression that they are sometimes even used to spy the foreign undertakings.

- Corruption is still a common, serious problem.
Even if a reform of procurement law has begun, this does not work yet. Corruption is currently widespread.

Many companies attempt to include clauses on the application of German law and German jurisdiction in their contracts. Also arbitration becomes more and more an alternative. Investment protection is considered a good alternative and last resort for emergency situations.

In some cases, the German Embassy and the AHK supported enterprises. However, they too are sometimes helpless in the face of the government’s inactivity. For political reasons, the EU Commission is very reluctant to support individual companies.

There were also difficulties in the photovoltaic sector in Slovakia, which, however, did not only affect foreign investors.

The bilateral chambers and other relevant business associations launched a Rule of Law Initiative, which developed an action plan. The main objectives are to improve the transparency and the predictability of the legislative process, to combat corruption that is harmful to the “Slovak brand”, and to have a transparent and effective judiciary as a strong base for domestic and foreign investors.

Key figures:

- **AHK Economic Outlook 2017**: With regard to legal certainty (4), predictability of economic policy (3.59), corruption (4.33), public administration (3.66) and transparency of public procurement (4.17) companies are very dissatisfied (figures of are on a scale of 1 = very satisfied to 5 = extremely dissatisfied). They even see deterioration. Only 79 % of the enterprises would choose Slovakia again as an investment location. However, 37 % of companies expect capital expenditures to increase compared to the previous year. In terms of the most attractive investment locations among the CEE countries, Slovakia is in the front despite of the difficulties.

- World Justice Project Rule of Law Index 2016: no information
- Corruption Perceptions Index CPI 2016: Rank 54
- Global Competitiveness Index 2016-2017: Rank 102 in the sector institutions
- UNCTAD Investment Dispute Settlement: 13 cases, 10 of them from EU countries

**Slovenia**

- The location factors combatting corruption and public administration have been at the very end for years. This hampers investment although Slovenia is, in general, open to foreign investors. Legal certainty and the predictability of economic policy have improved and enterprises are mostly satisfied with the legal system despite of the sometimes excessive bureaucracy.

- Even if the surveys concerning public procurement have improved, there are still significant problems. The companies are threatened with unfair treatment as there is currently no effective legal protection in the review process: The National Audit Commission is not a court according
to EU law. Its members are not judges and have no comparable independence. They are not obliged to take account of all procedural guarantees under Article 6 ECHR. Legal protection against their decisions is limited. As a result, there is a risk of unfair treatment, especially of foreign investors. A complaint to the EU Commission for incomplete implementation of EU law is supported by the AHK.

- An Arbitration Organisation for Commercial Matters has been established as Evropski Center za Reševanje Sporov (European Center for dispute resolution, ECDR) in Ljubljana. Whether it would also support investor-state disputes is unknown.
- An EU act or guide supporting informal procedures and arbitration would be welcomed.

**Key figures:**

- **AHK Economic Outlook 2017**: There have been some improvements in 2017 compared to the very negative surveys from previous years, especially in terms of legal certainty. Nevertheless, more than half of the enterprises remain dissatisfied with the fight against corruption (71 %) and the public administration (57 %). Almost half of the companies are dissatisfied in terms of transparency of public procurement (48 %) and the predictability of economic policy (49 %). Only in terms of legal certainty Slovenia gets better results with “only” 39 % dissatisfaction. However, 90 % of enterprises would choose Slovenia again as an investment destination – more than last year (81 %) – and 35 % of companies expect capital expenditure to increase compared to the previous year.

- World Justice Project Rule of Law Index 2016: Rank 27
- Corruption Perceptions Index CPI 2016: Rank 31
- Global Competitiveness Index 2016-2017: Rank 58 in the sector institutions
- UNCTAD Investment Dispute Settlement: 3 cases, 3 of them from EU countries

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