

Employers' Group

Newsletter July 2015



Luxembourg Presidency:

Employers' Expectations

As Luxembourg employers, we believe that the Luxembourg Presidency is of strategic importance to the country. The government will have an opportunity not only to take the limelight by forging ahead with legislative affairs at European level, but also to set its own priorities. The Presidency is also an ideal opportunity to give a positive shine to our country by showcasing what Luxembourg does best. We at Fedil (Business Federation Luxembourg) will be publishing a comprehensive document highlighting our priorities. We are convinced that the key to success in Europe is held by businesses. Because they are innovative, productive and constantly pursuing excellence, they are the source of our wealth. What they need is a political framework that helps them to flourish in Europe and across the world. Far more than the purely national dimension is at stake: solutions must be forthcoming from Europe. Whether completing the internal market, introducing a common energy policy or working towards a free-trade policy, it is up to the European Union to build a framework in which businesses can generate growth and create jobs.

Fedil is committed to framing a comprehensive and coherent industrial policy which not only covers every stage in the value chain but also strengthens its links with digital technology. To achieve this, a new system of industrial governance is essential, bringing together all industrial competitiveness issues across the full range of the EU's fields of action. Every new initiative must be scrutinised in terms of its potential impact on industrial competitiveness. This must also be put at the core of decision-making at all levels, at every stage of the industrial value chain.

In this regard, the Competitiveness Council plays a key role in the institutional machinery: this role needs to be stepped up significantly so that it becomes the real defender of competitiveness in the EU. It must ensure that all policy initiatives and legislative proposals contribute to industrial growth in Europe. The government's commitment within the High-Level Committee for industrial development demonstrates its determination to press ahead and make industrial policy a priority.

The task of creating a solid industrial foundation in Europe that uses resources effectively and is competitive must be tied in with a coherent European policy on climate and energy, not least in terms of measures to solve the problem of high energy prices, especially for energy-hungry industries. EU energy and climate policy must match its industrial ambitions. Energy prices that are two or three times higher than our main competitors' have a serious impact on Europe's international

competitiveness and the viability of Europe's industrial value chain as a whole.

European energy policy must rest equally on three pillars: price competitiveness, security of supply and the environment. On the international scene, and with the aim of creating a level global playing field for European industry, the European Union must back an ambitious international climate agreement in Paris in 2015, at the same time making sure that it does not become an isolated front-runner. The Luxembourg Presidency will have a key role in coordinating the EU's position, and it must ensure that European businesses do not pay the price of a unilateral policy. The European Union must reform the post-2020 emissions trading system, by establishing the ETS as the sole EU instrument for decarbonising industry and promoting investment in low-carbon technologies. Against the backdrop of the future reform proposal from the Commission, it is essential that installations with the best CO₂ performance in terms of dealing with the carbon leakage risk should not be hit by further emission reduction costs.

Completing the internal market is a priority for Fedil. In spite of the adoption and largely successful implementation of more than 3 500 measures over the last thirty years, formidable obstacles and other "missing links" persist. Businesses still have to cope with 28 different sets of national legislation, making market access very costly or even impossible. It is consequently essential for the European Union to make completing and deepening the single market one of its top priorities in order to further open up intra-European trade, boost the mobility of factors and expand opportunities for cross-border cooperation. The Luxembourg Presidency should urge the European Commission to put forward solutions that are simultaneously ambitious and pragmatic so that the right solutions can be found for the difficulties facing our businesses.



In completing the single market and enhancing European competitiveness, it is crucial to fully harness the potential of the digital economy. Europe has everything it needs to be at the forefront of the digital revolution, but over recent years it has lost ground in this sector. First of all, the EU must create a framework and the conditions needed for its digital revolution to take place. An integrated industrial policy is essential in order to help all economic sectors to go digital. Digital technologies can effectively have a cross-fertilising

effect on all economic sectors and society at large. These impacts must always be taken into account when introducing new legislation. The digital economy is of strategic importance to our country, and the Presidency must help put European policy on a solid footing.

Open and fair trade and strategic partnerships with major economies are fundamental in order to stimulate economic growth, competitiveness and employment in Europe. In this regard, the EU must not miss the opportunities provided by the on-going negotiations with the United States, which should lead to the conclusion of a complete, ambitious and growth-friendly TTIP.

The transatlantic economy is already the world's largest market as well as its most integrated, in terms of both trade and investment. The dominant size and wealth of the transatlantic economy means that relations between the EU and US also shape the world economy as a whole. The Luxembourg Presidency, together with its European partners, must convince public opinion of the soundness of this agreement and its positive repercussions for growth and employment in Europe, while maintaining a high level of consumer protection.

Luxembourg facts and figures:

- ◆ **Area** 2,586.4 km²
- ◆ **Population:** 549,680
- ◆ **Languages:** French, German, Luxembourgish
- ◆ **GDP per capita:** (EU28=100) 263
- ◆ **Prevised GDP growth** in 2015: 3,4%
- ◆ **Unemployment rate:** 5,7% (2015 estimation)
- ◆ **Gross public debt (% of GDP):** 24,9 (2015 estimation)

(source: Eurostat)



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Bulgarian Social Dialogue: Hot Issues

Social dialogue in Bulgaria is well developed, with many examples of reaching consensus to promote the growth of the Bulgarian economy. However, there are still some issues that are intensely debated where Bulgarian employers have recently been having problems making their voices heard. Therefore, we are looking forward to a fruitful debate with the Employers' Group Bureau to find innovative ways to resolve disputes, the most important of which are:

The minimum monthly salary in Bulgaria. This is set according to the Bulgarian Labour Code, where the Council of Ministers decides its level after a formal discussion in the National Tripartite Council. It is very rare for the state to take the employers' views and arguments, although they are relevant and sound, into account during these discussions and keeps increasing the minimum salary faster than the economic realities allow for. Then the level gets too high, which has a negative influence on a number of economic processes, impeding economic growth and creation of new jobs. For example, the minimum salary in Bulgaria has risen five times during the period 1999 - 2015, or by 437 %, without matching labour productivity growth or any market trends.

The way the minimum thresholds on which securities are paid are set. Once per year the social partners negotiate to set the thresholds in 85 sectors, for all professional positions in each sector. Once the agreement has been reached, the social and pension securities are paid to the agreed minimum threshold, even if the actual salary is lower. Out of 85 sectors, agreement was reached in 57 sectors (maximum score) in 2013 and in 30 sectors (minimum score)

in 2011. The main problem is that for the sectors where an agreement has not been reached, the Minister of Labour has (and usually exercises) the right to decide and to set the threshold himself (usually the average agreed increase). This administrative decision does not reflect any objective factors of economic development or of the labour market, nor are they a result of agreement between the social partners and therefore it has detrimental effects on employment and competitiveness in the affected sectors because it significantly impedes the employment of staff with lower qualifications and increases undeclared labour.

According to the Bulgarian Labour Code, the Council of Ministers sets an **additional salary for length of service and professional experience** (currently 0.6 % for each additional year of service and professional experience). Bulgarian employers have been pleading for a long time now for this additional salary to be abolished. It was finally abolished in 2012 for civil servants, but was kept for private sector employees, creating inequalities between the private and public sector and hampering competitiveness. Currently the average amount of this additional salary is about 12 % on top of the main salary.

Erosion of the second (capital) pillar of the 3-pillar Bulgarian pension system. On Christmas 2014, the Bulgarian Government suggested a change in the Bulgarian pension system model which endangered the second (capital) pillar by absorbing it completely into the first pillar (as was done in Hungary), putting the whole pension system at risk of future instability. The changes envisage the right for citizens to move their instalments from the second pillar (capital, with personal accounts) to the first pillar (state-owned, cost-covering), thereby endangering the adequacy of the pension levels, the diversification of pension sources, as well as the Bulgarian capital market and the mid-term fiscal position.

Extraordinary meeting of the
Employers' Group Bureau

Competitive Industries for Sustainable Growth and Jobs

"Euxinograd" Palace
Varna, Bulgaria

06-07|07|2015



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Association



**BULGARIAN
INDUSTRIAL CAPITAL
ASSOCIATION**

Why does ISDS matter?

By Jonathan Peel



The key to the ISDS controversy lies in the ability of companies who invest in another country to protect their interests when under threat. Foreign Direct Investment (FDI) is an important contributor to economic growth and jobs, but companies that so invest are ipso facto taking a specific risk.

If two countries desire to promote economic relations with each other through an International Investment Agreement (IIA), each will promise the other that they will guarantee certain levels of treatment to investors and investments from the other country. States look to include provisions to protect their own companies against discriminatory actions of trade partners.

These promises then need to complete full domestic ratification processes. They do not in any way prioritise corporate interest over the right of governments to so regulate. In the interests of the rule of law governments need to be held to the guarantees they give. Foreign contractors need to be protected against disproportionate and abusive treatment, such as through direct expropriation, discrimination on grounds of nationality and unfair and unequal treatment when compared with domestic investors.

When matters go wrong, a neutral disputes mechanism is important. Investments are often very long term and political circumstances in host states can change. An IIA between two states (or Regions) involves international law. To be effective that needs an effective, balanced, international disputes settlement mechanism.

With most IIAs, however, the disputes settlement mechanism puts together individual companies and the host state through the Investor to State Disputes Settlement (ISDS) Procedure (Provision for ISDS is found in some 93% of the more than 3,250 IIAs signed to date, although the procedure has only been used in under 100, i.e. in less than 3%). ISDS is retrospective in character. Unlike the WTO Disputes Settlement Procedure, if a state loses a case only payment of compensation is involved. It does not need to repeal the relevant legislation. Investment is not a WTO competency, being dropped from the Doha Round agenda in 2003.

Equally, it is unrealistic for an aggrieved company to expect

that any dispute should automatically be taken up at State-to-State level, at political or diplomatic level. If companies were to rely on the EU to take disputes up on a State-to-State basis, very few could be so pursued, and smaller companies would be less likely to have their voices heard. Many cases between two mature democratic legal systems are unlikely, but if this Procedure were to become the norm, the number of cases would rise, with major resource implications.

As Commissioner Malmström herself has pointed out in connection with the TTIP negotiations, international law cannot be invoked in US courts, and no US law prohibits discrimination against foreign investors. In other countries, domestic courts may be less trustworthy.

Investment became an EU competency under the Lisbon Treaty. The EU-Canada trade agreement (CETA), together with the investment chapter in the EU-Singapore Free Trade Agreement, both yet to be ratified, are the EU's first investment agreements. CETA includes an extensive investment protection chapter including provision for ISDS, which has gone a long way to address outstanding concerns, but ISDS needs to evolve further.

Over time a number of real and perceived abuses have arisen through the use of ISDS, which need to be addressed. ISDS needs to be updated. Apart from the principle of "Most Favoured Nation" (MFN), and the cover normally included by the Commission to deal with compensation in cases of war, revolution and so on, investor protection under an IIA and therefore open to the use of ISDS, needs to be restricted to cover the four substantive protections, namely:

- not to discriminate on grounds of the nationality of an investor;
- a minimum standard of treatment, usually described as "fair and equitable";
- prompt, adequate and effective compensation when expropriation occurs (not discriminatory and with due process);
- allowing transfer of funds related to the investment.

The EESC Employers' Group also welcomes the four areas for further study on investment protection and ISDS identified by the Commission in January 2015 as a result of its public consultation on investment protection and ISDS in

TTIP, following its inclusion in the mandate for the negotiations given unanimously by the Member States. These covered:

- the protection of the State's right to regulate;
- the establishment and functioning of arbitral tribunals;
- the review of ISDS decisions through an appellate mechanism;
- the relationship between ISDS and domestic judicial systems.

Due protection of the **State's right to regulate** is essential, and any remaining ambiguities removed. As stated in the Committee's Opinion on TTIP (REX/390), it is "essential that any ISDS provision proposed in the TTIP does not hinder the ability of the EU Member States to regulate in the public interest". Previous IIAs have been primarily drafted with the need to protect investments. Both CETA and the Singapore Agreement have tightened key definitions to avoid unwarranted interpretations and specifically refer to the right to regulate in the preamble to each agreement. The EESC Employers' Group considers that this should now be included in the body of the relevant text, as a specific Article of any such agreement.

It is essential that **arbitrators on ISDS tribunals** must be fully impartial and not open to conflicts of interest. The EESC Employers' Group urges that all arbitrators must be chosen from a roster pre-established by the Parties to the relevant agreement, and that clear qualifications are established for such arbitrators, notably that they are qualified to hold judicial office and have proven expert knowledge in the relevant fields of international law.

An **appellate mechanism** is also essential – a legal process without a right of appeal is rightly very rare, although this exists in current IIAs. The EESC Employers' Group notes reference was made to an appellate mechanism in the original TTIP negotiating directives. Design of such a mechanism will be critically important, including the methods how members are designated, their qualifications and remuneration, together with any time limits to be applied. It should cover errors of law and errors of fact. Early consideration should be given as to whether a bilateral mechanism could be made multilateral, perhaps modelled on the WTO Appellate Body. Any such mechanism will involve extra costs, but that should be taken into account.

The relationship between **ISDS and domestic judicial systems** will be harder to resolve. IIAs are international agreements and domestic courts do not necessarily have the competence to interpret matters of international law. Even

the best system can falter, but double claims should be prohibited. Either potential litigants should make a final choice at the start of proceedings, or lose the right to go to domestic courts as soon as they turn to ISDS.

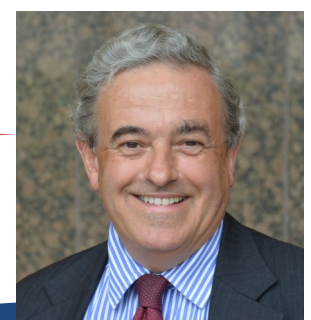
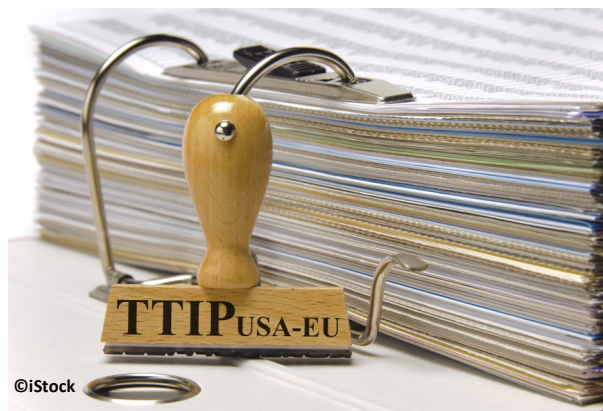
A multilateral, **International Court** is the longer term answer. This needs to be developed in parallel with the development of ISDS in TTIP and elsewhere. It is imperative that some form of international investor protection remains whilst such an international body is negotiated and established.

It is important to ensure critical mass for the establishment of an International Court as the longer term objective for investment dispute settlement. The widespread acceptability of such an international appellate mechanism is likely to stem from it being set up through consensus, which should deal with potential related problems that all new international institutions, including the International Criminal Court, face.

The EESC Employers' Group cautions against the suggestion that, as all "G7" members are currently involved in IIA negotiations, these start to develop an International Court separately by themselves. Critical mass can only be achieved if a much wider spread of countries involved from the onset, and the door is left open for others to join as and when they are interested.

In the meantime, the EESC Employers' Group recommends the EU and the US to engage on a bilateral investment dispute settlement mechanism in TTIP.

A Business Round Table organised by the EESC Employers' Group on the Transatlantic Trade and Investment Partnership, TTIP, concluded that: "*An international agreement such as TTIP should create the right conditions to attract a high level of future investment in the transatlantic market. This includes granting ample access and non-discriminatory treatment for investors on both sides and improving the current framework for IP, including ISDS by making it more accessible to SMEs and striking a proper balance between investor rights, the right of states and local authorities to regulate in the public interest*".



About the author:

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The digitalisation of industry

On 5 May 2015, Group I members and Category I delegates, all of whom members of the CCMI, held a debate on "The digitalisation of industry: what does it mean in practice for production today?"

As industry representatives in the CCMI, we invited representatives of the industrial sectors most affected by the digitalisation of industry to speak on the subject:

- Pierre Lucas, senior adviser for Orgalime (the European Engineering Industries Association)
- Holger Kunze, director of the European office of the VDMA (the German mechanical engineering federation)
- Bertrand Deprez, director for European affairs at multinational Schneider Electric (electrical components)

Group I president Mr Krawczyk opened the discussions by stressing the importance of the subject. Several references were made during the debate to the statements made by commissioner Günther Oettinger at the 2015 Hannover Messe on 14 April. He had referred to digitalisation as the "start of the fourth industrial revolution that will change not only the entire productive sector, but also our economy and our lives".

According to our guests, the issue is not so much the digitalisation of the entire manufacturing industry as the way industry takes on board digital tools and, more specifically, big data. This data is no longer generated solely by the interconnection of a billion human beings, but also by that of 25 billion objects (50 billion by 2020).

The opportunities are immense and there is a strong possibility that the next Google or Apple will come from a traditional sector such as textiles, construction, energy or automobile manufacturing. These are industries where Europe is strong and it will be important to ensure that they embrace digital transformation.

The debate homed in on the concept of **Industrie 4.0** and, more specifically, the following aspects:

- factory digitisation (smart factories organising constant and instantaneous communication between the various tools and work stations in the production and supply chain);
- factory flexibility and the customisation of production, giving the final consumer and various partners a place in the process;

- new logistical tools to increase exchanges of data between the factory and external logistics players;
- raw material and energy efficient factories whose management is made more efficient by coordinating needs and availability, thus fuelling additional productivity gains.

Industry is calling for:

- coordination and incorporation of the Industrie 4.0 concept when it comes to the implementation of the European Commission's three main communications of 2015 on: energy policy reform (published on 25 February), the digital single market (published on 6 May) and the reform of the internal market (expected in the autumn);
- accelerated deployment of energy and broadband digital infrastructure using, for instance, the resources of the EU budget and Juncker's Investment Plan funds;
- an emphasis on technical standardisation (fewer laws and more standards), given the limitations of legislation in the face of a rapidly evolving sector, providing this remains in the hands of industry;

- provision for training: promoting the development of a new kind of training (courses for technicians and engineers that combine digital technology with traditional sciences) so that these trades can make full use of the Industrie 4.0 concept.

At the end of the debate, Mr van Iersel presented the conclusions of the conference held on 25 March 2015 at the EESC on the same

subject - the impact of digitalisation on business and society: a challenge for policy-makers. Lastly, expressing their thanks for having been invited, the three guests underlined the quality and relevance of the questions asked by the participants and hoped that a further meeting might be held next year if possible.



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A very promising meeting in Paris

The Employers' Group bureau held an extraordinary meeting in Paris on 2 and 3 June 2015. This mission, led by Jacek Krawczyk, the Group's president, made it possible to meet the leaders of MEDEF and discuss two topical issues, namely the arrangements for managing the Greek crisis (presented by Jean-Paul Betbeze) and preparations for the COP 21 in Paris (presentation by Olivier Imbault), and to begin a process of enhanced cooperation on matters of common interest (including promoting the TTIP to SMEs).

This meeting also provided an opportunity for a frank and in-depth discussion with the business group of the French economic, social and environmental council, headed by Françoise Vilain. This discussion came at a very opportune moment because the French employers would like to monitor European issues more closely in cooperation with the EESC during its next term of office (November 2015).

Two other sectoral meetings, covering the very different markets in the construction sector and high-end industries, benefitted from the input of professionals on the economic situation in France, which is characterised by a still fragile level of consumption, a sharp downturn in the pace of construction

and a very globally-oriented approach for the French creative industries, which account for 2.7 % of French GDP. The question of monitoring whether the obligations of the Posting of Workers Directive in France are being observed prompted lively exchanges, illustrating the objective tension existing between the creation of a single market for services and its economic impact on a sector which benefits from the deadweight effect by employing labour from EU countries where the cost of social protection is lower to work on its sites.



Transport Category meeting in Frankfurt

On 24 June, the Transport Category held its 2nd Extraordinary Meeting in Frankfurt. The meeting was combined with a study visit to DB Schenker in Frankfurt. The members of the Transport Category were welcomed by Ms Silke Janser, Operations Manager at DB Schenker Rail, Mr Boris Dobberstein, Head of European Service Design at DB Schenker Rail and Mr Oliver Sellnick, Vice President, European Corridor Management at DB Netz.

Ms Janser started by presenting DB Schenker Rail - Operations Management, which is considered to be the "engine room" of DB Schenker Rail, from which every train and wagon in the European network is operated. The delegation had the opportunity to visit the Operations Management site. A team of highly trained professionals is responsible for the 24/7

dispatching, the control of the electrified engines and the daily operations.

Mr Dobberstein then took the floor to elaborate on the growth prospects of European rail freight. Although there were huge growth opportunities for rail freight, we could still fail, he explained. This could be attributed to four major reasons:

- downturn of the European economy
- insufficient investment
- unfavourable cost development
- failure to attract private investments.

He emphasised that high operational and financial efforts were necessary to enable smooth European rail transport.

In the afternoon, Mr Sellnick continued the debate. DB Netz manages the largest and most complex network in Europe and had a revenue of EUR 4.6 billion in 2013. He underlined that DB Netz was a key promotor of international corridors. Building TEN-corridors and bringing rail freight corridors into existence were its main goals in order to create a competitive European network.



Commissioner Bieńkowska at the meeting of the Employers' Group bureau

SMEs are at the very heart of my concerns, I am the SME envoy to the EC", said Elżbieta Bieńkowska, Commissioner for the Internal Market, Industry, Entrepreneurship and SMEs, launching the debate with the Employers' Group bureau.

The members of the Employers' Group presented three ongoing EESC opinions related to SMEs. Jan Klimek, rapporteur for INT/765 on family businesses, emphasised that the EU needed a unified definition of family firms in order to provide better analytical and statistical tools for this wide group of companies. He pointed out that the legal status of family businesses needed to be addressed in terms of taxation and inheritance. Incentives for investment in innovation and education would also be extremely useful for family companies.

Another major challenge that SMEs are currently facing in Europe is access to finance. Dimitris Dimitriadis, rapporteur of the opinion ECO/372 devoted to this issue, underlined the differences between the northern and southern countries of the EU when talking about access to finance. In his view, big banks often did not understand the needs of SMEs and were unable to evaluate their situation correctly. Therefore, local banks should be more involved in financing SMEs and access to EU funds for SMEs should be facilitated. The debate on changing the definition of SMEs should also be launched.

Emmanuelle Butaud-Stubbs presented the REX/433 opinion on TTIP and its impact on SMEs. She pointed out that the SMEs in the EU were more experienced in international trade. The key to success was ambitious regulatory convergence. SMEs were currently facing numerous problems with adapting to the various permits needed to access the US market. The opinion recommended, inter alia, better information for SMEs and facilitating access to funds.

Kristin Schreiber from DG GROW welcomed the proposals presented by the EESC members. She provided details about the stage work had currently reached on the EC initiatives related to SMEs.

Jacek Krawczyk, President of the Employers' Group assured Commissioner Bieńkowska of the group's support for the Commission's initiatives and offered to provide its help and the possibility for consultation.



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