

# **EU INVESTMENT LAW**

## ***INTRODUCTORY NOTES***

**Prof. Dr. Pia Acconci**  
**pacconci@unite.it**

# **EU LAW**

***Institutions, Competences and  
Regulatory Instruments***

# Key Aspects of the European Union

- EU = a new kind of international organization, but an uncertain concept
- A functionalist and gradual approach to cooperation
- ... in light of the objectives provided in the Establishing Treaties

# A Few Basic Problems of the European Union

- the relationship between the EU and its Member States
- sovranationality
- democratic «legitimacy»
- the relationship between the EU and third States

# The Establishing Treaties Cronology

- 1957: Treaty of Rome (EEC)
- 1986: European Single Act (EEC)
- 1992: Treaty of Maastricht (EU/EC)
- 1997: Treaty of Amsterdam (EU/EC)
- 2000: Treaty of Nizza (EU/EC)
- [2004: Treaty of Rome for a Constitution]
- 2007: Treaty of Lisbon (EU)

# EU Institutions

- The European Parliament
- The European Council (Heads of State and Prime Ministers)
- The Council of Ministers (national Ministers in sectorial configurations)
- The European Commission (one Commissioner for each Member State, including the High Representative of the Union for Foreign Affairs and Security Policy)
- The Court of Justice of the European Union (the Court and the Tribunals)

# EU institutions differ in terms of

- Interests at stake
- Competences
- Monitoring

# COMPETENCES OF THE EUROPEAN UNION

- Division of competences between the EU and its Member States (MS)
- Principle of conferral
- Investment: in part an exclusive competence; and in part a shared competence



# EXCLUSIVE COMPETENCES

## Art. 3 of the TFEU

- 1. The Union shall have exclusive competence in the following areas:
    - (a) customs union;
    - (b) the establishing of the competition rules necessary for the functioning of the internal market;
    - (c) monetary policy for the Member States whose currency is the euro;
    - (d) the conservation of marine biological resources under the common fisheries policy;
    - (e) common commercial policy.
  2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

# NON-EXCLUSIVE COMPETENCES

- **Shared competences** (Art. 4 of the TFEU): the EU and EU MS are able to legislate and adopt legally binding acts. EU MS exercise their own competence where the EU does not exercise, or has decided not to exercise, its own competence.
- **Supporting competences** (Art. 6 of the TFEU): the EU can only intervene to support, coordinate or complement the action of EU MS. EU legally binding acts do not require the harmonisation of the laws or regulations of the EU MS.

# THE EXERCISE OF EU COMPETENCES

- is subject to two fundamental principles laid down in Art. 5 of the Treaty on European Union:
- proportionality: the content and scope of EU action may not go beyond what is necessary to achieve the objectives of the Treaties;
- subsidiarity: in the area of its non-exclusive competences, the EU may act only if — and in so far as — the objective of a proposed action cannot be sufficiently achieved by the EU MS, but could be better achieved at EU level (the exercise by the EU MS is preferred)

# TYPICAL REGULATORY SOURCES

- Treaties
- Regulations
- Directives
- Decisions
- Resolutions and other possible non-binding acts

# BASIC APPLICABLE PRINCIPLES

- Freedom of movement
- Non discrimination
- Proportionality
- Necessity (of any acceptable restriction)

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***Integration***

# The **SPECIALITY** of the EU

- A custom union
- ... for the creation of a single market

# THE MAIN PURPOSE OF EU INTEGRATION IS

- the creation of a single market rather than
- ... making social policies



# EU INTEGRATION

- Negative integration: the removal of domestic trade-distorting policies
- Positive integration: the creation of common policies

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***EU Investment Law***

# The Expansion of the Common Commercial Policy through the 2009 Lisbon Treaty

- The inclusion of FDI within the common commercial policy (Art. 207 TFEU)
- Relevance of Arts. 2.5, 21 TEU and 205 TFEU: consistency between the EU external action and the EU principles and values
- Expectations of a change in the typical legal frameworks on FDI

# EU Policy Tasks

- Regulatory: treaty-making power and EU acts
- Coordination
- Technical and financial support
- Coaching
- Establishment of special information databases/networks/platforms

# EU POLICY OBJECTIVES

- Promotion and Protection of EU FDI
- Prevention of conflicts
- Sustainability
- Legality/Rule of Law

# The EU Regulatory Action on FDI

- Relevant provisions of the (*post*-Lisbon) TEU and TFEU
- A few non-binding documents on ‘a comprehensive European international investment policy’
- A number of international treaties on trade and investment
- Secondary binding acts, e.g. those on transitional arrangements for the bilateral investment treaties of the EU Member States

# Relevant Treaties Concluded by the EU after 2009

- Association Agreements with Georgia, Moldova and Ukraine in 2014
- Free Trade Area Agreements with South Korea in 2011 and with Central America in 2012
- a Trade Agreement with Colombia and Peru in 2013
- Partnership and Cooperation Agreements with Iraq and Vietnam in 2012
- an Interim Agreement Establishing a Framework for an Economic Partnership Agreement (EPA) with Cameroon in 2009 and Eastern and Southern Africa (ESA) in 2012
- an Interim Agreement with SADC in 2009