

Preface

The entry into force of the Lisbon Treaty entails sweeping changes with respect to foreign investment regulation. Most prominently, the Treaty on the Functioning of the European Union (TFEU) now contains in its Article 207 an explicit competence on the regulation of foreign direct investment as part of the Common Commercial Policy (CCP).

With its new competence the EU will become a new actor in the field of international investment policy and law. Although the Lisbon Treaty solves problems of the past in some policy fields, the new empowerment in the field of international investment law prompts a multitude of questions. *Karel de Gucht* was asked in his parliamentary hearings before being appointed Commissioner for External Trade on his position on the “investment topic”. He stated:

Investment is a completely new competence for DG Trade. . . . We will have to address a lot of issues in this respect, and I suggest that some time soon we should have a follow-up discussion on this matter on the basis of a communication on how the European Commission is going to address it. There are existing investment agreements, by which I mean agreements for protecting investments. . . . First of all we will preserve legal certainty, then we will look closely at what initiatives we should take, and towards which countries. Within our prerogatives with respect to investment, legal certainty for investments in third countries is a main topic that we should certainly address very soon because, for example, it has a lot to do also with energy security. . . .

As this statement of Commissioner *van Gucht* only gave slight indications of what the answers to many of the key questions arising following the shift of competence are, it is the purpose of this volume to analyse in depth the new “post-Lisbon situation” in the area of investment policy, provoke further discussion and offer new approaches. The “*Tübingen Workshop on International Investment Law and EU Law*” of 18 September 2009 – just a little more than 2 months before the entry into force of the Lisbon Treaty – dealt with the most prominent problems resulting from the transfer of competences to the European level. This conference formed the basis of this publication.

The analysis starts off with a contribution by *Steffen Hindelang* und *Niklas Maydell* which does not only reflect on the Union’s new explicit competences on

foreign investment in a historic perspective, but places it in their broader context, i. e. the interrelations with the fundamental freedoms and other Treaty provisions. Following this, *August Reinisch* and *Marc Bungenberg* discuss the division of competences between the EU and its Member States after the entry into force of the new treaty. *Jörg Philipp Terhechte* und *Markus Burgstaller* proceed with analysing the impact of the shift of competences on the existing net of bilateral investment treaties of the Member States. In this context *Jörg Philipp Terhechte* also deals with the Lisbon decision of the German Constitutional Court in regard to EU and German investment policy.

The possible future of a European investment policy is addressed by *Tillmann R. Braun* und *Carsten Nowak*, who discuss the possible options for a future agreement/future agreements. In his comment *Joern Griebel* proposes the adoption of a multilateral/plurilateral investment platform as the probably most efficient solution to the problem. Finally, *Lars Markert* and *André von Walter* discuss one of the key questions of a future investment system, the question of how to balance investors' rights with regulatory interests of the host state.

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