

The Legal Norms on the European Union's International Investment Policy

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Abstract

The Lisbon Treaty establishes for the first time an exclusive competence over foreign investment by including it in the scope of the Common Commercial Policy. Nevertheless, the scope of application of the EU foreign investment policy is not yet clear. If EU exclusive competence covers both investment protection and liberalization, the EU will need to address the question of an EU model agreement to be applied in any future investment chapters in free trade agreements. In 2010, the European Commission brought forward two proposals: (1) a draft regulation to fix the vacuum created by transferring FDI competence to the EU-level, and (2) a communication proposing the new EU investment policy which feeds into negotiating mandates for EU investment agreements or investment chapters in free trade agreements. The EU's new investment competence will lead to fervent discussions in and among Member States, the Commission and the Parliament.

Key Words: Common Commercial Policy, foreign direct investment (FDI), exclusive competence, Minimum Platform on Investment, portfolio investments