

Third country regime



- ⌘ Basic freedom
- ⌘ General exceptions
- ⌘ More specific exceptions

Basic freedom



- ⌘ Capital movements (Art. 56.1)
- ⌘ Payments (Art. 56.2)

Article 56



1. Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.

2. Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited.

General exceptions



- ⌘ Internal exceptions - also external
- ⌘ Differential regime - certain operations
- ⌘ Common rule making possible here

Article 57



a “grandfathering clause” for a limited list of transactions

The provisions of Article 56 shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Community law adopted in respect of the movement of capital to or from third countries involving **direct investment - including in real estate -, establishment, the provision of financial services or the admission of securities to capital markets.**

In respect of restrictions existing under national law in Estonia and Hungary, the relevant date shall be the 31 December 1999.

Article 57



. new Community exceptions can be introduced concerning a limited list of transactions

. Whilst endeavouring to achieve the objective of free movement of capital between Member States and third countries to the greatest extent possible and without prejudice to the other Chapters of this Treaty, the Council may, acting by a qualified majority on a proposal from the Commission, adopt measures on the movement of capital to or from third countries involving **direct investment - including investment in real estate -, establishment, the provision of financial services or the admission of securities to capital markets. Unanimity shall be required for measures under this paragraph which constitute a step back in Community law as regards the liberalization of the movement of capital to or from third countries.**

More specific exceptions



- ⌘ EMU difficulties (Art. 59)
- ⌘ Financial sanctions (Art. 60)

⌘ Article 59



Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the ECB, may take safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary.

⌘ Article 60



- 1. If, in the cases envisaged in Article 301, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.**
- 2. Without prejudice to Article 297 and as long as the Council has not taken measures pursuant to paragraph 1, a Member State may, for serious political reasons and on grounds of urgency, take unilateral measures against a third country with regard to capital movements and payments. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest. The Council may, acting by a qualified majority on a proposal from the Commission, decide that the Member State concerned shall amend or abolish such measures. The President of the Council shall inform the European Parliament of any such decision taken by the Council.**

Agreements with third countries



- ⌘ Specific: EEA Agreement
- ⌘ Bilateral Agreements
- ⌘ Multilateral Agreements

Bilateral Investment Treaties (BITs)



- ⌘ concluded between two countries for the promotion of investment between the parties (*investment* is usually defined in very broad terms);
- ⌘ affording protection to investments of investors of both countries (e.g. expropriation);
- ⌘ most grant national treatment (although often with specific sectoral exceptions) and most favoured nation treatment (but regularly “REIO” clause);
- ⌘ provide for a disputes' settlement procedure;
- ⌘ large network (2265 agreements in 2003 worldwide).

Bilateral Investment Treaties



- ⌘ infringement procedures against Austria, Finland and Sweden concerning **pre-accession BITs with non-EU countries**;
- ⌘ **Article 307 EC**: Community law does not automatically prevail over BITs concluded by MS before accession (unlike *post*-accession).
 - **obligation of Member States** to take all appropriate steps to eliminate possible incompatibilities in pre-accession BITs.

Bilateral Investment Treaties



- The Commission's view:** incompatibility between
- ⌘ the BITs in question (nationals and companies of the non-EU country at stake could invoke the rights acquired under the BIT) and,
 - ⌘ the application of restrictive EU Council measures (**powers reserved to EU Council of Ministers** to adopt measures on the movement of capital to and from non-EU countries, **Art. 57 §2, 59 and 60 EC**).