

Capital Movement Restrictions in EU Law: Retrospective and Modern Approaches, Development Trends

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Summary: This article addresses the issue of establishing the legal framework for freedom of capital movement in the EU, as well as the peculiarities of the current legal regulation of freedom of capital movement between EU Member States, as well as between them and third countries. Authors examine the issues of correlation between freedom of establishment and freedom of capital movement. The restrictions on capital movement between EU Member States and between them and third countries are characterized. The case law of Court of Justice of the European Union on key issues in this area is analysed. The main trends of capital flow restrictions at the present stage are outlined, such as those emerged amidst new realities, including the armed aggression of the Russian Federation against Ukraine, and its impact on the processes of capital flow liberalization in the EU.

Keywords: European Union, EU law, Court of Justice of the European Union, capital, investment, free movement of capital, liberalization of capital movements, restrictions on the movement of capital, armed conflicts, sanctions, the Capital Markets Union, macroprudential measures, investment agreements, investment screening

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1. Introduction

The free movement of capital, along with the free movement of persons, goods and services, is a key element of the efficient functioning of the internal market of the European Union (hereinafter referred to as the EU). Free movement of capital creates underlying conditions for effective functioning of a competitive, open, unified, single EU internal market¹, providing a number of benefits to both citizens and business entities.

At the same time, the free movement of capital is not absolute. The free movement of capital may be subject to restrictions under the internal law of a Member State in justified cases, for example, to prevent infringements of national law. Capital flow restrictions may apply both to relations between EU Member States and to relations of EU or its Member States with third countries.

Over the years, the EU has made considerable efforts to remove obstacles to capital movement in order to achieve its goal of absolutely free movement within the integration community, as well as in relations with third countries. Despite a fairly high level of integration in the area of capital movement freedom, current challenges create new obstacles, slowing down the liberalization process.

Today, the EU has one of the most open investment regimes in the world, and its Member States have relatively low amount of restrictions on foreign direct investment. However, despite the EU's desire to further liberalize the capital market, current realities, especially Russian-Ukrainian armed conflict, have a significant impact on this process, as Russia's unprovoked and brutal aggression has exacerbated the contradictions of the current world and significantly complicated the socio-economic situation at the regional and global levels.

This strengthens relevance of the chosen research topic, since the issue of the impact of the armed conflict unleashed by Russian Federation in the 21st century in the centre of Europe on the freedom of capital movement, as well as other factors which cause capital movement restrictions, have not been comprehensively studied to date.

In order to address this issue, this article aims to investigate the evolution of legal regulation of free capital movement in the EU and examples of relevant case law of Court of Justice of the European Union (hereinafter referred to as CJEU), highlight peculiarities of its modern legal regulation, provide a general characteristics and development trends of capital movement restrictions in EU law.

¹ For detailed information see: ŠÍŠKOVÁ, N., HAMULÁK, O. (eds.). *Evropské právo 2. Jednotný vnitřní trh*. Prague: Wolters Kluwer, 2012, pp. 84–95.

2. Free Movement of Capital: Evolution and Peculiarities of Modern Legal Regulation

Freedom of capital movement can be viewed in the subjective sense – the subjective right to move capital freely; in the objective sense – as a set of rights and obligations enshrined in the EU law; and as a fundamental principle of the EU common market.²

The EU law does not contain a definition of the concepts of “capital movement” and “free movement of capital”. As noted by CJEU in its judgment in Case 68/88 of *Commission of the European Communities v Hellenic Republic* of 03 December 1987, freedom of movement of capital is the original freedom to carry out a wide range of financial transactions.³ In judgement in Case C-302/97 of *Klaus Konle v Austria* of 01 June 1999, CJEU actually equated the concepts of “capital flows” and “investment flows”⁴, in this respect, as follows from the judgment, the Court distinguishes between the categories of “investment” and “capital”.

According to S. Hindelang, the amount of freedom of capital movement determines the amount of foreign direct investment⁵, as investments are included in capital movements under the EU law. As stated by Z. Darvas et al., capital flows can be defined as direct, portfolio and other investments, as well as financial derivatives.⁶

The freedom of capital movement was first envisaged by the Treaty establishing the European Economic Community (hereinafter referred to as the EEC Treaty) dated 25.03.1957. Article 67(1) of the Treaty stipulated that Member States shall, in the course of the transitional period and to the extent necessary

² STRILETS, B. *Pravove rehulivannia investytsiinoi diialnosti v Yevropeiskomu Soiuzi* [Tekst] : dys. ... kand. yuryd. nauk : 12.00.11 / In-t zakonodavstva Verkhov. Rady Ukrainy. Kyiv, 2020, p. 33–34 (in Ukrainian).

³ *Commission of the European Communities v Hellenic Republic*. Case 194/84. Judgment of the Court of 03 December 1987 [online]. Available at: <https://eur-lex.europa.eu/legalcontent/GA/TXT/?uri=CELEX:61984CJ0194>

⁴ *Klaus Konle v Republik Österreich*. European Court Reports. 1999. I-03099. Judgment of the Court of 01 June 1999 [online]. Available at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A61997CJ0302>

⁵ FRAGA, L. S., HINDELANG, S. The Free Movement of Capital and Foreign Direct Investment: The Scope of Protection in EU Law. *European Journal of International Law*. 2010. vol. 21, issue 2, p. 497 [online]. Available at: <https://academic.oup.com/ejil/article/21/2/496/374222>

⁶ DARVAS, Z., HUTTL, P., MERLER, S., WALSH, T. Analysis of developments in EU capital flows in the global context. *Final study. Bruegel*. 2015, № 2015.2574, p. 20 [online]. Available at: https://finance.ec.europa.eu/system/files/2020-06/study-bruegel-capital-flows-03112015_en.pdf

for the proper functioning of the Common Market, progressively abolish as between themselves restrictions on the movement of capital belonging to persons resident in Member States and also any discriminatory treatment based on the nationality or place of residence of the parties or on the place in which such capital is invested. Article 71 imposes an obligation on Member States to avoid introducing within the Community any new exchange restrictions which affect the movement of capital and current payments connected with such movement, and making existing rules more restrictive.

When establishing the European Economic Community (hereinafter referred to as the EEC), the Member States declared their readiness to liberalize capital flows to the maximum extent possible, taking into account their economic situation and balance of payments. Along with that, there was a possibility of introducing safeguard measures (with the consent and under conditions determined by the Commission of the European Communities in consultation with the Monetary Committee), in the event of movements of capital leading to disturbances in the functioning of the capital market in any Member State (Article 73(1)).⁷ Thus, free movement of capital, a treaty “freedom”, was introduced, which must be achieved in the manner provided for in this founding treaty by adopting an appropriate legislative programme.

The legal consequences of Article 67 of the original version of the EEC Treaty were analysed by CJEU in the course of consideration of, *inter alia*, the criminal proceedings against Guerrino Casati.⁸ In its judgement, the European Court made the following conclusions: 1) Article 67 of the EEC Treaty differs from the provisions on the free movement of goods, persons and services in the sense that there is an obligation to liberalise the movement of capital only to the extent necessary to ensure the proper functioning of the common market. The scope of restrictions varies over time and after the end of the transition period, the requirements of the common market are taken into account to determine these restrictions, the benefits and risks of liberalisation are assessed, which, in turn, is the prerogative of the Council in accordance with the procedure regulated by Article 69 of the EEC Treaty; 2) Article 67 of the EEC Treaty must be interpreted in such a way that the restriction on the export of foreign banknotes cannot be considered cancelled after the end of the transition period regardless of the provisions of Article 69 of the EEC Treaty; 3) failure to apply the safeguard procedures provided for in Article 73 of the EEC Treaty, which constitute restrictions on the movement

⁷ Treaty establishing the European Economic Community (Rome, 25 March 1957). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3Axy0023/>

⁸ Criminal proceedings against Guerrino Casati. Judgment of the Court of 11 November 1981. Case 203/80 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61980CJ0203>

of capital that the state is not obliged to liberalise, does not constitute a violation of the EEC Treaty (clauses 1–3 of the judgment’s Summary).

Subsequently, in 1960, the First Directive for the Implementation of Article 67 of the Treaty was adopted. In the lists “A”, “B”, “C” and “D” of Annex No. 1, the Directive divided capital transactions into four categories, taking into account the level of liberalisation.⁹ The Second Council 63/21/EEC Directive of 18 December 1962, which supplemented and amended the First Directive¹⁰ supplemented lists A, C and D of Annex 1. The First Directive liberalised mainly long-term capital transactions, but the Second Directive extended the liberalisation to securities transactions.

The next stage of liberalisation of capital movements in the EU was launched by the Single European Act, which was adopted on 17 February 1986¹¹. Article 13 of this act supplemented the EEC Treaty with a new Article 8a, according to which the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty¹². The liberalisation of capital movement was given the same importance as other internal market freedoms.¹³

On May 23, 1986, the Commission of the European Communities proposed to the Council a programme for the liberalization of capital movement in the Community based on the EEA. This Program outlined a three-level progressive liberalization of capital movements, which correspond to the following three categories of operations: purely capital operations (“capital operations”), such as commercial loans, direct investments or various “personal” movements of capital, which are directly related to effective implementation other basic freedoms of the common market; operations with securities on financial markets, the liberalization of which depends on the existence of a single European financial

⁹ See: First Directive (EU) of the Council of 11 May 1960 for the implementation of Article 67 of the Treaty. *Official Journal of the European Communities* L 043, 12.07.1960, pp. 0921–0932 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31960L0921>

¹⁰ See: Second Directive (EU) 63/21/EEC of the Council of 18 December 1962 adding to and amending the First Directive for the implementation of Article 67 of the Treaty. *Official Journal of the European Communities* L9 22.01.1963, pp. 62–74 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31963L0021>

¹¹ Single European Act, 29.06.1987. *Official Journal of the European Communities* L 169/1, 29.06.1987, pp. 1–28 [online]. Available at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:11986U/TXT&from=EN>

¹² Ibid.

¹³ STRILETS, B. Svoboda rukhu kapitalu ta investytsiina diialnist u Yevropeiskomu Soiuzi. *Chasopys Kyivskoho universytetu prava*. 2015, № 1, p. 301 [online]. Available at: http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?I21DBN=LINK&P21DBN=UJRN&Z21ID=&S21REF=10&S21CNR=20&S21STN=1&S21FMT=ASP_meta&C21COM=S&2_S21P03=FILEA=&2_S21STR=Chkup_2015_1_72 (in Ukrainian).

market; liberalization in this area should extend to all types of operations carried out by both investors and issuers; transactions related to commercial credits and money market instruments, the liberalization of which requires the establishment of a unified financial system in the EU.¹⁴

Moreover, the Programme proposed a two-stage action plan for capital liberalisation. The aim of the first stage was to achieve in the EEC the actual liberalisation of capital transactions necessary for the proper functioning of the common market and the effective interaction of the capital markets of the Member States. The second stage, in turn, was the full liberalisation of all capital transactions, including all banking and financial transactions (short and long term), even if they were purely currency transactions.

To implement the above Programme, Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty was adopted.¹⁵ In accordance with Article 1 of this Directive, Member States shall abolish restrictions on movements of capital taking place between persons resident in Member States. In accordance with Article 6, Member States shall take the measures obligatory to comply with this Directive no later than 1 July 1990.

After the adoption of the Single European Act¹⁶, the process of implementing the single market programme became irreversible. At the same time, various barriers continued to exist on the market. Trade flows were closely monitored by national customs services.

The programme for completing the internal market, set out in the White Paper of the Commission of the European Communities, provided for the development and implementation of multiple directives aimed at eliminating all physical, technical and financial obstacles to the free movement of goods, persons, capital and services.¹⁷ As a result, this eventually led to the complete accomplishment of the freedom of capital movement (but with possible restrictions).

Subsequently, on 7 February 1992, the Treaty on European Union (Maastricht Treaty) was signed, it amended the EEC Treaty, according to which, from 1 January 1994, all restrictions on the free movement of capital and payments

¹⁴ Ibid.

¹⁵ Directive (EU) 88/361/EEC of the Council of 24 June 1988 for the implementation of Article 67 of the Treaty [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31988L0361>

¹⁶ See: Single European Act, 29.06.1987. *Official Journal of the European Communities* L 169/1. 29.06.1987. pp. 1–28 [online]. Available at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:11986U/TXT&from=EN>

¹⁷ YAKOVIUK, I., ANAKINA, T., TRAHNIUK, O., KOMAROVA, T. *Istoriia yevropeiskoi intehratsii vid Rymyskoi imperii do Yevropeiskoho Soiuzu: monohrafiia* / za red. I. V. Yakoviuka. Kyiv: *Red. zhurn. «Pravo Ukrainy»*, 2012, p. 128 [online]. Available at: <https://dspace.nlu.edu.ua/handle/123456789/1210> (in Ukrainian).

between Member States and between Member States and third countries were prohibited.¹⁸ The single market was successfully introduced and started functioning on 1 January 1993.¹⁹

Subsequent amendments to the EU's founding treaties, including the Lisbon Treaty, did not significantly change the process of regulating the freedom of capital movement.²⁰ According to article 63 of the Treaty on the Functioning of the European Union (hereinafter referred to as TFEU), within the framework of the provisions set out in Chapter 4 ("Capital and payments") of Title IV "Free movement of persons, services and capital", all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited. 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.²¹

The basis for determining capital flows in the EU, as defined by CJEU²², is the Nomenclature of Capital Movements set out in Annex 1 to Directive 88/361/EEC. It differentiates capital movements based on the economic nature of the assets and liabilities to which they relate, whether expressed in national or foreign currency. According to the above Nomenclature, capital movements include: direct investments; investments in real estate; transactions with securities that are usually traded on the capital market; transactions with certificates of collective investment institutions; transactions with securities and other instruments that are mainly traded on the money market; transactions with current and deposit accounts with financial institutions; loans related to commercial transactions

¹⁸ Treaty on European Union (Maastricht, 07 February 1992). Official Journal C 191, 29/07/1992 pp. 0001–0110 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:11992M/TXT>

¹⁹ See: YAKOVIUK, I., ANAKINA, T., TRAHNIUK, O., KOMAROVA, T. *Istoriia yevropeiskoi intehratsii vid Rymkskoi imperii do Yevropeiskoho Soiuzu: monohrafiia* / za red. I. V. Yakoviuka. Kyiv: *Red. zhurn. «Pravo Ukrainy»*, 2012, p. 142 [online]. Available at: <https://dspace.nlu.edu.ua/handle/123456789/1210> (in Ukrainian).

²⁰ SAMOILENKO, Y., ZAVHORODNIA, V. *Vilnyi rukh kapitalu u pravovomu rehuliuanni finansovoho rynku Yevropeiskoho Soiuzu ta perspektyvy vykorystannia yevropeiskoho dosvidu dlia Ukrainy. Pravove rehuliuannia vidnosyn na finansovomu rynku: stan ta napriamy vdoskonalennia: monohrafiia*, vidp. red. V. D. Chernadchuk. *Summary: VVP «Mriia» TOV*, 2013, p. 277 [online]. Available at: https://essuir.sumdu.edu.ua/bitstream-download/123456789/50052/8/Zavhorodnia_Samoilenko_vilnyi_rukh_kapitalu.pdf?sessionid=09386B0619E4C93FF1AB7E61CCA428E3 (in Ukrainian).

²¹ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal of the European Union* C 326, 26.10.2012, Vol. 55, p. 412 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

²² Capital movements [online]. Available at: https://finance.ec.europa.eu/regulation-and-supervision/capital-movements_en

or the provision of services in which a resident is a participant; financial loans and credits.²³

The same Annex 1 to Directive 88/361/EEC states that the above Nomenclature is not an exhaustive list for the concept of capital movements and should not be interpreted as limiting the scope of application of the principle of full liberalisation of capital movements.²⁴ Although the free movement of capital rules now apply to movements into and out of the EU, the 1988 definitions designed to cover intra-Community movements continue to be used. This was made clear when CJEU confirmed that mortgages fall within the scope of capital movements as defined in the Directive 88/361/EEC in its judgment in Case C-222/97 *Trummer and Meyer* of 16 March 1999 and further ruled that this interpretation should continue to apply to the free movement of capital according to founding treaties. Namely, CJEU expressed the opinion that “inasmuch as Article 73b of the EC Treaty (*Maastricht consolidated version*), which prohibited restrictions on the movement of capital, substantially reproduces the contents of Article 1 of Directive 88/361, and even though that directive was adopted on the basis of Articles 69 and 70(1) of the EEC Treaty, which have since been replaced by Article 73b et seq. of the EC Treaty, the nomenclature in respect of movements of capital annexed to Directive 88/361 still has the same indicative value, for the purposes of defining the notion of capital movements, as it did before the entry into force of Article 73b et seq., subject to the qualification, contained in the introduction to the nomenclature, that the list set out therein is not exhaustive”.²⁵

Nowadays, the issue of distinguishing between freedom of establishment and freedom of capital movement is important. Freedom of establishment under the TFEU cannot be extended to situations with third countries, unlike freedom of capital movement.

CJEU seems to be ambiguous in its approach to this issue. S. Hemels, J. Rompen, S. Adfelt et al. argue that CJEU in this context has developed a rule of “definite influence” of the investor on the company’s activities, if there is such influence, this situation falls under the freedom of establishment, if not – then under the freedom of capital²⁶. In particular, the concept of “definite influence”

²³ Directive (EU) 88/361/EEC of the Council of 24 June 1988 for the implementation of Article 67 of the Treaty [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=C_ELEX%3A31988L0361

²⁴ Ibid.

²⁵ Manfred Trummer and Peter Mayer. Judgment of the Court of 16 March 1999. Case C-222/97 [online]. Available at: <https://curia.europa.eu/juris/liste.jsf?num=C-222/97>

²⁶ HEMELS, S. et al. Freedom of establishment or free movement of capital: is there an order of priority? Conflicting visions of national courts and the ECJ. *EC Tax Review*. 2010, Vol. 1, p. 21 [online]. Available at: <http://ssrn.com/abstract=1959832>

was applied in the judgment of CJEU in *C. Baars v Inspecteur der Belastingen Particulieren/Ondernemingen Gorinchem* (Case C-251/98) of 13 April 2000.²⁷

At the same time, the question arises as to how to determine the existence of this influence. In this regard, CJEU has developed two rules that are not fully consistent with each other: 1) the conclusion on the existence of a determining influence is made on the basis of an analysis of the provisions of the relevant national legislation, for example, in the judgment in *Winfried L. Holböck v Finanzamt Salzburg-Land* of 24 May 2007²⁸; 2) the existence of “definite influence” is determined on the basis of the actual circumstances of the case, for example, in the decision in Case C-284/06 *Finanzamt Hamburg-Am Tierpark v Burda GmbH* of 26 June 2008.²⁹

The position expressed by CJEU on 13 November 2012 in its judgment in Case of *Test Claimants in the FII Group Litigation* C-446/04 seems to be significantly different from the previous ones. Thus, CJEU noted that if the tax legislation in question is of a general nature (e.g., a direct general system of taxation of income and gains from shareholdings), then the freedom of movement of capital also applies to the situation when EU resident legal entities receive taxable income from controlling interests in companies resident in third countries.³⁰

On the other hand, the case law of CJEU shows that if EU Member States violate both the freedom of establishment and the freedom of movement of capital, the Court may focus on the violation of the freedom of movement of capital, and legal consequences are imposed for this violation. In particular, in the Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 13 February 2007 in Case C-112/05 *Commission v Germany*³¹, it was noted that the European Commission

²⁷ *Baars v Inspecteur der Belastingen Particulieren/Ondernemingen Gorinchem*. Judgment of the Court (Fifth Chamber) of 13 April 2000. Case C-251/98. European Court Reports 2000 I-02787 [online]. Available at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A61998CJ0251>

²⁸ *WINFRIED, L. Holböck v Finanzamt Salzburg-Land*. Judgment of the Court (Fourth Chamber) of 24 May 2007. Case C-157/05. I-04051 [online]. Available at: <https://eurlex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0157>

²⁹ *Finanzamt Hamburg-Am Tierpark v Burda GmbH*. Judgment of the Court (Fourth Chamber) of 26 June 2008. Case C-284/06. I-04571 [online]. Available at: <https://eurlex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0284>

³⁰ *NIJKEUTER, E., MAARTEN, F. «FII 2» and the Applicable Freedoms of Movement in Third Country Situations. EC Tax Review*. 2013, Vol 22, p. 250 [online]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2331989

³¹ *Commission of the European Communities v Federal Republic of Germany*. Failure of a Member State to fulfil obligations. Article 56 EC. Legislative provisions concerning the public limited company Volkswagen. Opinion of Mr Advocate General Ruiz-Jarabo Colomer delivered on 13 February 2007. Case C-112/05. *Commission v Germany* [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62005CC0112&from=LT>

did not make any specific claim that the Volkswagen Law was incompatible with Article 43 of the EEC Treaty, no doubt because it took into account the previous case law in which CJEU focused on the free movement of capital (paragraph 104 of the Opinion). Namely, in a number of judgments, CJEU has ruled that restrictions on the freedom of establishment are a direct consequence of obstacles to the free movement of capital, with which they are inextricably linked. It follows from the foregoing that if a violation of Article 56(1) of the EEC Treaty (prohibition of restrictions on the movement of capital) is established, then there is no need for a separate consideration of the measure in the context of freedom of establishment (paragraph 105 of the Opinion).

In view of the above, the CJEU does not have a well-established position in terms of determining the dominant freedom in a particular case.

Along with that, it can be noted that free movement of capital is given the widest scope compared to other fundamental freedoms of the EU internal market. In addition, free movement of capital is the only freedom that applies within the EU, as well as to and from third countries. From the territorial point of view, it is the broadest freedom which applies *erga omnes* (to all investors).³² Moreover, the freedom of movement of services and establishment always involves the movement of capital.

Thus, the freedom of capital movement occupies a special place among other freedoms of the EU internal market, as it applies not only to EU Member States but also to third countries. However, although this freedom has absolute (global) character in territorial aspect, it is not absolute when it comes to a possibility of introducing restrictions regarding it.

3. General Characteristics of Capital Movement Restrictions in EU Law

Article 63 TFEU provides that, within the framework of the provisions set out in the relevant Chapter, restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited. Restrictions on payments between Member States and between Member States and third countries are prohibited too.

At the same time, such restrictions can still be applied as exceptional measures in the context of the EU's objectives and principles. They may not be

³² HAMULÁK, O. Unveiling the overlooked freedom – the context of free movement of capital and payments in the EU law. *International and Comparative Law Review*: 2012, Vol. 12, No. 2, p. 145 [online]. Available at: <https://intapi.sciendo.com/pdf/10.1515/iclr-2016-0091>

imposed for economic purposes, but only if there is a real and serious threat to fundamental social relations. The restrictions on capital flows are specified by the TFEU, while some explanations and legal interpretations in this context can be found in CJEU case law. Among the provisions of the TFEU, we should distinguish between restrictions of a special nature, provided for in Chapter 4 “Capital and Payments” (Articles 64–66), and general restrictions, established in other parts of the Treaty. General restrictions are set out in Articles 345 (restrictions related to property ownership), 346 (national security and defence), 143–144 (balance of payments), 75 and 215 (financial sanctions) of the TFEU.

Restrictions of a special nature relate to restrictions for third countries, tax differentiation, prudential measures, public order or public security.

The TFEU provides for the possibility to restrict the movement of capital for the reasons set out in Article 65 of this treaty and, in the case of non-discriminatory restrictions, to protect the public interest. In particular, Article 65 TFEU provides that the free movement of capital shall be without prejudice to certain rights of the Member States. These include: a) the right to apply relevant provisions of their tax laws that distinguish between taxpayers in different circumstances as regards their residency or place of investment; b) the right to implement preventive and supervisory measures, especially in the area of taxation and prudential supervision of financial institutions. In addition, this Article reserves the right of Member States to take measures justified by reasons of public policy or public security.

In any case, restrictive measures must comply with the principle of proportionality. They must therefore be fit for purpose and shall not go beyond what is necessary to achieve that purpose, for example, violation of such principle was once mentioned by the CJEU as “...restricting in manifestly disproportionate manner...”.³³ In addition, national measures must be consistent with other general EU principles, such as legal certainty (“rules of law must be clear, precise and predictable”³⁴), as well as with fundamental rights stipulated in Charter of Fundamental Rights of the European Union.³⁵ Furthermore, the exemptions provided for in the TFEU should not be used as a cover for arbitrary discrimination or disguised restrictions on the free movement of capital (Article 65(3) TFEU).

³³ European Commission v Hungary. Judgment of the Court (Grand Chamber) of 21 May 2019. Case C-235/17. P. 59–61 [online]. Available at: <https://curia.europa.eu/juris/liste.jsf?num=C-235/17>.

³⁴ Société d’investissement pour l’agriculture tropicale SA (SIAT) v État belge. Judgment of the Court (First Chamber), 5 July 2012. Case C318/10. P. 58 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010CJ0318>

³⁵ European Commission v Hungary. Judgment of the Court (Grand Chamber) of 21 May 2019. Case C-235/17. P. 59–61 [online]. Available at: <https://curia.europa.eu/juris/liste.jsf?num=C-235/17>.

With regard to the application of Article 65 TFEU, CJEU in many cases has emphasised that the free movement of capital as a fundamental principle of EU law may be subject to restrictions under the internal law of a Member State only for the purpose of taking urgent measures to prevent breaches of national laws and regulations or in cases of overriding public interest. Restrictions imposed by states may also be applied as exceptional measures in the context of EU objectives and principles. It is prohibited to impose them for economic purposes, but only if there is a real and serious threat to fundamental social relations.³⁶

Disputes over the application of restrictions on the free movement of capital have been repeatedly considered by CJEU. In particular, the judgments in cases *Erika Waltraud Ilse Hollmann* № C-443/061 of 11 October 2007³⁷ and *Amurta SGPS v Inspecteur van de Belastingdienst/Amsterdam* № C-379/052 of 8 November 2007, are illustrative.³⁸

The first case concerned different taxation rates for residents and non-residents on the sale of real estate in Portugal, and the second case concerned the refusal to exempt a non-resident who owned a share in the authorized capital of a Dutch company from dividend taxation, given that residents are exempt from such taxation. In both cases, the CJEU concluded that the taxation of income from such sources is minimally different for residents and non-residents, so the approach of the Member States to introduce unequal taxation conditions shall be considered incorrect.³⁹

In 2019, the CJEU in its judgment in Case C-235/17 *European Commission v Hungary* found that Hungary had failed to fulfil its obligations arising from

³⁶ See: SAMOILENKO, Y., ZAVHORODNIA, V. Vilnyi rukh kapitalu u pravovomu rehuliuванні finansovoho rynku Yevropeiskoho Soiuzu ta perspektyvy vykorystannia yevropeiskoho dosvidu dlia Ukrainy. Pravove rehuliuвання vidnosyn na finansovomu rynku: stan ta napriamy vdoskonalennia: monohrafiia, vidp. red. V. D. Chernadchuk. *Sumy: VVP «Mriia» TOV*. 2013, p. 281–282 [online]. Available at: https://essuir.sumdu.edu.ua/bitstream-download/123456789/50052/8/Zavhorodnia_Samoilenko_vilnyi_rukh_kapitalu.pdf;jsessionid=09386B0619E4C93FF1AB7E61CCA428E3 (in Ukrainian).

³⁷ *Erika Waltraud Ilse Hollmann v Fazenda Pública*. Judgment of the Court (Fourth Chamber) of 11 October 2007. Case C-443/06 [online]. Available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006CJ0443:EN:PDF>

³⁸ *Amurta SGPS v. Inspecteur van de Belastingdienst/Amsterdam*. Judgment of the Court (First Chamber) of 8 November 2007. Case C-379/05 [online]. Available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005CJ0379:EN:NOT>

³⁹ See: SAMOILENKO, Y., ZAVHORODNIA, V. Vilnyi rukh kapitalu u pravovomu rehuliuванні finansovoho rynku Yevropeiskoho Soiuzu ta perspektyvy vykorystannia yevropeiskoho dosvidu dlia Ukrainy. Pravove rehuliuвання vidnosyn na finansovomu rynku: stan ta napriamy vdoskonalennia: monohrafiia, vidp. red. V. D. Chernadchuk. *Sumy: VVP «Mriia» TOV*. 2013, p. 275–307 [online]. Available at: https://essuir.sumdu.edu.ua/bitstream-download/123456789/50052/8/Zavhorodnia_Samoilenko_vilnyi_rukh_kapitalu.pdf;jsessionid=09386B0619E4C93FF1AB7E61CCA428E3 (in Ukrainian).

the free movement of capital and right to property guaranteed by the Charter of Fundamental Rights of the European Union.⁴⁰ The Commission referred Hungary's case to CJEU because it failed to bring its national rules terminating certain usufruct rights to agricultural land into line with EU law.

At the same time, in 2019 the European Commission decided to close the respective infringement procedures related to the free movement of capital after the Member States concerned corrected the alleged violation of EU law, namely two cases against Lithuania and Slovakia related to the acquisition of agricultural land. However, the Commission extended the term during which Croatia can derogate from free movement of capital in such circumstance, but such extension was time-limited and was done in accordance with Croatia's Treaty of Accession.⁴¹

In 2018, CJEU issued two judgments in the cases brought by European Commission against France and Belgium for violating the principle of free movement of capital in the field of direct taxation. In the first case, the Court ruled that France had failed to fulfil its obligations under the founding treaty by refusing to take into account the tax incurred by a non-resident subsidiary in the double taxation mechanism, which allows for the offset of tax levied at each level of dividend distribution.⁴²

In the second case, CJEU found that Belgium had failed to comply with its obligations by retaining the provisions according to which the rental income of Belgian taxpayers from foreign real estate is calculated on the basis of the actual rental value, and from property located in Belgium – on the basis of the cadastral value.⁴³

An analysis of CJEU case law leads to the conclusion that the term “restrictions” can be interpreted by it to mean all measures that may make cross-border capital movements “less attractive” (paragraph 40 of judgment of 26 April 2012 in joined Cases C-578/10 to C-580/10 *Staatssecretaris van Financiën v L.A.C. van Putten and Others*).⁴⁴

⁴⁰ European Commission v Hungary. Judgment of the Court (Grand Chamber) of 21 May 2019. Case C-235/17 [online]. Available at: <https://curia.europa.eu/juris/liste.jsf?num=C-235/17>

⁴¹ Commission staff working document on the movement of capital and the freedom of payments. Brussels, 7 April 2021 (OR. en) 7578/21 [online]. Available at: <https://data.consilium.europa.eu/doc/document/ST-7578-2021-INIT/en/pdf>

⁴² European Commission v French Republic. Judgment of the Court (Fifth Chamber) of 4 October 2018. Case C-416/17 [online]. Available at: <https://curia.europa.eu/juris/liste.jsf?num=C-416/17>

⁴³ European Commission v Kingdom of Belgium. Judgment of the Court (Sixth Chamber) of 12 April 2018. Case C-110/17 [online]. Available at: <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-110/17>

⁴⁴ *Staatssecretaris van Financiën v L.A.C. van Putten and Others*. Judgment of the Court (Third Chamber), 26 April 2012. Joined Cases C578/10 to C580/10. P. 40 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010CJ0578>

It should be noted that the global financial crisis of 2007-2008 underscored the importance of overarching supervision and macroprudential actions. Capital movements can pose risks, which can be alleviated through macroprudential strategies, such as curbing unchecked credit expansion in a specific member state. It's crucial for these preventive actions to counteract potential loopholes, like heightened lending via foreign bank branches or cross-border loans, to maintain the effectiveness of measures targeting housing surpluses in a particular country.

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU). No 648/2012⁴⁵ provides for a number of instruments of macroprudential influence on the banking sector. Some instruments, such as the countercyclical capital buffer (CCyB) and the buffer for global systemically important institutions (G-SIIs), are mandatory. Others, such as the buffer for other systemically important institutions (O-SIIs), are not mandatory, although identification of O-SIIs is mandatory.

In June 2019, amendments to the Capital Requirements Regulation (2013/575/EU) and Directive (2013/36/EU) came into force as part of a broader review of the prudential and resolution framework for banks (the “Banking Package”)⁴⁶.

Moving forward, let's consider general restrictions provided for in Articles 345 (restrictions on property rights), 346 (ensuring national security and defence), 143–144 (balance of payments), 75 and 215 (financial sanctions) of the TFEU.

In accordance with Article 345 TFEU, the EU founding treaties, which set out, *inter alia*, the rules on freedom of movement of capital, shall in no way prejudice the rules of the Member States regulating the property rights system. Thus, the exclusive competence of Member States includes privatisation policy and nationalisation of property, provided that they are carried out in a non-discriminatory manner. Art. 346 TFEU provides that Member States are not obliged to provide information the disclosure of which would prejudice their security interests, and may take the necessary measures to protect their own security interests arising from the production or trade in arms, ammunition and military material. At the same time, these measures may not have a negative impact on

⁴⁵ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU). No 648/2012 [online]. Available at: <https://eur-lex.europa.eu/eli/reg/2013/575/oj>

⁴⁶ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal of the European Union* C 326, 26.10.2012, Vol. 55, p. 412 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

the conditions of competition in the domestic market in relation to products not intended exclusively for military purposes.⁴⁷

Among the measures to restrict capital flows, one of the key ones is anti-money laundering (AML). As noted by P. Palazov, there is an emerging competition between free capital movement and AML-related legal acts in the EU.⁴⁸ The relevant measures in this integration community were, in particular, introduced by Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC. This legal act, *inter alia*, established the obligation of Member States to ensure that financial institutions, as well as persons providing services in any way related to the movement of capital (real estate agents, auditors, notaries, etc.), require the identification of their clients in the process of establishing business relationships. The identification requirements shall be applied to any transaction(s) with clients in excess of EUR 15,000, regardless of whether the transaction was carried out as a single transaction or as a series of interrelated transactions (Article 11).⁴⁹

Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA is aimed at improving the use of financial information by providing law enforcement agencies with direct access to information about the identity of bank account holders contained in national centralized bank registers. It also provides law enforcement agencies with access to certain information from national financial intelligence units, including data on financial transactions, and improves the sharing of information between the mentioned units and their access to law enforcement information necessary

⁴⁷ Consolidated Version of the Treaty establishing the European Community. *Official Journal of the European Communities*. 1997, C340/1733. 143 p. [online]. Available at: <https://op.europa.eu/en/publication-detail/-/publication/3c32722f-0136-4d8f-a03ebfaf70d16349>

⁴⁸ See: PALAZOV, Petko. Is De-Risking one of the Indications for an Emerging Competition between the Free Movement of Capital and the Anti-Money Laundering Regulations? *International Conference KNOWLEDGE-BASED ORGANIZATION Vol. XXVII*. 2021, No 2, pp. 57–64 [online]. Available at: <https://sciendo.com/de/article/10.2478/kbo-2021-0048>

⁴⁹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance). OJ L 141, 05.06.2015, pp. 73–117 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>

for the performance of their tasks. These measures will speed up criminal investigations and allow authorities to fight cross-border crime more effectively (clauses 14, 15 of Article 1).⁵⁰ This Directive does not create barriers directly it is only intended for providing financial information to law enforcement bodies.

The European Commission has also adopted two delegated regulations on the following regulatory technical standards, drafts of which were developed by the European Supervisory Authorities:

- I. Regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries, adopted on 31 January 2019⁵¹.
- II. Regulatory technical standards on the criteria for the appointment of central contact points for electronic money issuers and payment service providers and with rules on their functions, adopted on 7 May 2018⁵².

On 19 June 2019, the European Commission adopted a report on the implementation of Regulation (EU) 2015/8471 on information accompanying the transfer of funds⁵³, which imposes a number of obligations on payment service providers with regard to the information on payers and recipients that must accompany transfers of funds.

Particular attention is drawn to the restrictions set out in Articles 75 and 215 of the TFEU – financial sanctions. Actually, they are a kind of EU sanctions in

⁵⁰ Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1153>

⁵¹ Commission Delegated Regulation (EU) 2019/758 of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries (Text with EEA relevance.). *Official Journal of the European Union* L25, 14.05.2019, pp. 4–10. [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019R0758>

⁵² Commission Delegated Regulation (EU) 2018/1108 of 7 May 2018 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regulatory technical standards on the criteria for the appointment of central contact points for electronic money issuers and payment service providers and with rules on their functions (Text with EEA relevance.). C/2018/2716. *Official Journal of the European Union* L 203, 10.08.2018, pp. 2–6 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1108>

⁵³ Report from the Commission to the European Parliament and the Council on the application of Chapter IV of Regulation (EU) 2015/847 on information accompanying transfers of funds. COM/2019/282 final [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2019:282:FIN>

general, which are one of the EU's tools to promote the objectives of the Common Foreign and Security Policy. These goals encompass the protection of the EU's core values and security interests, bolstering democracy, upholding the rule of law, protecting human rights and international law principles, maintaining peace, averting conflicts, and fortifying global security.⁵⁴ Pursuant to Art. 75 of TFEU, administrative measures may be imposed on the movement of capital and payments, including the freezing of accounts, financial assets or economic profits owned or held by individuals, legal entities, groups or non-state entities (in order to prevent and combat terrorism and related activities).⁵⁵ According to Article 215 TFEU, if a decision taken in accordance with Chapter 2 of Title V of the Treaty on European Union provides for the termination or restriction, in part or in whole, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal by the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. The Council shall inform the European Parliament thereof. In addition, the Council may adopt restrictive measures against individuals or legal entities and groups or non-governmental entities.

As can be seen from these articles, sanctions can be applied to entities both inside and outside the EU. However, as a rule, such restrictions are applied to entities from other countries, for example, individuals associated with al-Qaeda⁵⁶.

Thus, restrictions on the freedom of movement of capital can be defined as measures that may make cross-border capital flows less attractive, they can be applied, *inter alia*, either to protect Member States and / or the EU against economic harm, as well as to safe-guard the EU's values, its fundamental interests, intra-EU and international security etc. (when it comes to sanctions). Capital movement restrictions are established by the EU founding treaties and are also interpreted/ explained in CJEU case law. It should be noted that capital controls apply not only to member states, but also to third countries that are not members of the EU.

⁵⁴ European Union sanctions [online]. Available at: https://www.eeas.europa.eu/eeas/european-union-sanctions_en#10710

⁵⁵ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal of the European Union* C 326, 26.10.2012, Vol. 55, p. 412 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

⁵⁶ European Parliament v Council of the European Union. Judgment of the Court (Grand Chamber), 19 July 2012. Case C130/10 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010CJ0130>

4. Peculiarities of Restrictions on Free Movement of Capital in the EU's and Its Member States' Relations with Third Countries

The provision of Article 63 TFEU on the free movement of capital between EU Member States and third countries has a different meaning compared to the freedom of capital movement within the EU. As noted by Czech scientist O. Hamulák, the TFEU highlights that, under the law of the European Union (following the enactment of the Maastricht Treaty), there was a complete liberalization of capital movement among Member States as well as between them and third countries. However, this doesn't imply that the extent of this freedom is identical internally and externally. The TFEU differentiates these aspects by permitting a more expansive set of exceptions to restriction prohibitions in the external dimension compared to the internal one.⁵⁷ In particular, in its judgment in *Skatteverket v A*, of 18 December 2007 (Case C-101/05), CJEU emphasized that it “takes place in a different legal context” than that existing within the EU. Thus, additional restrictions may be acceptable in case of non-EU countries.⁵⁸

Pursuant to Article 64(1) TFEU, the provisions of Article 63 shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Union 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. With regard to restrictions that existed in the national legislation of Bulgaria, Estonia and Hungary, the relevant date is 31 December 1999.⁵⁹

Brexit consequences can be analysed in the context of restrictions on the free movement of capital with third countries. As noted above, Article 63 of the TFEU guarantees unrestricted access to the market in the context of capital movement not only to EU Member States, but also to third countries. After Brexit, these

⁵⁷ HAMULÁK, O. Unveiling the overlooked freedom – the context of free movement of capital and payments in the EU law. *International and Comparative Law Review*: 2012, Vol. 12, No. 2, p. 145 [online]. Available at: <https://intapi.sciendo.com/pdf/10.1515/iclr-2016-0091>

⁵⁸ *Skatteverket v A*. Judgment of the Court (Grand Chamber) of 18 December 2007. Case C-101/05 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0101>

⁵⁹ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal of the European Union* C 326, 26.10.2012, Vol. 55, p. 412 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex-%3A12012E%2FTXT>

provisions became applicable to the United Kingdom. However, considering the findings by Prof. Dr. Alexander Schall⁶⁰, it appears to us that overlapping between freedom of establishment and freedom of capital movement may create cardinally different consequences depending on which freedom will be considered as dominated one, because freedom of establishment does not apply to situations with third countries unlike its competing freedom.

Although Article 65 TFEU and the additional restriction-related provisions in Articles 64, 66 and 75 potentially limit the extent to which third countries participate in the internal market, we agree with the position⁶¹ that they are unlikely to affect the UK, considering close economic relationships between it and EU Member States. Thus, the UK should continue to benefit from the free movement of capital after Brexit. In terms of capital movement, this country still has access to the EU single market.

According to Article 64(3) TFEU, the Council of the EU, acting in accordance with a special legislative procedure, may unanimously and after consultations with the European Parliament adopt measures that are a step back in EU legislation in matters of liberalization of the movement of capital to or from third countries. In addition, in accordance with Article 66 TFEU, if, under exceptional circumstances, the movement of capital to or from third countries causes or may cause serious complications in the functioning of the economic and monetary union, the Council of the EU, on a proposal of the European Commission and after consultations with the European Central Bank, may take protective measures regarding third countries for a period not exceeding 6 months, if such measures are absolutely necessary.⁶²

According to Article 29 TFEU, the Council of the EU adopts decisions that determine the approach of the EU to a separate issue of a geographical or thematic nature, and according to Article 215 TFEU, the Council may adopt restrictive measures against individuals or legal entities and groups or non-governmental organizations.

In 2019, three new sanction regimes were introduced. Pursuant to Council (EU) Regulation 2019/796, the Council may freeze the funds and economic

⁶⁰ SCHALL, A. Free capital movement vs. freedom of establishment in light of Brexit. Thesis paper [online] Available at: https://www.law.ox.ac.uk/sites/default/files/migrated/free_capital_movement_vs._freedom_of_establishment_in_light_of_brexit_0.pdf

⁶¹ See: MUKWIRI, J. Brexit and implications for the free movement of capital. *Legal issues of economic integration*. 2019. № 46 (1). pp. 7–28 [online]. Available at: <https://heinonline.org/HOL/LandingPage?handle=hein.kluwer/lei0046&div=6&id=&page=?>

⁶² Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal of the European Union* C 326, 26.10.2012, Vol. 55, p. 412 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex-%3A12012E%2FTXT>

resources of individuals or legal entities, organizations and bodies responsible for cyber-attacks, as well as those who support them. Two new geographic sanction regimes apply to Nicaragua⁶³ and Turkey's unauthorized drilling in the Eastern Mediterranean.⁶⁴ Currently, no persons, organizations or bodies have been included in the list of these regimes.

Practice shows that most current EU sanction regimes have been extended for the next six-month periods, including regimes introduced in connection with Russia's actions aimed at destabilizing the situation in Ukraine, and North Korea's nuclear proliferation activities.

The most notable of the existing EU sanction regimes were those related to Russia's actions in Ukraine.⁶⁵

In particular, Council (EU) Regulation No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine provided for the freezing of all funds and economic resources of natural or legal persons involved in the violation of territorial integrity of Ukraine.⁶⁶

Subsequently, on July 31, 2014, the Council of the EU adopted Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine⁶⁷, that is, a violation of sovereignty and territorial integrity. It was prohibited to carry out transactions, provide financing or investment services or operate with new bonds or shares or similar financial instruments with a maturity / repayment of more than 90 days, issued by stateowned Russian financial institutions (Sberbank, VTB Bank, Gazprombank

⁶³ Council Decision (CFSP) 2019/1720 of 14 October 2019 concerning restrictive measures in view of the situation in Nicaragua. OJ L 262, 15.10.2019, p. 58–63 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019D1720>

⁶⁴ Council Decision (CFSP) 2019/1894 of 11 November 2019 concerning restrictive measures in view of Turkey's unauthorised drilling activities in the Eastern Mediterranean. OJ L 291, 12.11.2019, p. 47–53 [online]. Available at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX%3A32019D1894>

⁶⁵ Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. *Official Journal of the European Union* L 78, 17.03.2014, p. 16–21 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014D0145>

⁶⁶ Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. *Official Journal of the European Union* L 78, 17.03.2014, p. 6–15 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0269>

⁶⁷ Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. *Official Journal of the European Union* L 229, 31.07.2014, p. 13–17 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014D0512>

and other entities specified in the Appendix to Decision), with the exception of Russia's institutions having international status established by intergovernmental agreements with the aggressor country as one of the shareholders.

The EU's restrictive financial measures are aimed at cutting off strategic stateowned Russian companies from the EU funding sources, thus imposing indirect financial costs on the Russian state in order to induce it to change its behaviour. In March 2015, the European Council linked the lifting of EU sanctions to the complete implementation of the Minsk agreements⁶⁸ (but eventually this did not happen).

In connection with the full-scale invasion of Ukraine by the Russian Federation, in 2022-2023 the EU approved a number of packages of tough sanctions against the aggressor country, which are primarily aimed at the Russian economy. Among the main restrictive measures, the following should be highlighted: exclusion of leading Russian banks from the SWIFT system; prohibition of investing in projects co-financed by the Russian direct investment fund; prohibition of exporting certain oil refining technologies; the ban on the import of Russian coal; a complete ban on the import of all Russian crude oil and oil products delivered by sea; restrictions in the transport industry (ban on exporting equipment and providing services in this field, closure of airspace for all aircraft owned, registered or controlled by Russia, including oligarchs' private aircraft; sanctions in the trade sector; exclusion of Russia from public contracts and financial/non-financial support etc.⁶⁹

A far-reaching EU sanctions regime in terms of the complexity of financial and capital restrictions is that of imposed against North Korea in connection with its nuclear proliferation activities.⁷⁰

The regime prohibits the transfer or clearing of funds to and from North Korea, as well as from North Korea, as well as any transactions with banks located in North Korea, or the opening of branches and subsidiaries of North Korean banks in the EU and EU banks in North Korea. It also requires Member States to strengthen the monitoring of their financial institutions' activities related to North Korean banks, as well as detailed reporting by EU banks on such activities.

⁶⁸ EU restrictive measures in response to the crisis in Ukraine [online]. Available at: https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/sanctions-adopted-following-russia-as-military-aggression-against-ukraine_en#timeline-measures-adopted-in-2022-2023

⁶⁹ Sanctions adopted following Russia's military aggression against Ukraine [online]. Available at: https://eu-solidarity-ukraine.ec.europa.eu/eu-sanctions-against-russia-following-invasion-ukraine_uk

⁷⁰ Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2013/183/CFSP. *Official Journal of the European Union* L 141, 28.05.2016, pp. 79–124 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016D0849>

In addition, the EU has implemented actions against Iran aimed at curbing its nuclear proliferation activities. Specifically, these include financial constraints such as freezing the assets of the Central Bank of Iran and prominent Iranian commercial banks, as well as establishing mechanisms for notifying and approving transfers exceeding certain limits to Iranian financial institutions. General and individual restrictive measures were also imposed in response to the use of Iranian drones in Russian aggression.⁷¹

Restrictions on the free movement of capital in the EU's relations with third countries have their own specifics, as they take place in a different legal context than that existing within the EU. The deepening level of global integration in the area of free movement of capital, on the one hand, and the current situation related to the armed conflict in Ukraine, as well as other factors, determine specific trends in the development of capital restrictions.

5. Capital Movement Restrictions in the EU: Development Trends

Despite a fairly high level of integration in the area of capital flows and significant liberalization, integration processes in the EU are further deepening, simultaneously facing difficulties.

Thus, in order to improve capital mobility and access to finance for EU member states, the European Commission initiated the creation of the Capital Market Union (hereinafter referred to as the CMU) in 2014, which remains a very important priority for the EU. It is necessary to complement the Banking Union, as well as to strengthen Economic and Monetary union and the international role of the euro.⁷²

The CMU is also an important project strongly linked to the internal market functioning. One of its main objectives is to remove the remaining cross-border barriers to investment in EU capital markets in order to create a true single capital market. This should allow savers and companies to access investment opportunities and financing on the same terms anywhere in the EU, regardless of their location or the state of development of local capital markets.⁷³

⁷¹ Iran: EU restrictive measures [online]. Available at: <https://www.consilium.europa.eu/en/policies/sanctions/iran/>

⁷² Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions. "Capital Markets Union: progress on building a single market for capital for a strong Economic and Monetary Union", 15 March 2019, Brussels, COM(2019) 136 final [online]. Available at: https://ec.europa.eu/finance/docs/policy/190315-cmu-communication_en.pdf

⁷³ Ibid.

All the legislative measures announced in the 2015 Capital Markets Union Action Plan and the 2017 Mid-Term Review of the Capital Markets Union Action Plan have been implemented by European Commission, including legislative proposals that contribute to the removal of barriers to cross-border investment. European Commission provided an overview of the progress made in its Communication COM(2019) 136 final of 15.03.2019 entitled “Capital Markets Union: progress on building a single market for capital for a strong Economic and Monetary Union”.⁷⁴

Since September 2015, the European Commission, the European Parliament and the Council have agreed on a series of legislative acts that lay the groundwork for the creation of the CMU. Together, they aim to: 1) to facilitate access to pan-European products and labels through a revised Venture Capital Regulation (EUVeCa), reduce red tape for companies seeking a public listing (prospectus review) and help create a common European market for personal pension products; 2) to increase market transparency and integrity through new rules for simple, transparent and standardised securitisation (STS); 3) introduce a more proportionate prudential regime for investment firms and a harmonised framework for covered bonds; and 4) remove cross-border barriers to capital market integration by harmonising key pre-insolvency procedures and strengthening the role of European supervisors in supervisory convergence.⁷⁵ It should be noted that shift towards the CMU raised new problems, as noted by D. Piroška and R.A. Epstein, “tensions between supranational empowerment and national control prevented deeper integration”⁷⁶, and this especially concerns EU Member States from Eastern Europe.

While it’s currently difficult to evaluate the impact of the enacted legislative proposals since most have not been in effect for long, further efforts are undoubtedly required to establish a fully-fledged CMU. Long-term trends, such as technological advancements, the implications of Brexit, and the shift towards a climate-neutral economy, will influence the future of capital markets in the EU. More effort will also be needed in areas where progress has been slower, such as access to financing and the development of appropriate ecosystems for small and midsize enterprises; addressing cross-border challenges like differing national bankruptcy laws and streamlining income taxation methods.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ PIROŠKA, D., EPSTEIN, R. Stalled by design: New paradoxes in the European Union’s single financial market. *Journal of European integration*. 2023, Vol. 45, № 1, p. 197 [online]. Available at: <https://www.tandfonline.com/doi/full/10.1080/07036337.2022.2154344>

In May 2019, the OECD Council approved a revision of the OECD Code on Capital Liberalisation.⁷⁷ This Code commits the countries that have joined it to gradually liberalise cross-border capital flows.⁷⁸

The main objective of the review was to strengthen the Code by ensuring that it remains relevant in an environment that has changed significantly in recent decades. European Commission has been actively involved in the reviewing process and has introduced additional coordination between Member States to ensure consistency of their positions, in particular on issues covered by the EU's common legal framework.

The revised Code ensures that Member States may take measures necessary to preserve financial stability (“macroprudential measures”) while maintaining liberalisation standards. The Code clarifies that commonly used macroprudential measures are not considered restrictions (Basel III-type cross-currency liquidity ratios such as the liquidity coverage ratio and the net stable funding ratio). It also provides flexibility for untested measures, recognising that the macroprudential toolkit is evolving.

An important step towards liberalising capital flows in the EU is the settlement of investment disputes in free trade agreements or individual investment treaties.⁷⁹

Investment protection provisions typically cover a number of standards for the treatment accorded to investors of one party and their investments in the territory of the other party. These include non-discrimination, fair and equitable treatment, as well as market accesses. However, some of these provisions have raised concerns in the past as to how they may interfere with states' right to regulate this matter in the context of public policy objectives. In this regard, the European Commission has adopted a reform-based approach that provides for modern and innovative provisions to strike a balance between the rights of investors and the right of states to regulate in order to achieve legitimate public policy objectives. The Commission applies this approach in its negotiations on investment protection provisions.⁸⁰

Negotiations on an investment agreement with China intensified in 2019. Several rounds of negotiations took place in 2019, focusing on liberalisation commitments and market access. Negotiations regarding Comprehensive Agreement

⁷⁷ OECD. OECD Code of Liberalisation of Capital Movements. 2019 [online]. Available at: <https://www.oecd.org/g20/summits/osaka/OECD-Codes-of-capital-movements.pdf>

⁷⁸ The IMF's Institutional View on Capital Flows in Practice. Group of twenty [online]. Available at: <https://www.imf.org/external/np/g20/pdf/2018/073018.pdf>

⁷⁹ Commission staff working document on the movement of capital and the freedom of payments. Brussels, 7 April 2021 (OR. en) 7578/21, p. 52 [online]. Available at: <https://data.consilium.europa.eu/doc/document/ST-7578-2021-INIT/en/pdf>

⁸⁰ Ibid.

on Investment were concluded in principle in December 2020⁸¹, further progress has stalled due to some economic/political reasons and, as it seems to be, due to other risks, including suggested China's tacit support for Russia.

The EU and Japan's Economic Partnership Agreement entered into force on 1 February 2019.⁸² Discussions are ongoing on investment protection and dispute settlement under a possible future additional agreement concerning these matters.

There are also some other EU free trade agreements, including with Singapore and Vietnam, as well there are multiple negotiations performed by the EU with many countries and regional trade blocs such as Southern Common Market (Mercosur) all over the world.

Typically, investment protection deals made at the EU level with different non-EU countries supersede the bilateral investment treaties established by Member States with those countries. Yet, according to Regulation (EU) No 1219/2012⁸³, which sets transitional rules for bilateral investment treaties between Member States and non-EU countries, the Commission can permit Member States to negotiate or finalize new bilateral investment treaties, provided there are no active (or finished) EU-level talks with that country, and the treaty aligns with EU law and its investment policy.

Despite the liberalisation of capital flows, certain barriers remain and, at the same time, there is an opposite trend towards their strengthening. An important tendency in the field of capital controls in the EU is the introduction and the use of investment screening mechanisms, as in some cases foreign investors may seek to acquire strategic assets that give them access to, for example, critical technologies, infrastructure or confidential information, which poses certain security or public order risks.⁸⁴ In response to such concerns, and considering that key trade partners of the EU, as well as few Member States already introduced the aforementioned measures, there was adopted Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.⁸⁵ As noted

⁸¹ Ibid.

⁸² EU-Japan Economic Partnership Agreement [online]. Available at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/japan/eu-japan-agreement_en

⁸³ Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries. *Official Journal of the European Union* L 351, 20.12.2012, pp. 40–46 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R1219>

⁸⁴ Commission staff working document on the movement of capital and the freedom of payments. Brussels, 7 April 2021 (OR. en) 7578/21, p. 55 [online]. Available at: <https://data.consilium.europa.eu/doc/document/ST-7578-2021-INIT/en/pdf>

⁸⁵ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union. *Official*

by Dutch scientists W. Zwartkruis and B. de Jong, the primary objectives of this Regulation are to streamline the evaluation of foreign direct investments linked to crucial strategic technologies and to establish coordination of the screening mechanism between Member States and the European Commission.⁸⁶ We believe that this screening actually means new restrictions of the capital movement, despite the fact that according to the EU's official information, "the EU mechanism does not restrict the EU's openness to FDI: of the more than 420 cases screened in 2022, less than 3% led to the Commission issuing an opinion."⁸⁷ However, it seems that with time and with increasing number of screened cases, diverse controversies may appear with regard of the application peculiarities of this Regulation.

Capital control measures are designed to deter chaotic capital outflows that may lead to financial and economic downturns. On the other hand, investment screening mechanisms allow state bodies to check and, when deemed highly appropriate, halt investments due to security concerns or public order considerations.

As of 2021, according to Member States, 17 of them (including Denmark, Germany, France, Finland, France, Italy, Latvia, Lithuania, and Hungary) have established screening mechanisms. Some these mechanisms apply to both intra- and outa-EU investments, while others apply only to third country investors. Some mechanisms specify the sectors in which investments are subject to review, while others are not limited to specific sectors or list sectors for illustrative purposes only.⁸⁸

Screening mechanisms may use various thresholds (e.g., acquisition of 25% of the share capital/voting or control rights in a company) to determine the investments subject to review, which typically exclude portfolio investments. They may be launched by voluntary or mandatory notifications, and under certain conditions, a public body may initiate a check-up on its own initiative.⁸⁹

The newly introduced EU's system for screening foreign investments is crafted to assist every Member State and the Commission in pinpointing and addressing potential threats that specific foreign investments could pose to security

Journal of the European Union L 79I, 21.03.2019, pp. 1–14 [online]. Available at: <https://eur-lex.europa.eu/eli/reg/2019/452/oj>

⁸⁶ See: ZWARTKRUIS, W., DE JONG, B. The EU regulation on screening of foreign direct investment: a game changer? *European Business Law Review*. 2020, Issue 31, pp. 447–474.

⁸⁷ EU foreign investment screening and export controls help underpin European security. Press release. 19 October 2023, Brussels [online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5125

⁸⁸ Commission staff working document on the movement of capital and the freedom of payments. Brussels, 7 April 2021 (OR. en) 7578/21, p. 56 [online]. Available at: <https://data.consilium.europa.eu/doc/document/ST-7578-2021-INIT/en/pdf>

⁸⁹ Ibid.

and public order. This takes place whether or not a Member State already has its own screening mechanism. This system isn't intended to substitute or replicate the existing screening frameworks in EU Member States. Instead, it establishes a collaborative framework, within which Member States and the Commission can share information about foreign direct investments that might impact security or public order. Additionally, it provides a platform for voicing concerns through Commission's opinions about such investments, when necessary. These opinions are not imperative, because it's up to Member State whether to apply a screening mechanism or not.⁹⁰

In addition, despite the EU's desire to further liberalise the capital market, current realities, including Russian-Ukrainian armed conflict, have a significant impact on this process, as Russian Federation's aggression has exacerbated the contradictions of the current world, in international community, and significantly complicated the socio-economic situation at the regional and global levels. A number of new challenges, risks and threats have emerged that have caused turbulent processes in the political, economic and security environments, namely: the termination of energy sources supplies from Russian Federation, the blockade of Ukraine's exports of agricultural products by it. The above circumstances had a negative impact on the liberalisation of capital flows, primarily between the EU member states and third countries, including Ukraine. The Russian-Ukrainian armed conflict has objectively reduced the interest and willingness of European investors to develop contacts with a state which fights against aggressor, which contains risks and dangers for prospective investments and business.

At the same time, the fact that Ukraine has been granted the status of an EU candidate, the unprecedented sanctions imposed by the EU against Russia, and a number of EU initiatives to liberalise trade relations with Ukraine (lifting trade restrictions for Ukrainian producers) demonstrate the EU's solidarity with Ukraine and support, including in ensuring the freedom of capital flows from Ukraine.

6. Conclusions

The provisions regarding free movement of capital were first envisaged in the EEC Treaty of 1957. In our opinion, they were not strictly imperative in nature: Member States were to strive to avoid introducing any new restrictions on capital

⁹⁰ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union. *Official Journal of the European Union* L 79I, 21.03.2019, pp. 1–14 [online]. Available at: <https://eur-lex.europa.eu/eli/reg/2019/452/oj>

movements and related payments within the EEC. This freedom proclaimed by the EEC Treaty was implemented gradually. A number of directives played a significant role in its development. The case law of CJEU also considerably influenced the evolution of free capital movement.

A new impetus to the liberalization of the movement of capital in the EEC was given by the EEA of 1986, according to which the liberalization of the freedom of the movement of capital was given the same importance as other freedoms of the internal market. In the context of understanding the concept of “capital movement” in accordance with EU law, investments are one of its components. From the analysis of legal acts and CJEU case law, it follows that investments were given a key importance in the process of liberalization of the movement of capital within the framework of the EU, namely, first of all, the free movement of direct investments was ensured. Hence other types of capital movements tended to be subject of more restrictions. Prohibition of capital restrictions both in the internal and external dimensions was introduced by the Maastricht Treaty.

Currently the freedom of movement of capital occupies a special place among other EU internal market freedoms, as it applies not only to EU member states but also to third countries, including a former member – the UK. In addition, freedom of capital movement is essential for the regulation of investment activity in the EU.

Current realities determine specific trends in the development of the capital market in the EU, as well as restrictions on the freedom of capital movement. The key trends include: the creation of the CMU and eliminating of appeared barriers towards its achievement, which remains a very important priority for the EU to complement the Banking Union, as well as to strengthen the economic and monetary union and the international role of the euro; the tendency to settle investment disputes in free trade agreements or individual investment agreements; the use of foreign investment screening mechanisms, etc.

In the current environment of slowing economic growth, global trade tensions, and, most importantly, the armed conflict in Ukraine, there is an urgent need for closer integration of capital markets in the EU, as Russian aggression has exacerbated the contradictions of the current world and significantly complicated the socio-economic situation at the regional and global levels. This aggression also caused new restrictions concerning Russian Federation and countries which provide military support to it, such as Iran.

Overcoming the consequences of the crisis caused by the armed conflict in Ukraine, as well as implementing the EU’s priorities for the coming years, including becoming the first climate-neutral economy, will require significant investment. Using public finance would not be sufficient, so attracting private investment and mobilising cross-border investment is crucial. The remaining restrictions to the free

movement of capital must of course be eliminated or eased when deemed appropriate/safe, because there seem to be exist confronting trends: dialectic combination of further liberalization and introducing new measures with a varying degree of restrictive potential, for example, foreign direct investment screening. Current realities indicate correctives in trend of liberalisation of capital movement in the EU towards new possible restrictions, mostly in its relations with third countries.

In addition, as bilateral investment agreements between EU Member States and third countries should be progressively replaced by the EU trade/investment agreements, it is essential that investors continue to feel confident that their investments will be effectively protected, and relevant measures in this regard should be improved. Hence the EU and its Member States should be careful when it comes to new restrictions, which will definitely be possible considering existing confrontation in the modern world triggered by Russia's unprovoked aggression in Ukraine and, unfortunately, support (explicit and implicit) of such illegal actions from the side of some countries.

List of references

- Amurta SGPS v Inspecteur van de Belastingdienst/Amsterdam. Judgment of the Court (First Chamber) of 8 November 2007. Case C-379/05 [online]. Available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005CJ0379:EN:NOT>
- Baars v Inspecteur der Belastingen Particulieren/Ondernemingen Gorinchem. Judgment of the Court (Fifth Chamber) of 13 April 2000. Case C-251/98. European Court Reports 2000 I-02787 [online]. Available at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A61998CJ0251>
- Banking Package 2021: new EU rules to strengthen banks' resilience and better prepare for the future [online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5401
- Capital movements [online]. Available at: https://finance.ec.europa.eu/regulation-and-supervision/capital-movements_en
- Commission Delegated Regulation (EU) 2018/1108 of 7 May 2018 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regulatory technical standards on the criteria for the appointment of central contact points for electronic money issuers and payment service providers and with rules on their functions (Text with EEA relevance.). C/2018/2716. *Official Journal of European Union* L 203, 10.08.2018, pp. 2–6 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1108>
- Commission Delegated Regulation (EU) 2019/758 of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist

- financing risk in certain third countries (Text with EEA relevance.) [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019R0758>
- Commission of the European Communities v Federal Republic of Germany. Failure of a Member State to fulfil obligations. Article 56 EC. Legislative provisions concerning the public limited company Volkswagen. Opinion of Mr Advocate General Ruiz-Jarabo Colomer delivered on 13 February 2007. Case C-112/05. Commission v Germany [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62005CC0112&from=LT>
- Commission of the European Communities v Hellenic Republic. Case 194/84. Judgment of the Court of 03 December 1987 [online]. Available at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:61984CJ0194>
- Commission staff working document on the movement of capital and the freedom of payments. Brussels, 7 April 2021 (OR. en) 7578/21. 59 p. [online]. Available at: <https://data.consilium.europa.eu/doc/document/ST-7578-2021-INIT/en/pdf>
- Communication from the Commission on capital market union: Progress on building a single market for capital for a strong economic and monetary union [online]. Available at: https://finance.ec.europa.eu/publications/communication-commission-capital-market-union-progress-building-single-market-capital-strong_en
- Consolidated Version of the Treaty establishing the European Community. *Official Journal of the European Communities*. 1997, C340/1733. 143 p. [online]. Available at: <https://op.europa.eu/en/publication-detail/-/publication/3c32722f-0136-4d8f-a03ebfaf70d16349>
- Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal of European Union* C 326, 26.10.2012, Vol. 55, p. 412 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>
- Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2013/183/CFSP. *Official Journal of European Union* L 141, 28.05.2016, pp. 79–124 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016D0849>
- Council Decision (CFSP) 2019/1720 of 14 October 2019 concerning restrictive measures in view of the situation in Nicaragua. *Official Journal of European Union* L 262, 15.10.2019, pp. 58–63 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019D1720>
- Council Decision (CFSP) 2019/1894 of 11 November 2019 concerning restrictive measures in view of Turkey's unauthorised drilling activities in the Eastern Mediterranean. *Official Journal of European Union* L 291, 12.11.2019, pp. 47–53 [online]. Available at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX%3A32019D1894>
- Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. *Official Journal of European Union* L 78, 17.03.2014, pp. 16–21 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014D0145>
- Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. *Official Journal of*

- European Union* L 229, 31.07.2014, pp. 13–17. [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014D0512>
- Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. *Official Journal of European Union* L 78, 17.03.2014, pp. 6–15 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0269>
- Criminal proceedings against Guerrino Casati. Judgment of the Court of 11 November 1981. Case 203/80 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61980CJ0203>
- DARVAS, Z., HUTTL, P., MERLER, S., WALSH, T. Analysis of developments in EU capital flows in the global context. Final study. *Bruegel*. 2015, № 2015.2574. 200 p. [online]. Available at: https://finance.ec.europa.eu/system/files/2020-06/study-bruegel-capital-flows-03112015_en.pdf
- Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance). *Official Journal of European Union* L 141, 5.06.2015, pp. 73–117 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>
- Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1153>.
- Directive (EU) 88/361/EEC of the Council of 24 June 1988 for the implementation of Article 67 of the Treaty [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/AL/?uri=CELEX%3A31988L0361>
- Erika Waltraud Ilse Hollmann v Fazenda Pública. Judgment of the Court (Fourth Chamber) of 11 October 2007. Case C-443/06 [online]. Available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006CJ0443:EN:PDF>
- EU foreign investment screening and export controls help underpin European security. Press release. 19 October 2023, Brussels [online]. Available at: https://ec.europa.eu/commision/presscorner/detail/en/ip_23_5125
- EU-Japan Economic Partnership Agreement [online]. Available at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/japan/eu-japan-agreement_en
- EU restrictive measures in response to the crisis in Ukraine [online]. Available at: https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/sanctions-adopted-following-russias-military-aggression-against-ukraine_en#timeline-measures-adopted-in-2022-2023
- EU restrictive measures in response to the crisis in Ukraine [online]. Available at: https://www.ecas.europa.eu/node/30963_en

- European Commission v French Republic. Judgment of the Court (Fifth Chamber) of 4 October 2018. Case C-416/17 [online]. Available at: <https://curia.europa.eu/juris/liste.jsf?num=C-416/17>
- European Commission v Hungary. Judgment of the Court (Grand Chamber) of 21 May 2019. Case C-235/17 [online]. Available at: <https://curia.europa.eu/juris/liste.jsf?num=C-235/17>
- European Commission v Kingdom of Belgium. Judgment of the Court (Sixth Chamber) of 12 April 2018. Case C-110/17 [online]. Available at: <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-110/17>
- European Parliament v Council of the European Union. Judgment of the Court (Grand Chamber), 19 July 2012. Case C130/10 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010CJ0130>
- European Union sanctions [online]. Available at: https://www.eeas.europa.eu/eeas/european-union-sanctions_en#10710
- Européenne et Luxembourgeoise d'investissements SA (ELISA) v Directeur général des impôts and Ministère public. Judgment of the Court (Fourth Chamber) of 11 October 2007. Case C-451/05 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0451&qid=1686077369936>
- Finanzamt Hamburg-Am Tierpark v Burda GmbH. Judgment of the Court (Fourth Chamber) of 26 June 2008. Case C-284/06. I-04571 [online]. Available at: <https://eurlex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0284>
- First Directive (EU) of the Council of 11 May 1960 for the implementation of Article 67 of the Treaty. *Official Journal of European Union* L 043, 12.07.1960, pp. 0921–0932 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31960L0921>
- FRAGA, L. S., HINDELANG, S. The Free Movement of Capital and Foreign Direct Investment: The Scope of Protection in EU Law. *European Journal of International Law*. 2010, vol. 21, issue 2, pp. 496–499 [online]. Available at: <https://academic.oup.com/ejil/article/21/2/496/374222>
- HAMULÁK, O. Unveiling the overlooked freedom – the context of free movement of capital and payments in the EU law. *International and Comparative Law Review*. 2012, Vol. 12, No. 2, pp. 129–145 [online]. Available at: <https://intapi.sciendo.com/pdf/10.1515/iclr-2016-0091>
- HEMELS, S. et al. Freedom of establishment or free movement of capital: is there an order of priority? Conflicting visions of national courts and the ECJ. *EC Tax Review*. 2010, Vol. 1, pp. 19–31 [online]. Available at: <http://ssrn.com/abstract=1959832>
- Iran: EU restrictive measures. [online]. Available at: <https://www.consilium.europa.eu/en/policies/sanctions/iran/>
- Klaus Konle v Republik Österreich. European Court Reports. 1999. I-03099. Judgment of the Court of 01 June 1999 [online]. Available at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A61997CJ0302>
- Manfred Trummer and Peter Mayer. Judgment of the Court of 16 March 1999. Case C-222/97 [online]. Available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:61997CJ0222>

- MUKWIRI, J. Brexit and implications for the free movement of capital. *Legal issues of economic integration*. 2019, № 46 (1), pp. 7–28 [online]. Available at: <https://heinonline.org/HOL/LandingPage?handle=hein.kluwer/lici0046&div=6&id=&page=>
- NIJKEUTER, E., MAARTEN, F. «FII 2» and the Applicable Freedoms of Movement in Third Country Situations. *EC Tax Review*. 2013, Vol 22, pp. 250–257 [online]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2331989
- OECD. OECD Code of Liberalisation of Capital Movements. 2019 [online]. Available at: <https://www.oecd.org/g20/summits/osaka/OECD-Codes-of-capital-movements.pdf>
- PALAZOV, Petko. Is De-Risking one of the Indications for an Emerging Competition between the Free Movement of Capital and the Anti-Money Laundering Regulations? *International Conference KNOWLEDGE-BASED ORGANIZATION Vol. XXVII*. 2021, No 2. pp. 57–64 [online]. Available at: <https://sciendo.com/de/article/10.2478/kbo-2021-0048>
- PIROSKA, D., EPSTEIN, R. Stalled by design: New paradoxes in the European Union's single financial market. *Journal of European integration*. 2023, Vol. 45, № 1, pp. 181–201 [online]. Available at: <https://doi.org/10.1080/07036337.2022.2154344/>
- Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries. *Official Journal of European Union L 351*, 20.12.2012, pp. 40–46 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R1219>
- Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union. *Official Journal of European Union L 79I*, 21.03.2019, pp. 1–14 [online]. Available at: <https://eur-lex.europa.eu/eli/reg/2019/452/oj>
- Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU). № 648/2012 [online]. Available at: <https://eur-lex.europa.eu/eli/reg/2013/575/oj>
- Report from the Commission to the European Parliament and the Council on the application of Chapter IV of Regulation (EU) 2015/847 on information accompanying transfers of funds. COM/2019/282 final. *Official Journal of European Union L 125*, 14.05.2019, pp. 4–10 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2019:282:FIN>
- SAMOILENKO, Y., ZAVHORODNIA, V. Vilnyi rukh kapitalu u pravovomu rehulivanni finansovoho rynku Yevropeiskoho Soiuzu ta perspektyvy vykorystannia yevropeiskoho dosvidu dlia Ukrainy. Pravove rehulivannia vidnosyn na finansovomu rynku: stan ta napriamy vdoskonalennia: monohrafiia, vidp. red. V. D. Chernadchuk. *Summary: VVP «Mriia» TOV*. 2013. pp. 275–307 [online]. Available at: https://essuir.sumdu.edu.ua/bitstream-download/123456789/50052/8/Zavhorodnia_Samoilenko_vilnyi_rukh_kapitalu.pdf?sessionid=09386B0619E4C93FF1AB7E61CCA428E3 (in Ukrainian).
- SCHALL, A. Free capital movement vs. freedom of establishment in light of Brexit. Thesis paper [online]. Available at: https://www.law.ox.ac.uk/sites/default/files/migrated/free_capital_movement_vs._freedom_of_establishment_in_light_of_brexit_0.pdf

- Second Directive (EU) 63/21/EEC of the Council of 18 December 1962 adding to and amending the First Directive for the implementation of Article 67 of the Treaty. *Official Journal of European Union* L 9, 22.01.1963, pp. 62–74 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31963L0021>.
- Single European Act, 29.06.1987. *Official Journal of the European Communities*. L 169/1. 29.06.1987, pp. 1–28 [online]. Available at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:11986U/TXT&from=EN>
- ŠÍŠKOVÁ, Naděžda, HAMULÁK, Ondrej (eds.). *Evropské právo 2. Jednotný vnitřní trh*. Prague: Wolters Kluwer, 2012, pp. 84–95.
- Skatteverket v A. Judgment of the Court (Grand Chamber) of 18 December 2007. Case C-101/05 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0101>
- Société d'investissement pour l'agriculture tropicale SA (SIAT) v État belge. Judgment of the Court (First Chamber), 5 July 2012. Case C318/10 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010CJ0318>
- Staatssecretaris van Financiën v L.A.C. van Putten and Others. Judgment of the Court (Third Chamber), 26 April 2012. Joined Cases C578/10 to C580/10 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010CJ0578>
- STRILETS, B. Pravove rehulivannia investytsiinoi diialnosti v Yevropeiskomu Soiuzi [Tekst] : dys. ... kand. yuryd. nauk: 12.00.11 / Instytut zakonodavstva Verkhov. Rady Ukrainy. Kyiv, 2020. 256 p. (in Ukrainian).
- STRILETS, B. Svoboda rukhu kapitalu ta investytsiina diialnist u Yevropeiskomu Soiuzi. *Chasopys Kyivskoho universytetu prava*. 2015, № 1, pp. 299–304 [online]. Available at: http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?I21DBN=LINK&P21DBN=UJRN&Z21ID=&S21REF=10&S21CNR=20&S21STN=1&S21FMT=ASP_meta&C21COM=S&2_S21P03=FILE=&2_S21STR=Chkup_2015_1_72 (in Ukrainian).
- The IMF's Institutional View on Capital Flows in Practice. Group of twenty [online]. Available at: <https://www.imf.org/external/np/g20/pdf/2018/073018.pdf>
- Treaty establishing the European Economic Community (Rome, 25 March 1957). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3Axy0023/>
- Treaty on European Union (Maastricht, 07 February 1992). *Official Journal of the European Communities* C 191, 29/07/1992, pp. 0001–0110 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:11992M/TXT>
- YAKOVIUK, I., ANAKINA, T., TRAHNIUK, O., KOMAROVA, T. Istoriia yevropeiskoi intehratsii vid Ryskoi imperii do Yevropeiskoho Soiuzu: monohrafiia / za red. I. V. Yakoviuka. Kyiv: Red. zhurn. «Pravo Ukrainy», 2012. 208 p. [online]. Available at: <https://dspace.nlu.edu.ua/handle/123456789/1210> (in Ukrainian),
- WINFRIED, L. Holböck v Finanzamt Salzburg-Land. Judgment of the Court (Fourth Chamber) of 24 May 2007. Case C-157/05. I-04051 [online]. Available at: <https://eurlex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0157>
- ZWARTKRUIS, W., DE JONG, B. The EU regulation on screening of foreign direct investment: a game changer? *European Business Law Review*. 2020, Issue 31, pp. 447–474.