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THE DEVELOPMENT OF A COHERENT EUROPEAN ECONOMIC POLICY IN THE FIELD OF EXTERNAL RELATIONS

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Abstract:

The inclusion of FDI within the scope of the Common Commercial Policy provides a first significant step towards reassessing the delimitation of competence between the Union and Member States by simplifying the current complex system of rules, solidifying Union competence with regard to certain aspects of foreign investment regulation and offering a framework for establishing a common foreign investment policy¹. However, it is unclear whether Article 207 TFEU confers power upon the Union to take action concerning all aspects of FDI regulation.

↳ As a result of the inclusion of FDI within the scope of the Common Commercial Policy, the Lisbon Treaty has taken a huge step towards establishing the Common Commercial Policy as the basic tool of external economic action.

Furthermore, it is noteworthy that Article 207 TFEU vests the Union with significant powers in the field of foreign investment and enables it to substitute Member States in the international sphere. Given, however, the plethora of contractual commitments undertaken so far by Member States, which have concluded more than 1,000 Bilateral Investment Treaties with third countries, it is still unclear whether, when and how the Union will exercise its new powers. The lack of clarity concerning the substantive scope of FDI competence in conjunction with the legislative changes required, in particular with regard to investment protection, adds to the speculation concerning the willingness of Member States to accept the transfer of their powers to the EU and future challenges by them to EU action in this field. The external action of the European Union is about to experience a new important development since the Lisbon Treaty establishes for the first time an express competence over foreign investment by including it in the scope of the Common Commercial Policy. Building upon the premises of the current regime, it contributes to the development of a coherent, effective and all-embracing Common Commercial Policy, and reflects the degree of internal economic integration in the field of external relations. The expansion of the scope of the Common Commercial Policy to trade in services, commercial aspects of IP and, most importantly, FDI indicates that a common policy in the fields of goods, services, establishment and capital with regard to third countries is needed in order to serve the goals of internal integration and to increase the competitiveness of Europe in the world. Till the day the Treaty of Lisbon will enter into force, there is however room for improvement in terms of trade and investment policy.

Keywords: Common market, FDI, external relations, bilateral investment treaties

¹ Chaisse Julien, 'Towards a European Investment Policy', NCCR Working Paper forthcoming April 2009.

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