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FREE MOVEMENT OF CAPITAL IN THE EU

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- General principle of Free Movement of Capital in the EU.
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ABSTRACT

The aim of the thesis is an analysis of the principle of free movement of capital, which applies directly to the laws of EU countries. The enforcement activity of the European Commission ensuring that EU countries properly apply the rules of the Treaty will be studied. Most common restrictions to the free movement of capital and acts to eliminate any barrier that is incompatible with the Treaty will be defined through analysis of the European Court of Justice case law. Finally, the powers of the Commission will be evaluated and measures will be proposed to tackle possible shortcomings found through the analysis.

KEY WORDS

Free Movement of Capital, European Court of Justice (ECJ), European Union (EU), Commission, Liberalization.

ANOTACE

Cílem této práce je analyzovat princip volného pohybu kapitálu, který je přímo spojen s právními předpisy zemí Evropské unie. Bude zkoumána vymáhací činnost Evropské komise, která zajišťuje, že země EU řádně uplatňují pravidla Smlouvy. Nejběžnější omezení volného pohybu kapitálu a opatření k odstranění jakékoli překážky neslučitelné se Smlouvou budou vymezeny prostřednictvím analýzy judikatury Evropského soudního dvora. Nakonec budou zhodnoceny pravomoci Komise a navrhnuta opatření k řešení případných nedostatků zjištěných analýzou.

KLÍČOVÁ SLOVA

Volný pohyb kapitálu, Evropský soudní dvůr (ESD), Evropská unie (EU), Komise, Liberalizace.

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INTRODUCTION

The EU's journey to a full harmonization between its member states has seen the implementation of four fundamental freedoms under the EU Single Market; free movement of Persons, Goods, Services and Capital. The free movement of capital in itself is not incredibly old, nevertheless, it is certainly the broadest and one that has a uniqueness to it, thus prohibiting all restrictions on capital movements and payments not only between Member States, but also with third countries and Member States. Liberalization process of capital flows in the EU progressed gradually with the unique third-country dimension a recent review due to the Maastricht Treaty since 2004. The main legal basis for this particular freedom is the Articles 63 to 66 of the Treaty on the Functioning of the European Union (TFEU).

The free movement of capital reinforces the single market complementing the other three freedoms. Montiel, 2014 referred to Capital flow as the "push factor" for economic growth. In the author's opinion, he builds the logic on the essence of a free movement of workers amongst member states, but not liberalizing areas that would allow Businesses to freely move capital or investments to promote business? The free movement of capital vastly contributes to economic growth-which is the main rationale behind the EU and its Fundamental Freedoms, by annihilating all barriers for free movement of capital efficiently and promoting the use of the euro as an international currency, thus also contributing to the EU's role in the global market. Jakšić, 2021 also comments on the overall economic gains as a result of decreasing or abolishing trade barriers which was realized by the EU in becoming the second-largest exporter and importer of goods in the world, accounting for 16% of global exports and 15% of global imports in 2018.

There is no explicit definition for the 'movements of capital' even in the treaty of the functioning of the EU. However, the Court of Justice of the European Union has held that the definitions in the nomenclature annexed to Directive 88/361/EEC be used to define the term in the absence of a given one. Giving these definitions, foreign direct investments (FDI), real-estate investments or purchases, securities investments (e.g., in shares, bonds, bills, unit trusts), granting of loans and credit, other operations with financial institutions, including personal capital operations such as

dowries, legacies, endowments, and more make up the contents of cross-border capital movements in the EU.

Among the fundamental freedoms underlying the EU single market free movement of people, goods, services, and capital, the free movement of capital is the most recent, and it has not been given the accurate attention it should attract (Andenas, M., Gutt, T., & Pannier, M.(2005)). It became a directly applicable treaty freedom only with the Maastricht treaty, so individuals could draw benefits from.

The author seeks to analyze the enforcement activities of the European Commission put in place to ensure that EU member states properly apply the rules arising from the TFEU. Firstly, an analysis of the case law of the CJEU will will also be conducted such that most of the common restrictions on the free movement of capital and the acts of Member States that create barriers and are incompatible with the rules on the free movement of capital are identified. Hereafter, the powers of the European Commission will be assessed where measures will be proposed to remedy the most frequent shortcomings identified by the analysis.

1. BACKGROUND OF STUDY

1.1 History of The Free Movement Of Capital

The context of “Capital flows” is certainly not a talk of today which has been an increase in its degree of integration in financial markets globally, more specifically in advanced economies. The phenomenon has received various scrutiny, being positive and negative from a lot of authors.

Theoretically, the money market has been, according to Schumpter,2017, the headquarters of capitalist system which fosters development. Contrasting the widely sold “largely positive impact” results of trade integration, many authors, thus economists, disagree and further gear towards the effects rather than impact on growth. This argument is mostly based on the fact that “capital flows” do not always yield positive results.

Several researchers have journeyed on the path to dissecting this area and find outcomes focusing on advanced and emerging markets. Baharumshah, 2006 and Aizernmen, 2013 in their findings came to the conclusions that, the impact or effect of capital flows may be positive or negative depending on factors such as the types of capital flows, economic structure, empirical specifications for cross-border and panel regressions amongst others.

However, FDI both inflows and outflows were associated with higher economic growth as compared to domestic savings. This practically proves Schumpeter’s theory of the role of capital which fosters development.

The first Community measures were restricted in range. The Free Movement of Capital was formally not contained in the Treaty establishing the European Economic Community (EEC Treaty). There were no provisions at all covering the European Capital Markets.

The basic initiative of the Treaty Establishing the European Economic Community was to implement and ensure the smooth operation of the common market and economic integration. Therefore, sought to establish and remove all barriers of the four freedoms; Free movement of persons, capital, goods and services and further pushed to harmonize them across all member states.

In such a territory where the forces of market, demand and supply are established to move and function freely, it is only logic and imperative for them to move along with money. The service provider or investor as well as the salary worker liberalized to move and work in a territory is bound to make financial operations which indeed would be possible if the area of capital is also liberalized unless the phenomenon of the financial integration and common market is mere illusion or fallacy without actions.

Gaining membership in the EU for states might be backed by couple of reasons, however they all emerge to the point of assessing the fundamental motives of welfare and development by implementing the freedoms; the free movement of persons, goods, services and capital. Alfaro, 2004 empirically provides evidence that suggests that FDI plays a vital role in the in growing an economy. Nonetheless, it is crucial for these positive results to take effect conditioned on certain policies put in place which would be compatible with local conditions and therefore foster economic growth. In the view of this, the free movement of capital was enacted based on several Treaty provisions, Directives, Regulations, and Recommendations that set out policies and guidelines, following numerous amendments and improvements, the most amongst the four freedoms and therefore is barely set out to hit a false note.

The free movement of capital was bent on coming into existence from the beginning but came to realization through the establishment of the European Economic Community (EEC) which was ideally meant to economically integrate the European territory alongside the single trading entity in the international world. The Treaty of Rome, signed in Rome on the 25th of March 1957 but came into force later on January 1st, 1958 officially established the EEC. This pact took off with six founding members and reached 28 at its peak, currently consist of 27 member states with the exit of the United Kingdom.

1.2 Research Problem

The main problem of the movement is the fragmented nature of the EU's capital markets, despite the progress achieved in past years since the push for liberalizing capital flow. The Single Market phenomenon cannot be realized without the sync of flow of capital. What is the essence

of the free movement of people to work but without free movement of capital which would in turn expand or create more business therefore jobs? This is why the Commission's aim of eradicating certain obstacles together with Member States pertaining to cross-border investment which fall within national competences is absolutely viable. An action was therefore taken to set up an expert group on such barriers to analyze the issue aroused. The Commission, by way of follow up on the task given in March 2017 published a report which stated the situation in Member States regarding the issue. Also in March 2019, a communication by the Commission was released entitled 'Capital market union, which originally a plan adopted in 2015 with 20 key measures: a progress on building a single market for capital to maintain strong economic and monetary union'. A CMU action plan followed in September 2020 for the second time, this contained sixteen prioritized objectives to be achieved. This action plan according to Veil, 2022 fell short to achieve a fully integrated capital market across the EU and therefore refers to the term "Capital Markets Union" being used again a misleading way.

Surprisingly, there is intra-EU bilateral investment treaties (BITs) , of which a lot of them existed before the most recent rounds of EU enlargement. Such agreements between Member States are considered a drawback by the Commission which having effects on the single market as they both conflict and overlap with the EU legislative framework. In the sense that, national courts and the Court of Justice are excluded in the arbitration mechanisms incorporated in the BITs, where such mechanisms prevent the application of EU Law. BITs may also result in bias treatment towards investors from certain Member States which as a result, concluded intra-EU BITs.

Since the EU keeps on enlarging, there are such impediments to the movements as new entry member states and even some old ones tend to contradict the implementation of the Free Movement of Capital.

1.2.1 Research Problem Questions

This study proposes to probe into and answer the following problem questions;

1. How does the free movement of capital work in general?

2. How is the EU's free movement of capital applied by Member States?
    a. What are the exceptions accepted by The Commission to be exercised?

3. What common obstacles do the freedom movement of capital has and why?

b. What has been done to curb such obstacles so far?

4. What has been the role of The Commission to ensure proper implementation of the Freedom?

1.3 Research Aim

The aim of the thesis is an analysis of the principle of free movement of capital which applies directly to the laws of EU countries. The enforcement activity of the European Commission ensuring that EU countries properly apply the rules of the Treaty will be studied. Most common restrictions to the free movement of capital and acts to eliminate any barrier that is incompatible with the Treaty will be defined through analysis of the European Court of Justice case law. Finally, the powers of the Commission will be evaluated, and measures will be proposed to tackle possible shortcomings found through the analysis.

1.4 Research Objectives

The study seeks to:

1. Review related literature and case laws on the principle of free movement of capital in the EU.

2. To analyze the implementation in various member states on how it syncs with the Treaty.

3. To assess the role of The Commission in ensuring proper implementation of the freedom amongst Member States.

4. To identify the powers of the Commission in it's role of enforcing the free movement of capital.

5. To identify possible improvements to tackle whatever hinderances there are to this movement.

1.5 Research Methodology

The study will mainly focus on the use of qualitative comparative case study methodology to properly probe into and explain the principle of Free Movement of Capital in the EU as well as the barriers and powers of The Commission. The paper displays the use of both primary and secondary data collection techniques, but secondary data sources will mostly be preferred from

several credible sources. Related case Laws will also be collected and analyzed. The collected data will be analyzed using content and document analysis approach for efficient and detailed evaluation of the implementation process of the selected cases.

1.6 Theoretical and Practical Significance of Study

As stated earlier, the Free Movement of Capital is the most recent amongst the four fundamental freedoms and has not been given maximum attention though is it the broadest of them all with a unique add-on which extends to third party countries.

Therefore, this study seeks to add up vastly to the existing pile of literature in the field of Free Movement of Capital. The study will be amongst the few to be analyzing the principle as a whole and assessing the powers of The Commission which is tasked to ensure the proper implementation of the principle.

The results of this study will also contribute to the policy agenda of the EU to help its institutions especially the Commission to roll out policies to bridge the gap between the main motive and implementation of principle by member states. It would further drive other researchers into this area to reveal more issues and focus on The EU's Free Movement of Capital which is supposed the "binding factor" of the remaining three freedoms.

The study may also as well help the member states to focus on proper implementation of the Free Movement of Capital. It is the hope of the researcher that this study realizes its purpose and adds up to supplement the research area and become a huge benefit to all actors involved and other researchers to come.

1.7 Outline of the Thesis

The master's thesis is divided into seven distinct parts, each contributing to thoroughly exploring the resource curse phenomenon. The first two parts establish a theoretical backdrop, including an overview of various legal theories and explanations.

The third and fourth sections are theoretical and discuss economic reforms and legal treatments addressing the resource curse paradox. These sections critically analyze strategies and legal mechanisms designed to tackle the challenges posed by resource abundance.

The fifth and sixth sections focus on the protection and exceptions to the phenomenon, respectively, and include a comparative analysis of ECJ decisions in cases related to the fundamental legal basis, Articles 63 to 66 TFEU. This analysis concludes the rights and limits of individuals, businesses, and member states.

The seventh and final section analyzes the powers of the Commission and evaluates its effectiveness in exercising its authority. This evaluation provides insights into the practical impact of the Commission's powers. The chapter concludes by offering practical recommendations considering the phenomenon's economic and legal aspects.

2. EVOLUTION OF THE FREE MOVEMENT OF CAPITAL

The Free movement of capital since its establishment, has gone through lots of changes and improvements which are captured in this phase of the study.

2.1 Treaty of Rome

The current European Union ignited from 1951, where the Treaty of Paris was signed and established the European Coal Steel Community (ECSC) to commence a liaise between Franco-West German coal and steel production dominating the two countries. This marked the beginning of a solid community in pursuit to create a European Communities (EC), meant to ensure peace and help the European continent recoup its losses after the WWII.

The plan was to put the coal and steel production under a common high authority that would be transparent for the other European countries to also be able to participate. The Treaty establishing the ECSC was navigated by France, Netherlands, Italy, Luxemburg, Belgium and then West Germany and finally signed on 18 April, 1951 and entered into force on 24th July,1952 for the period of fifty years.

The French were more hungry for further integrations and proposed a European Defense Community (EDC) and European Political Community (EPC). However, the EPC's Treaty during the preparation got rejected by the Common Assembly as well as the EDC by the French Parliament. More and more proposals were pushed and withdrawn in a span of time. Eventually, a senior civil servant of the French, Jean Monnet, proposed creating two separate communities where one was the EEC.

The Spaak committee, chaired by Paul-Henri Spaak was inaugurated at the Messina Conference and charged with the role of preparing a report which would help create the common European market. The report drawn by Pierre Uri and Monnet as a collaborator later provided the fundamentals at the Venice Conference on the 29th and 30th of May 1956 where it was accepted to progressively organize an Intergovernmental Conference held in Brussels from 26th June 1956 until March 1957. The main agenda being the drawing of the Treaties establishing the European Economic Community and of the European Atomic Energy Community.

The discussions at the Conference built major disagreements between the export-oriented or better say the economic giants of the era, Germany and the Benelux countries; Belgium, Netherlands and Luxemburg, who were in much favor of the motion due to their personal interests to reduce barriers and cost of cross-border trading. Against this motion stood the subtle economies, Italy and France, whose spur pushing in favor of some sort of mechanism for market regulation to be able to gain protection in the competitive external market.

The conference came to a consensus and ended in the signing of the Treaties of Rome on 25th March, 1957 establishing the European Economic Community and the European Atomic Energy Community, which rooted the postulated and envisioned common market and customs union to speed off the economic integration amongst member states. Articles 67 to 73 of the Treaty of Rome facilitates the Free Movement of Capital [1]which strived to liberalize capital movements amid member states but failed to be conferred upon, direct effect by the Court of Justice of the European Union.

The principle of direct effect denotes that a certain directives, provisions or rules confer rights on individuals which national courts are obligated to enforce. This principle came into realization with the case Van gen en Loos[2], where the national court upon the preliminary ruling sent to the CJEU received an affirmative reply based on Article 12 of the Treaty establishing the European Economic Community that it produces direct effects and creates individual rights which national courts must protect.

2.2 Directive 88/361/EEC

Following the Treaty of Rome, there wasn't much progress seen in the area of financial integration considering the non-declaration of direct effect on the part of the CJEU leaving individuals with no choice of drawing rights from the freedom.

[1] creating a common commercial policy, fostering economic cooperation through association agreements, and eliminating quantitative restrictions on imports and exports between EEC member states, the Treaty Additionally, the treaty aims to harmonize policies and laws related to trade and capital movement, facilitating the functioning of an integrated internal market within the EEC.

[2] Case 26-62, EUR-Lex - 61962CJ0026 - EN - EUR-Lex (europa.eu)

The Council Directive 88/361/EEC[3], known as the capital liberalization directive and the first capital directive was a single European Act that set out to amend Article 67 EEC to be able to encourage it reach its full financial extent. Its purpose was to abolish all possible barriers whatsoever of the Free Movement of Capital to finally liberalize it in toto. The nomenclature not only rectified the issue created by the CJEU, however it broke down certain complex procedures in the area making integration process easier which backed the development of the single market objective in the territory. The directive cleared certain types of restrictions on commercial and private capital movements, these include real-estate purchases, short or medium-term lending for commercial transactions, as well as purchases of securities which were traded on the stock exchange market. Some Member States, like Germany and the Benelux countries went ahead to introduce various unilateral national measures and thereby practically eliminating every restriction on capital movements. This gap was originally identified in the "Segre Report", a report by a group of independent experts chaired by Claudio Segre and named after him who was commissioned by the European Economic Community Commission. The report made certain criticisms on the national capital markets coupled with recommendations to help salvage the situation. This was a call for action for The Council to enact and pass laws relevant to this area.

Further liberalization was achieved in areas like long-term lending for varying commercial transactions as well as purchases of securities that were not dealt with on the stock market for exchange. This was realized as a result of the improvements on the 'First Capital Directive' in 1985 and 1986. Capital movement were then entirely liberalized through a council directive in 1988 and additionally, erased all the remaining restrictions on capital movements that fell between Member State residents as of July 1990. There was also the motive of loosening the restrictions on capital movements involving third countries in a comparable way.

The CJEU finally declared[4] direct effect of the freedom amidst a compatibility dispute in the control legislation of the Spanish control. Upon which Article 1 of the Directive 88/361/EEC was referred to stating, member states shall remove all restrictions to cross-border movement of capital and therefore declaring should have direct effect.

[3] https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:31988L0361
[4] Case 26-62-Van gen en Loos on 5 February 1963.

This declaration made it possible for individuals as well as businesses to draw rights in the freedom equally as the remaining freedoms which national courts are obliged to protect. This single European Act is still used to in the definition of the philosophy of Fee Movement of Capital.

2.3 The Maastricht Treaty

Another significant addition was the Maastricht Treaty which introduced the Free Movement of Capital as a Treaty Freedom.

The Treaty of the European Union, which established the European Union and meant to come into force on 1 January, 1993 but was delayed due late transpositional period, rather came into force on November 1, 1993. This nomenclature was envisaged to amend and ratify the previous Treaties making it more compatible with the initiative of full economic integration as well as with national laws.

The Treaty marked the beginning of the rooted union realized today which is grounded firm and deep and focused on a mutual goal. Through the Treaty of the European Union, the foundations of the Economic and Monetary Union (EMU) was laid which involves the coordination of economic and fiscal policies; introducing a common currency the euro, cooperation between EU governments on justice and home affairs as well as the commencement of the concept of EU citizenship.

The commencement of the Treaty of the European Union, was a significant milestone in the development of the European Union, expanding its scope and powers and laying the foundation for further integration purposefully the area of free movement of capital.

2.4 Treaty of Lisbon

The Treaty of Lisbon, which amended the previous treaties and entered into force on December 1, 2009, made several changes concerning the free movement of capital in the EU.

One of the main changes was the abolition of all restrictions on the movements of capital between EU member states, member states, and third countries. These measures mean capital can flow freely across borders without barriers or limitations, such as taxes or quotas.

The Treaty also strengthened the powers of the EU in regulating the financial sector, particularly for establishing and operating financial institutions. The EU now has the power to regulate and supervise all financial institutions operating within its jurisdiction, including banks, insurance companies, and other financial intermediaries.

Additionally, the Treaty established the European System of Financial Supervision, consisting of three supervisory authorities overseeing the banking, insurance, and securities sectors. These authorities can ensure that financial institutions comply with EU regulations and that financial stability can be maintained across the EU.

Overall, the Treaty of Lisbon reinforced the EU's commitment to the free movement of capital while enhancing its regulatory framework for the financial sector to promote stability and prevent systemic risks.

The Article 63 of the TFEU [5]currently forms the supreme legal law governing the free movement of capital and thereby prohibits all forms of restrictions on the movement of capital and payments. This is between Member States, and between Member Staes and third countries. The Free Movement of Capital entails extensive case laws which the European Court of Justice has been tasked to interpret as it is same with all parts of the Treaties. With all these case laws, Directives and the Treaties laid out, if a Member State goes further and restrict in any form the freedom of capital movement, the usual infringement procedure laid out in Articles 258-260 of the TFEU will apply.

Nevertheless, there are existing restrictions to the Freedom restricting movements of capital in relation to third countries set out in Article 64 of the TFEU. These restrictions also adds to options for Member States to apply restrictions on certain movements such as direct investments and other transactions that existed on a given date, after a consultation with the European

[5]1.Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.
2. Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited.

Parliament, the Council may also unanimously take certain measures involving taking a step back in the liberalization process with third countries. There is also the possibility for the Council to adopt legislative measures which involves direct investment, establishment, provision of financial services and the admission of securities to capital markets which the Article 66 of the TFEU[6] covers in such emergency measures vis-a-vis third countries, however, limited to an extent of six months.

The Article 65 of the TFEU spells out the general restrictions on capital movements within the EU which include measures to prevent infringements of national law; for taxation and prudential supervision of financial services, procedures for the declaration of capital movements for administrative or statistical purposes, as well as measures that are justified on the grounds of public policy or public security. The latter was later invoked during the European sovereign debt crisis. This is when Cyprus, in 2013 and Greece in 2015 had been forced to introduce capital controls to be able to prevent an excessive outflow of capital. Cyprus therefore abolished all remaining restrictions in 2015 whiles Greece followed suit in 2019. Certain restrictions are also put in place not only for financial reasons but also for the purpose of combating terrorism which is catered for in the Articles 75 and 215 of the TFEU.

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

3. ECONOMIC DIMENSION OF THE FREE MOVEMENT OF CAPITAL

The EU as a phenomenon, is a fascinating one to study, though not a perfect haven as it is mostly coined to be, it is a pacesetter and therefore offers lots of lessons and footprint for new entrants and observers to emulate.

The EU is one of the world's most important economic and political unions. Been founded following World War II with the goal of promoting peace, stability, and prosperity amongst its member countries. The EU has evolved through time into a complicated body with a plethora of economic policies aimed at boosting integration, growth, and competitiveness. In this sense, A.M. El-Agraa's "The European Union: Economics and Policies" is a thorough examination of the EU's economic foundations and policy framework.

This overview focuses immensely on the essential themes and topics addressed in influential work amongst renowned economists. The single market of the EU is a key component of the Union's economic strategies. El-Agraa looks at the tenets and procedures that support the free flow of capital, labour, services, and goods inside the EU. In his analysis of the single market's effects on trade, investment, competition, and consumer welfare, he highlights both its advantages and its drawbacks for the various member states which will also be highlighted in this chapter.

3.1 Relationship between Other Fundamental Freedoms and Free Movement of Capital

A key component of the EU's single market and economic integration goal is the relationship between other fundamental freedoms and the free movement of capital within the EU. The EU's internal market is supported by these four fundamental rights and the unrestricted flow of capital and vice versa[7], which promote economic cooperation and expansion among member states.

Within the EU, goods can move without restriction as part of the free movement of goods. Cross-border commerce and investment are made possible by the free movement of capital, which

[7] See Case 203/80 Casati EU:C:1981:261-According to the ECJ's decision, the free movement of capital is one of the Community's fundamental freedoms, along with the free movement of people and goods. Furthermore, certain freedom criteria of capital movement must exist for other liberties protected by the Treaty, including the right of establishment, to be effectively exercised.

makes it simple for enterprises to get finance from other member states. To acquire a competitive advantage, access new markets, or improve their supply chains, businesses can invest in production facilities or establish subsidiaries in other member states[8]. Along with enhancing trade flows inside the EU, the free movement of capital enables enterprises to finance the manufacturing and delivery of goods more effectively.

Service providers can offer their knowledge and services across borders without being subject to arbitrary restrictions because to the free movement of services. Service providers have access to money to grow their businesses, invest in technology, and enter new markets when combined with the free flow of capital. For instance, a business that offers financial services might open branches in other member states to reach a wider consumer base. The expansion of service sectors is aided by the free movement of capital, which also increases the EU's service sector's international competitiveness.

EU citizens have the freedom to live, work, and study in any member state thanks to the free movement of people. Because of this human mobility, the EU labor market is vibrant. This freedom is complemented by the free flow of capital, which fosters international trade, job growth, and talent mobility. Different member states' creative ventures and start-ups can be financed by investors, which creates jobs and draws in highly qualified workers. Furthermore, the availability of venture capital and investment options encourages highly skilled people to look for employment and entrepreneurial opportunities within the EU.

Individuals and corporations can open businesses or branch offices in any member state thanks to the freedom of establishment. Combining this independence with the free flow of capital fosters international investment and pushes companies to expand across member nations. Investors can purchase or create wholly owned; joint ventured, or subsidiary businesses, which promotes competition within the EU and diversifies the economy. Mergers and acquisitions are made more accessible by the free flow of capital, enabling enterprises to consolidate and improve their market positions.

Regarding this, the free movement of capital correlates to other fundamental rights of the EU, increasing their influence on the development of the European single market. The free flow of

[8] See Case C-264/96 - ICI v. Colmer (1998) ECLI:EU:C:1998:179

capital across boundaries promotes international trade, draws money, and strengthens interstate economic cooperation. This interaction strengthens the EU's goal of building a single, competitive economic space where people, businesses, and investments can freely move around, innovate, and support the Union's overall economic growth and prosperity, which helps the requirement that underlying laws and regulations protect the free movement of capital.

3.2 Balancing Economic and Non-Economic Objectives

The EU, a vibrant alliance of 27 nations in Europe, pursues both supporting economic progress and advancing social well-being. Establishing a single market, wherein the unrestricted flow of goods, services, capital, and labor paves the way for economic efficiency and competitiveness, is at the center of the process. The EU is abreast of the significance of balancing these financial goals and several non-economic factors, such as social cohesion, environmental sustainability, cultural preservation, and safeguarding fundamental rights.

The EU has set economic goals to foster prosperity and competition among its member states. Eliminating trade, investment, and capital movement restrictions enables organizations and people to prosper internationally, encouraging innovation and specialization. The EU also recognizes the link between a stable social order and a robust economy. The EU is committed to a holistic approach, shown in the importance of non-economic goals in policymaking. For instance, cohesion policy seeks to foster social and economic convergence and lessen regional differences. The EU promotes balanced and inclusive growth by distributing subsidies to less developed regions.

The EU places a high priority on environmental protection and works assiduously to reduce climate change, safeguard biodiversity, and promote the use of renewable energy sources. The preservation of the world for future generations depends on sustainable practices. Public health and consumer protection are equally important. The EU upholds strict consumer protection laws and works with other nations to address global public health issues, protecting the welfare and security of its population.

The EU values preserving cultural heritage and identity very highly. The EU embraces variety and solidifies its rich cultural fabric by supporting the arts, intercultural dialogue, and language preservation. But attaining this harmony between economic and non-economic goals is no simple

task. A significant problem is achieving a harmonic balance between encouraging open trade and protecting social standards. The EU works to maintain strong social and labor standards while ensuring fair competition.

Before implementing new policies, the EU conducts impact assessments to determine potential effects on economic, social, environmental, and cultural elements to make well-informed decisions. As a result, decision-makers can better analyze the costs, benefits, and possible impacts on all aspects of EU society.

The EU's approach to governance and policymaking is defined by its commitment to striking a balance between economic and non-economic goals. The EU wants to build an inclusive and sustainable future for its members by promoting economic growth while tackling social, environmental, and cultural issues. Incorporating various policy tools into ongoing collaboration and dialogue is necessary to maintain this delicate balance. By embodying its core values, the EU makes policies that are economically effective, socially just, and environmentally sound, thereby safeguarding the foundations of the European Union.

3.3 Increased Investment Opportunities across Member States

The free movement of capital across the European Union has increased investment opportunities among member states dramatically. Prior to the creation of the Single Market, capital constraints and hurdles hampered cross-border investments, limiting capital flows and slowing economic progress. However, now that these impediments have been removed, investors can freely shift their wealth across the EU. This has resulted in a more integrated and appealing investment environment, which has resulted in a greater range of options for investors.

Several factors contribute to the growing investment prospects. For starters, abolishing capital controls has eased capital movement, allowing investors to explore varied investment opportunities between member states. This has resulted in a more effective allocation of financial resources since capital may now move to locations and industries with greater returns. Additionally, a consistent and predictable investment framework has been made possible by the EU's harmonisation of investment norms and rules. Due to the absence of complicated and dissimilar national legislation, investors no longer have to navigate them, which has decreased uncertainty and encouraged cross-border investments. Both domestic and foreign investors have

been drawn to the adoption of common regulations and standards because they have increased transparency and investor confidence.

3.4 Attraction of Foreign Direct Investment (FDI)

The attractiveness of EU member states for foreign direct investment has increased dramatically as a result of the free movement of capital. These investments made by people, companies, or governments from one nation into another are referred to as FDIs, made with the intention of forming a long-term relationship and having a substantial impact over the investment recipient.

Multinational companies and investors can now invest across the EU's many industries and nations without encountering significant obstacles thanks to capital mobility. As a result, FDI inflows have grown, significantly boosting the economies of receiving nations. Due to things like the size of the market, the availability of trained labour, political stability, and access to the Single Market, the EU attracts foreign investment.

FDI inflows promote investment, job creation, and knowledge transfer, all contributing to economic growth. They boost the growth of industries and encourage innovation by bringing finance, knowledge, and technology to host nations. Additionally, FDI frequently results in spillover benefits, where domestic businesses gain from connections with foreign investors and gain from the dissemination of knowledge, better productivity, and increased competitiveness.

3.5 Capital Allocation Efficiency and Resource Utilization

Additionally, within the EU, the free flow of capital encourages effective resource management and allocation. Capital mobility enables investors to direct their means to the locations and industries where they will be most productively used. This results in the effective distribution of capital within the EU, ensuring that it is focused on initiatives and sectors with high potential for productivity and growth.

By allocating capital in the most productive ways, efficient capital allocation makes it easier to employ resources. Because resources like labour, land, and infrastructure are used wisely to provide greater returns, economic efficiency is increased. As a result, the EU experiences greater output, productivity, and economic success.

Furthermore, risk diversification is encouraged by the free flow of capital. By spreading their funds over many areas and industries, investors can lessen their exposure to certain dangers. By reducing the risks brought on by economic downturns or sector-specific shocks, this diversification improves overall financial stability.

3.6 Unleashing Opportunities for Businesses and Individuals

The idea of free capital movement is a potent driver of development and innovation in the complex world of contemporary global economics. This fundamental principle, which makes it possible for unfettered financial resources to flow across international borders, has profound effects on enterprises and people, bringing about various benefits that promote economic growth and open doors to new vistas.

Businesses, which make up the core of the global market, stand to gain considerably from the free flow of capital. This principle provides access to unmatched opportunities that can alter the course of businesses. Many finance options are available to firms thanks to the unrestricted flow of capital. They will be able to gain the financial resources necessary for growth and innovation by accessing global investors, getting venture capital, and getting foreign loans. Additionally, companies can quickly enter new markets since there are no restrictions on the free flow of capital. Businesses can diversify their revenue sources by establishing subsidiaries, forming alliances, capturing untapped international markets, and lessening dependence on any single market.

Likewise, cross-border innovation and idea exchange are encouraged by capital mobility. This helps companies find inspiration from various sources, increasing production and competitiveness. Another strategic benefit is spreading investments across many markets and geographical areas. With this, businesses can overcome difficulties more resiliently during currency changes, economic uncertainty, or geopolitical unrest.

As for individuals, capital mobility provides a way for investment portfolio diversification. They can successfully manage risk while pursuing better rewards by tapping global markets. Financial services that are easier to access are a direct result of capital mobility. People can take advantage of banking, investment management, and insurance options, all of which help them achieve their financial goals.

Additionally, spreading investments among several nations protects against economic volatility in a single region, preserving wealth. The free cash flow encourages cross-border relationships and cultural interchange, which promotes global understanding, as people travel borders for work, study, and personal improvement.

Recognizing the significance of solid regulatory frameworks is essential when adopting the idea of the free flow of capital. These frameworks protect financial stability, promote fair competition, and reduce the dangers of illegal activity. The free flow of capital emerges as a beacon of progress, creativity, and collaboration as we negotiate the complexities of a globalized society; it enables people to venture into uncharted financial waters and businesses to reach new heights.

3.7 Impact on Job Creation and Technology Transfer

Within the EU, the unrestricted movement of money is essential for transferring knowledge and creating jobs. The development and growth of enterprises, which create job possibilities, are facilitated by increased investment flows and FDI. FDI frequently results in the establishment of new enterprises, the development of already existing ones, and the adoption of novel techniques and procedures, all of which help to increase the number of jobs.

Additionally, cross-border exchange of cutting-edge technology, knowledge, and experience is made easier by capital mobility. Foreign investors contribute cutting-edge technologies and industry best practises from their home nations when they open offices or make investments in new markets. Technology spillovers result from this, where domestic businesses can pick up and use new technologies, increasing their productivity and competitiveness.

Manufacturing, R&D, and services are just a few of the sectors that can benefit from technology transfer through FDI. It promotes innovation, improves product quality, and makes it possible to implement new production methods. In the end, this promotes economic growth and increases the EU economy's general competitiveness in the world market.

3.8 Eu Institutions

The current progress and results achieved is not something the EU realised overnight, enough work and effort was contributed which would not have been possible without the various

institutions within the EU who in the quest to make the economy a stable and successful one that we see today, coined various policies as well as establishing communities and committees to oversee the process in all ways possible.

Understanding the process of European integration is based on the historical and institutional underpinning of the European Union. The foundation for a unified Europe based on economic cooperation and shared objectives was built by the creation of the European Coal and Steel Community and the following Treaties of Rome. The development of EU institutions, including the European Commission, European Parliament, and Council[9] of the European Union, is a reflection of the complexity and influence of the EU's decision-making processes, which are becoming more and more influential. This study sheds insight on the turning points that established the EU's current structure by highlighting the historical roots and institutional growth of the EU.

As mentioned before, The EU have achieved profusely to serve as an example, but, it is far from perfect and have also got challenges that still needs to be improved on.

3.9 Economic Challenges and Risks of The Free Movement of Capital

Some dangers and obstacles are associated with the free flow of capital within the European Union, which must be carefully controlled. The impact on less developed regions and industries is covered in this section, along with four other significant areas of concern: financial instability and systemic risks, regulatory and supervisory issues, potential tax evasion and avoidance, and regulatory and supervisory obstacles.

The possibility of financial instability and systemic dangers is one of the main issues with unrestricted capital flow. If capital flows are not adequately regulated and supervised, they might be unstable and cause financial crises. Large-scale capital transfers have the potential to exacerbate asset price bubbles, exaggerate the consequences of economic shocks, and make financial institutions more vulnerable.

[9] Case 203/80 Casati EU:C:1981:261- The Council is primarily responsible for evaluating the requirements of the single market, as well as the possible benefits and hazards associated, is a prerequisite for liberalizing capital movements., and limitations on capital movements may continue after the transitional phase.

Strong prudential laws and supervisory structures are required to solve these issues. Risks related to capital flows are reduced in part through effective risk management procedures, capital adequacy standards, and stress testing of financial institutions. To improve financial stability and reduce systemic risks, macroprudential policies, such as capital limits and countercyclical measures, can also be put into practise.

The liberated flow of capital also creates difficulties for regulation and oversight. Regulation arbitrage possibilities and barriers to efficient monitoring may result in differences in national regulations and supervisory regimes among EU member states. Regulations' efficiency and integrity can be compromised by inconsistently applying and enforcing them.

Although regulations are being harmonized, regulatory agencies have improved their cross-border collaboration. To encourage regulatory convergence and maintain uniform supervisory practices, the EU has established regulatory agencies, including the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA). Regulatory authorities must work closely together and share information to solve these issues and keep the playing field level for market participation.

4. LEGAL BASIS OF THE EU'S FREE MOVEMENT OF CAPITAL

The development of the EU's free movement of capital encapsulates detailed documentation of relevant phases and legislation; however, Articles 63 to 66 of the TFEU stands as the basis of the free movement of capital with its primary goal of removing all restrictions on capital movements between member states and between member states and third countries, though with exceptions in certain circumstances.

The creation of the free movement of capital comes with some macro and microeconomic effects, which demand major regulatory roles looking at the large territory of the EU with diversified laws, which explains why there should be a level of unification in the legal means. The regulatory role of such laws are meant to ensure the efficiency of capital market, investor protection, financial stability, and sustainability.

4.1 Phase I of Capital Markets Law

The documentation of the various legislation originates from the Treaty establishing the European Economic Community, which gave birth to the vision of creating an internal market but needed more specifications and provisions regarding the European capital markets law. In its way of criticism, the Segre report threw light on the downside, thus specific structural problems governing the capital markets. Per its recommendations based mainly on an information policy, pushing to familiarize the public on securities on investment and stock exchange, ensuring an endless flow of information by making the operations of company accounts transparent by publication. Lastly, an information system that is made comprehensive concerning all appeals made for the public's savings were recommended. The report saw the need for more flexible and systematic instruments for fiscal policies which would bridge the cyclical imbalances in regulating monetary demand as well as all aspects of finance policies of public and authorities and enterprises.

Upon the recommendations of the Segre report, the Council earmarked the first phase of the capital markets law, which was to coordinate stock exchange and prospectus[10] law[11]. The first

[10] vital in the financial markets, particularly when a business or other entity wants to sell securities to the general public or list and trade those securities on a stock exchange. It is a vital resource for prospective investors, giving them in-depth knowledge of the investment opportunity, the issuing company, and the risks involved.

[11] The regulation outlining the requirements for prospectuses

legislative measures covered the stock exchange law and prospectus to harmonize the national laws, eliminating considerable differences regarding Member States' provisions. The Council ensured this by the passing of three Directives; Directive 79/279/EEC[12] of March 5, 1979, stated statutory provisions for the admission of securities to the official stock exchange listing; the Directive provides equivalent protection for investors at the community level across member states and non-member states to ensure the amalgamation of national securities and therefore supporting the vision of establishing the European capital market. The Directive does give room for flexibility to be able to adapt to different situations. The second Council Directive regarding the coordination of requirements for the drawing up, scrutiny, and distribution of the listing, Directive 80/390/EEC[13] of March 17, 1980, is set to safeguard the protection of the interests of actual and potential investors which requires the availability of provided sufficient information concerning the financial happenings about security on the part of the issuer and therefore is required in the medium of publication of listing particulars to make it widely known and transparent to potential and actual investors. The third, Council Directive 82/121/EEC, passed on February 25, 1982, focused on the information to be published. The said Directive required the regular publication of information by companies on shares admitted to official stock exchange listing. The nomenclature mandates that the investor be given the proper regular information throughout the entire time the securities are listed. The Council, by these measures, envisioned harmonizing the national laws on a minimum by levelling them in terms of equivalence and not necessarily making them completely uniform.

Three years on, the Commission to European Council published the White paper on "Completing of the internal market" on June 14, 1985. The paper laid specific emphasis on the agenda to achieve a single market by 1992, thereby intending to spell out the program specifications and timetable. The Commission attributed much importance to the liberalization of capital movements in the community while citing the Undertakings for Collective Investments in Transferable Securities Directive (UCITS)[14], a consolidated EU directive allowing collective

[12] Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing

[13] Council Directive 80/390/EEC of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing

[14] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

investment schemes to operate freely throughout the EU based on a single authorization from one member state. Aiming to ensure that open-ended funds investing in transferable securities are subject to the same rules throughout the EU, Council Directive 85/611/EEC was enacted in 1985. Once such legislative uniformity was established across the continent, it was anticipated that funds authorized in one Member State could be sold to the general public in every Member State without additional authorization, advancing the EU's objective of a single market for financial services in Europe.

4.2 Phase II: Harmonization of Securities Markets Laws

The harmonization of securities market law began a few years later with the adoption of Directive 88/627/EEC[15], passed on December 12, 1988, regarding the transparency of information to be published while a significant holding in a listed firm is being disposed of or acquired. The Directive was initiated to support the aim of earlier Directives passed by keeping investors protected in areas of transferable securities by setting up policies that provide adequate information to stimulate confidence and interest in the securities markets.

Council Directive 89/298/EEC was also enacted on April 17, 1989, to deal with requirements for drawing up, scrutiny, and distribution like Council Directive 80/390/EEC. However, the main distinguishing feature is that the former deals with the prospectus to be published when transferable securities offered to the public are involved. The document requires that a prospectus involving information such as this, transferable securities offered to the public for the first time, be made available to investors' knowledge irrespective of whether they had been subsequently listed.

Whereby Council Directive 89/592/EEC also adopted on November 13, 1989, targeted the issues of insider dealing, it focused its dealings based on Article 100a of the former Treaty establishing the European Economic Community by applying to secondary markets for securities and requires the Member States to introduce provisions forbidding insider dealings of any sort. This measure was taken to eliminate further any threat of undermining investors' confidence and thereby jeopardizing the ability of the market to operate smoothly.

[15] Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of

The second phase ended with the approval of Council Directive 93/22/EEC on May 10, 1993, which addressed the provision of investment services. The Council viewed this Directive as a crucial tool for achieving the Commission's White Paper's goal of completing the Internal Market. This Directive required the introduction of "prudent rules" on keeping records of transactions carried out and the organization of the firm with the enactment of requirements that are amenable to investment companies to inform clients. It also called for the freedom of establishment and the free movement of services relating to investment firms. The Directive, like the other elaborated Directives, seeks to protect investors.

4.3 Phase III; Reorganization of Prospectus and Securities Laws

Before phase three of the enactment of capital market laws, the Financial Services Action Plan was meant to implement the framework for financial markets commissioned in 1999. The Commission ultimately needed the implementation of new regulatory measures to be able to keep up with the rapid development of the capital markets. The Commission recommended introducing a securities committee, which would take part in proceedings regarding the development of European provisions on securities.

Then in 2000, the Lamfalussy report surfaced criticizing significant differences between national laws on the rules on disclosure and definition of market manipulation. The report, chaired by Alexandre Lamfalussy recommended a detailed restructuring procedure to contribute to the acceleration of the legislative process which was adhered to by the Commission by enacting specific framework directives and regulations as well as setting up a Committee of Europe and Securities Regulations (CESR) to mainly improve the cooperation between the various national supervisory authorities.

The third phase of the capital market laws was focused on amending subsequent Directives, Directive 88/627/EEC, and ones from 1979 and 1982, which were later merged into a more clarified and efficient document. Changes were made and yielded into the adoption of Directive EC/2001/34 on the admission of securities to the official stock exchange listing and on any information to be published on their securities.

Significant developments were made in market abuse with Directive 89/592/EEC requesting Member States to forbid any insider dealings, restricting the enclosure of all sorts of inside information and even further to future facts. The Commission, in addition, took measures by

implementing Directives covering definitions, investment recommendations, and disclosure of conflict of interest as well as a Regulation covering exemptions for buy-back programs and stabilization of financial instruments; Directive 2003/124/EC, Directive 2003/125/EC, Directive 2004/72/EC, and Regulation (EC) No. 2273/2003 respectively.

Another Directive 2003/71/EC, was enacted to support further the Prospectus Directives enacted before, which provided legal grounds for securities to be offered across the borders of the EU for the first time. The previous cross border offering was based on certain agreements already made with non-member countries and was to remain the same, however, Council Directive 2003/71/EC spelt out the conditions to render cross border security offers and admissions valid or whatsoever. A Prospectus Regulation (EC) No. 809/2004 was later on April 29, 2004, to support the Directive concerning when the prospectus content was applicable in the Member States. Subsequently, a directive, Directive 2004/39/EC or MiFID (Markets in Financial Instruments Directive) on markets and financial instruments, was also implemented to cover market organization areas that dealt with investment firms, specifically, laying down compliance requirements for investment firms. The MiFID Directive laid forth several crucial compliance requirements for investment firms doing business in the European Union. Investment firms must first get approval and a legitimate license from their respective national competent authority, which monitors their compliance with MiFID's provisions and other relevant laws. Additionally, investment firms must categorize clients into retail clients, professional clients, and eligible counterparties, each receiving different levels of protection. Firms must assess product suitability based on individual risk profiles and provide timely reports to clients. Conflicts of interest must be managed, and adequate financial resources maintained. Compliance entails thorough record-keeping and transparent pre-trade disclosures. Post-trade transparency is required, along with effective complaint handling and potential membership in investor compensation schemes. Cross-border services necessitate compliance with passporting requirements. Adherence ensures legal, ethical operation while promoting investor protection and market integrity in the EU.

The last area dealt with in the third phase was the area of Transparency regarding issuers who had their securities admitted to trading on a regulated market. Transparency Directive 2004/109/EC was enacted to amend a subsequent Directive 2001/34/EC on the harmonization of

transparency requirements with regard to such matters. These Directives were directed to sustain investor confidence and protection to safeguard the safe operation of the capital market.

4.4 Further Developments in the Capital Markets Law

The area of capital markets law has seen cumbersome and hefty documentation of laws around various areas even until recently.

This processing did not end with the third phase as it continued through a fourth phase, where there was the need to control the financial markets crisis between 2009 and 2016 by unifying the European Law and a European Supervisory Architecture to cover up for the deficiencies revealed by the financial crisis at the time. An opportunity was given to experts to analyze the situation and turn in their recommendations on future regulations to combat the situation. Their recommendations were taken into consideration, which resulted in the EU's strategy of unifying the financial markets law on September 23, 2009, but was accomplished in 2010, thereby forming the European Banking Authority, European Insurance Occupational Pensions Authority, and the European Securities Markets Authority. The latter was tasked with a supervisory role of ensuring the coherent and effective application of European legal acts. The following action was taken on credit rating agencies with Regulation (EC) No. 1060/2009 enacted on September 16, 2009, to primarily put up some disclosure requirements and conflict of interest resulting from the issuers' pay model. The market abuse Regulation 596/2014/EU and Directive 2014/57/2014 on criminal sanctions for market abuse[16], both of April 16, 2014, were enacted based on the ideology that such actions contravene the integrity of capital markets and therefore hinder the smooth operation of the EU's capital markets. Significant areas were also developed, like regulation on short sales.

The Commission established the Capital Markets Union (CMU) on September 30, 2015, by adopting a 20-key measure action plan to see through the achievement of the longed-for single market. It seeks to encourage savings and investment among all member states for the gain of people, businesses, and investors. The capital markets union is crucial for the EU to be competitive and experience economic development. Some of the key measures included establishing an EU framework for simple, transparent, and standardized securitization, which

[16]Refers to specific illegal actions that potentially damage the credibility and fairness of the financial markets such as insider trading, unlawful disclosure of information, and market manipulation.

sought to promote investment in securitized assets while ensuring transparency and risk management. Reviewing Prospectus Directive to streamline regulations and make it easier for companies to raise funds through capital markets. To further facilitate fundraising, the Commission planned on developing a pan-European private placement market, enabling companies to access capital from a broader investor base. Moreover, support for venture capital and equity financing was emphasized, encouraging investments in start-ups and innovative businesses. The plan also focused on fostering both retail and institutional investment, creating an environment conducive to attracting diverse investors. Additionally, the Commission aimed to enhance banks' lending capacity, supporting economic growth by ensuring access to financing for businesses and projects.

The Prospectus law was later subject to reform to raise the level of its harmonization into a more uniform legal document. Regulation (EU) 2017/1129 was approved to make it possible for investors to be aware of investment decisions, do away with all fragmentations due to the previous legal documents, and further eliminate any obstacles to the efficient and effective functioning of the internal markets. Security Regulation (EU) 2017/2402 was also enacted in 2017 to make simple, transparent, and standardized securitizations to address the risk involved with investors and majorly to protect them.

Much currently, a second phase for CMU's Action plan was called for in a proposal for the financial sector to advance to specific areas like blockchain, artificial intelligence, and cloud services, making it much more secure and accessible for new entrants. As a result, the Commission proposed a legal framework to be introduced in 2024, the Digital Finance Strategy, as a part of the Action Plan.

The next action was taken on credit rating agencies with Regulation (EC) No. 1060/2009 enacted on 16th September 2009 to primarily put up some disclosure requirements and conflict of interest resulting from the issuers' pay model.

The market abuse Regulation 596/2014/EU and Directive 2014/57/2014 on criminal sanctions for market abuse, both of 16 April 2014 were enacted basing on the ideology that such actions contravene the integrity of capital markets and therefore hinders the smooth operation of the EU's capital markets. Major areas were also developed like regulation on short sales.

The European Commission's Capital Markets Union (CMU) project aims to develop a single capital market within the EU to improve finance accessibility, international investment, and economic growth. Its main goals include encouraging investment, bolstering the financial system, and making long-term investment easier by removing obstacles and harmonizing rules and since its implementation in 2015, has achieved notable accomplishments which include updating the Prospectus Regulation, streamlining the securities issuing process, and enacting the Securitization Regulation to safeguard investors while reviving securitization. Through the EU Taxonomy and strengthened investor protection, the CMU actively promotes sustainable finance and ensures transparent information for investment decisions.

Moreover, it supports venture capital investment in start-ups through programs like the Pan-European Venture Capital Fund of Funds. Despite advancements, problems still exist, including the need to harmonize laws across various member states, deal with geopolitical unpredictability, and manage the effects of Brexit on the CMU. The CMU is still a complicated, continuing project that needs constant coordination and cooperation to succeed.

According to Véron, N., & Wolff, G. B. (2016), The EU's financial intermediation should be seen as undergoing a fundamental and long-lasting restructuring due to the Capital Markets Union (CMU). It is not meant to be a quick-fix boost to improve financial momentarily. Rapid implementation through financial aid, tax breaks, or regulatory perks would skew its goals and have harmful long-term effects. The emphasis should be placed on creating the ideal framework circumstances so the new financial ecosystem can develop naturally and progressively at its speed. To ensure the efficiency and sustainability of the CMU, patience, and careful preparation are essential.

Much currently, in 2020, a second phase for the CMU’s Action plan was called for in proposal for the financial sector to be able to advance to certain areas like blockchain, artificial intelligence and cloud services as well as making it much more secure and accessible for new entrants. As a result, a legal framework to be introduced in 2024, the Digital Finance Strategy was proposed by the Commission as a part of the Action Plan.[17]

[17] *Capital Markets Union 2020 action plan Finance*. Available at: https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union/capital-markets-union-2020-action-plan_en (Accessed: 13 August 2023),

5. PROTECTION AND THIRD PARTY DIMENSION OF THE FREEDOM

The EU has long embraced the free flow of capital as a fundamental principle, aiming to encourage investment and foster economic cooperation among its member nations. While much attention has been devoted to studying the direct effect[18] on member states, it is equally crucial to consider the third-party perspective and protection of the freedom as well. This part of the study delves into the multifaceted nature of the third-party component of the free flow of capital within the EU and explores its implications for non-EU nations and international trade. Additionally, it sheds light on the protective measures and objectives in place. The topic encompasses the legal framework, challenges, opportunities, and policy recommendations required to adapt to the ever-changing environment of capital movements.

The EU's commitment to free capital movement, as has been highlighted earlier, established since its inception, has been strengthened by successive treaties like the Treaty of Rome (1957), Single European Act (1986), Maastricht Treaty, Treaty of Amsterdam, and the Capital Movement Directive, culminating in the Lisbon Treaty of 2007, which solidified this principle and provided a stable regulatory environment for businesses and investors in the EU.

In response to the Eurozone sovereign debt crisis, the European Stability Mechanism (ESM) was established in 2012. Although not a treaty or directive, the ESM played a critical role in offering financial aid to member states facing financial difficulties and threats to the stability of the euro. However, its establishment also impacted cross-border capital movements as it imposed temporary restrictions and conditions on recipients of financial assistance.

See also, *Lex - 52020DC0591 - en - EUR-Lex* (no date) *EUR*. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0591 (Accessed: 13 August 2023).

[18] Joined Cases C-163/94, C-165/94 and C-250/94: In answer to inquiries from the Juzgado Central de lo Penal de la Audiencia Nacional, the European Court of Justice (ECJ) made its decision. The decision finds that while laws requiring prior authorization for the export of coins, banknotes, or bearer cheques are prohibited by articles 73b(1) and 73d(1)(b) of the EC Treaty, rules requiring a previous declaration are permitted. These regulations, however, are not covered by Article 73c(1) of the Treaty.

When applied in national courts, Article 73b(1), along with Articles 73c and 73d(1)(b), have the power to nullify any federal regulations that conflict with these Treaty requirements.

Speaking of the protection of the free movement of capital, there is the need to shed light on what rights need to be protected which is conferred by the TFEU[19], the principle allows business entities and individuals to invest in international markets, set up subsidiaries, obtain foreign assets, and form partnerships or joint ventures (Senjic, D. P. 2023). This all-encompassing right promotes international economic cooperation by facilitating cross-border expansion and growth which is not to be interfered with (Hindelang, S. 2009).

The ability to obtain finance from international sources is a significant benefit. This includes domestic and international investors, banks, venture capitalists, and other sources. Growth, research, development, and innovation are all fueled by access to various financing sources. A variety of financial services are also accessible in overseas markets. Borderless access to banking, investment management, insurance, and other financial services ensures smooth financial transactions. Concerning this, a case was brought forth by the European Commission against Belgium that the Royal Decree's total ban on Belgian citizens acquiring securities of a loan on the Eurobond market which hereinafter referred to as "the challenged action" was a violation of the Treaty's Article 73b provision guaranteeing the free flow of capital.

The ECJ ruled that the Royal Decree's second section of Article 3 goes beyond a measure intended to prevent residents of a Member State from subscribing to a loan issued abroad or requires prior authorization by explicitly excluding the option for Belgian residents to participate in the loan above. As a result, this action restricts the free movement of capital, as that term is defined in Article 73b of the Treaty[20].

The movement of capital is more than one-directional. Both companies and individuals can repatriate profits and income from foreign investments. This dynamic assures capital movement fluidity, which enhances financial flexibility.

In addition, the free movement of capital is more than one-directional. Both companies and individuals can repatriate profits and income from foreign investments. This dynamic assures capital movement fluidity, which enhances financial flexibility. See Cases, C-78/18: European

[19] Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE IV: FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL - Chapter 4: Capital and payments - Article 63 (ex Article 56 TEC). (n.d.). EUR-Lex. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12008E063

[20] Commission v Belgium Case C-478/98 ECLI:EU:C:2000:497

Commission v Hungary, C-483/99: Commission of the European Communities v French Republic, and C-98/01: Commission of the European Communities v United Kingdom. Here in these cases, the first centered around the imposition of registration, declaration, and publication obligations on specific categories of civil society organizations that received support from abroad exceeding a designated threshold. The Court determined that Hungary had introduced discriminatory, unwarranted, and avoidable limitations on foreign contributions to civil society organizations, contravening its responsibilities under Article 63 TFEU and Articles 7, 8, and 12 of the Charter of Fundamental Rights of the European Union.

The second, which the Commission of the European Communities was against French Republic, revolved around the French government's denial of allowing a company to subtract the losses incurred by its subsidiary in another Member State from its taxable profits. The Court ruled that this restriction on the free movement of capital lacked justification. And then there was Commission of the European Communities vs. United Kingdom. This case centered on the UK government's refusal to permit a company to deduct the losses sustained by its subsidiary in another Member State from its taxable profits. The Court found that this constraint on the free movement of capital lacked justification.

As was already mentioned, skilled labor follows the movement of capital. People can look for employment opportunities abroad, which promotes personal development and knowledge sharing worldwide. Additionally, the free flow of finance encourages cross-border entrepreneurship, which promotes global innovation. The ability to use various financial services offered in overseas markets is an additional right that the free movement brings. Borderless access to banking, investment management, insurance, and other financial services ensures smooth financial transactions. Individuals can also use their legal right to own property abroad for personal or investment goals. Education also transcends national boundaries, enabling students to enroll in famous institutions worldwide.

However, these rights are intricately woven into the legal and regulatory fabric of each country and economic union. Capital controls, investor protection laws, taxation regulations, and other factors influence the exercise of these rights. Navigating these frameworks with awareness and understanding is paramount as businesses and individuals seize the abundant opportunities afforded by the free movement of capital.

5.1 Protection of Foreign Direct Investment (FDI)

In today's globalized economy, FDI is a key contributor to economic expansion, technical advancement, and job creation. The protection of FDI becomes a crucial component of international economic relations as more nations open their borders to foreign investment. To draw foreign investment and promote cross-border investment activity, it is essential to maintain a stable and predictable investment environment.. Therefore, to protect the rights and interests of foreign investors in host nations, FDI is subject to a complex web of legal and policy frameworks. These safeguards cover various topics, such as property rights, non-discrimination, dispute resolution procedures, and prohibitions against unjustified expropriation.

This part of the study sheds light on the significance of developing a suitable investment climate that creates trust and confidence among investors by looking at the many aspects of FDI protection. Additionally, it aims to shed light on how FDI protection has changed over time and how international economic ties continue to influence global investment flows.

5.1.1 Promotion and Facilitation of Cross-Border Investment within the EU

Through a number of initiatives and campaigns, the EU actively promotes investment prospects alongside its individual member states[21]. These initiatives seek to boost intra-EU investment as well as entice FDI from outside the EU. The information, support, and incentives that investment promotion organizations offer to potential investors are essential.

The investment process is made more straightforward, and administrative barriers for investors are reduced by harmonizing investment rules and regulations among member states and member states and third countries[22]. The EU is working to provide a more standardized and frictionless investment environment within the EU through the Capital Markets Union and the Single Market for Services.

Finance must be readily available to encourage investment. The EU offers several financial instruments for enterprises looking to expand internationally, including loans and guarantees from the European Investment Bank (EIB). The appeal of the EU as an investment destination is

[21] See Case C-483/99 - Commission v France, on the Golden Shares held by France which was deemed a hinderance to FDI by discouraging investors.
[22] C-560/13 Wagner-Raith, EU:C:2015:335.

increased through streamlining administrative processes and cutting red tape for establishing enterprises and making investments across borders.

The European Union's single market is founded on the non-discrimination principle, which also governs the free flow of capital. It ensures that all EU citizens are treated equally and forbids unwarranted distinctions based on nationality or residence. The concept, which applies to several facets of EU legislation, is enshrined in Article 63 of the Treaty on the Functioning of the European Union.

According to the concept, member states cannot give foreign investors a different level of access to capital markets, investment opportunities, or related financial services than they do to their citizens. Some restrictions might be permitted for prudential considerations, such as preserving financial stability or avoiding money laundering, provided they are reasonable and required, whereas others will not be tolerated. As The European Commission initiated legal proceedings against Hungary in Case C-78/18 for placing discriminatory, pointless, and unnecessary restrictions on foreign donations to organizations supporting civil society. The requirements of Transparency Law required specific categories of civil society organizations to fulfill registration, declaration, and public disclosure responsibilities, whether they received direct or indirect support from abroad over a predetermined threshold. The law also authorized the application of fines against businesses that disregard these criteria. The Commission argued that the Transparency Law prevented the free flow of money by indirectly favoring capital transfers between Hungary and EU member states and non-member nations.

5.1.2 Bilateral Investment Treaties and Their Impact on Intra-EU Investment

The terms and conditions for investments made by investors from one country in the other are established through bilateral investment treaties (BITs), which are agreements between two governments. However, due to the EU's internal market and comprehensive legal system, BITs have changed and come under scrutiny regarding intra-EU investment. Through bilateral investment treaties (BITs) and agreements between two governments, the terms and conditions for investments made by investors from one country in the other are defined. However, the EU's internal market and extensive legislative framework have caused BITs to alter and come under examination concerning intra-EU investment.

Before the Lisbon Treaty was enacted in 2009, each EU member state concluded several BITs with foreign nations. These BITs increased investor protection for those member states but also created disputes and overlaps with EU law. In other areas, such as foreign direct investment, the Lisbon Treaty granted the EU exclusive jurisdiction. The EU's exclusive jurisdiction over FDI means that member states can no longer conclude BITs with foreign nations that overlap with EU law (Shan, 2010). To end member states' pre-existing BITs with other EU nations, the European Commission initiated infringement proceedings against them. This was carried out to guarantee the consistency and coherence of investment protection across the EU[23].

Investors have previously used BITs between EU member states to file claims against host nations inside the EU. These conflicts have sparked debate over EU law autonomy and the suitability of intra-EU investment arbitration. The ECJ has been asked to decide on intra-EU investment matters and the legality of intra-EU arbitration under BITs. The ECJ determined that BITs' provisions for intra-EU investment arbitration are incompatible with EU law also in its Achmea decision on March 6,2018 (C-284/16 ECLI:EU:C:2018:158).

5.1.3 Safeguarding FDI through Dispute Settlement Mechanisms

To protect FDI and give investors' confidence and clarity, it is essential to have efficient dispute resolution systems. The EU has created several measures to address investment disputes within the Union. In the event of a dispute, investors may seek redress through the national courts of the host member state[24]. Nevertheless, this strategy can result in ambiguities and interpretations of EU law in various member states.

Investors may file claims against host countries with international arbitral courts using ISDS systems. For its trade and investment agreements, the EU has attempted to replace conventional ISDS with an Investment Court System (ICS) to allay concerns about accountability, transparency, and the right to regulate. The EU has suggested creating an international Investment Court to settle investment disputes under upcoming international accords. The MIC guarantees uniformity, predictability, and impartiality in resolving investment disputes. Since the Achmea ruling by the ECJ, ISDS provisions found in BITs are no longer applicable to

[23] See Cases C-205/06 - Commission v Austria and C-249/06 - Commission v Sweden
[24] See Case C-264/96 - ICI v. Colmer (1998) ECLI:EU:C:1998:179, this case reenforces the rights of investors.

resolving intra-EU investment disputes. The ECJ has instead emphasized the value of home courts in resolving such conflicts.

In conclusion, economic development and integration within the EU must encourage and facilitate cross-border investment. The EU has made tremendous progress in harmonizing investment laws, offering legal safeguards, and easing investor access to capital. However, because of the EU's internal market and developing legal system, the problem of BITs and intra-EU investment conflicts continues to be complicated. Creating efficient dispute resolution mechanisms will remain a top priority for defending foreign direct investment within the Union as the EU strives to balance safeguarding investors and guaranteeing legal coherence.

5.2 Capital Movement and Taxation

The link between capital flow and taxation is intricate and multidimensional. On the one hand, tax laws have a significant impact on how investors make decisions and how money moves inside and outside the EU. Effective tax policies can entice FDI and aid domestic businesses in expanding. On the other hand, variations in tax laws and procedures across the member states can present chances for tax planning tactics that take advantage of variations to lower tax obligations[25].

Finding consensus on tax policies and coordinating efforts at the EU level are crucial to ensuring a level playing field for businesses, improving tax compliance, and maintaining the integrity of the single market as we navigate the complex terrain of capital movement and taxation. This study aims to add to the understanding of the issues and opportunities connected with taxation in the context of capital movement within the EU by shining light on the intricate nature of this connection. We may investigate potential options for strengthening tax cooperation, promoting transparency, and supporting fiscal policies that support sustainable economic growth and prosperity for all member states through thorough analysis and critical evaluation.

[25] See Case C-48/93 - Alpine Investments BV ECLI:EU:C:1995:322, The CJEU upheld Alpine Investments BV's claim that implementing a withholding tax on profits paid to non-resident corporations constituted a barrier to the free flow of capital. The CJEU ruled that the withholding tax breached the principle of non-discrimination and impeded the free flow of money within the EU. To comply with EU law, Member States may not apply withholding taxes on profits in a manner that disparages non-resident enterprises.

Creating a single market with level playing fields for businesses and investors is one of the primary aims of the EU. The EU has attempted to harmonize tax laws and policies among its member nations to accomplish this. Harmonization strives to lessen tax system inequalities, avoid tax barriers to international commerce and investment, and encourage a more effective allocation of resources.

State aid regulations in the EU are intended to stop member states from giving particular businesses preferential treatment, which could distort competition in the single market. This is pertinent when discussing tax breaks or other unique tax arrangements that may favor some companies. State assistance regulations support the preservation of fair competition and deter unfair tax practices.

A critical EU legal measure to combat tax evading tactics is the ATAD. It comprises solutions for hybrid mismatches, interest cap restrictions, controlled foreign business requirements, and exit taxation. The ATAD aims to establish a fairer and more open tax environment for enterprises operating within the EU by enacting standard rules to prevent tax avoidance. Tax agreements among EU members are essential for preventing double taxation and fostering international investment. The possibility of a taxpayer being taxed on the same income in two separate member states is avoided thanks to these accords. These tax treaties are negotiated and implemented by EU legal policies, assuring uniformity and mutual benefit.

The Parent-Subsidiary Directive is a piece of EU legislation designed to stop the double taxation of dividends paid inside multinational corporate groups. It authorizes exempting withholding taxes on dividends issued among associated enterprises in various member states to encourage investment and capital mobility within the EU. The EU legislative framework covers the subject of cross-border loss offset, which entails enabling businesses to compare earnings made in one member state to profits made in another. The EU strives to ensure that regulations governing cross-border loss offset do not prevent investment and the effective distribution of capital within the single market.

Moreover, by requiring member states to share information on advance tax rulings and agreements, EU legal regulations highlight the value of transparency in tax rulings. For enterprises that operate internationally, this transparency aims to improve the predictability of tax outcomes and stop aggressive tax planning.

The non-discrimination principle also applies to tax policies, and discriminatory tax measures that treat international investments less favorably than domestic investments may violate the rule. Through its seminal rulings, the European Court of Justice significantly contributes to the interpretation and application of the principle[26].

In simple terms, EU legislative regulations are crucial in determining how taxes are applied within the EU and how they affect capital flows. A fair, open, and competitive tax environment for firms and investors is what the ATAD, state assistance regulations, tax treaties, and other EU legal instruments aim to achieve. EU legal laws aim to enable cross-border investment, foster economic growth, and strengthen the integration of financial markets inside the EU by addressing tax avoidance, encouraging transparency, and guaranteeing uniformity in taxing regulations. Any actions taken under Article 65 TFEU must be strictly essential to resolve tax rules, financial supervision, or other difficulties. They also must not result in arbitrary discrimination. Measures beyond what is necessary to safeguard national interests may be interpreted as veiled restrictions on the free flow of money.

To support the free flow of capital, these judicial principles guide interpreting and applying the limitations in Article 65 TFEU. Before the Lisbon Treaty, Article 60 EU was connected to the Common Foreign and Security Policy (CFSP) and limited the free movement of capital. This gave the EU, and its member states the power to sever or curtail economic ties with non-EU nations, as well as to halt or halt capital transfers and impose trade embargoes or other limitations on financial operations.

Article 60 EU, however, was changed to Article 75 TFEU following the Lisbon Treaty, which now relates to the sphere of freedom, security, and justice. Article 67 of the TFEU, which addresses the goals of freedom, security, and justice, is related to Article 75 of the TFEU. Facilitating the implementation of Article 67 TFEU, particularly the prevention and combat of terrorism and associated actions is the goal of Article 75 TFEU.

5.3 Legal Framework of the Third-Party Dimension

[26] Case C-251/98 ECLI:EU:C:2000:205 C. Baars v Inspecteur der Belastingen Particulieren/Ondernemingen Gorinchem

"All restrictions on the movement of capital between Member States and between Member States and third countries" are forbidden under Article 63 TFEU (ex-Article 56 TEC)[27]. The ECJ has confirmed that this provision has direct effect with respect to third countries, allowing persons and businesses file lawsuits to enforce their rights under the provisions of Article 63 TFEU, in the national courts of the Member States. Though there is little information on the primary reason for the third party dimension[28], this extension was originally intended to strengthen the euro as a global reserve currency. Due to the fact that all EU member states were also OECD members, the liberalization of capital movements within the OECD Code of Liberalization of Capital Movements had an impact on the inclusion of the third country feature in EC Treaty Article 56(1) now Article 63 TFEU.

The European Court of Justice has gradually severed the concept of unrestricted financial flow between the EU and non-EU nations from its original purpose. The ECJ acknowledges that the extension to third countries furthers other goals, such as retaining financial centers inside EU member states and preserving the credibility of the euro on the international financial arena. However, because the ECJ sees the third country aspect of free capital movement as acting in a separate legal framework, it has restrictions and may deviate from Article 56.1 in relation to third countries. When applied to the capital movements of third nations, justifications for restrictive restrictions that wouldn't be acceptable between EU member states may be allowed.

The possibility of the free movement of capital to third countries having an effect on the tax legislation of member states was unanticipated when Articles 56 to 58 were added to the EC Treaty in 1991 now Article 65 to 63 TFEU. The jurisprudence of the ECJ regarding direct taxes was still in its infancy, and Article 56 was not yet acknowledged as a stand-alone ground for contesting direct taxation policies. By 2004, member states were more cognizant of the potential consequences, which gave the Commission and Council greater authority to restrict the third country feature with respect to direct taxes.

The Principle is as well controlled by a broad legal framework that covers the third-party component, which includes nations outside of the EU. With a focus on bilateral and multilateral trade agreements with non-EU nations and the effects of these agreements on capital movement.

[27] See also Case C-483/99 Commission vs France ECLI:EU:C:2002:327
[28] O'Brien, M. (2008) page 630 "There is, however, very little commentary to be found in English on how the third country dimension came to be included in Article 56"

These agreements include the General Agreement on Trade in Services (GATS) and the World Trade Organization (WTO).

To expedite and control capital transfers, the European Union has entered into a number of bilateral and multilateral agreements with non-EU nations. These agreements play a crucial role in strengthening economic relations and enhancing collaboration between the EU and its international partners. Speaking on Facilitating Capital Movement, Capital transfers between the EU and non-EU nations are intended to be streamlined and made easier by bilateral and multilateral agreements. These agreements help to increase economic ties and encourage foreign investment by removing obstacles and streamlining procedures.

Numerous agreements also have clauses that protect foreign investments, giving non-EU investors peace of mind that their assets and rights will be protected within the EU. Expropriation, fair and equitable treatment, and dispute resolution procedures are just a few examples of the protections that may be included. While others concentrate on allowing non-EU nations access to the financial markets of the EU and vice versa. For both EU and non-EU investors, this provision expands the possibilities for international investments and diversifies investment portfolios. The clauses for regulatory cooperation between EU and non-EU nations are frequently included in the accords. The alignment of financial norms and regulations is essential for preventing discrepancies, fostering a secure and stable financial environment, and ensuring compliance. Although these agreements might be difficult to negotiate because different nations may have different economic interests and legal systems. During the negotiation process, it can be difficult to strike a balance between advancing free markets and safeguarding domestic interests.

The World Trade Organization (WTO) and the General Agreement on Trade in Services (GATS) both have a considerable impact on how the free movement of capital is perceived by third parties. While the WTO is in charge of overseeing international trade laws and regulations, the GATS is a comprehensive agreement that encompasses several service industries, including financial services. The GATS promotes financial services liberalization and the elimination of trade and investment restrictions. This promotes competition and broadens the selection of financial services available to customers by making it easier for foreign financial service providers to enter the EU market. GATS stipulates that member nations treat domestic and

foreign service providers equally. This rule prevents unfair practices against non-EU financial service providers, fostering fair competition on the EU market. Member nations commit to certain levels of market access under GATS, indicating the degree of openness they provide in particular service sectors. These promises give non-EU nations privileged access to the EU financial market, which benefits them.

The WTO's dispute settlement procedure offers a forum for addressing disagreements that can develop between EU member states and non-member states over financial services and capital movement. This system aids in preserving stability and adherence to laws governing international commerce. EU member states may need to modify their regulatory frameworks in order to comply with international trade agreements like GATS and the provisions of these agreements. The investment environment for both EU and non-EU investors can be improved by this procedure, which can also support regulatory harmonization. The legal framework established by bilateral and multilateral agreements with non-EU nations, as well as the effects of international trade agreements like GATS and the WTO, have a significant impact on the third-party dimension of the free movement of capital in the EU. These legal frameworks are essential in determining how money moves between the EU and the global economy, opening up opportunities for investment and promoting economic cooperation while also posing difficulties that need to be carefully negotiated and taken into account.

5.4 Implications on Non-EU Countries

The free movement of capital across the European Union substantially affects non-EU nations like the EU member states. Along with the difficulties non-EU nations encounter when accessing the EU's financial market, capital flows, and investment climates in neighboring countries are positively impacted. The open capital market of the EU offers non-EU investors the chance to make investments in a wide variety of financial assets, such as stocks, bonds, and real estate. As a result, non-EU nations can see an influx of capital from EU investors looking for lucrative business opportunities in their economy.

On the other hand, the EU's appeal as a secure and developed market could cause capital to leave non-EU nations. Investors may shift their wealth to the EU in search of safer and more lucrative returns, thereby escalating economic problems in their home nations. Furthermore, highly

qualified workers from non-EU nations can be enticed to the EU, resulting in a brain drain in those nations' own economies. Which is currently a dicey situation in Ghana with respect to nurses; a BBC report states that in 2022, around 1200 nurses left Ghana for the United Kingdom, and their loss is noticeable in the Ghanaian healthcare system. According to the article, nurse shortages in hospitals nationwide due to the nurses' departure have caused patients' deaths. According to the Ghana Registered Nurses and Midwives Association (GRNMA), many nurses are migrating from Ghana to countries in Europe and America for better working circumstances. Due to inadequate pay and working conditions, the GRNMA claims over 3,000 members will have departed Ghana by March 2022.

Considerable money flows in or out of the EU influence economies beyond the EU. Sudden capital outflows from the EU trigger currency devaluation in non-EU nations that substantially rely on EU trade or investment relationships. Contrarily, substantial capital inflows into non-EU countries might trigger inflationary pressures or asset bubbles. This may seem as a disadvantage, however in a positive way, this could foster the urge for these economies to also strive to be better and eliminate redundancy and idleness on the part of policy makers. And this in turn would be a benefit to the economies and the local people as well as the markets.

5.5 Impact on Investment Climates in Neighboring States

The investment climates in nearby non-EU states may be impacted by the EU's free capital flow. The degree of impact could be determined by how close these nations are to the EU geographically and how dependent they are on it economically. For neighboring non-EU nations, being close to the EU can be advantageous because of the potential for greater FDI due to spillover effects. By introducing new technologies, enhancing job prospects, and improving infrastructure in neighboring markets, EU investors can draw additional FDI. On the other hand, it fosters regulatory competition in the area. To draw EU investors and maintain competitiveness, neighboring nations may be pushed to improve their investment climates, simplify procedures, and enact investor-friendly laws. Neighboring non-EU countries may be more susceptible to changes in the EU's economy if they have stronger economic ties to it. Less trade and investment opportunities for the region's neighbors may emerge from economic downturns in the EU, which could have an impact on those countries' economic growth.

When participating in the EU's open capital market, non-EU nations confront legal, geopolitical, and economic difficulties. Diverse regulatory regulations and compliance standards obstruct efficient capital flow and deter prospective investors. Geopolitical unrest may result in limits on capital flows, which would reduce the opportunities available to investors outside the EU. Their participation in the financial system of the EU is further hampered by their lack of accurate information access and currency exchange rate swings.

The third-party component of the free movement of capital within the European Union is constantly changing due to various variables, including economic breakthroughs, technical developments, and geopolitical trends. For governments, investors, and non-EU nations alike, it is essential to understand the future potential of this dimension. The emergence of financial technology (fintech) and digitization is changing the financial landscape globally, particularly the capital market in the EU. Fintech advances can be used by non-EU nations to more effectively access the EU's financial system, while the EU can profit from increasing cross-border investment flows made possible by digital platforms.

For non-EU nations wishing to interact with the EU's financial system, the third-party dimension of the free movement of capital in the EU offers both opportunities and obstacles. Yes, it is obvious and significant how Article 56 may affect the free flow of capital between Europe and the rest of the world. The exact outcome will rely on how much investors from the EU and non-EU nations defend their legal claims before national courts in Member States. While the open capital market of the EU presents appealing investment opportunities, non-EU investors may encounter challenges due to legislative restrictions, geopolitical factors, and information asymmetry. The EU and non-EU nations must improve communication and cooperation through strengthening the legal background of the freedom, bringing in the balance to ensure compatibility and therefore limiting any significant impact on non-EU nations if they are to handle these issues and take advantage of the potential. A favorable environment for cross-border capital flows must be created by regulatory harmonization, openness, and information sharing. It can also promote more stable and mutually beneficial commercial partnerships to address worries about currency risks and geopolitical issues.

Both EU and non-EU nations should adjust to new trends as the global economic landscape continues to change. An increasingly robust financial system may result from embracing

digitization, green finance, and sustainable investment. The EU's status as a major financial center will be further strengthened through cooperation in crisis management and attempts to harmonize regulatory requirements.

The third-party component of the EU's free flow of capital is still a dynamic and developing facet of international economic relations. The EU and non-EU nations may promote an ironclad and inclusive financial ecosystem, benefiting economies on both sides and fostering international economic cooperation by tackling difficulties and taking advantage of emerging trends.

6. EXCEPTIONS AND JUSTIFIED RESTRICTIONS TO THE FREEDOM

All four economic freedoms must be liberalized entirely as a general principle. The free movement of people, goods, services, and establishments can be restricted under certain conditions, such as public morals, public policy, and public security. As it includes third nations, the free movement of capital is more liberalized than other freedoms; however, there are also more significant exceptions. The free movement of capital between member states and other nations is crucially governed by Article 63 TFEU, with the following treaty provisions acting as exceptions. Article 65 TFEU mainly covers capital transfers between member states, and all treaty rules cover third nations.

An in-depth discussion of the many exemptions and legitimate limitations placed on the free movement of capital across the EU will be covered in this part of the study as provided in Articles 64, 65(1), and 65(1b) of the TFEU however, these measures must not represent a means of arbitrary discrimination or a distinguished restriction in the sense of Article 65(3) TFEU. It investigates the legitimacy of such policies and their underlying theory and practical ramifications. These exclusions and limitations are crucial tools that enable the EU to safeguard national security, preserve financial stability, uphold tax laws, guarantee investor protection, and efficiently address economic difficulties. To fully appreciate the intricacy of the EU's strategy for managing capital flows while fostering a harmonious and competitive economic environment, it is imperative to comprehend these exceptions and constraints.

In the following sections, we'll look at particular justifications for limitations, like issues with public safety and order, prudential management and financial stability, taxation laws, monetary and economic policy objectives, and the use of capital controls in emergencies whilst backing them with ECJ case law as per how they were tackled and their implications. Each factor advances knowledge of how the EU strikes a careful balance between financial openness and protecting essential interests. We learn more about the EU's changing legal system and its determination to adjust to new problems and possibilities as we investigate the exceptions and legitimate limitations to the free movement of capital. We will also evaluate the potential effects

on EU enterprises, investors, and politicians, as well as the stability and expansion of the European market.

To illuminate the delicate balance between economic liberalization and preserving the public interest, this part of the paper thoroughly examines the difficulties involved in controlling capital movements in the EU. An informed and comprehensive view of the operation of the EU single market and its consequences for both Member States and investors will result from an understanding of these intricate features.

6.1.The Role Of The Court Of Justice Of The European Union (CJEU)

The practical application and enforcement of the fundamental freedoms of the European Union, particularly the free movement of capital, are crucially dependent on the Court of Justice of the European Union. The CJEU, the highest court in the EU, interprets and applies EU law, giving Member States and citizens direction and legal certainty. An in-depth discussion of the CJEU's authority, the principles that guide its judgments, and its general role in defending the rights related to capital movement will be provided in this part.

The Court of Justice and the General Court comprise the CJEU's principal courts. The Court of Justice reviews appeals against General Court rulings and preliminary references from national courts. The General Court handles direct queries by people, businesses, or Member States against EU institutions and specific orders. All issues about EU law, particularly situations affecting the Free Movement of Capital, are under the jurisdiction of the CJEU.

6.1.1 Interpreting EU Law and Methodology

When interpreting and applying EU legislation, notably concerning the Free Movement of Capital, the CJEU abides by an array of fundamental principles. According to the supremacy principle, EU law supersedes national laws. This prevents competing measures that could impede capital movement and maintains uniformity and consistency in applying EU regulations across all Member States. The principle of direct effect enables people to enforce their rights regarding capital movement against both Member States and private entities by relying on specific provisions of EU legislation directly before national courts. The CJEU adheres to these and evaluates whether any limitations placed by Member States on the Free Movement of Capital are appropriate in light of the justifiable goals pursued. The CJEU may invalidate the limits if it determines that they are disproportionate.

6.1.2 CJEU's role in safeguarding capital movement rights

Protecting capital movement rights is under the purview of numerous essential duties of the CJEU. First, it offers authoritative interpretations of EU law, enabling a uniform and coordinated approach to capital movement throughout the EU. Second, the CJEU provides a venue for contesting Member States' restrictions on capital flow[29]. Cases can be brought before the CJEU by people, businesses, or the European Commission, which results in the elimination of discriminatory practices and arbitrary restrictions.

Third, the CJEU fosters trust and promotes investment within the EU by resolving legal ambiguity for people and businesses involved in cross-border capital transactions. Furthermore, the CJEU's rulings are legally binding on all Member States, and the court has the authority to fine non-compliant nations to ensure that capital mobility rights are adequately enforced. The CJEU also consults an Advocate General prior to making a decision. Independent legal experts that offer advisory opinions on the issues are known as advocates general. Although they are not legally binding, these judgements frequently have a lot of weight and can affect the outcome.

6.1.3 CJEU's Role in Resolving Tax-Related Disputes

Additionally, the CJEU assists in settling tax-related issues within the EU, guaranteeing the smooth operation of the internal market and adherence to EU legislation[30]. It offers comprehensive explanations of EU tax law that clarify its application and scope. The CJEU investigates disputes involving the freedom of establishment and the free movement of capital and national tax policies that impose unjustifiable obstacles. It distinguishes between direct and indirect taxation to ensure that federal tax laws do not violate EU principles and fundamental freedoms[31].

To avoid illegal state aid and advance fair competition[32], the CJEU also examines instances involving tax rulings and state aid. It further examines whether tax policies adhere to EU

[29] See Case C-35/98 - Verkooijen v. Nederlandse Administratie der Belastingen “Article 1(1) of Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty precludes a legislative provision of a Member State which, like the one at issue in the main proceedings, makes the grant of an exemption from the income tax payable on dividends paid to natural persons who are shareholders subject to the condition that those dividends are paid by a company whose seat is in that Member State.”

[30] Case C-319/02 – Manninen ECLI:EU:C:2004:484

[31] Case C-196/04 ECLI:EU:C:2006:544 Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue

[32] See also Case C-596/19 P ECLI:EU:C:2021:202 Commission vs Hungary, see p.57

directives intended to harmonize tax laws and deter tax evasion. Preliminary judgments from the CJEU may be requested by national courts to provide direction for the uniform implementation of EU tax law. Member States must follow CJEU rulings, and failure to do so could result in financial fines.

6.2 Legitimate Grounds for Restrictions

6.2.1 Security

The core of national security is the need for a sovereign state to safeguard its territorial integrity, assert its independence, and mount an effective defense against foreign threats. According to Article 65 of the TFEU, national security is a recognized justification for imposing limits on the free flow of money. However, this provision should not be taken advantage of which is seen in the case of Commission vs Netherlands[33], the CJEU ruled in favor of the commission on the grounds that the Netherlands infringed on the EC Treaty (TFEU) as that the golden shares[34] gave the state the power to veto certain decisions of the companies, such as mergers, acquisitions, or changes in shareholding structure. The Court found that this power constituted a restriction on the free movement of capital, and also held that the restriction was not justified by any overriding public interest, such as national security or public order[35]. Also in Case C-463/00[36], the Court of Justice determined that Spain violated its Treaty duties[37] by maintaining a system of prior administrative approval for certain decisions taken by privatized economic operations. The Commission of the European Communities brought the lawsuit, arguing that the Spanish system violated Articles 43 EC and 56 EC (now Articles 49 TFEU and 63 TFEU), which are the freedom of establishment and the free movement of capital, respectively. The Court concurred with the Commission that the Spanish system went above and beyond what was required to protect the public interest and lacked justification based on any overriding purpose of general interest, such as public security[38]. The Court also rejected the claim that the system was exempt

[33] Joined cases C-282/04 and C-283/04 ECLI:EU:C:2006:608
[34] See also Case C-112/05 ECLI:EU:C:2007:623 Commission of the European Communities v Federal Republic of Germany
[35] See also Case C-54/99 ECLI:EU:C:2000:124- Association Eglise de scientologie de Paris and Scientology International Reserves Trust v The Prime Minister.
[36] Commission of the European Communities v Kingdom of Spain ECLI:EU:C:2003:272
[37]See also Case C-367/98 Commission of the European Communities v Portuguese Republic ECLI:EU:C:2002:326
[38] Case C-387/11 European Commission v Kingdom of Belgium ECLI:EU:C:2012:670

from the rules on property ownership outlined in Article 295 EC (now Article 345 TFEU), which allows Member States to maintain their regulations on the subject.

The EU strives to achieve a difficult balance between promoting economic openness and maintaining national security. As a result, Member States may use focused actions to defend their fundamental security interests. Geopolitical tensions, terrorist threats, and possible dangers to vital infrastructures are just a few examples of the many variables that make up the idea of national security, then again, any restriction should not discriminate[39] as it would infringe the TFEU. The EU still takes great care to ensure that federal security constraints do not unnecessarily impede the free flow of capital. The Court of Justice of the European Union has determined through these rulings that the need for public security cannot be used as an excuse to violate Treaty provisions such as the freedom of capital movements unless the concept of proportionality is upheld. This concept states that any deviation must be reasonable, suitable, and essential to achieve its intended aim. It must also not go beyond what is required to do so.

6.2.2 Public Order Concerns

The main issues with public order are preserving societal stability and protecting public safety. The EU accepts that legitimate public order concerns may justify limitations on the free flow of capital as long as those restrictions remain reasonable and without discrimination[40]. It is crucial to ensure that public order limitations comply with EU legislation and principles to support fair competition and a smooth market operation.

Public order concerns may develop due to situations like civil unrest, large-scale protests, or potential public safety issues. In the case of C-358/93 is indeed “Bordessa and Others”, The key legal question before the ECJ was whether the German rule, which allowed German nationals to receive pensions at a younger age than other EU nationals, constituted a violation of the principle of equal treatment under EU law. In its ruling on November 23, 1995, the ECJ held that the German rule indeed violated the principle of equal treatment as enshrined in Article 7 of

[39] T-315/01 - Kadi v Council and Commission: The Court upheld some of Kadi's arguments and found that the EU's regulation implementing the sanctions violated his right to defense and the right to effective judicial protection. The Court held that individuals targeted by sanctions must have the opportunity to be informed of the reasons for their listing and to contest the evidence and allegations against them before an independent authority.
The Court ruled that the EU's regulation failed to provide Kadi with the necessary procedural safeguards, and therefore, his listing and asset freeze were unlawful. Consequently, the Court annulled the regulation implementing the sanctions against Kadi.

[40] See Case C-423/98-Alfredo Albore ECLI:EU:C:2000:401

Regulation (EEC) No. 1408/71 (now replaced by Regulation (EC) No. 883/2004). The Court emphasized that the principle of equal treatment is a fundamental pillar of EU law, and it prohibits any discrimination on the grounds of nationality.

The ECJ ruled that there should be no distinction between EU nationals in regard to social security benefits based solely on their nationality. In this specific case, the German law's different treatment of Italian nationals regarding the age at which they could receive pensions compared to German nationals was considered discriminatory. The judgment in C-358/93 - Bordessa and Others reaffirmed the importance of ensuring equal treatment and non-discrimination in the application of social security benefits within the EU. It reinforced the principle that EU nationals should have equal access to social security benefits and services, regardless of their nationality, when they meet the relevant qualifying conditions.

Each case must be carefully assessed and considered to strike the correct balance between upholding the public interest and advancing market integration. The European Court of Justice (ECJ) is crucial in determining how public order concerns affect capital movement and providing guidance on the legality and reasons for limitations based on general order.

6.2.3 Exceptions Justified by The ECJ

As stated in Article 65 TFEU, there are generally only a few justifiable limits on the Free Movement of Capital within the EU. These limitations include steps taken to stop transgressions of domestic legislation, such as those concerning taxation and financial services regulation however it is notable for such restrictions not to breach the TFEU [41]. Administrative or statistical processes might also require declarations of capital movements. Furthermore, limits may be justified by considerations of public safety or policy amongst others. Like in the case of Commission vs Hungary[42], the European Commission sued Hungary for imposing a crisis tax on crucial economic sectors as telecommunications, energy, and retail. The Commission argued that this tax damaged commerce and competition within the EU and was an unlawful form of state aid. Hungary won the CJEU decision, finding that the Commission had failed to prove that the tax was unfair and gave some undertakings a benefit. Notably, to stop excessive capital outflows

[41] See Joined cases C-515/99, C-519/99 to C-524/99 and C-526/99 to C-540/99 ECLI:EU:C:2002:135 on Prior authorisation procedure for the acquisition of agricultural and forestry plots

[42] Case C-596/19 P ECLI:EU:C:2021:202

during the European sovereign debt crisis, capital controls were also enforced in both Cyprus (2013) and Greece (2015). These limitations were later lifted in 2015 and 2019, respectively.

The emergence of digital finance, in particular cryptocurrencies based on blockchains, has the potential to put existing systems that guarantee the free flow of capital to the test. Policymakers may need to modify legislation to accommodate new complications and uphold the integrity of the Free Movement of Capital as these innovative financial technologies continue to develop.

When it comes to interpreting and making decisions in matters involving limitations on the free movement of capital within the European Union, the European Court of Justice has been crucial. These seminal decisions shed essential light on the ECJ's methodology and assessment of the appropriateness and conformity of such measures with EU legislation. Additionally, the ECJ's evaluation is guided by the proportionality principle as mentioned earlier, which ensures that limits on public order and national security are both reasonable and essential to address the particular issues they are intended to address.

In the case of Gebhard (1995)[43], Germany's limitations on foreign solicitors' entry to its legal services market were with issue. According to the ECJ, Member States can apply rules based on public policy and public security considerations, but these limitations must adhere to the provisions of the TFEU and not be discriminatory in any form[44]. The ECJ emphasized in this decision that any measure restricting the any of the four freedoms must be appropriate for achieving its goal and staying within what is required:

"*National measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it.*"

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[43] Case C-55/94, [1995] ECLI:EU:C:1995:411Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano

[44] See also Case C-370/05 Criminal proceedings against Uwe Kay Festersen ECLI:EU:C:2007:59

Whereas in Åklagaren v. Gustavsson (2009)[45], the ownership of fishing rights by EU citizens who are not residents is regulated in Sweden. According to the ECJ, restrictions based on concerns for public safety are permissible as long as they are appropriate for the goal and do not go beyond what is required. In this instance, the limitations were considered excessive, thus referred to the principle of proportionality, and contravening EU legislation.

Until the EU adopts liberalizing measures, member states can continue imposing restrictions on capital movements linked to direct investment, financial services, establishments, and securities under Article 64 TFEU. The most extensive exemption to the free movement of capital is provided by Article 65 TFEU, which enables member states to disobey their commitments based on tax administration, public policy, financial supervision, and establishment rights. But neither unfair discrimination nor covert restrictions are permitted under these limitations.

Article 65(4) of the TFEU's provisions on member states' taxation authority has been strengthened by a Lisbon Treaty amendment. A member state may enact punitive tax policies towards third-world nations if the European Commission refuses action. Regarding the free movement of products, the exceptions in Article 65 TFEU are comparable to those in Article 36 TFEU. Both provisions are subject to the requirement that limitations must not result in arbitrary discrimination or covert trade obstacles between member nations.

According to the CJEU, member states cannot cite financial hardships as a justification to shirk their treaty commitments. Control measures under Article 65 TFEU should prioritize monitoring financial institutions and the administration of the tax system, not economic policy issues.

The subjects already covered by EU law should be distinct from national actions authorized under treaty exceptions. Periodic capital movement liberalization lessens member states' ability to enforce domestic regulations on fully liberalized categories of capital movement. Any actions taken under Article 65 TFEU must be strictly essential to resolve tax rules, financial supervision, or other difficulties. They also must not result in arbitrary discrimination. Measures beyond what is necessary to safeguard national interests may be interpreted as veiled restrictions on the free

[45] Case C-142/05 Åklagaren v Percy Mickelsson and Joakim Roos Reference for a preliminary ruling: Luleå tingsrätt - Sweden. ECLI:EU:C:2009:336

flow of money. To support the free flow of capital, these judicial principles guide interpreting and applying the limitations in Article 65 TFEU.

6.3 Unveiling the Free Movement of Capital: Insights from CJEU Case Law

A thorough examination of a range of landmark cases decided by the Court of Justice of the European Union (CJEU) reveals fundamental concepts and precedents that shape the parameters of these basic rights. Drawing upon these cases, we unravel general patterns that can guide future scenarios, investigate the grey area that calls for individualized evaluation, and define non-negotiable boundaries that governments must adhere to.

Numerous cases, including C 478/98, C 98/01, and C 463/00, shed light on situations where member states' actions deviate from the tenets of the free movement of capital. These cases underscore that states are permitted to enact restrictions on capital movement, provided such actions are justifiably proportionate to the objectives pursued. The cases above concern national measures that either directly or indirectly discriminate against foreign transactions or operators based on their nationality, residence, origin, or destination, discouraging or hindering cross-border investments or acquisitions. It becomes evident that member states possess a degree of autonomy in shaping policies that promote capital flow as long as they uphold the overarching principles of the EU.

Cases C 78/18, C 370/05, and C 282/04 amongst others enter a grey area, calling for careful consideration of governmental activities. In these situations, the CJEU emphasizes balancing the right to free capital movement and other fundamental principles like preventing money laundering and guaranteeing fiscal transparency. The murky area materializes where even though an action may not explicitly impede capital movement, it may still have an impact, as in Case C370/05, where workers were subjected to double contributions under Danish legislation. The CJEU emphasizes the significance of case-specific analyses in this instance while also considering the larger context and goals and finds the justification for regulating social security systems to be lacking and incompatible. Looking at cases like C 55/94, C 283/04, and C 271/09 where clear boundaries are drawn by state actions unequivocally deemed incompatible with the free movement of capital. These cases center on policies and measures that impose arbitrary

limitations or discriminate against cross-border investments. The CJEU's unwavering stance signals that some actions are impermissible and directly conflict with the EU's fundamental principles of non-discrimination and economic integration. The case of Van Gend en Loos v Nederlandse Administratie der Belastingen, C 26/62 cannot be overlooked as it is a landmark case of the European Court of Justice (ECJ) which established that provisions of the Treaty Establishing the European Economic Community (EEC) were capable of creating legal rights which could be enforced by individuals in the courts of member states.

In addition, in cases C 112/05 and C 483/99, referred to as the "Golden Shares" cases, these shares grant the bearer unique voting rights and empower them to veto specific corporate decisions or actions. The European Court of Justice (ECJ) concluded categorically that this arrangement constituted state aid because it gave both States involved an edge over their rivals by enabling them to gain from public scrutiny. The ECJ further ruled that these arrangements limited free capital flow since they made it less attractive to non-residents, which impeded FDI.

The lessons learned from these cases provide valuable guidance as we prepare for potential future circumstances. Member States can draw inspiration from the principles of proportionality and non-discrimination when developing capital movement policies. However, the grey area necessitates a careful analysis that balances conflicting interests. The CJEU's case law emphasizes how crucial it is to make sure that state acts, no matter how well-intended they may be, may not unintentionally impede capital movement.

A potential grey area lies in differentiating between direct and indirect limitations on the free movement of capital. Direct restrictions entail explicit differentiation between local and foreign transactions or operators, contingent on factors like nationality, residency, origin, or destination. On the other hand, indirect constraints are impartial in their application to both domestic and foreign transactions or participants, but they exert a more pronounced influence on cross-border instances compared to purely internal situations. The CJEU has affirmed that both categories of restrictions are prohibited under Article 63 TFEU, unless they can be substantiated by compelling reasons of public interest.

Nevertheless, the CJEU has also acknowledged that certain measures might not qualify as limitations per se; instead, they could be considered as impediments or difficulties intrinsic to the practice of capital's unrestricted movement. These measures are exempt from the constraints

stipulated by Article 63 TFEU, and thus, there is no obligation to provide a public interest rationale to validate them. Taking into account where the CJEU has ruled that:

- The existence of different tax systems or rates among Member States does not amount to a restriction on the free movement of capital, as long as they refrain from discriminating against foreign transactions or operators. This principle was upheld by the CJEU in Case C-279/93 Schumacker, Case C-35/98 Verkooijen, Case C-319/02 Manninen, and other relevant cases.
- The requirement to provide information or documentation to tax authorities does not constitute a limitation on the free movement of capital, as long as it remains proportionate and does not impose excessive burdens or delays on cross-border transactions or operators. This principle was affirmed by the CJEU in Case C-390/98 Banks, Case C-376/03 D, Case C-540/07 Commission v Italy, and other pertinent instances.
- The application of national rules on civil procedure or evidence does not serve as a constraint on the free movement of capital, as long as they do not render it impossible or excessively complicated for individuals to enforce their rights under EU law. This principle was affirmed by the CJEU in Case C-446/04 Test Claimants in the FII Group Litigation, Case C-598/17 A-Fonds, and other relevant cases.

Hence, the challenge is to determine whether a measure falls within the category of direct or indirect restrictions, which are prohibited by Article 63 TFEU and need to be justified by public interest, or within the category of inherent obstacles or inconveniences, which are not prohibited by Article 63 TFEU and do not need to be justified by any public interest. This determination may depend on various factors, such as the nature and purpose of the measure, the scope and intensity of its effects, the availability and adequacy of alternative measures, and the consistency and coherence of its application. Depending on the particular conditions and context of any scenario, these elements may change from case to case. As a result, it is impossible to distinguish between direct or indirect limitations and intrinsic difficulties or inconveniences. Instead, a case-by-case review that considers all pertinent factors and available information is required. This is what the CJEU does in its rulings concerning the free movement of capital, and this is how national courts should apply EU law.

7. POWERS AND ROLE OF THE EU COMMISSION

In the institutional structure of the European Union, the EU Commission plays a crucial part in formulating regulations and laws, especially those about the Free Movement of Capital. One of the fundamental liberties within the EU is the Free Movement of Capital, which makes it easier for money to move between member states for investments and other purposes. To maintain the efficient operation of this vital component of the EU single market, the EU Commission plays a crucial role.

7.1 The EU Commission's Role in Policy Formulation

Legislation about the Free Movement of Capital is one of the primary responsibilities of the EU Commission. Adjusting rules to shifting economic and market situations requires identifying areas for improvement, creating new regulations, and reforming existing ones. Within the European Union, only the EU Commission has the competence to propose laws. The Commission actively assesses and identifies areas that need attention and intervention regarding issues involving the Free Movement of Capital to increase the efficacy and efficiency of capital movements within the single market. Additionally, the Commission continuously assesses the performance of other present policies, determining their impact and recommending any required modifications. Based on this analysis, the European Commission annually publishes staff working materials to increase transparency, support policymakers, and aid stakeholders in understanding the dynamics of capital transfers throughout the EU. The European Commission gathers information on capital flows from various sources, including central banks, international organizations, and financial institutions. This information includes loans, trade balances, portfolio investments, and loans from abroad. Commission economists and financial specialists then examine the data to spot trends, patterns, and potential threats.

The Commission compiles an annual staff working document using the data that has been analyzed. This extensive paper summarizes the current situation regarding capital movements within the EU. It emphasizes investment trends, capital sources, destinations, heavily invested industries, and notable outliers. The paper usually incorporates graphs, charts, and data visualizations to improve comprehension. These tools make it easier for researchers, economists, politicians, and the general public to comprehend the critical findings of the data study. The staff

working document frequently explores potential policy ramifications of observed capital flow trends. It examines economic inequalities, dangers associated with significant foreign investment in specific industries, possible benefits of capital mobility, and methods for promoting sustainable and balanced capital flows.

The yearly staff working paper is published and made publicly available through official channels of the European Commission, such as its website and pertinent materials. This accessibility guarantees that the information and ideas offered in the publication can be accessed by stakeholders like policymakers, researchers, academics, journalists, and citizens. The paper assumes the function of serving as a valuable tool for national governments, EU institutions, and policymakers. Its research and conclusions provide helpful information for discussions, policy development, and decision-making procedures involving economic and financial issues inside the EU.

Initiating a policy requires extensive investigation, market trend analysis, and complete comprehension of economic data as earlier mentioned. The Commission closely collaborates with experts and stakeholders as well in its proceedings and based on this analysis, the Commission develops or amends directives and rules to address particular problems or advance already-existing frameworks about the Free Movement of Capital. The EU Commission also extensively consults with member states, companies, financial institutions, and civil society to guarantee complete and informed recommendations. This consultative process aims to collect various viewpoints and consider all pertinent parties' interests. The Commission hopes to develop policies through these discussions that align with the requirements and worries of those the legislation will impact. The EU Commission can propose, amend, and repeal capital-movement-related laws. It influences the directives and rules that affect the movement of capital inside the EU. For legislation to be passed, there must be an interaction between the EU Commission, European Parliament, and Council. The Parliament and the Council offer comments, suggest revisions, and eventually approve the final laws while the Commission makes legislative proposals.

7.2 Monitoring and Assessment of Existing Policies' Effectiveness

For the integrity of the single market, it is essential to ensure adherence to EU rules regarding capital movement. Beyond proposing new legislation, the responsibility of regulating how member states carry out their capital movement regulations falls on the EU Commission. The Commission may begin infringement procedures in cases of noncompliance or violations to remedy the problems[46]. The process[47] consists of several stages where first, there is the issuance of a "Letter of Formal Notice." At this stage, the Commission sends a formal letter to the concerned Member State, outlining the alleged breach of EU law and setting a deadline for a response. The letter's content is based on information gathered from various sources, including complaints, reports, and investigations.

Subsequently, the "Reasoned Opinion" phase follows. Here, the Commission sends a formal request to the EU Member State, urging compliance with EU law within a specified timeframe, usually around two months. This opinion is built upon the response or lack thereof to the initial letter. It provides legal and factual arguments, specifying the necessary measures to rectify the breach. The case may be referred to the Court of Justice of the European Union (CJEU) in the final stage. The Commission makes this decision if it determines that the Member State has not taken sufficient measures to comply within the timeframe outlined in the reasoned opinion or has introduced measures incompatible with EU law. This referral grants the CJEU the authority to rule on the matter and impose necessary penalties. The Commission announces the referral publicly through a press release, summarizing key points of the case and linking to further details on its website.

By doing this, it aims to preserve fair competition and level playing fields in and out the EU. To assess the condition of the Free Movement of Capital, the EU Commission must collect and analyze data. The EU Commission also performs in-depth impact analyses to fully understand the results and implications of the applied policies on capital flows. These analyses assist in determining the effectiveness of present policies and locating any unexpected consequences.

Annually, the European Commission releases a comprehensive annual report that meticulously assesses the implementation of EU law within the preceding year. This report is essential for

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[46] See cases Case C-212/09 ECLI:EU:C:2011:717, Case C-271/09 ECLI:EU:C:2011:855, Case C-478/98 ECLI:EU:C:2000:497, Case C-367/98 ECLI:EU:C:2002:326, Case C-503/99 ECLI:EU:C:2002:328 and many more.
[47] *Infringement procedure European Commission*. Available at: https://commission.europa.eu/law/application-eu-law/implementing-eu-law/infringement-procedure_en (Accessed: 25 August 2023).

scrutinizing various facets of EU law application across Member States. The report delves into the intricate landscape of how EU law has been implemented through a comprehensive review, highlighting the accomplishments and challenges encountered during the year. Beyond a mere compilation of data, the report offers a panoramic perspective on the dynamics between the Member States and the European Commission, spotlighting the latter's efforts to ensure the effective enforcement of EU law. This pivotal publication serves as a valuable reference for policymakers, legal experts, and the general public seeking insights into the intricate workings of the EU's legal framework. Below is data on infringement proceedings initiated against member states.

Figure 1. Alleged or Potential Breaches of EU Law: 2017 to 2021

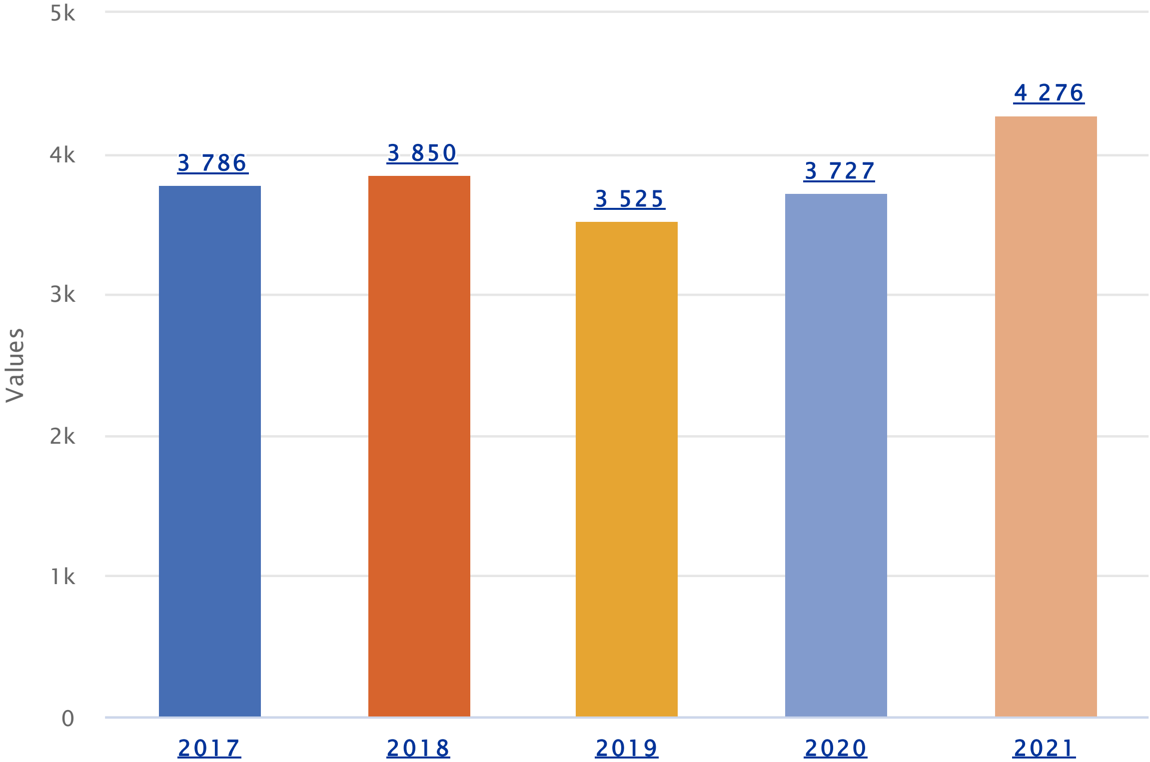

Figure 1

Source: European Commission's website[48]

This chart shows the number of infringement proceedings concerning the free movement of capital in the EU initiated by the European Commission against EU Member States from 2017 to 2021. The chart reveals that the number of infringement proceedings concerning the free movement of capital in the EU has been relatively stable over the years, ranging from 3,786 to 4,276, except for a slight decrease in 2020, when it dropped to 3,525. However, this indicates that most EU Member States still maintain or introduce measures that restrict or discriminate against cross-border capital movements or must implement or apply EU law correctly or effectively. Therefore, the Commission continues to monitor and enforce the free movement of capital in the EU by launching infringement procedures against EU Member States that violate Article 63 TFEU. The charts that follow shows the number of cases year in the year since 2021 which saw the highest cases opened and what area was concerned.

Figure 2. Areas of EU Law Breached in 2021

[48] *2021 Annual report on monitoring the application of EU law European Commission*. Available at: https://commission.europa.eu/law/application-eu-law/implementing-eu-law/infringement-procedure/2021-annual-report-monitoring-application-eu-law_en (Accessed: 25 August 2023).

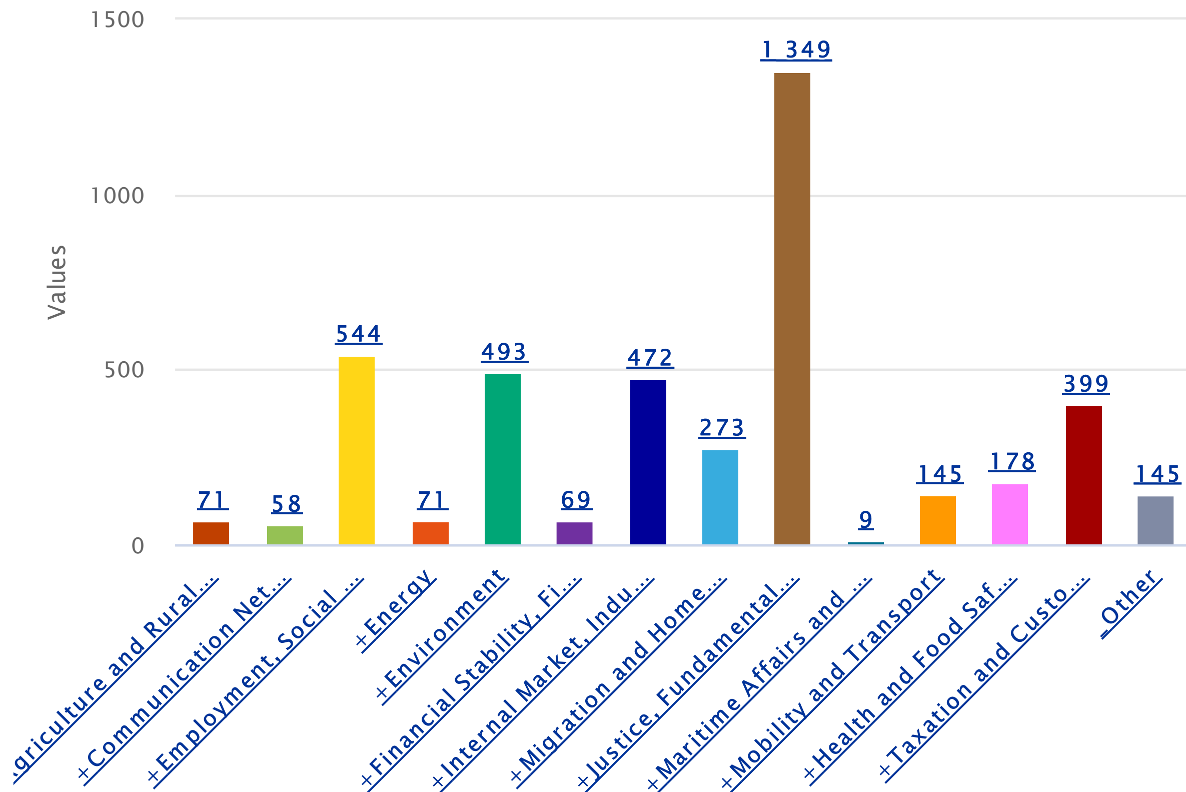

Figure 2

Source : European Commission’s website

The Commission can decide on prospective changes or amendments to maximize the advantages of the Free Movement of Capital by analyzing policy outcomes. The Commission keeps stakeholders informed and makes evidence-based policy decisions to support a dynamic and interconnected European financial landscape by routinely reporting on capital mobility trends, issues, and opportunities. In addition, the Commission requests input on the practical implications of the policies from stakeholders, businesses, and individuals. Real-world experiences and insights from this feedback loop guide the Commission's evaluations and decision-making process. The Commission can address particular problems and better match policies with the needs of individuals impacted by doing so by embracing stakeholder opinions. The financial environment in the EU is kept sensitive and adaptable to shifting economic situations thanks to this proactive approach to policy assessment.

Aside the above responsibilities, The EU Commission permits international capital movement agreement negotiations. These agreements may strongly impact the Free Movement of Capital, whether bilateral or international. In these negotiations, the Commission must balance defending national interests and furthering the EU's overarching goals.

The EU Commission represents the EU on matters about capital movement on a global scale. It promotes the advantages of the Free Movement of Capital globally and fights for the interests of the EU. Coordination with member states on international issues ensures a coordinated strategy in the global financial domain. The EU Commission holds member states responsible for adhering to EU capital movement regulations. The Commission can spot potential problems through vigilant surveillance and initiate infringement proceedings against non-compliant member states. Working with national authorities is essential for tackling issues with capital controls and having a consistent strategy.

The EU Commission is crucial in addressing the instability of capital flows during financial crises. The Commission's primary priorities are putting emergency measures into place and protecting the integrity of the single market. The effectiveness of crisis management measures is increased by close cooperation with institutions like the European Central Bank. The EU Commission must as well interact with various stakeholders, including corporations, financial institutions, and civil society. The Commission ensures policies reflect the needs and concerns of the affected parties by seeking input and holding discussions. The Commission's job involves balancing the interests of several stakeholders, which is a complex but essential task.

7.3 Efficacy of EU Infringement Procedures: Balancing Enforcement and Cooperation

The effectiveness of infringement procedures against EU Member States, brought by the European Commission, depends on various factors. These include the nature and seriousness of the breach of EU law, the willingness and ability of the Member State to cooperate and comply, the duration and outcomes of the Commission's stages within the procedure, the intervention and judgment of the Court of Justice of the European Union (CJEU), and the implementation and enforcement of the CJEU's ruling by the Member State.

Studies and statistics offer insights into the effectiveness of these procedures. For instance, a study by Börzel et al. (2010) found that most infringement procedures are resolved at early stages, indicating cooperation between Member States and the Commission.

Figure 3. Status of Complaints

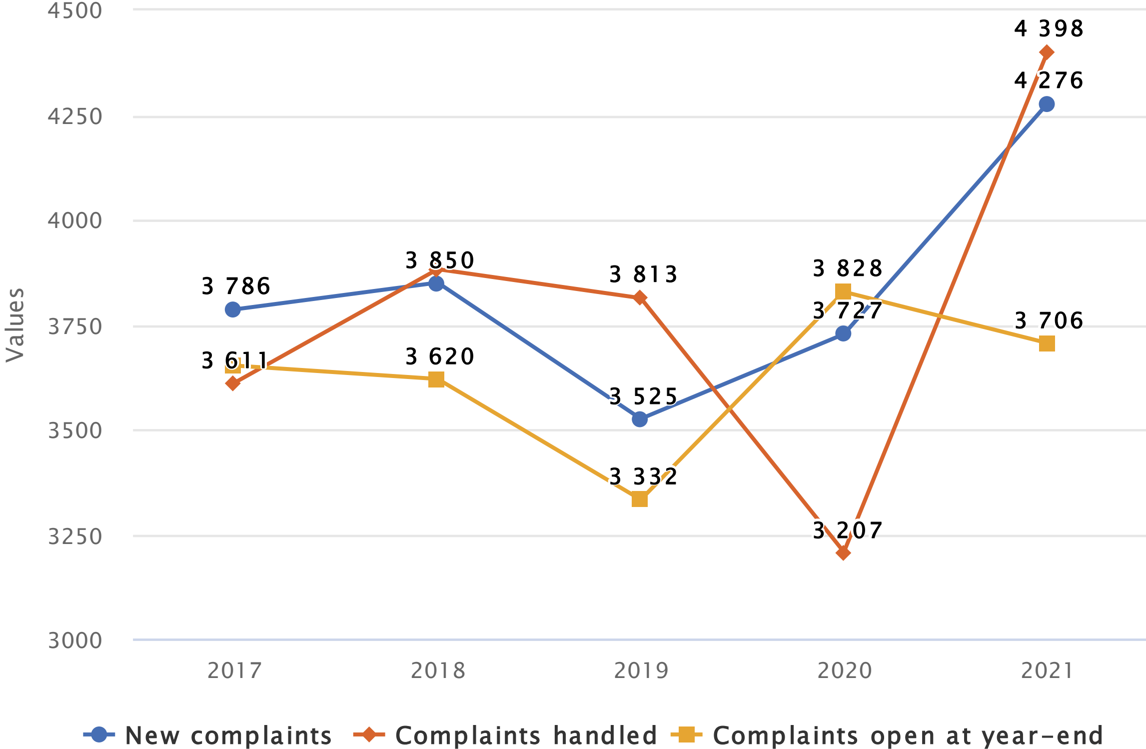

Figure 3

Source : European Commission's website

The chart shows how effective the powers of the Commission is and how it impacts on the implementation of the free movement of capital[49].

[49] See also Börzel et al. (2010)

Another study by Börzel (2016) noted that CJEU rulings are usually implemented promptly, demonstrating respect for the CJEU's authority. The chart below illustrates how long in weeks it takes to handle open cases brought against member states .

Figure 4. Infringement process

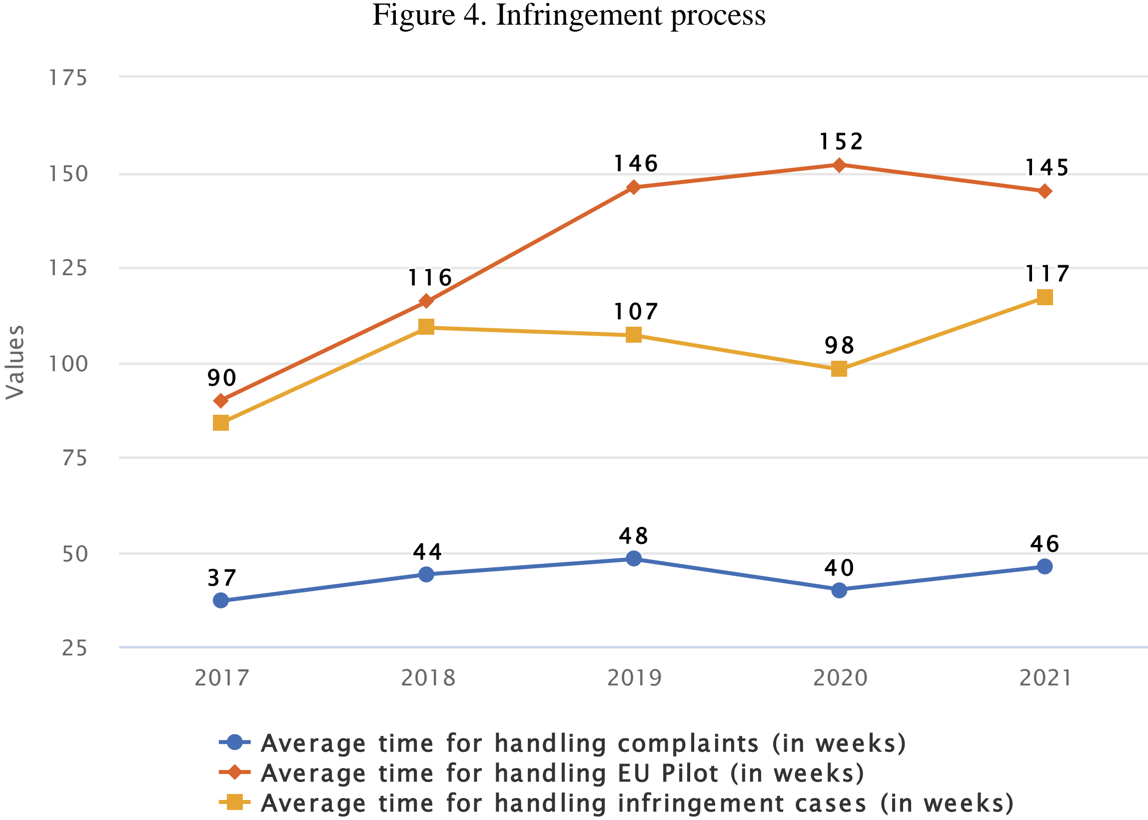

Figure 4

Source : European Commission's website

Nonetheless, some challenges exist. Falkner et al.'s study (2005) identified variations in compliance patterns among EU Member States depending on their political, economic, social and cultural factors as depicted in the chart below illustrating open infringement cases open at the beginning and end of each year from 2017 t0 2021.

Figure 5. Open infringement cases:2017-2021

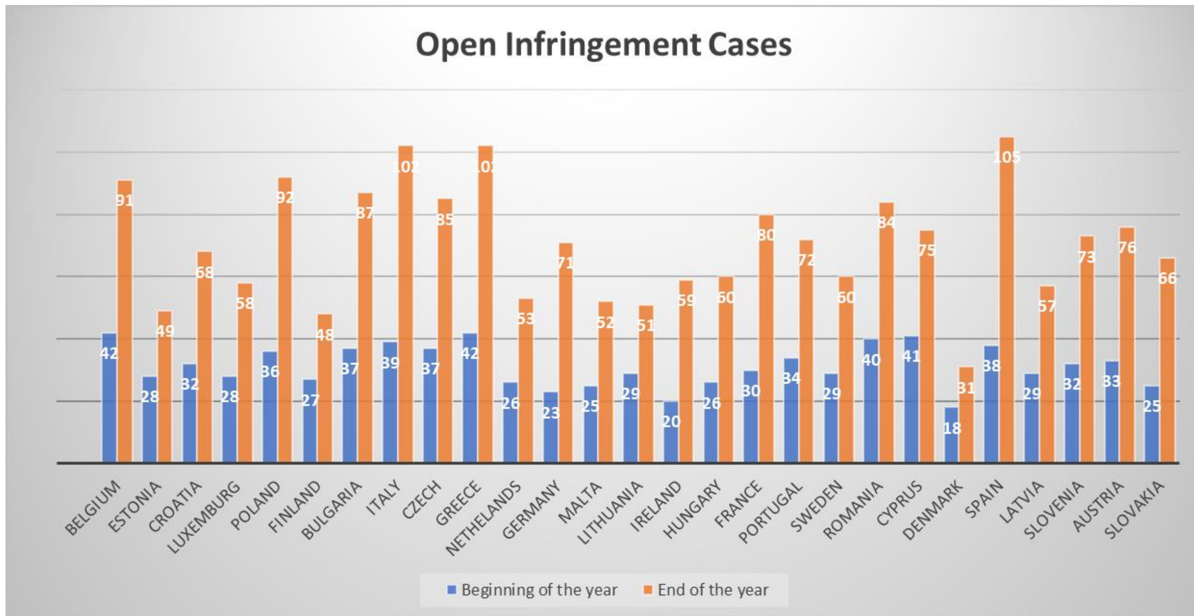

Figure 5

Source: European Commission's website

The study argued that some EU Member States are more prone to violate or ignore EU law than others, and that some areas of EU law are more difficult or controversial to implement than others.. Mastenbroek et al.'s analysis (2016) showed disparities in the duration of infringement procedures, depending on case complexities. The study concluded that some infringement procedures can take a very long time to resolve, which may undermine their effectiveness and credibility.

Figure 6. Infringement Cases Open at the End of 2017-2021

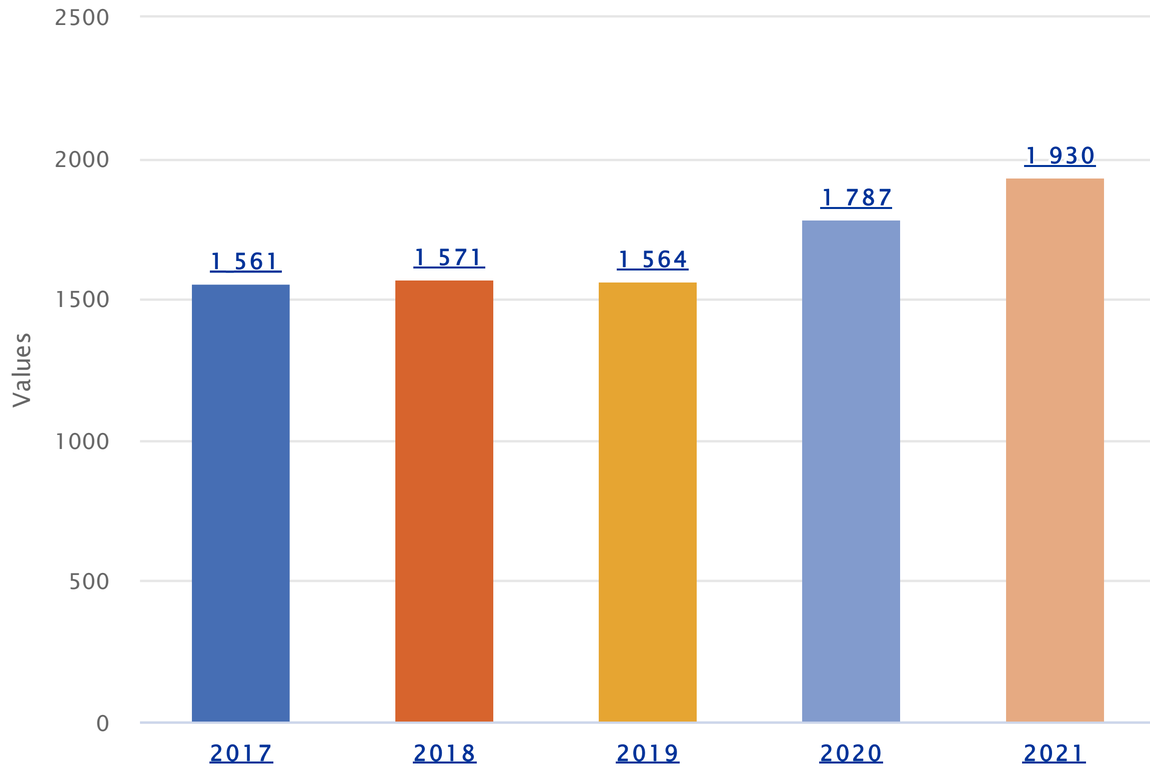

Figure 6

Source: European Commission's website

According to the European Commission 2020 report,[50] and in the chart above depicting number of infringement cases remained open from 2017 to 2021, a noticeable trend has emerged in infringement procedures spanning all domains of EU law. This report highlights a significant decline in the frequency of such procedures over the years, showing a reduction from 2,011 instances in 2014 to 1,607 in 2019. This reduction strongly suggests that EU Member States have embarked on a commendable journey towards enhanced adherence to EU law and a marked decrease in their instances of violation. This trend reflects a collective commitment among Member States to bolster their compliance efforts and align their actions with the EU's legal framework. It signifies a positive shift in the landscape of legal accountability and a stride toward fostering a more harmonious and law-abiding European Union towards the authority of the Commission.

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[50] European Commission (2020) '28th Annual Report on Monitoring the Application of EU Law (2019)', COM(2020) 360 final.

All things considered, Commission-led infringement procedures generally prove effective, yet challenges persist. Striking a balance between equitable enforcement and continuous improvements is crucial for the Commission. The authority and function of the EU Commission regarding the Free Movement of Capital is essential to the operation of the EU single market. The Commission's involvement guarantees a dynamic and integrated European financial environment in everything from policy creation and legislation to international representation and crisis management. It significantly contributes to economic growth, prosperity, and stability both within the EU and outside of it by promoting the free movement of capital.

7.4 LIMITATIONS OF THE STUDY

One of the main limitations of this study is the scope. The free movement of capital is a global phenomenon that involves multiple actors, regions, and sectors. However, due to time and resource constraints, The study was limited to the EU, which may not represent the global situation. The legal framework governing the free movement of capital can also be complex and vary between different regions and countries, which could make it challenging to conduct a comprehensive study.

In order to address this limitation, we chose to focus on the European Union (EU) as our main study for several reasons. First, the EU is one of the most advanced and integrated regions regarding the free movement of capital, as it has established a common market and a common currency that facilitate cross-border capital flows. Second, the EU has a rich and diverse legal framework regulating the free movement of capital at the supranational and national levels. Third, the EU faces some of the most pressing and relevant challenges and opportunities related to the free movement of capital, such as Brexit, digitalization, globalization, and crises. Therefore, studying the EU can provide valuable insights and lessons for other regions and countries interested in the free movement of capital.

However, focusing on the EU does not mean other regions and countries are ignored or neglected. On the contrary, these regions could benefit by using this study as a guide to achieve and improve on what has been done. An examination of interactions and cooperation within the EU regarding capital movements and an analysis of their impacts and implications for both sides was conducted. By doing so, this study aims to provide a broader and more balanced perspective

on the free movement of capital in the world. Diving into the free movement of capital is moreover essential to better understand its implications on economies, financial systems, and the well-being of individuals and businesses as well the EU organisation as a whole. The study will add up to the few available to further enrich and provide future researchers a firm basis and fair view of the free movement of capital to enable them embark on deeper understanding and broaden the scope, as well as throw more insight to the principle. Researchers should acknowledge and address these limitations to enhance the credibility and usefulness of their studies. Areas of recommendations for further research for this study would be a study on the global scope by conducting a comparative analysis amongst the EU and other continents. Another area that would be novice to improve that wasn't captured by this study would be a study into the accountability of the Free movement of capital. Thus to measure and compare the EU's economic structure to other high performing economies whilst evaluating and analysis the fall shorts on the part of the EU.

7.5 RECOMMENDATIONS

Considering the complexities and interdependencies of financial markets and global economies, there will always be misunderstanding and disputes over the topic of flow of capital. The European Commission should continue monitoring and enforcing compliance with EU law on the free movement of capital among Member States. Robust monitoring mechanisms are essential to ensure compliance with EU regulations on capital movement. The EU should institute comprehensive systems for tracking and evaluating cross-border financial activities.

As seen in the infringement cases brought against member states, member state have the tendency to impose certain restrictions due to the longing to protect national security systems or public security, this is a grey area which needs to be ratified. There should be some concrete measures laid down to protect the security of member states which would be uniform and harmonised across the EU so this need to restrict the free movement of capital would be bridged. Provision of precise definitions and guidelines related to capital movement, would also foster a common understanding across member states therefore establishing universal recognized terms and concepts which can mitigate the potential for ambiguity and misinterpretation and promote a more predictable regulatory environment.

The EU Commission in its role of supervising the effective implementation of the principle, could use the help of financial institutions and relevant authorities to facilitate a real-time identification of discrepancies or potential breaches, looking at the enormous number of infringement cases still open at the end of every year. This could help speed up the process of identifying which actions of member states breach the principle since these financial institutions are primary actors concerning movement of capital, as well as enable swift correction actions looking at the average time of handling cases[51].

The European Commission 2020 report, highlights the statistics of infringements cases against every member states from 2017 to 2021. Though the numbers differ for each member states, there is a trend of rising cases still open at the end of each year[52]. With this information at hand, the Commission could also analyse why member states infringe on the provision of the TFEU on the movement of capital, solicit answers and concerns from all member states to put some measures in place to mitigate this obstacle based on the results. Through training programs and support initiatives, less developed financial systems can acquire the necessary tools to manage and regulate capital movement effectively since the capabilities of member states are not at a par, thereby ensuring equitable consistent compliance with EU law. Cooperation among member states is pivotal in achieving a harmonized application of EU competencies. Encouraging regular communication and information-sharing platforms can lead to the disseminating of best practices and a consistent interpretation of the rules governing capital movement. Such collaborative efforts can bridge gaps, prevent disparities in implementation, and further enhance their understanding and commitment to compliance.

Transparency is key in promoting trust and accountability. The EU should introduce standardized reporting requirements for member states to provide comprehensive insights into capital movement activities. This transparent approach equips the EU with a holistic understanding of cross-border transactions, facilitating early detection of anomalies and enabling timely intervention. Striving for coherent and unambiguous judgments in infringement cases by the CJEU can enhance legal clarity for Member States and stakeholders. Additionally, expediting

[51] See Figure 4 p 71.
[52] See Figure 6 p 73.

proceedings and addressing pending cases can contribute to a more efficient legal process. Public understanding and support should also be incorporated for the success of EU policies. The EU should engage in educational campaigns to raise awareness about the benefits and principles of capital movement. The EU can garner broader support and reduce potential resistance to its policies by building public knowledge. The EU must remain adaptable to emerging trends by acknowledging the transformative impact of financial technology,. Regular assessments of the influence of technology on capital movement, coupled with timely regulatory adjustments, ensure that the EU's framework remains relevant and practical.

Finally, the EU must be willing to review and adjust its competencies as the economic and political landscapes evolve. Flexibility is vital to ensure that the regulatory framework effectively addresses the changing dynamics of the free movement of capital. This is necessary in the sense that, some parts of the legality of the principle might be too rigid for member states to adhere to, hence the many infringement cases so far. It therefore could be practical for waters to be tested by making them flexible, regarding the powers of national courts on determining what are and are not restrictions in a gradual process to see how it does. This could even open eyes to new ideas and paths to take and what to completely refrain from.

Incorporating these recommendations can significantly contribute to a more streamlined and effective environment for the free movement of capital within the European Union. These measures reflect a collective commitment to upholding the principles of the EU while ensuring a more harmonious legal landscape for all stakeholders involved.

CONCLUSION

The main objective of this thesis was to examine the principle of free movement of capital, which has a direct impact on the laws of EU countries. It was established that the foundational principle of the free movement of capital is enshrined within Article 63 of the Treaty on the Functioning of the European Union. This article stands as a steadfast guardian against impediments to the flow of capital between Member States and even extends to transactions with third countries. Embracing this principle as one of the cardinal pillars of the EU single market stresses its role in reinforcing the Economic and Monetary Union and the adoption of the euro. Its purpose is multi-dimensional: fostering economic integration, enhancing competitiveness, and ensuring stability within the EU while fostering collaboration and development with global counterparts.

The study found that the concept of the free movement of capital is nuanced and tempered by exceptions and derogations. These carveouts permit Member States to impose specific constraints on capital movement under certain circumstances. These include third-country restrictions, tax differentiation, prudential measures, and considerations for public security. Crucially, These exceptions are subject to rigorous scrutiny as seen it analysis of various cases by the Commission and the Court of Justice of the European Union (CJEU) in the study. This dual oversight ensures their necessity, proportionality, and absence of threat to the harmonious functioning of the single market. With these proceedings taken against member states, although there is a continuous increase in open cases[53], there are significant amount of them being closed at the end of each year[54].

Over the course of analysis, the study found that navigating the intricate arena of free capital movement demands a complex and adaptive legal framework orchestrated by an array of actors, instruments, and jurisdictions, as itemized in the study. The EU exercises exclusive authority in this jurisdiction to establish and regulate the movement of capital within its territories and across borders, a mandate reinforced by Article 3(2) of the TFEU,

[53] See Chart 5 p.72
[54] Figure 1 p. 67 to Figure 6 p.73

"The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope."

Surveillance and enforcement were found essential in upholding the integrity of this legal edifice. Therefore, the Commission, acts as the vigilant custodian, ensures that Member States adhere to the standards delineated in EU law. This vigilance encompasses a spectrum of mechanisms—from dialogues and guidance to the potential imposition of financial sanctions which has proven in the study to be effective and justified[55]. Amidst this intricate dance, the CJEU emerges as the authoritative interpreter and implementer of EU law governing capital movement. It adjudicates disputes and conflicts that may arise, clarifying legal ambiguities and ensuring compliance. Moreover, the CJEU offers preliminary rulings in response to queries posed by national courts, underscoring its position as the guardian of consistency in interpreting the nuances of capital mobility.

At its core, and by the findings of this study, the free movement of capital has demonstrated a potent capacity to catalyze economic growth and development. By enabling the efficient allocation of financial resources, it spurs increased investment, fosters innovation, and contributes to job creation. The success of the European Union's Single Market is a prominent example of how reducing barriers to capital movement can lead to widespread prosperity. However, alongside these economic benefits, it was also discovered challenges the unrestricted movement of capital introduces that demand careful consideration. The potential for destabilizing financial markets through sudden surges or outflows of capital becomes a noteworthy concern. Nevertheless, the extensive legal framework established by the EU for including treaty provisions, protocols, declarations, and transitional measures granted by the acts of accession to new member countries, these challenges have been overcome before, during the financial markets crisis between 2009 and 2016 and the Eurozone sovereign debt crisis, mechanisms put in place have proven effective and also tested the impulsive management capacity of the EU to be able to make a comeback from such challenges.

[55] See Figure 3 p.70

A pertinent issue from the study is the defense mechanism member states pose towards the mere anticipation of exacerbating wealth inequality due to unrestricted capital movement. The ease with which significant investors and multinational corporations can transfer capital raises concerns about the concentration of wealth and the marginal benefits accruing to local economies, which some member states sought to restrict but were deemed inadmissible due to insufficient justification.

In the cases mentioned, the doctrine of direct effect was established, allowing individuals to invoke EU law in national courts directly. This decision empowers individuals to challenge national restrictions on capital movement, fostering a more inclusive environment for cross-border investments. Additionally, the CJEU's affirmation that capital movements include individual transfers ensures a comprehensive framework that accommodates various forms of cross-border transfers. This inclusivity bolsters economic integration. By broadening the definition of quantitative restrictions, The CJEU decisions ensure that even measures with an effect similar to trade barriers are scrutinized and, therefore, prevent member states from enacting hidden restrictions on capital movement within the Single Market. Non-discrimination in the context of cross-border investment is also found to be frowned upon, it therefore bolsters investor confidence, enhances cross-border investment, and contributes to economic growth within the Single Market. While the benefits of capital movement are undeniable, the tension between preserving economic stability and safeguarding public interests versus honoring union commitments becomes apparent. The case of C-493/09 (Commission v Portugal) is a clear example of how the justification of protecting essential security interests by ensuring public service obligations highlights the intricate interplay between regulations and national autonomy, ensuring that Member States do not abuse their special rights or powers over such companies or sectors.

In conclusion, the free movement of capital is a fundamental principle that has significantly contributed to economic integration and growth within the EU. It has facilitated efficient capital allocation, resource utilization, technology transfer, innovation, and knowledge exchange. The EU's dedication to balancing economic goals with non-economic objectives ensures well-informed policymaking and fosters stable economic partnerships with non-EU nations. The restrictions to the principle have all been justified and will always be clarified by the CJEU to

ensure all provisions of free movement of capital as spelled out in the TFEU is indeed adhered to. The powers and authority of the Commission has also been proven and deemed effective as per the findings of this study through the information gathered from the operations of the Commission. The protection of this principle through harmonization, enforcement, and interpretation by the European Court of Justice and the EU Commission, whose powers and authority of has been proven and deemed effective as per the findings of this study through the comparative analysis of results of the operations of the Commission. This further enhances the EU's position as a major financial center and promotes international economic cooperation.

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