



UNIVERSITÀ
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Economic Law

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Free Movement of Capital and EMU



*Article 63 TFEU
(ex art. 56 TEC)*

- 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 third countries shall be prohibited.*

- **VERTICAL AND HORIZONTAL DIRECT EFFECT**
 - **ECJ C-101/05 SKATTEVERKET V A**
- **NO DEFINITION OF MOVEMENT OF CAPITAL BUT**
 - **REFERENCE TO THE NON-EXHAUSTIVE LIST IN DIR. 88/361/EC**
 - **ECJ C-112/05 COMMISSION V FEDERAL REPUBLIC OF GERMANY**
 - **THE ECJ HAS THE POWER TO DECIDE WITH THE AID OF THE DIR. 88/361/EC WHETHER A MEASURE CONSTITUTES A RESTRICTION ON THE MOVEMENT OF CAPITAL**



Directive 88/361

- ✓ **Direct investments**
- ✓ **Investment in real estate**
- ✓ **Operations in securities normally dealt in on the capital market**
- ✓ **Operations in units of collective investment undertakings**
- ✓ **Operations in securities and other instruments normally dealt in on money market**
- ✓ **Operations in current and deposit accounts with financial institutions**
- ✓ **Credits related to commercial transactions (...) in which a resident is participating**
- ✓ **Financial loans and credits**
- ✓ **Securities, other guarantees and rights of pledge**
- ✓ **Transfers in performance of insurance contracts**
- ✓ **Personal capital movements**
- ✓ **Physical import and export of financial assets**
- ✓ **Other capital movements**



*Article 65 TFEU
(ex art. 58 TEC)*

1. *1. The provisions of Article 63 shall be without prejudice to the right of Member States:
 - (a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;
 - (b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.*



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EMU AND THE ECB

Article 119 TFEU (ex art. 4 TEC)

- 1. For the purposes set out in Article 3 of the Treaty on European Union, the activities of the Member States and the Union shall include, as provided in the Treaties, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.*
- 2. Concurrently with the foregoing, and as provided in the Treaties and in accordance with the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Union, in accordance with the principle of an open market economy with free competition.*
- 3. These activities of the Member States and the Union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.*



THE ECB

- **Art. 130 TFUE**
- **Artt. 282 TFUE**



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MONETARY POLICY

- **Art. 127 TFUE**