Executive Summary

The United States and the European Union (EU) have the world's largest investment relationship, with the historical book value of U.S. investment stock in the EU Member States at over $2 trillion. This is a result, in part, of the ongoing process of European integration. The European Single Market, in place since 1992, allows for the free movement of goods, services, capital, and people in the 28 EU Member States of 506 million consumers with a total GDP of $15.97 trillion (2012 figures, latest available).

The EU is governed by the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), which collectively constitute the Treaty of Lisbon. The entry into force in December 2009 of the Lisbon Treaty changed EU jurisdiction over direct investment issues in major respects. The Lisbon Treaty now brings foreign direct investment (FDI) within the scope of the EU common commercial policy, making it an exclusive EU competence. In addition, the EU gains the ability to negotiate bilateral investment treaties (BITs) or investment chapters of free trade agreements and requires the consent of the European Parliament for new EU investment agreements.

In June 2013, President Obama, European Council President Van Rompuy, and European Commission President Barroso announced the launch of negotiations on the Transatlantic Trade and Investment Partnership (T-TIP) agreement. Given that the transatlantic economic relationship is already the world's largest, accounting for half of global economic output and nearly one trillion dollars in goods and services traded, the goal of such an agreement is to expand further the transatlantic trade and investment partnership. This would promote greater growth and support more jobs, as well as contribute to the development of global rules that can strengthen the multilateral trading system.

The EU's economy is starting to recover from the economic and financial crisis, though growth remains subdued and uneven among Member States. The EU's response to the crisis has included a major overhaul of the economic governance structure, including significant reforms to the EU's complex fiscal rules; the establishment of a new permanent financial assistance mechanism, replacing what had been temporary arrangements; and significant reforms to Europe's financial sector. The European Commission (EC) projected GDP growth for 2014 of 1.6 percent in the EU and 1.2 percent in the euro area in its Spring Forecast, which was released on May 5. Growth projections reflect a modest uptick in domestic demand, a slower pace of fiscal consolidation and adjustment, and improved business confidence. For 2015, GDP growth is forecast at 2.0 percent in the EU and 1.7 percent in the euro area. While both domestic and foreign direct investment levels fell in most EU Member States during the crisis, investment sentiment and business confidence are improving with the recovery.

1. Openness To, and Restrictions Upon, Foreign Investment

The EU is open to and encourages FDI. The EU's Member States collectively serve as the largest destination for FDI in the world, with the United States being the largest source of third-country FDI in the EU, on the basis of stock and flow. The stock of U.S. foreign direct investment (FDI) in the EU totaled $2.1 trillion in 2011.

The EU is founded on the "four freedoms" (free movement of goods, persons, services and capital) within the European Union. Free movement of capital is required by Article 49 TFEU, which requires EU Member States to provide national treatment to investors from other Member States regarding the establishment and conduct of business. Any violation of EU law ultimately can be adjudicated by the European Court of Justice (ECJ) in Luxembourg.

Lisbon Treaty Impact

The Lisbon Treaty gave the EU exclusive competence over investment policy, including the ability to negotiate bilateral investment treaties (BITs) and investment chapters of Free Trade Agreements. In July 2010, the Commission issued a communication aimed at defining a comprehensive EU international investment policy as well as a legislative proposal establishing transitional arrangements for investment agreements between Member States and third countries. The Council and the Parliament reached an agreement in late 2012 on the legislation and the final text with amendments became law in early 2013 (see: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0040:0046:En:PDF). Under the new rules, the more than 1,200 BITs concluded by Member States, including some with the United States, are presumed to remain valid under EU law unless subsequently found to be incompatible with the EU's common commercial policy.

U.S.-EU Efforts to Promote Open Investment

In April 2012, the United States and the EU, under the auspices of the Transatlantic Economic Council (TEC), announced an agreement on Shared Principles for International Investment, which reaffirmed a commitment to open, transparent, and non-discriminatory international investment policies. The Principles embody a number of shared core values, including a level competitive playing field, strong protections for investors and their investments, neutral and binding international dispute settlement, strong rules on transparency and public participation, responsible business conduct, and narrowly-tailored reviews of national security considerations.

Ownership Restrictions and Reciprocity Provisions

While TFEU Articles 49 (establishment) and 63/64 (capital movements) generally create a hospitable legal framework for foreign investment in the EU, restrictions on foreign direct investment do exist. For example, under EU law, the right to provide aviation transport services within the EU is reserved to firms majority-owned and controlled by EU nationals. The right to provide maritime transport services within certain EU Member States is also restricted.

Currently, some EU banking, insurance and investment services directives include "reciprocal" national treatment clauses, under which financial services firms from a third country may be denied the right to establish a new business in the EU if the Commission determines that the investor's home country denies national treatment to EU service providers. An increasing number of revised EU financial services legislation include equivalency provisions, aimed at assessing if and to what extent the home country legal framework provides comparable safeguards to the EU's. Equivalency findings generally provide for more liberalized access to European markets, although this varies by sector. In addition, as with the United States, the non-discrimination obligations of international trade agreements (e.g., those in the WTO General Agreement on Trade in Services) do not apply to prudential measures.

In March 2004 the EU adopted a Directive on takeover bids ("Takeover Directive"), which sought to protect shareholders, improve transparency, and create favorable regulatory conditions for takeovers in order to boost corporate restructuring within the EU. The Takeover Directive authorizes Member States to ban corporate defensive measures (e.g., "poison pills" or multiple voting rights) against hostile takeovers. However, a reciprocity provision allows Member States to exempt companies from those restrictions if the potential suitor operates in a jurisdiction that permits takeover defenses. While Article 12.3 of the Directive is ambiguous as to whether the reciprocity principle applies to non-EU firms, the preamble states that application of the optional measures is without prejudice to international agreements to which the EU is a party. For example, French companies may suspend implementation of a takeover if they are targeted by a foreign company that does not apply reciprocal rules. In June 2012 the Commission issued a report based on an external study that reviewed the application of the Takeover Directive. The report concluded that most stakeholders were satisfied with the Directive and that it was functioning satisfactorily, although it listed several rules that could use clarification in order to improve legal certainty for the parties concerned and the effective exercise of minority shareholder rights. The June 2012 report can be found at: http://ec.europa.eu/internal_market/company/docs/takeoverbids/COM2012_347_en.pdf.

Energy Sector Liberalization

On June 25, 2009, after passage by the European Parliament, the European Union officially adopted the Third Energy Package, legislation consisting of two directives and three regulations designed to promote internal energy market integration and to enhance EU energy security. Specifically, the legislation mandates the separation of energy production and supply from transmission through the unbundling of European energy firms. The objective is to create a level playing field by preventing companies engaged in the generation and distribution of gas and electricity from using their privileged position to prevent access to transmission systems or limit connectivity of transmission networks. Energy firms that operate within the European market have three options: 1) full ownership unbundling; 2) an Independent System Operator (ISO); and 3) an Independent Transmission Operator (ITO). Member State compliance with the Third Energy Package has varied. In autumn 2011 the Commission launched infringement proceedings against 19 Member States for non-transposition of the Third Package Electricity and Gas Directives. At the end of 2012 and in the beginning of 2013 Poland, Slovenia, Finland, Bulgaria, Estonia, the UK, and Romania were referred to the EU Court of Justice for failing to fully transpose the EU internal energy market rules, and in early 2014 the Commission announced Ireland would also be referred to the Court.

Additionally, the package includes a "Third Country Clause" that requires all non-EU companies to comply with the same unbundling requirements as EU companies before they are certified to own and/or operate transmission networks in the EU. Moreover, the clause permits Member States to refuse a foreign company certification/permission to acquire or operate a transmission network – even if it meets other requirements – if it is deemed to have a potential negative impact on the security of energy supply of an individual Member State or the EU as a whole. Member States are required to inform the Commission of their choice of unbundling model and certification has to be carried out with the involvement of the Commission. The Third Package entered into force in March 2011, while the "Third Country Clause" has only been applicable since March 2013. The Commission has also set up a Gas Advisory Council to work with the Russian government and state-owned Gazprom, both of which have extensively criticized the unbundling provisions.

2. Conversion and Transfer Policies

Europe’s single currency, the euro, and the remaining national EU Member State currencies are freely convertible. The EU places virtually no restrictions on capital movements. Article 63 TFEU specifically prohibits restrictions on the movement of capital and payments between Member States and between Member States and third countries, although TFEU allows for exceptions in certain situations. The adoption of the euro by 18 of the EU Member States has shifted currency management and control of monetary policy in those countries to the European Central Bank (ECB) located in Frankfurt, Germany.

3. Expropriation and Compensation

The European Union does not have the authority to expropriate property; this remains the exclusive competence of the Member States.

4. Dispute Settlement

Foreign investors can, and do, take disputes against Member State governments directly to local courts. In addition, any violation of a right guaranteed under EU law, which has supremacy over Member State law, can be heard in local courts or addressed directly to the ECJ by a foreign investor with a presence in a Member State. Further, with the exception of Poland, all EU Member States are members of the World Bank's International Center for the Settlement of Investment Disputes (ICSID), and most have consented to ICSID arbitration of investment disputes arising under individual bilateral investment treaties (BITs). While the EU is not itself a party to ICSID or other similar arbitration conventions, it has stated its willingness to have investment disputes subject to international arbitration. Regulation No 1219/2012 of the European Parliament and the Council adopted 12 December 2012 (see paragraph eight) foresees that if a BIT falls within the scope of that Regulation, the Member State is, under Art 13(c), obliged to "seek the agreement of the Commission before activating any relevant mechanisms for dispute settlement against a third country included in the bilateral investment agreement and shall, where requested by the Commission, activate such mechanisms." The article further states that "those mechanisms shall include consultations with the other party to a bilateral investment agreement and dispute settlement where provided for in the agreement," and that "the Member State and the Commission shall fully cooperate in the conduct of procedures within the relevant mechanisms, which may include, where appropriate, the participation in the relevant procedures by the Commission."

5. Performance Requirements and Investment Incentives

European Union grant and subsidy programs are generally available only for nationals and companies registered in the EU, usually on a national treatment basis. For more information, see Chapter 7 "Trade and Project Financing" in the EU Country Commercial Guide as well as individual Country Commercial Guides for Member State practices.

6. Right to Private Ownership and Establishment

The right to private ownership is firmly established in EU law, as well as in the law of the individual Member States. See individual country commercial guides for EU Member State practices.

7. Protection of Intellectual Property Rights

The EU and its Member States offer high levels of protection and enforcement of intellectual property rights (IPR). The EU and/or its Member States adhere to all major IPR agreements, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provisions. Together, the United States and the EU have committed: 1) to encouraging strong protection and enforcement of IPR in third countries; 2) to undertake cooperative efforts to strengthen IPR enforcement at U.S. and EU borders; and 3) to work together to build the capacity of our small- and medium-sized enterprises to protect and enforce their intellectual property rights abroad. This cooperation was endorsed at the June 2005 U.S.-EU Summit and is undertaken by the Transatlantic IPR Working Group.

Despite overall high levels of protection and enforcement of intellectual property rights, several EU Member States are currently listed in the April 2014 U.S. Special 301 Report to the U.S. Congress for specific deficiencies in intellectual property rights protection or enforcement. The United States continues to be engaged with the EU and individual Member States on these matters.

Enforcement of Intellectual and Industrial Property Rights

In April 2004, the EU adopted the Intellectual Property Enforcement Directive (IPRED) (http://ec.europa.eu/internal_market/iprenforcement/directives_en.htm). This Directive requires Member States to apply effective and proportionate remedies and penalties to form a deterrent against counterfeiting and piracy and harmonizes measures, procedures, and remedies for right holders to defend their IPR within Member States. Remedies available to right holders under IPRED include the destruction, recall, or permanent removal from the market of illegal goods, as well as financial compensation, injunctions, and damages. The Directive has provided a solid basis for the enforcement of IPR but enforcement continues to diverge widely among the Member States.

Specific IPR Measures

Copyright: In 2001, the EU adopted Directive 2001/29 establishing pan-EU rules on copyright and related rights in the information society. In December 2006, the Council and Parliament passed an updated version of the 2001 Copyright Directive modified to clarify terms of copyright protection. This new Directive (2006/116/EC) entered into force in January 2007. In 2014, the EU adopted Directive 2014/26/EU on collective rights management and multi-territorial licensing of rights in musical works for online uses. No legal instrument currently addresses specifically the clearing of copyright and related rights for cross-border on-line audiovisual media services.

In September 2011 the EU amended Directive 2006/116/EC regarding the term of protection of copyright and certain related rights. Once implemented, the agreed text will extend the term of copyright protection for performers and record producers from 50 to 70 years and introduce a 'use-it-or-lose-it' provision that allows performers to recover their rights after 50 years, should the producer fail to market the sound recording, and a so-called 'clean slate' which prevents record producers from making deductions to the royalties they pay to featured performers. The proposal also creates a new claim for session players amounting to 20 percent of record labels' offline and online sales revenue.

In December 2009 the European Union and Member States ratified the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Trademarks: Registration of trademarks with the EU Office for Harmonization in the Internal Market (OHIM) began in 1996. OHIM issues a single “Community Trademark” (CTM) that is valid in all EU Member States. In October 2004 the European Commission acceded to the World Intellectual Property Organization (WIPO) Madrid Protocol; this established a link between the Madrid Protocol system, administered by WIPO, and the CTM system, administered by OHIM. Since October 2004 CTM applicants and holders have been allowed to apply for international protection of their trademarks through the filing of an international application under the Madrid Protocol. Conversely, holders of international registrations under the Madrid Protocol are entitled to apply for trademark protection under the CTM system. This link between the OHIM and the WIPO registration systems thus allows firms to take advantage of each, reducing costs and streamlining administrative requirements. The Commission has proposed revisions to the CTM Regulation and the Trade Mark Directive which are currently under discussion.

Designs: The EU adopted the Community Designs Regulation, introducing a single EU-wide system for the protection of designs, in December 2001. The Regulation provides for two types of design protection, directly applicable in each EU Member State: the Registered Community Design (RCD) and the unregistered Community design. Under the RCD system, holders of eligible designs can use an inexpensive procedure to register them with OHIM, and will then be granted exclusive rights to use the designs anywhere in the EU for up to 25 years. Unregistered Community designs that meet the Regulation’s requirements are automatically protected for three years from the date of disclosure of the design to the public. Protection for any RCD was automatically extended to Romania and Bulgaria when those countries acceded to the European Union in January 2007 and to Croatia in July 2013.

In September 2007 the EU acceded to the Geneva Act of the Hague Agreement concerning international registration of industrial designs. This allows EU companies to obtain protection for designs in any country that belongs to the Geneva Act, reducing costs for international protection. In April 2008 OHIM updated the guidelines for renewal of RCDs. In February 2009 OHIM announced it would accept priority documents that do not include views of designs, such as German registration certificates. This change has helped accelerate the registration process, and is in line with the practice in most EU Member States.

Patents: In 2012, the EU formally approved the creation of a first unitary patent covering all EU Member States except Spain and Italy. The current system requires patents to be registered separately in individual EU Member States making it a lengthy and costly procedure. Under the new system, companies will only be required to submit applications to the European Patent Office. EU Patents will be made available in three languages (English, French, and German) but applications can be made in any EU language and free automated translations are available in 28 European languages for informational purposes. There will also be a new Unified Patent Court in which most of the Member States will participate; this will, in many instances, replace the current need to undertake patent litigation in multiple Member State courts. Full implementation of the new system is expected sometime in 2016.

Until the implementation of the new Community Patent System, the most effective way to secure a patent across EU national markets is to use the services of the European Patent Office (EPO). EPO offers a one-stop-shop enabling right holders to obtain various national patents using a single application. However, these national patents have to be validated, maintained and litigated separately in each Member State. In September 2008 the EPO and the U.S. Patent and Trademark Office (USPTO) launched the Patent Prosecution Highway, a joint trial initiative leveraging fast-track patent examination procedures already available in both offices to allow applicants to obtain corresponding patents faster and more efficiently. This permits each office to reference work already done by the other office and reduce duplication. In addition, the two offices, along with the patent offices of Japan, Korea, and China, announced a joint agreement (IP5) in November 2008 to undertake projects to harmonize the environment for work sharing and to eliminate unnecessary work duplication.

8. Transparency of the Regulatory System

The institutions of the European Union are publicly committed to transparent regulatory processes. The European Commission has the sole right of initiative for EU regulations and publishes extensive, descriptive information on many of its activities. See:
http://ec.europa.eu/atwork/decision-making/index_en.htm;
http://ec.europa.eu/smart-regulation/index_en.htm;
http://ec.europa.eu/transparency/index_en.htm .

Since December 2012 the Commission has administered a Regulatory Fitness and Performance Programme ("REFIT") aimed at streamlining existing regulations. In June 2014, the Commission sought public comment on draft guidelines on its 2002 *General Principles and Minimum Standards for Consultation of Interested Parties*, that have applied to the Commission's Directorates-General when drafting major EU regulations. The Commission is also aiming to revise its *Impact Assessment Guidelines*, similarly reflecting further efforts to improve the EU regulatory development process.

While the European Commission is the executive, the European Parliament and the Council of the European Union are called “co-legislators” within the EU system and likewise publicly aspire to using and applying transparent processes. See: http://www.europarl.europa.eu/aboutparliament/en/0060f4f133/Ethics-and-transparency.html; http://www.consilium.europa.eu/documents/legislative-transparency

In T-TIP negotiations, the United States is seeking commitments on transparency, accountability and public participation to ensure that the EU will build on its existing mechanisms for public outreach and its publication of all laws, regulations, administrative rulings and other procedures that affect trade and investment. Specifically, the United States has prioritized T-TIP provisions that would ensure that the EU would provide opportunities for any interested parties, regardless of nationality or domicile, to learn about and provide meaningful input on measures before they are adopted by the European Commission.

The T-TIP negotiations envisage both horizontal and sector-specific provisions to enhance regulatory compatibility and future cooperation. Provisions relating to sanitary and phyto-sanitary measures; commitments regarding technical barriers to trade (technical regulations, standards, and conformity assessments); cross-cutting disciplines on regulatory coherence and transparency for the development and implementation of efficient, cost-effective, and more compatible U.S.-EU regulations for goods and services, including early consultations on significant regulations, use of impact assessments, periodic review of existing regulatory measures, and application of good regulatory practices; are all subjects being addressed in the ongoing T-TIP negotiations and are intended to help ensure a transparent regulatory climate, hospitable to foreign trade and investment. See: http://www.ustr.gov/about-us/press-office/reports-and-publications/2013/final-report-us-eu-hlwg

9. Efficient Capital Markets and Portfolio Investment

The drive to establish a single internal market spurred efforts to integrate financial markets in the EU. The EU has taken actions to implement the 1999 Financial Services Action Plan (FSAP) to establish legal, regulatory, and supervisory frameworks for integrated financial services (banking, securities, insurance) markets within the EU. In response to the growing impact of the European financial crisis, the 2009-2014 Barroso Commission put forward several legislative proposals that go beyond the measures envisaged by the 1999 FSAP, in order to address what was increasingly perceived as an unacceptable degree of deregulation in the financial sector, particularly in the wake of massive injections of public money to rescue weak financial institutions.

The EU has been active in the G-20 process that established a roadmap for strengthening the regulation of the financial sector. Over the past four years (since the 2009 G-20 Summit in Pittsburgh), the EU has introduced numerous legislative proposals to extend the regulatory perimeter in the financial sector [alternative investment fund managers, over-the-counter (OTC) derivatives, credit rating agencies (CRAs), short selling, credit default swaps] or to update the regulation on sectors that were regulated but needed to be strengthened (banking and securities). The EU also set up new pan-European supervisory authorities (ESAs) for banking (European Banking Authority), securities (European Securities and Markets Authority) and insurance (European Insurance and Occupational Pensions Authority), but stopped short of entrusting them with legal supervisory competences (with the exception of ESMA's direct supervision and registration of CRAs) and limited their role to coordinating the national supervisory authorities' work. The EU's current financial services regulatory architecture comprises:

Banking Union: In December 2012, Member States adopted the legislation creating a Single Supervisory Mechanism (SSM) at the European Central Bank (ECB). In spring 2014, the European Parliament and EU Member States adopted the Single Resolution Mechanism (SRM). The aim is to create an integrated framework to reduce financial fragmentation within the Eurozone and improve monetary policy transmission to restore strong and sustainable economic growth.

- The SSM will be operational on November 1, 2014. Approximately 130 banks with more than €30bn in assets or representing 20 percent of the host Member State's GDP will be directly supervised by the ECB. The ECB will be empowered to apply higher capital buffers than required by national authorities (including countercyclical buffers), and apply more stringent measures aimed at addressing systemic or macro-prudential risks at the level of credit institutions.
- The SRM will be operational in January 2015, and will be responsible for initiating and carrying out resolution proceedings for large banks (those supervised by the SSM and any cross-border banks) that are failing or likely to fail. It will be supported by a Single Resolution Fund (SRF) that will be funded over 8 years by contributions from the banks. The SRM will apply the resolution rulebook (applicable to all EU28 Member States) that has been agreed to as part of the Bank Recovery and Resolution Directive (BRRD).

Bank Resolution and Recovery Directive (BRRD): The BRRD is the new EU-wide framework for recovery and resolution of failing banks that aims to establish uniform rules for bailing in private shareholders and creditors, as well as other resolution tools, such as bridge banks. The BRRD also specifies rules that circumscribe, but do not eliminate, the potential for the use of public funds in resolution. The BRRD is set to enter into force on January 1, 2015, with the bail-in tool taking effect on January 1, 2016. While technically separate from the Banking Union, BRRD is related in that SRM will apply the BRRD resolution approach and toolkit.

In late 2008, the European Commission asked former IMF Director General Jacques de Larosière to review the EU's financial supervisory architecture and make recommendations for improvement. The February 2009 "de Larosière" report recommended the creation of a European System of Financial Supervisors (ESFS) and a European Systemic Risk Board (ESRB). Legislation adopted in September 2010 created as of January 2011 three new European Supervisory Authorities (ESAs): the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), and the European Securities and Markets Authority (ESMA). The new European Supervisory Authorities have powers to carry out four primary tasks:

- *Develop technical standards to establish a single EU rule book;*

- *Ensure the consistent application of Community rules;*
- *Act in emergency situations;*
- *Perform legally-binding mediation.*

In addition, the ESAs have a role in the identification and measurement of systemic risk posed by market participants, and in the protection of consumers. The ESAs are able to adopt non-binding guidelines and recommendations to which the "comply or explain" principle applies.

The main functions of the European Systemic Risk Board (ESRB) are to monitor and collect information relevant to potential threats and risks to financial stability arising from macro-economic developments and the EU financial system. Its tasks include the following:

- Identify and prioritize systemic risks;
- Issue warnings to the whole EU or to single Member States, where such systemic risks are deemed to be significant;
- Issue recommendations for remedial action in response to the risks;
- Monitor the follow-up to warnings and recommendations;
- Coordinate with international institutions, as well as the relevant bodies in third countries, on matters related to macro-prudential oversight.

Other significant financial services legislation adopted since 2009 and that are either in force or due to enter into force by January 1, 2015 are:

- *Capital Requirements Directive (CRD IV) and Regulation (CRR I):* The implementation of the Basel III framework in the EU is contained in a two-document package that includes the fourth amendment to the Capital Requirements Directives (CRD IV) and the first Capital Requirements Regulation (CRR I).
- <u>CRD IV</u> prescribes measures on enhanced corporate governance, supervision, and capital buffers that must remain within the competence of individual Member States for legal or practical reasons.
- <u>CRR I</u> contains most of the capital and liquidity rules for banks and investment firms. By using a regulation instead of a directive the EC aims to achieve maximum harmonization of the rules across Member States through a "single rulebook."

The CRD package will be applicable as of January 1, 2014, and will require banks to hold a combined 7 percent of Common Equity Tier (CET)-1 capital on a risk-weighted asset basis. This new minimum standard includes a new capital conservation buffer of 2.5 percent. At the end of the phasing-in process (2019), total minimum capital (common equity, Tier-1 and Tier-2) will be 10.5 percent of the bank's assets. CRD IV/CRR I also allows national authorities the flexibility to impose higher capital requirements (up to 3 percent independently, up to 5 percent by notifying to the EC); requires banks to report to the EC (by 2014) their profits, taxes and subsidies on a country-by-country basis (public disclosure could start in 2015, subject to an EC decision); and imposes a cap on the salary-to-bonus ratio of a maximum of 1:2 for risk-taking staff in financial institutions.

The CRD package introduces a Liquidity Coverage Ratio (LCR) starting at 60 percent in 2015 and reaching 100 percent in 2018. However, separate legislation will be required to introduce the Basel III requirement of a net stable funding ratio (NSFR) and of a leverage ratio (to be proposed by the EC no later than December 31, 2016).

Markets in Financial Instruments Directive: The Markets in Financial Instruments Directive (MiFID II) and its accompanying Regulation (MRR I) implement the G-20 commitment to promote trading of standardized derivatives on exchanges on electronic trading platforms, where appropriate, as well as revised market structure rules, including new rules for trading platforms and high frequency trading. In particular, the MiFID II/MiFIR I introduces "organized trading platforms" and central clearing of derivatives trades.

Market Abuse Directive: Connected to the review of MiFID is the revision of the Market Abuse Directive (MAD) with an accompanying Regulation (MAR). It aims to increase market integrity and investor protection, creating a single, directly applicable EU-wide rulebook for market abuse enforced by national administrative sanctions. MAD requires all Member States to introduce criminal sanctions for intentional insider dealing and market manipulation, including making the manipulation of benchmarks a criminal offence.

European Market Infrastructure Regulation: The European Market Infrastructure Regulation (EMIR) entered into force in the fall of 2013 and provides the regulatory framework for OTC derivatives, CCPs, and trade repositories.

Solvency II: Solvency II, the new risk-based solvency regime for the EU insurance sector, was approved in 2009 and will be applicable in 2016. It introduces the concepts of group solvency and group supervision. Third-country insurers will be allowed to operate in the EU on a transitional basis until the time when their home country regulatory framework is found to be equivalent to the EU's by a formal Commission decision.

Retail Financial Services: The EU has also focused on deepening the integration of retail financial services markets. The retail investment market is largely dominated by Packaged Retail Investment Products (PRIP). While these provide retail investors with easy access to financial markets, they can also be complex for investors to understand. Sellers can face conflicts of interest since they are often remunerated by the product manufacturers rather than directly by the retail investors. To address these issues, the EU adopted legislation to introduce changes in product transparency (pre-contractual disclosures) and sales rules.

Credit Rating Agencies: The current Regulation on Credit Rating Agencies (CRAs) entered into force in 2009 and introduced an authorization and supervision regime. Ratings by non-systemically relevant CRAs established outside of the EU can be used in the EU if the CRA's home jurisdiction is deemed equivalent and the home jurisdiction supervisor (e.g. SEC) has concluded a cooperation agreement with ESMA. An EU-registered CRA may endorse ratings issued by an unregistered affiliate located outside of the EU, thereby allowing the rating to be used in the EU. The endorsing CRA must demonstrate that the ratings have been developed following internal standards "at least as stringent as" the EU's, that the affiliate is registered and supervised and that a cooperation agreement between supervisors is in place.

As of 2013, the Regulation introduces limitations on the number of sovereign ratings a rating agency can provide in a year, a stricter regime for the rating of structured finance products that requires issuers to rotate rating agencies according to a defined calendar, and seeks to resolve conflicts of interest by establishing rules on ownership of rating agencies and rated entities.

Deposit Guarantees: All Member States are required to raise the minimum threshold for the deposit insurance of deposit-taking institutions to €100,000. Deposit Guarantee Schemes (DGS) are required to hold "1.5% of eligible deposits at hand after a transition period of 10 years". The payout period is harmonized the time period for the repayment of deposits.

Alternative Investment Fund Managers Directive (AIFMD): AIFMD entered into force in 2013; it provides EU managers with EU-wide market access on the basis of a passport. Third-country managers will be eligible for this passport in 2015 at the earliest. National private placement regimes will remain in place at least until 2018.

Short-selling/Credit Default Swaps Regulation: The regulation on "Short Selling and certain aspects of credit default swaps (CDS)" entered into force in 2012. The law bans "naked sales" of sovereign CDS, as well as naked bond and share sales, unless used to hedge exposures. Investors may continue to buy CDS on sovereign debt only if they own the bond or other assets whose price is correlated to that of the bond, as defined by ESMA and the Commission. National authorities can opt out of protecting the functioning of their sovereign debt markets under certain conditions.

10. Competition from State-Owned Enterprises

The EU's rules on competition, including antitrust and merger control, are found in Articles 101 through 106 of the TFEU as well as a Merger Regulation. TFEU Articles 107 and 109 refer to "state aid rules" (subsidies granted by Member States). Enforcement of EU rules on competition and state aid are implemented through the Directorate General for Competition. EU Member States and the European Commission cooperate on competition policy through the European Competition Network (ECN). Please refer to individual Investment Climate Statements for information on competition from state-owned enterprises in specific EU Member States.

11. Corporate Social Responsibility

For information on Corporate Social Responsibility policies, please see the Investment Climate Statements of individual EU Member States.

12. Political Violence

Political violence is not unknown in the European Union, but is rare. Such incidents are generally regional in nature, and individual Country Commercial Guides should be consulted for details on problems in specific areas.

13. Corruption

The Commission has gained the ability through the Lisbon Treaty to propose EU legislation harmonizing criminal law relating to corruption and trafficking in drugs, persons, and weapons across Member States. The Commission recognized in a 2011 paper that, although the nature and extent of corruption vary, it harms all EU Member States and the EU as a whole. In order to support the implementation of a comprehensive anti-corruption policy across the EU, the Commission has managed since 2011 a reporting mechanism for the periodic assessment of anti-corruption efforts (referred to as the 'EU Anti-Corruption Report') that is used to identify trends and best practices, to make general and tailor-made recommendations for adjusting EU policy on preventing and fighting corruption, to help Member States, civil society or other stakeholders identify shortcomings, and to raise awareness and provide training on anti-corruption. Regarding the protection of EU finances, the EU's Anti-Fraud Office (OLAF) publishes an annual report on its activities which can be found online at the EU's Anti-Fraud Office website: http://ec.europa.eu/anti_fraud/index_en.htm.

14. Bilateral Investment Agreements (BITs)

Implementation of the Lisbon Treaty competence changed in major respects how the EU treats investment (see Openness to Foreign Investment, above). Since Lisbon makes foreign direct investment an exclusive EU competence, a broad definition of FDI extends EU authority over much of the subject matter hitherto addressed under Member State BITs. The Council has so far granted the Commission authority to negotiate investment chapters in the free trade agreements under negotiation with Canada, India, Singapore and the Transatlantic Trade and Investment Partnership (T-TIP). The Commission has indicated that it does not currently plan to develop a model investment treaty, preferring instead to establish general objectives and principles.

Agreement to launch a BIT between the EU and China was reached during EU China Summit of February 2012; negotiations started in January 2014. This would be the first EU BIT since the Commission gained competence for investment policy with the 2009 adoption of the Lisbon Treaty, although virtually all the Member States have extensive networks of such treaties with third countries.

Other regional or multilateral agreements addressing the admission and treatment of investors to which the Community and/or its Member States have adhered include:
a) The OECD Codes of Liberalization, which provide for non-discrimination and standstill for business establishment and capital movements, including foreign direct investment;
b) The Energy Charter Treaty (ECT), which contains a "best efforts" national treatment clause for the making of investments in the energy sector but full protections thereafter; and
c) The WTO General Agreement on Trade in Services (GATS), which contains national treatment, market access, and MFN obligations on measures affecting the supply of services, including in relation to the mode of commercial presence.

15. OPIC and Other Investment Insurance Programs

OPIC programs are not available in the EU as a whole, although individual Member States have benefited from such coverage.

16. Labor

Employment, worker training, and social benefits remain primarily the responsibility of EU Member States. However, the Member States are coordinating ever more closely their efforts to increase employment through macroeconomic policy cooperation, guidelines for action, the exchange of best practices, and support from various EU programs. The best information regarding conditions in individual countries is available through the labor and social ministries of the Member States.

Helpful information from the EU can be found on the websites for the EC Directorate-General for Employment and Social Affairs: http://ec.europa.eu/social/home.jsp?langId=en, and on the Eurostat website: http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/.

In general, the labor force in EU countries is highly skilled and offers virtually any specialty required. Member States regulate labor-management relations, and employees generally enjoy strong protection. EU Member States have among the highest rates of ratification and implementation of ILO conventions in the world. Numerous provisions in the Treaty on the Functioning of the European Union (TFEU), EU labor law and policy guidelines aim to strengthen social dialogue and the role of the "social partners" (labor and management organizations) at EU, national, sectoral, local, and company levels.

There is a strong tradition of labor unions in most Member States. While Nordic Member States (Denmark, Finland, and Sweden) still have high levels of labor union membership, many other large Member States, notably Germany and the United Kingdom, have seen these levels drop significantly to around 20-30 percent. French labor union membership, at less than 10 percent of the workforce, is lower than that of the United States.

17. Foreign Trade Zones/Free Ports

EU law provides that Member States may designate parts of the "Customs Territory of the Community" (reflecting a pre-EC structure) as "free zones" and free warehouses. The EU considers the free zones to be mainly a service for traders to facilitate trading procedures by allowing fewer customs formalities. Information on free trade zones and free warehouses is contained in Title IV, Chapter Three, of Council Regulation (EEC) no. 2913/92 establishing the Community Customs Code, titled, "Free Zones and Free Warehouses" (Articles 166 through 182).

Article 166 states that free zones and free warehouses are part of the Customs Territory of the Community or premises situated in that territory and separated from the rest of it in which:

a) Community goods are considered, for the purposes of import duties and commercial policy import measures, as not being on Community customs territory, provided they are not released for free circulation or placed under another customs procedure or used or consumed under conditions other than those provided for in customs regulations;

b) Community goods for which such provision is made under Community legislation governing specific fields qualify, by virtue of being placed in a free zone or free warehouse, for measures normally attaching to the export of goods.

Articles 167-182 detail the customs control procedures, how goods are placed in or removed from free zones and free warehouses and their operation. The use of free trade zones varies across Member States. For example, Germany maintains a number of free ports or free zones within a port that are roughly equivalent to U.S. foreign-trade zones, whereas Belgium has none. A full list of EU free trade zones last updated August 2013 is available at: http://ec.europa.eu/taxation_customs/customs/procedural_aspects/imports/free_zones/index_en.htm

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

According to U.S. statistics (the U.S. Bureau of Economic Analysis), the value of the U.S. investment stock in EU Member States, on a historical-cost basis as of the end of 2013, was $2.35 trillion. The Netherlands was the largest EU host to U.S. foreign direct investment, with $723 billion, followed by the United Kingdom ($571 billion), Luxembourg ($416 billion), and Ireland ($240 billion). More statistics on U.S. investment abroad are available at: http://www.bea.gov/international/di1usdbal.htm. For virtually all EU Member States, the largest "foreign" investors are in fact other Member States.

According to the European Commission's statistics, FDI flows accounted for 2.3 percent of European GDP in 2010.

http://epp.eurostat.ec.europa.eu/portal/page/portal/product_details/dataset?p_product_code=TEC00046

According to U.S. statistics (BEA, 2013) the biggest EU investors in the United States include the United Kingdom ($519 billion), The Netherlands ($274 billion), France ($226 billion), Germany ($209 billion), and Luxembourg ($202 billion).

19. Contact Point at Post for Public Inquiries

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