REVIEWS AND ANNOTATIONS

Catharine Titi. The Right to Regulate in International Investment Law. Baden-Baden: Nomos/Hart, 2014, 240 pp.[1]

Catharine Titi's book *The Right to Regulate in International Investment Law* offers its readers deep and comprehensive understanding of a concept, which is increasingly relevant in international investment law. With growing number of international investment agreements and investment disputes, the author rightly highlights that "*the right to regulate has gradually come to the spotlight*" (p. 19). As fears of regulatory chill are spreading across the lay public, particularly in Western European countries,[2] we can find various reactions to this development specifically in recently negotiated treaties' provisions.[3]

Titi's book contains ten chapters alongside introduction and conclusion. Chapters II and III provide general observations and put the right to regulate in the context of international investment law and other relevant legal systems such as WTO law, EU law and the European Convection on Human Rights case law. Chapter IV discusses the backlash[4] against the current investment protection regime and its links to the "right to regulate" while searching its rationale. Types of regulatory interests in definitions of essential security interests or public order (*ordre public*) are examined in chapter V. Subsequent three chapters (VI, VII and VIII) are practical and focus on drafting practice in international investment agreements. These chapters represent the biggest added value in the book. They principally scrutinise treaty language on regulatory interests, numerous forms in which the right to regulate can be embedded and crucial role of the nexus requirement and self-judging clauses. The following chapter IX analyses the right to regulate by subjects, namely, essential security interests, taxation and cultural diversity. The last chapter X considers two rather separate issues. Firstly, it examines arbitral jurisprudence and the legitimate interests of the host state. Secondly, the question of an implicit right to regulate is taken up.

Titi clearly states the purpose of her work. She begins by portraying the crisis of legitimacy of the regime of investment law in different forms, which *"involve a serious weakening of standards of protection*" (p. 23). This weakening necessitates the right to regulate to play more important role in achieving a viable balance,[5] which will stabilise the system and maintain investment protection in place. Nevertheless, she points out that the purpose of the book is not to propose how to strike the desired balance. Rather, *"it seeks to offer the tools necessary for an appraisal of the means and devices available for this balance, thus contributing to a better understanding of the essential legal concept*" (p. 28). The goal of providing an insightful guidance into a significant element of international investment agreements was without doubt accomplished by the author. In addition, the part discussing cultural diversity deserves mentioning as an excellent contribution to the long neglected

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[2] European Commission. *Online public consultation on investment protection and investor-to-state dispute settlement (ISDS) in the Transatlantic Trade and Investment Partnership Agreement (TTIP)*. 13. 1. 2015, SWD(2015) 3 final.

[3] Art. 9.15, Chapter 9 Investment, Trans-Pacific Partnership (TPP); Art. 8.9, Chapter 8 Investment, Comprehensive Economic and Trade Agreement (CETA); Art. 13bis, Chapter 8 Trade in Services, Investment and E-Commerce, EU-Vietnam Free Trade Agreement.

[4] See also WAIBEL, M., KAUSHAL, A., CHUNG, K., BALCHIN, C. (eds.). *The Backlash Against Investment Arbitration. Perceptions and Reality*. New York: Wolters Kluwer, 2010.

[5] See also HINDELANG, S., KRAJEWSKI, M. (eds.). *Shifting Paradigms in International Investment Law. More Balanced, Less Isolated, Increasingly Diversified*. Oxford: Oxford University Press. 2016.

area of international investment law. On the other hand, the weakest part of the book is the conclusion of chapter VI. It lacks convincing arguments for its strong assertion that the language in preambles referring to state powers to regulate in public interest is more effective in safeguarding host state policy space, rather than positive language in other treaty provisions.

The book under review is coherent in its focus, however it is not suitable as an introductory text into the field of international investment law; on the contrary Titi's work is intended for readers, who have attained a certain level of knowledge in the field.

This book came out at a time when the right to regulate is at the centre of discussions on the legitimacy of the system of protection of foreign investments. The book provides expert analysis of various provisions of international investment agreements safeguarding the right to regulate. As such, it is valuable to academics, advanced students of international law and practitioners and particularly to negotiators of these agreements, because it demonstrates, which drafting can best protect state's regulatory powers. To conclude, the Titi's book is a timely and competent assessment of current state of right to regulate in international investments law as a key component of international investment agreements.

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Václav Šmejkal contributed an article titled **Ten Years after the Viking Judgment: EU Court of Justice Still in Search of Balance between Market Freedoms and Social Rights.** The author suggests that ten years after the well-known *Viking* and *Laval* judgments, there is still no end to the debate about the appropriateness of the EU Court of Justice (CJEU) approach to cases of conflict between the fundamental freedoms of the EU internal market and the fundamental, especially social, rights protected by EU law as well. The CJEU does not abandon its pre-Lisbon case law, only the accent seems to change. In its recent decisions however - in particular the *AGET Iraklis* one from December 2016 - a quite more socially responsive approach can be traced. The analysis outlined in the article attempts to sum up the path that the CJEU has made between the Viking and *AGET Iraklis* judgments. It wonders whether the CJEU has found the optimal solution for clashes between fundamental freedoms and fundamental rights. It shows that this is not yet the case, because even in the *AGET Iraklis* judgment CJEU did not abandon the one-sided test of proportionality, which treats basic social rights and their protection as possible exceptions to the freedoms of movement that could be acceptable only if they are reasonably justified by the protection of overriding reasons in public interest.

Martin Hobza contributed a paper about **Independent Investment Advice under MiFID II**. In his view the distinction of independent and "non-independent" investment advice along with related duties of investment firms is one of the highlights brought by the recast of Markets in financial instruments directive to the area of European investment services regulation. Within the scope of the paper, the attention is focused mainly on answering the important question: what makes independent investment advice independent? In other words, distinction of both above-mentioned ways

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