

EU INVESTMENT POLICY: FINANCIAL AND LEGAL ASPECTS

Luchkovska Svitlana

DOI: <https://doi.org/10.61345/1339-7915.2024.5.12>

Annotation. In the article the key role of investment policy in ensuring sustainable economic development of the European Union (EU) has been examined. The study emphasizes the EU's comprehensive approach, which integrates legal norms and financial mechanisms to create a favourable investment climate, enhance competitiveness and promote social, economic and environmental progress.

The author has researched the scholarly works on EU investment policy, focusing on the contributions of such scholars as Mykola Sidak, Edita Gainyshova, Helen Kavvadia, Green de Burka, Paul Craig and others. Their research provides valuable information on investment protection, the role of the European Investment Bank (EIB) and other financial institutions.

The aim of the work is to analyze the financial and legal provision of the EU investment policy, to identify its main principles and mechanisms, and to assess their effectiveness. The key principles include a single market environment, protection of investors' rights, effective regulation of financial instruments and market transparency. The study emphasizes the importance of legal instruments, including the founding treaties, EU regulations and directives, which underpin free movement of capital, competition rules.

Financial instruments such as guarantees, grants, loans, and investments provided by entities like the EIB and the European Investment Fund (EIF) are examined for their role in reducing risks and facilitating access to capital. These mechanisms support innovation, infrastructure development, and regional cohesion, aligning with EU strategic objectives.

The author emphasizes that understanding and adopting EU investment principles is crucial for Ukraine's European integration. Harmonisation of Ukrainian legislation with EU standards can attract investment, promote economic growth and improve the welfare of society.

The study concludes that EU investment policy, based on a sound legal framework and innovative financial instruments, is vital to promote sustainable development and address global challenges such as digitalisation and climate change. Increased coordination and new sources of funding are essential for further progress.

Key words: investment policy, investment activity, financial and legal provision, financial instruments, normative provision, financial provision, the European Union European integration.

1. Introduction.

Investment policy plays a key role in ensuring the sustainable economic development of any country. In the European Union, investment policy is ensured by a set of legal norms and financial mechanisms that create favorable conditions for attracting capital and protecting investors. The EU investment policy is an important element of sustainable development and competitiveness, as it is a powerful tool that ensures the development of social, economic, environmental and other spheres.

2. Analysis of scientific publications.

Researchers study various aspects of the EU investment policy. In the process of research, the author's attention was focused on the works of some of them. For example, Mykola Sidak, Prof., Doctor of Science, Bratislava University of Economics and Management (BUEM)), and Edita Hajnišová, Doctor of Philosophy, Comenius University in Bratislava, in their works investigate the issues of investment protection in the EU [1]. The scientific works of Helen Kavvadia, PhD, researcher at the University of Luxembourg, [2-5] are of particular interest in studying the role of the European Investment Bank (EIB) and other financial institutions, including the aspect of implementing the EU investment policy.

The works of Grainne de Burca, Professor of Law, European University Institute and New York University School of Law, due to the fact that her specialization is the EU law and public law, are interesting for our research first of all in the context of understanding the legal status of EU institutions [6-8], and the works of Professor Paul Craig, Emeritus Professor of English Law, St. John's College, Oxford University - in the aspect of studying the legal status of the EU institutions and the nature of EU law, as his interests are mainly focused on constitutional law, administrative law and EU law [6-7; 9]. The research of Judith Clifton, Professor of Business and Economics at the University of Cantabria, Daniel Diaz-Fuentes, Professor of Economics and Head of the Econpoint Group at the University of Cantabria, Ana Lara Gómez, Ph. D. in Economics, University of Cantabria, and David Howarth, PhD, Professor of Political Science in EU Studies, University of Luxembourg, are important for us in the context of investigating the use of certain EIB financial instruments in the process of implementing investment policy [10-12].

3. The aim of the work is to analyze the financial and legal aspects of the EU investment policy, to identify the key principles and mechanisms of the investment policy, and to evaluate their effectiveness.

4. Review and discussion.

For economic development and European integration, the basic principles of financial and legal provision for the EU investment policy are fundamental. They form the basis for an attractive investor climate, promote economic growth, increase competitiveness, and intensify cooperation between EU member states. For Ukraine, understanding these principles is critical for successful European integration. Adapting Ukrainian legislation to European standards in the field of investment will help create an appropriate environment for attracting investment, creating new jobs and increasing the welfare of society and the state.

In our opinion, the main principles of financial and legal provision of investment activity in the EU should include the following:

- 1) *the EU's single market environment*, which creates conditions for the functioning of the EU's internal market, ensuring the free movement of capital, goods, services and labors. The main legal acts regulating the functioning of the internal market are the EU founding treaties, in particular the Treaty on the Functioning of the European Union (TFEU), which regulates the foundations of the single market, including provisions on ensuring the freedoms of the single market; the Treaty on European Union (TEU), which sets out the fundamental principles of cooperation and integration; as well as EU regulations and directives on financial services and capital. Particular attention should be paid to the freedom of movement of capital, as the EU provides a legal framework that supports the free movement of capital between member states, prohibiting unreasonable restrictions on interstate investment (as defined in the Treaty on the Functioning of the European Union (TFEU), which guarantees investors the ability to move capital freely without discriminatory barriers).
- 2) protection of investors' rights as one of the basic principles of legal support of investment activity, which is achieved primarily through:

✓ creation of a stable regulatory environment that protects investors, in particular, from risks such as expropriation or unfair treatment, including such key EU initiatives as the Capital Markets Union (CMU) Action Plan (updated in 2020) and the Investment Plan for Europe (completed in 2020, but its mechanisms have been integrated into the new InvestEU program, which is valid from 2021 to 2027);

✓ guarantees of fair consideration of disputes through arbitration and judicial mechanisms (arbitration procedures within ICSID or UNCITRAL; court proceedings in the Court of Justice of the European Union (CJEU)).

3) *effective regulation of the use of various EU financial instruments, programs, funds and initiatives*, often implemented in partnership with public and private institutions to facilitate access to capital for businesses and investors. Examples include the European Investment Fund (EIF) and the NextGenerationEU (NGEU) fund, which provide loans and guarantees to support innovative and infrastructure projects, the European Fund for Strategic Investments (EFSI); Horizon Europe and InvestEU programs, etc.

4) *providing transparency of financial markets and setting standards of information disclosure*: The EU guarantees transparency through reporting and auditing requirements, which strengthens confidence in markets. For example, the Corporate Sustainability Reporting Directive (CSRD) requires companies to disclose a large amount of detailed information on their sustainability performance and related strategic consequences, which promotes more responsible investment [13].

The above principles, together with the legal framework and financial instruments, create a favorable environment for investment in the EU through economic growth and development. We believe that a study of the financial and legal aspects of the EU investment policy will help identify the most effective tools for attracting investment, understand the mechanisms of the European investment market, and further help to make effective strategies for the development of the Ukrainian economy.

The legal aspects of investment policy directly depend on the normative provision of the investment component of the European Union. *The normative provision of the EU investment policy* should mainly include the following:

1). Founding treaties, in particular the Treaty on the Functioning of the European Union (TFEU): for example, the provisions of Articles 63-66 of Chapter 4 of Title IV, which establish the principles of free movement of capital between member states and third countries, which is the basis for investment activity; the provisions of Articles 101-109 of Section 1 of Chapter 1 of Title VII, which contain rules on competition policy in the field of business entities and rules to prevent any abuse of dominant position in the internal market by business entities [14].

2). EU regulations, which primarily include the following: 1) Commission Regulation (EU) 651/2014 on state aid, which sets out the conditions under which Member States may provide financial support to undertakings to encourage investment in innovation, green technologies and infrastructure development [15]. This regulation sets out the conditions for granting state aid based on different categories of support, such as innovation, research and development, environmental protection, and others. The Regulation establishes that Member States may provide aid to enterprises without violating competition rules if the support meets the established criteria, in particular to stimulate the development of innovative and environmentally friendly technologies. This is the main regulatory act governing the provision of state aid in the EU, supporting investments in sustainable development and innovation; 2) Regulation (EU) 1303/2013 of the European Parliament and of the Council (as regards EU structural and investment funds): defines common provisions for financing investments from such funds as the European Social Fund, the European Regional Development Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development, the European Maritime and Fisheries Fund [16]; Regulation (EU) 2015/1017 of the European Parliament and of the Council (as regards the European Fund for Strategic Investments, EFSI): regulates the operation of the fund, which aims to stimulate private investment in key sectors, including infrastructure, innovation and small enterprises [17]; Regulation (EU) 2021/523 of the European Parliament and of the Council (as regards the InvestEU program): establishes a financial framework to support strategic investments in the EU for 2021-2027 [18].

3). EU directives, in particular: 1) Directive (EC) 2006/123/EC of the European Parliament and of the Council on services in the internal market, which regulates the freedom of provision of services between EU countries, which helps to attract investment in various sectors of the economy. [19]. It is aimed at simplifying administrative procedures, ensuring a level playing field for service providers within the EU, and promoting the development of the internal market for services. It establishes rules to ensure freedom of service provision between EU member states, allowing companies to provide services without having to establish branches or affiliates in each country. Thanks to this directive, the provision of services has become more transparent and efficient, which has helped to attract investment in various sectors of the economy. It covers such industries as financial services, tourism services, information and communication technologies, and other professional services; 2) Directive (EU) 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (MiFID II): regulates markets in financial instruments, ensures transparency of financial markets and protection of investors [20]; 3) Directive (EU) 2009/138/EC of the European Parliament and of the Council on the taking up and conduct of business in the field of insurance and reinsurance (Solvency II): applies to insurance companies, which are often large institutional investors in the EU [21]; 4) Directive (EU) 2011/61/EU (AIFMD) on alternative investment fund managers: regulates alternative investment funds, the operation of which is important for venture capital and private equity [22].

The financial provision of the investment policy is realized through the use of appropriate financial instruments, which include, in particular:

1. Guarantees and financial instruments: provided through the EIB, EIF and EU programs that reduce financial risks for private investors: EIB guarantees (help to convince commercial banks and investors to participate in financing large projects, reducing the level of risk); EIF and SME instruments (EIF often provides financial instruments to support SMEs, such as loan guarantees, which allow businesses to obtain financing that would otherwise be unavailable due to high cost or risk); EU programs such as Horizon Europe or InvestEU (provide guarantees for investments in important projects, in particular in the fields of innovation, sustainable development and infrastructure).
2. Grants: non-repayable financial resources provided from EU funds to support projects that meet EU policy objectives. They are provided under specific programs, such as: Horizon Europe (a program that finances research projects and innovative start-ups); Cohesion Funds and Regional Funds (providing grants for investments in regions with less developed infrastructure or economy), in particular the European Regional Development Fund (ERDF), which aims to reduce economic, social and territorial disproportions among EU countries and regions, supports investments that aim to increase the competitiveness of regions, promote innovation, SME development, and improve infrastructure and social services.
3. Loans, credits and investments provided through the EIB, EIF and specialized programs: EIB loans and credits (for both governments and private companies, to finance large infrastructure projects such as energy, transport, or innovative infrastructures); EIF loans (for SMEs, especially when banks are reducing lending due to high risk); investments in startups and innovation (the EIF and other institutions also invest in startups and innovative companies, especially through venture capital funds or fund programs that promote job creation and the development of new technologies).

5. Conclusions.

The financial and legal provision of investment activities under EU law is aimed to create a stable and transparent environment for investors. The EU investment policy plays a central role in ensuring economic growth, social cohesion and environmental sustainability. It is based on clearly defined legal norms and effective financial mechanisms that ensure the development of a favorable environment for attracting investments. The European Investment Bank and the European Strategic Investment Fund are central elements of financial support for regional development, innovation, and infrastructure. At the same time, the EU normative framework, including the ESF, guarantees compliance with the principles of competition and equality of conditions for investors. Further development of investment policy should take into account global challenges such as digitalization,

climate change, and geopolitical instability. This requires enhanced coordination between member states and the attraction of new sources of funding to support innovative projects and the transition to a climate-neutral economy.

References:

1. Sidak, M., Hajnišová, E. Innovation of investment protection mechanisms: determination of legal pillars to ensure sustainable development in the EU. Verejná správa a regionálny rozvoj. Vysoká škola ekonómie a manažmentu verejnej správy v Bratislave/Public administration and regional development. School of Economics and Management in Public Administration. Číslo (No.): 2, december 2019, ročník XV. Číslo 2, december 2019, ročník XV / No. 2, December 2019, Volume XV. P.141-147. URL: https://www.vsemba.sk/portals/0/Subory/2019_VSEMvs_casopis_VSaRRc.2%20-%20web.pdf#page=141.
2. Kavvadia, H. (2021). The European Investment Bank and the Asian Infrastructure Investment Bank: Incumbents and challengers in the field of regional development banking. In J. Clifton, D. Díaz Fuentes & D. Howarth (Eds.), *Regional Development Banks in the World Economy*, pp. 256-282. Oxford: Oxford University Press. URL: <file:///C:/Users/Користувач/Downloads/OUPEIB-AIIBFullPaper1.pdf>.
3. Kavvadia, H. Small words, big changes: Understanding the European Investment Bank through its business model. Helen Kavvadia. The funder for this chapter is Helen Kavvadia (author) (CC BY-NC-ND 4.0) DOI: 10.4324/9781003231592-7. Deciphering the European Investment Bank History, Politics, and Economics Edited by Lucia Coppolaro and Helen Kavvadia. First published 2022. P.116-139. URL: https://library.oapen.org/bitstream/handle/20.500.12657/58506/9781003231592_10.4324_9781003231592-7.pdf?sequence=1&isAllowed=y.
4. Kavvadia, H. The reification of the European Investment Bank. From policy choices to a functioning organization (1957-1977). *Instituta* 2023, 2(II), pp.65-67. URL: https://www.researchgate.net/publication/378798386_The_reification_of_the_European_Investment_Bank_From_policy_choices_to_a_functioning_organization_1957-1977.
5. Kavvadia, Helen. From a policy bank to a crowding-in bank: The development of the European Investment Bank in the last ten years, as seen through its business model. *Croatian Regional Development Journal*. Vol. 1 No. 1. 2020. P.30-43. URL: (PDF) [From a policy bank to a crowding-in bank: The development of the European Investment Bank in the last ten years, as seen through its business model](#).
6. Craig, Paul; De Búrca, G. (Gráinne). *EU law : text, cases, and materials*. Oxford: OUP, 2020. 1155p. URL: https://books.google.com.ua/books?hl=en&lr=&id=nLaNiry3if8C&oi=fnd&pg=PP2&dq=info:zYlcTDwJkcoJ:scholar.google.com&ots=KBUEgQfL63&sig=Vksdg7GeqVmN7qt3tJeflIRE7nGA&redir_esc=y#v=onepage&q&f=false.
7. Craig, P., & de Búrca, G. eds. (2021). *The evolution of EU law (3rd ed.)*. Oxford: Oxford University Press. 977p. <https://doi.org/10.1093/oso/9780192846556.001.0001>. URL: https://books.google.com.ua/books?id=HxNqzgEACAAJ&pg=PR3&hl=uk&source=gbs_selected_pages&cad=1#v=onepage&q&f=false.
8. Gráinne de Búrca. After the EU Charter of Fundamental Rights: The Court of Justice as a Human Rights Adjudicator? (June 1, 2013). *Maastricht Journal of European and Comparative Law*. Volume 20, Issue 2. <https://doi.org/10.1177/1023263X1302000>. URL: <https://journals.sagepub.com/doi/abs/10.1177/1023263X1302000202>.
9. *The Lisbon Treaty, Law, Politics and Treaty Reform*, by P. Craig (Oxford: Oxford University Press, 2nd edn, 2012, 529pp. https://doi.org/10.1111/jcms.12173_6.
10. Judith Clifton, Daniel Díaz-Fuentes, Ana Lara Gómez & David Howarth (05 Mar 2024): Overlapping lending by the European Investment Bank and the European Bank for Reconstruction and

Development, Journal of Economic Policy Reform, DOI: 10.1080/17487870.2024.2312120. To link to this article: <https://doi.org/10.1080/17487870.2024.2312120>. URL: https://www.researchgate.net/publication/378787893_Overlapping_lending_by_the_European_Investment_Bank_and_the_European_Bank_for_Reconstruction_and_Development.

11. Judith Clifton, Daniel Díaz-Fuentes and Ana Lara Gómez, *The European Investment Bank: From Development, Integration, and Investment to 'You Get What You Give'* In: *Regional Development Banks in the World Economy*. Edited by: Judith Clifton, Daniel Díaz-Fuentes, and David Howarth, Oxford University Press (2021). (pp.97-115). DOI: 10.1093/oso/9780198861089.003.0005. URL: https://www.researchgate.net/publication/351054922_The_European_Investment_Bank_From_Development_Integration_and_Investment_to_%27You_Get_What_You_Give%27From_Development_Integration_and_Investment_to_%27You_Get_What_You_Give%27.
12. Clifton, Judith and Diaz-Fuentes, Daniel and Diaz-Fuentes, Daniel and Howarth, David and Kavvadia, Helen, The Role of the European Investment Bank in Times of COVID-19 (December 1, 2020). McDonald, D.A., Marois, T., and Barrowclough, D.V. (Eds.) (2020) Public Banks and Covid-19: Combatting the Pandemic With Public Finance. Municipal Services Project (Kingston) and UNCTAD (Geneva), pp pp PP 135-148. Available on : https://publicbankscovid19.org/images/PDF_FILES/Chapter_6_-_EIB.pdf , Available at SSRN: <https://ssrn.com/abstract=3743454>
13. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance). PE/35/2022/REV/1. ELI: <http://data.europa.eu/eli/dir/2022/2464/oj>.
14. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences. *Official Journal C 326* , 26/10/2012 P. 0001 – 0390. ELI: http://data.europa.eu/eli/treaty/tfeu_2012/oj.
15. Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty Text with EEA relevance. ELI: <http://data.europa.eu/eli/reg/2014/651/oj>.
16. Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006. ELI: <http://data.europa.eu/eli/reg/2013/1303/oj>.
17. Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments. ELI: <http://data.europa.eu/eli/reg/2015/1017/oj>.
18. Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017. ELI: <http://data.europa.eu/eli/reg/2021/523/oj>.
19. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. ELI: <http://data.europa.eu/eli/dir/2006/123/oj>.
20. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) Text with EEA relevance. ELI: <http://data.europa.eu/eli/dir/2014/65/oj>.

21. Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast) (Text with EEA relevance). ELL: <http://data.europa.eu/eli/dir/2009/138/oj>.
22. Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 Text with EEA relevance. ELL: <http://data.europa.eu/eli/dir/2011/61/oj>.

Svitlana Luchkovska,

*Candidate of Legal Sciences (PhD in Law), Docent,
Associate Professor of the Department of Law,
Khmelnyskyi National University
E-mail: luchkovskaSv@khnmu.edu.ua
ORCID: 0000-0002-9505-9480*