# INVESTMENTS AND POLITICS:

# THE TURKISH-GREEK CASE


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**Introduction**

Amidst the different aspects of the developing economic reality that intensified international trade and globalization has brought about, the issue of Foreign Direct Investments (FDI) is increasingly gaining in importance. Though FDI is by no means a new concept in international law and has been used systematically in Europe since the end of WWII, economic data show that in the last two decades an unprecedented development of this model of investment has occurred[1]. This preference shows that states find FDI a useful medium for their economic development and expect gains in the economic, technological and political field when they resort to it whether as a home state or a host state.

In order to better comprehend the impact FDI has on the economy of a state and the way law is trying to tackle the issue of an enterprise dealing simultaneously on the international and the domestic level, one has to always bear in mind the way FDI functions.

In the classic model of FDI an economically developed, capital exporting state is trying to further enhance the economic prosperity of its subjects, whether they are persons or companies based in the state, by encouraging them to exploit economic opportunities abroad, securing in this way increased economic growth for itself. Such a "home state" will try to secure the best possible conditions for its nationals venturing abroad and will try to minimize any risks that may be threatening the success of this enterprise. On the other hand a "host state" is usually a developing country possessing inadequate technology and infrastructure that is seeking the necessary capital for the development of its companies. Readily available foreign capital is seen

[1] Global inflows increased by an average of 13% annually between 1990-1997, whereas between 1998 and 2000, the average growth rate rose to nearly 50%. Capital inflows reached a peak of US$1.5 trillion in 2000 (data obtained from Foreign Direct Investments Trends and Statistics, prepared by the Statistics Department of the IMF, October 28, 2003; available at: http://www.imf.org/external/np/sta/fdi/eng/2003/102803.pdf)

as a fast way to stimulate economic growth that will hopefully result in the overall development of the state. In the middle lies the investment itself, usually made by a multinational company or a state owned corporation, trying to make profit through the use of low priced natural resources and manpower of the host state. Chasing its own ends, the investing entity serves at the same time the aims both of its home state, whether these aims are fiscal, political or other, and its host state through development.

According to the classical economic theory on foreign investment, the benefits brought about by the input of foreign capital to a developing economy justify the necessary restriction of sovereignty that the host state undergoes when it takes up obligations deriving from an international treaty. Incoming foreign capital frees up domestic capital that can be put to other use for the public benefit. There is a boost in employment, an ailing issue in most developing economies. Since foreign capital is usually channeled to more complex and advanced enterprises, it brings new technology alongside, meaning higher skills for the workforce employed. Infrastructure developed by the foreign investor in order to facilitate its business can also benefit the public, as in the case of transport and power grids[2].

However, there are serious issues challenging the classical theory. A foreign investment can recruit local rather than foreign capital, draining thus the local economy from much needed capital. The protection a foreign investment usually enjoys, deriving from favourable legislation and international treaties, coupled with the size of the multinational investing company are tempting reasons for local private capital to prefer foreign owned companies to local ones. Repatriation of profits, which is regularly demanded by home states in the negotiations with a potential host state, means that the benefits of the development of the investment can escape the

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[2] M. Sornarajah, *The International Law on Foreign Investment* (Cambridge; New York: Cambridge University Press 1994) p.38

host state. Technology brought in is sometimes already outdated in the home state and the technological skills that the host state's workforce acquires are obsolete. In addition, companies transfer obsolete technology to less developed states in order to circumvent higher environmental standards required by the home state regulations, thus raising environmental issues as well[3]. Even financial benefits have been doubted, as large investments made by foreign companies on key sectors of a developing economy mean a greater influence of foreign actors on the overall economy of the state. In this way, foreign capital can control the type of industrialization of the host state and can channel economic development to its benefit[4]. An example is provided by a survey conducted in 1971 showing that out of the three largest foreign investment made in Greece during the 1960's (Greek Aluminium, Esso Pappas, Greek Shipyards) the first two actually impaired Greek economy more than they benefited it. Only the last one had a positive impact on Greek economy balancing the favourable treatment it received from Greek banks and the subsequent imbalance to competition, with the employment it created[5].

The concept that foreign direct investments can be used, apart from their purely financial function, as a medium of foreign policy as well, in the context of bilateral relations between Turkey and Greece, is relatively new. Its origins date to the end of the 1990's decade and the start of the rapprochement process between the two countries initiated by Foreign Ministers Cem and Papandreou in 1999. The issue of bilateral FDI and their relation to politics has been discussed by several academics so far[6]. However, no effort appears to have been made for the presentation of the legal framework concerning bilateral investments. The aim of the present

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[3] M. Sornarajah, *The International Law on Foreign Investment* p.39

[4] Eleni Kalyva, "Ξένες επενδύσεις σε λιγότερο αναπτυγμένες χώρες. Η ελληνική εμπειρία" [Ksenes ependyseis se ligotero aneptygmenes hores. I elliniki empeiria-Foreign Investments in Less Developed Countries. The Greek Experience], Armenopoulos 1996, no.5, p.652

[5] Ibid.

[6] Constantine Papadopoulos, Ioannis Grigoriadis and Ziya Öniş to name a few

paper, therefore, is to identify the reasoning behind the concept of FDI and politics; highlight the potential dangers and possibilities for the development of bilateral relations through investments; and finally present the legal framework that regulates the establishment and function of bilateral investments both at the level of domestic legislation and at the level of international law, through the Bilateral Investment Treaty (BIT) the two countries signed in 2000.

The first part of the paper describes the political aspects of the recently developed phenomenon of FDIs between Turkey and Greece. Since Turkish investments in Greece are still very limited, the paper concentrates on the presentation of the investment environment of the capital-receiving state, Turkey. The shortcomings of the Turkish economy as well as the reforms that were implemented by the Turkish government to tackle them are presented in turn. The role of the European Union (EU) in the reform process that takes place in Turkey, the progress of Greek-Turkish relations and the mentality of the rapprochement process between the two states are also presented in order to show the effects political decisions have on the formation of economic relations. Finally, the practical results of the policy decision of rapprochement in the field of trade and investments are exhibited.

By examining the legal framework concerning investments in both states, the paper presents the potential basis on which FDIs can be established. The domestic legal order of each country is evolving as both states become more interconnected with the international community, a worldwide process that grants increasing importance to international law. This holds especially true for international law on FDIs, which is one of the fastest growing aspects of international law. The fact that both Greece and Turkey take part in a series of international agreements on FDI regulation, as well as the fact that they have signed a BIT, makes the presentation and comparison of both legal systems necessary. For this reason, the domestic legal order of both

countries and the BIT signed by the two states in 2000 are presented in the second part of the paper. A brief account of the most important initiatives in the field of international law concerning FDIs is followed by the presentation of the domestic legislation on investments in both states. In order to facilitate comparison, the two legal systems are presented side by side. The differences and similarities of specific stipulations concerning investments protection standards, capital movement freedom and admission procedures in each of the legal texts analyzed show the different approach each state has on the issue of foreign investments. Finally, the bilateral investment treaty between Turkey and Greece signed in 2000 is presented in detail. The provisions included in the bilateral agreement define the rights and obligations of the two states and private investors in the context of a treaty that enjoys priority over national legislation, marking, thus, the importance the treaty holds on the issue.

# Chapter I

## Foreign Direct Investments in the Political Field

### 1. Determinants of foreign direct investments in Turkey

The existence of a secure legal framework which covers all aspects necessary for the establishment of an investment and which regulates the behaviour of all three actors, namely the host state, the home state and the investor, is an essential condition for the development of economic relations through FDIs. Indeed, it would be highly unlikely that a company would invest any serious amount of capital or effort in a country which did not enforce a minimum set of rules concerning investments. Nor would a company risk to venture in an area where at least

the possibility of protection from its home state would be impossible. However, the existence of an adequate legal framework is by far not a sufficient condition for the realization of a foreign investment.

An FDI is particularly vulnerable to abrupt changes in the political, societal and economic environment of a host state. A series of prerequisites need to be fulfilled before any serious investment can take place. These broad conditions, which are generally referred to as the "investment environment"[7], are an issue of major concern for all capital-receiving states. In the particular case of Turkey, these conditions have wide repercussions in the political and societal field and in turn are widely affected by the political conditions in the country. The lack of these prerequisites also helps explain the reason why FDI inflow in Turkey has remained relatively low, compared to other states of the same size, and why Greek investors in particular have been hesitant for so long to venture into what would otherwise seem as an ideal area for investments.

### *1.1 Political instability*

The first and foremost concern of foreign investors in Turkey has been political instability[8]. Apart from the economic downturn that is expected in a country where there are frequent changes in the political field, investments can be affected by the lack of a concrete investment policy by the state. The administration and the executive branch also suffer from the continuous change of personnel and decision makers, making it hard for investors to find a reliable partner with whom they can cooperate for the development of the investment. In times of

[7] According to Sayek the investment environment can be described as "… the institutional structure of the system, including its financial markets, legal structure and labour markets, among dimensions of its institutional structure and infrastructure" *see* Selin Sayek, "FDI in Turkey: The Investment Climate and EU Effects", *The Journal of International Trade and Diplomacy*, vol.1, no.2, Fall 2007, p.118

[8] Ioannis N. Grigoriadis and Antonis Kamaras, "Foreign Direct Investment in Turkey: Historical Constraints and the AKP Success Story", *Middle Eastern Studies*, vol.44 no.1, January 2008 p.58

political turmoil, the investment even faces the danger of a radical political group totally opposed to foreign capital coming to power. In Turkey, the bright prospects of the country in the beginning of the 1990's concerning the inflow of FDI capital did not materialize as between 1989 and 2003 Turkey had 13 different governments[9].The majority of these governments were coalitions between unwilling partners, adding structural inability to take any serious political initiative to the list of problems emanating from the political crisis of the time[10].

The political landscape in Turkey changed significantly with the election of the Justice and Development Party (Adalet ve Kalkınma Partisi – AKP) government in 2002, the first single party government Turkey had in years. Despite contrary predictions, the party pursued the advancement of EU membership candidacy of Turkey, through the enactment of a series of reforms during its first years in power. However, the political and societal differences between the AKP and the established elites opposing it led to serious political friction. The constant intervention of the army and the judiciary corps in the political life of Turkey, are indicators of the political instability still reigning in Turkey.

A clear example of the way non-political actors interfere in politics was the reaction of the army during the Presidential elections, as well as the highly politicized decision of the Constitutional Court that annulled the first round of the elections held in the parliament on the grounds that it had failed to reach a quorum, a decision that was labeled as a "a bullet fired against democracy" by the Prime Minister Erdoğan[11]. The ensuing crisis that led Turkey to early

[9] While Turkey's share of the worldwide inflows of FDI was 0.3% on average between 1985 and 1995, it decreased to 0.17% in 1997 and 0.1% in 2003, before picking up pace again and reaching 1% in 2005; ibid. p.105

[10] Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession", *Turkish Studies*, vol.6, no.3, September 2005, p.331

[11] Marcie J. Patton, "AKP Reform Fatigue in Turkey: What happened to the EU Process?", *Mediterranean Politics*, vol.12, no.3, November 2007, p.351,

general elections in 2007 and the trial against AKP[12], an action by the Chief Public Prosecutor that caused an outcry in Europe, are clear signs that political differences are frequently settled through the use of indirect means and not through the accepted democratic rules, i.e. the ballot.

*1.2 Macroeconomic stability*

Apart from political stability, macroeconomic stability is an issue of great concern for foreign investors. States that follow strict fiscal and monetary policies and show prospects of economic stability and growth in the long run are expected to attract a greater number of FDIs. Studies have also shown that domestic purchasing power and openness to trade are two of the most important factors that weigh on the decision of an investor to proceed with an investment[13]. This is easily explained, as the former indicates a potential for the local market to absorb the production of the investment, while the latter enables the investment to easily import material needed for its production process and export surplus products, not absorbed by the local market. It is not surprising in this respect, that Turkey lagged in FDI attractiveness during the 1990's, a period during which Turkey went through three successive economic crises (1994, 1999, 2001). The economic crises were the result of populist policies and clientelism which was allowed to flourish, as the political crisis of the time meant that there was no accountability for the parties rising to power[14]. The frequent changes of governments also led to the weakening of the administrative sector and to relaxed checks and balances, adding fuel to the partisan policies

[12] Commission of the European Communities, *Turkey 2008 Progress Report*, Brussels, 5.11.2008, SEC (2008) 2699 (English Version), p.6
[13] Selin Sayek, "FDI in Turkey: The investment climate and EU effects", p.118
[14] Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession", p.331

followed by the parties at the time[15]. The Turkish case is a clear example of how economic and political stability are interdepented and why investors regard them as high priority conditions.

A more specific aspect of the macroeconomic stability condition is the issue of inflation and this is of particular interest to the investor. Although it is argued that high inflation *per se* does not deter investors from investing in a country[16], high volatility in inflation rates, as the case was in Turkey, is an indicator of macroeconomic instability and therefore a barrier to FDI inflow in the country. Low inflation is an imperative need for a capital-recipient state, as it brings certainty about the future of the economy and installs confidence in the ability of the investment to repatriate its profits at full value. The danger of profits being undermined due to an unexpected increase of the inflation rate or a sudden devaluation of the currency of the host state goes in tandem with highly volatile inflation rates[17]. It is no wonder then that the main medium of expression for Turkish capital, TÜSIAD (Turkish Industrialists and Businessmen's Association) , has stressed in the past the importance of low inflation and strong currency for the sustained economic growth witnessed in Turkey after 2004[18].

*1.3 Unregistered economy*

The issue of unregistered or informal economy is also frequently blamed for the low amount of FDI capital in Turkey. A high volume of informal economy creates an imbalance in fair competition, as it puts companies that do business within the registered establishment at a disadvantage[19]. It is also difficult for a company, especially a foreign one, to deal with informal

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[15] *Ibid.* p.331
[16]Selin Sayek, "FDI in Turkey: The Investment Climate and EU Effects" p. 124
[17] Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession", p.331
[18] TÜSİAD, *Investment Environment and Foreign Direct Investments in Turkey*, Working Paper prepared for Investors Advisory Council Meeting, 15 March 2004, Istanbul, p.4
[19] Ibid. p.13

partners such as suppliers and workers, that are characterized by unreliability[20]. As Turkey's informal economy represents roughly half of Turkey's GDP[21], the effect this issue has on Turkey's economic development and fiscal planning-not to mention the societal issues concerning tax evasion-is more than evident.

*1.4 Institutional determinants*

Other barriers that impede the inflow of FDIs to a state have to do with the structure of the state and the efficiency of its administrative apparatus[22]. In this context, a serious complaint of investors doing business in Turkey is the existence of a weak judicial system[23]. Apart from complaints that the frequent changes in legislation create uncertainty to the investor as to how business is conducted in Turkey, it has been pointed out that the most important problem is poor implementation of existing legislation[24]. Legal cases often take more than a year to be resolved and the outcome can not be predicted, as there is no consistency in the application of the rules. This means that foreign firms have to allocate resources and employ personnel that deals exclusively with issues of this nature. It can also lead to a fear that foreign firms are treated in a discriminatory way by the local courts[25] and that court decisions are influenced by extra-lege considerations.

[20] Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession", p.328

[21] TÜSİAD, *Investment Environment and Foreign Direct Investments in Turkey*, p.13; Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession", p.328

[22] Agnès Bénassy-Quéré, Maylis Coupet and Thierry Mayer, "Institutional Determinants of Foreign Direct Investment", *CEPII*, Working Paper no. 05, 2005, p.18

[23] Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession", p.329

[24] TÜSİAD, *Investment Environment and Foreign Direct Investments in Turkey*, p.9

[25] Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession", p.332

Administrative barriers also pose a serious problem for investors, especially in a state like Turkey, that has a tradition in centralized economic development and in state intervention in the market. Difficulties encountered by investments in their dealings with the administration can lead to increased cost in the production, affecting the overall efficiency of the investment[26]. It is even possible that the investment can be brought to a halt due to insurmountable difficulties, especially in cases where a state permit is needed in order to do business in a certain economic field. There are many reasons for the administrative inefficiency witnessed in Turkey. Administrative laws are complex and in some cases contradictory. Sometimes there is an overlap of jurisdiction between different agents of the administration[27]. A lack of political culture on the part of lower administrative staff and local politicians, in the sense that they can disobey, directly or indirectly, commitments of higher authorities or choose not to honour agreements made with previous authorities, has been noticed[28]. There is also concern about administration burden, the need for simplification, the establishment of regulatory impact assessments and the enhancement of transparency[29]

Bureaucratic procedures can also be lengthy and, subsequently, costly. It has been estimated that foreign investors spend 1/5 of their managerial time dealing with administrative requirements[30]. Before the new law on FDI was implemented, the establishment of a new

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[26] Agnès Bénassy-Quéré, Maylis Coupet and Thierry Mayer, "Institutional Determinants of Foreign Direct Investment", p.9

[27] For example, environmental protection fell under the responsibility of the Ministry of Public Health (MOPH) up to the 1980s. Despite the creation of the Ministry of Environment in 1991, the law on public health was not revised and many institutional functions of the MOPH remained effective. As a practical result, an investor wishing to start an activity that was regarded as "sensitive to the public environment" had to obtain two different sets of permits and licences, issued by two different agencies for the same goal. TÜSİAD, *Investment Environment and Foreign Direct Investments in Turkey,* p.22

[28] Ibid. p.9

[29] Commission of the European Communities, *Turkey 2008 Progress Report* , p.8

[30] Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession" p.332

company by a foreign investor required no less than 19 steps[31]. These regulatory burdens which, apart from the increased cost in specialized personnel wages, sometimes include hidden fees for the acquisition of permits, also deter the investors from investing in a country that is unfamiliar ground for them. As a matter of fact, studies have shown that multinational companies are more concerned about hidden costs rather than explicit costs such as tariffs[32]. They may therefore prefer to invest in a state which imposes high tariffs, but on the other hand provides the necessary assurance that no implicit taxes will be imposed on them.

### *1.5 Corruption and bribery*

Lengthy administrative procedures pave the way for corruption and bribery. Even though the evidence about whether corruption has a positive or negative effect on FDIs is not conclusive[33], it can be assumed that the harm done on the whole state apparatus outweighs the significance of small-scale benefits acquired in individual cases. Apart from raising the cost of doing business in a corrupt state, bribery strengthens the sense of insecurity and unpredictability in the transactions taking place. It also makes it difficult for investments coming from a corruption-free environment to understand business ethics and the way business is conducted in the host state and ultimately harms fair competition. Turkey suffers from corruption stemming from partisan politics and clientelist networks that have been formed during times of political crises. The formation of a single party government could brake the vicious cycle of clientelism and politics, though accusations about corrupt members of the ruling AKP party are commonly

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[31] TÜSİAD, *Investment Environment and Foreign Direct Investments in Turkey* , p.32
[32] Selin Sayek, "FDI in Turkey: The investment climate and EU effects" p.128
[33] *Ibid.* p.120 see also Agnès Bénassy-Quéré, Maylis Coupet and Thierry Mayer, "Institutional Determinants of Foreign Direct Investment", p.8

expressed by the opposition[34]. Corruption can take many forms, from bribery or use of public resources for political gain, to lack of objectivity in recruiting civil servants[35].

*1.6 Infrastructure*

The impact of infrastructure on the inflow of FDIs in a state is also debatable. Although lack of infrastructure at face value would seem an important impediment for the establishment of investments in a region[36], the opposite view has also been supported and it is claimed that the location of an investment is not greatly influenced by the existence of infrastructure[37]. A reason for this may be the fact that infrastructure itself can become the object of FDIs, by granting construction contracts to foreign companies[38]. Turkey lags behind most of its competitors, mostly countries of Central and Easter Europe, in areas such as telephone lines, paved roads or electricity consumption per capita[39]. On the structural level, it has also been felt that the legislation on transport and other areas[40] has to be modernized, in order to come in tune with EU legislation.

One final factor that has been proposed as having an influence on FDI inflow is that of social infrastructure. Admittedly the most obscure and most difficult factor to measure, social infrastructure could include all the factors that shape the quality of human capital, such as the

[34] "Less than White?", *Economist*, 18.9.2008
[35] TÜSİAD, *Investment Environment and Foreign Direct Investments in Turkey,* p.10 ; Although up to mid-career level civil servants are recruited through a merit-based competitive examination managed by an autonomous body, senior level appointments have been criticized as being political. Commission of the European Communities, *Turkey 2008 Progress Report* , p.8
[36] Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession", p.334
[37] Selin Sayek, "FDI in Turkey: The Investment Climate and EU Effects", p.120
[38] TÜSİAD, *Investment Environment and Foreign Direct Investments in Turkey,* p.26
[39] Ibid. p.25
[40] Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession", p.334

level of health care, social insurance, education[41] etc. offered to the citizens of a state[42]. These areas of social spending, which due to their size can not be undertaken by a single investor, seem to have an important influence on the decision for the establishment of an investment[43]. Since the investment, unlike physical infrastructure, can not interfere with social infrastructure, the investor has to take social infrastructure under consideration beforehand.

## 2. Reform and FDI in Turkey

### *2.1 The background of Turkish economy*

Turkey started tackling the problems that have just been described relatively late. These problems seriously hamper the economic development of the country in general and the establishment of FDIs in particular. The reasons for this delay were both political and economic.

The transition from a closed, protective system of economy to an open economy, integrated to the international market and therefore accessible to foreign capital for investment, has not been an easy one for Turkey. Turkey for a long period of time had chosen an import-substitution model of development, where the state played a dominant role both as a regulator and as financial entrepreneur[44]. The state owned many enterprises, mainly in the services sector and infrastructure, as it represented the only adequate accumulation of capital in Turkey capable of undertaking large investments. Certain businessmen became prime partners of the state.

[41] S.A. Spyridakis, *Government policy and Foreign Direct Investments* (Athens: A. Sakkoulas 1999), p.109
[42] Agnès Bénassy-Quéré, Maylis Coupet and Thierry Mayer, "Institutional Determinants of Foreign Direct Investment", p.18
[43] Selin Sayek, "FDI in Turkey: The Investment Climate and EU Effects", p.122
[44] Leda-Agapi Glyptis, "The Cost of Rapprochement: Turkey's Erratic EU Dream as a Clash of Systemic Values", *Turkish Studies*, vol.6, no.3, September 2005, p.404

Turkish capital, represented by a handful of families, was economically protected by the state from foreign competition and was allowed to lapse in its standards of production and the quality of its products[45]. Turkey could be described as an introvert economy for the most part of its existence, the only important foreign investment being joint ventures, mainly in the manufacturing sector[46]. With the joint venture scheme, the established Turkish capital remained in control of the development planning of the state and retained its dominance in the financial sector.

The liberalization of the economy started to take place in the late 1970's, with the gradual ascent of Turgut Özal to power. Özal, under the supervision of the army, which was dictating the political condition at the time, was allowed to go forward with his reform plan after he became Prime Minister in 1983. He initiated a series of reforms the aim of which was to make the Turkish market accessible to foreign capital for the first time. This gradual liberalization, which had serious repercussions on Turkish society, came to a halt after Özal's death, since political instability dominated most part of the 1990's in Turkey. The stabilization of the economy and the promotion of foreign capital-led growth came to the agenda once more in the end of the 1990's and especially after the 2001 crisis that shook the foundations of the Turkish economy[47].

*2.2 Crisis and reform*

Two factors facilitated the opening up of the Turkish economy to foreign capital and the promotion of foreign investments: Turkey's candidacy for the EU and the IMF-proposed fiscal measures that came to force after 2001. The twin financial crisis of November 2000/ February

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[45] Ioannis N. Grigoriadis and Antonis Kamaras, "Foreign Direct Investment in Turkey: Historical Constraints and the AKP Success Story", p.56

[46] Ilker Ataç and Andreas Grünewald, "Stabilization Through Europeanization? Discussing the Transformation Dynamics in Turkey", *Debatte*, vol.16, no.1, April 2008, p.40

[47] Ibid. pp. 40-45

2001 was the result of massive withdrawal of foreign capital[48] that had been invested in short-term operations with high returns. This outflow of capital had disastrous effects on the Turkish economy, which contracted by 9% in 2001. Turkey was forced to sign a series of agreements with the IMF as a condition for the granting of much needed loans. The agreements aimed at the creation of long-term economic stability through the implementation of austerity measures and strict fiscal control. An important part of the policies required by the IMF, which include further liberalization of the market and reduction of state intervention in the economy, coincide with the requirements set by the EU's Copenhagen Criteria[49].

The prospect of EU membership has played a significant role in the development of political affairs in Turkey. Ever since the rejection of the Turkish candidacy by the European Economic Community in 1989, the Turkish political elites have struggled to bring Turkey in tune with its Europeans counterparts in an effort to achieve membership status. This effort has meant that all aspects of life in Turkey, including the political, societal and financial fields, have undergone a process of Europeanization. In this sense, the situation an investor has to face when investing in Turkey has been radically modified during the last ten years. Many of the shortcomings of Turkish economic life have been addressed, not only with the narrow aim of attracting more FDIs in mind, but in the context of a deeper transformation of the state. The factors affecting Greek investments in Turkey in particular have been adjusted to a great degree because of the two greater obstacles the Turkish candidacy faced during the 1990's: The fulfillment of the Copenhagen Criteria and Turkish-Greek relations.

[48] US$ 8.7 bn left Turkey in November 2000, while a further US$ 3 bn followed in February 2001. Ibid. p.46
[49] Ibid. p.46

*2.3 Copenhagen Criteria*

The "Copenhagen criteria" is a short version for the set of rules that govern the accession process of an EU candidate country. Every state wishing to become a full member of the EU is obliged to fulfill the criteria which where agreed upon at the Copenhagen European Council in 1993 prior to its entrance to the Union[50].

The membership criteria include:

- Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.
- The existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.
- The ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

In addition to the above mentioned criteria, candidate states need to adjust their administrative structures to the ones used by the European Union as was stated in the Madrid European Council in December 1995. The EU stresses the importance of reforms in legislation of candidate countries in order to be aligned with the European legislation, as well as the importance of proper implementation of law, through appropriate administrative and judicial structures[51].

It is easily understandable that many of the reforms required by the EU in the context of the Copenhagen Criteria, such as the consolidation of democracy and the rule of law, are necessary conditions for the establishment of foreign investments in a country. There is an interconnection between political reforms and improvement in the investment climate as has been explained above. Thus, the EU candidacy of Turkey has been the driving force for the

[50] Ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm
[51] Ibid.

changes required for economic development and the facilitation of foreign investment establishment.

*2.4 Europeanization, domestic affairs, and the AKP*

The AKP government, elected to power in November 2002, caused serious concern about the orientation Turkey would adopt and the effect this would have on the EU bid of the country. Coming from an Islamist background, most party founders had been young members of the *Refah Partisi* (RP) in the past, a party which held a fiercely anti-Western and anti-European agenda throughout its existence and which, during its short spell in power, had tried to associate Turkey with the Islamist world and the Middle East[52]. Even though the newly-founded party had denied it had an Islamist political agenda and considered itself a conservative right centre party, along the lines of Christian Democrat parties in Europe[53], it lacked the necessary credentials and it was viewed with extreme suspicion from the political and bureaucratic elites it had displaced with its electoral victory.

Trying to reappease fears shared by a large part of the society and seeking allies that would help it consolidate its position in power, the AKP government embraced the European orientation of Turkey and made vigorous attempts to achieve the goals set by the EU[54]. Many of the reforms demanded by the EU, such as the consolidation of civic rights and the reduction of the influence the military had on Turkish politics, were goals shared by the AKP as well. Prime Minister Erdoğan himself had been imprisoned for a short while in the past in a case concerning freedom of expression, when he used expressions considered to be "inflammatory" in a public

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[52]Philip Robins, "Turkish Foreign Policy Under Erbakan", *Survival*, vol.39, no.2, June 1997
[53]William Hale, "Christian Democracy and the AKP: Parallels and Contrasts", *Turkish Studies*, vol.6, no.2, June 2005
[54] Ioannis N. Grigoriadis and Antonis Kamaras, "Foreign Direct Investment in Turkey: Historical Constraints and the AKP Success Story", p.59

speech. The military on the other hand, which had always considered itself as the guardian of Atatürkism, felt that a government with an Islamist background would be a threat to the secular state and was constantly at odds with the government. Any weakening of the power the military had over domestic policies would benefit the democratic rule and strengthen the position of the AKP. Many members of the AKP were members of the RP when it fell from power in 1997, following the "28th of February" process, initiated by the military and were fearful that AKP would share the same fate.

Taking these factors into consideration, the Erdoğan government adopted a pro-EU stance early on and set out to implement EU-monitored reforms pending for a long period of time due to the lack of political will shown by previous governments. In this way, it achieved unprecedented progress in the harmonization of Turkish legislation and administration with the EU standards, succeeding in an area which ideologically belonged to the traditional parties in the opposition. Therefore, the political situation in Turkey during the first term of the AKP in power, evolved into a paradox, where the Islamist-oriented government supported progressive social reforms backed by the EU, while the opposition took a hard stance against Europe and adopted a reactionary position[55].

*2.5 Reforms under the AKP*

Following a reformist agenda, the AKP government managed to earn the trust of EU officials who were faced with a reliable partner with a clearly formed plan on how to achieve the

[55] CHP has appealed to the Constitutional Court for 16 laws passed in 2008, many of them EU-related. Commission of the European Communities, *Turkey 2008 Progress Report*, p. 7. *See also* Michael M. Gunter and Hakan M. Yavuz, "Turkish Paradox: Progressive Islamists Versus Reactionary Secularists", *Critique: Critical Middle Eastern Studies*, vol.16 no.3, September 2007, p.7

goals set by them[56]. The volatile political situation in Turkey forced EU officials to express their concern on the way the military and the judiciary operated on a number of occasions, such as the trial against AKP in 2008, indirectly lending their weight to the democratically elected government[57]. As the government was seen as a reliable partner by officials abroad, it gained in status on the domestic field as well[58].

The political reforms, which reached their peak with the amendment of the 1982 Constitution[59], may have been the prime concern for European states; however, it was the financial reforms that earned the AKP government an important ally in the domestic field. TÜSIAD, an association that frequently expressed its opinion on the political situation in Turkey, had always been a pro-European advocate. Its members comprise the business elite in Turkey which has close ties with business partners abroad. Having overcome the initial difficulties of competing in an international market during the first stages of the liberalization process, especially after the 2001 banking crisis when the most unstable and insecure members of the business environment were forced out of the market[60], Turkish capital felt confident enough to take part in a rapidly evolving globalised economy. The initial suspicion with which TÜSIAD viewed the newly elected government, mainly on the issue of the pro-European orientation of the country[61], was quickly replaced with support for the proposed reforms. TÜSIAD believed that the reforms, which were in part imposed by the need to bring Turkish legislation in tune with the

[56] On 1.9.2008 the Turkish government announced a Draft national Programme for the Adoption of the *Aquis*. Commission of the European Communities, *Turkey 2008 Progress Report* , p.7
[57] "EU hails ruling on Turkish Party" *BBC* 31.7.2008
[58] Ioannis N. Grigoriadis and Antonis Kamaras, "Foreign Direct Investment in Turkey: Historical Constraints and the AKP Success Story", p.59
[59] The amendment of 35 articles of grave importance was undertaken by the coalition government led by B. Ecevit in 2001. The AKP government gave a group of academics a mandate for further amendment of the Constitution, with no tangible results so far. Leda-Agapi Glyptis, "The Cost of Rapprochement: Turkey's Erratic EU Dream as a Clash of Systemic Values", p.405 and Commission of the European Communities, *Turkey 2008 Progress Report* p.6
[60] Ioannis N. Grigoriadis and Antonis Kamaras, "Foreign Direct Investment in Turkey: Historical Constraints and the AKP Success Story", p.60
[61] TÜSİAD, *Investment Environment and Foreign Direct Investments in Turkey*, p.4

European one, were necessary both for the development of local business and for the increase in the inflow of foreign capital.

The reforms that affected, among other areas, the investment environment in Turkey, took place both on an institutional and a legislative level. On the institutional level, the Turkish government tried to battle corruption by becoming a member of the group of states against corruption and by ratifying a series of conventions against corruption[62]. However, despite a series of high-profile corruption investigations undertaken in 2008, Turkey is lagging in combating corruption. It has been criticized both by the European Committee for not creating a body overseeing the implementation of anti-corruption strategies and by the OECD for its poor implementation of the OECD anti-bribery convention[63]. It is also pointed out that there is not sufficient political support for anticorruption strategies[64].

An extensive program of training judges and prosecutors on new concepts of law has been initiated. The ministry of Justice put forward a draft strategy in Spring 2008, dealing with issues of independence, impartiality and effectiveness in an effort to enhance confidence in the Judiciary. A reform on the selection procedure of new judges and prosecutors has also taken place. The new procedure is based on specific selection criteria. These criteria, however, have been criticized by Bar associations as open to subjective interpretation. The recruitment of a number of judges has been put on hold after an appeal by YARSAV, the association of judges and prosecutors, to the Council of State in March 2008[65]. Finally, there has been an effort to modernize the structure of courts with the introduction of computerized organization. However,

[62] The United Nations Convention against Corruption, the Council of Europe Civil Law Convention on Corruption, the OECD Convention on the bribery of Foreign Officials in Internaional Business Transactions *see* Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession", p.332
[63] Commission of the European Communities, *Turkey 2008 Progress Report,* p.68
[64] Ibid. p.10
[65] Ibid. p.66

independence of the Judiciary from the Executive or the Legislative power is still an issue of grave concern, as many senior members of the high courts occasionally make public comments that are considered political[66].

As far as foreign investments are concerned, the establishment of a Coordination Council for the Improvement of the Investment Climate (CCIIC) by Decree in 2001, a council in which both members of the government and private sector representatives take part, has been the most important initiative at the institutional level[67]. The Council adopted in 2008 a plan consisting of a series of actions suggested by the 12 technical committees it had previously set up[68].

At the legislative level, a new, radically different law on foreign investments was introduced in 2003 as will be described later. A new Labour Code providing greater flexibility for part-time and temporary employment was introduced in the same year[69]. In addition, progress has been reported in the field of taxation, especially on the issue of direct taxation with the amendment of the Personal Income Tax Law. Administrative issues concerning tax collection have been addressed with the help of computerization in tax offices[70]. Inflation accounting was also introduced in 2004, allowing for companies to be taxed on their real profits rather than "paper profits" that were created because the scale on which taxation is calculated did not follow the high inflation of the time. High taxation in labour and social security fees makes labour cost expensive for companies, which in turn insist on cutting down on expenses in this field[71].

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[66] Ibid. p.68

[67] Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession", p.333

[68] Commission of the European Communities, *Turkey 2008 Progress Report* , p.63

[69] Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession", p.328

[70] Commission of the European Communities, *Turkey 2008 Progress Report* , p.58

[71] Assia Hadjit and Edward Moxon-Browne, "Foreign Direct Investment in Turkey: The Implications of EU Accession", p.334

However, the strong reaction anticipated by the society and the subsequent high political cost makes labour law less prone to change.

It should also be noted that a distinct decrease in the pace of the implementation of the reforms has been observed from 2005 onwards. Curiously enough, this reform fatigue exhibited by the AKP government came right after the EU accepted Turkey as a candidate state and accession negotiations had just begun. This behaviour has been attributed to the modalities of EU behaviour towards Turkey, the need of AKP to readjust its rhetoric in order to gain electoral advantages and the resistance of Kemalist institutions, namely the judiciary, the Higher Education Board (YÖK) and the military to AKP led reforms[72]. During the last year the Turkish government and Prime Minister Erdoğan personally have admitted that there was not enough progress in the past and reaffirmed Turkey's determination to implement reforms in its pursuit of EU membership[73].

### 3. Turkish-Greek relations and Turkey's EU accession

Apart from the Copenhagen Criteria, the second factor dominating the EU-Turkey agenda were the Greek-Turkish relations. The relations between the two countries were tense for the most part of the 1990's. The tension between the two states reached its peak during the Imia/Kardak crisis, when a dispute over the sovereignty over two rocks in the Aegean nearly led to open conflict. Tensions of this kind had an immediate impact on the accession process of

[72] Marcie J. Patton, "AKP Reform Fatigue in Turkey: What happened to the EU Process?"
[73] "AB'yi muhalefet engelliyor" [The opposition is obstructing the EU] *Milliyet* 20.1.2009 http://www.milliyet.com.tr/Siyaset/HaberDetay.aspx?aType=HaberDetay&ArticleID=1049278&Kategori=siyaset&Date=20.01.2009&b=Hamasa%20acik%20destek&ver=84

Turkey. In the Luxemburg European Council in December 1997, Turkey was upset to find out that it was the only applicant denied candidacy status, which was awarded to countries that had started accession talks with the EU much later and in some cases, such as Slovakia, did not meet the Copenhagen Criteria either.

The Customs Union, which had come into effect earlier in 1996 and which had not proved as beneficial to Turkey as it had been expected, as well as the fact that in the same decision Turkey's eligibility for membership had been recognized did little to sweeten the pill. The Luxemburg Council decision denied Turkey candidacy status on the grounds of its poor human rights record and unsatisfactory relations with Greece[74], highlighting the two main obstacles for the accession of Turkey to the EU: the Copenhagen Criteria and poor relations with an EU member state, namely Greece. However, the general feeling in Turkey was that the exclusion was the result of mainly political reasons, namely the objection of Germany and particularly its chancellor Helmut Kohl, and Greece, whereas the Copenhagen Criteria were used only as a pretext, as they did not impede the accession of other countries, such as Slovakia, Bulgaria and Romania. The two years between the Luxemburg European Council and the Helsinki Council in December 1999, when Turkey was recognized for the first time as a candidate state, were years of bitter relations and gradual estrangement between the two sides.

The main event that took place between the two Councils that reached decisions so different from one another was the radical revision of Greece's strategy towards Turkey. The Simitis government made a drastic break from the traditional hard line against Turkey, adopting a new approach that favoured the strengthening of ties between Turkey and the EU. According to this view, the promotion of the EU-bid of Turkey would facilitate the adoption of a more

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[74] Conclusions No 12 and 13. *See* Zeki Kütük, "Turkey and the European Union: The Simple Complexity", *Turkish Studies*, vol.7 no.2, June 2006 p.277

cooperative stance from the Turkish side on bilateral issues, as Turkish foreign policy would gradually adapt to EU norms and behavioural codes[75]. It would also mean that Turkey would not risk its chances to enter the EU for the relatively smaller probable gains against its neighbour[76]. Finally, Greece would not be seen as the adversary blocking the way of Turkish candidacy, as it was felt at the time that Greece was used as a scapegoat by other member states that hid their opposition to Turkey's bid behind the hard line followed by Greece up to that point[77].

The Helsinki Council, where Greece refrained from its right to veto the Turkish candidacy, was the highlight point of a rapprochement that had started earlier that year, based on the personal relations and the common understanding between the Foreign Ministers of the two states, Cem and Papandreou. The starting point for this process can be traced in the letters exchanged between the two ministers early in 1999 and in the series of proposals for the amelioration of the bilateral relations included in them. The process was facilitated on the societal field by the surge of sympathy between the people on both sides, following the devastating earthquakes that hit Istanbul and Athens in August and September 1999 respectively[78]. It has to be stressed, however, that this so called "earthquake diplomacy" had already begun on the governmental level before that event. It was based on the rationalization of the bilateral relations and the recognition that regional cooperation was more beneficial for both sides, compared to mutual enmity.

Ever since the Helsinki Council, Greece has been a staunch supporter of Turkey's candidacy, a political choice that was not altered by the Karamanlis government that succeeded

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[75] Dimitris Tsarouhas, "The political economy of Greek-Turkish relations", Southeast European and Black Sea Studies, Vol.9 No.1, March 2009 p.51

[76] For more on the Europeanization of Turkish Foreign Policy *see* Mustafa Aydin and Sinem A. Acikmese, "Europeanization Through EU Conditionality: Understanding the New Era in Turkish Foreign Policy", *Journal of Southern Europe and the Balkans*, vol.9, no.3, December 2007

[77] Zeki Kütük, "Turkey and the European Union: The Simple Complexity", p.285

[78] Dimitris Tsarouhas, "The political economy of Greek-Turkish relations" p.44

that of Simitis in March 2004[79]. Turkey finally secured a date for the start of accession negotiations in the European Council in 2004; negotiations begun in October 2005. However, it was stressed by the EU officials that this was an open-ended process that did not guarantee Turkey's eventual membership in the EU. The EU also withheld the right to withdraw from accession talks, should Turkey not show progress in the adoption of the necessary reforms.

The conditions imposed on Turkey were unprecedented and were thus considered as discriminatory by the majority of the Turkish political establishment. They also fostered the growth of negative sentiments towards the EU and the European orientation of the country by the Turkish public. However, negotiation talks have provided the necessary motive for the AKP government to pursue radical reforms on the Turkish state. The fact that the EU closely monitors the reform progress in Turkey and regularly issues progress reports means that it is difficult for the reform process to relapse.

It is evident that Greece, by supporting a certain policy on the EU level, has achieved results on the bilateral level. Turkey's EU-bid has been the basic motive for the radical reform of the political, societal and economic structures in Turkey. These reforms were essential for the promotion of the direct bilateral relations between Greece and Turkey, which included among other issues, the promotion of stronger financial ties. In this way, the policy followed by Greece at the European level, helped it achieve its goals on the regional level.

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[79] James Ker-Lindsay, "Greek-Turkish Rapprochement Under New Democracy", *The International Spectator*, vol.42, no.2, June 2007

*3.1 The rapprochement of 1999*

The change of climate in the bilateral relations had its root in a negative incident. The Öcalan affair[80] that took place in 1999, resulted in the replacement of the Greek Foreign Minister Theodoros Pangalos. The new Foreign Minister, George Papandreou, adopted a new line of approach to the Turkish-Greek relations early in his office term. The first indications of a new understanding in the bilateral relations can be found in the letter of 24th of May 1999 by Ismail Cem, addressed to the newly appointed Papandreou. In this letter, he proposes that action should be taken on the issue of terrorism[81]. He also suggests that a Plan for Reconciliation should be initiated, on the basis of previous proposals made in various fora. The first concrete proposals for this new policy take form in Papandreou's reply letter of 25th of June, 1999.

In this letter, the Greek Foreign Minister gives a brief account of his views on the bilateral relations and proposes for the first time the adoption of a series of measures that would deal with matters of every-day relations. Incorporating the offer for an agreement to combat terrorism in a wider set of suggestions, Papandreou proposed the signing of bilateral agreements on issues as diverse as tourism, protection of the environment, culture, the fight against illegal drug trafficking and illegal immigration, organized crime, trade and the avoidance of double taxation and regional cooperation.

This set of proposals came in total contrast with all previous attempts to tackle bilateral problems, as they were generally concentrated on issues of high politics. The proposed measures were greeted warmly by the Turkish side. The difference in the relations between the two ministers, as well as the level of understanding they achieved, as it is seen in the text of these two

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[80] PKK leader Öcalan was captured on February the 15th 1999 by agents of the Turkish secret services while leaving the residence of the Greek Ambassador in Nairobi, Kenya.
[81] The echo of the Öcalan affair and of public feeling in Turkey that Greece was providing help to terrorist organizations

letters and the Joint Communiqué of 30th of July 1999 compared to the letters exchanged only a few months earlier with Foreign Minister Pangalos is enormous.

The new approach was based on the hypothesis that closer relations at the institutional and personal level between the two peoples would help to the reduction of tension in bilateral relations[82]. As the climate in the two societies would start to change, politicians on both sides would feel less pressured by the public opinion to adopt a hard line against the other side. This would provide essential room for maneuvering and would enable politicians to make the necessary concessions for the reconciliation of differences without being accused of "giving in" to the other side[83]. In addition, it was felt that cooperation at the regional level would be more beneficial for both countries than a zero-sum policy, where one side's loss is considered the other side's gain. The political and economic situation at the time encouraged the adoption of such a political view. Greece, faced with the challenge of satisfying the necessary conditions for its participation in the Economic and Monetary Union (EMU), needed to reallocate financial resources from armaments expenditure to other sectors of the economy[84]. At the same time, Turkey was faced with increasing security challenges on its Eastern borders. The reduction of tension over the Aegean was considered an imperative need by the state that was at the same time struggling to recover from the heavy blow the 1999 earthquake had delivered to Turkey's industrial and financial centre.

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[82] James Ker-Lindsay, "The Policies of Greece and Cyprus Towards Turkey's EU Accession", *Turkish Studies*, vol.8, no.1, March 2007, p.73

[83] Kemal Kirisçi, "The "Enduring Rivalry" Between Greece and Turkey: Can 'Democratic Peace' Break It?", *Alternatives*, vol.1, no.1, Spring 2002

[84] Panayotis Tsakonas, "Problems of and Prospects for Greece's "Socialization Strategy" vis-à-vis Turkey", in Proceedings of the International Conference on the Turkish-Greek Relations : Issues, Solutions, Prospects / Fuat Aksu(ed.), Istanbul : YTU, 2006, p.27

*3.2 The bilateral agreements of 2000*

The new policy was quickly put to practice with the visit of Papandreou to Ankara in 2000, during which a series of bilateral treaties were signed, covering areas that were first described in the June 25th, 1999 letter of Papandreou to Cem. Three bilateral agreements and one memorandum of understanding were signed on January 20th , 2000 in Ankara, covering the fields of tourism, environmental protection, investments and the fight against crime[85]. Five more bilateral agreements were signed on February 4th, 2000 in Athens, raising the total number of bilateral agreements signed to nine. The agreements signed in Athens covered the fields of cultural cooperation, science and technology, economic cooperation, maritime transport and customs administration[86]. Other bilateral agreements on technical issues were to follow, later in 2000 and 2001. Compared to the immediate past, the treaties signed in just one year, heavily outnumber the number signed in the previous 25 years.

Provisions in a number of treaties, such as the treaty on customs cooperation and the agreement on battling organized crime, drug trafficking and illegal immigration, entail the cooperation on an institutional level and the organization of seminars by Greek officials to their Turkish counterparts, sharing their expertise on European regulations. Other treaties, such as the treaty on cultural cooperation and the agreement on scientific and technological cooperation gave the chance to academics and artists of both countries to meet one another. As a result of these

[85] The agreements signed in 20th of January 2000 in Ankara are:
-The agreement on cooperation in the field of tourism
-The memorandum of understanding concerning cooperation on environmental protection
-The agreement concerning the reciprocal promotion and protection of investments and
-The agreement on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal immigration.

[86] The agreements signed on the 4th of February 2000 in Athens are:
-The agreement on cultural cooperation
-The agreement on cooperation in science and technology
-The agreement on economic cooperation
-The agreement on maritime transport and
-The agreement on cooperation and mutual assistance between customs administrations

treaties, the number of common cultural projects such as movies, TV series and documentaries, investigating aspects of everyday life in both countries has increased significantly[87]. Finally, the signing of the bilateral treaty on FDIs and the agreement on economic cooperation, coupled with the treaty on the avoidance of double taxation[88], aimed at the creation of stronger economic ties and, subsequently, of economic interdependence. The signing of a treaty of this kind, especially a taxation agreement, had been the demand of businessmen in both sides, highlighting the importance societal groups and NGOs have acquired during the last years in the formation of foreign affairs[89].

*3.3 Economic cooperation and bilateral relations*

It was hoped that the creation of economic ties, also encouraged by the signing of an agreement on cooperation in tourism, an important industry in both countries, would at first create informal channels between the two people. These networks would encourage initiatives that promote peaceful co-existence. In the long run, a deeper integration of the two economies is believed not only to promote wealth and economic growth in both countries, but also make the other state an important economic partner, that each state would find difficult to lose, along the lines of the historic Franco-German détente[90]. It is in this context that the threshold of US$ 5 bn

[87] Bahar Rumelili, "The European Union and Cultural Change in Greek-Turkish Relations", *Working Papers Series in EU Border Conflicts Studies*, University of Birmingham no.17 April 2005

[88] H. Anagnostopoulos, "Ερμηνεία της Σύμβασης αποφυγής διπλής φορολογίας Ελλάδας-Τουρκίας (N3228/2004, ΦΕΚ 32Α'/2004) και σύγκρισή της με το σχέδιο Σύμβασης του ΟΟΣ.Α." [Ermineia tis Symvasis apofygis diplis forologias Ellados-Tourkias (N.3228/2004, FEK 32A'/2004) kai sygkrisi tis me to shedio Symvasis tou O.O.S.A.- Interpretation of the Agreement on avoidance of double taxation between Greece and Turkey(L.3228/2004, Gazette 32A'/2004) and comparison with the OECD Model Agreement], Deltio Forologikis Nomothesias Vol.58 , 2004

[89] Dimitris Tsarouhas, "The political economy of Greek-Turkish relations" p.46

[90] Zeki Kütük, "Turkey and the European Union: The Simple Complexity" p.285and Dimitris Tsarouhas, "The political economy of Greek-Turkish relations" p.53

in bilateral trade has been proposed as the limit that, if realized, would avert any possible future conflicts[91]. In this view, economic cooperation could be seen as a guarantor of peace.

### *3.4 Nationalism in the financial field*

The opposite view to this function of economic ties lies on what is perhaps one of the greatest dangers FDIs face, irrespective of the country they have been established in: the risk of nationalism. Nationalism against an FDI can take many forms, from public boycott against the investment's products due to policies of the home state of the investment[92], to administrative barriers, such as the denial to grant permissions necessary to do business or even the denial of entry in the country of employers that are nationals of the home state. In this case, the administration, sometimes on the scale of low-rank administrators that share the feelings of the public, undertakes to implement decisions taken on the political level, violating state obligations or abusing existing law.

The issue of nationalism in the field of FDIs has its roots in the notion shared by the public that foreign companies "steal away" the wealth of the country. It is also feared that the investment, if large enough, will dominate the financial field and dictate conditions on the political field as well. Nationalistic sentiment and concern about the economic expansion of a state has appeared even in rich countries[93]. The investment is thus conceived to play a political role apart from its purely financial one. In this sense, financial domination can lead to the undermining of state sovereignty. This holds especially true for countries that share a history of

[91] Infra pp.53-54

[92] Such is the case of the Greek boycott against Dutch products in 1991 due to the policy followed by the Dutch state on the issue of the name of FYROM. A similar boycott was adopted by the Turkish public against Greek products following the arrest of Öcalan.

[93] Such is the case of European countries reacting against the influx of American capital and the reaction of Americans against the acquisition of real estate in American soil by foreigners, see M. Sornarajah, *The International Law on Foreign Investment* p.59

enmity, such as Greece and Turkey, and nationalism is considered one of the biggest concerns of businessmen of the two sides doing business with the other side[94]. The issue is further exacerbated by the fact that the state plays an important role in the economies of both countries, dictating the rules and conceding little room to the forces of the market to have any impact[95], as well as the fact that nationalism has been a key element in public discourse in both sides.

*3.5 Greek investments in Turkey: cases*

Several cases concerning Greek investments in Turkey, provide examples of the way nationalism can intrude in what is clearly a financial issue. The most prominent is the case of the sale of Finansbank. Following a long period of negotiations, Greece's largest bank, the state-owned National Bank of Greece (NBG) acquired in April 2006 46% of Finansbank, Turkey's 8th largest bank at the time. The price for the transaction was a record-breaking US$ 2.77bn (3.6 times book value). In January 2007, NBG proceeded to raise its share in Finansbank to 89.44% for an additional US$ 2.25 bn, thus making Finansbank by far the most important Greek investment in Turkey.

Reactions concerning the transaction were diverse in both states. Although the agreement was hailed as a positive action by business circles in Turkey[96], the most nationalistic segment of the Turkish society expressed its concern about the control a Greek company would hold on the economy. Numerous articles reporting the alleged withdrawal of€3m from Finansbank by the

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[94] Dimitris Tsarouhas, "The political economy of Greek-Turkish relations" p.46
[95] Demet Yalcin Mousseau, "Turkey and the EU: The Importance of Markets", *Survival*, vol.48, no.3, October 2006
[96] An interesting remark coming from a Turkish businesswoman at the wake of the Finansbank sale was: "Our government is willing to sell to whoever pays the biggest prize, even if it's a Greek…We must attract the best investors to our country" . "Καλώς όρισες…Ελλάδα" [Kalos orises…Ellada-Welcome Greece] *Kathimerini* 8.4.2006

army as a sign of disproval[97] or even pointing out the financial interests of the Greek Church in NBG[98]-striking, thus, a rather sensitive chord of Turkish nationalism- were published in the aftermath of the transaction. What most journalists and pundits agreed upon, however, was the fact that an agreement of this size would have never taken place without the active encouragement of both governments[99], which gave their specific assurance that no geopolitical risks existed anymore. The change in the business climate between the two countries, a result of the new approach adopted by both governments after 1999, is reflected in the words of the previous owner of Finansbank, Hüsnü Özyeğin, who stated that he would never think that the possibility to sell the bank to a Greek bank even existed ten years before the actual sale took place[100].

Not all similar cases had a happy ending. In August 2007, Turkey's Banking Regulation and Supervisory Agency (BDDK) did not permit the sale of a 50% share of Alternatif Bank to Alpha Bank, Greece's largest private bank. The decision came as an unexpected blow to the deal, as the agency did not give its permission on legal grounds, without at the same time referring to the specific provisions that made Alpha Bank ineligible to proceed with the deal. The decision was at first interpreted to be a case of reciprocity, as Ziraat Bank had encountered difficulties by the Greek authorities in its attempt to expand to the Greek market[101]. Even though the reasons for the final collapse of the deal seem to be financial, as both sides were not content with the results of the negotiations, it is interesting to notice that a political reason was officially presented as the

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[97] Constantine Papadopoulos, "Greek-Turkish Economic Cooperation: Guarantor of Détente or Hostage to Politics?", South East European Studies at Oxford, Occasional paper No.8 March 2008 p.29 note 125
[98] "Greek Church holds shares in NBG" *Turkish Daily News* 6.4.2006
[99] "Εξαγορά με πολιτικές πλάτες" [Eksagora me politikes plates-Buy out with political backing] *Eleftherotypia* 28.5.2006
[100] "Γιατί πούλησα στην Εθνική" [Giati poulisa stin Ethinki-The reason I sold to the NBG] *Eleftherotypia* 16.4.2006
[101] "Ανεξήγητο γιοκ, ίσως επιμείνει η Alpha" [Aneksigito yok, isos epimeinei I Alpha-Unreasonable yok, Alpha may insist] *Eleftherotypia* 9.8.2007

key to the decision of the BDDK; namely the fact that P. Apostolidis, a member of the board of Alpha Bank had served as head of the Greek Intelligence Services[102].

In a similar case, the Marfin Investment Group (MIG), a Greek holding company, was not allowed to participate in the auction of the Turkish shipping company UN Ro-Ro Işletmeleri A.S. The reason given for this ruling was the fact that a company belonging to the group had Cypriot shareholders[103].

BITs are a way of securing investments against nationalism. Through the use of provisions on national treatment, expropriation of property and repatriation of profits, which will be presented at a later point, the investment is protected from unfounded administrative action. Furthermore, the inclusion of the provision on full protection of the investment in a treaty forces the state to take positive action against possible hostile actions by members of the public. The number of BITs signed during the last years is an indicative of the importance the markets have acquired in a globalised economy.

Despite the formal protection that a BIT grants to an investment, the final and most efficient guarantor of an investment is the contemporary economic reality. Any state that chooses to keep its distance from the globalised markets risks being left behind financially. In addition, intensified trade and closer international financial relations have rendered this kind of practices obsolete and ineffective. However, it should be noted that in times of economic crisis, such as the one that started in 2008, financial nationalism in the form of protectionism quickly emerges even among states that traditionally have good relations and are strongly supportive of liberalism

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[102] "BBDK'dan Alpha bank-Albank evliliğe 'kırmızı kart' güvenlik gerekçesiyle çıktı" [ Red card to the Alpha Bank-Albank marriage by the BBDK on security reasons] *Radikal* 10.8.2007

[103] Constantine Papadopoulos, "Greek-Turkish Economic Cooperation: Guarantor of Détente or Hostage to Politics?" p30 note 130

in the economy[104]. The way bilateral investments in Turkey and Greece would react in an environment of financial crisis therefore remains to be tested.

*3.6 Economic cooperation as a medium of policy*

The question of whether bilateral FDIs can promote regional stability or they remain hostages to political tensions also remains unanswered. Greek-Turkish economic relations were almost non-existent before 1999. The two countries seemed to take little interest in one another economically, preferring to do business with other countries in the region that were financially more attractive. In this way, they created parallel business networks in a series of countries, mostly located in the Balkans, which, though not directly competitive to one another, remain more important for each country than the bilateral economic transactions, both in terms of trade and investments to this date. This is in contrast with what would be expected from two countries with close geographic proximity and which had already developed external investment networks. This observation can be attributed to the lack of the necessary framework to do business with each other. As mentioned earlier, with the exception of the short spell of the Davos period in 1988, there were almost no bilateral treaties or agreements since 1974. There is no clearer example of the way legislation (or the lack of it) of both countries becomes the manifestation of political choices. For a long period after 1974 issues of everyday importance, such as the rise in illegal immigration over the Aegean or drug trafficking remained unresolved, hostages to the impasse reached in high politics issues.

Political tension, therefore, shaped the way economic relations between the two countries had developed, both indirectly, with the lack of progress on an institutional and legislative level

[104] "Brazilian President Luiz Inacio Lula da Silva said the US and other developed countries should not turn to protectionism" in *BBC* G20:Economic summit snapsot, 2.4.2009
http://news.bbc.co.uk/2/hi/in_depth/business/2009/g20/7897719.stm

as shown above, and directly, with the simple lack of will of businessmen to deal with each other[105].

Many of the bilateral treaties signed in the context of the rapprochement process after 1999 dealt with issues that affected the business environment between the two countries. In this way the framework for the development of financial ties was formed in an adequate manner for the first time. Furthermore, the two states actively encouraged closer relations, committing important amounts of capital in common ventures in the fields of energy (construction of the Karacabey-Komotini gas pipe, connection of the two countries' electric grid), transport (construction of Egnatia and Ipsala-Istanbul roads) and investments (both the National Bank of Greece and Ziraat Bankasi, the two most important investments on either side are state owned).

*3.7 Trade and politics*

The rise in the volume of bilateral trade is being touted as the first important pillar on which economic cooperation can contribute to the amelioration of bilateral relations. Bilateral trade is indeed showing a steady trend of increase, rising from $940 million in 2002 to $2.72 billion in 2006. Though still a long way behind the appointed aim of $5 billion, which would supposedly mark the point of no return for Greek-Turkish relations, the percentage rise is impressive. When inspected more closely, however, the data do not justify the optimism shown on the political level. Only 1.6 % of Turkish exports in 2006 were directed to Greece ($1.5 bn out of a total of $91.7 bn) which ranks 15th in importance as an export market for Turkey. At the

[105] Rahmi Koç, the then chairman of the Executive Board of the Turkish-Greek business forum, in the wake of the Öcalan affair had stated that relations between the two countries were irreparable and had announced the cancelling of all joint meetings of the council. Constantine Papadopoulos, "Greek-Turkish Economic Cooperation: Guarantor of Détente or Hostage to Politics?" p.2, see also Soli Özel, "Rapprochement on Non-Governmental Level: The Story of the Turkish Greek Forum" pp.269-290 in Mustafa Aydin and Kostas Ifantis (eds.). *Turkish-Greek Relations: The Security Dilemma in the Aegean* (Portland OR: Routledge 2004)

same time, imports from Greece accounted for 0.8% of total Turkish imports ($1.04 bn out of $137 bn), ranking 32nd in the relevant list.

Roughly the same numbers are given by the Greek side for the same year[106], making Turkey the 6th most important export market for Greek products (5.1% of total Greek exports) while Turkish products imports accounted for 2.6% of total Greek imports, placing Turkey in the 13th position in the relevant list. Both countries have much more developed trade relations with other countries in the area, such as Bulgaria and Romania. It is evident that, despite significant increase in both sides, there is room for improvement. Even if the US$5 billion threshold is reached, however, the share of bilateral trade compared to the overall trade bill of both countries would remain relatively small. It would therefore be doubtful if the increase in trade could have any important impact on policy decisions in both countries in the foreseeable future. This holds especially true for Turkey which, due to the large size of its economy, is less dependent on bilateral trade than Greece[107]. This is evident in the bilateral trade deficit which steadily grows in favour of Turkey. The imbalance in the developing trade relations, an imbalance which is reinforced by the nature of goods exported by Greece to Turkey and the subsequent vulnerability of Greek exports, casts further doubts on whether economic ties, at least in the field of trade, can guarantee reduced tension on the bilateral relations[108]. The overall picture is completed if the fact that the EU is by far the most important trade partner of Turkey is taken into consideration. Turkey's foreign policy is far more likely to be affected by considerations related to trade with other EU members, rather than the marginal ones with Greece. As the whole rapprochement

[106] Figures given by the two sides do not match precisely, see Constantine Papadopoulos, "Greek-Turkish Economic Cooperation: Guarantor of Détente or Hostage to Politics?"
[107] Ibid. p.12
[108] Dimitris Tsarouhas, "The political economy of Greek-Turkish relations" p.46

process is based on the clause of closer EU-Turkey relations, the priority political choices of Greece have over its trade relations, rather than the other way round, is highlighted once more.

*3.8 Bilateral investments*

Foreign Direct Investment, on the other hand, represents a more important commitment to bilateral economic cooperation. The amount of capital usually involved, as well as the long term planning needed for an investment to be lucrative, reveals the confidence one side has on the financial prospects of the other side. It also shows the willingness of the parties involved to cooperate on the institutional level and the trust the investor has on the administrative, political and legal order in the host state[109]. In terms of interdependence, as well as the requirement for positive relations between the home and host state, FDIs represent probably the most efficient means for the improvement of bilateral relations.

Greek-Turkish bilateral FDIs however are not balanced in terms of size. Following the unprecedented investment of $2.9 bn made by the National Bank of Greece in order to acquire a controlling stake in Finansbank, EFG Eurobank became the second Greek bank to invest in Turkey, acquiring 70% of Tekfenbank. Alpha Bank, the largest private bank in Greece has also been trying to find an investment opportunity in Turkey[110].

Following the same pattern that was witnessed during the economic expansion of Greek companies in the Balkans during the 1990's[111], smaller scale investments took place in the wake of the larger investments in the banking sector. These companies took advantage of the growing banking network created by Greek banks in Turkey and, based on the financial security provided

[109] Ibid. p.44
[110] Othon Anastasakis, "Power and Interdependence, Uncertainties of Greek-Turkish Rapprochement". *Harvard University Review*, Winter 2007
[111] Jean Bastian, "'Knowing Your Way in the Balkans': Greek Foreign Direct Investment in Southeast Europe", *Southeast European and Black Sea Studies,* vol.4, no.3, September 2004

by them, ventured on a number of business fields. The interests of investing Greek companies are diverse, with investments of various size taking place in a series of fields. Apart from the banking sector, which is by far the most important sector concerning Greek firms, Greek companies are active in the field of textiles, computers, industrial products, plastics, agricultural applications, packaging, pharmaceuticals and cosmetics, fish farming, tourism and constructions.

By 2007, more than 230 Greek firms were operating within Turkey. On the other hand, only 10 Turkish companies had invested in Greece at the same time, mainly in the retail and food sector. Though financial reasons undoubtedly play the most important role in the decision not to invest in Greece, due to the increased labour cost and the unstable tax regime[112], complaints have also been raised by Turkish entrepreneurs against Greek administrative procedures[113]. Most of these complaints have to do with the issue of visas and the work permit regime in Greece which, despite the relevant clause in the BIT[114], follows the strict restrictions posed by the EU. Such restrictions are applied vigorously by the Greek authorities when dealing with Turkish nationals in a case, perhaps, of misconceived reciprocity against similar practices by Turkish authorities[115]. There have been complaints, however, concerning bureaucratic obstacles that hindered the establishment of the first Turkish investment in the banking sector in Greece, the opening of two branches, one in Athens and one in Komotini, by Ziraat bankasi. The branches were finally opened in early 2009, not without further friction with local authorities[116].

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[112] Constantine Papadopoulos, “Greek-Turkish Economic Cooperation: Guarantor of Détente or Hostage to Politics?” p.27

[113] Dimitris Tsarouhas, “The political economy of Greek-Turkish relations” p.48

[114] Infra p.66

[115] Constantine Papadopoulos, “Greek-Turkish Economic Cooperation: Guarantor of Détente or Hostage to Politics?” p.27 des kai p.15

[116] “Παράς με μουσουλμανική ουρά” [Paras me mousoulmaniki oura-Money with a muslim hint] *Eleftherotypia* 22.4.2009

*3.9 Investments and politics*

The major inflow of investments originating from Greece naturally caused some upheaval in both sides. Fears that Greek capital will obtain too much influence were expressed in the most nationalist circles in Turkey, especially concerning the major deals in the banking sector[117]. On the other side, there were concerns, surprisingly coming from the leader of PASOK G. Papandreou about the financial viability of the enterprise and the soundness of the decision to undertake such an investment[118]. The concerns of both sides reflect the uneven development of bilateral investments. On the Turkish side, there is a fear that foreign capital will influence politics and there will be a loss of sovereignty concerning financial matters. On the Greek side, there is an uneasiness concerning the size of the capital committed in a state that is not considered politically safe. While both sides' fears are unfounded[119] and indeed are shared by only a small part of the society[120] in both countries, they demonstrate the reason why bilateral investments have to be equally distributed if they are to have a positive impact in bilateral political relations.

One-sided investments, as is the case between Greece and Turkey, can be the reason for concern for the party that is primarily the host state, in this case Turkey. In this way, closer economic relations can lead to increasing economic competition between the two states and to the creation of nationalistic sentiments. History provides numerous examples of tensions created by economic rivalry among states that had a high level of economic relations[121]. In such an event, states generally tend to adopt a protectionist stance concerning their nationals' financial

[117] Constantine Papadopoulos, "Greek-Turkish Economic Cooperation: Guarantor of Détente or Hostage to Politics?" p.29
[118] It should be stressed though that the operation site of the investment did not cause explicit reactions by G. Papandreou, see Dimitris Tsarouhas, "The political economy of Greek-Turkish relations" p.50
[119] Finansbank accounted for a third of NBG's profits the following year
[120] Constantine Papadopoulos, "Greek-Turkish Economic Cooperation: Guarantor of Détente or Hostage to Politics?" p. 31
[121] Most notably France and Germany before WWI

interests. Greece and Turkey have been known to revert to such policies in the past and could do so in the future, despite the fact that Greece is at the forefront of the movement for open markets, being a member of the EU and the Economic and Monetary Union, and the fact that Turkey seeks to gain a similar position through its negotiations with the EU[122].

The Greek fears of overcommitment in the Turkish market are the other side of the coin, reflecting uneven development of the bilateral investments. While economic cooperation is supposed to promote stability through the creation of common interests and the subsequent interdependence, one-sided investments provoke fears of overly dependence on the whim of the host state, leaving national interests vulnerable to the good will of a potentially hostile state. The fear of extreme interdependence is visible in all aspects of financial activities, such as the energy sector[123].

### *3.10 Prospects of economic cooperation between Greece and Turkey*

Closer economic relations undoubtedly promote the creation of common interest and business networks, hence allowing for unofficial actors to emerge and have a say in the formation of foreign policy in the two states. This has been the most significant qualitative difference in the present period of rapprochement compared to the previous ones[124]. The fact that the change in government in both sides did not have any effect in the rapprochement process is a positive indicator that the process itself is enduring and is not completely dependent on the political situation. It also indicates that there is widespread support for the process in both

[122] Constantine Papadopoulos, "Greek-Turkish Economic Cooperation: Guarantor of Détente or Hostage to Politics?" p.31
[123] Greece has refused Turkish proposals to provide electricity to the Greek islands of Eastern Aegean and prefers to provide electricity through its own means, at a higher cost. Constantine Papadopoulos, "Greek-Turkish Economic Cooperation: Guarantor of Détente or Hostage to Politics?" p.25
[124] Othon Anastasakis, "Power and Interdependence, Uncertainties of Greek-Turkish Rapprochement". *Harvard University Review*, Winter 2007

countries. FDIs are the most committing means for the creation of such strong economic relations. Joint ventures, for example, are the clearest case of companies from different states sharing common financial interests. As such, they are ideal for the promotion of a policy of interdependence and eventual détente between the two states[125].

Since the amount of capital invested in both countries has not yet reached significant proportions and additionally is not equally distributed in both countries, it is unlikely that it will have any serious impact on foreign policy decision making, especially as far as Turkey is concerned. In addition, it is the political leadership and not businessmen in the two states that has so far taken the initiative for closer economic cooperation and not the other way round. However, economic cooperation has a wider effect in bilateral relations. Economic cooperation by itself does not seem able at the moment to lead to the resolution of hard politics issues such as security-related issues. However, it can have a direct impact on the perception of the other state by the public. The other side is no longer portrayed with negative colours, but is rather the everyday partner at work.

This may be the most important benefit of economic cooperation. Stronger economic ties mean stronger personal and societal ties. This may eventually lead to the shift of paradigm needed by both sides in order for an enduring reconciliation to be reached[126]. A state where a reconciliation process is pursued not because of the narrow strategic advantages a zero sum game entails, but because it is in the true interest of the two people, has to be reached. Economic cooperation seems a way to achieve this state.

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[125] The joint venture of two construction companies, one Turkish, one Greek, for the creation of Blue City, a €20 billion building project in Oman is a good example of a common project in third countries, showing that economic cooperation between Turkey and Greece need not remain restricted to the borders of the two countries.

[126] Tarik Oğuzlu, "The Latest Turkish-Greek Détente: Instrumentalist Play for EU Membership, or Long-term Institutionalist Cooperation?", *Cambridge Review of International Affairs*, vol.17 no.2, July 2004

Closer economic relations have taken advantage mostly out of the European aspirations of Turkey. In fact, the whole rapprochement process is based on the notion that, however distant, there is a possibility that Turkey will eventually become a member of the EU. There is a danger, then, that the whole process in general, and the economic cooperation in particular, would be harmed should Turkey be refused such a prospect. If, on the other hand, economic ties between the two countries are consolidated, there is no reason why they shouldn't form the basis for broader cooperation between the two countries outside the context of the EU and the Europeanization of Turkey.

## Chapter II

## Foreign Direct Investment in International and Domestic Law

### 1. FDI in International Law

The growing importance of FDI in the global economy means that there is an increasing need for regulation, both domestically and on the international level. As FDIs have a decisive impact on the economy and the financial stability of many developing states, the need for a legal framework that promotes legal certainty for both states and investing companies, by outlining their respective rights and obligations is becoming increasingly important[127]. Indeed such attempts have been made as far as international law is concerned, though the absence of coercion in international law makes it difficult for states unwilling to cede part of their sovereign rights

[127] Afroditi-Sofia Georgiadou, *The regulation of foreign direct investments under International, European and Greek Law: with a special reference to financial services' investments*, (Thessaloniki: Sakkoulas 2004) p.24

over their control on their economic life to cooperate. Most attempts to regulate FDI are therefore formed on a voluntary basis or are presented as mere guidelines, not law.

The rapid increase of FDI combined with the volatility of the political and economical environment in which investments find themselves have put pressure on states for the formation of supra-national legislation from an early stage. The first rules concerning foreign investment were based on customary international practice in the form of standards of protection. These standards, however, such as the fair and equitable treatment standard, could not be considered as a binding rule for the host state, as they did not derive from any of the generally accepted sources of law. They were mostly considered to be points of reference, in an attempt to standardize the behaviour of the actors in a foreign investment. A host state, though not forced to comply with these standards, often found it more advantageous to do so if it wanted to remain an attractive foreign capital destination[128].

The most important attempt to regulate FDIs made by an international organization is the draft United Nations "Code of conduct for transnational corporations". This initiative was the result of the political pressure by the developing countries which, especially after the decolonization period, held the majority within the UN and were eager to harness the political power of multinational corporations doing business within their borders. The draft code seeks to identify the obligations the transnational corporation has against its host state and to a lesser extent the obligations that arise for the host state as well[129]. Differences on the way FDI is viewed by capital exporting and capital importing states means that the code remains on a draft stage. However, even great capital exporting states, such as the United States, have not

[128] Petros Stagos, *Το νομικό πλαίσιο των διεθνών επενδύσεων* [To nomiko plaisio ton diethnon ependyseon-The Legal framework of international investments], (Thessaloniki: Sakkoulas 2005) p.8
[129] M. Sornarajah, *The International Law on Foreign Investment* p.61, p.190

withdrawn their support to the draft code as they gradually become recipients of foreign investments too[130].

The most important multilateral texts on investments are those composed by international economic organizations such as the Organization for Economic Cooperation and Development (OECD) and the World Bank. The OECD published in 1961 the Code for the Liberalization of Capital Movements which is binding for OECD members only and therefore lacks worldwide applicability as well as the Code for the Liberalization of Current Invisible Operations. In 1976 it created a voluntary instrument for its members in the form of the Declaration and Decisions on International Investments and Multinational Enterprises[131]. Finally, an attempt was made for the creation of a "charter" for international investments. The Multilateral Agreement on Investments (MAI), launched by the OECD in 1995, was first negotiated by its members with the aim for developing countries to adhere to it at a future point. However, the fierce opposition it met by developing countries who felt that their exclusion was unjustifiable, as well as by NGOs meant that MAI , after long negotiations had to be abandoned[132].

The World Bank also had an important impact in the creation of international law on FDI[133]. In 1992 it issued the Guidelines on the Treatment of FDI which again are not binding for states as the World Bank lacks the legal authorization to produce legally binding texts[134]. The most important contribution of the World Bank though, is the conclusion of two conventions that were drafted within its ranks and tend to have a global application: The "Convention on the Settlement of Investment Disputes Between States and Nationals of Other States", signed in

[130] *Ibid.* p. 194
[131] Afroditi-Sofia Georgiadou, *The regulation of foreign direct investments under International, European and Greek Law: with a special reference to financial services' investments*
[132] Ibid.
[133] Ibrahim F.I. Shihata, "Avoidance and Settlement of Disputes-The World Bank's Approach and Experience", *International Law FORUM du droit international*, vol.1, no.2, May 1999, p.96
[134] M. Sornarajah, *The International Law on Foreign Investment* p.212

Washington on the 18th of March 1965, which established the International Centre for the Settlement of Investment Disputes (ICSID)[135] and the Seoul Convention of 11th of October, which created the Multilateral Investment Guarantee Agency (MIGA)[136]. Greece and Turkey both take part in the two conventions and are therefore bound by their provisions. This means that even if the two states had not signed a bilateral treaty, the legal status of investments between the two countries would still be governed by these two conventions.

However, the most important way states promote investment protection remains the conclusion of Bilateral Investment Treaties (BIT). Over 2000 treaties have been signed over the past years[137], making BITs the medium drawing much attention by international law theory.

As far as domestic law is concerned, each state forms its own law on foreign investment, trying on the one hand to promote the financial interests of its nationals on an international level while at the same time trying to protect domestic capital from foreign competition.

## 2. Domestic Law and FDIs: The case of Greek Legislative Decree 2687/53 and Turkish Law 4875/2003

### *2.1 FDI Legislation in Greece and Turkey: The early steps*

Greece and Turkey have, for the greater part of the 20th century, been recipients of FDI. This reality has been reflected in the two countries' domestic legislation which is primarily interested on the one hand in providing incentives for investments, in an effort to make their

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[135] http://icsid.worldbank.org/ICSID/Index.jsp
[136] http://www.miga.org/
[137] Petros Stagos, *Το νομικό πλαίσιο των διεθνών επενδύσεων* [To nomiko plaisio ton diethnon ependyseon-The Legal framework of international investments] p.12

economies more attractive to foreign capital, and on the other hand creating and exhaustive set of rules regulating entry and behaviour of foreign investments, as the states try to extract as many economic benefits as possible and at the same time protect local capital. The gradual improvement of the two countries' relative position in the global and particularly regional economy and their transformation from recipient states to capital exporting ones have signaled a change in the priorities of the law makers of the two countries. Greece for example, apart from taking part in virtually all the international initiatives for the creation of treaties regulating foreign investments, has been active in its effort to sign bilateral investment treaties with a number of states, most of which are in the Balkans, the Black Sea and Eastern Europe[138].

The domestic legislation concerning foreign investments in the two countries was first formed around roughly the same time and the texts bear many similarities, reflecting the similar concerns and aspirations of the two countries at the time. The basic piece of legislation concerning foreign investments in the Greek legal order is Legislative Decree 2687/1953 concerning "investments and protection of foreign capital", whereas the basic piece of legislation in the Turkish law system came into force one year later, introduced as Law 6224/18.1.1954. Both texts, reflecting the priorities of the two states at the time, provide for an impressive number of exceptions and facilities for the entry of foreign capital, creating a status of almost double standards in favour of foreign investment companies. We should bear in mind that in the 1950's, when this particular piece of legislation came into force, Greece had just emerged from WWII and a devastating four-year civil war that had left the country without any sort of intact economic function or infrastructure. At the same time, Turkey, though not directly involved in WWII, had suffered too from the difficult situation worldwide. Both countries had just affirmed their position in the free-economy camp and were struggling to attract foreign capital that would

[138] Ibid. p.5

help rebuild their economies. This capital was expected to come from their capital exporting allies in NATO.

*2.2 Current Legislation*

In the course of more than fifty years since its introduction, several provisions of the Greek investment Law have been amended and several more have been made redundant by more specific provisions found in BITs between Greece and other countries, granting more specific rights to the countries concerned. However, the basic structure of the legal framework concerning investments remains unchanged.

In Turkey, on the other hand, the law concerning foreign investments was amended twice. Once with the introduction of the decree of June 7, 1995 (decree No 95/6990), whose purpose was to establish the principles of promoting foreign capital which will flow into Turkey (art.1) and then with the "communiqué concerning the foreign capital framework decree", put into force in August 24, 1995, whose purpose was to explain the principles put foreword by the aforementioned decree. After the rise of the AKP in government, however, as part of the broader reforms in the economy sector, Law 6224/1954 was replaced by a new investment law, Law 4875/2003. The new investment law took a different approach to foreign investments, more "in accordance with modern notions, definitions and applications concerning foreign investments", according to its authors[139]. It aims to create a positive environment for foreign capital not through the granting of extra-ordinary privileges as was the case in most national legislations including the Greek one, but through battling bureaucracy. In pursuit of this goal, the Turkish

[139]" About the foreign direct investment law" bulletin published by the Turkish Undersecretariat of Treasury, available at http://www.treasury.gov.tr/irj/portal/anonymous?guest_user=treasury&NavigationTarget=pcd:portal_content/com.hazine.folders.Hazine_Icin_Icerik/com.hazine.folders.English/com.hazine.folders.Roller/com.hazine.roles.Treasury_Anonymous_User/com.hazine.worksets.Legislation/com.hazine.iviews.Foreign_Investment_Legislation

investment law has changed its focus from screening, approval, share transfer and minimum capital restrictions to creating a monitoring system[140].

*2.3 Screening*

The main tool most states adopt in order to secure their interests as far as foreign investments are concerned, is the creation of a government committee, responsible for the filtering of the investing companies that will be allowed entry in the country. These committees in essence play a screening role on the issue of entry and represent the biggest obstacle a foreign investor faces in the initial phases of establishment of an FDI, as they can apply criteria other than purely financial (political, societal etc.) to reach their decision.

Greek Legislative Decree 2687/1953 establishes a committee of this kind in art.3. Every foreign investor that wants to establish a company in Greece has first to apply to the Ministry of Economy and Finance, in order to get permission to proceed with the investment. The committee, which is part of the Directorate of Foreign Capital, under the General Secretariat of Investment and Development, examines if the investment in question fulfills the economic and legal prerequisites and its function is in accordance to the economic policies of the state, i.e. whether the investment would promote economic development of the country. If the criteria are fulfilled, the investment's entry and the conditions on which this entry is done are approved by Law published in the official Gazette (ar.3§2). This approval of entry, which can not be revoked concerning the conditions on which it was granted, also guarantees that the investment is

[140] "Key questions": question No 2, bulletin published by the Turkish Undersecretariat of Treasury, available at http://www.treasury.gov.tr/irj/portal/anonymous?guest_user=treasury&NavigationTarget=pcd:portal_content/com.hazine.folders.Hazine_Icin_Icerik/com.hazine.folders.English/com.hazine.folders.Roller/com.hazine.roles.Treasury_Anonymous_User/com.hazine.worksets.Legislation/com.hazine.iviews.Foreign_Investment_Legislation

protected by the domestic regulation concerning investments. Any exceptions to the law will have to be agreed upon individually, with the consent of the investor[141].

The Turkish investment Law takes a radically different approach to the issue. Foreign investors are free to make foreign direct investments and establish companies in Turkey, as long as they take a form recognized by the Turkish commercial Law (ar. 3 Law 4875/2003). Under Law 6224/54 (esp. Decree no 95/6990 ar.3), the Undersecretariat of the Treasury played a screening role, having in effect the final say as to which company is allowed to do business within the borders of Turkey. The new law reorganized fundamentally the role and function of this body. The Undesecretariat is now responsible for the formation of policies concerning foreign investments. In order to realize its new function, the Undersecretariat is entitled to ask for yearly data by every foreign investment in Turkey (ar.4), even those established under the provisions of the old investment Law. The new investment Law has therefore replaced the ex ante control of investments, which were scrutinized before entry in Turkey and were subject to screening by the Undersecreteriat, with an ex-post monitoring system where every investment can be established freely but is subject to control by the Undersecretariat in its new, regulating role[142].

*2.4 Capital Transfers Restrictions*

The second restriction that is generally posed by the host states to foreign investments is capital transfers restrictions. In this way, the state secures that the investment made will not be an opportunistic scheme but will be an investment committed to the development of the economy.

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[141] For an example of unilateral amendment of guarantees made by Greece see Antonias Dimolitsa, "Διαιτητικές Συμφωνίες και Ξένες Επενδύσεις" [Diaititikes Symfonies kai Ksenes Ependyseis-Arbitration Agreements and Foreign Investments], Nomiko Vima, vol. 36

[142] Ibid.

However, capital transfer restrictions are seen as major obstacle and therefore greatly diminish the attraction of an economy, especially in the last decades, when capital movement worldwide has known an unprecedented rise and is seen as an everyday practice.

The main restriction posed by the Greek domestic law concerning foreign investments, apart from the screening and filtering done by the ministry committee, is limitations to capital movement. A series of restrictive clauses are set in an attempt to make sure that opportunistic capital placement will be avoided and that any investment made will be tied to the country for a period of time. Therefore, article 5§1 of Law 4256/1962 sets a ratio of 7/10 to the currency allowed to be exported from the country as repatriated capital or profits compared to the currency imported from exports of goods made from the investment. Furthermore, loan capital is allowed to be repatriated up to an annual rate of 20%. Finally, repatriation of capital and profits is restricted by ar. 5 of LD 2687/1953. According to this article, repatriation of capital is not allowed earlier than a full year has passed from its entry. In addition, currency exported for the repatriation of capital can not exceed 10% of the imported capital. Currency export for the payment of profits or interest abroad is also restricted to a rate of up to 12% of imported capital annually.

As mentioned earlier, most of the restrictions concerning capital movement posed with the present law have been revised. The most serious revision of the restrictions is the liberalization of capital movements between Greece and the EU states[143]. Under pressure from daily practice and demands, the capital movement restrictions have also been annulled for a series of companies based on countries which have signed BITs with Greece. This is the case with Turkey as well, as article 5 of the BIT makes clear that no capital movement restrictions are valid concerning capital transfers between the two countries.

[143] ΠΔ 96/1993 (Presidential Decree 96/1993)

The Turkish law maker, taking a bold step at the domestic law level, provides the same level of capital transfer freedom in art. 3§c. Stepping in line with the everyday practice and the demands of foreign investors, Turkey has lifted all restrictions on the transfer of net profits, dividends, proceeds from the sale or liquidation of all or any part of an investment, compensation payments, amounts arising from license, management and similar agreements and reimbursements and interest payments arising from foreign loans through banks or special financial institutions. Coupled with the aforementioned freedom of establishment of foreign companies, this makes the Turkish economy a rather deregulated economy, in accordance with the Turkish government's wish to attract foreign investors by making it easy for them to do business in Turkey, rather than grant them special benefits which local firms do not enjoy.

*2.5 Protective Clauses*

This change of attitude is evident if we compare the benefits that the Greek and Turkish investment laws offer to foreign investors. The only general principle which the Turkish Law recognizes to foreign investors is that of national treatment. According to art.3§a part b, "foreign investors shall be subject to equal treatment with domestic investors". This provision again reflects the wish of the Turkish legislator to make things as clear and simple as possible concerning the legal framework of the establishment of a foreign investment. Foreign investments are free to do business in Turkey; they are recognized as Turkish companies enjoying the privileges and the responsibilities the Turkish commercial Law recognizes and are guaranteed that they will not be treated in a discriminatory way.

The Greek investment Law on the other hand provides a wider range of protection to foreign investments. Article 10 states that companies formed by foreign capital are treated as

beneficially as any other similar enterprise in the state (§1). The second paragraph of the article states that in case a company formed by foreign capital is granted more favourable terms than other, previously founded foreign capital companies, the favourable terms are extended to the previously formed company as well on the condition that it files a petition to gain the more privileged status[144]. The Greek state, in essence, implements without discretion as to the state of origin the national treatment standard (§1) and the most favoured nation treatment standard to all foreign investments in its territory. It therefore surrenders an important card in bilateral negotiations, as Greece can not bargain for a similar treatment of Greek investments in the other state. The inclusion of these two standards in the BIT between Greece and Turkey has therefore only a reaffirming role for the Turkish investor, as the investment would be treated in the same way based on Greek domestic law alone as well.

*2.6 Expropriation, Arbitration and Employment of Foreign Nationals*

As far as special provisions are concerned, the Turkish investment Law, which is more restricted in this aspect than the Greek one, makes specific reference to three issues: expropriation and nationalization; dispute settlement and the employment of foreign staff. Both the Greek and the Turkish Law make specific reference to the protection of property of the investor. According to the Greek investment Law there is a prohibition of expropriation of assets that belong to a foreign investment settled in Greece (ar.11). The investor's property is further protected from requisition by state agents unless it takes place in a state of war and requisition is necessary for the armed forces of the state, in which case fair compensation is owed to the investor. In case a dispute concerning the amount owed arises, the same article provides for the creation of an arbitral tribunal. The Turkish investment Law has a similar provision in art.3§b,

[144] See for example 2271/1995 ΣτΕ

which prohibits expropriation or nationalization of foreign investments, unless public interest is served, in which case due compensation is owed to the investor. It is needless to point out that the term "public interest" is so vague that it can lead to the annulment of the provision once it is put into practice, unlike the Greek Law which states that "...any expropriation is prohibited"(art. 11§1). In order to provide efficient protection to the foreign investor, the provision of art.3§b has to be supported by the jurisprudence of the Turkish courts which will hopefully be accumulated through time.

Both investment Laws also give the right to foreign investment companies to employ staff that are not nationals of the home state. Art.3§g of the Turkish law and art.7 of the Greek Law and ar. 22 of Law 1975/1991 give special rights as far as entry and residence in the country are concerned to key personnel to be employed in the foreign investment, circumventing possible administrative obstacles concerning the entry of foreign nationals. This is particularly important for Turkish investments in Greece, as Turkish nationals still require a visa to enter Greece, putting Turkish companies at a disadvantage compared to EU state companies whose staff enjoys the freedom of persons movement within the borders of the EU.

The Greek investment Law also includes a clause on the settlement of disputes arising from differences in the interpretation of the clauses of the Law or from legal gaps. According to art.12 disputes of this kind can be solved through arbitration, thus rendering the appeal of the investor to national courts unnecessary. A similar clause is found in the Turkish investment Law (art.3§e ). Arbitration is provided as one alternative among others for the settlement of disputes arising from investment agreements subject to private law and investment disputes arising from public service concessions contracts and conditions which are concluded with foreign investors.

It should be noted that provisions similar to the ones found in the domestic legislation of the two states on expropriation, foreign staff employment and dispute settlement are repeated in the BIT signed by the two states. The provisions of the BIT, being part of an international agreement enjoy priority compared to domestic laws and are not subject to change unless there is bilateral agreement on the amendments made, unlike national legislation which is subject to change in accordance to the will of the government.

*2.7 Further Protective Clauses*

The Greek investment Law has adopted a more traditional approach to foreign investment and, together with the important restrictions it poses on foreign investments, also grants a series of important benefits that aim to make Greece an attractive destination for foreign capital. These benefits include a series of advantages in the form of exceptions from domestic legal obligations and the lifting of possible administrative obstacles.

The benefits that the foreign investment enjoys after its establishment cover a wide range of issues that target to particular goals that the state pursues. Specific forms of investment enjoy a rather advantageous status of tax exemption. Investments in the exporting sector, the mine industry or companies whose business action save up foreign exchange for Greece are charged with reduced tax rates or are totally exempted from taxation for a period of time of up to ten years for a series of actions. These include the import of machinery and spare parts that are used in the investment production, fares and taxes owed to local authorities, port facilities etc and fares for the establishment of securities for foreign capital. It can also be agreed between the investor and the state that the taxation rate will remain fixed for as long as ten years, securing thus that the investment will be protected from abrupt changes in taxation policy of the state

(ar.8§4). However, the relativity of the incentives presented here and the way they are used by the state as a means to realize its goals is evident in the same article, as the Greek state retains its right to revoke the above mentioned rights if the investment no longer fulfills the criteria on which the benefits were granted in the first place (ar.8 §2).

Further benefits include the prohibition of export restrictions and export taxes, subject to the needs of the country and national security -an exception so vague that can easily lead to the practical annulment of the benefits-(ar.8§4) and the right to do business and keep books in foreign currency (ar.9).

As mentioned above, apart from the incentives given to the investor with Legislative Degree 2687/1953, which in any case have been replaced or modified with newer legislation, the Greek legislator has granted a series of exceptions and incentives beneficial to the foreign investor, usually relative with taxation, for a series of more specified sectors of the economy[145]. In this way, every investment is faced with a different legal framework according to which benefits or controls are implemented, depending on the sector in which the investment is taking place. Greek companies are plagued by the same abundance and regular modification of domestic laws too and complains of this kind are frequent by Greek businessmen[146]. The different approach of the Turkish legislator in investment law, at least in principle, is evident.

[145] Thus, Legislative Decree 2687/1953 was amended first by law 4171/1961and then by Legislative Decrees 4256/1961 and 916/1971as far as investments exceeding Drs 90 million (and later Drs 150 million- Law 159/75) were concerned. Finally, Legislative Decree 4256/1961 was replaced by Law 849/78. This series of laws provided a more relaxed regulatory environment for large investments in the field of capital transfer.

[146] See for example speech of the president of the Hellenic Federation of Enterprises, O. Kyriakopoulos, available in http://www.sev.org.gr/online/viewNews.aspx?id=703&mid=8&lang=gr (in Greek)

*2.8 Real Estate Acquisition in Turkish Law*

A final note concerning the Turkish investment Law should be made with regard to art.3§d. This clause which dealt with access of foreign investments to real estate in Turkey has been annulled by the decision [147] of the Constitutional Court. This decision, which was prompted by a petition filed by the Cumhurriyet Halk Partisi (CHP) party, the main opposition party in the current Turkish parliament, puts, therefore, a restriction to the right of foreign investments to acquire real estate in Turkey. To fill the legal gap, an amendment to the law was passed in July 2008. According to the revised law, foreign physical persons can acquire land property up to certain area limits, while foreign capital companies can acquire real estate in accordance with the activities listed in their articles of association. In addition, an implementing regulation forces foreign companies to get the approval of the military chief of staff and the local authorities in order to buy immovable property[148]. This prohibition violates the principle of equal treatment which is granted by the same article in §a part 2 and comes in contrast to the mentality of the Law. It is also interesting to see how this prohibition will be in tune with the international obligations Turkey has undertaken with a series of international agreements, among which is the BIT with Greece. The EU has already expressed its concern, stating that the Turkish Law concerning land property is not fully consistent with article 56 of the treaty establishing the European community[149].

[147] B.2003/71, R:2008/79 dated 11.3.2008
[148] Commission of the European Communities, *Turkey 2008 Progress Report* p.46
[149] Ibid. p.41

## 3. The Bilateral Investment Treaty between Greece and Turkey

### *3.1 Greek and Turkish investments before the year 2000*

Following the thaw in the bilateral relations that begun in 1999 Greece and Turkey have started a closer cooperation on a number of fields. The political drive for better relations included the development of closer cultural, political and economic ties. The political agenda put forward by foreign affairs ministers Cem and Papandreou resulted in the signing of a series of treaties from the year 2000 onwards on a number of sectors at the low-politics level including trade, tourism, culture, transport, education and economic ties.

Economy and investments in particular is seen as an important pillar for the strengthening of bilateral relations. A 5 billion dollars threshold in trade has been mentioned as “the point of no return”, meaning that the issues at stake would be so high that it would prevent any serious deterioration of the bilateral relations. Despite numerous assurances made by a number of eminent officials, no less than the Turkish Prime Minister himself[150], that this target is not only feasible but easily reachable, this target has yet to materialize.

Up until the year 2000 bilateral investments were virtually non-existent. The two countries have been allies of NATO since 1952 and have considered themselves as part of the same camp during the Cold War being, at least in principle, followers of free market. Capital flow between the two countries, however, had been minimal for over half a century. The reasons for this were twofold: The first reason is political. Foreign investment is particularly vulnerable to political tensions. The climate in the relations between the two NATO allies was hostile for the most part of these fifty years, with the two countries coming close to open conflict on at least three

[150] Constantine Papadopoulos, “Greek-Turkish Economic Cooperation: Guarantor of Détente or Hostage to Politics?”, p. 12

occasions from 1974 onwards. Secondly, the two countries simply lacked the capacity to invest abroad, being primarily recipients of FDI and exporters of labour force. In addition, protection of their own enterprises from regional competition was a priority. Their legislation reflects this concern. With the advent of globalization and the subsequent opening of state-centred economies worldwide, the two countries found themselves in a relatively stronger position towards their neigbouring countries and directed their efforts towards penetrating less developed economies. Both countries chose to concentrate on the easier and less costly aim of investing in the recently opened -and therefore underexploited- economies of the post-communist Balkan countries. In this way, Turkey established a large number of FDIs in Romania and Bulgaria, while Greek businessmen were primarily concerned with setting up business in the Balkans, largely ignoring the Turkish market[151].

*3.2 The Agreement of 20th of January 2000*

The "agreement between the Republic of Turkey and the Hellenic Republic concerning the reciprocal promotion and protection of investments" signed in Ankara on the 20th of January 2000 by Foreign Ministers Cem and Papandreou[152], constitutes the basic legal text binding the two countries on the issue of bilateral investments. It is a bilateral investment treaty that follows the standardized structure of the majority of BITs in which Greece is a party and is part of the network of treaties that Greece has formed in the region in order to promote Greek investments and regulate their protection. As such, it can also be studied as a model text that reveals Greece's concerns and priorities on the field of investment law. It is also useful to

[151] Jean Bastian, "'Knowing Your Way in the Balkans': Greek Foreign Direct Investment in Southeast Europe"
[152] Greek Law N.2907/2001, ratified by the Greek Parliament on 11.4.2001 and coming to force on 24.11.2001

compare the treaty with the BIT between Greece and Bulgaria[153], a neighbouring state with witch Greece also had limited financial relations in the past due to political reasons and which is now an important field for Greek investments. The minor differences in the layout of the two texts can not hide the fact that their provisions, if not their form, are identical. This similarity is even more remarkable when we consider the fact that the treaty with Bulgaria was concluded 6 years earlier than the one with Turkey and that Bulgaria was a state that was emerging from a radical reform of its socioeconomic system. It implies that Greece was the party that took the initiative for the conclusion of both treaties. It is also a sign that behind the "reciprocal promotion of investment" clause, Greece is the party acting as the capital-exporting state as networks of identical treaties such as these are normally formed by states that primarily act as exporters of capital[154].

The treaty itself deals with a series of issues that have emerged through international practice and international law theory such as national treatment and most favoured nation treatment clauses, expropriation of property, repatriation of funds and settlement of disputes. These are issues that almost all BITs worldwide have come to recognize as vitally important and are therefore included in almost every treaty, giving the BITs a semblance of customary practice. The different way that the same issues are tackled by different treaties however, differences arising from different perceptions on law and economic interests of capital exporting states, means that the BITs can not be considered as a source of customary international law[155].

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[153] Greek Law N. 2182/1995
[154] Petros Stagos, *Τ ονομι κό πλαί σι οτ ων δι ε θνών ε πε νδύσε ων* [To nomiko plaisio ton diethnon ependyseon-The Legal framework of international investments], p.12
[155] M. Sornarajah, *The International Law on Foreign Investment* p.74

*3.3 Preamble*

The agreement begins with a declaration of the purpose of the treaty. Following the example set by BITs worldwide, the two states proclaim that their aim is the promotion of the bilateral economic cooperation and they recognize that investments are a helpful means to achieve the desired development of the parties. They accept the international standard of fair and equitable treatment of investments as the basis on which the treaty is formulated and clearly state that the treaty aims to the promotion and reciprocal protection of investments. This is a common enough wording, found in most BITs worldwide, which raises however some consideration.

Firstly, the reciprocity concerning the protection of investments is usually considered to be of a typical or legal nature. The wording of the BIT hides the fact that most treaties are concluded between unequal partners, as one party is usually a capital-exporting state while the other a recipient. This means that there is an imbalance on the obligations undertaken by the two states, as the host state in reality undertakes the protection of a vastly superior number of investments than the home state, finally meaning that there is a greater erosion of sovereignty of the host state[156]. The Greek-Turkish case would seem to deviate from this model, as neither economy is in a dominating position. The relative advantage of the more advanced Greek economy could be counterbalanced by the sheer size of the Turkish economy, the abundance of Turkey's resources and its more developed industrial sector[157]. However, practical results show that capital flow between the two sides is surprisingly one-sided, at least in the first years following the signing of the treaty. Capital is transferred almost exclusively from Greece to Turkey. The reciprocity appearing in the initial declaration then, is of a legal nature, meaning

[156] Ibid. p.237

[157] In 2008 Turkey had a GDP of US$729.443 bn while Greece had a GDP of US$230.291 bn. Greeks on the other hand enjoyed a GDP per capita of US$20.785 while GDP per capita for Turkey mounted to US$10.471 (figures retrieved by IMF, available at www.imf.org)

that every provision of the treaty will be served by the two parties, irrespective of whether there is an actual balancing of interests[158] .

A further concern is the nature of the declaration made at the begining of the treaty. The declaration is clearly placed outside the body of the provisions proper, which are formed in numbered articles. However, general practice in law dictates that every part of the text, including the title of the text, constitutes law and therefore claims can be based on the violation of the statement of the purpose of the treaty. This could mean that a party can consider the treaty void if it claims the other party has not upheld its obligations deriving from the reciprocal nature of the treaty. Apart from that, the broad way that the declaration is worded and its placement, preceding the provisions of the agreement, signifies its role as a general guideline for the interpretation of the whole treaty. In case a dispute concerning the interpretation of a provision of the treaty arises, the interpretation best serving the purpose of the agreement as stated in the declaration should be preferred, i.e. the one that is in pace with the fair and equitable treatment standard and that promotes greater economic cooperation of the two states.

Finally, the question of whether the BIT only applies to investments that serve the aim stated in the declaration should be answered[159]. It could be argued that a state, having proven that a particular investment is not beneficial to its economy or is not promoting economic cooperation between the two countries can deny the particular investment the rights of protection that derive from the present agreement. A claim of this kind however would undermine the status of the agreement, as it would enable a party to abstain from its obligations piecemeal, denying the right of protection to each investment individually. The broad way in which the declaration is worded, apart from making such a claim technically hard to prove, also means that it is easily susceptible

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[158] Petros Stagos, *Το νομικό πλαίσιο των διεθνών επενδύσεων* [To nomiko plaisio ton diethnon ependyseon-The Legal framework of international investments], p.5
[159] M. Sornarajah, *The International Law on Foreign Investment* p.239

to political manipulation. Finally, a claim of this nature would constitute an abuse of right. An approach adhering to the strict application of the agreement should be adopted instead and any investment falling under the provisions of the agreement should enjoy the privileges granted by it.

### *3.4 The definition of the term "investor" in the BIT*

The first article of the agreement is concerned with definitions of terms that are used in the text of the treaty. This is common practice in most international treaties, as it clarifies potential points of dispute and, due to the similarity found among most treaties, it contributes to the common understanding in basic issues concerning international law[160].

The definition of the term "investor" in the treaty is straightforward, as far as natural persons are concerned. A person that has the nationality of one of the parties can be an investor recognized by the agreement. The granting of nationality to natural persons is regulated by the domestic law of each respective country. The issue of legal persons is more complicated. The agreement proposes an indicative list of forms a legal person can take in order to be recognized as an investor. The wording of the text ("such as…") leaves the treaty open for future venturing schemes, not yet adopted by domestic legislation of the two states. However, in order for a legal person to be recognized as such by a party, it has to be formed and organized according to the provisions of domestic law of the other party. The list includes companies, corporations, business associations and partnerships. An attempt is evident for the definition to be as broad as possible on the issue. Both state-owned companies and joint ventures are therefore both undoubtedly recognized as eligible forms of legal persons- investors. The nationality of the legal person is determined by either its seat or the place of its effective economic activities. In this way, it is

[160] Ibid.

possible for a company that is nominally the subject of a third state to enjoy the protection granted by the agreement, if its actual management and activities take place in the territory of one of the two parties.

The natural or legal person has to prove that the criteria set by the rules concerning nationality of the investor's home state and not those of the host state are fulfilled in order to enjoy the protection of the BIT[161]. In this way, investors can take advantage of liberal domestic rules of citizenship of a certain state and, having been granted the nationality can claim the protection of a BIT. Although the application of this rule is somewhat restricted as far as natural persons are concerned, especially in the case of Greece and Turkey which have a rather inflexible system for granting nationality to foreigners, many multinational companies adjust their form to fully exploit the benefits offered by BITs worldwide and essentially use the possibilities of forum-shopping. In this way, an investor of a third party state or even an investor of the host state itself can enjoy the protection offered by a BIT against the host state by establishing a holding company whose single purpose is to grant the investment the desired nationality and enable it to choose the forum it wants for the resolution of any possible disputes with the host state[162]. This forum-shopping in turn further strengthens the importance of BITs and the alternative ways they offer to conflict resolution between investors and states, such as investment treaty arbitration, as a much greater number of investments are able to use their provisions.

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[161] Gus Van Harten and Martin Loughlin, "Investment Treaty Arbitration as a Species of Global Administrative Law"., *The European Journal of International Law*, vol.17, no.1, 2006 p. 138

[162] This is the case in the CME arbitration, in which a US investor used a Dutch holding company to file two parallel claims against the Czech Republic under two different treaties for the same actual facts and the Tokios arbitration in which a Lithuanian company owned by 99% by Ukrainian nationals launched a claim against the Ukraine under the provisions found in the BIT between Lithuania and the Ukraine.
See Gus Van Harten, *Investment Treaty Arbitration and Public Law* (New York; Oxford: Oxford University Press 2007), p.113-117

*3.5 Definition of the term investment*

The definition of the investment itself is equally important to the application of the treaty. Provided that the investment has been made in accordance with the legislation of the party hosting the investment to its territory, a series of assets are protected. An indicative list is again provided, mentioning a series of assets most commonly in use in the field of investments. This means that the two parties can, at a later point, negotiate for the extension of the protection to other assets or even give their silent consent for an expansion of this kind proposed by the other party. The clause of reciprocity is, of course, binding both parties to the protection of any new asset added to the agreement.

The protection of tangible property linked to the investment is a clear concept. The protection covers both movable and immovable property, as well as other in rem rights such as mortgages, ususfructus, liens, pledges and others. It should be noted, however, that claims as those mentioned above will have to be acquired according to the law of the host state and their redress will take place according to the provisions of the law that created them, i.e. the law of the host state.

The protection of shares, stocks and participation in companies reflects a parting from customary international law. Following the ruling for the Barcelona Traction Case by the International Court of Justice (ICJ)[163], it has been generally accepted in international law that only the state whose national a company is has the right of diplomatic protection on behalf of the company. A state whose nationals are shareholders in a foreign company lacks the *locus standi* to protect their interests[164]. The same ruling however indicated that protection of shareholders

[163] ICJ (1970) Rpts 1
[164] M. Sornarajah, *The International Law on Foreign Investment* p.246, ICJ (1970) Rpts at p.47

can be achieved through BITs that specifically provide for such a clause[165]. In this way, according to the present agreement, participation in a company is considered an investment on its own and therefore nationals of Greece and Turkey participating in a company of a third party that is active in the territory of the other party are still protected by the agreement. The protection of shareholders also resolves, to a certain extent, the issue of joint ventures. The problem of the protection of joint ventures arises from the fact that a company of this type has been created according to the law of the host state. In this sense, it is a national of the host state[166] and a foreign investment would have to be made without the possibility of diplomatic protection by its home state. With the inclusion of shares in the definition of investments, however, the rights of foreign shareholders in a joint venture are secured even if their shares constitute only a minority of the capital of the company.

Intellectual property rights are also protected by the agreement as they are granted the status of investments as well. It could be argued that intellectual property rights, being intangible property, exist only because their existence is recognized by the law of the state. They could not therefore be granted any protection from international law. Once acquired, however, they can be part of a BIT as is the case of the present agreement, and they can be protected by the home state through the provisions of the agreement. Intellectual property rights generally include patents, copyright, know-how and reputation[167]. However, as intellectual property law is a relatively new concept, additional areas that would be protected under this clause of the agreement can not be excluded in the future.

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[165] § 90

[166] M. Sornarajah, *The International Law on Foreign Investment* p.247

[167] Euaggelos N. Vasilakakis, *Το νομικό πλαίσιο των ξένων επενδύσεων στην Βουλγαρία* [To nomiko plaisio ton ksenon ependyseon stin Voulgaria-The legal framework of foreign investments in Bulgaria], (Thessaloniki: Sakkoulas 1996), p.26

Finally, the issue of recognition of business concessions, conceded by law or contract or by decision of the authority as an investment on its own right, entitled to protection independently, is an important one. With the inclusion of this clause, the two states recognize the fact that investments can be of little value if they are denied the right to do business due to lack of authority permission. This is especially true for investments on natural resources. The permission to conduct business granted by administrative law or an administrative agency has, therefore, economic value of its own and, once granted, is protected by the agreement as any other assets invested by an investor of one party to the territory of the other party. However, this could mean that, once an administrative law grants a right to an investor of the other party, the administration can not revoke the said right. This is a grave limitation to the sovereignty of the host state, especially as administrative law rights -unlike civil law rights- are granted with the public interest in mind. Even though domestic law is considered as having less legislative power than an international treaty[168] signed by the state, an administrative law that can not be withdrawn by the state that issued it is a concept that causes some unrest[169].

*3.6 Definition of territory*

One final and rather ironic part of the section of the agreement dealing with definitions is the definition of territory of each party which, according to the treaty, is constituted by its territory, territorial sea as well as the maritime areas over which it has jurisdiction or sovereign rights for the purpose of exploration, exploitation and conservation of natural resources, pursuant to international law. Even though this clause is rather straightforward, the matter of fact is that

[168] For example see *Greek Constitution ar. 28 §1*
[169] *This is due to* the fact that no contract can limit *a priory* the right of the state to regulate its internal order, as this would mean a limitation on the right of sovereignty of the state. The concessions granted by the state should therefore be considered as the obligation undertaken by the state to honour the principle of the sanctity of contract.

the two states have repeatedly come close to open conflict over these very specific rights of exploration and exploitation of natural resources in maritime areas. In addition, there is an issue concerning the international law that applies to Turkey and Greece in this area, as Turkey is not a part of the United Nations Convention on the Law of the Sea, signed in 1982, and is therefore not bound by its provisions.

The second article of the agreement introduces a time element. According to it, the agreement applies not only to investments that follow the signing of the treaty, but investments already established to the territory of the other party. The provisions dealing with dispute settlement are not however applicable to disputes that arose prior to the agreement's entry in force. The wording in this case differs from the one in the BIT between Greece and Bulgaria, which left the issue open to interpretation as its use of words ("that may…arise") has been criticized as vague.

*3.7 Protection of investments*

The aim of the agreement is the creation of a network of provisions that will protect the investment and the investor from any discriminatory measure issued by the host state and will secure fair compensation in case such measures are taken and the interests of the investment are harmed. The two states in a sense guarantee with the agreement that the legal environment that the investment will encounter once it has been established will not change abruptly and, in case it does, they secure that the investment will not be affected. This is a necessary condition without which private initiative can not venture safely and therefore can not take the economic risk of transferring capital abroad. The agreement introduces both general principles on protection of the investment and special clauses that describe in detail the course taken for its protection.

*3.8 Fair and Equitable Treatment Standard*

Three general clauses are introduced with the third article of the agreement. Firstly, the "fair and equitable treatment" standard is introduced (art.3 §2). The clause specifically mentions the areas of activity in which the fair and equitable treatment is applicable. It includes management, use and enjoyment or disposal of investments in the territory of the host party. The clause is broad and vague and has been the subject of study among scholars[170]. Fairness in the investment field in the context of a BIT such as the present one could be interpreted as the right of the foreign investor to be treated not less favourably than the nationals of the host state[171] or as the right to enjoy the same advantages as other foreign investors in the host state [172]. In the context of an investment treaty fairness could introduce the concepts of reasonableness and justice in the sense that any action taken by the state has to be justified and to be made in good sense. It also means that any abuses made by the investment shall not enjoy beneficial treatment by the host state either. It also introduces a notion of evolution, as the context of what is considered fair evolves through time[173].

Equity in the treatment of the investment by the state is a safeguard for the exclusion of absurd or unreasonable results by appealing to a general principle that overrules specific, possibly discriminatory rules[174]. It introduces the element of proportionality to the treatment of the foreign investment and secures the legitimate expectations of the investors[175]. Cases in which

[170] For more on FET see Ioana Tudor, *The Fair and Equitable Treatment Standard in the International Law of Foreign Investment* (Oxford; New York: Oxford University Press 2008)
[171] Though this interpretation is made redundant by the national treatment standard that follows in the third paragraph of the article
[172] Which is also covered by the most favoured nation clause following in the next paragraph
[173] Ioana Tudor, *The Fair and Equitable Treatment Standard in the International Law of Foreign Investment,* p.127
[174] *Ibid.* p.128
[175] August Reinisch (ed.), *Standards of Investment Protection* (Oxford; New York: Oxford University Press 2008) p.130

the fair and equitable treatment standard has been accepted as applicable include: Lack of respect for the obligation of vigilance and protection, denial of due process and procedural fairness, non-observance of the investor's legitimate expectations, coercion and harassment by the organs of the host state, failure to offer a stable and predictable legal framework, unjustified enrichment, evidence of bad faith, absence of transparency and arbitrary and discriminatory treatment[176].

*3.9 Full protection and security*

The article also guarantees the full protection and security of the investment in the territory of the other party. This standard, which is often considered to be part of the fair and equitable treatment standard, refers to both physical harm of the investment (tangible assets), which has to be prevented by the security forces of the host state and the availability of the legal and administrative system in a way that secures adequate and efficient protection from possible harm[177]. However, the obligation of the state deriving from this standard is not absolute. The state has to act with the necessary due diligence in its effort to provide the necessary protection to the investor but it is not giving a warranty against the harm of the investor's assets. Nor can it be held responsible for activities of a private person or entity. The obligation concerns the state itself, which has to take the necessary measures that will ensure the protection of the investment and at the same time abstain from adopting legislation that comes in contrast to these measures[178]. A series of rulings in international law concerning the issue of full protection and security standard have ruled repeatedly against the absolute nature of the standard[179].

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[176] For a list of cases in which the Fair and Equitable Treatment standard was applied see Ioana Tudor, *The Fair and Equitable Treatment Standard in the International Law of Foreign Investment* chapter 5 pp. 154-181
[177] August Reinisch (ed.), *Standards of Investment Protection* p.150
[178] Ioana Tudor, *The Fair and Equitable Treatment Standard in the International Law of Foreign Investment* p.184
[179] Thus in the *Sambaggio* case the Italo-Venezuelan mixed commission for reclamations adopted the view of Venezuela that "governments are constituted in order to offer protection, not to guarantee it".

*3.10 Employment of foreign nationals*

The protection granted by this clause is meant to create a safe working environment in which the investment can act unhindered by administrative restrictions. The provisions made in the fifth paragraph of the third article reinforce the investment's capabilities by lifting restrictions to the people chosen for employment by the company. The two states guarantee that staff employed by the investor will not meet administrative obstacles concerning their entry and residence in their territory when they are engaged in activities linked to the investment. In addition, the investors are free to employ top managerial and technical personnel regardless of nationality. The beneficial provisions of the BIT therefore can expand to nationals of a third state. With these provisions the investment companies are allowed to bring their desired personnel in the host state in order to optimize their performance and are guaranteed once more that no discriminatory administrative measures will restrain their activities.

*3.11 National Treatment Standard*

The second standard of protection introduced by the agreement is that of national treatment. According to this standard, investors and investments of one party are subject to the same treatment as nationals of the host state. The subjection of foreign investments to a legal status inferior to that granted to nationals of the state as well as discriminative legal treatment

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In the *ELSI* case, the court declared that the obligation "can not be construed as the giving of a warranty that property shall never in any circumstances be occupied or disturbed"(*ELSI* case §108). In a more recent case, the tribunal deciding the *Ronald S Lauder vs Czech Republic* case declared that the bilateral investment treaty which contained this clause "obliges the Parties to exercise such due diligence in the protection of foreign investment as reasonable under the circumstances" (*Lauder* case §308),. In the *Tecmed* case, the tribunal ruled that the full protection and security standard is "not absolute" and "does not impose strict liability upon the State that grants it" (*Tecmed* case §177)

*See ibid.* p.184

against them is forbidden. The wording of the article[180], however, makes a positive discrimination, in which foreign investments enjoy superior protection compared to nationals, possible. In this way, double standards in favour of foreign investors can apply. This will be the case if foreign investors, for example, will be exempt from obligations required by the nationals of the state or enjoy a more beneficial status concerning taxation, licenses etc. It should also be mentioned that the national treatment standard applies in the case of foreign investors of different nationalities in relation to one another as well, as they should be treated in a non-discriminative manner by the host-state[181]

On the contrary, foreign investors can not be subjected to measures that are not implemented on the state's nationals, such as the obligation to provide a bond for an economic activity, or the acquisition of special permission for the execution of such an activity[182]. Specific performance requirements such as export quotas and local purchase requirements are also invalid according to the national treatment standard, if not during the initial phase of the admission of the investment in the host state, at least after the investment has been established[183]. There are certain administrative restrictions, however, that remain unresolved, despite the provisions of the agreement[184].

The danger of the national treatment standard "backfiring"[185] at the investment, as a harsh law concerning nationals would apply to foreign investments as well, in which case there could

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[180] "Each Party shall accord to investors of the other Party, as regards their activity in connection with investments in its territory, treatment not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable" (Art.3§4)

[181] The same principle applies to the case of nationalization and expropriation, *see below* p. 81

[182] Euaggelos N. Vasilakakis, *Το νομικό πλαίσιο των ξένων επενδύσεων στην Βωλγαρία* [To nomiko plaisio ton ksenon ependyseon stin Voulgaria-The legal framework of foreign investments in Bulgaria], p.31

[183] M. Sornarajah, *The International Law on Foreign Investment* p.251

[184] The most important is the restriction in the ability to acquire land, which is prohibited to foreigners in certain areas deemed as having "strategic importance" to the state. The decision B.2003/71, R:2008/79 (11.3.2008) of the Constitutional Court of Turkey is a clear example of the violation of this principle.

[185] M. Sornarajah, *The International Law on Foreign Investment* p.251

be an indirect discriminatory action, if, for instance, the law concerns a field of investment where foreign investment is playing a dominant role, is protected by not only the fair and equitable treatment standard mentioned above, but from the most favoured nation standard as well.

### *3.12 Most Favoured Nation Treatment Standard*

The most favoured nation standard is working in a complementary role to the national treatment standard and is introduced in the same articles of the agreement. With the inclusion of this clause the two states agree that the treatment they reserve for the nationals of the other state will be linked not only to the treatment of their own nationals but to the treatment that nationals of third parties enjoy as well. This practically means that if, by means of another BIT or other binding agreement, one of the states grants more favourable conditions to the investments of a third state, these rights automatically extend to the treatment of the investments of the other party of the agreement.

Since both standards have been adopted, the result of the agreement is that the level of protection the investment enjoys is either that of the treatment equal to the nationals of the host state or equal to the treatment reserved for third party nationals, whichever is most favourable to the investment. The choice as to which status is actually more favourable should rest on the investor himself[186].

Exceptions to the most favoured nation treatment clause are introduced in the sixth paragraph of the article. More specifically, privileges granted to third party nationals do not extend to nationals of the other party of the agreement if they are the result of the third party's participation to existing or future customs union, regional economic organization or similar

[186] M. Sornarajah, *The International Law on Foreign Investment* p.251

international agreements[187]. The issue concerns primarily the benefits that members of the EU enjoy in their business in Greek territory, especially the free movement of capital and persons, of which Turkey can not benefit via the most favoured nation clause. However, in some issues the situation is ameliorated by the fact that Turkey has entered in a Customs Union agreement with the EU in 1996. Another exception to the most favoured nation standard concerns privileges that are the result of an international agreement relating to taxation. Such benefits for the nationals of the two states have been negotiated separately, through a bilateral agreement concerning the avoidance of double taxation[188]. Finally, the absence of a general clause allowing for the two states to introduce exceptions to the national treatment standard at will in a future point, similar to the provision of article 3 §4 of the Greek-Bulgarian BIT is surprising, as it is rather restrictive for the two states, showing in a sense the commitment of the two states to the agreement[189].

*3.13 Admission of the investment*

The issue of the admission of the investment and whether the investor can take advantage from the beneficial standards of treatment guaranteed in the agreement in the admission stage is also debatable. The wording used in the treaty (Each party …shall admit such investments in accordance with its legislation ar.3 §1) places the treaty in the admission model[190], meaning that each state regulates issues concerning screening and the admission of investments to its territory on its own, unobstructed by any obligations from the BIT signed between the two countries. As far as admission is concerned, the laws and regulations of the host state apply.

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[187] Karsten Engsig Sorensen. *"The most-favoured-nation Principle in the EU"*, Legal Issues of Economic Integration, vol. 34, no. 4, 2007

[188] Greek Law 3228/2004

[189] Euaggelos N. Vasilakakis, *Το νομικό πλαίσιο των ξένων επενδύσεων στην Βουλγαρία* [To nomiko plaisio ton ksenon ependyseon stin Voulgaria-The legal framework of foreign investments in Bulgaria], p.34

[190] More on models of admission in BIT in August Reinisch (ed.), *Standards of Investment Protection* p.10

From this conclusion two further questions arise. One is whether an investor can demand retribution on the initial stage of entry if the investment has been denied entrance in violation of the host state's legislation. Though jurisprudence is scarce on the subject, the nature of the agreement leads us to the conclusion that the investor is not protected by the BIT in the initial stages of investment talks, i.e. before the investment has been accepted to the host state. This also means that the investors of a particular state can enjoy a more beneficial treatment than investors of other states in matters of admission. However, once the investment has been accepted it immediately is protected by the agreement's clauses and can enjoy the most favoured nation treatment standard as described above[191]. The second question regards national legislation. Since the laws governing admission of foreign investments are different in the two states, admission of one state's investments to the other state could be more difficult than the other way round[192]. This potential imbalance violates the basic principles governing the BIT, principles that have been stated in the heading of the agreement. The reciprocity clause that is situated in the BIT does not, however, create any legal obligation for any of the two parties to amend their national legislation on screening and admission of investments of the other party. Any changes towards the harmonization of the two states' legislation would have to be the result of political pressure and the policies pursued in the same mentality as the one which brought about the signing of the treaty itself.

The three clauses that have just been discussed are vague and general and they act as guidelines for the two states' legislators. They do not create specific obligations for the two states. Their aim is to create a minimum standard of protection for the investor, securing that the

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[191] *Ibid.* p.16

[192] Such was the case in the Turkish Investment Law 6224/54 which stipulated that the minimum capital required for the establishment of an investment in Turkey was US$ 50.000. Such a requirement did not exist in the Greek Investment Law. This limit was the major obstacle small scale Greek investments faced before the implementation of the new Investment Law in 2003.

investment shall enjoy a legal status of at least the same nature as nationals of the host state or that a third party based investor shall not have a more advantageous position. The host state therefore has an obligation to produce certain results without being restricted as to the means it will use to achieve this result[193]. However, any discrimination made against investors of one party or failure to uphold the three standards of treatment could give rise to international responsibility of the host state[194].

### *3.14 Nationalization and Expropriation*

Nationalization presents the greatest threat to foreign investment. The multinational company is virtually powerless against a state that exercises its sovereign rights while regulating its own economic life. Examples of nationalization have been ample in the past, especially in times of international strife and economic crises. Nationalization and expropriation are administrative measures targeted against nationals of other states, being measures of a primarily discriminatory nature. They can take the form of confiscatory taxation, total or partial compulsory sale, loss of management or manipulation of the economic value of the investment[195]. BITs, wishing to tackle this thorny issue, have gone to great lengths in trying to regulate expropriation which on the one hand is considered an inalienable right of the state but, on the other, creates a climate of instability that can effectively bring foreign investment inflow to a halt. For this reason in most BITs rules on expropriation and compensation are introduced in great detail. In addition, it is generally accepted that nationalization, even though it is an inalienable right of the state, can not be exercised arbitrarily. Certain qualifications need to be

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[193] Euaggelos N. Vasilakakis, *Το νομικό πλαίσιο των ξένων επενδύσεων στην Βουλγαρία* [To nomiko plaisio ton ksenon ependyseon stin Voulgaria-The legal framework of foreign investments in Bulgaria], p.37
[194] M. Sornarajah, *The International Law on Foreign Investment* p.251
[195] *Ibid.* p.254

fulfilled, such as the fact that it has to be part of a declared, legitimate policy and serve a public purpose, it must be non-discriminatory between foreigners of different nationalities and compensation must be provided[196]

The BIT between Greece and Turkey follows this trend, even though expropriation of an investment seems less likely in recent years, as international economic relations have strengthened globally and harsh measures such as these create more problems for the state implementing them, both in the economic and political field, than they solve. This is even truer for Greece and Turkey which take part in the same Customs Union and could potentially become part of the same political union as well.

The fourth article of the BIT between Greece and Turkey equates nationalization and measures of similar effect with expropriation and deals with them in the same way. The article generally forbids taking of property, unless it serves a public purpose. The basic provision of the agreement then, is that expropriation is unlawful unless the contrary can be established[197]. The burden of proof seems to lie on the side of the state performing the expropriation. Even if the public purpose of the expropriation can be proved, it can not proceed without the payment of prompt, adequate and effective compensation to the investment that is subject to the expropriation. In addition the measures taken have to be justified, in accordance with the law governing such issues and they can not be discriminatory against foreign investors[198]. The standards of treatment that have been discussed above are specifically referred to by the article. The fair and equitable treatment standard in particular takes effect in this situation.

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[196] Afroditi-Sofia Georgiadou, *The regulation of foreign direct investments under International, European and Greek Law: with a special reference to financial services' investments* p.28
[197] Contra M. Sornarajah, *The International Law on Foreign Investment* p.253
[198] Euaggelos N. Vasilakakis, *Το νομικό πλαίσιο των ξένων επενδύσεων στην Βουλγαρία* [To nomiko plaisio ton ksenon ependyseon stin Voulgaria-The legal framework of foreign investments in Bulgaria]p.46

The assets that are protected by this article are not confined to tangible property only. The list provided in article 1 §2 should be an indicator as to what constitutes investment and is therefore protected from expropriation. The wide range of protection includes intangible assets like shares in a company that is threatened with expropriation and for which compensation can be claimed. Even intellectual property rights can be the object of this protective clause[199]. The requirement for prompt, adequate and effective compensation has raised a lot of discussion since, once again, the standard is vague and open to different interpretations. It should, however, as a minimum, be accepted that by prompt, the agreement means compensation paid at the same instant the expropriation takes place[200]. The inclusion of an interest clause for undue delay in payment, starting from the date of the expropriation (ar.4 §2) gives weight to this view. Compensation should at least be equal with the full value of the property that is being expropriated[201] and should take a form that can be beneficial for the recipient of the compensation. Monetary compensation seems to be the most proper means, especially since the agreement further states that it should be freely transferable to its home state as provided by article 5. Land property that is provided in exchange for land that is expropriated, as is the case in many states' legislation does not seem to fulfill the need for effective compensation.

*3.15 Compensation*

There is also a great deal of discussion as to what should be the criteria for the calculation of the compensation owed and as to which administrative or legal body is eligible to make such assessments. The agreement specifies that the compensation should be equivalent to the market

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[199] Ibid. p.47

[200] Contra ibid. p.48 The inclusion of a specific clause in the Bulgarian domestic legislation stating that payment of compensation precedes the taking of property means that a lack of a similar clause in the BIT allows for compensation to be paid at a later point.

[201] For the US view on the issue see M. Sornarajah, *The International Law on Foreign Investment* p.254

value of the expropriated investment before the expropriation takes place (art. 4 §2). In this way both the value and the time in which the assessment should be made are specified. In addition the value of the investment is further protected by the agreement, as any potential loss of market value of the investment due to rumours of potential expropriation of the investment is not taken into consideration (art. 4 §2).

However, the agreement does not specify the exact method that should be used to calculate the market value of the investment, nor does it mention the body that will make the assessment. It is only natural that, in view of this void, the host state will insist that the only eligible body is the tribunals of the state[202]. This claim is once more based on the sovereignty of the state. These two points of interest that are not clear could become the source of serious dispute between the two states, disputes that would have to be settled by the mechanism created by the agreement and that will be presented at a further point.

One final application of the national treatment and the most favoured nation treatment standard arises in the third paragraph of the article concerning compensation. This clause stipulates that in the event of a state taking compensatory measures for losses of property sustained in war, civil disturbance or similar events, the nationals of the other party are entitled to the same compensation as nationals of the home state or nationals of a third state do. The measures taken by the Greek government in the aftermath of the civil unrest in December 2008 is an example of this kind of compensation. As a result of the ten-day riots, many properties in the commercial district of Athens and other major cities were destroyed. The government issued an immediate fund for the compensation of these losses. Any business owned by Turkish nationals that suffered losses of property would be entitled to the compensation on the basis of this clause. It should be noted, however, that the host state is not obliged to compensate foreign investors for

[202] M. Sornarajah, *The International Law on Foreign Investment* p.254

any loss sustained during war etc. The clause comes into effect only when a compensation of this kind is given to its nationals. Any other claims that a foreign investor might have in the case the state does not take this kind of measures, would have to be based on the provisions of art. 3 par.2 ("investments… shall enjoy full protection and security in the territory of the other party") and the breach of this obligation by the host state would have to be proven.

Investors of the one party are also entitled to compensation in the case of requisition or destruction of their investment by the other party's forces or authorities in the case of expropriation if this destruction, partial or whole, was not required by the situation. This signifies that destruction of the investment caused by the authorities is considered lawful if the situation made the destruction necessary and therefore no compensation is owed. The somewhat surprising wording of the text refers to the first paragraph of the article and makes the clause eligible in cases of expropriation of an investment by the host state. In most BITs the same provision refers to a state of war or civil strife[203]. In this case, destruction of an investment during war operations does not constitute a reason for compensation to the investor if such an operation was considered necessary. The compensation granted by this article is also subject to the prompt, adequate and efficient rule described above.

*3.16 Repatriation of profits*

The main purpose of a foreign investment is the generation of profit and the repatriation of the surplus made back to the home state[204]. If the capital flow is restricted by administrative laws, the existence of the foreign investment is at risk. The two parties guarantee free monetary transfers through the introduction of an absolute clause ("all transfers related to an investment

[203] M. Sornarajah, *The International Law on Foreign Investment* p.260
[204] August Reinisch (ed.), *Standards of Investment Protection* p.231

[shall be] made freely) in article 5 of the agreement. However, the absolute fashion in which the clause is worded may lead to monetary imbalances and endanger the economic life of the host state. This is especially true if the investment made is of a large scale or is made in a key sector of the monetary system of the state, such as the banking sector. The clause can be challenged in a situation of dire economic need as being based on an economic situation no longer existing. Exchange restriction is widely considered as a sovereign right of the state when it faces balance-of-payment difficulties[205]. The application of customary international law and treaty provisions such as the present one, however, can restrict that right in terms of necessity, discrimination and proportionality. The nature of the transfers that are allowed free repatriation is extremely wide. It includes capital and profits made by the investment, compensation awarded according to the provisions of article 4 and payments that are the result of the settlement of a dispute and finally wages of the employees working in the other state. The subjects of the provision can therefore be both companies and natural persons, such as the employees who can transfer their earnings freely back to their home state. The transfer is made in any convertible currency at the rate of exchange prevailing at the date of the transfer.

The agreement leaves some issues unanswered and therefore likely to raise disputes between the two parties or between a party and individuals who are nationals of the other party. These issues include the question of whether tax has to be paid for every amount transferred separately and whether the execution of rulings made by the tribunals of the host state can be secured by the confiscation of such amounts to be transferred to the home state[206]. There is an absence of a clause protecting the interests of the creditors of the foreign investment or claimants

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[205] *Ibid.* p.242

[206] Euaggelos N. Vasilakakis, *Το νομικό πλαίσιο των ξένων επενδύσεων στην Βουλγαρία* [To nomiko plaisio ton ksenon ependyseon stin Voulgaria-The legal framework of foreign investments in Bulgaria], p.53

that are based in the host state, similar to the reservation made in the Greek-Bulgarian BIT in art. 6 §3.

The number of persons recognized by the agreement is further widened by the clause on subrogation (art.6). According to the article, if an investment is insured by an insurer according to the system established in the domestic law of a party[207] any subrogation of the insurer is recognized by the other state as valid. In this case, the insurer, after having fully compensated the investment that sustained damages, replaces the investment to all its rights and claims against the host state. The insurer is recognized by the agreement as a party in the dispute settlement that will take place according to the provisions of the agreement.

*3.17 Settlement of disputes between the host state and the investor in the BIT*

The two final points of interest in the agreement are articles 7 and 8, which concern the settlement of disputes between one party and the investors of the other (art. 7) and the settlement of disputes between the two parties (art. 8). With article 7 of the agreement, the two parties agree on the creation of a mechanism securing that the disputes arising from practice concerning bilateral investments can eventually be resolved in a neutral forum. This commitment is rather important in the political field as well, as it gives the private investor the means to pursue his own protection, it prevents (legal) diplomatic protection of the home state and can "depoliticize" the investment dispute. With the creation of a dispute settlement procedure, the dispute is limited to the persons of the host state and the investor, not the home state. In this way, the two parties can continue their political relations unhindered by private disputes[208] .

[207] Such as the case of Greek law N.2496/1997 ar. 14 according to which if an insurer compensates the insured person, all claims and rights are ex lege transferred to the insurer.
[208]M. Sornarajah, *The International Law on Foreign Investment* p.266

The fact that the home state of the investment is prevented from using diplomatic protection for its nationals brings to mind the Calvo clause[209], which, in effect, is an attempt to avert interference of the more powerful home state to the dispute between the host state and the investor. Whereas the Calvo doctrine has been dismissed by a number of jurists, however, on the grounds that diplomatic protection is a right that is exercised by the state and therefore can not be revoked by the investor in the concession contract, in this case it is the state that refrains from its right to exercise diplomatic protection. According to art. 27 of the "convention on the settlement of investment disputes between states and nationals of other states", "No Contracting State shall give diplomatic protection or bring an international claim in respect of a dispute which one of its nationals and another Contracting State shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute ". The lack of diplomatic protection in this stage, therefore, can not be disputed, as could be the case with the Calvo doctrine, since the states refrain from the exercise of their right with the signing of the above mentioned convention, to which article 7 of the BIT refers to[210].

The agreement specifies that any investment dispute concerning an obligation of the host state towards the investment shall fall under the provisions of article 7 upon notification, by the investor, of the host state of the investment. The home state is therefore banned from bringing a dispute to light. This responsibility rests solely upon the investor. The agreement also encourages the settlement of disputes by consultations and negotiations between the parties concerned. Even

[209] According to the Calvo clause, which was included in concession contracts between investor companies and host countries, mainly in the Latin America, the national tribunals have exclusive jurisdiction over disputes arising from foreign investment contracts. This clause has been rejected by most jurists, a series of international tribunals however have given it a degree of acceptance. Ian Brownlie, *Principles of Public International Law* 5th ed.p.549
[210] Agreements, such as the "convention on the settlement of investment disputes between states and nationals of other states", are treaties among governments and therefore are binding for states, not individuals see Afroditi-Sofia Georgiadou, *The regulation of foreign direct investments under International, European and Greek Law: with a special reference to financial services' investments* p.242

though legal diplomatic protection is not allowed in case a state has in advance accepted the jurisdiction of an international tribunal[211] such as the ICSID, this initial phase of negotiations and consultations is certainly open for non-legal diplomatic protection of the interests of the investor by the home state. The home state can freely lend its weight to the negotiating position of the investor, which otherwise would be helpless in this initial stage[212].

In order for this stage to have any practical meaning and for dilatory tactics to be avoided, the second paragraph of the article states that negotiations should be concluded in a period of six months, starting from the notification of the host state by the investor. If no compromise is reached, the investor may choose any of the procedures available to him in order to pursue the settlement of the dispute in a neutral forum. Of course, the continuation of the negotiations mentioned in par. 1, especially if it is likely that they will bear fruit, beyond the six months limit, is also an option available to the investor.

The means available to the investor are:

I. The International Centre for the Settlement of Investor Disputes (ICSID);

II. An ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL)

III. The Court of Arbitration of the Paris International Chamber of Commerce

IV. Any previously agreed dispute settlement procedure

The most critical points of the article however, are its three final clauses. According to these, the two parties give in advance their consent for the submission of investment disputes to international arbitration; they accept that the decision made by the tribunal shall be final and

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[211] Petros Stagos, "Διεθνής διαιτησία επί διαφορών που ανακύπτουν από επενδύσεις" [Diethnis diaitisia epi diaforon pou anakyptoun apo ependyseis-International Arbitration on investments disputes], Armenopoulos 1998, 3, p.269

[212] Ibid. p.270

binding to them; and they undertake the commitment to execute the award, each according to its national law.

The consent given by the two states regarding the jurisdiction of international arbitration on investments disputes is pretty straightforward and is given in advance, in anticipation of the dispute, (in contrast to clauses that simply refer, for example, to the ICSID or mention sympathetic consideration for the submission of the dispute to the ICSID). However, there are considerable doubts as to whether the consent as stated in the agreement gives automatic jurisdiction to tribunals such as the ICSID. There is an opinion, for example, that a relative clause would have to be included in the separate agreement between the investor and the host state that establishes the investment. If such a clause is not included, then the investor is not protected by the treaty clause[213]. However, this kind of considerations is overcome in practice by the clauses contained in the treaties that establish the arbitral tribunals themselves. This is the case, for example, of article 25 par. 1 of the convention that establishes the ICSID. According to this article, the consent of the two parties has to be given in paper and can not be withdrawn unilaterally. It has also been accepted in international law theory that, if a state gives its consent in advance in the context of a BIT, the national of the other state can give his consent at any other point, even at the same time as it hands in its request for arbitration to the secretary of the ICSID[214] .

Another issue concerning the submission of an investment dispute to international arbitration has to do with the exhaustion of local remedies. It is a fundamental principle in International customary Law that, before any dispute is brought to the level of International Law, there is a duty for the person seeking legal protection to exhaust all local remedies available to

[213] M. Sornarajah, *The International Law on Foreign Investment* p.268

[214] Petros Stagos, "Διεθνής διαιτησία επί διαφορών που ανακύπτουν από επενδύσεις" [Diethnis diaitisia epi diaforon pou anakyptoun apo ependyseis-International Arbitration on investments disputes], p.263

him first. This principle, which is the expression of the judicial sovereignty of the host state in its territory, should not be easily discarded and should be considered in force unless specifically stated otherwise in another treaty[215].

However, article 26 of the "convention on the settlement of investment disputes between states and nationals of other states", a treaty which Greece became party to at an early stage[216], states that the consent given by a state for the jurisdiction of the ICSID, as is the case of the BIT between Greece and Turkey, is considered, unless otherwise stated, as a renunciation of any other remedies. It constitutes therefore a diversion from the customary law that Greece and Turkey have consented to[217]. It should also be considered whether the six months period that is granted in art.7§1 of the BIT creates a duty for the investor to apply to local remedies and, if no decision is reached by that point, to pursue his claim at the international level. This would mean that the two states give their consent for the jurisdiction of the ICSID on the condition that local remedies, either judicial or administrative, would be tried first, in accordance with the second phrase of art. 26 of the convention establishing the ICSID. However, the judicial reality in the two states, where lengthy procedures are one of the most important problems of the judicial system, means that such an interpretation is of little practical value.

The fact that the two states accept that the decisions of the arbitrator will be binding to them entails another serious self imposed restriction on the states' sovereignty. A third party, that of the arbitrator, gains control over the exercise of public authority. This transfer of power is the basis on which arbitration, which initially is considered as an institution of the private law, takes

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[215] M. Sornarajah, *The International Law on Foreign Investment* p.271 See also Gus Van Harten, *Investment Treaty Arbitration and Public Law,* p.110

[216] Greece signed the agreement on the 16th of March 1966. Turkey on the other hand signed the agreement on the 24th of June 1987.

[217]. Petros Stagos, "Διεθνής διαιτησία επί διαφορών που ανακύπτουν από επενδύσεις" [Diethnis diaitisia epi diaforon pou anakyptoun apo ependyseis-International Arbitration on investments disputes], p.268

a form reminiscent of administrative law. The state in a dispute of this kind is not acting as an individual but in a sovereign capacity. The action under question in an international arbitration is an action of public authority and not an action of a private individual[218]. A decision that is the result of international arbitration can award damages against the state for actions of its agents or agencies, state responsibility being based on the principle of the unity of the state. As a result, a decision of this kind can dictate the way the state exercises its public authority and in the end be considered as part of the state's administrative law[219]. The fact that an individual can bring a claim against sovereign acts of the state and obtain a decision that checks state action on an international forum, grants an international arbitration such as the one introduced in article 7 of the BIT the nature of international administrative law[220].

One final issue has to do with legal diplomatic protection during the time the dispute is pending in an international arbitrary, such as the ICSID. The fact that an international arbitration is available for the investor means that diplomatic protection from the home state is put on hold, according to art. 27 par.1 of the convention. In this way the consent given in advance by the host state, which restricts the host state's negotiating ability, is compensated by the lack of the home state's ability to act in favour of its national[221]. The exclusion of the right to file an international claim or exercise diplomatic protection in favour of its nationals by the home state is another feature through which international arbitration is thought to help to the depoliticisation of the

[218] Argyris A. Fatouros, *Government guarantees to foreign investors* (New York; Columbia University Press 1962), p.204

[219] Gus Van Harten and Martin Loughlin, "Investment Treaty Arbitration as a Species of Global Administrative Law", p.146

[220] Ibid. p.149

[221]. Petros Stagos, "Διεθνής διαιτησία επί διαφορών που ανακύπτουν από επενδύσεις" [Diethnis diaitisia epi diaforon pou anakyptoun apo ependyseis-International Arbitration on investments disputes], p.269

disputes and promote the necessary confidence for the realization of transnational commercial agreements[222].

The diplomatic protection revives when the host state refuses to execute the award given by the international arbitration. This is made possible not only from art. 27 par1 of the convention[223] but by the BIT itself, as a refusal of this kind would mean a breach of the treaty between the two states as well[224].

However, it should be noted that despite the great lengths in which the present BIT has undergone to set up an alternative method of dispute settlement and despite the attention investment treaty arbitration in general has attracted worldwide, the practical results are much more restricted due to the prohibitive cost of international arbitration. Indeed, arbitrators' fees, which are equally divided and owed by the two parties filing for the arbitration, as well as the financial burden that a prolonged legal battle entails, means that the right to use an alternative forum for the settlement of a dispute between the host state and an investor, though granted in a generous way, is in fact restricted to either extremely wealthy individuals or large multinational companies. Most investors simply lack the necessary assets to pursue a legal solution of this kind and are obliged to revert to the traditional means of local remedies[225]. The size of most investments that fall under the provisions of the BIT between Greece and Turkey means that this article will rarely be put to use.

[222] Ibrahim F.I. Shihata, "The Settlement of Disputes regarding Foreign Investments: The Role of the World Bank, with Particular Reference to ICSID and MIGA", *Arab Law Quarterly*, vol.1, no.3, May 1986, p.269
[223] Ibid. p269
[224] M. Sornarajah, *The International Law on Foreign Investment* p.269
[225] Gus Van Harten and Martin Loughlin, "Investment Treaty Arbitration as a Species of Global Administrative Law", p.138

*3.18 Settlement of disputes between the two states in the BIT*

Article 8 of the agreement deals with the settlement of disputes between the two states concerning the interpretation and application of the agreement. A method different from the one employed for the settlement of disputes between states and investors is used in this article. This is of course due to the difference in the nature of the parties engaged in the dispute. The international arbitrators that have been mentioned in the previous article are set up exclusively for the settlement of disputes between private persons on the one hand and states on the other. They are not fit to arbitrate between two sovereign states however. For this reason the agreement sets up an individual method that is eligible only for the settlement of disputes of the specific nature arising from the present agreement. It can not therefore be used for the settlement of disputes of a political or other nature different from the one specified in the present article.

Negotiations and consultations are again the method preferred by the authors of the agreement. If the direct and meaningful negotiations do not produce any results within six months, the dispute can be submitted to an arbitral tribunal. The time limit, which is certainly short, once more aims to put pressure on the two sides to reach an agreement. The tribunal however is totally different from the options given to the two parties in article 7. It is an ad hoc three member tribunal, formed for a specific dispute every time. The most interesting feature of the tribunal is that each state appoints one member of the tribunal each, with the president of the tribunal being elected by the two other members. It is also noteworthy that the time restrictions on every procedure are very short, aiming for the swift settlement of the dispute. Finally, the two parties accept that the decision will be reached by a majority of votes, will be final and will be binding for both parties.

*3.19 Evaluation*

In conclusion, the general legal framework concerning bilateral investments can be deemed as adequate. The provisions in both states' investment legislation guarantee a minimum of protection for the investor against discriminative action by the state. The Turkish Investment Law grants a noticeably greater amount of freedom to the investor, both on the issue of initial establishment of the investment and its subsequent development. The fact that every company created in accordance with the Turkish Commercial Law is considered a Turkish firm and is treated as such, irrespective of the origin of its capital, gives a further advantage to the Greek investor. The two states' commercial laws are based on the Napoleontian commercial code and therefore share the same basic principles, despite subsequent changes made to each side[226]. Since the Turkish investment Law refers nowadays to the basic Turkish commercial Law on issues such as the establishment of a company or the form a company can take, the Greek investor finds himself in familiar legal ground in Turkey. It is consequently easier and more secure for him/her to establish a company along similar lines and with similar organization to a company established in his/her home state.

The bilateral investment treaty, coupled with the agreement on avoidance of double taxation, secures the financial interests of the investors by eliminating any points of ambiguity and obliging both states to reciprocally protect and promote investments through an international agreement. The provision on dispute settlement enables the investor to choose the forum where disputes with the host state will be resolved, helping in this way to the depoliticization of financial relations between the two countries. A legal provision, in this case, leads to the

[226] Such as the abolishment of commercial courts in Greek civil procedure

disassociation of a purely financial operation from political events, which was the objective of businessmen groups on both sides for a long period of time[227].

Finally, the fact that both countries, apart from signing a series of bilateral agreements on financial issues, are parties in multilateral agreements and organizations means that bilateral economic transactions take place in accordance to international standards. Greece and Turkey are both members of the OECD and the ICSID and are parties in the WTO agreements on TRIMs (Trade Related Investment Measures) and TRIPs (Trade Related Aspects of Intellectual Property Rights). In this protective environment of integrated markets investors are allowed to establish viable business networks that have an effect on both the financial and the political field.

The existing legislation may offer an adequately regulated framework in which investments can take place. The way bilateral investments will develop in the future, however, is a matter of implementation by the administration of the two countries and interpretation of the law by Courts in individual cases.

**Conclusion**

Greek-Turkish relations have entered an era of rapprochement since 1999. Unlike previous rapprochement periods, however, a large number of unofficial actors take active part in the creation of networks between the two societies. This active participation of citizens in the process of amelioration of the bilateral relations seems unrelated to the progress of high politics issues between the two states. Indeed, after the change of government in Greece in 2004, there

[227] Christina Argyropoulou, "Οι Ελληνικές Επενδύσεις στην Τουρκία" [I Ellinikes ependyseis stin Tourkia-Greek Investments in Turkey], Agora horis synora, vol.9 no.3, 2004, p.195

has been a gradual slackening of the rapprochement process and even a slight worsening in state relations between the two countries[228]. Unofficial networks, however, work in an ever increasing pace in the fields of economy, academic research and arts, unhindered by the lack of progress in state relations. This is the result of the importance citizens' groups, such as NGOs, have acquired in the formation of politics in both countries during the last two decades, as well as the fact that a basis for the participation of individuals in bilateral relations exists on the legislative level[229]. Bilateral relations, therefore, have obtained a more business-like character, which is based on practical considerations and moves away from the nationalistic paradigm that dominated bilateral relations for nearly half a century. After the initial enthusiasm of rapprochement dissipated, both societies tend to regard each other not as an enemy or a long lost brother, but rather as a useful partner in trade, industry, research and art. In the end, Turkish-Greek relations should not be regarded as any different from bilateral relations of the two states with any other country.

The financial wing of this process and especially the establishment of Greek FDIs in Turkey is crucial to the improvement of bilateral relations, as it has enabled many individuals to live and do business in the other state. Assisted by the Europeanization process that Turkey was undergoing for the most part of the 1999-2009 decade, Greek companies expanded to the Turkish market with a series of investments. At the same time, Turkish businessmen managed to gain an important position in the Greek market, helping to the rapid rise of Turkish exports to Greece. As the prospect of Turkish membership to the EU is getting dimmer and Greek foreign policy is trying to readjust to the new challenges, the bilateral economic relations that have flourished under the political mindset that has been described above, could from a new basis on which bilateral relations could take root outside the context of the Turkish EU candidacy.

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[228] James Ker-Lindsay, "Greek-Turkish Rapprochement Under New Democracy"
[229] After the initial 9 agreements signed in 2000, bilateral agreements on a series of diverse issues have been regularly signed throughout the 2000-2009 period.

However, it should be stressed once more that economic relations at the moment have not developed to such a degree as to challenge high politics differences and dictate the rules for a greater reconciliation between the two states. Even though the capacity to do business with the other state exists and the legal framework, both on the domestic and the international level, provides adequate protection to investors, economic cooperation between the two states is still vulnerable to political considerations. It therefore does not provide a solution to the existing bilateral differences but, if supported sufficiently by both governments, can become the field through which the two states can create a *modus vivendi* that promotes stability and security to the whole region.

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