Editorial

We are delighted to present the second issue of the nineth volume of the European Investment Law and Arbitration Review (*EILA Rev*). The publication of the first issue of the ninth volume, which coincided with the EFILA Annual Conference held on 25 April 2024 in Frankfurt, marked a particularly important moment in time as it highlighted the fact that the transition to Kluwer was successfully completed. Accordingly, all our back volumes and all new issues are available on https://kluwerlawonline.com/.

The developments in the cross-sections of European law, international investment law and domestic law within and outside the EU continue at a breathtaking pace. This issue tracks some of the important recent developments.

First, Chrysoula Mavromati and Alexander Schubert – both working at DG Trade of the European Commission – explain and present the EU model clauses for bilateral investment treaties (BITs) of the EU Member States with third countries, which were recently published by the European Commission in the form of a 'non-paper'. Although, this 'non-paper' is a legally non-binding document, it is clear that the European Commission wants to push the EU Member States to align their existing 1,200 BITs and any new BITs, which they might conclude in the future, with the EU's CETA-model.

Meanwhile, the clash between domestic courts outside the EU, in this case the UK Supreme Court, with the Court of Justice of the EU (CJEU), became recently visible in two completely opposing decisions on the priority that should be given to the ICSID Convention vis-à-vis the jurisprudence of the CJEU. In the second article, Simon Hermes analyses the CJEU's judgment against the United Kingdom, which was initiated by the European Commission for the failure of the UK Supreme Court to follow the CJEU's jurisprudence – even post-Brexit. In the case at hand, the UK Supreme Court had decided to enforce the *Micula* ICSID award, thereby giving preference to the fulfilment of Britain's obligations arising out of the ICSID Convention instead of refusing the enforcement as the CJEU's jurisprudence prescribes.

In the third article, Nathalie Potin provides an overview of the key features of the new EU-Angola Sustainable Investment Facilitation Agreement. This new type of agreement deviates significantly from the standard BITs, and it is the EU's intention to sign more of these types of agreements. Thus, this overview is

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an important contribution for understanding the new direction of the EU's investment policy.

Finally, Patrick Dumberry concludes the article section by providing an in-depth analysis of how the FET clause linked to the Minimum Standard of Treatment has been interpreted by multiple arbitral tribunals over time.

The case-note section starts with a note by Carlos Ramos-Mrosovsky, Paul M. Levine, James J. East and Jillian E. Timko, who examine the US Court of Appeal's ruling in *Nextera*, which effectively decided that Spain cannot rely on sovereign immunity to escape the enforcement of intra-EU ECT awards in the US.

This is followed by a case-note of János Katona who zooms into the *amicus curie* brief, which was submitted by a group of international scholars to the US courts in the *Nextera* case. This group of scholars (which includes both Editors-in-Chief of this *Review*) explain in detail why US courts are bound by the ICSID Convention and thus required to recognize and enforce final intra-EU ECT awards – irrespective of the CJEU's opposing jurisprudence.

In the third case-note, Nelson Goh (who is a member of the Editorial Board of this *Review*), Henrietta Tonkin and Joseph Fox-Davis explain the UK Supreme Court's ruling in *Micula* and why the UK Supreme Court was required to give primacy to the ICSID Convention rather than following the CJEU's jurisprudence.

The case-note section is concluded by a note by Dimitris Babiniotis who explains why the Greek Supreme Administrative Court was wrong in extending the CJEU's ban on intra-EU BIT arbitration to contract-based arbitrations.

The focus section on EFILA features the Report on the ninth EFILA Annual Conference as well as the third Young EFILA event, which were both held in Frankfurt in April 2024, and was written by Özge Varis.

As in the past years, we run an Essay Competition inviting young practitioners to submit their unpublished submissions. After a thorough selection of all submissions, we have selected two winners. The first prize winner is Dano Brossmann with his essay on the 'EU Council's Denial of Benefits to Russian and Belorussian investors under the Energy Charter Treaty'. The second prize winners are Jack Bownes and Rebecca Mee with their essay entitled 'Ditch or Fix? The Role of International Investment Agreements in Reconciling ISDS with the Climate Emergency'. Both essays reflect the interest in this Essay Competition and the high quality which young practitioners can produce on highly complex issues.

Finally, the book review section covers one review written by Nikos Lavranos, which concerns an extensive commentary on the ECT edited by Prof. Leal-Arcas.

In sum, it can be concluded that this is yet another rich issue with a truly diverse group of contributors from around the world and manifests why the *Review* continues to attract so much attention, not only by scholars and practitioners but also from national courts and arbitral tribunals. The wide range of topics and jurisdictions featured in this issue is testimony of the increasing reach of the *Review* worldwide.

We wish to express our gratitude to the wonderful editorial team, led by the Co-Managing Editors Trisha Mitra and Samuel Pape who are supported by our editors Mark McCloskey, Maria Fanou and Szilard Gaspar-Szilagyi and our Editorial Board.

Last, but certainly not least, we are also indebted to Vincent Verschoor and Gwen de Vries of Kluwer Law International for their relentless support and enthusiasm in developing and producing this *Review*.

In order to ensure that each issue we produce is substantial, innovative and intriguing, we invite unpublished, high-quality submissions (both long and short articles as well as case notes) that fall within the scope of the *Review*. The Call for Papers and the house style requirements are published on the *Review*'s website, https://efila.org/eila-review/

In addition, we will also run again an Essay Competition for the autumn issue 2025. All information regarding the 2025 Essay Competition will be published on the *Review*'s website in due course, https://efila.org/eila-review/

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