

another Contracting Party, is only valid if it is made between Investors and Investments in similar circumstances. In determining whether differential treatment of Investors or Investments is consistent with Article 10, two basic factors must be taken into account.

The first factor is the policy objectives of Contracting Parties in various fields insofar as they are consistent with the principles of non-discrimination set out in Article 10. Legitimate policy objectives may justify differential treatment of foreign Investors or their Investments in order to reflect a dissimilarity of relevant circumstances between those Investors and Investments and their domestic counterparts. For example, the objective of ensuring the integrity of a country's financial system would justify reasonable prudential measures with respect to foreign Investors or Investments, where such measures would be unnecessary to ensure the attainment of the same objectives insofar as domestic Investors or Investments are concerned. Those foreign Investors or their Investments would thus not be »in similar circumstances« to domestic Investors or their Investments. Thus, even if such a measure accorded differential treatment, it would not be contrary to Article 10.

The second factor is the extent to which the measure is motivated by the fact that the relevant Investor or Investment is subject to foreign ownership or under foreign control. A measure aimed specifically at Investors because they are foreign, without sufficient countervailing policy reasons consistent with the

herende parts investeringer eller investorer, er kun gyldig, hvis den foretages mellem investorer og investeringer under sammenlignelige omstændigheder. Når det afgøres, om differentieret behandling af investorer eller investeringer er i overensstemmelse med artikel 10, bør der tages hensyn til to grundlæggende faktorer:

Den første faktor er de kontraherende parter politiske mål på forskellige områder, for så vidt de er forenelige med principperne om ikke-forskelsbehandling som anført i artikel 10. Legitime politiske mål kan retfærdiggøre differentieret behandling af udenlandske investorer eller deres investeringer som middel til at tage hensyn til forskelle i relevante omstændigheder mellem de pågældende investorer og investeringer og deres indenlandske modstykker. F.eks. vil ønsket om at sikre det finansielle systems integritet i et givet land kunne retfærdiggøre rimelige forsigtighedsforanstaltninger over for udenlandske investorer eller investeringer, mens sådanne foranstaltninger ville være unødvendige til at sikre opfyldelsen af de samme mål for så vidt angår indenlandske investorer eller investeringer. Disse udenlandske investorer eller deres investeringer befinder sig således ikke i omstændigheder, der kan sammenlignes med de omstændigheder, der gør sig gældende for indenlandske investorer eller deres investeringer. Selv om en sådan foranstaltning indebærer differentieret behandling, vil den derfor ikke være i strid med artikel 10.

Den anden faktor er, i hvilken grad foranstaltningen skyldes, at den pågældende investor eller investering tilhører en udenlandsk ejer eller er under udenlandsk kontrol. En foranstaltning, der specifikt er rettet mod investorer, fordi de er udlændinge, uden fyldestgørende grunde hertil i overensstemmelse med oven-