

CFIS 24 Background Paper on Panel

FDI Screening Mechanisms in the EU and its Member States – FDI and EU Strategic Autonomy

Prepared by Marcelo Sequeira de Sousa

CFIS 24 Programme Sherpa and Junior Associate at BLOMSTEIN¹

The purpose of this Paper is to set the scene and provide the state of play and background information to the participants in Panel 3.

Balancing Growth and Strategic Protection: *How can the EU effectively balance its desire to remain an attractive destination for global investment while simultaneously protecting its strategic interests and critical infrastructure? This involves navigating the complex interplay between economic growth and national security concerns.*

Sector-Focused Agenda: *The EU's pursuit of economic independence and technological sovereignty is becoming a central pillar of its strategic autonomy agenda. This focus on sectors such as technology, healthcare, and energy is not only shaping FDI policies but also creating new opportunities for investors who align with the EU's priorities, as evidenced by initiatives like the European Chips Act and the Digital Europe Programme.*

EU-Wide Security Concept: *There is a significant transition occurring from individual Member States' national security concerns to a broader, EU-wide concept of security. The European Commission is increasingly positioning itself as the guardian of the EU's economic strategic autonomy, which is reshaping the current EU FDI regime. This shift is likely to lead to more harmonized and stringent FDI screening processes across the EU.*

¹ The views expressed in the Background Paper do not necessarily reflect the views of the panellists and participants in CFIS 24 and cannot be attributed to them. The CELIS Institute, as a matter of institutional policy, does not take any position but provides a neutral venue for open exchange.



About CFIS 24 | 16 -18 October 2024 | On-site | In private | Paris (France)

The CELIS Forum on Investment Screening (CFIS) is the flagship event of the CELIS Institute, to be held in its 6th edition this year. CFIS is Europe's first and foremost forum to discuss questions on investment screening and economic security. Thought leaders in investment control and economic security from Europe, the US, and beyond discuss current practical challenges and influential ideas to sketch geoeconomic strategies for Europe.

This year space is very limited. If you would like to join, please get in touch with events@celis.intitute.

About the CELIS Institute

The CELIS Institute is an independent non-profit, non-partisan research enterprise dedicated to promoting better regulation of foreign investments in the context of security, public order, and competitiveness. It produces expert analysis and fosters a continuous trusting dialogue between policymakers, the investment community, and academics. The CELIS Institute is the leading forum for studying and debating investment screening policy. The CELIS Institute enjoys the status of charitable enterprise under German law.



Table of Contents

- A. Introduction..... 3**
- B. Context and Background..... 4**
- C. Latest Developments 5**
- D. Between the Open Market and Strategic Asset Protection 7**
- E. List of References:..... 8**

A. Introduction

As the economic landscape continues to evolve and the unprecedented number of successive large-scale crises have shown that the economic interdependence of States can be a source of vulnerability, the European Union (EU) has been increasingly focused on achieving strategic autonomy to safeguard its economic interests and enhance its resilience against external shocks. This concept of strategic autonomy encompasses various dimensions, including economic sovereignty, technological independence, and security of critical infrastructures.

In recent years, the EU has undertaken significant measures to strike a balance between remaining an attractive destination for global investment and protecting its strategic interests. The intersection of FDI and European Strategic Autonomy is a critical area of focus, particularly considering recent geopolitical tensions, economic disruptions caused by events such as the COVID-19 pandemic, Russia’s aggression on Ukraine and the US / China trade war, as well as the accelerating pace of technological advancements.



B. Context and Background

Foreign Direct Investment has long been a cornerstone of the EU's economic strategy, driving growth, creating jobs, and fostering innovation. However, the increasing complexity of global supply chains and the rising importance of critical technologies have prompted a re-evaluation of FDI policies. The EU recognizes that while FDI can bring substantial benefits, it also poses potential risks to national security, public order, and the integrity of critical infrastructure.

The European Commission has been proactive in addressing these concerns through various legislative and regulatory initiatives. One of the key developments in this regard is the EU FDI Screening Regulation², which came into full effect in October 2020. This regulation provides a framework for Member States to review foreign investments on the grounds of security and public order, ensuring a coordinated approach to FDI across the EU, and has significantly enhanced the ability of Member States to scrutinize foreign investments.

The regulation further establishes a mechanism for cooperation and information exchange between Member States and the European Commission, allowing for a more comprehensive assessment of the potential risks associated with foreign investments. This collaborative approach ensures that FDI decisions are made with a holistic understanding of their implications for the EU as a whole.

² Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019.



C. Latest Developments

Recent years have seen a marked increase in the number of FDI screening mechanisms established by Member States. Countries such as Germany, France, and Italy have updated their national FDI laws to align with the EU framework, incorporating stricter scrutiny of investments in critical sectors such as technology, healthcare, and energy. These measures reflect a growing awareness of the need to protect strategic assets.

Technological sovereignty has also been in the spotlight, being a central pillar of the EU's strategic autonomy agenda. The rapid pace of technological innovation, coupled with the increasing reliance on digital infrastructure, has underscored the importance of safeguarding critical technologies. The EU has identified key areas such as artificial intelligence, cybersecurity, and semiconductor manufacturing as strategic priorities³.

On another front, geopolitical dynamics play a crucial role in shaping the EU's approach to FDI and strategic autonomy. The evolving relationship between the EU and major global powers, such as the United States and China, has significant implications for investment flows and economic policies. The EU's strategic autonomy agenda aims to navigate these complex relationships by reducing dependencies and enhancing resilience. Current geopolitical events such as the ongoing Russia / Ukraine conflict have also influenced foreign investment screening, with the European Commission pushing

³ *Vide* Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2030 Digital Compass: the European way for the Digital Decade. COM/2021/118 final.



for a presumption of threat against national security on all Russian and Belarusian FDI⁴.

The EU has been particularly cautious about FDI from state-owned enterprises and investors with strong ties to foreign governments. Concerns about potential political influence and strategic control have led to a more rigorous assessment of such investments. The recent emphasis on "economic security" has highlighted the need for the EU to protect its critical industries and maintain control over key assets.

This evolving landscape presents both challenges and opportunities for businesses and investors. Companies seeking to invest in the EU must navigate a more complex regulatory environment, with heightened scrutiny of investments in strategic sectors. Nonetheless, some innovation-driven sectors can still draw new opportunities for investors who align their strategies with the EU's priorities, benefiting from funding opportunities, research collaborations, and a favourable policy environment. That is the case of the EU's focus on technological sovereignty, with initiatives such as the European Chips Act⁵ and the Digital Europe Programme⁶ offering substantial support for businesses involved in cutting-edge technologies.

As the cherry on top of the cake, the European Commission has proposed a revision of the FDI Screening Regulation⁷, aiming to enhance the current framework by

⁴ Communication from the Commission of 6 April 2022, Guidance to the Member States concerning foreign direct investment from Russia and Belarus in view of the military aggression against Ukraine and the restrictive measures laid down in recent Council Regulations on sanctions.

⁵ Proposal for a Regulation of the European Parliament and of the Council establishing a framework of measures for strengthening Europe's semiconductor ecosystem (Chips Act). COM/2022/46 final.

⁶ <https://digital-strategy.ec.europa.eu/en/activities/digital-programme>.

⁷ European Commission. (2023). Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union. COM(2023).



introducing more stringent screening criteria, increasing transparency, and facilitating greater cooperation among Member States. These goals are to be attained by harmonizing national rules, identifying a minimum sectoral scope that all Member States are required to screen, and extending the scope of EU screening to cover intra-EU transactions where the direct investor is ultimately owned by a non-EU individual or entity.

D. Between the Open Market and Strategic Asset Protection

Concerning the FDI regime's role in European Strategic Autonomy, the initiatives undertaken by the European Commission and Member States reflect a commitment to balancing openness to global investment with the ever more present need to protect strategic interests.

Now, more than ever, a transition is occurring from the concept of Member States' national security to a broader, communitarian concept of EU national security, with the European Commission striving to position itself as the guardian of the EU's economic strategic autonomy, reforming the current EU FDI regime status quo.

This panel will delve deeper into these issues, exploring the latest developments and challenges. We are fortunate to have a distinguished group of experts with us to share their insights and perspectives on this critical topic.



E. List of References:

- European Commission. (2019). Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union. <https://eur-lex.europa.eu/eli/reg/2019/452/oj>.
- Proposal for a Regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council. COM/2024/23 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52024PC0023&qid=1721133753861>.
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2030 Digital Compass: the European way for the Digital Decade. COM/2021/118 final. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52021DC0118>.
- Communication from the Commission Guidance to the Member States concerning foreign direct investment from Russia and Belarus in view of the military aggression against Ukraine and the restrictive measures laid down in recent Council Regulations on sanctions (Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1) and its amendments and Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures concerning restrictive measures in view of the situation in Belarus

(OJ L 134, 20.5.2006, p. 1) and its amendments.) 2022/C 151 I/01 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022XC0406%2808%29>).

- Proposal for a Regulation of the European Parliament and of the Council establishing a framework of measures for strengthening Europe's semiconductor ecosystem (Chips Act). COM/2022/46 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52022PC0046>.
- European Council – ART (2021), 'Strategic Autonomy, Strategic Choices', Issue paper, <https://www.consilium.europa.eu/media/49404/strategic-autonomy-issues-paper-5-february-2021-web.pdf>.
- European Economic and Social Committee, 'What ways and means for a real strategic autonomy of the EU in the economic field? Final Report', https://www.eesc.europa.eu/sites/default/files/files/qe-02-23-358-en_n_0.pdf.
- Meunier, S., & Nicolaidis, K. (2019), "The Geopoliticization of European Trade and Investment Policy" *JCMS: Journal of Common Market Studies*, 57(S1), 103-113.
- Robert S. (2023), "Foreign Investment Control Procedures as a Tool for Enforcing EU Strategic Autonomy" *European Papers*, Vol. 8, 2023, No 2, European Forum, Insight of 27 July 2023, pp. 513-523 (<https://www.europeanpapers.eu/en/europeanforum/foreign-investment-control-procedures>).
- Beaucillon C. (2023), "Strategic Autonomy: A New Identity for the EU as a Global Actor" *European Papers*, Vol. 8, 2023, No 1, European Forum, Insight of



27 July 2023, pp. 417-428 (<https://www.europeanpapers.eu/en/europeanforum/strategic-autonomy-new-identity-eu-global-actor>).

- Beaucillon C. and S. Poli (2023), “Special Focus on EU Strategic Autonomy and Technological Sovereignty: An Introduction” European Papers Vol. 8, No 2, pp. 411-416 (<https://www.europeanpapers.eu/en/europeanforum/special-focus-eu-strategic-autonomy-and-technological-sovereignty-introduction>).
- Alcidi C. and Kiss-Gálfalvi T. (2023) “Economic integration during an age of geopolitical instability”, CEPS Explainer 2023-09. <https://www.ceps.eu/ceps-publications/economic-integration-during-an-age-of-geopolitical-instability/>.
- Castro Ribeiro, J. (2023). *The European Union’s Strategic Autonomy: Navigating a Complex Geopolitical Landscape*. Bruges European Economic Policy Briefings, College of Europe. Retrieved from https://www.coleurope.eu/sites/default/files/research-paper/EDP%203%202023_%20Castro%20Ribeiro.pdf
- Guerrieri, P., & Padoan, P. C. (2024). *European Competitiveness and Strategic Autonomy - The European Union and the double challenge: strengthening competitiveness and enhancing economic security*. LEAP LUISS Working Paper Series, WP5/24. Retrieved from <https://leap.luiss.it/wp-content/uploads/2024/03/WP5.24-European-competitiveness-and-strategic-autonomy-.pdf>