

# A Shifting European Paradigm in FDI Screening: From Market Protection to Economic Security

by Federica Marconi

In recent years, the European Union has significantly redefined its stance on foreign direct investment (FDI) and its control, transitioning from a traditionally liberal and market-oriented approach to one increasingly shaped by strategic considerations. This "geo-economic turn"<sup>1</sup> has been heavily driven by the changing economic reality and mounting concerns about the implications of foreign – particularly non-EU – investment in critical infrastructure and sensitive technologies. These developments have resulted in the establishment of a common framework for FDI screening at the European level, with the adoption of Regulation (EU) 2019/452 (FDI Regulation).<sup>2</sup> While the screening of FDI

remains the responsibility of individual member states, this area is becoming an increasingly important intersection of national sovereignty and supranational interests. Consequently, there is growing concern about the future architecture of FDI screening in Europe, particularly in light of the ongoing discussions regarding the revision of the FDI Regulation, on which political agreement is expected to be reached by the end of the year.

## *From internal market integrity to external threats*

Over the past decades, FDI in Europe has come to be seen as a double-edged sword. While FDI remains a cornerstone of economic growth across countries, it is also increasingly intertwined with the need to protect national security from potentially hostile takeovers. Particular concerns have arisen from the lasting interest and considerable influence that an investor from one country can gain over a company based in another, which could grant them access to sensitive sectors or strategic

<sup>1</sup> Sarah Bauerle Danzman and Sophie Meunier, "The EU's Geoeconomic Turn: From Policy Laggard to Institutional Innovator", in *Journal of Common Market Studies*, Vol. 62, No. 4 (July 2024), p. 1097-1115, <https://doi.org/10.1111/jcms.13599>.

<sup>2</sup> European Parliament and Council of the EU, *Regulation (EU) 2019/452 of 19 March 2019 Establishing a Framework for Screening of Foreign Direct Investments into the European Union*, <http://data.europa.eu/eli/reg/2019/452/2021-12-23>.

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assets vital to a state's sovereignty, such as those related to critical infrastructure and sensitive technologies. Therefore, member states have sought to protect their core interests by introducing new FDI screening mechanisms or reinforced already existing ones through domestic legislation. Although FDI is an exclusive competence of the EU under the common commercial policy as stated in Art. 207 TFEU,<sup>3</sup> its control instead belongs to the exclusive competence that member states hold over matters of national security and public order.

At the turn of the century and into the early 2000s, the European Commission frequently challenged domestic rules that granted national authorities broad discretion to restrict or condition FDI, arguing that they could easily allow for discriminatory decisions, thus violating the free movement of capital and the freedom of establishment provided for by EU Treaties. This sparked a push to reconcile national security prerogatives with the rights and freedoms of the internal market, that resulted in member states undergoing systemic reforms aimed at aligning their national FDI screening mechanisms with EU law. However, a different stance emerged from 2015-2016 onwards, with the emergence of debates about the need to protect the strategic interests of the EU – rather than national interests alone – and to shield the internal market from external

threats. This was fuelled, in particular, by the EU's increasingly growing awareness of China as a "systemic rival" – especially due to the heavy politicisation of the Chinese business environment – and the consequent call for greater reciprocity in market access.<sup>4</sup>

As a result, the Commission put forward a proposal for the FDI Regulation as part of the broader EU trade agenda to harness globalisation.<sup>5</sup> The FDI Regulation, adopted in 2019, does not aim to replace national FDI screening mechanisms or to oblige member states to put in place new ones, rather to provide common criteria to identify risks related to the control of strategic assets. It also establishes a cooperation framework for information exchange among the member states and between them and the Commission, enabling the Commission to issue non-binding opinions when (i) an investment threatens the security or public order of more than one member state or when (ii) it could undermine a strategic project or programme of interest to the entire EU.<sup>6</sup>

<sup>3</sup> As confirmed by the Court of Justice of the EU (CJEU), *Opinion 2/15 of the Court (Full Court) of 16 May 2017: Free Trade Agreement between the European Union and the Republic of Singapore*, [https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:62015CV0002\(01\)](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:62015CV0002(01)).

<sup>4</sup> Gisela Grieger, "EU Framework for FDI Screening", in *EPRS Briefings*, April 2019, [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2018\)614667](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2018)614667); European Commission, *EU-China Summit: Defending EU Interests and Values in a Complex and Vital Partnership*, 22 June 2020, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1159](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1159).

<sup>5</sup> European Commission, *A Balanced and Progressive Trade Policy to Harness Globalisation* (COM(2017/492), 1 September 2017, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52017DC0492>.

<sup>6</sup> Lena Hornkohl, "From Fragmentation to Harmonisation, From Investment to Security? Entering the Trilogues on the Revision of the FDI Screening Regulation", in *Kluwer Competition Law Blog*, 17 June 2025, <https://legalblogs.wolterskluwer.com/competition-blog/node/4754>.

The goal of safeguarding the interests of the EU “as a whole” by relying on national-level measures complemented by a brand-new EU framework that would serve the emerging concept of shared supranational interests, was further confirmed in the face of the consequences of the Covid-19 pandemic and Russia’s war against Ukraine. In several Communications, the Commission called on member states to rely on their own FDI screening mechanisms and to reinforce those that were either underdeveloped, inconsistent or ineffective at managing cross-border risks.<sup>7</sup>

### *The proposal for the revision of the FDI Regulation*

Since the entering into force of the FDI Regulation in October 2020, the Commission and member states have been working to strengthen the framework and enhance resilience, both by addressing procedural shortcomings and preparing for evolving challenges, thus marking the transition into the EU’s current geopolitical approach. In particular, over the last years, the EU has been experiencing an escalating

global competition, especially in the digital and technological spheres, where economic giants like China and the United States have consistently outpaced other players. This has left the EU in a laggard position, especially evident in strategic sectors like electric vehicles (EVs), which has made the FDI Regulation’s objectives more crucial than ever: maintaining the EU’s openness to foreign investment while simultaneously safeguarding its essential and strategic interests.

In October 2023, three years after its entering into force, the first periodic evaluation of the Regulation was completed.<sup>8</sup> The reports published by the Organisation for Economic Co-operation and Development (OECD) and the European Court of Auditors identified key weaknesses capable of jeopardising a unified EU response,<sup>9</sup> including: (i) the absence of screening mechanisms in some member states; (ii) divergent timelines, procedures and standards in member states where such mechanisms do exist; (iii) insufficient cooperation and information-sharing both between member states and with the Commission. Building on these assessments, the Commission proposed a revision of the FDI Regulation,<sup>10</sup> with

<sup>7</sup> European Commission, *Guidance to the Member States Concerning Foreign Direct Investment and Free Movement of Capital from Third Countries, and the Protection of Europe’s Strategic Assets, ahead of the application of Regulation (EU) 2019/452 (FDI Screening Regulation)* (C/2020/1981), 26 March 2020, [https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52020XC0326\(03\);](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52020XC0326(03);) *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...* (C/2022/2316), 6 April 2022, [https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52022XC0406\(08\).](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52022XC0406(08).)

<sup>8</sup> As foreseen under Article 15 of the FDI Regulation.

<sup>9</sup> OECD, *Framework for Screening Foreign Direct Investment into the EU. Assessing Effectiveness and Efficiency*, Paris, OECD Publishing, January 2022, <https://doi.org/10.1787/f75ec890-en>; European Court of Auditors, “Screening Foreign Direct Investments in the EU. First Steps Taken, But Significant Limitations Remain in Addressing Security and Public-Order Risks Effectively”, in *ECA Special Reports*, No. 27/2023 (December 2023), <https://www.eca.europa.eu/en/publications?ref=SR-2023-27>.

<sup>10</sup> European Commission, *Proposal for*

the aim of “further strengthening the protection of EU security and public order by proposing improved screening of foreign investment into the EU”.<sup>11</sup> This proposal was part of a package of five initiatives “to strengthen the EU’s economic security at a time of growing geopolitical tensions and profound technological shifts”,<sup>12</sup> in line with the broader European Economic Security Strategy of June 2023.<sup>13</sup> This Strategy sets out a three-pillar approach to boosting EU economic security, by promoting the EU’s competitiveness and partnering with the broadest possible range of countries to advance shared economic security interests, while protecting its interests from emerging risks.<sup>14</sup>

The Commission’s proposal is actually more than just an amendment; it seeks to replace the current FDI Regulation, signalling a new awareness in the EU’s

approach to FDI screening, towards greater harmonisation. Key changes include (i) mandatory screening in all member states, with better harmonised national procedural rules; (ii) minimum sectoral coverage for EU strategic assets,<sup>15</sup> as well as certain critical goods, technologies and entities,<sup>16</sup> where all member states must screen FDI; (iii) the inclusion of indirect intra-EU investments (that is, investments by EU investors that are ultimately controlled by individuals or businesses from a non-EU country).<sup>17</sup> Alongside a stronger coordinating and decision-making role for the Commission, the content of the proposal suggests a rebalancing of power from national sovereignty to greater supranational oversight, raising important questions about the future distribution of competences within the EU in this area.

*a Regulation on the Screening of Foreign Investments in the Union and Repealing Regulation (EU) 2019/452 (COM/2024/23)*, 24 January 2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52024PC0023>.

<sup>11</sup> European Commission, *Commission Proposes New Initiatives to Strengthen Economic Security*, 24 January 2024, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_363](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_363); European Commission, *Advancing European Economic Security: An Introduction to Five New Initiatives (COM/2024/22)*, 24 January 2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52024DC0022>.

<sup>12</sup> European Commission, *Commission Proposes New Initiatives to Strengthen Economic Security*, cit.

<sup>13</sup> European Commission, *European Economic Security Strategy (JOIN/2023/20)*, 20 June 2023, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52023JC0020>.

<sup>14</sup> European Commission DG Trade, *Interinstitutional Talks Begin on EU’s Revised FDI Screening Mechanism*, 17 June 2025, [https://policy.trade.ec.europa.eu/node/1842\\_en](https://policy.trade.ec.europa.eu/node/1842_en).

<sup>15</sup> Annex I of the proposal, for example projects or programmes of Union interest, such as preparatory action on preparing the new EU GOVSATCOM programme; Space programme; Union security connectivity programme; Horizon 2020 including research and development programmes pursuant to Article 185 TFEU, and joint undertaking or any other structure set up pursuant to Article 187 TFEU; Euratom Research and Training Programme 2021-25; Trans-Europe Networks Transport (TEN-T); Connectivity Europe Facility; Digital Europe Programme; European Defence Industrial Development Programme, etc.

<sup>16</sup> Annex II of the proposal, for instance advanced semiconductors technologies; artificial intelligence technologies; quantum technologies; biotechnologies; advanced connectivity, navigation and digital technologies; advanced sensing technologies; space and propulsion technologies; energy technologies; robotics and autonomous systems; advanced materials, manufacturing and recycling technologies; critical medicines, etc.

<sup>17</sup> European Commission DG Trade, *EU Foreign Direct Investment Screening 2024 Revision (factsheet)*, 24 January 2024, <https://doi.org/10.2781/130838>.



### *Ongoing negotiations in the trilogues: Between a rock and a hard place*

Since interinstitutional negotiations on the Commission proposal of revision of the FDI Regulation began on 17 June 2025, tensions have already emerged between the Commission, the European Parliament and the Council of the EU regarding the final text.

In the position adopted on 8 May 2025, the Parliament has gone beyond the Commission's proposal, reaffirming its strong stance towards the need to protect the EU's overall strategic priorities.<sup>18</sup> The position of the Parliament is coherent with the one it has been advocating since 2022,<sup>19</sup> when it repeatedly underlined the importance of stepping up EU cooperation in screening and blocking inbound investments in critical infrastructure "where major negative impacts on other member states or the EU as a

whole cannot be excluded".<sup>20</sup> Thus, the Parliament has called for mandatory FDI screening mechanisms in all member states and greater harmonisation of national systems, with broader sectoral coverage, such as in the areas of media, critical raw materials, transport, electoral infrastructure and large-scale agriculture. The Parliament has also pushed for the Commission to be entitled to investigate FDI and to act on its own initiative in cross-border cases or when member states disagree. The Council, however, has taken a step back from the Commission's proposal in its position adopted on 6 June<sup>21</sup> and appears to be in greater alignment with the willingness of individual member states to firmly protect their prerogatives in an area closely linked to the core of their public powers. While acknowledging the need for a stronger and more effective FDI screening framework and greater harmonisation across the EU, it has emphasised the importance of preserving member states' room for manoeuvre, encouraging them to go further within their national systems. While supporting robust minimum standards, the Council has also argued that member states should retain the ability to expand the scope of their national screening mechanisms

<sup>18</sup> European Parliament, *Amendments Adopted on 8 May 2025 on the Proposal for a Regulation of the European Parliament and of the Council on the Screening of Foreign Investments in the Union...*, [https://www.europarl.europa.eu/doceo/document/TA-10-2025-0102\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-10-2025-0102_EN.html).

<sup>19</sup> European Parliament, *Resolution of 23 June 2022 on the Future of EU International Investment Policy*, [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0268\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0268_EN.html); *Resolution of 1 June 2023 on Foreign Interference in All Democratic Processes in the European Union, Including Disinformation*, [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0219\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0219_EN.html); *Resolution of 17 January 2024 on the Security and Defence Implications of China's Influence on Critical Infrastructure in the European Union*, [https://www.europarl.europa.eu/doceo/document/TA-9-2024-0028\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0028_EN.html); *Resolution of 28 February 2024 'Implementation of the Common Security and Defence Policy – Annual Report 2023'*, [https://www.europarl.europa.eu/doceo/document/TA-9-2024-0105\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0105_EN.html).

<sup>20</sup> European Parliament, *Resolution of 17 January 2024 on Building a Comprehensive European Port Strategy*, [https://www.europarl.europa.eu/doceo/document/TA-9-2024-0025\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0025_EN.html).

<sup>21</sup> Council of the EU, *Proposal for a Regulation of the European Parliament and of the Council on the Screening of Foreign Investment in the Union... – Mandate for Negotiations with the European Parliament (9517/25)*, 6 June 2025, <https://data.consilium.europa.eu/doc/document/ST-9517-2025-INIT/en/pdf>.

to encompass FDI in sectors not included in the EU-wide minimum scope. Furthermore, while the Council has recognised the importance of enhancing the efficiency of EU-level cooperation on FDI screening, it has softened the push for an expanded role of the Commission, restating that the ultimate authority over investment decisions will continue to lie with individual member states.

Despite the divergent views that have surfaced on the revision of the FDI Regulation, two key points seem to have garnered broad consensus: (i) the need for an enhanced EU FDI framework to overcome issues stemming from the fragmentations and specificities of national screening mechanisms; (ii) the importance of formalising and strengthening a unified EU's role in addressing challenges related to economic security.

### *Paving the way for a new European economic architecture*

The EU's changing stance on FDI is a telling example of a broader shift happening in the background. While at the turn of the century and into the early 2000s the EU's primary concern was protecting the integrity of the internal market against national measures that could distort competition and discriminate against operators, from the second decade of the 2000s onwards the EU's legal and political approach has changed, recognising the need to shield the internal market from external threats. As of now, the EU trajectory reflects a broader attempt to redefine the traditional notions of national security and sovereignty to safeguard

its role in the competition with other major actors, in an era characterised by increasing geopolitical instability and weaponised interdependencies. Additionally, the assertive behaviour of state-driven economies like China, combined with the consequences of the measures adopted during the second Trump administration, has added a fresh sense of urgency to this process.

Thus, the use of the control of FDI has been increasingly integrated into the EU's strategic architecture,<sup>22</sup> signalling Europe's strategic convergence with other global players in safeguarding economic security. However, unlike jurisdictions such as the United States, where investment control is managed at the federal level, the EU must navigate a far more complex institutional landscape. The EU's unique legal nature and the delicate balance of competences between EU institutions and member states create structural constraints that limit the scope for centralised action. Thus, enhanced cooperation and coordination remain the only politically and legally viable instruments for safeguarding EU strategic interests. While this approach is inherently a compromise, it represents, under the current conditions, the most realistic pathway to a more coherent and effective EU response.

21 July 2025

<sup>22</sup> Marcin Szczepański, "New EU Economic Security Doctrine", in *EPRS Briefings*, June 2025, [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2025\)772915](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2025)772915).

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