

VAN BAEEL & BELLIS



European Economic Security Package: Five Initiatives

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On 24 January 2024, the European Commission ("Commission") adopted its "[Economic Security Package](#)" identifying five initiatives to promote the European Union's ("EU") economic security and give effect to the [European Economic Security Strategy](#) adopted in June 2023. That strategy focuses on 'de-risking' the EU's trade and investment links with third countries as well as promoting the EU's competitiveness and growth, and partnering with third countries with shared concerns.

The Economic Security Package's most concrete initiative is the proposal for a new Foreign Direct Investment ("FDI") Screening Regulation. In the other four initiatives, the Commission identifies new policies relevant to economic security which are to be further discussed and developed. Those include (i) a [White Paper](#) on Export Controls; (ii) a [White Paper](#) on Outbound Investment; (iii) [a proposal](#) for a Council Recommendation on Research Security; and (iv) a [White Paper](#) for enhancing support for research and development ("R&D") involving technologies with dual-use potential.

PROPOSAL FOR A NEW FDI SCREENING REGULATION

The Commission's proposal for a new FDI Screening Regulation seeks to (i) require the Member States to screen certain foreign investments and implement a series of minimum requirements in their national screening mechanisms, (ii) enhance the cooperation mechanism between the Member States and the Commission, and (iii) broaden the scope of the existing [2019 FDI Screening Regulation](#).

Mandatory FDI screening mechanism and minimum requirements

Under the existing FDI Screening Regulation, there is no obligation for Member States to adopt an FDI screening mechanism. Currently, five Member States (Ireland, Croatia, Bulgaria, Greece, and Cyprus) still do not have such a mechanism in place. Under the Commission's proposal, the Member States will be required to set up their own FDI screening mechanism no later than 15 months after the entry into force of the regulation.

The Member States' FDI screening mechanisms will at a minimum need to subject to prior authorisation investments where the EU target:

- participates in programmes of EU interest, as detailed in Annex I to the proposed new FDI Screening Regulation (i.e. Horizon Europe, European Defence Fund, Euratom); or
- is economically active in the sectors listed in Annex II to the proposed new FDI Screening Regulation (i.e. critical infrastructure and inputs such as semiconductors, artificial intelligence, critical medicines, and dual-use and military items).

Moreover, FDI screening mechanisms will have to meet certain minimum procedural requirements (though stricter requirements may be adopted by the Member States), including:

- ensuring the protection of confidential and/or commercially sensitive information;
- guaranteeing an administrative right to be heard prior to the final decision;

- guaranteeing the right of investors, their subsidiaries, or undertakings to seek judicial review of a screening decision; and
- monitoring compliance with, and preventing the circumvention of, screening mechanisms and screening decisions.

Enhanced cooperation mechanism

The proposed new FDI Screening Regulation seeks to strengthen and improve the existing cooperation mechanism between the Commission and the Member States' authorities. Under the new proposal, the Member States will no longer be required to report all FDI screened at national level, but only the following investments (although more extensive reporting remains possible):

- foreign investments in EU targets that participate in EU programmes listed in Annex I to the proposed new FDI Screening Regulation;
- foreign investments in EU targets economically active in the sectors listed in Annex II to the proposed new FDI Screening Regulation, where the foreign investor (i) is directly or indirectly controlled by a third country (including its EU subsidiary); (ii) is subject to EU sanctions (including any of the investor's subsidiaries and other related third parties); or (iii) was involved in a foreign investment previously screened by a Member State (including any of its subsidiaries) which was blocked or only authorised with conditions;
- foreign investments in EU targets when the Member State where the target is established initiates an in-depth investigation under its FDI screening procedures, and exceptionally, where it intends to impose mitigating measures or block the transaction without an in-depth investigation.

Other changes aimed at streamlining the cooperation mechanism include:

- in case of a foreign investment involving several Member States, aligning the time limits of notification procedures by requiring investors to notify all competent authorities on the same day;
- requiring reporting Member States to give "utmost consideration" to the views of other Member States and the opinion of the Commission (as opposed to "due consideration");
- requiring more detailed information in the Member States' notifications.

Scope of the proposed new FDI Screening Regulation

The proposal envisages that the new FDI Screening Regulation's scope of application includes (i) greenfield investments and (ii) investments made by an EU investor which directly or indirectly controlled by a foreign entity, where the target is based in another EU Member State ("**intra-EU investments**"). The inclusion of intra-EU investments follows the recent *Xella* judgment (C-106/22) of the Court of Justice of the EU, where it held that the existing FDI Screening Regulation did not apply to such investments. This means that foreign investments carried out through EU subsidiaries may now be subject to screening. However, as clarified in that judgment, foreign investors may oppose such screening efforts if they undermine EU fundamental freedoms such as the free movement of capital or the freedom of establishment.

WHITE PAPER ON OUTBOUND INVESTMENTS

Through this White Paper, the Commission has launched a process to assess how to develop an outbound investment framework. The Commission considers that outbound investments by EU companies can raise similar risks as inbound investments and exports of dual-use technologies, in particular regarding technological and know-how leakage. Moreover, the lack of restrictions on outbound investments could undermine the effectiveness of existing FDI screening and dual-use export control mechanisms.

The White Paper outlines the following process through which the Commission intends to develop a policy on controls of outbound investments:

- a [public consultation](#) running until 17 April 2024, open to relevant stakeholders and the public;
- monitoring and reviewing any existing legislation relevant to outbound investments and risk assessments of outbound investment transactions (summer 2024 to summer 2025); and
- assessing the need and content of any further policy responses (autumn 2025).

ADDRESSING GAPS IN THE EU EXPORT CONTROL REGIME

The White Paper on export control proposes actions to address perceived gaps in the current EU export control regime:

- **short-term actions:** issue a proposal to expand the scope of the EU export control regime, in particular dual-use items not covered by multilateral export control regimes due to a blockage of decision-making, but which were supported by the Member States within these regimes. The Commission also proposes to (i) create a forum for political coordination between the Commission and the Member States to facilitate the adoption of common EU positions on export controls and (ii) adopt a recommendation on enhanced coordination between the Member States in respect of their “national control lists”.
- **medium-term actions:** evaluate the operation and effects of the EU Dual-Use Regulation during the first quarter of 2025 (this was originally scheduled for the period between 2026 and 2028). This evaluation will be supported by a comprehensive study to be carried out in 2024 as well as the results of risk assessments of critical technology considered relevant to that regulation.

INITIATIVES RELATED TO RESEARCH AND INNOVATION

White Paper for enhancing support for research and development involving technologies with dual-use potential

This White Paper reviews whether existing EU funding programmes, such as the EU Defence Innovation Scheme and the European Defence Fund, are adequate for supporting the development of technologies with dual-use potential. Apart from maintaining the current legislative framework, the White Paper also contemplates removing the exclusive focus on civil applications in selected parts of the successor programme to Horizon Europe or creating a dedicated instrument with a specific focus on R&D with dual-use potential.

The Commission has launched a [public consultation](#), running until 30 April 2024, to gather input from public authorities, civil society, industry and academia.

Proposal for a Council Recommendation on Research Security

The Proposal for a Council Recommendation on Research Security focuses on supporting and empowering Member States, EU higher education institutions and other EU public and private research organisations in identifying and addressing “research security risks”. Those risks notably relate to how research and innovation sectors can be exploited, including through the military use of research results or the undue influence of authoritarian States on research institutions.

The proposed Council Recommendation encourages the Member States to establish a policy framework for research security, covering, for example: (i) a coherent set of policies to enhance research security, with due regard to academic freedom and critical technologies for EU economic security; (ii) the integration of research security concerns in the processes and decisions of research funding organisations; and (iii) incentives for universities and other research organisations to make appropriate institutional changes, such as appointing research security advisers, introducing due diligence and risk management processes, and developing training programmes.

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