

WAKING THE EU GIANT: FDI SCREENING AND FSR CONTROL AND THE BATTLE TO PRESERVE EU COMPETITIVENESS¹

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Abstract: In a world where openness and security increasingly collide, the EU is rewriting its rules of engagement. This article explores how two new gatekeepers, foreign direct investment screening mechanism and foreign subsidies control, reshape the internal market without closing the door to global capital. It maps the legal mechanics and asks what happens when subsidised bids and strategic acquisitions meet (or not) the EU's demands for fairness and resilience. Drawing on recent enforcement trends and comparative doctrine, the research goal is to provide comprehensive mapping, considering the development, different factors and focusing on the enabling factors and barriers for the EU to implement FDI regulation and simultaneously to be competitive in global framework.

Keywords: law, European Union law, foreign direct investment screening, foreign subsidies control, fair competition, competitiveness

Introduction

What can the EU do to shape globalisation in line with its shared interests and values? This question was raised by the Commission already in 2017³ before adopting measures aimed at ensuring that the EU remains among the world's largest bloc (in terms of GDP).⁴ In a highly integrated economic area, such as the EU, everything is interconnected. Therefore, in addition to undisputed advantages, the open economy also brought security risks. These risks have recently emerged primarily from the Covid-19 pandemic, the illegal and unprovoked war in Ukraine, hostile economic actions, cyber and infrastructure attacks, foreign interference and disinformation

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³ EUROPEAN COMMISSION: Reflection paper on harnessing globalisation. Com(2017) 240 of 10 May 2017. Publication Office, 2017. ISBN:978-92-79-68226-1, doi:10.2775/41851, p. 3.

⁴ In 2017, the GDP of the EU represented 16,0% of world GDP and EU was the 3rd largest economy behind the China (16,4%) and USA (16,3%). Source: https://ec.europa.eu/eurostat/documents/portlet_file_entry/2995521/2-19052020-BP-EN.pdf/bb14f7f9-fc26-8aa1-60d4-7c2b509dda8e [Accessed on 28 September 2025].

and a global increase in geopolitical tensions.⁵ As a result, the EU had to consider a shift from market liberalism towards geo-economic security and strategic autonomy. The Union stands before an uneasy task: ensuring economic security and fair competition while remaining attractive for capital inflow. Until FDI Regulation⁶ came into force⁷, the EU was relatively unprotected regarding economic security. Foreign investors were able to acquire shares or even control in various strategic facilities, including shipping terminals.⁸ Fifteen years ago, such investments were welcome as they helped to mitigate the consequences of the financial crisis. If there were any concerns related to strategic security, the responsibility for protection laid entirely with the Member States (MSs), which for this purpose usually used derogations enshrined in provisions on freedom of establishment⁹ and free movement of capital.¹⁰

Meanwhile, practice has shown that it is quite a legal challenge for national legislators to meet the strict, yet permissible, criteria for restricting the fundamental market freedoms, even when justifying such restrictions on grounds of strategic national interests.¹¹ The typical tool used by MSs in this regard has been the approval of shares acquisition above certain threshold, enabling the shareholder to exercise decisive influence within the company ("golden shares"). The CJEU had already acknowledged that certain concerns may justify the retention by Member States of a degree of influence within undertakings that were initially public and subsequently privatised, where those undertakings are active in fields involving the provision of services in the public interest or strategic services.¹² However, when conditioning the acquisition of golden shares by potential (either domestic or foreign) investors, the MS must be precise in defining the national interest so the investor will be aware in advance on indication whatever as to the specific, objective circumstances in which

⁵ EUROPEAN COMMISSION: Joint communication to the European Parliament, the European Council and the Council: On "European Economic Security Strategy". JOIN (2023) 20 final of 20 June 2023, p. 1

⁶ 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 in the Union, (*OJ L 79*, 21.3.2019, pp. 1–14).

⁷ The FDI Regulation is applicable from 11 October 2020.

⁸ For example, the Chinese COSCO Shipping Ports Limited acquired shares in ports in Greece (Pireus 100 %), Belgium (Zeebrugge 90%, Antwerp 20%), Germany (Hamburg 24,9%), Italy (Vado Ligure 40%), Netherlands (Rotterdam 17,85%), Spain (Valencia 51%, Bilbao 39,51 %). Source: <https://ports.coscoshipping.com/en/Businesses/Portfolio/#OverseasTerminals> [Accessed on 28 September 2025].

⁹ Article 52 TFEU.

¹⁰ Article 65 TFEU.

¹¹ See to this regards Judgement of 13 May 2003, *Commission v Spain*, C-463/00, EU:C:2003:272, Judgement of 26 March, *Commission v Italy*, C-326/07, ECLI: EU:C:2009:193.

¹² Judgement of 4 June 2002, *Commission v France*, C-483/99, EU:C:2002:327, para. 43.

prior authorisation for buying a golden shares will be granted or refused.¹³ Regarding objectives linked to security of supply, the Court has also emphasized that such an objective may only be relied upon if there is a genuine and sufficiently serious threat to a fundamental interest of society.¹⁴ Naturally, such circumstances differ from state to state. Consequently, FDI that has positive effects in one MS has the potential to pose risks to security in another MS and, potentially to the internal market as a whole. The Commission addressed these challenges by introducing the FDI screening mechanism in 2019 and foreign subsidies control regulation¹⁵ (FSR) in 2022. Despite the relatively short period since their entry into legal effect, a new legislative proposal on FDI screening has already been discussed.¹⁶ Furthermore, the FSR has undergone criticism, too.^{17,18} In the following parts, the author analyses the weaknesses of both tools, investigates the causes of their low effectiveness, and suggests possible ways forward. The key research question is: To what extent do harmonised and centralised screening policies contribute or hinder the economic resilience and attractiveness of the EU for FDI? The research goal is to provide comprehensive mapping, considering the development, different factors and focusing on the enabling factors and barriers for the EU to implement FDI regulation and simultaneously to be competitive in global framework.

Regarding methodology, this study combines doctrinal legal analysis with a descriptive empirical overview of early enforcement under the EU Foreign Subsidies Regulation and the FDI Screening framework, focussing on concentrations and public procurements notified under Regulation 2022/2560. The temporal window captures the first two years of FSR notification obligations (from 12 October 2023) to assess initial patterns without over-extrapolating from a nascent regime.

¹³ Ibid, para. 50.

¹⁴ Judgement of 8 November 2011, *Commission v Greece*, C-244/11, EU:C:2012:694, para. 67.

¹⁵ Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (*OJ L 330*, 23.12.2022, pp. 1–45).

¹⁶ See to this regard the 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 of 24 January 2024, COM(2024) 23 final, SWD(2024) 23 final.

¹⁷ From Commission's annual reports, it can be derived, that MSs suffers with capacities challenges as some of them don't have sufficient financial or personal sources to exercise the screening properly. Other issues relate to insufficient feedback from the MS to which the other states communicate their observances

¹⁸ E.g. CELIS Institute [<https://www.celis.institute/posts-celis-2019/empowering-the-forgotten-competitors-rights-and-remedies-under-the-foreign-subsidies-regulation/>], CARPI, Alessandro: Charting the path: Administrative and judicial remedies available to third parties under the Foreign Subsidies Regulation. In: Review of European Litigation, Issue 3, year 2024, pp. 19–56, ISSN 2975-1306. Available at: https://europeanlitigation.eu/wp-content/uploads/pdf/Fascicolo-3-2024_def.pdf

doi: 10.46282/bpf.2025.31

Design and scope: The analysis maps objectives, scope, procedures and decision outcomes for FSR concentrations and situates these against the legal architecture of FDI screening. Public procurement under the FSR is discussed doctrinally but excluded from the quantitative counts to avoid mixing heterogeneous procedural tracks.

FDI Regulation – a barking dog that does not bite?

The CJEU has already explained that a direct investment consists of investments of any kind made by natural or legal persons which serve to establish or maintain lasting and direct links between the persons providing the capital and the undertakings to which that capital is made available in order to carry out an economic activity. The acquisition of a holding in an undertaking constituted as a company limited by shares is a direct investment where the shares held by the shareholder enable him to participate effectively in the management of that company or in its control.¹⁹ Direct investments are regulated by the provisions on the internal market. However, when foreign direct investments are concerned, a special regime of common commercial policy contained in Art. 207 TFEU applies instead.²⁰ So says the legal theory. Here comes the tricky part. Pursuant to Art.207(2) TFEU the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy. The common commercial policy falls within the exclusive powers of the EU (Art. 3 TFEU)²¹ and regulation appears to be the appropriate tool in this regard. However, eleven MSs had adopted their own FDI screening mechanisms before the EU adopted the FDI Regulation.²² Despite the fact that these mechanisms covered and affected area not within the competence of the MS, the Commission, surprisingly, did not consider this to be an infringement of EU law. Furthermore, implementation of the FDI Regulation was accompanied by reluctance of some of the MSs to adopt screening mechanism. Although the FDI Regulation came into legal force on 11 October 2020, at that time only eleven MSs

¹⁹ Opinion of 16 May 2017, *Accord de libre-échange avec Singapour*, 2/15, EU:C:2017:376, para. 80.

²⁰ *Ibid*, para. 81.

²¹ *Ibid*, para 82: "(...) *the European Union has exclusive competence, pursuant to Article 3(1)(e) TFEU, to approve any commitment vis-à-vis a third State relating to investments made by natural or legal persons of that third State in the European Union and vice versa which enable effective participation in the management or control of a company carrying out an economic activity.*"

²² EUROPEAN COMMISSION: Report from the Commission to the European Parliament and the Council: First Annual Report on the screening of foreign direct investments into the Union, of 23 November 2021. COM(2021)714 final, SWD(2021)334 final, p. 6.

had (their own) FDI screening mechanism²³. They were followed by seven²⁴ others in 2021, Malta in 2022 and Luxemburg and Estonia in 2023. The remaining MSs²⁵ introduced their screening mechanism at the turn of 2023/2024. By now, all MSs have implemented at least some form of screening mechanism. However, they differ from state to state regarding their scope, timelines or even the lack of power to act effectively in some cases.

The provision of Art. 207 TFEU indicates that when the EU legislator adopts a regulation to frame the implementation of common commercial policy, it does so in a binding manner (a nature of regulation that can be derived from Art. 288 TFEU complies with this expectation). Therefore, the Union (based on Art. 207(2) TFEU) adopted the FDI Regulation. However, the FDI Regulation does not impose binding rules, nor does it establish a common foreign direct investment screening mechanism.²⁶ Rather, it merely authorises, and thus does not even oblige, Member States to introduce legislation governing the screening of foreign direct investment (Art. 3 of the FDI Regulation). It encourages MSs to establish their own FDI vetting regimes but makes this optional, requiring only that they share details of any mechanisms they implement. In addition to this authorisation, the regulation establishes a framework of common standards that such national mechanisms (if established) must comply with, thereby only partially harmonising existing national legislation. This has also resulted in inconsistency of what is notified.²⁷ MSs retain discretion over the scope, coverage, and procedures of their screening systems. Instead of setting a common standard dictating the substantive or procedural elements, the FDI Regulation rather legitimizes already existing (and divergent) practices of the MSs (Figure 1) and offers only non-binding guidance. There is a defined process with timelines for input from the Commission and other MSs on specific transactions, but neither these opinions nor comments are binding, except

²³ Austria, Denmark, Finland, France, Germany, Italy, Latvia, Lithuania, Poland, Portugal and Spain.

²⁴ Belgium, Czechia, Hungary, Netherlands, Romania, Slovakia and Slovenia.

²⁵ Bulgaria, Croatia, Cyprus, Greece, Ireland, and Sweden.

²⁶ See to this regard for example the Opinion of AG Tamara Čapeta of 30 March 2023 in *Xella Magyarország*, C-106/22, EU:C:2023:267, para. 32, EUROPEAN COURT OF AUDITORS: Special Report 27/2023: screening foreign direct investments in the EU: First steps taken, but significant limitations remain in addressing security and public-order risks effectively. Publication Office of the European Union, 2023. ISBN 978-92-849-1299-5. doi:10.2865/885487, or the EU Legislation in Progress briefing of the European Parliament: Screening of foreign investments in the Union. European Union, 2024. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762382/EPRS_BRI\(2024\)762382_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762382/EPRS_BRI(2024)762382_EN.pdf).

²⁷ EUROPEAN COMMISSION: Report from the Commission to the European Parliament and the Council: First Annual Report on the screening of foreign direct investments into the Union, of 23 November 2021. COM(2021)714 final, SWD(2021)334 final, p. 16

for certain cases involving Union-level projects. The regulation also establishes a Commission-led screening procedure for transactions affecting strategic Union interests, including research and pan-European networks. However, final authority always remains with individual MSs, meaning neither the Commission nor other MSs can directly block transactions through their input.

Figure 1: Some of the differences in the screening mechanisms applicable in MSs

	Powers to effectively gather information on transactions not undergoing screening in individual Member States			Explicitly legislated powers to act in the interest of other Member States or projects or programmes of Union interest			
	Explicit mention of an information obligation and the scope of information for non-screened transaction	Deadlines for the provision of the information are specified	Powers to sanction non-performance or provision of false information	Explicit powers to start screening an investment that is likely to affect other Member States' security or public order	Explicit powers to materially intervene in investments that likely affect other Member States' security or public order	Explicit powers to start screening an investment that is likely to affect projects and programmes of Union interest	Explicit powers to materially intervene in investments that likely affect projects and programmes of Union interest
Austria	Yes	Yes	Yes	No	No	No	No
Belgium	Yes	No	No	No	No	No	No
Bulgaria	No	No	No	n/a	n/a	n/a	n/a
Croatia	Yes	Yes	No	n/a	n/a	n/a	n/a
Cyprus	No	No	No	n/a	n/a	n/a	n/a
Czechia	No	No	No	No	No	No	No
Denmark	No	No	No	No	No	No	No
Estonia	No	No	No	No	Yes	No	Yes
Finland	No	No	No	No	No	No	No
France	No	No	No	No	No	No	No
Germany	No	No	No	Yes	Yes	Yes	Yes
Greece	No	No	No	n/a	n/a	n/a	n/a
Hungary	No	No	No	No	No	No	No
Ireland	No	No	No	n/a	n/a	n/a	n/a
Italy	No	No	No	No	No	No	No
Latvia	Yes	Yes	No	No	No	No	No
Lithuania	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Luxembourg	No	No	No	No	No	No	No
Malta	No	No	No	No	No	No	No
Netherlands	Yes	No	Yes	No	No	No	No
Poland	Yes	No	No	No	No	No	Yes
Portugal	No	No	No	No	No	No	No
Romania	Yes	No	No	No	No	No	Yes
Slovakia	Yes	Yes	Yes	n/a	Yes	No	Yes
Slovenia	No	No	No	No	No	Yes	Yes
Spain	No	No	No	No	No	No	No
Sweden	Yes	No	Yes	No	No	No	No

Source: OECD²⁸

²⁸ OECD: Framework for Screening Foreign Direct Investment into the EU: Assessing effectiveness and efficiency, OECD Publishing, Paris, 2022. <https://doi.org/10.1787/f75ec890-en>.

The defined weaknesses raise concerns on how the FDI Regulation and FDI vetting regimes work in practice. At this point, it would be appropriate to analyse the relevant case-law of the CJEU. However, to date there is only one decision in relation to the FDI Regulation – *Xella Magyarország* (C-106/22). In the given case, the court did not apply the FDI Regulation as it used rather formalistic interpretation of “foreign investor”, and excluded from the scope of the regulation investments made by undertakings organised in accordance with the laws of a MS over which an undertaking of a third country has majority control.²⁹ The court ultimately clarified that the FDI regulation does not cover intra-EU investments made by EU companies under non-EU control, unless such transactions involve artificial arrangements intended to evade screening and do not reflect genuine activity.³⁰ The CJEU then applied the provisions of the TEFU on freedom of establishment instead.³¹

Therefore, to assess the operability of the FDI regulation, the desk research and analysis of the screening mechanisms of the MSs must be provided. From the FDI Reports of the Commission in 2021-2024, serious effectiveness gaps can be detected. While applying the FDI Regulation, MSs raised several issues such as overly short or inconsistent timelines for proper assessment of the complex FDI transactions, different levels and conditions for screening, lack of information regarding comments provided by other MSs to the receiving MS where the FDI is planned, and how these comments were considered in the final decision of that state (limits of follow-up).³² Reluctance of some MS³³ to adopt the screening mechanisms or at least the effective tools to manage risks related to FDI to EU, created gateways into the internal market. Furthermore, the OECD, in its report (2022, p. 8-9) pointed out that lack of rules to gather and share information on unnotified transactions on MSs leads to limited detection and screening. The lack of accountability and tight screening deadlines further hinder effective cooperation. The Regulation also fails to ensure full access to transaction-specific information and uses unclear criteria for notifying transactions, resulting in irrelevant exchanges and withheld data. Additionally, the information exchange excludes many transactions involving EU-established

²⁹ See *Xella Magyarország* judgment (C-106/22), paras. 31-37. In this case, Hungarian authorities blocked a Hungarian company Xella Magyarország whose parent company was controlled by company based in Bermuda from the acquisition of a local construction company Janes és Társa, on grounds of security and public order.

³⁰ *Ibid*, para. 39.

³¹ To compare, in the Explanatory Memorandum of the new proposal of FDI Screening Mechanism (COM(2024)23 final), the Commission proposes to extend the scope of the regulation to include investments controlled by non-EU investors, including investments carried out by an EU entity controlled by a non-EU investor when the decision-making power over the investment remains with the non-EU investor (page 3). This is a clear shift from the approach of the CJEU in *Xella Magyarország*.

³² COM(2021)714 final, p. ..., COM(2024) 464 final, p.

³³ E.g. Croatia, Cyprus, Greece.

investors despite potential risks. Finally, handling multi-jurisdiction FDI transactions is inefficient due to varied national rules and insufficient EU-level coordination. Such weaknesses have substantially compromised the effectiveness of the FDI Regulation. The Commission responded promptly by submitting a new proposal on FDI screening mechanism.³⁴ The act has not yet been adopted; however, the legislative procedure is ongoing.³⁵ The proposed amendments address the most criticised issues. It requires new measures such as the making the FDI screening mechanism mandatory for all MSs, defining the minimum scope for compulsory screening of transactions subject to an authorisation requirement, covering intra-EU investments by EU investors that are ultimately controlled by entities from a non-EU country, establishing minimum procedural requirements, enhancing the accountability of MSs and Commission, and introducing a specific ex-post review. Meanwhile, the economy of the EU has remained open to FDI.

Post-FDI regulation EU – still attractive for foreign investments?

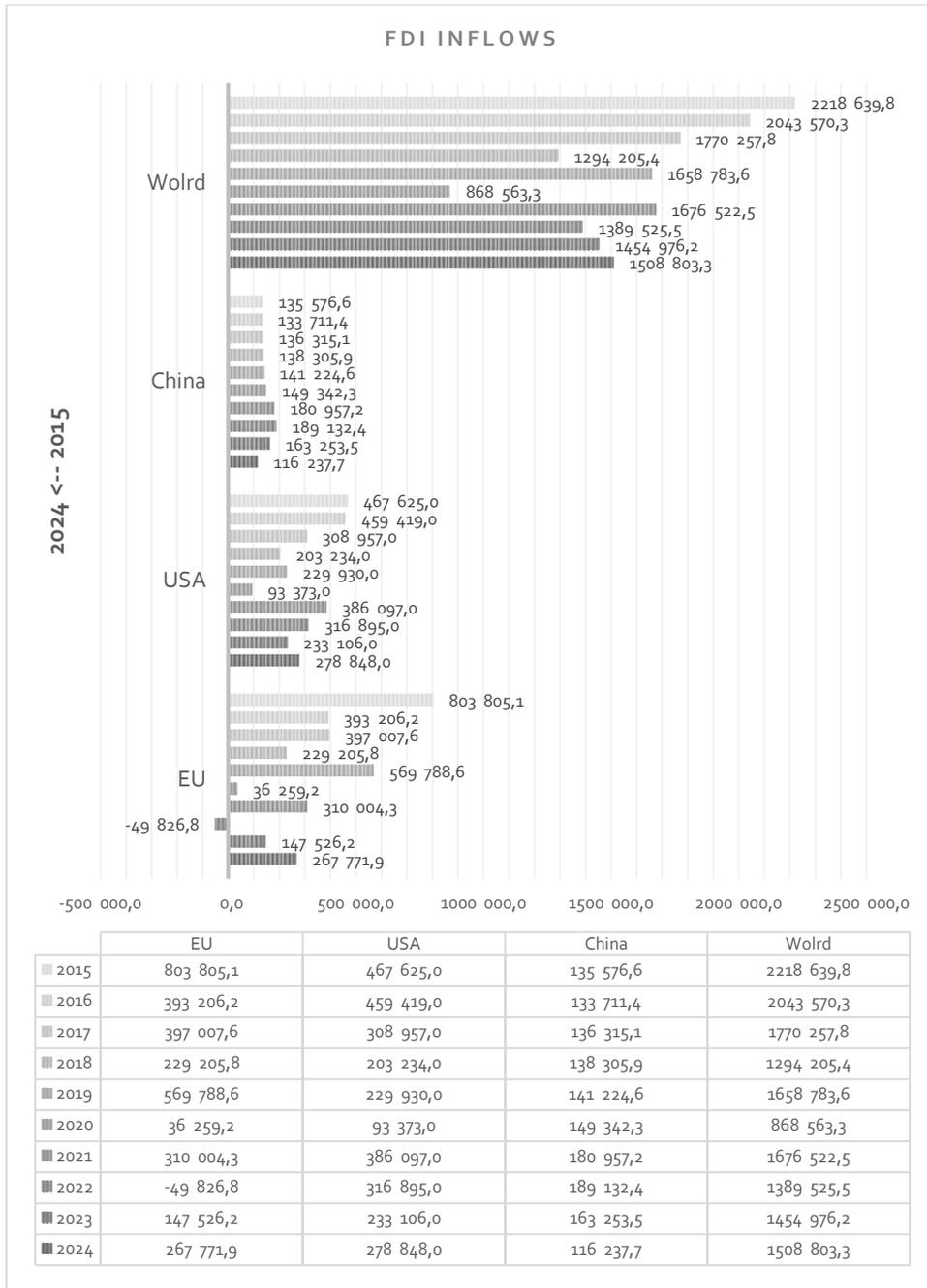
The Commission in its various reports states that the EU belongs among the most attractive markets for investments and statistics of the UN³⁶ confirms that (Figure 2). The question to be considered is whether the increase in administrative burden due to the established screening mechanism under FDI regulation hinders potential foreign investors from investing in the EU. Undoubtedly, vetting of FDI by MSs prolongs such business operations and if the intended investment operation undergoes screening, the administrative burden rises as well. On the other side, as those operations require thorough due diligence anyway, additional administration could be perceived just as a necessary evil, but it should not cause a loss of interest in the investment.

³⁴ COM(2024) 23 final

³⁵ The European Parliament adopted its first reading position P10_TA(2025)0102 on 8 May 2025 (Available at: https://www.europarl.europa.eu/doceo/document/TA-10-2025-0102_EN.pdf). The Council adopted its first reading position on 11 June 2025 (<https://www.consilium.europa.eu/en/press/press-releases/2025/06/11/trade-coreper-endorses-the-council-s-negotiating-position-on-fdi-screening-revision/pdf/>). Interinstitutional negotiations (trilogues) begun on 17 June 2025 (https://policy.trade.ec.europa.eu/news/interinstitutional-talks-begin-eus-revised-fdi-screening-mechanism-2025-06-17_en).

³⁶ Available at: https://unctad.org/system/files/official-document/wir2025_en.pdf, p. 7.

Figure 2: FDI Inflows, by region and economy, 2015-2024.



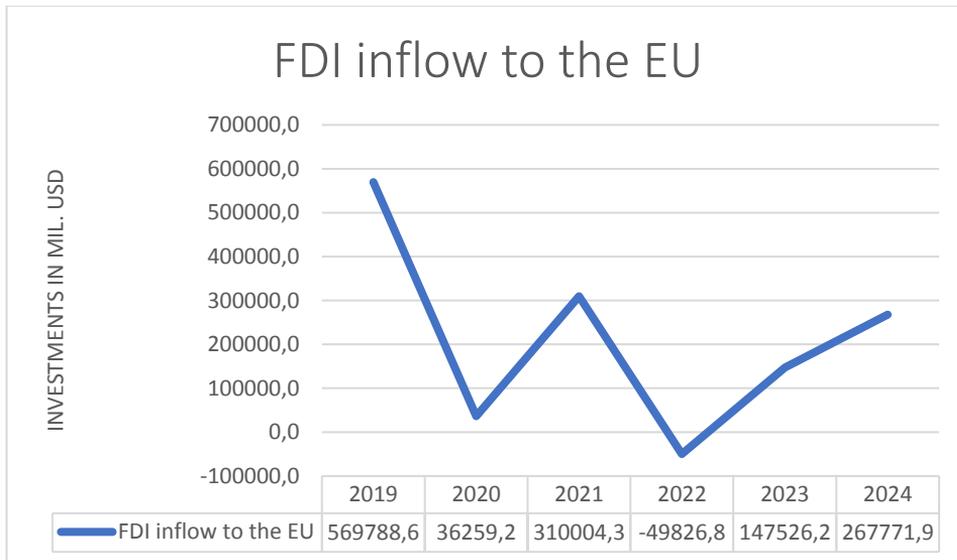
Source: data retrieved and processed by the author from UNCTAD³⁷

Data show that the immediate FDI inflow into the EU after the entry into force of the FDI Regulation radically decreased. However, this decline cannot be automatically

³⁷ Available at: https://unctad.org/system/files/non-official-document/wir25_tab01.xlsx

attributed to regulation, as an external factor in the COVID-19 pandemic must also be considered. The after-pandemic period is then characterised by both a rise and a decline in FDI (Figure 3).

Figure 3: Dynamics of FDI inflow to the EU after FDI regulation



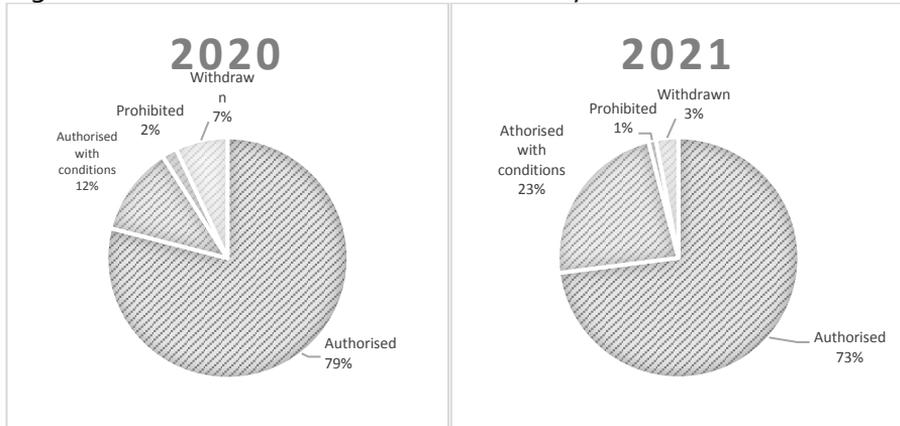
Source: processed by the author, data retrieved from UNCTAD³⁸

A survey of authorisations or prohibitions of vetted investments can therefore provide an answer to whether the FDI Regulation presents an obstacle for FDI inflow to the EU. Statistics of the Commission in its 2020-2024 FDI reports indicate that processes of authorisation of vetted FDI were rather formal than comprehensive, with only a low rate of withdrawals from investments by parties before a formal decision was taken. (Figure 4).

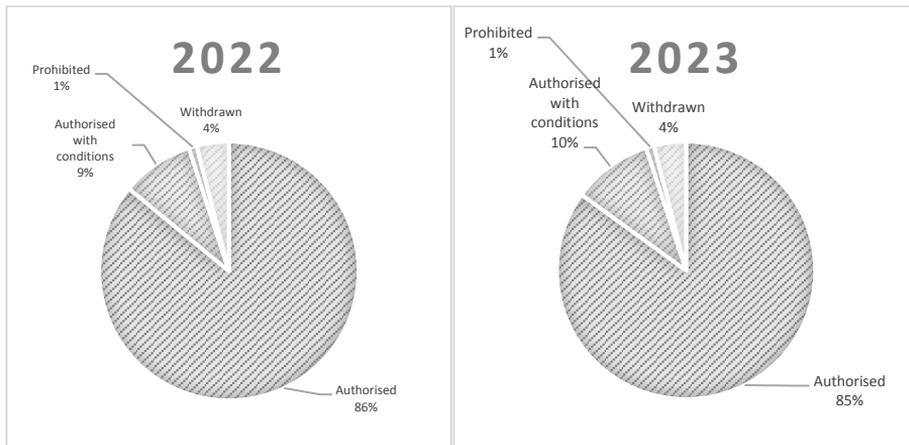
³⁸ Available at: https://unctad.org/system/files/non-official-document/wir25_tab01.xlsx

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Figure 4: Outcomes of FDI dossiers formally screened in 2020-2023:



Source: Data retrieved from the Commission's 2021 FDI Report, the 2022 FDI Report



Source: Data retrieved from the Commission's 2023 FDI Report, the 2024 FDI Report

At this place, one must bear in mind that heterogeneity in screening mechanisms in Member States might cause that not all relevant FDI were screened and that there exists a possibility that even those that should be prohibited were due to the gaps in the system realised. However, the current situation suggests that FDI regulation by its nature does not create an obstacle to potential foreign direct investments to the EU.

FSR – make level playing field in the EU great again

The wider concept of protection of the economic security of the Union, in addition to ownership-based and public-order screening, includes complementary tools that target market distortions arising from third-country financial support. The persistent

subsidization of companies by third countries has undermined the vision of an internal market without internal frontiers.³⁹ In this regard, a general assumption is that competition-oriented, distortion-focused approach closes gaps left by fragmented FDI screening, particularly where influence is exercised through financing rather than corporate control. The key research question in this part is focused on how the FDI Regulations and the FSR jointly contribute to economic security while preserving the openness and attractiveness of investment in the EU's internal market.

By the FSR, the Commission gained the power to examine foreign subsidies that confer advantages and have the potential to distort the level playing field and competition in the internal market. It complements merger control, state aid, and public procurement rules by its aim to catch foreign distortive subsidised investments, services, and financial flow that were not sufficiently covered by the EU law. Although the core purpose is, in compliance with the FDI Regulation, the resilient market that still remains open for foreign investments, it does not intend to unduly burden load for normal commerce. Therefore, main goals aim to filling the gaps by controlling foreign subsidies that fall outside the EU state aid control and integrating assessments with principles of public procurement and merger control to protect markets of public tenders⁴⁰ and critical assets without derailing legitimate competition.

After the first two years of application, it is hard to evaluate whether this tool is fit for the purpose. The Commission launched the consultations⁴¹ on the draft guidelines⁴² and subsequently set practical procedural rules through implementing rules.⁴³ In August 2025, the Commission also launched a review of the FSR⁴⁴ that is still ongoing at the day of the submission of this article.

³⁹ HOFFMANN, Tessa Sophie. 'Legal Recommendations Amidst Political Realities: Reconciling the Foreign Subsidies Regulation With State Aid Law and WTO Frameworks'. *European Foreign Affairs Review*, Vol 29, Issue 4, (2024): pp. 493–530, p. 493.

⁴⁰ These markets are funded by public, i.e. taxpayers' sources.

⁴¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1863

⁴² Communication from the Commission: Guidelines on the application of certain provisions of Regulation (EU)2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market. Available at: https://competition-policy.ec.europa.eu/document/download/a0b557e7-96f8-4231-9ed5-522f13de9065_en?filename=FSR_draft_guidelines_application_of_EU_Reg_2022-2560.pdf

⁴³ Commission implementing regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU)2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market. OJ L 177 (12.7.2023), pp. 1-44

⁴⁴ https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1954

Currently, the Commission has been notified in 194 cases on concentrations that fall under FSR (Figure 5). It unconditionally authorised 173 operations, with the remark “the provisional deadline and the suspension period under FSR expired”, indicating that no in-depth investigation was opened and the standstill expired. Three concentrations were withdrawn before decision.⁴⁵ The Commission launched two in-depth foreign subsidies investigations to assess (1) the **acquisition by e&** (a state-controlled telecommunication operator headquartered in the UAE providing telecommunication services such as mobile phone service) of sole control of **PPF**⁴⁶ (a telecommunication operator in Czechia, Bulgaria, Hungary, Serbia (Yettel) and Slovakia (O2), headquartered in Czechia), excluding its Czech business and (2) the **acquisition by ADNOC** (a state-owned oil and gas producer, the national oil company of Abu Dhabi, headquartered in the UAE) of **Covestro**⁴⁷ (a publicly listed company incorporated in Germany and a chemical producer that focuses on the supply of high-performance polymers and components for such polymers). While the first concentration was authorised with the binding commitments,⁴⁸ in the second case, the Commission decided on suspension (stop-the-clock decision) according to Article 24(5) FSR. Sixteen other cases have not been decided yet.

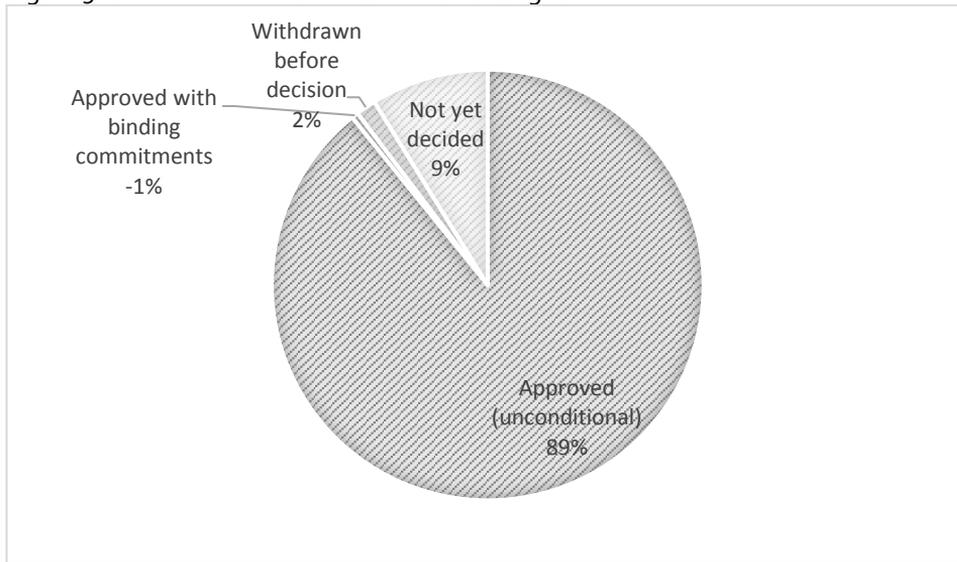
⁴⁵ FS.100183 - MVM / EER / EAST (15 September 2025), FS.100032 - PROJECT KXL (19 June 2024) and FS.100053 - PROJECT FELIX (12 March 2024).

⁴⁶ https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3166

⁴⁷ https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1894, <https://competition-cases.ec.europa.eu/cases/M.11771>

⁴⁸ Decision of the European Commission of 24 September 2024, finding that, with the binding commitments, the foreign subsidies in the concentration do not distort the internal market, Case FS.100011 - e&/PPF Telecom Group, C(2024) 6745 final.

Figure 5: Decisions of the Commission according to the FSR



Source: data retrieved from <https://competition-cases.ec.europa.eu/search?caseInstrument=InstrumentFS&pageSize=50&sortField=caseLastDecisionDate&sortOrder=DESC>, processed by the author.⁴⁹

The Commission also launched an in-depth investigation in public procurement, one in Bulgaria⁵⁰ in the sector of railway and tramway locomotives and two in Romania⁵¹ in the solar photovoltaic sector. However, following the launch of investigations,

⁴⁹ The primary dataset is the European Commission Foreign Subsidies case search export "export_search-foreign-subsidies_2025-10-12_20-56.xlsx," capturing case meta-data, timelines, and decision strings as published.

Codebook: Approved (unconditional): decision string contains "the provisional deadline and the suspension period under FSR expired." Approved with conditions: contains "Art. 11(3) Decision with Commitments." Withdrawn: contains "Withdrawal during preliminary review." Prohibited: contains "prohibit" (case-insensitive). Phase II opened (flag): contains "Art. 10(3)" or "in-depth investigation." Coded outcomes: Approved (unconditional): 173. Approved with conditions: 1. Prohibited: 0. Withdrawn: 3. Pending/other: 17.

Additional information for transparency: Phase II opened: FS.100011 (EMIRATES TELECOMMUNICATIONS GROUP / PPF TELECOM GROUP), FS.100156 (ADNOC / COVESTRO). Approved with conditions: FS.100011 — EMIRATES TELECOMMUNICATIONS GROUP / PPF TELECOM GROUP (Art. 11(3) Decision with Commitments). Withdrawn: FS.100183 — MVM / EER / EAST; FS.100032 — PROJECT KXL; FS.100053 — PROJECT FELIX.

⁵⁰ Summary notice concerning the initiation of an in-depth investigation in case FSP.100147 pursuant to Article 10(3) of regulation (EU) 2022/2560 (C/2024/1913), 29 February 2024 (CRRC Sifang).

⁵¹ Summary notice concerning the initiation of an in-depth investigation in case FSP.100151, pursuant to Article 10(3)(d) of Regulation 2022/2560 (C/2024/2830), 22 April 2024 (Case ENEVO Group), and Summary notice concerning the initiation of an in-depth investigation in Case FSP. 100154, pursuant to Articles 10(3)(d) of Regulation (EU) 2022/2560 (C/2024/2832), 22 April 2024 (case Shangai Electric).

investigated companies announced their withdrawals from the public procurement procedure.⁵² Undoubtedly, the Commission's activity proves its willingness to enforce the rules, where there exist concerns on inappropriate advantages from third-country subsidies.

However, some scholars also point to the negative effects of this regulation. For example, Franke pays attention to the possible collision of the FSR with the WTO's Agreement on Subsidies and Countervailing Measures (SCM), and warns, that FSR does not constitute a sufficient guarantee to safeguard the supremacy of WTO law.⁵³ Hoffman stresses the differences in interpretation of term "subvention" when applying the state aid concept and FSR as well as in interpretation of distortion criteria, as the FSR does not require the "state sources" within the meaning of state aid rules which moves this concept closer to WTO's anti-subsidy rules. She also points to the balance of the effects on the market beyond the usual practice of the *acquis* of state aid, as it openly requests the positive effects related to the development of subsidised activity within the internal market, which cause uncertainty on the scope and extent of "positive effects". Su⁵⁴ criticises that FSR as a hybrid model constructed from state aid rules and SCM agreement makes it difficult for the EU to handle foreign subsidies in the same way as it handles EU state aid and therefore has the potential to create the uneven level playing field for foreign competitors. Zonta then concludes that the adoption of the FSR is liable to increase legal uncertainty for companies pursuing mergers or acquisition in the EU as the increased costs of proceedings and the lack of clarity on the Regulation's interpretation leads to uncertainty, which would result in cautious business behaviour and adoption of EU standards by non-EU firms.⁵⁵ Blažo finally points out to legal uncertainty caused by

⁵² See the press release of the Commission available at: <https://public-buyers-community.ec.europa.eu/news/commission-closes-two-depth-investigations-solar-photovoltaic-sector-following-withdrawal>

⁵³ FRANK, Malte: The EU's new Foreign Subsidy Regulation on collision course with the WTO. In: *Common Market Law Review*, Vol. 60, Issue 4 (2023), pp. 925-958, <https://doi.org/10.54648/cola2023070>, p. 955.

⁵⁴ SU, Xueji: A Critical Analysis of the EU's Eclectic Foreign Subsidies Regulation: Can the Level Playing Field be Achieved? (August 26, 2023). In: *Legal Issues of Economic Integration*, Vol. 50, Issue 1 (2023). pp. 67-92, <https://doi.org/10.54648/leie2023001>. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4552463

⁵⁵ ZONTA, Enrico: From economic security to legal uncertainty: exploring the impact of the FDI screening regulation and foreign subsidies regulation on mergers and acquisitions in the EU, *Journal of European Competition Law & Practice*, Volume 16, Issue 3, April 2025, Pages 167-178, <https://doi.org/10.1093/jeclap/lpaf043>, p. 178.

unclear terminology which together with the shortcomings when applying the FDI Regulation can result that this mechanism become “a statute with feet of clay”.⁵⁶ By September 2025, there is no judgment of the CJEU on substantive merits relating to the FSR.⁵⁷ Decisive practice is, therefore, still in development and until the clearance provided by the court, the interpretation of the FSR is, despite collided opinions from academia sector, grounded by the decisions of the Commission.

Injured parties and right to remedy – no one left behind?

Before we proceed to conclusions, an important issue requires attention. Both the FDI Screening Regulation and the FSR are designed to safeguard competition within the internal market if a potentially distortive foreign element is present. However, remedies are not regulated at the EU level. This topic is currently widely discussed at EU level, as the Antitrust Damages Directive⁵⁸ appears rather ineffective in some MSs (including Slovakia), whereas remedies for harm caused by mergers or state aid are not regulated at EU level at all.

Using Slovakia as an example, this has led to three distinct legal regimes: antitrust damages are governed by the Antitrust Damages Actions Act⁵⁹, damages caused by mergers are governed the Commercial Code,⁶⁰ and state aid damages are governed by the Civil Code.⁶¹ These regimes establish different substantive and procedural rules for damages claims, including the limitation period, the nature of liability, disclosure of evidence, and the competent court.

⁵⁶ BLAŽO, Ondrej: A New Regime on Protection of Public Procurement against Foreign Subsidies Distorting the Internal Market: Mighty Paladin or Giant on the Feet of Clay? *International and Comparative Law Review*, 2021, vol. 21, no. 2, pp. 138–161. DOI: 10.2478/iclr-2021-0016, p. 158.

⁵⁷ The only decision of CJEU of 21 March 2025, *Nuctech Warsaw Company Limited and InsTech Netherlands v Commission*, C-720/24 P(R), EU:C:2025:205 relates to the disclosure of information during the inspection (the Commission requested the content of a number of employees’ mailboxes).

⁵⁸ Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ L 349, 5 December 2014, pp. 1-19).

⁵⁹ Act No 350/2016 Coll. on Certain Rules for the Application of Claims for Compensation for Damages Caused by Violations of Competition Law and Amending Act No. 136/2001 Coll. on the Protection of Competition and on Amendments to Act of the Slovak National Council No. 347/1990 Coll. on the Organization of Ministries and Other Central State Administration Bodies of the Slovak Republic, as amended, as amended, as amended [zákon č. 350/2016 Z.z. o niektorých pravidlách uplatňovania nárokov na náhradu škody spôsobenej porušením práva hospodárskej súťaže a ktorým sa mení a dopĺňa zákon č. 136/2001 Z. z. o ochrane hospodárskej súťaže a o zmene a doplnení zákona Slovenskej národnej rady č. 347/1990 Zb. o organizácii ministerstiev a ostatných ústredných orgánov štátnej správy Slovenskej republiky v znení neskorších predpisov v znení neskorších predpisov].

⁶⁰ Act No 513/1991 Coll Commercial Code [zákon č. 513/1991 Zb. Obchodný zákonník].

⁶¹ Act No 40/1964 Coll. Civil Code [zákon č. 40/1964 Zb. Občiansky zákonník].

Given that neither the FDI regulation nor the FSR provides for private remedies, the national law of the MS shall apply in this regard. This will likely lead to differing levels of protection for injured parties, as we have already witnessed in antitrust cases.

In Slovakia, this implies the application of the most general rules contained in the Civil Code. Consequently, the injured party must bring the claim for damages within the 2-year subjective limitation period before the general (non-specialised) jurisdictional district court according to the seat of the defendant. Finally, to succeed, the claimant bears the burden of proof to establish the defendant's breach and his/her/its failure, notwithstanding the very limited possibilities for disclosure of evidence.⁶²

This part does not have the ambition to thoroughly analyse all aspects of remedies while building a robust competitive EU internal market. Rather, it aims to initiate a discussion on this important topic. To create a level playing field, the issue of remedies should not be left behind.

Conclusions

Have the Foreign Direct Investment Screening Regulation and Foreign Subsidies Control Regulation helped the EU to awake on its mission to preserve competitive in an open yet risk-aware internal market? The answer is not unambiguous. Both regulations represent milestone attempts by the European Union to reconcile openness with heightened economic security and fair competition. Their introduction catalysed policy evaluation at both EU and Member State levels, directly addressing the complex interplay of economic resilience, market competitiveness, and strategic autonomy in a post-globalisation risk landscape (pandemic, war, hostile economic actions). As the risks keep evolving, the Union assesses the effectiveness of these tools and considers upgrades or new tools that may be needed.⁶³

Regarding the regulatory impact, the empirical overview demonstrates that the immediate decline in FDI inflow post-regulation cannot be attributed solely to

⁶² To find out more about the remedies for harm caused by the infringement of competition rules or public procurement rules in Slovakia, see KOVÁČIKOVÁ, Hana: Náhrada škody vo verejnom obstarávaní. In: Hospodárska súťaž – Verejné obstarávanie – Etablovanie: Úniové pravidlá versus Slovenské. Univerzita Komenského v Bratislave, 2021, ISBN 978-80-7160-595-9. Available at: https://www.flaw.uniba.sk/fileadmin/praf/Pracoviska/Ustavy/UEP/Jean_Monnet_Aktivty/2021_Hospodarska_Sutaz_Verejne_Obstaravanie_Etablovanie.pdf, KOVÁČIKOVÁ, H: An ornamental legal framework – Private enforcement of competition law in Slovakia [not yet published, will be published in 2025], KOVÁČIKOVÁ, H: Private enforcement of public procurement law in Slovakia – Another ornamental law? [not yet published, will be published in 2025].

⁶³ EUROPEAN COMMISSION, HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY: Joint Communication to the European Parliament, the European Council and the Council on „European Economic Security Strategy“ of 20 June 2023, JOIN(2023) 20 final, p. 7.

administrative burdens, and that external factors (e.g. Covid-19) played a significant role. Subsequent fluctuations in FDI inflow, as visualised in Figures 2 and 3, underscore the necessity to interpret regulatory effects contextually rather than in isolation. Furthermore, data from the Commission reports confirm, that formal authorisations and low withdrawal rates characterise most vetted investments, suggesting that while the screening process introduces new procedural layers, it does not constitute a prohibitive barrier for foreign capital in the medium term.

The biggest weaknesses of the FDI Screening Mechanism were caused by the existing space to penetrate the market by using gaps in the screening system. Divergent screenings mechanisms, different sectoral coverage of screening, lack of administrative capacities and resource constraints, various timelines, exclusion of indirect intra-EU investment from the screening, ambiguities around definitions (e.g., foreign investor, date triggering notification) and the interplay with other instruments (merger control, sanctions, prudential rules) cause implementation challenges.

Policy mapping and quantitative comparison of national screening mechanisms reveal substantial heterogeneity in approach, coverage, capacity, timelines, and enforcement powers – weaknesses acknowledged by both practitioners and policymakers. The Commission reacted with the submission of the new FDI regulation that addresses those challenges. The introduction of a mandatory, harmonised EU-wide FDI screening mechanism, as proposed in legislative draft, stands out as a crucial step to reduce regulatory gaps, clarify definitions, and address coordination failures in multi-jurisdictional transactions. However, as the draft is still undergoing the legislative procedure, we must wait for the final product to analyse it.

By now, based on the comparative and workflow data, the possible ways forward can be suggested and later confronted with the new law:

- Rules related to strategic infrastructure shall be uniform across the EU. The definition and treatment of critical infrastructure should be standardised at EU level to prevent circumvention and reinforce the resilience of the internal market.
- Indirect intra-EU investments where EU investors are controlled by non-EU entities shall be integrated into screening. Investments controlled by non-EU entities via EU intermediaries must be systematically incorporated into the screening regime.
- Capacity building and accountability: Both Commission and Member States should invest in administrative capacity and adopt procedural enhancements. Transparent exchange and rigorous follow-up on inter-state comments and notifications will be pivotal.
- Diverse national regimes fore private enforcement and private remedies (commercial, competition, and civil law) generate unequal protection and

enforcement challenges. EU-level harmonisation is necessary to guarantee access to effective remedies and a level playing field for injured parties.

Regarding the FSR, the main objections were directed towards the increased burden on foreign competitors, the unclear interpretation of some concepts, and the conflict with WTO standards. However, since most of the operations were authorised during the first phase of control and no action against the Commission's prohibitive decision has yet been taken, it appears that this tool works well.

The FDI Screening and Foreign Subsidies Regulations have awakened the EU to its mission of safeguarding competitive, open, yet risk-aware markets. While they have highlighted critical implementation challenges and the need for ongoing reform, their adaptive nature and the data-driven approach adopted by the Commission position the EU to respond effectively to future threats and opportunities. The EU should now capitalize on lessons learned to drive harmonization, transparency, and efficiency to build a robust, competitive internal market that remains attractive to global investment.

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