



1. On 24 January 2024, the European Commission (“Commission”) published a [white paper](#) proposing measures to monitor and assess outbound investments, that is, investments made by EU companies in non-EU countries. As will be explained in more details below, the main purpose of this initiative is to assess the security risks that could arise when sensitive technologies leave the EU and could be exploited by third countries in a way that can threaten international peace and security.
2. EU action in this area represents quite a novelty. Neither the EU nor Member States have enacted legal frameworks to control outbound investments yet, and only very few countries worldwide have adopted or announced such screening mechanisms. However, this initiative does not seem to come entirely out of the blue either. The broader context of EU action in the area of economic security and commercial policy has been rather eventful recently. First, the white paper on outbound investments was published as part of a [package of initiatives to improve the EU’s economic security](#). These initiatives also include one legislative proposal for a new regulation on the screening of foreign direct investments (“FDI”), that should replace the [FDI Screening Regulation currently in force \(Regulation \(EU\) 2019/452\)](#), strengthening the framework and introducing more harmonization (for a brief description of this Regulation, see below). The package also contains a white paper on controlling the export of dual-use goods, that is, goods and technologies that can have both civil and military applications. While multilateral frameworks on dual-use goods export control already exist, to prevent the proliferation of weapons, the EU proposes measures to uniform the control across Member States. Second, more generally, the EU has been seeking to revamp its commercial policy and step up its economic security strategy by enhancing cooperation and harmonization in this area. The package of 24 January 2024 follows [a communication of June 2023 by the Commission and the High Representative for the Union on Foreign Affairs and Security Policy](#), proposing a common framework to enhance economic security to minimize risks deriving from certain global economic flows. Furthermore, the current [FDI Screening Regulation](#), already mentioned above, has been applying since October 2020. This Regulation

introduces an EU framework to identify and mitigate risks to security and public order deriving from investments by foreign companies into the EU (for example, in case foreign companies acquire European companies active in sectors critical for strategic interests of the EU). If an investment of this kind poses an actual threat to such interests, it can be prohibited. In addition, the EU also adopted the [Foreign Subsidies Regulation \(Regulation \(EU\) 2022/2560\)](#), that entered into force in July 2023. This Regulation establishes a new set of rules to address distortions to competition caused by foreign subsidies in the EU single market. More specifically, while EU Member States cannot grant certain subsidies to their companies under the EU State Aid framework, non-EU governments can often do so, as they don't have this limitation. Therefore, foreign companies may have an advantage vis-à-vis EU companies if they operate in the single market while receiving subsidies from their governments. The Foreign Subsidies Regulation empowers the Commission to impose measures against foreign companies to neutralize the distortive effects of such subsidies.

3. There is one *fil rouge* that underpins these and other recent initiatives in the context of the EU's commercial and economic policy. The goal is indeed to mitigate certain imbalances and certain risks to the public order and economic security deriving from the integration into the globalized economy, while ensuring that the EU remains open to trade and investments. These objectives, in turn, are coherent with the overarching political priority to achieve the so-called Open Strategic Autonomy, a current EU strategy that, by means of initiatives such as the ones described above, seeks to strike a balance between a self-reliant EU when necessary and an open, internationally cooperative EU whenever possible.
4. Considering this context, first, it is relevant to analyse why the Commission has decided to turn its attention to outbound investments. To do so, it's helpful to have a look at the main differences between outbound investments and their opposite phenomenon, inbound investments (already referred to above as foreign direct investments or FDI). In a nutshell, from an EU perspective, foreign direct investments are investments made by non-EU companies or investors into the EU, aiming at establishing a direct link between the foreign entity and an EU entity that carries out

an economic activity in one or more Member States. An FDI can be, for example, the acquisition of a company established in the EU by a non-EU company, or the creation by the latter of a joint venture in the EU. On the other hand, outbound investments follow the opposite direction: they occur when EU companies or investors make investments outside of the EU, making capital available to carry out economic activities in non-EU countries. Again, as indicated in more detail below, examples are acquisitions of companies abroad, or setting up joint ventures to operate in foreign countries.

5. As mentioned, inbound investments are already covered quite widely by both EU and Member States' law. Under the national and EU FDI screening frameworks, inbound investments are screened and potentially prohibited if they entail the acquisition by foreign entities of sensitive assets or technologies. The risk linked to such acquisitions usually materializes in terms of a threat to security and public order if the acquiring entity could use the acquired assets in a way that's detrimental to the public interest of the host country or the EU. In a nutshell, therefore, the purpose of the FDI screening frameworks is to avoid the acquisition of critical assets and technologies by hostile entities. From this viewpoint, however, the new white paper on outbound investments highlights an existing gap in the legal framework. The Commission explains that the transfer of critical technologies to foreign entities could also occur if EU companies take such technologies abroad when they invest outside of the EU. While this risk would be akin to the one that inbound investment screening frameworks seek to tackle, there is no legal framework in place to monitor and assess outbound investments.
6. At such an initial stage, however, it is still unclear whether a possible outbound investments screening mechanism would assess and prevent the same exact categories of harm as the FDI Screening Regulation. The latter mentions the necessity to screen inbound investments on grounds of «security and public order», a concept interpreted rather broadly, as the Regulation provides, for example, that Member States should look at effects on a large array of sectors, from energy to telecommunications to food security and media pluralism. On the other hand, the white paper on outbound

investments seems to refer primarily to the need to prevent the leakage of a «narrow set of advanced technologies that could advance military and intelligence capacity of actors who may use these capabilities to threaten international peace and security». Product-wise, as explained in more details below, the white paper mentions that the monitoring of outbound investments should initially focus on the most sensitive technologies, such as advanced semiconductors, artificial intelligence, quantum technologies and biotechnologies. Risk-wise, the monitoring should focus on the possible use of these technologies for military purposes, for example in conflicts, for breaches of human rights and for the proliferation of weapons of mass destruction. Considering this, the proposal set forth by the Commission in the white paper suggests that the screening of outbound investments might have a narrower scope than the scope of the FDI Screening Regulation. It goes without saying, however, that it is still difficult to foresee how this new possible framework will develop.

7. Having outlined the context and the purpose of the proposed measures, it is now time to briefly describe the concrete initiatives that the Commission proposes with regard to the screening of outbound investments. As it is the case with many policy initiatives by the Commission, the prelude is a public consultation whereby the Commission seeks to gather feedback from stakeholders to better identify the problem, shape possible solutions and guide policy action. The white paper on outbound investments is no exception and proposes a step-by-step approach. The first step is indeed a public consultation, where we currently are, launched by the white paper itself and a questionnaire to stakeholders. At the end of the public consultation, the Commission will draw up a recommendation to Member States (the “Recommendation”) to monitor outbound investments concerning certain technologies for some time. The second step is the actual monitoring phase, where Member States will monitor outbound investments based on the guidelines of the Recommendation. The third step is a risk assessment phase, carried out based on the information gathered during the monitoring. The Commission will then take stock of the results of these activities and will consider whether to proceed with a proper policy proposal. The white paper

already lays down suggestions on how Member States should carry out the monitoring of outbound investments and the risk assessment, seeking reactions and comments to better shape the content of the Recommendation that will follow. The paragraphs below will briefly outline the details of the approach that the white paper suggests.

8. First, the white paper takes stock of the state of play and acknowledges the relevant lack of data and knowledge concerning outbound investments. In short, we don't know enough about outbound transactions to establish whether any security risks can arise from such investments. In particular, the Commission found that from 2013 to 2022 there have been roughly 12 800 transactions carried out by EU companies in non-EU countries, the top two destinations being the US and the UK (70% of the transactions together). However, there is a significant lack of more granular data and details, regarding for example the characteristics of these transactions, their size, the sectors, and the technologies involved. According to the white paper, the considerable knowledge gap on outbound investments appears to be one of the initial findings of the Expert Group on Outbound Investments ("Expert Group") that the Commission set up in July 2023 to start studying the matter. The knowledge gap seems to be a particularly high barrier to overcome before Member States will be able to analyse the risks linked to outbound investments. This is not surprising: as the white paper highlights, outbound investments have never been systematically monitored for security purposes by EU and Member States. Furthermore, the matter is quite sensitive and complex: among other issues, monitoring might not be easy if investments are directed to jurisdictions that are not fully transparent.
9. Before describing the concrete steps that the Commission proposes for the monitoring and the risk assessment, the white paper outlines a few principles that should guide future policy action. First, the evaluation of the risks should consider the delicate balance between the benefits of outbound investments, that are valuable for the EU's economy, and the security risks deriving also from the broader geopolitical context. Second, action should be effective, proportionate, targeted and enforceable. Third, new policy responses should be a sort of last resort, as Member States need to make full use of the already existing instruments first, where legally possible and effective

(e.g., FDI screening mechanism, dual-use goods export control). This seems an important part of the evaluation that Member States and the Commission will have to conduct: whether and to which extent current instruments could be used to screen outbound investments (and which amendments would be needed in this case), or whether ad hoc policy initiatives would be a better fit for the purpose.

10. The white paper goes on to lay down a concrete way forward, concerning especially the monitoring phase. First, the Commission considers that Member States should monitor outbound investments to close the knowledge gap discussed above. As regards the type of investments that should be monitored, the Commission proposes a rather broad approach, covering «investments of any kind» (mergers, acquisitions, creation of joint ventures, greenfield investments, asset transfer, venture capital) «by natural or legal persons resident or established in the EU [...] aimed at carrying out an economic activity outside the EU», including indirect investments through investment vehicles established in third countries. In practice, only portfolio investments seem to fall out of the scope of the proposed monitoring, i.e., financial investments made without the intention to influence the management of the target. The Commission does not seem to recommend any thresholds in terms of the size of the investment that should be monitored. In addition, the Commission also mentions an optional monitoring for Member States to carry out, related to activities that are linked or preparatory to outbound investments, to the extent that they pose any potential risks to public security. In particular, the white paper suggests that public authorities could also monitor research and development cooperation with third-country entities (including between academic institutions), or the transfer of highly specialized personnel, to the extent that such practices could lead to the transfer of intellectual property or know-how that could be exploited.
11. Going further, as regards the technology areas where investments should be monitored, the Commission suggests that Member States should focus, at least initially, on «the most sensitive technology and know-how», that is, semiconductors, artificial intelligence, quantum technologies and biotechnologies. These technologies, according to the Commission, are likely to present the most sensitive risks related to

security. However, the language used by the Commission gives the impression that these technology areas are considered more of a starting point, and that the list of sectors captured by a possible future screening mechanism could become longer. This will of course depend on the outcome of the consultation and the experience gathered by Member States. However, if one were to draw a (maybe premature) parallelism with the development of FDI screening frameworks, it would come naturally to point out that such frameworks generally showed a tendency to expand their scope of application from security and defence to new sectors and technologies such as energy, telecommunications, health etc.

12. Another relevant factor that the white paper considers for the monitoring of outbound investment is the geographic coverage. While no countries of destination should be a priori excluded from the screening, the Commission suggests that Member States should prioritize investments directed to countries that have a higher risk profile. If it is true that 70% of outbound investments have been directed to the US and the UK, this geographic criterion might shrink the amount of potentially critical investments. Again however, it might be relevant to note that there are examples of foreign direct investments made by EU entities having been blocked by another EU Member State (one example, that dates November 2023, is Italy's prohibition of a proposed acquisition of an Italian target by a French company in the aerospace sector). It remains of course to be seen whether, also based on the results of the public consultation, the screening of outbound investments will follow the same trajectory of FDI screening frameworks.
13. The white paper also elicits comments on the period covered by the monitoring, suggesting that it should focus on transactions carried out as of January 2019, and provides a list of the information that Member States should gather about outbound investments during the monitoring phase. In short, such information should include all the data necessary to carry out a risk assessment. The set of data is quite broad, and includes information about the parties and their owners, the sectors and technologies involved, the timing, the value of the investment etc.



14. Another issue that Member States need to address is how to carry out the monitoring, which is, as mentioned, a rather new activity for public authorities. They should therefore gear up to be able to gather information about outbound investments effectively. In order to do so, the Commission suggests Member States to designate one authority responsible for the monitoring and use, to the extent possible, existing instruments that could serve this new purpose. The language used by the Commission in this case is not very detailed, simply stressing that the monitoring tools should be effective. Member States will likely have a margin of manoeuvre as to how to organize the activity. Some existing instruments that the white paper suggests are reporting obligations to central banks, national statistical offices, and export authorities.
15. As regards the timing of the monitoring phase, the white paper suggests that, following the adoption of the Recommendation at the end of the public consultation phase in summer 2024, Member States should conduct the monitoring for 12 months. Based on this schedule, assuming there are no delays, it appears that the monitoring phase is expected to be over by summer 2025.
16. It is understood from the white paper that a risk assessment phase should follow, until autumn 2025. In this regard, the white paper also lays down a few suggestions on how Member States should frame the risk assessment phase. For example, the assessment should be comprehensive and should prioritize transactions that entail a risk for security of the whole EU, it should identify the main types of threats based on the geopolitical context and should consider the characteristics of the sectors, the technologies and the value chains concerned. The white paper does not go into much detail about the risk assessment step. It is mentioned, however, that the Recommendation will further develop the framework of the risk assessment that Member States will carry out.
17. The white paper explains that Member States should then report to the Commission and other Member States the results of their monitoring and risk assessment. Following the reporting, the Expert Group is expected to discuss the outcome of these activities «with a view to consolidate the overall results and help the Commission



prepare a final comprehensive risk assessment and ensure a shared understanding of risks». Whether or not a proper policy response will follow in the form of a legislative proposal is still unknown. According to the white paper, as mentioned, this will be assessed by the Commission in autumn 2025.

18. In conclusion, the initiative to monitor outbound investments is surely innovative and at the same time coherent with a context in which the EU is stepping up its effort to enhance economic security. The screening of outbound investments is not an established practice worldwide either. As the white paper points out, only Japan and China have enacted laws that provide for this type of control, and the US are developing a framework to do so. It is interesting to note that Japan monitors a narrow set of sectors that include, in addition to weapons and narcotics, fisheries and leather. China's framework seems to include a wide array of sectors, such that the outbound investment control framework would be aimed at protecting the broader national interest rather than just public security. On the contrary, the US seem to be quite aligned with the EU at this stage, since [their initiative](#) would target technologies that could be exploited for military, intelligence and surveillance purposes. Regarding the EU, the initiative is still at a too early stage to be able to foresee the results to which the process outlined above will lead. Certainly, monitoring outbound investments from scratch appears a challenging endeavour. As mentioned above, the scope of the monitoring appears broad, and a first question mark concerns whether Member States will be able to gather meaningful data without the cooperation of the companies involved and of the countries of destination. If data can be gathered, it remains to be seen whether they are granular enough to be able to carry out a solid measurement of the risk that such investments entail. Additional food for thought that this initiative could feed, although it is still early to make detailed comments, could take us back to one of the initial considerations about the broader context. In the context of the Open Strategic Autonomy strategy, finding the right balance between openness towards the world on the one hand, and protection and risk mitigation on the other is a very complex exercise. It has been observed, although regarding the EU's commercial policy, that certain recent initiatives seem to tend towards unilateral solutions to



global challenges, which would be less effective than multilateral solutions (see for example [Rubini, \*I segni dei tempi: unilateralismo o cooperazione? Riflessioni su alcuni recenti sviluppi nella politica commerciale dell'Unione europea\*, in \*Eurojus\*, Fascicolo n. 4 - 2020](#)). By their very nature, measures aimed at tackling public security risks generally do not fit well with multilateral approaches, as they go to the core of the exercise of sovereign powers (FDI screening for example is still a Member States' competence). In any case, regulatory measures of this kind still create tensions with the ambition of an open system and tend to raise barriers to international business and commerce. Regulatory burdens and red tape on EU companies seeking to do business worldwide, especially in highly technological and dynamic sectors, need to be proportionate and well construed. This could be an additional challenge that regulators will be called upon to keep in mind on the path towards a possible outbound investment screening mechanism.