Next

Maxime Steukers

Generation

Foreign Direct Investment and Critical Infrastructure

Nr. 19

EIZ Publishing

Author: Maxime Steukers
Publisher: EIZ Publishing (eizpublishing.ch), Bellerivestrasse 49, 8008 Zürich, eizpublishing@europa-institut.ch
ISBN:
978-3-03994-068-4 (Print – Softcover)
978-3-03994-069-1 (ePub)
DOI: https://doi.org/10.36862/6GRK-8E1J
Version: 1.00-20260203

This work is available in print and various digital formats in **OpenAccess**. Additional information is available at: https://eizpublishing.ch/next-generation/.

Next Generation

The “Next Generation” series offers a platform for young academics in all areas of law. The aim is to promote the visibility of special talents at an early stage. The volumes in this series are published in Open Access and can therefore be shared and distributed via social media and other channels. Each contribution undergoes a peer review process before it is published.

Foreign Direct Investment and Critical Infrastructure

From a Swiss and European Perspective

Maxime Steukers*

This paper analyses the regulation of foreign direct investment (FDI) in relation to critical infrastructure from a Swiss and European perspective. It examines how growing geopolitical tensions and security concerns have led to increased scrutiny of foreign investments, particularly those involving state-linked investors. After outlining key concepts of FDI, the paper compares the legal frameworks governing FDI screening in Switzerland and the European Union. Special attention is given to Chinese investments in critical infrastructure within the EU, illustrated by a case study of COSCO's investment in the Port of Hamburg. In addition, the analysis identifies regulatory gaps and outlines recent efforts to strengthen FDI screening mechanisms.

Table of Contents

Bibliography 3

1. Introduction 5

2. Foreign Direct Investment: Concepts and Classifications 6

3. The Legal Framework for Foreign Direct Investment in Switzerland 8
   3.1 Existing Sectoral Regulation of FDI 8
   3.2 The Future Swiss Framework for FDI Screening 9

4. The Legal Framework for Foreign Direct Investment in the European Union 11
   4.1 Geopolitical Shift and the Rise of FDI Screening in the EU 11
   4.2 Introduction and Key Definitions in the FDI Screening Regulation 13
   4.3 Substantive and Procedural Aspects of the FDI Screening Regulation 14

* Maxime Steukers holds a joint Bachelor of Laws degree from KU Leuven, Maastricht University and Hasselt University, as well as a Double Degree Master of Laws (LL.M.) from KU Leuven and the University of Zurich, specializing in European and international business law. During his studies, he gained practical experience at leading international law firms and institutions in Brussels and New York, with a particular focus on EU competition law. In addition, he served as a research assistant at the University of Zurich and New York University under the supervision of Prof. Dr. René Matteotti, supporting research in EU and international tax law.

5. Critical Infrastructure and FDI in the European Union 16
5.1 Legal Definitions of Critical Infrastructure 16
5.2 The EU's Response to Chinese Influence on Critical Infrastructure 16
5.3 Case Study: COSCO's Investment in the Port of Hamburg 18
5.4 Regulatory Gaps in the Context of China's Strategic Influence 20
5.5 Strengthening FDI Screening to Counter Strategic Influence 21
6. Conclusion 22

Bibliography

Legislation

Critical Entities Resilience Directive (EU) 2022/2557.

European Parliament resolution (EU) 2024/5719 on the security and defence implications of China's influence on critical infrastructure in the European Union.

FDI Screening Regulation (EU) 2019/452.

Federal Act of Banks and Savings Banks of 8 November 1934.

Federal Act on the Acquisition of Immovable Property in Switzerland by Foreign Non-Residents of 16 December 1983.

Swiss Investment Screening Act (not yet entered into force).

Consolidated Version of the Treaty on the Functioning of the European Union (EU).

Academic literature (books and articles)

Ghiretti Francesca et al, Chinese Investments in European Maritime Infrastructure, European Parliament, Policy Department for Structural and Cohesion Policies, 2023.

Glucksmann Raphaël, Hahn Svenja and Piera Pascale, European Parliament Legislative Train 04.2025, Revision of the Foreign Direct Investment (FDI) Screening Regulation, 2025.

Jüris Frank, Security Implications of China-owned Critical Infrastructure in the European Union, Directorate-General for External Policies of the Union, 2023.

Makoni Patricia, An Extensive Exploration of Theories of Foreign Direct Investment, in Risk governance & control: financial markets & institutions, Virtus Interpress, Volume 5, Issue 2, 2015.

OECD, Framework for Screening Foreign Direct Investment into the EU, Assessing effectiveness and efficiency, 2022.

Quirico Otavio and Williams Katarzyna, The European Union and the Evolving Architectures of International Economic Agreements, Springer, 2023.

Trakman Leon and Ranieri Nicola, Foreign Direct Investment: an overview, in Regionalism in International Investment Law, Oxford University Press, 2013.

Velten Jens, Screening Foreign Direct Investment in the EU, Springer, 2022.

Online sources

Corporate Finance Institute, Foreign Direct Investment (FDI), consulted on 20 April 2025 via https://corporatefinanceinstitute.com/resources/economics/foreign-direct-investment-fdi/.

Freshfields, German approval of Chinese stake in Hamburg container terminal – a veto in disguise?, consulted on 4 December 2025 via https://riskandcompliance.freshfields.com/post/102i0m9/german-approval-of-chinese-stake-in-hamburg-container-terminal-a-veto-in-disgui.

Global Competition Review, Switzerland: gearing up to a new comprehensive FDI control regime, consulted on 22 April 2025 via https://globalcompetitionreview.com/hub/fdi-regulation-hub/fourth-edition/article/switzerland-gearing-new-comprehensive-fdi-control-regime#footnote-007.

Homburger, Switzerland Introduces a Targeted FDI Regime, consulted on 3 December 2025 via https://www.homburger.ch/en/insights/switzerland-introduces-a-targeted-fdi-regime#.

White & Case, Foreign direct investment reviews 2024: Switzerland, consulted on 22 April 2025 via https://www.whitecase.com/insight-our-thinking/foreign-direct-investment-reviews-2024-switzerland.

1. Introduction

Foreign direct investment, also referred to as FDI, plays a crucial role in shaping the economic and strategic landscapes of both the European Union and Switzerland. As global competition intensifies and geopolitical tensions rise, foreign investments, especially those involving critical infrastructure, are increasingly viewed not only as economic transactions but also as potential threats to national security and public order. In response, both the EU and Switzerland have taken steps to scrutinize and regulate foreign direct investments more closely. This paper starts by outlining the basics of FDI, followed by examining the legal frameworks that govern FDI screening in Switzerland and the European Union. In addition, the paper examines the increasing regulatory and strategic concerns related to foreign investments in critical infrastructure, with a particular focus on Chinese investments in the EU.

2. Foreign Direct Investment: Concepts and Classifications

Foreign direct investment has been defined in various ways by different international institutions. In 1993, the International Monetary Fund (IMF) defined FDI as 'an international investment made by one economy's resident entity, in business operations of an entity resident in a different economy, with the intention of establishing a lasting interest'. Some years later, in 2000, the IMF described FDI as 'the ownership of 10 per cent or more of the ordinary shares or voting stock of an enterprise, which is usually considered to indicate significant influence by an investor'. In the view of the World Trade Organization, FDI occurs when 'an investor based in one country (the home country) acquires an asset in another country (the host country) with the intent to manage that asset'. Also other international organizations such as the World Bank and the Organization for Economic Co-operation and Development (OECD), created their definitions of FDI.[1]

In the European context, the FDI Screening Regulation provides a definition of foreign direct investment. It is described as 'an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity'.[2]

What distinguishes FDI from acquiring stocks or shares as part of a portfolio investment in another country is the element of management control. Simply buying shares in a foreign company does not qualify as FDI unless it comes with influence over management decisions. Determining the level of control necessary for an investment to qualify as FDI is largely a factual matter. It depends on whether the investment grants sufficient de facto control to be classified as 'direct' rather than 'indirect'. This assessment typically involves both quantitative and qualitative criteria. While owning 50% or more of a foreign company's shares is a common indicator of control, smaller ownership stakes may also qualify as FDI.[3]

1 Patricia Makoni, *An Extensive Exploration of Theories of Foreign Direct Investment*, in 'Risk governance & control: financial markets & institutions', Virtus Interpress, Volume 5, Issue 2, 2015, p77.

2 Art. 2(1) of the FDI Screening Regulation (EU) 2019/452.

3 Leon Trakman and Nicola Ranieri, *Foreign Direct investment: an overview*, in 'Regionalism in International Investment Law', Oxford University Press, 2013, p2-3.

Foreign direct investment can take several distinct forms, depending on the structure and strategic goals of the investing company. The main categories include horizontal, vertical, conglomerate and platform FDI. Horizontal FDI refers to a company expanding its operations into a foreign market by replicating the same activities it performs domestically. In this model, the business operates in the same industry abroad as it does at home. For example, McDonald's opening restaurants in Japan would be classified as horizontal FDI, as it is simply extending its core business into a new geographic market. Vertical FDI involves the expansion of a business into a foreign country by entering a different stage of the supply chain. An example would be McDonald's acquiring a farm in Canada to produce meat for its restaurants. Conglomerate FDI occurs when a business invests in an unrelated industry in a foreign country. This type of investment is relatively rare because it requires navigating both a new market and an unfamiliar sector. For instance, if the UK-based Virgin Group were to purchase a fashion brand in France, it would be undertaking conglomerate FDI. Lastly, platform FDI takes place when a company sets up operations in one foreign country with the intention of exporting the output to a third country. This form of FDI is often found in low-cost countries that are part of free-trade zones. An example would be Ford acquiring manufacturing facilities in Ireland primarily to export cars to other EU countries.[4]

In addition, one needs to distinguish between inward and outward FDI. The first type refers to investments that originate from abroad and are directed into a country's economy, for instance, foreign investments coming into the EU. Outward FDI refers to investments made by a country's domestic businesses into foreign economies, for example, EU companies investing in other countries.[5]

---

4 Corporate Finance Institute, *Foreign Direct Investment (FDI)*, consulted on 20 April 2025 via https://corporatefinanceinstitute.com/resources/economics/foreign-direct-investment-fdi/.

5 Leon Trakman and Nicola Ranieri, *Foreign Direct investment: an overview*, in 'Regionalism in International Investment Law', Oxford University Press, 2013, p3.

3. The Legal Framework for Foreign Direct Investment in Switzerland

3.1 Existing Sectoral Regulation of FDI

To date, Switzerland lacks a unified legal framework for overseeing foreign direct investment, though legislative developments indicate that such a framework will soon be introduced (see *infra*). The existing legal framework in Switzerland is limited in scope, since it applies only to a few specific areas, in particular banking and real estate. In contrast to many other countries, Switzerland has traditionally offered a highly favourable environment for foreign investment, imposing minimal or no restrictive conditions.[6]

To illustrate how Switzerland regulates FDI at a sectoral level, it is interesting to take a closer look at the Federal Act on the Acquisition of Immovable Property in Switzerland by Foreign Non-Residents. It starts by saying that the Act intends to restrict foreign non-residents from acquiring immovable property to prevent foreign nationals from owning an excessive amount of Swiss land.[7] Therefore, foreign non-residents must obtain approval from the relevant cantonal authority before acquiring immovable property, although certain exemptions may apply.[8] The Act also includes certain administrative, private and criminal sanctions. For example, if the authorisation is obtained by providing incorrect information, the authorisation will be revoked and the person is liable to a custodial sentence of up to three years or a monetary penalty of up to 50,000 Swiss francs.[9]

Another aspect of FDI can be found in the Federal Act on Banks and Savings Banks, where we can read that banks that are under foreign control after their incorporation must obtain an additional license subject to certain conditions. Some of these conditions include that banks have to notify the Swiss National Bank of the scope of their business activities and their relationship abroad, as well as the prohibition for banks to use a corporate name that indicates or suggests a Swiss character. Furthermore, the Federal Act requires the bank's

---

6 White & Case, *Foreign direct investment reviews 2024: Switzerland*, consulted on 22 April 2025 via https://www.whitecase.com/insight-our-thinking/foreign-direct-investment-reviews-2024-switzerland.

7 Art. 1 of the Federal Act on the Acquisition of Immovable Property in Switzerland by Foreign Non-Residents of 16 December 1983.

8 Art. 2 of the Federal Act on the Acquisition of Immovable Property in Switzerland by Foreign Non-Residents of 16 December 1983.

9 Arts. 25, 26 and 29 of the Federal Act on the Acquisition of Immovable Property in Switzerland by Foreign Non-Residents of 16 December 1983.

board members and management to inform FINMA of any developments that may indicate foreign control of the bank or a change in foreign shareholders.[10]

3.2 The Future Swiss Framework for FDI Screening

In May 2022, in response to a request from Parliament, the Federal Council introduced a first Draft Bill on FDI regulation. Following largely critical feedback, the Federal Council released a Revised Draft Bill for the Federal Screening Act at the end of 2023. This version featured a narrower focus, targeting mainly foreign state investors. However, in September 2024, the National Council voted to significantly expand the scope once more, particularly to include foreign state investors more broadly.[11]

In December 2025, the Swiss Parliament finally agreed on the content for a national foreign direct investment regime. The new Investment Screening Act (ISA) focuses on acquisitions by foreign state investors and is designed to address potential national security concerns while maintaining Switzerland's attractiveness to foreign investment. It is important to note that foreign investments by private investors do not fall within the scope of the legislation. Once the final version of the legislation has been approved, Swiss voters may request an optional referendum, and the Federal Council must still draft the implementing ordinance. Given these procedural steps, the Act is not expected to enter into force before 2027.[12]

The Act says that a transaction must be submitted for approval when 'there is a takeover of a domestic (Swiss) undertaking by a foreign state investor in a (security) critical sector and the relevant turnover thresholds are met'. When looking at the critical sectors, the regime captures transactions in areas deemed essential for national security, such as defence-related manufacturing, energy infrastructure, water supply, and certain IT services.[13] Importantly, the legislator decided not to extend screening to emerging critical technologies such as artificial intelligence, semiconductors, or biotechnology. Furthermore, the Federal Council may temporarily expand the list of sectors covered

10 Arts. 3bis and 3ter of the Federal Act of Banks and Savings Banks of 8 November 1934.

11 Global Competition Review, *Switzerland: gearing up to a new comprehensive FDI control regime*, consulted on 22 April 2025 via https://globalcompetitionreview.com/hub/fdi-regulation-hub/fourth-edition/article/switzerland-gearing-new-comprehensive-fdi-control-regime#footnote-007.

12 Homburger, *Switzerland Introduces a Targeted FDI Regime*, consulted on 3 December 2025 via https://www.homburger.ch/en/insights/switzerland-introduces-a-targeted-fdi-regime#.

13 Art. 3(1) of the Swiss Investment Screening Act (not yet entered into force).

by the notification requirement. It can subject additional categories of domestic companies to screening for a period of up to twelve months, should this be required to safeguard public order and security.[14]

The Act establishes a two-phase review process similar to merger control: an initial one-month screening by SECO (the State Secretariat for Economic Affairs), followed by an in-depth assessment of up to three months if security risks cannot be ruled out.[15] Approval is granted unless there are indications that a transaction could endanger public order or security, taking into account the investor's track record and the essential nature of the target's activities.[16] A standstill obligation applies until approval is granted, and breaches may lead to substantial administrative fines, of up to 10% of the domestic undertaking's global annual turnover.[17] Because the regime only applies to a narrow set of foreign state-driven transactions, the number of cases requiring review is expected to remain limited. Nonetheless, foreign state investors active in sensitive sectors will need to anticipate potential delays and incorporate appropriate safeguards into their transaction planning.[18]

---

14 Art. 3(3) of the Swiss Investment Screening Act (not yet entered into force).

15 Art. 6 et seq. of the Swiss Investment Screening Act (not yet entered into force).

16 Art. 4(1) and 4(2) of the Swiss Investment Screening Act (not yet entered into force).

17 Art. 20 of the Swiss Investment Screening Act (not yet entered into force).

18 Homburger, *Switzerland Introduces a Targeted FDI Regime*, consulted on 3 December 2025 via https://www.homburger.ch/en/insights/switzerland-introduces-a-targeted-fdi-regime#.

4. The Legal Framework for Foreign Direct Investment in the European Union

4.1 Geopolitical Shift and the Rise of FDI Screening in the EU

The international economic system has become increasingly characterized by competition, where globalization has contributed to the economic rise of China, while Western economies have experienced relative decline. China's expansion has been driven not only by market forces but also by state-directed strategies, particularly through foreign investments by Chinese state-owned enterprises. These developments have raised concerns that foreign investments may threaten national security. International economic law has struggled to keep pace and many countries have resorted to unilateral measures to protect their interests.[19] Within this context, the EU, traditionally one of the most investor-friendly FDI regimes, became increasingly concerned about foreign acquisitions in strategic sectors, especially after the 2008 financial crisis. Investments backed by foreign states, particularly China, began targeting sensitive European industries such as energy, defence and high-tech. Unlike other major economies, the EU had no unified system to scrutinize such investments, leaving individual Member States to manage the issue under fragmented rules.[20]

To close this regulatory gap, the EU adopted the FDI Screening Regulation, which took effect in October 2020. This framework does not enforce full harmonization but sets out a common approach to reviewing foreign investments that may affect security or public order. The Regulation was initiated at the urging of France, Germany and Italy, who were concerned about a lack of reciprocity for EU companies abroad and the increasing number of foreign takeovers within Europe. At the time of the Regulation's proposal, only 14 EU countries had screening mechanisms in place, creating vulnerabilities within the Single Market.[21] However, a graph of the OECD (see Figure 1) shows that these screening mechanisms were even less present in EU countries before the Regulation's proposal, with only 3 Member States having these mechanisms up till 1997.[22]

---

19 Otavio Quirico and Katarzyna Williams, *The European Union and the Evolving Architectures of International Economic Agreements*, Springer, 2023, p110.

20 Otavio Quirico and Katarzyna Williams, *The European Union and the Evolving Architectures of International Economic Agreements*, Springer, 2023, p110-111.

21 Otavio Quirico and Katarzyna Williams, *The European Union and the Evolving Architectures of International Economic Agreements*, Springer, 2023, p112.

22 OECD, *Framework for Screening Foreign Direct Investment into the EU, Assessing effectiveness and efficiency*, 2022, p17.

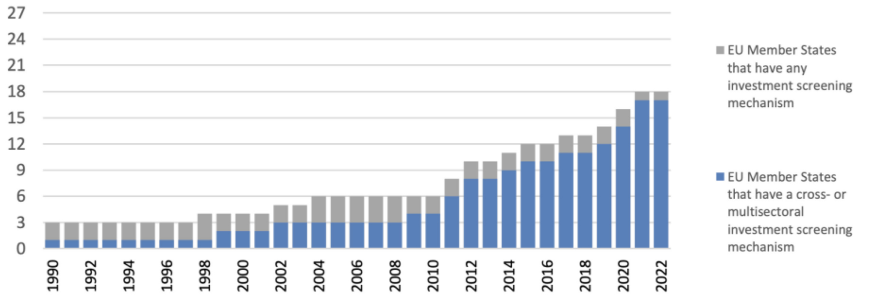

Figure 1. Presence of investment screening mechanisms in EU Member States: evolution over time (1990-2022)

Today, almost all EU Member States have adopted or are developing national screening procedures. The Regulation led to more uniform action across the EU and gradually expanded the Union's influence over foreign investment decisions. Although still limited in scope, the framework marks a significant step toward greater integration and protection in the EU's investment policy, paving the way for possible future harmonization.[23]

The EU emphasized the importance of FDI screening mechanisms in response to political developments and crises. During the COVID-19 pandemic, the European Commission warned of increased risks of foreign takeovers in healthcare and research sectors, urging Member States to strengthen screening to protect critical assets and strategic capacities. The Russian invasion of Ukraine further reinforced the EU's push for strategic autonomy in trade and investment.[24] These trends are clearly illustrated in the following graph (see Figure 2), which shows a clear increase in policy measures concerning national screening mechanisms across Member States during this period.[25]

---

23 Otavio Quirico and Katarzyna Williams, *The European Union and the Evolving Architectures of International Economic Agreements*, Springer, 2023, p112-113.

24 Otavio Quirico and Katarzyna Williams, *The European Union and the Evolving Architectures of International Economic Agreements*, Springer, 2023, p112.

25 OECD, *Framework for Screening Foreign Direct Investment into the EU, Assessing effectiveness and efficiency*, 2022, p16.

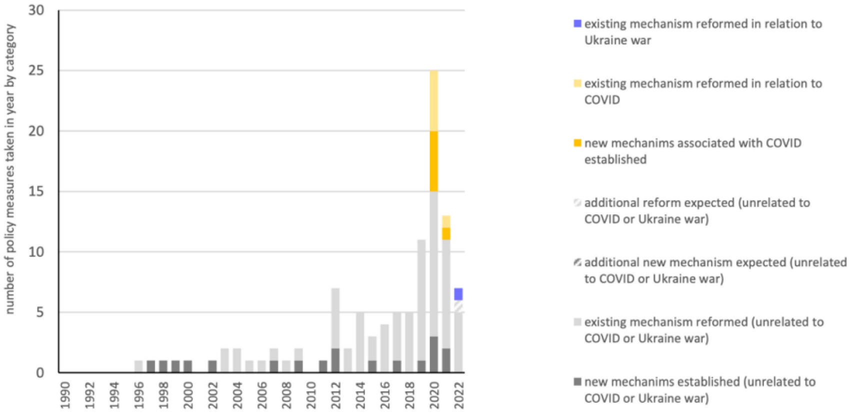

Figure 2. Policy making dynamics on investment screening in EU Member States 1990-2022

4.2 Introduction and Key Definitions in the FDI Screening Regulation

The adoption of the FDI Screening Regulation marked the EU's first significant move toward a more unified approach to foreign direct investment. In effect since October 2020, the Regulation emerged as a compromise, shaped by differing views among stakeholders and ultimately preserved substantial discretion for individual Member States. Rather than establishing a mandatory EU-wide screening system, the Regulation introduces two main elements to promote greater alignment, which will be discussed in the next subchapter.[26]

Before diving deeper, it is helpful to first clarify two key definitions under the Regulation, namely 'foreign investor' and 'screening'. A foreign investor refers to a natural person of a third country or an undertaking of a third country, intending to make or having made a foreign direct investment. The term screening means a procedure allowing to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments.[27] The definition of foreign direct investment itself was already covered in the second chapter of this paper (see *supra*).

[26] Jens Velten, *Screening Foreign Direct Investment in the EU*, Springer, 2022, p35.
[27] Arts. 2(2) and (3) of the FDI Screening Regulation (EU) 2019/452.

4.3 Substantive and Procedural Aspects of the FDI Screening Regulation

First, the FDI Screening Regulation sets up a mandatory cooperation mechanism between Member States and the European Commission. This mechanism focuses on sharing information about FDI cases to ensure national decisions consider broader EU interests, namely those of other Member States and of the Commission.[28] The Regulation makes a distinction between two situations, namely the situation (A) where an investment is undergoing screening in a Member State and the situation (B) where this is not the case, but where another Member State considers that an investment is likely to affect its own security or public order.

In the first scenario (A) all Member States are required to notify the European Commission and other Member States of all foreign direct investments in their territory that are undergoing screening.[29] Other Member States have the possibility to submit comments to both the Member State conducting the screening and the Commission if they believe the foreign direct investment may impact their security or public order, or if they possess relevant information for the screening process.[30] In the second scenario (B) Member States can also provide comments.[31] In both scenarios, whether the investment is being screened or not, the Commission can provide an opinion if it believes the foreign direct investment is likely to affect security or public order in more than one Member State, is likely to affect projects or programmes of Union interest on grounds of security or public order, or has relevant information in relation to that foreign direct investment.[32] If one-third of the Member States believe the investment poses a risk to their security or public order, the Commission is even required to issue an opinion.[33] Additionally, a Member State that determines that a foreign direct investment in its own territory may threaten its security or public order, can ask the Commission to provide an opinion.[34] Important to note is that the opinions of the Commission are not binding and therefore the Member States are not required to follow the opinions.[35] This implies that the Member States have the last word regarding the final screening decision. Furthermore, information about the foreign direct investment

28 Jens Velten, *Screening Foreign Direct Investment in the* EU, Springer, 2022, p36.
29 Art. 6(1) of the FDI Screening Regulation (EU) 2019/452.
30 Art. 6(2) of the FDI Screening Regulation (EU) 2019/452.
31 Art. 7(1) of the FDI Screening Regulation (EU) 2019/452.
32 Arts. 6(3), 7(2) and 8(1) of the FDI Screening Regulation (EU) 2019/452.
33 Arts. 6(3) and 7(2) of the FDI Screening Regulation (EU) 2019/452.
34 Arts. 6(4) and 7(3) of the FDI Screening Regulation (EU) 2019/452.
35 Art. 288(5) of the Consolidated Version of the Treaty on the Functioning of the European Union.

can be required by the Commission and the requesting Member States in certain situations.[36]

Second, the Regulation introduced a new screening ground, namely 'likely to affect security or public order'. As a result, Member States now have four possible approaches to FDI screening.[37] The first option is that Member States simply do not implement any FDI screening mechanism. The second and third options are to implement a screening mechanism on the grounds of public policy or public security, or on the grounds of national security.[38] It is important to note that screening mechanisms based on these grounds remain outside the scope of the Regulation's framework.[39] The fourth option then is to adopt screening mechanisms when foreign direct investments are likely to affect security or public order.[40]

If Member States choose the fourth option, the Regulation outlines certain minimum standards to ensure that national screening procedures are transparent and trustworthy. These include non-discrimination between third countries, clearly defined timelines and the availability of judicial review for screening decisions.[41] Furthermore, although the Regulation does not offer a comprehensive definition of what constitutes a threat to 'security or public order', it lists key areas considered relevant to security or public order, such as critical infrastructure, critical technologies and sensitive information.[42]

Another interesting aspect of the Regulation is that it also opens the door for international cooperation. It says that Member States and the Commission are permitted to cooperate with the relevant authorities of third countries on matters concerning the screening of foreign direct investments for reasons of security and public order.[43]

---

36 Art. 9 of the FDI Screening Regulation (EU) 2019/452.
37 Jens Velten, *Screening Foreign Direct Investment in the* EU, Springer, 2022, p36.
38 Recital 4 and Art. 1(2) of the FDI Screening Regulation (EU) 2019/452.
39 Jens Velten, *Screening Foreign Direct Investment in the* EU, Springer, 2022, p37.
40 Art. 1(1) of the FDI Screening Regulation (EU) 2019/452.
41 Art. 3 of the FDI Screening Regulation (EU) 2019/452.
42 Art. 4 of the FDI Screening Regulation (EU) 2019/452.
43 Art. 13 of the FDI Screening Regulation (EU) 2019/452.

5. Critical Infrastructure and FDI in the European Union

5.1 Legal Definitions of Critical Infrastructure

The FDI Screening Regulation outlines several key factors to consider when assessing foreign direct investments, including its effects on critical infrastructure, critical technologies, supply of critical inputs and access to sensitive information or the ability to control such information. Critical infrastructure encompasses both physical and virtual infrastructure, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure. Critical technologies include artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies. The Regulation also considers effects on critical inputs, including energy, raw materials and food security. Lastly, it addresses the effects on access to sensitive information such as personal data.[44]

Next to the FDI Screening Regulation, the Critical Entities Resilience Directive also provides a definition of critical infrastructure. It is described as an asset, a facility, equipment, a network or a system, or a part of an asset, a facility, equipment, a network or a system, which is necessary for the provision of an essential service. An essential service is defined as a service which is crucial for the maintenance of vital societal functions, economic activities, public health and safety, or the environment.[45]

5.2 The EU's Response to Chinese Influence on Critical Infrastructure

On 17 January 2024, the European Parliament adopted a resolution on the security and defence implications of China's influence on critical infrastructure in the EU. It is aware that disruptions to critical infrastructure can seriously impact government operations, essential public services, the economy, and EU security and defence. Therefore the Parliament wants to reduce its reliance

44 Art. 4(1) of the FDI Screening Regulation (EU) 2019/452.
45 Arts. 2(4) and (5) of the Critical Entities Resilience Directive (EU) 2022/2557.

on China to safeguard free market principles from being undermined by such regimes.[46]

In this context, the European Parliament stresses repeated warnings from intelligence agencies about the risks of economic dependence, espionage and sabotage linked to the presence of entities from non-EU countries, particularly China, in strategic sectors and critical infrastructure. It also raises concern over political interference in the approval of certain Chinese investments, such as the German government's decision to permit an acquisition by a Chinese company of a stake in the Port of Hamburg.[47] More in general, it is increasingly alarmed by the scale of Chinese state-owned investments in European ports, which now manage over 10% of the continent's total shipping container traffic. Many of these ports, nearly half of those with Chinese involvement, are located near military facilities or support NATO operations, significantly heightening the risk of espionage.[48]

In addition, the Parliament expresses serious concern over the involvement of Chinese companies, such as HMN Technologies, in providing and operating undersea cable infrastructure that supports diplomatic and military communications. One such cable system connects EU territories with the Indo-Pacific region and extends to NATO and Member State military bases, posing significant security risks, particularly in terms of cybersecurity, underwater surveillance, intelligence gathering and data collection.[49]

The European Parliament highlights the importance of the FDI screening regulation as a vital tool for safeguarding security and public order from external threats. However, it calls for strengthening current tools by introducing comprehensive screening processes for all entities involved in critical infrastructure projects, including joint ventures, partnerships and technology transfers. Moreover, it advocates for due diligence standards to detect China's influence over investors in EU infrastructure and insists these standards also apply to EU candidate countries. While infrastructure protection is a Member State responsibility, the Parliament expresses concern that existing FDI screening guidelines are not being uniformly applied, urging Member States to imple-

---

46 Paragraphs A and B of the European Parliament resolution (EU) 2024/5719 on the security and defence implications of China's influence on critical infrastructure in the European Union.

47 Paragraph 4 of the European Parliament resolution (EU) 2024/5719 on the security and defence implications of China's influence on critical infrastructure in the European Union.

48 Paragraph E of the European Parliament resolution (EU) 2024/5719 on the security and defence implications of China's influence on critical infrastructure in the European Union.

49 Paragraph 9 of the European Parliament resolution (EU) 2024/5719 on the security and defence implications of China's influence on critical infrastructure in the European Union.

ment the current legislation more consistently and reinforce the resilience of critical entities.[50]

Furthermore, the European Parliament urges the Commission to enhance the impact of its opinions on FDI screening to prevent market distortions. It calls for greater harmonisation across Member States and emphasizes the need for full implementation of the FDI screening regulation. It also recommends exploring the introduction of a screening mechanism for outbound investments to address emerging risks. In brief, the Parliament encourages the Commission to propose ambitious legislative updates that close existing loopholes.[51]

5.3 Case Study: COSCO's Investment in the Port of Hamburg

It is interesting to take a closer look at the recent transaction of COSCO Shipping, a Chinese state-owned company, buying a stake in the Port of Hamburg, as it offers a clear illustration of the challenges associated with foreign direct investment in critical infrastructure. COSCO's initial plan to acquire 35% of a terminal operator raised immediate concerns within the German government, as several ministries viewed the potential influence of the Chinese state-owned enterprise over a strategically significant logistics asset as a possible risk to security and public order. In addition, the Port of Hamburg was identified as critical infrastructure.[52]

Nonetheless, the former German Chancellor, Olaf Scholz, was very much in favor of the transaction, as he emphasized the significance of solid trade ties between China and Germany. Ultimately, the federal government approved the transaction only after imposing a substantial limitation: COSCO's shareholding was reduced to 24.9%. Although Germany has long been one of the most advanced EU Member States in terms of foreign investment screening and has progressively tightened its review mechanisms in recent years, formal prohibitions have remained relatively uncommon. Since 2017, only two transac-

50 Paragraph 19 of the European Parliament resolution (EU) 2024/5719 on the security and defence implications of China's influence on critical infrastructure in the European Union.

51 Paragraph 22 of the European Parliament resolution (EU) 2024/5719 on the security and defence implications of China's influence on critical infrastructure in the European Union.

52 Freshfields, *German approval of Chinese stake in Hamburg container terminal – a veto in disguise*?, consulted on 4 December 2025 via https://riskandcompliance.freshfields.com/post/102i0m9/german-approval-of-chinese-stake-in-hamburg-container-terminal-a-veto-in-disgui.

tions, IMST and Heyer, both involving Chinese investors, have been officially blocked.[53]

Beyond the political debate surrounding COSCO's stake in the Port of Hamburg, the transaction exposes several structural vulnerabilities. One significant concern is the risk of economic coercion, which stems from the ability to influence or pressure political decision-making, for instance by decreasing the amount of cargo handled. However, COSCO's influence alone is unlikely to change major German policies. The real risk lies in many small forms of influence adding up over time. Because Germany and the EU are already closely tied to China economically, even minor signals or pressures can shape decision-making. Another prominent issue is the cyber and data-security risk, as Chinese companies, including COSCO, are bound to Chinese legislation that obliges companies to share data with state authorities when requested. This raises concerns that COSCO could even become a channel for intelligence gathering, an issue that becomes more sensitive in a port like Hamburg, where NATO vessels are frequent visitors.[54]

This pattern is not limited to Hamburg. COSCO also holds a major presence in the Port of Piraeus (Athens), where it controls 67% of the port authority and operates two of the three main terminals. The Board of Directors consists of six Chinese and three Greek members, with COSCO providing both the chairman and the CEO. China explicitly describes the port as "a valuable asset in inter-regional supply chains," and therefore its position in Piraeus is far from neutral. Although the investment is often portrayed as beneficial for both the port and Greece, Greek authorities have never conducted an assessment of its economic or strategic impact. At the same time, the location of COSCO's operations next to key civilian and military facilities creates notable vulnerabilities, particularly with regard to cyber security and the possible exposure of sensitive information.[55]

53 Freshfields, *German approval of Chinese stake in Hamburg container terminal – a veto in disguise*?, consulted on 4 December 2025 via https://riskandcompliance.freshfields.com/post/102i0m9/german-approval-of-chinese-stake-in-hamburg-container-terminal-a-veto-in-disgui.

54 Francesca Ghiretti et al, *Chinese Investments in European Maritime Infrastructure*, European Parliament, Policy Department for Structural and Cohesion Policies, 2023, p28-33.

55 Francesca Ghiretti et al, *Chinese Investments in European Maritime Infrastructure*, European Parliament, Policy Department for Structural and Cohesion Policies, 2023, p21-27.

5.4 Regulatory Gaps in the Context of China's Strategic Influence

The existing framework does not give EU agencies decision-making authority, leaving Member States responsible for creating and enforcing screening mechanisms. Although national agencies can monitor non-EU involvement in critical infrastructure, this oversight lacks enforcement power and is not applied systematically. In addition, EU agencies currently lack tools to actively assess whether Chinese or other foreign entities involved in Europe's critical infrastructure are exposed to influence from the Chinese government.[56]

Beyond regulating foreign direct investment, the EU and its Member States have taken targeted actions against specific Chinese companies considered security risks, such as Huawei and ByteDance. These measures show the ability to respond to threats posed by entities tied to China's party-state and intelligence networks, especially in sectors like telecommunications. The EU has also used its Global Human Rights Sanctions Regime to hold Chinese officials accountable for repression.[57] These actions taken by EU agencies and Member States show both their capacity and readiness to counter risks associated with Chinese party-state-linked entities. However, these efforts also reveal the absence of a comprehensive, unified framework to safeguard Europe's critical infrastructure effectively. Member State responses have largely been reactive, focused on high-profile cases like Huawei and ByteDance, highlighting a broader lack of systematic oversight of China's influence over infrastructure. While consistent regulation is emerging in the area of foreign direct investment, this is just one of several channels through which China can gain strategic access.[58]

A key example is the rare earth industry, essential to the EU's defence and energy sectors. Even without owning European assets, Chinese state-linked entities exert influence by controlling global rare earth supplies in countries like Greenland and the U.S. These forms of leverage fall outside the EU's current FDI-screening mechanisms, revealing a regulatory gap. This allows China to create dependencies and apply political pressure. Currently, although some risks have been addressed on a case-by-case basis, the EU lacks a regulatory framework capable of systematically preventing exposure to influence beyond

---

[56] Frank Jüris, *Security Implications of China-owned Critical Infrastructure in the European Union*, Directorate-General for External Policies of the Union, 2023, p9.

[57] Frank Jüris, *Security Implications of China-owned Critical Infrastructure in the European Union*, Directorate-General for External Policies of the Union, 2023, p10.

[58] Frank Jüris, *Security Implications of China-owned Critical Infrastructure in the European Union*, Directorate-General for External Policies of the Union, 2023, p10.

direct investment. This creates potential loopholes that China could exploit to gain strategic leverage, posing significant security concerns.[59]

5.5 Strengthening FDI Screening to Counter Strategic Influence

In 2024, as part of its 'Advancing European Economic Security' strategy, the European Commission proposed a revision of its FDI Screening Regulation to better protect the EU's strategic interests. The proposal aims to address key gaps in the current framework and strengthen the EU's capacity to respond to security risks linked to foreign investments. Among the key changes, the Commission proposes making it mandatory for all Member States to establish an FDI screening mechanism. It also seeks to define a minimum set of transactions that must undergo mandatory screening, particularly those requiring prior authorisation. Additionally, the proposal introduces a new procedure allowing Member States or the Commission to conduct ex-post reviews of completed transactions for up to 15 months, enabling greater oversight of potentially harmful investments that may initially escape scrutiny.[60]

---

59 Frank Jüris, *Security Implications of China-owned Critical Infrastructure in the European Union*, Directorate-General for External Policies of the Union, 2023, p20.

60 Raphaël Glucksmann, Svenja Hahn and Pascale Piera, *European Parliament Legislative Train* 04.2025, *Revision of the Foreign Direct Investment (FDI) Screening Regulation*, 2025, p1-2.

6. Conclusion

It is clear that both Switzerland and the EU are actively working to strengthen their FDI screening frameworks in response to rising geopolitical tensions and increasing concerns over the security and resilience of critical infrastructure. While in Switzerland a formal FDI screening regime still needs to enter into force, the EU has already taken significant steps forward with its FDI Screening Regulation, establishing a more coordinated approach across Member States. Nevertheless, important regulatory gaps remain within the EU framework, both in terms of the Regulation's scope and enforcement mechanisms, as well as in addressing risks beyond foreign direct investment. At the same time, there is a growing awareness among the European Parliament and the European Commission about the vulnerabilities linked to foreign ownership of strategic sectors, especially regarding China's expanding footprint through state-linked investments. This evolving landscape highlights the urgent need for further regulatory reforms and enhanced cooperation to safeguard economic security and strategic autonomy on the European continent.

Next Generation

This paper analyses the regulation of foreign direct investment (FDI) in relation to critical infrastructure from a Swiss and European perspective. It examines how growing geopolitical tensions and security concerns have led to increased scrutiny of foreign investments, particularly those involving state-linked investors. After outlining key concepts of FDI, the paper compares the legal frameworks governing FDI screening in Switzerland and the European Union. Special attention is given to Chinese investments in critical infrastructure within the EU, illustrated by a case study of COSCO's investment in the Port of Hamburg. In addition, the analysis identifies regulatory gaps and outlines recent efforts to strengthen FDI screening mechanisms.

Maxime Steukers