Institute for European
Analysis and Policy

Jean Monnet Centre of Excellence
on EU Inclusive Open Strategic Autonomy

Comparing EU and US approaches towards Economic Security Strategies

Lúcio Vinhas de Souza

Policy Brief 11/2024

September 3, 2024

Comparing EU and US approaches towards Economic Security Strategies

Lúcio Vinhas de Souza[1]

1. The EU and US: differences

While the EU and the US share many similarities as market democracies that uphold the rule of the law, there are also many differences, from preferences to levels of vulnerability. One difference of immediate relevance for this work concerns the institutions in these two regions.

Namely, the US is a federal state, with a center that has encompassing capabilities in most areas related to economic security (notably, all dimensions of external relations). The EU is a hybrid construct, in which an institutional center (made up of the European Commission – EC, its executive body, and other bodies like the European Council, the European Parliament –EP– and the European External Action Service –EEAS) has limited (but growing) capabilities in many areas, but lacks authority in several areas, notably external relations and defense, which are either *shared* with its 27 Member States (MSs) or are the full responsibility of the MSs. This said, on areas like trade, competition and some aspects of FDI, the EC has *direct centralized authority*. These differences are of key importance for the subject of this paper.

2. A more geopolitical EU

Developed democracies face a rapidly evolving geopolitical environment, from Russia's war of aggression against Ukraine, an increasing number of conflicts such as the one in the Middle East, to rising tensions in the Asia-Pacific region. Such growing and multiplying security concerns also imply direct economic costs, like impacts on supply chains, resulting in delays, pauses in production and increasing costs, including in energy, and a fragmentation of the "global commons" laboriously put into place after the end of World War II.

Consequently, the EU in particular has progressively expanded its arsenal of tools since 2019, adding defensive (new trade defense instruments, FDI screening, revamped export controls, an Anti-Coercion Instrument), resilience and industrial policy (e.g., the Critical Raw Materials communication, the European CHIPS act) and security/military components (e.g., the Strategic Compass).

[1]While this author was involved in the design of several of the EU frameworks described in here, this paper does not necessarily reflect the views of any organization the author is or was affiliated with. All usual disclaimers apply.

The two most recent examples of this trend are the "Joint Communication"[2] on a European Economic Security Strategy (EESS) published in June 2023 and the related package from January 2024 of five initiatives (including one Regulation –e.g., a binding legal act, one "Recommendation" –a non-binding act– and three "White Papers", which are consulting/discussion tools). The EESS is a comprehensive multi-sector strategy, with a 3-pillar structure, aiming to:

1) **Promote** the EU's competitiveness and growth by strengthening the Single Market, supporting a strong and resilient economy, and fostering the EU's research, technological and industrial base;
2) **Protect** economic security through a range of policies and tools, including targeted new instruments where needed;
3) **Partner** with and further strengthen cooperation with countries worldwide.

The EESS "protect" pillar (Pillar 2) is the more advanced one (see Figure 1); as was made clear by the January 2024 package.

Figure 1: The EESS Pillars

Pillar 1: Promoting the EU's economic base, competitiveness and growth	*Pillar 2: Protecting against economic security risks*	*Pillar 3: Partnering on economic security*
• *Single Market (NGenEU/Cohesion Funds)* • *EU Industrial Strategy* • *Critical Raw Materials Act* • *European Chips Act Net-Zero Industry Act* • *Single Market Emergency Instrument* • *Strategic Technologies for Europe Platform (STEP).*	• *Addressing weaponization of economic dependencies and economic coercion* • *Protecting economic security by protecting infrastructure* • *Technology security and technology leakage* • ***Better EU coordination on export controls of dual-use items*** • ***Inbound investments affecting security and public order*** • ***Outbound investment***	• *Bilateral and plurilateral cooperation* • *Multilateral cooperation*

Source: European Commission

In practical terms, new instruments are found only under Pillar 2, with Pillar 1 largely listing pre-existing frameworks and Pillar 3 being largely made up of discussion forums. This lopsided structure may result in competitiveness concerns for the EU economy, as expressed by business associations, if a greater balance between the "protect" and the "promote" and "partner" pillars is not achieved (see BusinessEurope, 2024).

[2] A "Communication" is a non-legally binding EU instrument that, in this particular case, provides outlines on future policies or arrangements concerning details/reforms of current policies. It is "Joint" because it is issued by the EC and the EEAS (the EU's joint Ministry of Defense and Foreign Affairs, which is *not* an EC body as it includes direct representation from all EU MSs).

The EESS also identifies four risk areas where "in-depth risk assessments" have been launched:[3]

1. Risks to the resilience of supply chains, including energy security;
2. Risks to the physical and cyber-security of critical infrastructure;
3. Risks related to technology security and technology leakage;
4. Risk of weaponisation of economic dependencies or economic coercion.

Regarding the development of "critical technologies" and associated technology security and technology leakage risks outlined in the EESS, a joint (e.g., involving both EU bodies and the MS) risk assessment exercise is taking place in four areas deemed critical, namely a) Advanced Semiconductors, b) Artificial Intelligence (AI), c) Quantum Technologies and d) Biotechnologies.

Let us now take a deeper look at three components of EESS Pillar 2, namely, exports controls, *inbound* and *outbound* FDI screening, which were further fleshed out in the 2024 package.

2.1 EU Exports Controls Reform

Export controls are a well-established and important part of the EU's trade toolbox – with a binding legal tool, the "Dual Use Regulation" - and key in the context of the ongoing economic security debate. The related 2024 package' "White Paper" (therefore a *discussion* tool) on this subject suggests amending the "Dual Use Regulation" to include items subject to export controls under the Wassenaar Arrangement[4] but whose adoption was blocked by a particular Wassenaar signatory, namely, Russia. These proposed controls *outside* Wassenaar would still be evaluated using the Wassenaar Criteria, e.g.:

1. Foreign availability outside participating states;
2. Ability to control effectively the export of the goods;
3. Ability to make a clear and objective specification of the item; or
4. Controlled by another export control regime.

It recommends closer consultation between the EC and MSs before any new export restrictions are introduced, while bringing forward a previously scheduled evaluation of the current Regulation to early 2025.

One should note that under the current Regulation only a marginal share of exports was actually denied: e.g., 559 denials were issued in 2020, representing about 1.4% of the value of controlled dual-use exports

[3]They include, e.g.:

- Supply Chain Alert Notification (SCAN) monitoring system (for identifying strategic dependencies and supply chain distress)
- Assessment of risks on physical/cyber-security of infrastructure (conducted under the Critical Entities Resilience Directive and the "NIS 2 Directive")
- The Cyber-Resilience Act and the Cyber Solidarity Act.

The timeline for the conclusion of the risk assessments is still undecided.

[4]The Wassenaar Arrangement, established in July 1996, is a voluntary export control regime whose 42 members exchange information on transfers of conventional weapons and dual-use goods and technologies. Wassenaar is not targeted at any region or group of states, but rather at "states of concern" to its signatories.

in that year, and 0.03% of total extra-EU27 exports. However, Russia's ongoing war of aggression against Ukraine, which started in 2022, has entailed an unprecedented number of EU Sanctions (coordinated with allies like the US), which both increased the number of export controls and ultimately led to the proposed revision of the existing Regulation.

2.2 EU FDI Screening Framework Reform

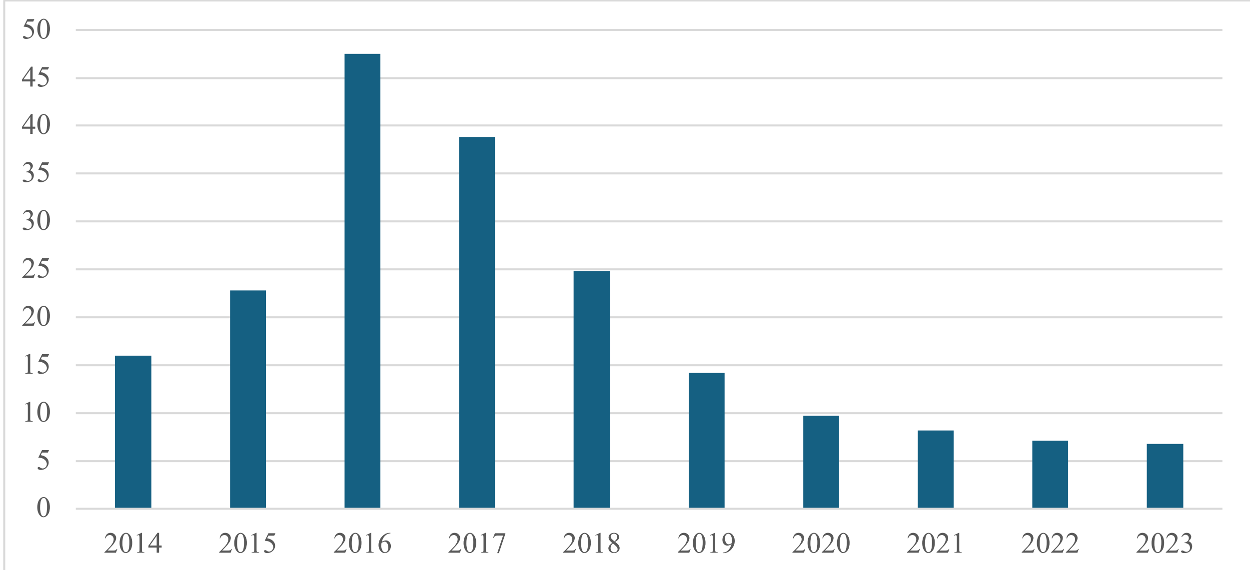
The 2024 package also includes an updated FDI screening Regulation proposal (again, a binding legal act). In it, MSs would now not only be *required to have* an FDI screening mechanism (currently, 22 out of the 27 MSs have one, while the others are in the process of creating one), but to have one that respects harmonized minimum requirements to conduct screening and enforce decisions. An "authorization" review and screening process are now *mandatory* for all FDIs in projects/programs deemed of "EU interest", dual-use, critical technologies, medicines or entities and in the financial system. The proposal also strengthens the cooperation mechanism between MSs and EC through a better notification system, more streamlined information requirements and stricter deadlines for the provision of comments by the MSs and for the EC "Opinion".

The scope of the FDI screening mechanism is also extended by the proposed Regulation by including (1) foreign investors' subsidiaries in the EU, directly or indirectly controlled by a third government, (2) foreign investors that are subject to EU sanctions and (3) foreign investors or subsidiaries involved in foreign investment previously screened by an EU MS.

To place these proposed changes into context, the original FDI screening Regulation put the EC at the center of what can almost be described as an "information sharing" network of MS-based screening authorities (although it did not make it obligatory for EU MS to have one, it advised to create one). It allowed the EC to issue "Opinions" when it considered that an investment posed a threat to the security or public order of more than one MS, or could undermine a project of interest to the whole EU. In such an "Opinion" the EC could *recommend* actions, but it was up to MSs to both take it on board and implement it (this is still the case).

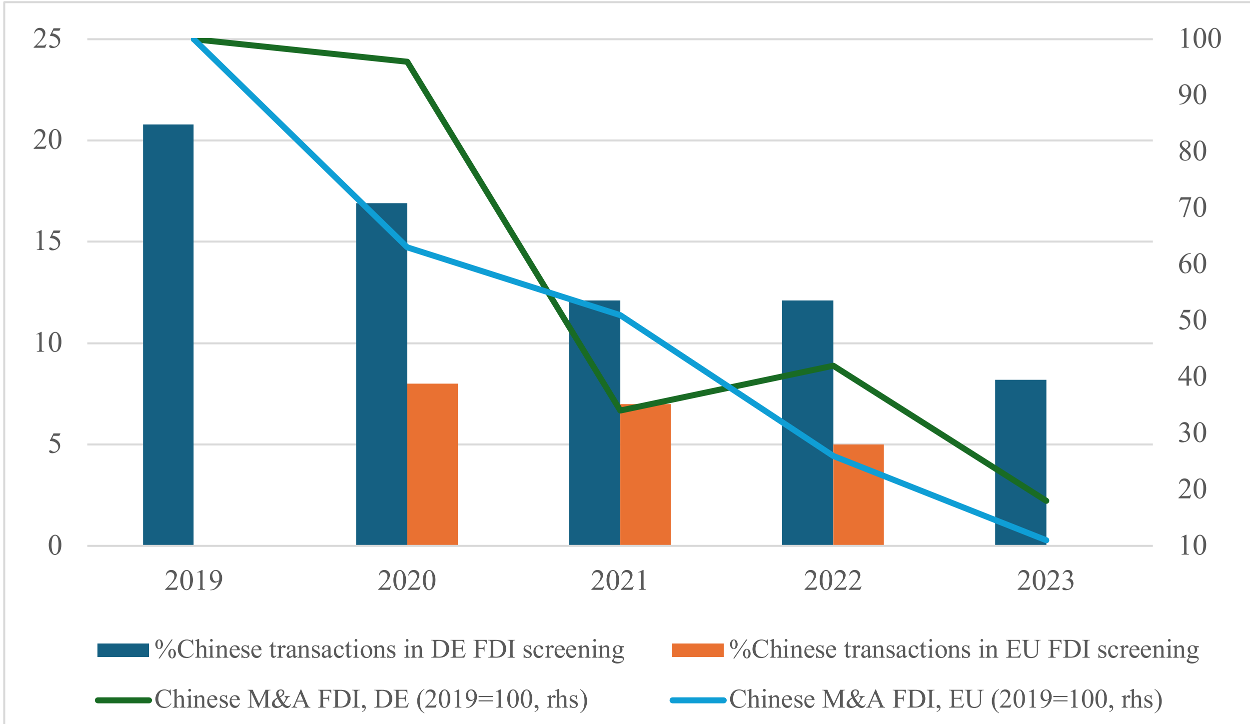
Its original development (started as far back as 2016) and enactment (in 2019, but with entry into force in 2020) were largely driven by fears related to China, even if the framework follows the EU traditional "country agnostic" standard. Such fears have now somewhat abated –or rather, migrated into others areas - since Chinese FDI inflows into the EU have fallen precipitously (see Figure 1) and become largely concentrated geographically and sectorally, namely in "greenfield" FDI for electrical vehicles plants in Hungary during 2022-23. This also resulted in a large fall of screening actions related to China (see Figure 2).

Figure 1: Chinese FDI into the EU (€ billion)



Source: European Commission

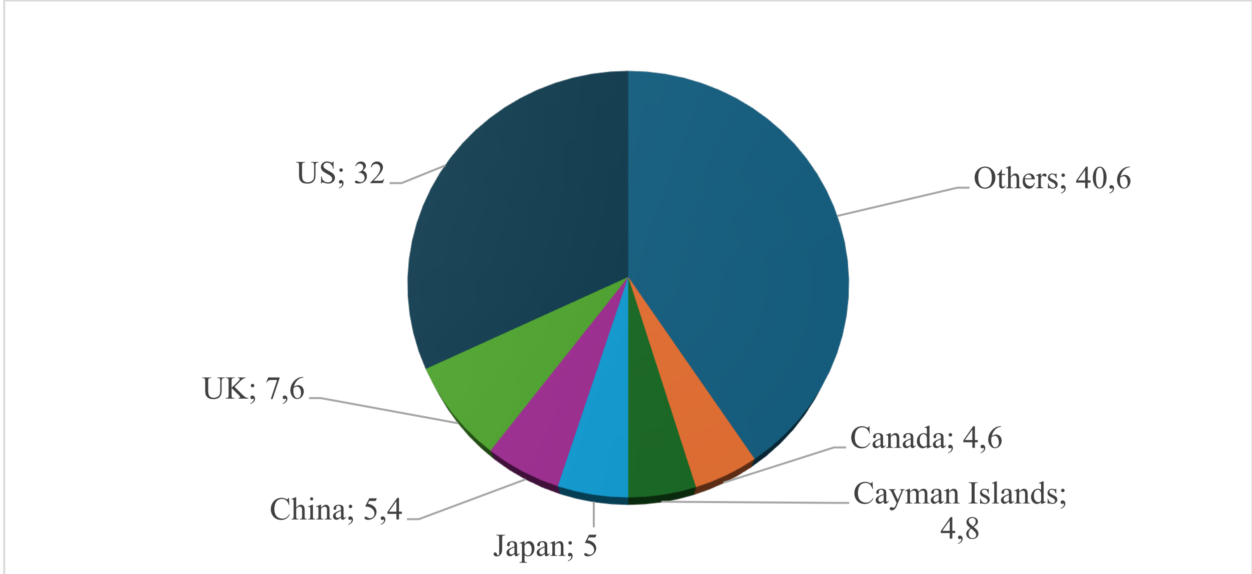
Figure 2: Germany and EU FDI screening actions on China



Source: European Commission

However, historically speaking, by far the most important target of screening actions has been the **United States**, and this remains the case, which is not surprising, given the large share and stock of FDI into the EU from the U.S. (see Figure 3).

Figure 3: EU FDI screening actions by investor country (%)



Source: European Commission

2.3 Outbound FDI Screening

This is a "White Paper" that outlines a stakeholders' *consultation* tool. It covers limitations on outbound FDI that *do not arise from sanctions*, and includes an initial discussion proposal that outlines a staged and gradual approach starting with a consultative, open and comprehensive questionnaire. The "White Paper" stresses that, before developing any new tools, p*otential* future EU initiatives in this area are to be based on a clear definition of the problem and a thorough assessment of any risks.

The consultation results were published on 23 July 2024, and are now being assessed by the "Expert Group on Outbound Investment", which was created in July 2023 and which brings together EU and MS experts on several areas, from dual-use export controls, FDI screening, to trade and foreign affairs departments (this group already met three times in 2023).

The consultation was open to the public from 24 January 2024 to 17 April 2024. Its questionnaire contained 21 queries, with the possibility of providing an open response for most, as well as to support the response by submitting a "position paper". Overall, 53 responses were provided, 35 from businesses/business associations (including 3 from the US and 1 from the UK), 5 from academic/research institutions, 3 from public authorities and 10 from EU citizens or NGOs. Concentrating on the replies **by business**,[5] they:

1. Mostly expressed a *cautious* stance towards monitoring outbound FDI, saying that *if* measures are taken, they should be "well informed";
2. Mostly were in favor of risk assessments;
3. Mostly did not give a clear answer *whether the four technology areas* described in the White Paper were a sufficiently defined basis for monitoring;

[5]MS representation in the "Expert Group" frequently acts as a voice for the respective MS businesses (one should also note that monitoring is the *only* point of agreement at this stage among the members of the group).

4. Mostly were in favor of monitoring asset transfers, joint ventures and venture capital transactions (less agreement on possibly covering mergers, acquisitions or greenfield FDI).

The number of respondents who did not give a clear answer is very high, *often the relative majority in many of the questions.* Most oppose *any* monitoring measures that could limit outbound FDI, undermine EU competitiveness or jeopardize the ability of EU firms to innovate and grow in global markets. Several respondents proposed only a *de minimis* threshold. Most think that the focus should be on *technologies rather than transactions,* and most agree that the monitoring should be based on the risk criteria already routinely used by MS export control authorities. Most say that the monitoring should only cover new and ongoing transactions, not legacy/existing ones.

Respondents also raised concerns regarding data protection, confidentiality and data collection, stressing that "amounts could overwhelm both authorities and businesses." Almost all respondents said that further information should *not* be gathered. Most are *very* skeptical about additional tools for monitoring, saying priority should be given to existing tools and any new tool should be introduced only if "absolutely necessary".

All in all, the results of the consultation clearly show a fairly limited level of support for the introduction of this type of controls by stakeholders.

3. The US: no overall strategy and few frameworks, but generally effective

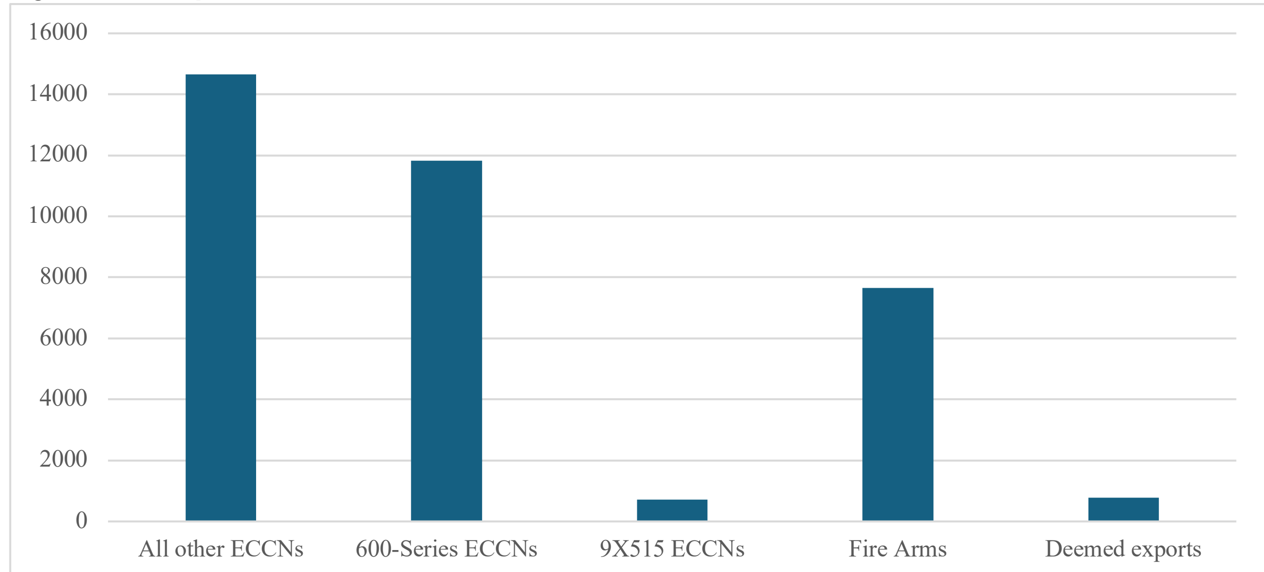
Contrary to the EU, the US **has no integrated economic security strategy** (as opposed to a national *security* strategy). Rather, several US departments and agencies have released their own individual strategies (e.g., the Departments of Defense, Treasury, Commerce, etc.). Also, the US government derives most of its economic security tools from a small set of federal-level legal frameworks: e.g., the sanctions authority comes from the International Economic Emergency Powers Act (IEEPA) of 1977; the 2018 Foreign Investment Risk Review Modernization Act (FIRRMA), which expanded Presidential authority on national security and investment and on modernizing the Committee on Foreign Investment in the U.S. (CFIUS); while the Export Control Reform Act (ECRA) of 2018 updated export controls rules, giving the US the ability to impose *unilateral* controls on items not listed on multilateral export control lists (the EU largely lacks such unilateral tools, but proposals have been made to address a part of this particular gap, as indicated above). This said, the existing US tools are however used in a more centralized and "offensive" way than in the EU, and are in some cases more institutionally developed.

3.1 The US and Exports Controls

Dual-use export controls are governed in the US by ECRA. ECRA provides broad authority for the US federal government to impose unilateral or multilateral controls to address a range of national security and foreign policy objectives, including those related to combatting weapons proliferation and terrorism, preserving the military superiority of the US, strengthening the US defense industrial base, protecting human rights and democracy, and facilitating military interoperability with allies.

In practical terms, dual-use export controls are administered by the Department of Commerce's (DoC) Bureau of Industry and Security (BIS) in close coordination with the Departments of Defense, Energy, and State, and the number of cases reviewed and the share of export denials are fairly similar to that in the EU's case (see Figure 4)

Figure 4: US export controls actions[6]



Source: U.S. DoC

3.2 The US and Inbound FDI Screening

The US has an established, effective and centralized legal framework for screening certain types of FDI into US firms for national security risks that may arise from such transactions. This is implemented by CFIUS, an interagency body chaired by the Secretary of the Treasury. CFIUS has broad authority to respond to national security risks arising from FDI flows covered by it.

It can do this through the negotiation –or in some cases, imposition– of terms on transactions to mitigate identified national security risks. When "mitigation" cannot overcome national security concerns, CFIUS may recommend that the President suspend or prohibit the covered transaction.

CFIUS is generally considered to be functioning well, and the EU uses it implicitly as a reference for its own "steady state" institutional development. It works largely by deterrence, with between 25% and 30% of FDI proposals withdrawn after the beginning of investigation but before its conclusion, and the number of actual Presidential decisions (cancelling or prohibiting FDI) effectively being at zero (see Table 1).

[6]ECCN stands for "Export Control Classification Number": the "600 series" is munitions, 9x515 is spacecraft, related items, and some radiation-hardened microelectronic circuits. The obligation to obtain an export license from BIS before "releasing" controlled technology to a foreign person is referred to as a "deemed export". Releases of controlled technology to foreign persons in the US are "deemed" an export to the person's country or countries of nationality. Many of the licenses for "deemed" exports involve those conducting scientific research.

Table 1: CFIUS Investigations.

Year	N. of notices	*of which, from China*	Notices withdrawn during review phase	N. of investigations	Notices withdrawn after investigation began	Presidential decisions
2021	272	46	2	130	72	0
2022	286	36	1	163	87	0
2023	233	33	0	128	57	0

Source: CFIUS

3.3 The US and Outbound FDI Screening

As in the EU, US policymakers are currently debating if and how to regulate US outbound FDI. The US administration has released an executive order together with an "advanced notice of proposed rulemaking", outlining a proposal to mandate notifications of –and in some cases, prohibit– certain US investments in *China's* AI, semiconductor, and quantum technology industries.

The US Congress is also considering a range of proposals: 1) the Senate favoring a mandatory notification program; 2) The House of Representatives is considering different options, e.g., the House Financial Services Committee is leaning to traditional sanctions while the House Select Committee on the Strategic Competition between the U.S. and the CCP has recommended creating new authorities to implement a sectoral approach to regulating outbound FDI.

4. Conclusion: Transatlantic learning and coordination possibilities (and limits)

So, how do the "Economic Security" frameworks of the EU and the US compare? In terms of export controls, both regions seem to have similar frameworks (even bearing in mind the more limited EC competencies, and the MS-level implementation) of comparable levels of effectiveness, dealing with similar volumes of applications and grappling with similar questions on their relation with existing multilateral frameworks.

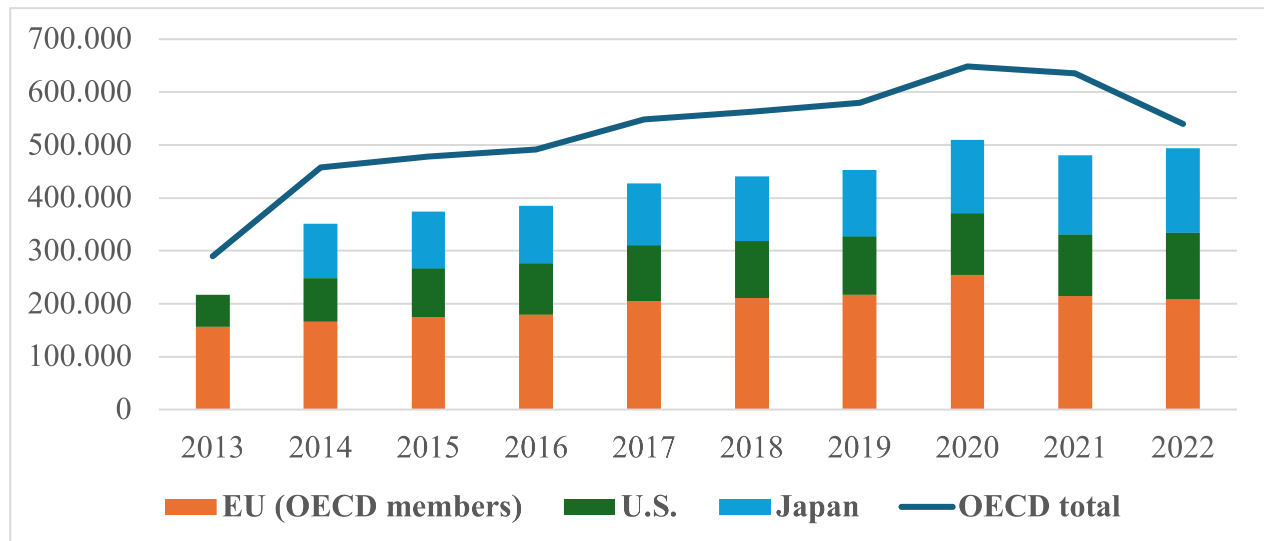
On the other hand, the US' CFIUS was/is the reference for the EU when designing its evolving inbound FDI screening mechanism, and there is still great margin for EU learning from US and reaching its level of institutional development. This said, when one looks at the effectiveness of the frameworks, it is not really apparent that the EU framework performs worse than its US counterpart in terms of results in this area.

Finally, as for outbound FDI screening, this is an evolving discussion on both sides of the Atlantic, but the staged process followed by the EU, with open and transparent consultation with stakeholders, and notably with industry, may have lessons for the US. Notably, the strong resistance by private sector stakeholders to any of the abovementioned controls is made apparent by the EU open consultative processes.

This short paper started with the differences between the two regions and will also finish with them. There are many differences when considering policy design and choices between the EU and the US other than the institutional one. To name just a few, the main thrust of the EU's approach is "de-risking", not "de-coupling" (now equally shared with the US). Also, the EU mostly eschews unilateral/extra-territorial actions/frameworks, while the US seems to favor them.

Furthermore, it is fundamental to tailor any actions to their desired aims, and ideally at least partially agree with your allies on what those aims are (for example, while recognizing that the tools in both scenarios may partially overlap, is the aim to "contain" China or to create incentives for it to be a "good global citizen"?). Equally, those ideally agreed aims and actions should naturally reflect both preferences and capabilities (which do differ between the EU and the US). The (political) economy context matters a lot for this, given the EU's much higher exposures and vulnerabilities, and not only towards China, but in general, from energy dependency to migration (see Figure 5 for an example: it shows that the EU's FDI stock in China is now 66% larger than that of the US).

Figure 5: FDI stock in China ($ millions)

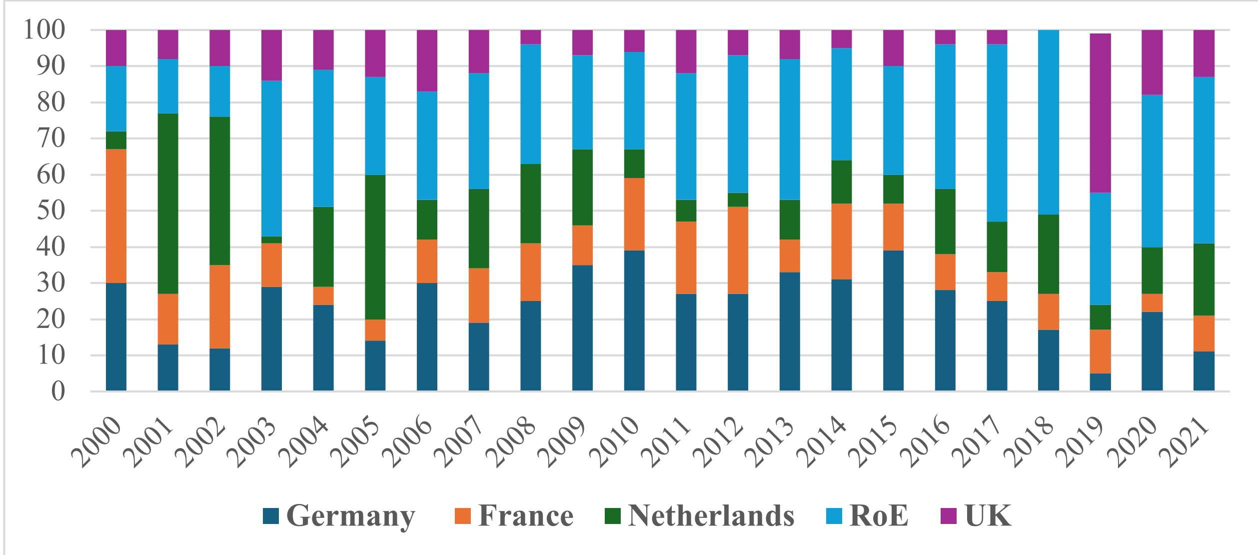


Source: OECD

These larger EU vulnerabilities remain, even if they are falling and (like Chinese FDI inflows into the EU) becoming more geographically and sectorally concentrated (see Figure 6).[7] Friends and allies should respect and understand each other's red lines in this evolving set of discussions, regardless of the political cycles that are normal in democracies.

[7]Namely, the EU's FDI into China is increasingly a "German story": the three big German automakers (Volkswagen, BMW and Daimler) plus German chemicals group BASF were responsible for over 34% of all the EU's FDI into China during the period between 2018 and 2021. It is noteworthy that the EU FDI stock in China fell from over 200% of the US stock in 2014 to 165% in 2022 (because of faster US FDI growth than the overall EU's one).

Figure 6: EU FDI inflows into China (%)



Source: MERICS

References:

Benson, E., Mouradian, C. and Leonard, A., (2024). Toward a U.S. Economic Security Strategy: Twenty-First-Century Guidance for Domestic and International Policymaking, CSIS, Washington, D.C.

BusinessEurope, (2024). European Economic Security: Striking the right balance between security and competitiveness, Brussels, Belgium.

CFIUS, (2023). Annual Report to Congress-CY2023, Department of Treasury, Washington, D.C.

European Commission. (2021). Strategic dependencies and capacities. Commission staff working document, SWD (2021)352, Brussels.

European Commission. (2022). EU strategic dependencies and capacities: second stage of in-depth reviews. Commission staff working document. SWD(2022) 41final, Brussels.

European Commission (2023) Joint Communication on "European Economic Security Strategy". JOIN(2023) 20 final, Brussels.

European Commission. (2023). Third Annual Report on the screening of foreign direct investments into the Union. Commission staff working document, SWD(2023) 329 final, Brussels.

European Commission. (2023). Screening of FDI into the Union and its Member States. Commission staff working document, SWD(2023) 329 final, Brussels.

European Commission (2024). 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, SWD(2024) 23 final, Brussels.

European Commission (2024). White Paper on Outbound Investment, COM(2024) 24 final, Brussels.

European Commission (2024). Summary of responses: Targeted consultation on the White Paper on Outbound Investment of 24 January 2024, Brussels.

Kilcrease, E., (2024). Testimony before The U.S. Senate Committee on Banking, Housing, and Urban Affairs Hearing on "National Security Challenges: Outpacing China in Emerging Technology, CNAS, Washington, D.C.

White House (2017). National security strategy of the United States of America, December 2017.

White House (2022). National Security Strategy.