

TRADE INSTRUMENTS & ECONOMIC STATECRAFT

The Advent of Joint Venture Requirements in EU Investment Law

Dr Jochem de Kok¹

1. Introduction and Executive Summary

The legal framework for foreign investments in the European Union is undergoing a structural shift. As the European Parliament has begun its consideration of the proposed Industrial Accelerator Act (IAA), one of key questions is how far the EU should go in imposing joint venture requirements and ownership caps in strategic sectors. The proposed IAA builds on a broader trend in the EU, whereby foreign investments are increasingly made subject to behavioural and structural conditions. While behavioural conditions relating to governance, information security and continuity of supply have thus far been most prevalent, structural conditions involving joint venture requirements and ownership caps appear increasingly common. The proposed IAA is likely to further accelerate that trend.

Following the adoption of the EU FDI Screening Regulation, all Member States have adopted and/or strengthened national investment screening mechanisms. As a result, an increasing number of foreign investments in the EU require prior notification and approval from the Member States on grounds of security and public order. Under the economic security paradigm, investment screening aims to address risks relating to supply chains resilience and technology security. While the vast majority of transactions are unconditionally approved, a substantial share of investments is subjected to conditions. In 2024, 86% of formally screened foreign investments in the EU were authorised without conditions, while 9% were approved subject to conditions or mitigating measures, 1% were prohibited, and 4% were withdrawn before a formal decision.² Conditions are typically (but not always) behavioural in nature, relating to governance, information security and continuity of supply, including restrictions on offshoring production, how-how or technology. However, in a number of cases, Member States have required structural commitments, such as ownership caps or obligations to enter into joint venture agreements with local partners, as mitigating measures to address (economic) security concerns.

The proposed IAA may introduce a strict conditionality regime for inbound capital in certain strategic net-zero sectors. The proposed IAA would for the first time introduce ownership caps and joint venture requirements in a wider range of sensitive industries on the basis of industrial policy grounds. Certain foreign direct investments (FDI) from investors whose home country controls more than 40% of global manufacturing capacity would need to meet specific pre-defined conditions to obtain approval from national Investment Authorities. These conditions include an ownership cap, precluding foreign investors from holding more than 49% of the share capital or voting rights in a Union joint venture. In addition, the IAA will introduce technology transfer obligations, requirements to direct revenue to local research, and quotas mandating that half the workforce comprises Union workers. While the IIA remains subject to negotiation between the European Parliament and the Council, the proposal is likely to accelerate a trend towards increased reference to investor conditionality and ownership caps.

For foreign investors, this means that they may increasingly be in a position where they find themselves looking for European partners. For European companies, this development may offer opportunities, as stricter foreign investment conditionality and related trends towards “Buying European” provide clear incentives for foreign investors to partner up with European firms. For the European Commission, there is a clear task to provide additional clarity and legal certainty on the type of cases and scenarios in which ownership caps or joint venture requirements are a proportionate and necessary solution to mitigate concerns.

Furthermore, for all corporate actors, these developments provide further indication that foreign investment screening should be considered at the investment-structuring stage rather than merely as a regulatory approval process, following agreement on a transaction. Foreign investors in strategic sectors should assess at an early stage whether a transaction is subject to investment screening. If so, they should not only consider possible behavioural commitments but also whether European investment participation, including through a joint venture, could facilitate regulatory approval. Furthermore, parties to a transaction should consider at an early stage the transaction’s contribution to European technological capabilities, employment and supply-chain resilience.

For policymakers, the growing use of structural conditions calls for greater clarity as to their purpose and appropriate use. Ownership caps and joint venture requirements may serve different objectives: mitigating security risks associated with foreign control, protecting technology or supply-chain resilience under the broader economic security paradigm, or ensuring European participation and value creation as a matter of industrial policy. As these rationales increasingly overlap, clearer guidance on when structural conditions are appropriate would promote greater consistency across the internal market while providing foreign investors with greater predictability when structuring investments.

2. Foreign Investment Screening

The European Union’s approach to inbound foreign capital is undergoing a profound transformation, shifting from liberalism to security as the dominant regulatory paradigm.³ Following increased geopolitical tension, technological competition and the realisation that certain economic transactions can pose risks to the EU’s security and undermine its competitiveness, the EU has expanded its economic security toolbox with a range of measures. In the area of investment, a historic emphasis on free movement of capital has increasingly made place on the need to balance openness with economic security interests, such as supply chain resilience, technology security and leakage, security of critical infrastructure and preventing economic dependencies that result in risks of economic coercion.

The EU’s investment screening framework is one of the key instruments in the economic security architecture. The EU FDI Screening Regulation (EU) 2019/452 and its recently adopted revision Regulation (EU) 2026/1386 provides a European framework under which Member States screen foreign investments to protect critical infrastructure and technologies from high-risk acquisitions. While the Member States are in charge of screening the investment, and taking the decision on whether to approve, restrict or prohibit the transaction, the frameworks provide for a minimum degree of harmonisation, a European cooperation mechanism and a possibility for the Commission to issue opinions to the Member States.

In order to address identified security or public order threats, the Member States may authorise a foreign investment subject to mitigating measures. The revised Foreign Investment Screening Regulation provides a list of illustrative mitigating measures that may be adopted, being:

- (a) changes to the proposed governance structure of the Union target;

- (b) modifications to the voting rights conferred on the foreign investor;
- (c) conditions on access to sensitive technologies or information;
- (d) commitments to ensure a specific supply and/or supply to a specific client;
- (e) measures to ensure the continuation of business activities;
- (f) requirements to source critical components from secure and reliable suppliers;
- (g) implementation of cybersecurity protocols to protect against potential threats; and/or
- (h) an obligation to store and process specific data within the Union.

In addition to these measures, a growing strand of decision practice shows that Member State investment screening authorities using structural remedies such as capped ownership stakes, mandated joint venture structures, and retained minority shareholdings for domestic parties as conditions for clearance. By implementing ownership caps and joint venture structures, Member State authorities are able to conditionally clear transactions that would otherwise be outright prohibited.

For instance, as part of the investment screening process, BC Partners, a UK investment firm, made several commitments to the French authorities as part of its acquisition of control over Biogaran, a major player in the French pharmaceutical industry and one of France's major generic medicine companies.⁴ As an apparent part of these commitments, Bpifrance, the French public investment bank, acquired a minority interest in January 2026.⁵

Similarly, when Teledyne Technologies Incorporated requested the French Ministry of the Economy and Finance for authorization of foreign investment related to the acquisition of Photonis, it was informed that the acquisition could only proceed subject to conditions. One of those conditions was a minority ownership stake in Photonis by Bpifrance, and associated veto rights regarding the operations and management of Photonis' European business in France and the Netherlands.⁶ While Teledyne was willing to accept these commitments, the transaction was ultimately prohibited, reportedly due to a negative opinion by the French Ministry of Armed Forces.

In Germany, the proposed acquisition by COSCO of 35% of HHLA Container Terminal Tollerort GmbH in October 2022, was conditionally approved, permitting only an acquisition of a 24.9% shareholding.⁷ This ownership cap was to prevent COSCO from conferring blocking/veto rights attached to a 25% interest. The government also barred COSCO from acquiring any influence beyond that conveyed by voting rights below 25%, expressly prohibiting it from contractually securing veto rights over strategic business or personnel decisions or appointing members of independent operative management.

In the Netherlands, an ownership cap was considered to address concerns of Chinese ownership over the Dutch semiconductor manufacturing company, Nexperia. In addition to various measures relating to Nexperia's governance structure, the Dutch Minister of Economic Affairs and the Chinese investor, Wingtech, discussed a diversification of up to 20% of the Wingtech and/or Nexperia shares at Euronext Amsterdam. Ultimately, this measure was not implemented, as concerns about Wingtech's ownership mounted when the US government decided to implement the so-called 50% rule, thereby indirectly placing Nexperia under the scope of the US Entity List. Instead, the Dutch Minister decided to issue an order on the basis of emergency legislation — the Dutch Goods Availability Act — ordering Nexperia to maintain business activities and means of production in the Netherlands. In parallel, Nexperia initiated a request for interim measures against its shareholders by means of an enquiry procedure (*enquêteprocedure*).⁸ The Enterprise Chamber of the Court of Appeal of Amsterdam subsequently decided to suspend the position of the CEO and to place the shares under management of a court appointed trustee.

3. The Proposed Industrial Accelerator Act

As investment screening authorities began to restrict sensitive acquisitions in critical technology sectors, Chinese investments shifted towards greenfield investments. While the investment screening framework allows Member States to screen greenfield investments, the investment screening mechanisms of most Member States do not apply to greenfield investments.⁹ For the most part, greenfield investments can therefore take place in the EU without requiring prior mandatory approval. In 2025, Chinese greenfield investment rose by 51% year-on-year to a record EUR 8.9 billion. These investments are notably concentrated in the EV supply chain.¹⁰

The proposed Industrial Accelerator Act (IAA) responds to this trend. Tabled on 4 March 2026 and currently under negotiation between the European Parliament and the Council, the proposed IIA sets out designated criteria for certain foreign investments in key sectors dominated by Chinese enterprises. The European Parliament's Committees on International Trade, Industry, Research and Energy and Internal Market and Consumer Protection issued their draft report on 9 September 2026.¹¹

The scope of application of the investment requirements under the IAA is limited to battery technologies, pure electric vehicles, solar technologies, and critical raw materials. The proposed IAA screening mechanism would be triggered when a foreign direct investment exceeds a certain value and originates from an investor whose home country holds more than 40% of global manufacturing capacity in that specific sector. The latter threshold was adopted to capture Chinese investors, without explicitly violating non-discrimination principles. The transaction value remains undetermined. The Commission initially set the value at EUR 100 million, with the European Parliament rapporteurs proposing to lower the threshold to EUR 50 million. The proposed IAA is proposed to apply to non-controlling investments, including acquisitions of shares exceeding 30% or 10% of the share capital, as proposed by the Commission and the European Parliament rapporteurs respectively.

For transactions falling under its scope of application, the proposed IAA requires the foreign investor to satisfy statutory conditions outlined in Article 18 to secure approval from national Investment Authorities. The Commission had proposed that the foreign investor "only" needs to meet four out of six criteria. This requirement has been strengthened by the European Parliament rapporteurs, proposing that foreign investors must meet all six conditions.

- Two conditions provide ownership caps, precluding the foreign investor from acquiring or holding more than 49% of the share capital or voting rights in the Union target or joint venture. The joint venture requirement in particular must ensure effective participation of Union partners in management, technology transfer, and capacity building.
- Two conditions provide mechanisms for technology transfer. One condition, in short, would involve licensing of intellectual property rights and know-how to the benefit of the Union target. The other condition involves a requirement to spend at least 1% of gross annual revenue on R&D in the EU.
- Two further conditions relate to workforce and Union local content. The workforce condition provides that at least 50% or 60% of the workforce across all operational, technical, and managerial levels would need to comprise Union workers, accompanied by capacity-building measures.¹² The final condition provides for EU content requirements. The Commission proposed that the foreign investor should have a strategy for enhancing EU value chains, aiming to source a minimum of 30% of inputs locally. The European Parliament rapporteurs have proposed to introduce a reciprocity requirement, providing that a 50% local input

requirement applies if the foreign investor originates from a third country that applies local sourcing requirements.

These conditions help ensure that the union target becomes embedded in the European industrial ecosystem, rather than an assembly outpost for imported components.

In addition, European Parliament rapporteurs have proposed to expand the scope of the foreign investment criteria to foreign investments in onshore wind and offshore renewable technologies, heat pumps and geothermal energy technologies, hydrogen technologies, electricity grid technologies and hydropower technologies.¹³ The scope of the investment criteria for these technologies is proposed to be limited to a general 49% ownership cap (without an obligation to enter into a joint venture agreement) and the EU workforce and local content requirements. In addition, investment screening authorities could reject a proposed investment on economic security grounds.

The proposed conditions have already attracted criticism. For instance, BusinessEurope and EuroChambers have questioned the overlap between the proposed IAA and the revised FDI Screening Regulation and warned that they may adversely affect the EU's attractiveness to foreign investors.¹⁴ The VDA, the German Association of the Automotive Industry, has warned that the investment provisions in the proposed IAA may trigger retaliatory measures, deter potential investors from third countries and could negatively affect competitiveness.¹⁵ The Chinese Ministry of Commerce has furthermore submitted comments to the Commission, criticising the foreign investment restrictions under the proposed IAA as constituting serious investment barriers and institutional discrimination.¹⁶ These restrictions, the Chinese government considers, could violate fundamental WTO principles, violate basic market economy principles and run counter to the important consensus reached between Chinese and EU leaders, and will hinder the EU's green transition, distort the level playing field in the EU market, and bring new shocks to multilateral trade rules.¹⁷ The provisions also remain subject to scrutiny during the ordinary legislative procedure. The question to what extent these criteria will make it across the finish line therefore remains to be seen.

Foreign ownership and control caps are not entirely novel. Under Regulation (EC) No 1008/2008, EU air carriers must be majority owned and effectively controlled by EU entities or Member States. Thus, non-EU foreign investment in EU air carriers is already strictly capped at 49%. This requirement, however, stems from ownership and control criteria that tend to be present in Airline Services Agreements between EU Member States and third countries that have been in place for decades. The proposed IAA would for the first time introduce ownership caps and joint venture requirements in a wider range of sensitive industries on the basis of industrial policy grounds.

The proposed ownership caps under the IAA are reminiscent of the type of measures adopted in various developing economies, notably including China. During the 1990s and 2000s, European enterprises, notably auto manufacturers, entered the Chinese market through joint venture structures. Decades later, Chinese manufacturers are now setting up production facilities and cooperations in Europe. Recent corporate alliances involving Stellantis, Volkswagen, and Jaguar Land Rover, in which European manufacturers exchange local manufacturing capacity, established distribution networks, and/or regulatory compliance infrastructure for access to Chinese critical net-zero technologies.¹⁸

The proposed IAA also aims to tackle the issue of divergence within the internal market. Under the Foreign Investment Screening Regulation, the Member States remain responsible for reviewing and approving investments. In order to avoid a race to the bottom, the IAA provides that while national investment authorities in principle charged with deciding on the admissibility of a foreign investment, the Commission may decide to undertake the assessment of the foreign direct investment in three circumstances. Namely, in short, (i) on its own

initiative where a foreign direct investment has the potential to significantly impact added value creation in the Union market, (ii) on the request of a national investment authority; or (iii) on its own initiative if the foreign direct investment has value exceeding EUR 1 billion. The first criterion, in particular, is broadly worded, allowing the Commission to decide to undertake the assessment on its own discretion. The European Parliament rapporteurs have proposed that the Commission automatically becomes competent to review the investment if the criteria above are met, further lowering the EUR 1 billion threshold to EUR 500 million and adding a review power if the foreign investment concerns the extraction, processing and recycling of critical raw materials.

The provision allowing the Commission to take over the assessment of the investment, is likely inspired by concerns over Chinese EV investments in Hungary, which attracted EUR 3.9 billion in Chinese investment in 2025.¹⁹ The European Parliament had also proposed a right for the Commission to, in certain cases, screen foreign investments in the context of the revision of the Foreign Investment Screening Regulation. That proposal did not make it into the final regulation. Whether the Council would accept a Commission competence to review foreign investments under the IAA thus remains to be seen. In this respect, Contexte reports that the preliminary Council position is to remove the Commission's right to initiate reviews of foreign investments.²⁰

4. CONCLUSION

This Policy Paper sets out that structural conditions remain an underconsidered dimension of foreign investment screening. While most attention has focused on prohibitions and behavioural mitigating measures, decision practice demonstrates that investment screening authorities can also address economic security concerns by altering the ownership and control structure of foreign investments. Structural conditions are likely to become increasingly important as the objectives of investment screening expand under the economic security paradigm and EU industrial policy, such as under the proposed IAA.

Joint venture requirements are increasingly viewed as a solution to mitigating economic security risks resulting from foreign investments. By subjecting foreign investments to joint venture requirements, whether on the basis of security or public order concerns or on the basis of outright industrial policy considerations, the EU aims to strengthen its economic resilience, mitigate risks arising from economic dependencies, and to promote a competitive industrial base in strategic sectors.

However, the rise of joint venture requirements as mitigating measures also results in a risk of internal market fragmentation. While the Commission has proposed that it could take over the assessment of investments falling under the proposed IAA on where by have the potential to significantly impact added value creation in the Union market, it is far from certain whether this provision will make it through the adoption process. Under the revised Foreign Direct Investment Screening Regulation, the substantive decision — whether to authorise, condition or prohibit an investment — has been explicitly left to the Member State. The national prerogatives of the Member State risk resulting in an uneven development of ownership caps and mandated joint ventures in the internal market. Growing decision practice on the basis of investment screening rules is more of an expression of national administrative practices, rather than an EU-wide strategy.

For foreign investors, the increasing reference to joint venture requirements and ownership rules may provide incentives to look for European partners at an early stage, when looking to invest in sensitive sectors. For European companies, this development may offer opportunities, as stricter foreign investment conditionality and related trends towards “Buying European” provide clear incentives for foreign investors to partner up with European firms.

While the revised Foreign Investment Screening Regulation has left the Member States in charge of foreign investment screening decisions, the Commission has an important role as policy maker. Given the risk of internal market fragmentation, there is a clear task for the Commission to provide additional clarity and legal certainty on the type of cases and scenarios in which ownership caps or joint venture requirements are a proportionate and necessary solution to mitigate security or public order concerns.

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