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A Return of Protectionism? Internal Deregulation and External Investment Restrictions in the EU

Research Fellow Martin Schulz

富士通総研(FRI) 経済研究所

Abstract

Security concerns towards large-scale cross-border takeovers have added to the EU member states' concerns about intra-EU takeovers that take advantage of deregulation especially in the network industries and energy markets.

The article takes a closer look at the resulting investment restrictions and discretionary interventions towards unwanted takeovers in the EU. This is especially important because the EU has emerged as an important international "de facto" standard setter. Current discussions in the EU will likely affect "international standards" or international investment frameworks that are under strong pressure to increase scrutiny of large-scale foreign investments.

Contents

1 Introduction

Concerns about large-scale and national security-sensitive takeovers from foreign government-backed funds and organizations originated after 9/11 in the U.S. But it soon triggered regulatory action in the EU as well. In the EU, the U.S. security concerns added to concerns towards large-scale Intra-EU cross-border takeovers that took advantage of deregulation and privatization especially in the network industries and energy markets.

A closer look at the EU's discussion of investment restrictions towards unwanted takeovers and its specific regulatory approach seems especially worthwhile. This is because "international standards" or international investment frameworks are evolving only slowly, but, as with many other regulations, the EU is currently emerging as an important "de facto" standard setter. Two important forces are driving this development:

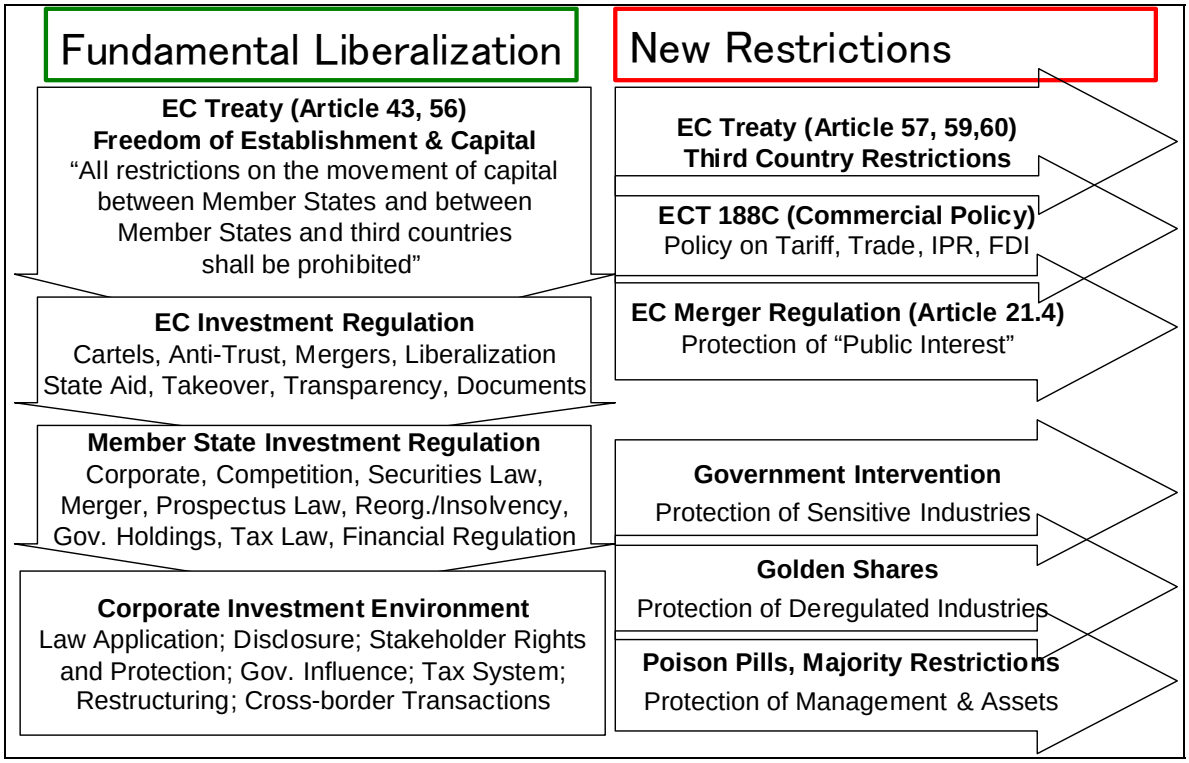
1) First, the 27 country EU is still subject to a wide diversity of national investment regulations, and therefore has the strongest need to develop international, i.e. intra-EU, investment standards that are acceptable in all its member-countries. This process is developing rather fast, already almost two thirds of all national laws and decisions originate in Brussels. In cross-border investment regulations in particular, basically all national reforms are based on EU standards, while many distorting national laws get challenged by the EU Commission. Consensus-based EU regulations might therefore be acceptable in other countries outside of the EU as well.

2) The huge size of the EU market with almost 500 million people and the opportunities it creates through ongoing deregulation demands compliance by all international investors as part of their global business strategies. Furthermore, the balancing of deregulation challenges with foreign investor demands is certainly of interest to any government that faces similar reforms.

2 The EU's Investment Framework

The freedom of capital and investment is enshrined in the EU's Economic Constitution (in EC Treaty Article 43, the Freedom of Establishment, and Article 56, the Freedom of Capital Movement). Based on these principles, a full set of EU-wide investment regulations has been developed that try to implement and secure a fundamental liberalization policy in the Single Market. But given the not always investor friendly and liberal investment environments in the EU member states, these EU regulations depend on a) the timely implementation in the member states, and b) the effective application regulations in the corporate investment environment. The following chart gives an overview of these three levels of fundamental investment liberalization and their main regulations on its left side.

Figure 1 EU Investment Framework



Source: © FRI 2008.

The implementation of these regulations and the reform of member state investment frameworks has not been a smooth process, however. Together with liberalization and deregulation (see section 6), concerns about unwanted side-effects of increasing cross-border capital flows and M&A activities have increased, and member states have become more reluctant to further open their markets. As a result, member state

governments have not only become slow in implementing the EU's deregulatory directives, they have also started to challenge liberal EU law with political interventions in cross-border mergers. This is especially problematic because much of the EU's investment regime remains work in progress. Many regulations, like the "Takeover Bids Directive", are either only voluntary, or the Member States undermine their effective implementation – as in the case of the Merger Regulation (see section 4).

Over the last few years, a set of investment restrictions has therefore been added to the EU's investment framework. These restrictions try to mend member state concerns while keeping the general liberalization stance intact. During the current discussion about the impact and role of investment of foreign sovereign funds in the EU, however, the balance between restrictions and liberalization seems to swing towards tighter regulation and possibly more protectionism. In the chart above, these restrictions have been plotted on the right side.

The original third-country investor restrictions in ECT Article 57, 59, 60 are actually only minor exceptions for situations of crisis or where existing regulations have not yet changed. But in contrast to these dated regulations, the more recently added investment restrictions are much more far-reaching, and potentially even adverse to the EU's liberalization project. All these defences are therefore still contested on all levels of EU regulatory legislation and executive implementation.

The latest addition to the EU's investment framework is the new Lisbon Treaty of 2008, which puts the European Commission in charge of FDI policy (ECT 2008, Article 188C). The Commission is already in charge of the EU's trade and competition policy, so this extension of the Commission's powers seems like a logical, but very significant streamlining of Single Market investment regulations.

So far, the member states have been in charge of their external investment policy and have eagerly spun a wide network of Bilateral Investment Agreements (BITs) with the most important partner countries. The start of a common external investment policy will therefore be confronted with many obstacles and resistance of member states, which will be discussed in detail in section 9. But beyond quarrying with member states about technical details of investment policy, it seems already rather certain that the EU Commission will push for a much higher level of "reciprocity" in its investment negotiations than the single member states were able or willing to do in their BIT negotiations. As in the EU's WTO negotiations, reciprocity in external investment relations means that the EU starts demand "a level playing field" of liberal investment conditions and investor transparency in the partner countries. For SWFs, such an reciprocity policy means that the EU will push for mandatory Codes of Conduct of that

require transparency and arms-length relations between the commercial funds and their governments. The effectiveness of such a policy remains quite questionable, however (see section 10).

Almost as important is an exception to the liberal Merger Regulation. Article 21.4 of the Merger Regulation is a show case of the European Commission's balancing act between the general liberalization project of the EU's Internal Market and the concerns of the member states for the protection of their "public interests" in some strategic sectors. Section 4 shows how the regulation tries to mend member state concerns, which otherwise might turn into "illegal" or "sub-legal" governmental action against unwanted investors, with the overall liberalization project of the Single Market. In essence, the article allows member state restrictions of cross-border mergers where member states see public security at stake. So far, the article has rarely been used, but this could easily change and the article might turn into a major investment restriction.

Existing member state Trade and Exchange Laws that allow the monitoring and restriction of foreign investments where public security is at stake already seem to point into this direction. Most recently, France as well as Germany have added further restrictions to these laws that allow discretionary interventions in a wide range of sectors and cases. Section 5 discusses these laws and the related background of the member states' investment environments on basis of examples of the major member states UK, France and Germany.

A related issue is the use of governmental "Golden Shares", or special voting rights, in companies in which governments have a stake. In Europe, most of the shares are a result of recent privatizations of public sectors and network industries. They therefore are a "heritage" of EU integration, which was thought to be on a slow but continuous way out. But recently, these shares have been discussed as an instrument against SWFs and other unwanted takeovers. Section 7 will show however, that a revival of GS seems unlikely.

Back to the start, section 3 outlines the most important regulations and market practices on the corporate law level that affect the member states' investment environments. Such regulations that include poison pills and minority shareholder protection remain to be major obstacles to cross-border investment and still diverge greatly between the member states.

3 Major M&A Regulations

The following table lists the major regulations that form the EU's investment environment and regulate cross-border transactions.

Figure 2 EU Investment Regulation

Cartels (EC Treaty -Article 81)
Anti-Trust (EC Treaty -Article 82)
- Abuse of Dominant Position

Liberalization (EC Treaty Article 86)
- EC becomes active where Member States grant special or exclusive rights.

State Aid (EC Treaty -Article 87)
- Prohibition except for special Social, Disaster, Serious Underdevelopment, Cultural Aids

Mergers (EC Merger Regulation (No 139/2004)
- Mergers going beyond Member State borders are examined at EU level (One Stop Shop).
- EUC Notification and Examination for proposed large-scale mergers
- Below these thresholds EU Member States may review the merger
- Rules apply no matter where in the world the merging companies have their registered office, HQ, activities or production facilities.

EC Directive on Takeover Bids (25/2004)
-"Board Neutrality" against Post-Bid and "Breakthrough Rule" against Pre-Bid Defences
-Mostly Mandatory

EC Implementing Regulation (EC 802/2004)
- Definition of Notification Documents

EC Transparency Directive (109/2004)
EC Banking Directive
- Financial Supervision

EC Markets in Financial Instruments Directive (39/2004) (MiFID)
- 'Passport' procedure on basis of Member State authorisation

Source: © FRI 2008.

In the EU, cartel and anti-trust policy (ECT Article 81 and 82) has become the cornerstone of internal EU commercial policy – with the EU Commission as a driving force against the building up and abuse of dominant market positions. In the meantime, these EU powers reach beyond the domestic market because any company that wants to do business in the Single Market is judged on basis of their world-wide operations. The showdown between the EU Commission and Microsoft concerning the use (and abuse) of its Windows Operating System is only one of such cases with great international repercussions. Not least because of the legal battle with the EU Commission, Microsoft has now agreed to transfer a major share of its OS code into public domain, which would have been unthinkable before the confrontation with the EU Commission.

Critics of investment restrictions beyond established competition policy therefore claim that even in case of opaque and monopoly-linked investments from SWFs, foreign

governments, or government-linked public corporations (such as energy producers), these cartel laws would be sufficient to stop abusive investors.

The most important regulations of the EU's investment framework concerning cross-border acquisitions are a) the prohibition of special and exclusive rights including state aid and golden shares. The impact of this regulation will be further investigated in section 6. And b) the Merger Regulation that gives the Commission the exclusive right to review and accept large-scale cross-border mergers. This allows companies trading in different EU Member States to obtain clearance for their mergers in one go. The directive requires that the annual turnover of the combined businesses exceeds specified thresholds in terms of global and European sales; the proposed merger must be notified to the European Commission, which must examine it. Below these thresholds, the national competition authorities in the EU Member States may review the merger. These rules apply to all mergers no matter where in the world the merging companies have their registered office, headquarters, activities or production facilities. But although the intention of this regulation is to produce a One-Stop-Shop for M&A in the EU, the reality still looks different (see section 5).

The EC Directive on Takeover Bids, on the other hand, is producing some harmonization results on cross-border bidding requirements, but its core-part, the restriction of corporate defence measures and poison pills bills remains mandatory. These two key provisions are "board neutrality" and a "breakthrough rule. The board neutrality rule relates to post-bid defences. It provides that during the bid period the board of the target company must obtain prior authorization from the general meeting of shareholders before taking any action which may result in the frustration of the bid. This rule may facilitate takeover activity by limiting the board's power to raise obstacles to hostile takeovers to the detriment of shareholders' interests. It safeguards shareholders against opportunistic behavior of the incumbent management and ensures that it is indeed the owners who decide on the future of the company. The breakthrough rule neutralizes pre-bid defences during a takeover. This rule prohibits share transfer or voting restrictions during the takeover period. It allows a successful bidder to easily remove the incumbent board of the target company and modify its articles of association, if there have been violations.

But in a recent report on the implementation of the directive (EC 2007c), the EU Commission finds that in many cases Member States have made use of opt-out options and exemptions. The report concludes that this could bring about new barriers in the EU takeover market, rather than eliminate existing ones. When publishing the report, the Commissioner Charlie McCreevy actually said: "Too many Member States are reluctant to lift existing barriers, and some are even giving companies yet more power to thwart bids. The protectionist attitude of a few seems to have had a knock-on effect

on others. If this trend continues, then there is a real risk that companies launching a takeover bid will face more barriers, not fewer. That goes completely against the whole idea of the Directive" EC (2007c).

In the table, the EC Implementing Regulation (EC 802/2004) and the EC Transparency Directive (109/2004) are listed as well. The two directives have some positive impact on filing procedures of international investors, but do not provide any new defences. The new EC Banking Directive limits national banking regulators from blocking international bank mergers. It gives 60 days to national regulators to review a cross-border merger deal. But regulators retain the power to reject a takeover deal

- if the acquirer has a "poor reputation" or financial weakness,
- if there is a chance of inability of the combined companies to abide by rules such as capital requirements,
- or if there is a risk of money laundering or terrorism financing.

On basis of these financial regulations the member states still have wide leverage for prudential regulation of their banking sectors and the screening of potential investors.

Finally, the EC Markets in Financial Instruments Directive (39/2004) (MiFID) tries to simplify the 'passport' procedure whereby EU firms provide cross-border services on the basis of their 'home' state authorization, without the need for authorization or license in the 'host' state. Whether this will enable banks to participate more easily in cross-border merger activity remains to be seen, however.

These EU-level M&A regulations do not necessarily describe the actual, applied situation for cross-border mergers in the various member state markets well. Although there is clearly progress in implementing these regulations, corporations still face quite diverse investment environments in the EU. It is therefore important to review the most significant M&A regulations on basis of member state corporate laws.

On a corporate law level, investment restrictions through Poison Pills have increased over the last years. This is surprising because the Takeover Directive was supposed to reduce Post-Bid Defences through "Board Neutrality" and Pre-Bid Defences through a "Breakthrough Rule" that neutralizes share transfers and special voting rights during a transaction. So far, the "anti-defence" parts of the directive have been handled as if they would be purely mandatory. In general, effective investment restrictions in the member states remain quite diverse, despite the added transparency through EU-wide regulations.

The UK, unsurprisingly, has one of the most open environments for foreign investors.

There are some remaining multiple voting rights for the government, but no poison pills in general. As in the other EU countries, the UK does require majorities of 75% of shareholder votes for major structural changes such as constitutional changes or liquidation of the company. It also has detailed employee rights for carrying over their contracts and pension schemes.

In France, double voting rights are common and companies can use poison pills if the acquiring company has such measures in place. Furthermore, it is almost impossible to merge a French company into a foreign company because the nationality of the company would change, which requires unanimous consent of all shareholders.

Germany, on the other hand, has no poison pills and generally treats all shareholders equally, but it is rather well-protected by the widespread use of "Associations Limited by Shares", a low free float, and its system of Employee Co-Determination during reorganization.

The following table lists the most important additional member-state regulations and restrictions for the three countries.

Figure 3 Additional Investment Restrictions in the UK, France, and Germany

	Poison Pills, Majority Thresholds, Multiple Voting Rights	**Bidder Duties, Employee Rights**	**Additional Restrictions**
EU	Board Neutrality (yes) Strict Duty of Neutrality (no) Breakthrough (voluntary)	One Share, One Vote (no); 75% Majority for Reorganizations (no) Strict Disclosure Requirements (yes) Prohibition of Market Distortion (yes) Employee Information Rights (yes; TUPE) Employee Dismissal Restrictions (no)	Limitation of Statutory Merger into Foreign Corp. (no)
UK	Poison Pills (no) Strict Duty of Neutrality (yes) Multiple Voting (government)	75% Majority for Reorganizations (yes); Minority Squeeze (from 90%); Complex Pension Scheme Transfers	Special Statutory Regimes for Media, Telecom, Utilities Approval for Significant Shareholdings in Banks, Brokers, Insurance
FR	Poison Pills (reciprocity); Strict Duty of Neutrality (no); Multiple Voting (yes)	66% Majority for Reorganizations (yes) Minority Squeeze (from 95%)	Limitation of Statutory Merger into Foreign Corp. (yes; 100% of votes) Approval for Banking and Media Acquisitions
GER	Poison Pills (no) Strict Duty of Neutrality (no) Multiple Voting (no) Low Free-float Widespread Associations Limited by Shares	75% Majority for Reorganizations (yes) Minority Squeeze (from 95%) Employee Co-Determination for Reorganizations	Limitation of Statutory Merger into Foreign Corp. (contested); Strict Anti-Trust; Strict Banking, Insurance, Media Supervision Limited Loss-Carry-Forward for Cross-border Reorg. Tax-neutrality of Cross-border Reorg. only for EU Corps.

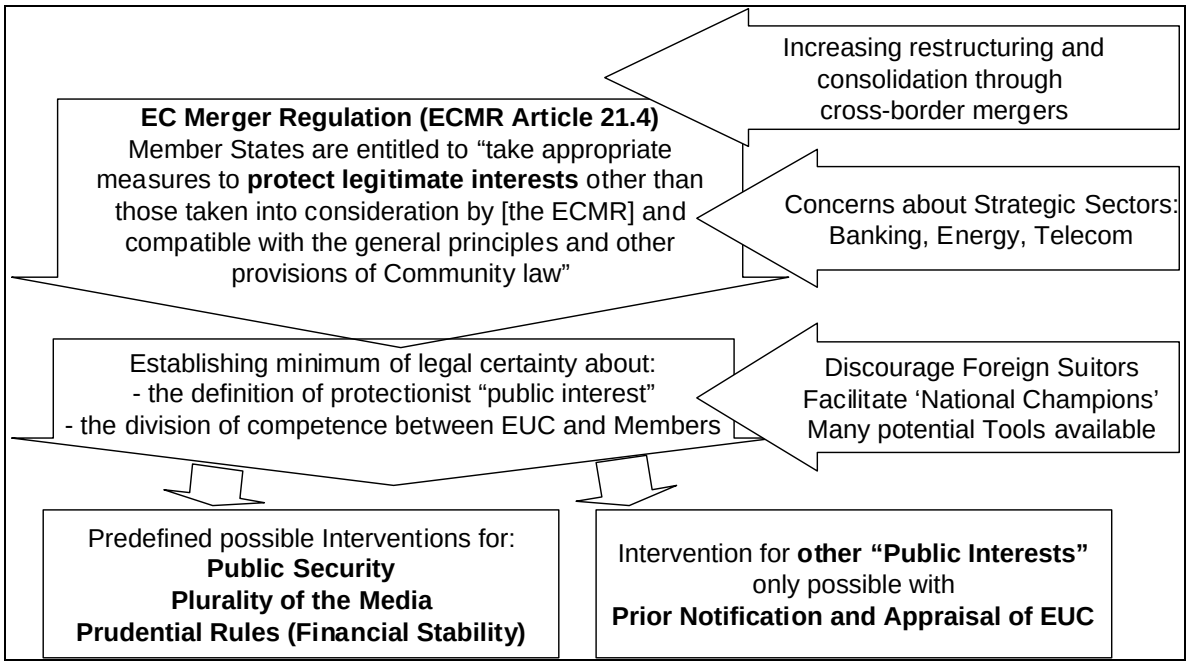
Source: © FRI 2008.

4 EU-Level Protection against Unwanted Takeovers

The success of the Internal Market for Investment with its strong cross-border investment activity has led to many protectionist concerns in the member states. Countries sometimes even try to take advantage of the increased market by promoting government-supported "National Champions".

Article 21.4 of the Merger Regulation therefore tries to balance the ongoing liberalization of the EU's Internal Market with the concerns of the member states by defining legitimate "Public Interests" in some strategic sectors.

Figure 4 Protection of Member State Interests: ECMR Article 21



Source: © FRI 2008.

In essence, the legitimacy of national "public interests" under Article 21 depends on two criteria:

1) Legitimacy of protectionist regulations and actions requires important reasons beyond competition considerations. In other words: restrictions cannot be based on economic or technological arguments. The regulation defines three legitimate types of intervention: Public Security, Plurality of the Media, and Prudential Rules in financial services.

2) Additionally, the national measures must be necessary, proportional and consistent with EU law, including non-discrimination on grounds of nationality.

Interventions on grounds of other "Public Interests" are only possible with prior appraisal of the Commission.

From 2005, the usage of Article 21.4 for national investment restrictions has increased. So far, however, it seems unlikely that the article becomes a major protectionist instrument because the Commission and the major member states fear a possible protectionist backlash against the Internal Market project. Such a "backlash" could come from two directions. One would be the acceleration of "exceptional" protectionist practices in the member states that might spill over into other anti-liberalization policies as well. The second risk is a deteriorating standing of the EU as an increasingly liberal and open market economy, which would result in additional difficulties when negotiating investment liberalization and market access in third countries.

An example of a major protectionist case on basis of ECMR 21.4 is the blocking of a merger between Spanish and Italian Motorway Operators by the Italian government. As in other cases before and after, the Commission was unable to secure the timely and impartial handling of the bid by the Italian regulator; so the deal finally fell apart. For Italy's government, the breaking of EU law in this case has little consequences - beyond some additional loss in reputation.

Figure 5 Case Study: Abertis (Spain) vs. Autostrade (Italy)

- April 2006: Abertis announces "merger of equals" to create the world's largest investor-owned toll road (TR) operator with a timetable for the final quarter of 2006. Abertis is the major TR provider in Spain, and already bought a 58% stake of the French SANEF from the government. Autostrade operates about half of Italy's motorways, the whole country's electronic toll system. It is the result of an earlier privatization.
- After the deal, Spanish companies would hold more than 33% of the company, with another 45% in free float. Half of the board seats and the CEO would be controlled by Abertis.
- August 2006: the Italian Infrastructure Minister and ANAS (**Italian Mortorway Regulator**) **refuse immediate authorization**.
- A pre-merger notification is submitted to EUC DG COMP and accepted in September.
- October 2006: Commission sends preliminary assessment to Italy that it is breaking the law on basis of **ECMR Article 21(4).**
- November 2006: Commission sends a formal notice to the Italian government to withdraw its decisions (ECT Article 226). The Italian government changes course, and claims merger concerns because of possible future under-investment in roads by the new company. It also announces a review of toll road concessions to the company (had been granted until 2038 before).
- December 2006: **Abertis/Autostrade merger abandoned** by the companies.
- January 2007: Commission sends a second preliminary assessment that **Italy has broken EU law**.

Source: © FRI 2008.

5 Member State Investment Restrictions for Public Security

Many EU member states have tightened their security related monitoring regulations over the last years. As mentioned above, these restrictions still remain rather diverse and only superficially fitted to the EU investment framework. France, for example, monitors all investments in 11 sectors and insists on differentiating between European companies with predominantly EU shareholders and European companies with controlling stakes of third-country investors, which is at odds with the EU's non-discriminatory right to establishment. England, on the hand, reserves the principal right to restrict foreign investments if broadly-defined "public interest" seems to be at stake. Germany, in a current reform of its Foreign Trade Law, is considering broad intervention rights as well, while possibly limiting investor rights to appeal with a clause of "provisional invalidity" of monitored investments.

The UK, for example, has one of the potentially most far-reaching regimes in place. Under the Enterprise Act of 2002, the UK government can start actions against any investment that infringes "Public Interest". It defines no detailed "negative list" of protected sectors. Despite these potential powers, however, the UK investment framework is considered as one of the most open and liberal. This is due to two reasons: The UK challenges only cases of investments in narrowly defined military industries, and it has created an independent Investigation Agency, the Office of Fair Trading, to oversee the process. Political interference is therefore unlikely.

France, in contrast, has a history of political market interventions. It requires notification and reviews basically all cross-border mergers. It even differentiates between EU and Non-EU corporations on basis of actual control in a company. From 2006, the investment control regime has been extended with a "negative list" of restricted sectors beyond the military sector. This list also contains biotechnologies, some research activities, and casinos (which will soon be deleted from the list again). So far, however, the Ministry of Finance has only asked for some special investment commitments in defence related cases.

Germany is currently reviewing its security related investment restrictions. Until now, it only reviews cases of investment beyond 25% of capital in military related corporations. For its future Foreign Trade and Exchange Law, it currently swings between the "liberal" UK approach and a detailed "negative list" in France (see below).

Figure 6 Overview of Investment Restrictions for Public Security

	UK	France	Germany
Legal Framework	Enterprise Act (2002)	Controle des Investissement (1996, 2005)	Foreign Trade and Payment Law (1961, 2006)
Basis of Review	Public Interest (National Security)	Public Order, Functions, Security	Public Security, Foreign Relations
Authority	BERR / Office of Fair Trading	Ministry of Economics and Finance / Ministry of Defence	Ministry of Economics and Technology
Notification / Review / Appeal	No / Case-by-Case / Yes	Yes / Case-by-Case / Yes	No / No / No
Negative List / Sector Restrictions	Yes / 11 Sectors	No / Defence	No / Military Goods, Cryptology
Process Time	NA	2 months, postponement rights	NA
Case Evidence	6 Defence Sector Cases, accepted with conditions	9 Defence Sector Cases, accepted with conditions	None

Source: © FRI 2008.

The bottom line is that restrictive regimes require more transparency, while "liberal" investment regimes are able to apply a "flexible" approach to security policy. The reason for this ambivalence is that investors demand the more political and bureaucratic predictability and accountability the more restrictive a country's general investment framework is. Both approaches therefore carry a risk for the government and costs for the economy: A more restrictive environment potentially provides better security-related protection, but requires a full set of binding pre-defined and propagated intervention procedures. A more liberal environment, on the hand, as in the case of the UK, potentially allows for greater case-by-case discretion and flexible intervention, but only for the most extreme cases. For most other cases, it relies on the stability of the domestic market and the protection of existing investment laws, such as cartel law.

In the following, the reform of the German Foreign Trade and Exchange Law will therefore show how a European government has been balancing this pro-and-contra of additional investment restrictions.

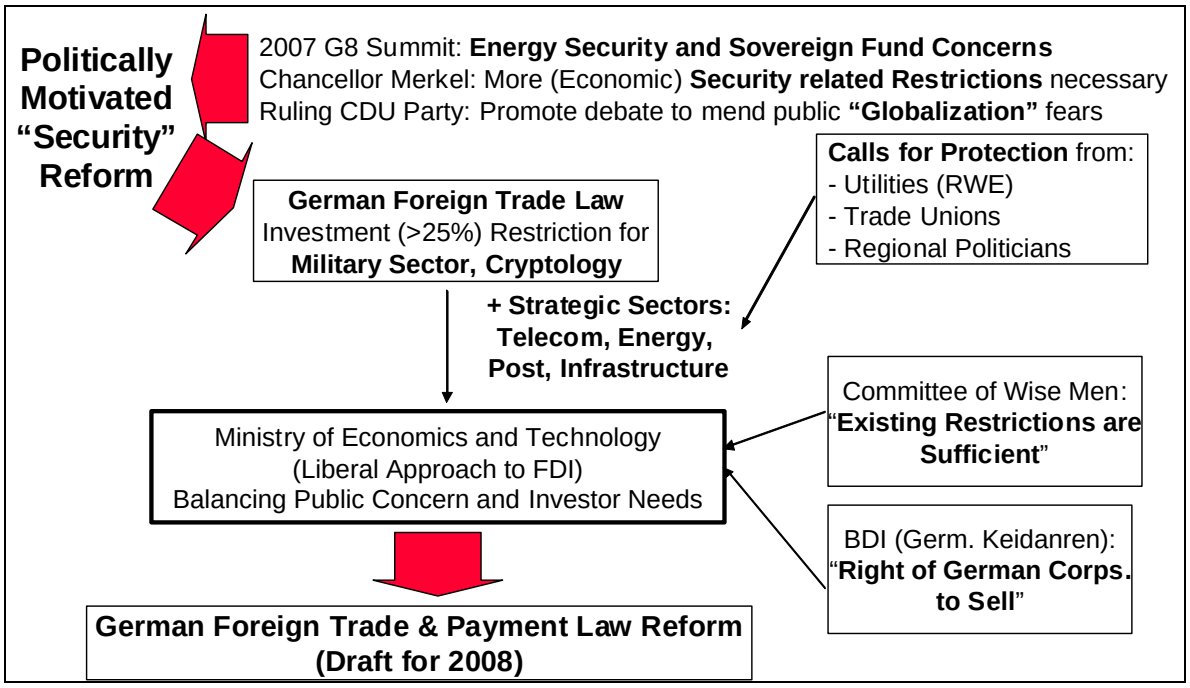
The current German discussion about the reform of its Foreign Trade and Payment Law was initialized by the G8 Summit in Germany where Energy Security and Sovereign Funds where important topics. This added to the current strong "globalization" fears in the population and in some regional parts of the ruling CDU party.

Soon after the debate started, calls for additional protection of "strategic sectors" in telecommunication, postal services, and infrastructure came from trade unions, utility companies, and regional politicians.

Both, the Ministry of Economics and Technology, which is in charge, and the Germany's industry lobby, which is most affected, were surprised by the public debate. Both considered Germany as rather well-protected by its company and competition laws. The ministry nevertheless ventured into drafting reform proposals.

The current reform proposal has swung towards the flexible UK approach of restriction policy. A broad definition of "Public Security and Order" is the core, and there is no "negative list" of protected sectors. Companies are not required to notify their investments, but they face the risk of extensive investigations if they do not notify voluntarily.

Figure 7 German Foreign Exchange Law Reform



Source: © FRI 2008.

Germany's industry lobby is staunchly opposed to the reform of the law. It sees German corporations well-protected by the fact that Germany has only few pure "stock" corporations with extensive free float. And it fears more political interference in corporate markets as well as a political backlash against its investments overseas. Since reform is now on the way, however, it asks for a "safe haven" or "positive list" of what investors can freely do, and for strict restraints on the Ministry's interventions. Most importantly, however, the currently discussed clause of "provisional invalidity" should be turned down because the "pending invalidity of contracts" during the investigation time hampers the ability of companies to proceed with their mergers or to finance the deal flexibly.

On basis of such opposition and discussion, the initial reform proposal has already changed substantial. The following table therefore lists the most important changes.

Figure 8 German 2007-2008 Reform Proposals

	Initial Proposal	Current Proposal
Basis of Review	Public Security and Order	Public Security and Order
Notification / Review / Appeal	Voluntary/ Yes / No (provisional invalidity)	Voluntary / Yes / Yes
Negative List / Sector Restrictions	No / All sensitive sectors	No / All Sectors (Security-related)
Process Time	3 months, 3-year postponement right for non-notified investments	1 month processing time during the first 3 months after investment

Source: © FRI 2008.

Furthermore, the ministry saw the necessity to clarify (in German language) on its homepage that these additional investment restrictions will only be applied in rare and exceptional cases. It also noted that the restrictions are not targeted against Sovereign Funds:

"Any investor with economic investment objectives is welcome in Germany. This also and specifically applies to sovereign funds as well. These funds were often - but incorrectly - mentioned as targets of foreign investment screening. But Germany has not only a decades-long history of positive experiences with investments from sovereign funds. The stabilizing role of sovereign funds for financial markets has also been proven during the current turbulences on international financial markets that originated from the U.S. real estate crisis" (BMWi 2008; translation by author).

It is not yet clear, how Germany's the final foreign trade law will look like - the publication has been postponed during the course of discussions several times. But the evolving proposals already offer interesting insights into the stages of public debate of security-related investment restrictions in Europe:

- Initial concerns lead to public debate and restrictive proposals
- Lobbying especially from industry lobbies leads to more liberal proposals
- Reviews on basis of European law lead to more liberal proposals
- Application of national restrictions in the EU's Single Market become difficult to

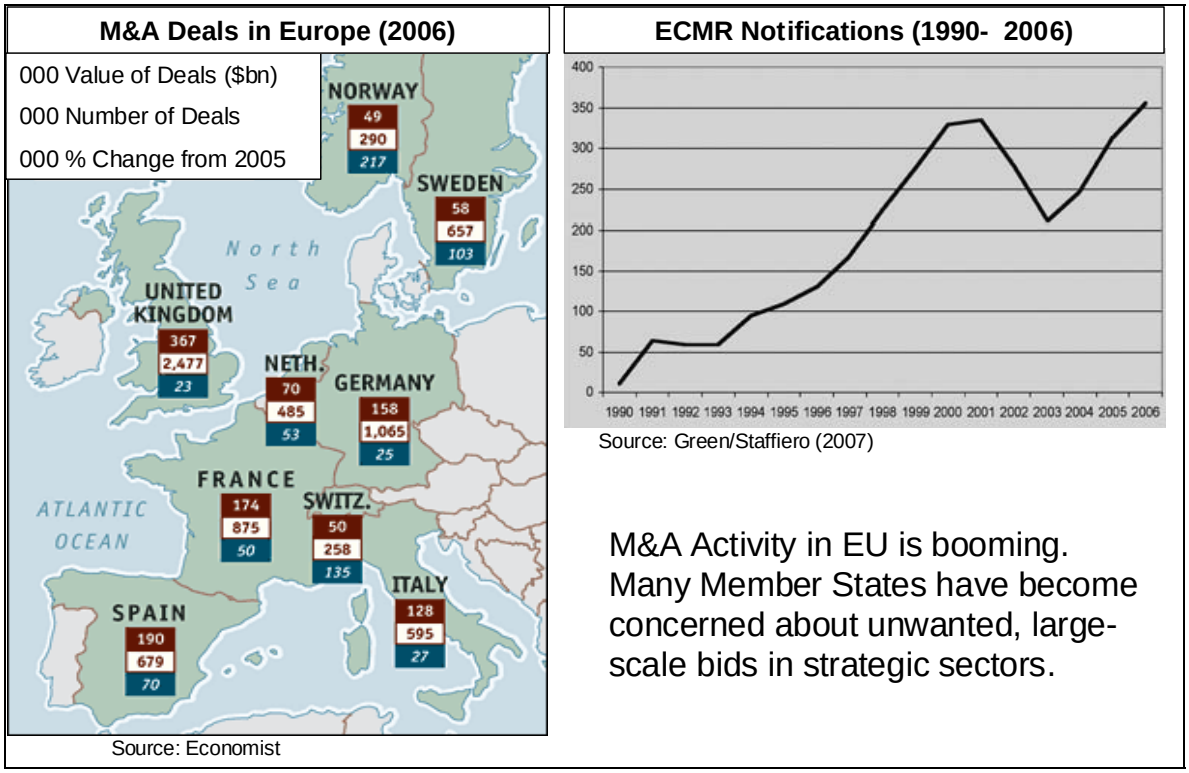
enforce

Finally, it is also important to note that in practice most countries have made only sporadic or no use of their new investment control procedures so far. In almost all cases, their policy objectives had been achieved on basis of their existing legal frameworks, such as competition law (DB Research 2007).

6 Economic Background and Initiatives against Unwanted Takeovers

The main reason for concerns in many Member States about unwanted, large-scale bids in strategic sectors is that the Single Market for investment has been integrating so fast. M&A activity has therefore been booming and evolved to unprecedented levels.

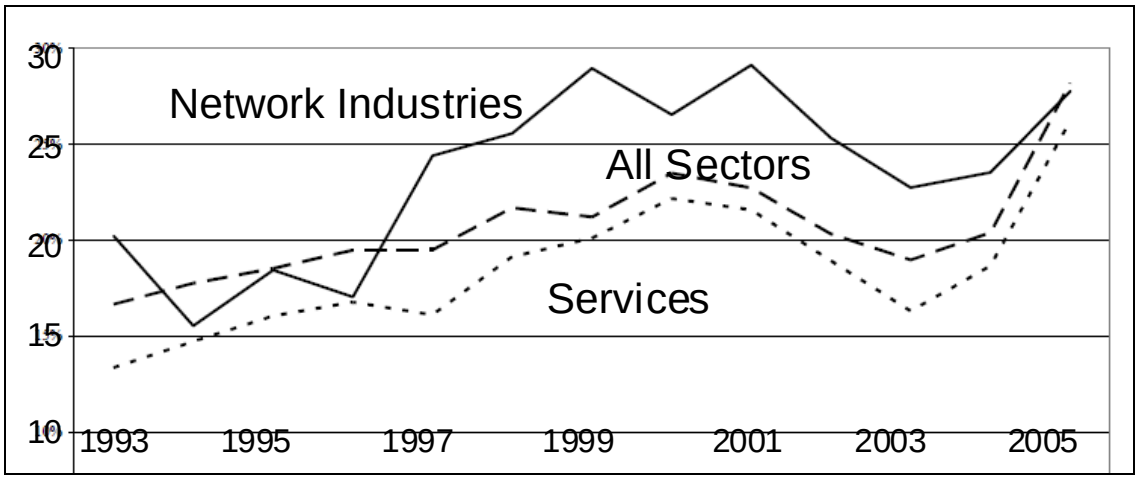
Figure 9 EU Internal Market led to an Explosion of M&A Deals



Source: © FRI 2008.

Especially ongoing deregulation in the network industries, especially of electricity and gas production and distribution, now feeds concerns for stability in these important sectors that have been under full government control before. As can be seen in the graph below, cross-border M&A in these industries have increased even faster than in other industries. The main driving force here is progress in the "unbundling" of energy production and network distribution businesses, which allows for third party access to the utility networks.

Figure 10 Share of Cross-border, Intra EU Network Deals (Percent of Total Value per Sector)



Source: EC (2006a).

This important deregulation turned the industries into the most sensitive sectors for investment restrictions, after military goods and services. Spain, for example, has already illegally blocked a takeover bid by Germany's major electricity company E.ON (EC 2006b). France has effectively re-nationalized Gaz de France by encouraging Suez, its energy giant, to merge with Gaz de France when rumors about a takeover bid from Italy's Enel emerged.

Figure 11 Top EU Utility Deals (2003-)

Announced	Target	Acquirer	Deal Status	Value ($bn)
Feb 2006	Endesa (Spain)	EON (Germany)	**Illegally blocked**	56.64
Feb 2006	Gaz de France	Enel (Italy) ->Suez (France)	**Government "White Knight"**	43.07
Aug 2005	Electrabel (Belgium)	Suez (France)	Completed	13.87
May 2005	Italenergia (Italy)	AEM/EDF (Italy/France)	Completed	10.33

Source: © FRI 2008.

So far, these investment interventions have evolved only among member states, but the liberalization of the energy market clearly also increases the risk of unwanted investments from energy giants like Russian Gazprom. The EU Commission is

therefore considering reciprocity, or a “level playing field”, in this market by requiring foreign acquirers to apply EU policy of unbundling network corporations.

The positions of the EU member states towards SWFs and Hedge Funds remain very diverse. Some member countries, like the UK, greatly gain from Hedge Funds and Private Equity firms (with headquarters in London, Luxembourg, or Amsterdam). These countries welcome the funds’ investment and also show little concern about SWFs.

Other countries, like Germany, basically welcome their investment, but are very concerned about a loss corporate control, which could disrupt their social models of employee participation. In Germany, the former minister of Hesse state, Roland Koch, last year proposed the establishment of a Sovereign Fund as a defence or “White Knight” against unwanted takeovers of important German corporations by foreign funds. The plan would have asked for an involvement of banks, pension funds, and insurance companies as investors in the fund. The plan never evolved beyond an inner-party research group, however. It was considered as running against the spirit of Germany investment environment, which saw a continuous retreat of public investment and shareholder ship. The fund would also have required enormous assets even for a single rescue of a major German blue chip company, and faced strong industry opposition.

It has already been shown above (see section 5) that Germany has toned down initial plans to significantly tighten its Foreign Trade and Payment Law and that concerns towards sovereign funds have receded. But the German government still plans to introduce legislation that tries to restrict the influence of such funds on management. The German Finance Ministry has introduced a new bill, the "Financial Risk Restriction Law" (in German: "Risikobegrenzungsgesetz"). This bill restricts so-called "acting in concert" of financial investors. This means that fund investors could be prohibited to pool their voting rights for coordinated proposals (for selling assets, for example) against the management of target companies. The bill also requires notification of controlling stakes of more than 30%, and requires some additional information disclosure on shareholdings beyond 10%.

Another, rather large group of countries, such as Italy, Spain, the Nordic Countries and Eastern Europe have recently privatized major industries and are concerned about “asset stripping” or breaking up of these groups. These countries are weighing the continued use of “Golden Shares” as a defence especially against Hedge Funds and PE firms (see section 7).

Finally, countries with still close government-industry relationships and active industrial policy, like France or Poland, continue to fend off foreign ownership in their "national champions" form basically all directions. For these countries, SWFs are a special matter of concern because they are big enough to swallow even a "national champion", and because of the possibility of competing foreign government influence.

In France, a kind of "Sovereign Funds" already exists since Napoleon times. The state-owned Caisse des Depots et Consignations (CDC), which manages state pensions and is directly accountable to France's parliament, has often become a tool of policy making. In January 2008, President Nicolas Sarkozy vowed to protect French businesses from sovereign wealth funds and private speculators and proposed the CDC should help to defend French industrial interests.
The idea is unlikely to succeed, however. Already the former socialist Prime Minister Dominique de Villepin had tried to urge the CDC (in 2005) to use its role as the biggest single long-term investor in French stocks, to boost his policy of fending off foreign hostile bids. But the CDC refused to back down on its independence, and an attempt to prevent the hostile takeover of steel firm Arcelor. Furthermore, Sarkozy is also counting on the CDC to make the economy more competitive by financing ten new university 'centres of excellence' and universal access to super high-speed internet services by 2016."

It is therefore likely that France will simply continue with its standing industrial policy of discretionary interventions and state-lead mergers to defend national champions. An example is the pledge of president Sarkozy in early February 2008, to use state funds to invest in an ArcelorMittal steel plant where nearly 600 jobs are threatened. Ironically, would now invest in a foreign-lead group that it earlier tried to fend off.
All these concerns are more related to the shape and short-comings of the EU member states' national markets than to thorough research on the negative impact of such funds. Authoritative "White Papers" on the need of protection against unwanted investors does not yet seem to exist, while most independent studies of banks, business lobbies, and advisory groups rather recommend a liberal stance towards these funds.

The EU Commission therefore now seems to adopt a generally liberal policy towards sovereign wealth funds. Charlie McCreevy, the EU's internal market commissioner has said: "*Let us be brutally frank about this: sovereign wealth funds have been positive and long-term investors. There is, as far as I know, no instance of sovereign wealth funds acting in any manner other than responsibly up until now*" (FT 2008.02. 28).
Furthermore, the Commission takes the view that, between the EU and its 27 member states, there are already comprehensive rules governing the activities of foreign

investors, and so there ought to be no need for legislation touching specifically on the sovereign wealth funds. But the Commission is concerned that if public alarm about the funds continues to spread, it could provoke uncoordinated national responses that would damage the EU's Single Market and its reputation for welcoming foreign investment.

The Commission has therefore warned member state governments to not to impose any restrictions against SWFs. Any “sub-legal” restriction in member states would be challenged by the Commission. Rather than imposing restrictions, the Commission has asked to support a currently discussed European Code of Conduct for sovereign funds and to support international initiatives at the OECD and the IMF. The EU Code of Conduct for SWFs would ask SWF investors to make public the size and source of their assets, the currency composition of their investments, and the regulation and oversight under which they operate in their home countries. The funds would also be asked to issue "an investment policy that defines the overall objectives of SWF investment" and to provide "public disclosure of the general principles of an SWF's relationship with government authorities" (FT February 28 2008).

7 Golden Shares as an Instrument against Unwanted Takeovers

Another instrument that has been discussed as an instrument against foreign takeovers by Sovereign Funds is the allocation of special voting rights for government holdings in major corporations, or Golden Shares. In the EU, Golden Shares have become a heritage of public control in major corporations after the hasty privatizations during the run-up to the Euro and the Enlargement towards the East. Due to EU deregulation policy, the member states had to sell their public holdings, but retained some governmental control by keeping shares with special voting rights.

Italy, for example, has GS holdings in most utility companies. The French government holds only few GS, but participates in many major corporations with large holdings. If minority stakes above 10% would be included in the graph, the French state participates in no less than one-tenth of the French economy. The UK kept special shareholdings in 23 companies, among them British Energy, Devonport and Rosyth Royal Dockyards, and Royal Mail. The following table gives an overview over existing Golden shares in the major member states.

Figure 12 Golden Shares in the EU (2005)

	Golden Sahres
EU25	**141 Major Cases の主要な案件**
UK	23 (Energy, Infrastructure, Mail)
Italy	Most Utilities
France	Defence, EADS
Germany	Volkswagen

Source: EC (2005a).

Source: © FRI 2008.

A revival of GS as instrument to protect strategic sectors seems unlikely, however. As part of its actions against Special Rights in the Internal Market, the Commission has steadily been fighting against remaining Public Golden Shares. It has won every case except one at the EU Court so far. In most of its rulings, the European Court of Justice (ECJ) has declared that " … special shares at issue constitute restrictions on the free movement of capital …" and are therefore unconstitutional. The following table gives an overview of major ECJ rulings against the use of GS at major member states.

Figure 13 EU Commission vs. Golden Shares (Court Rulings):

Country	Corporation
Germany	Volkswagen
Holland	TNT (Post)
Italy	Electricity and Gas Sectors
UK	British Airports Authority
Spain	Public Sector Undertakings
Belgium	Supply of Gas (only case upheld)
France	Elf (Oil)

Source: © FRI 2008.

Most recently, a 2007 ruling against Germany, which retained a special law for government control in the carmaker Volkswagen (and heavily lobbied for keeping it), was seen as an important signal that GS as instrument for industrial policy in the EU are on their way out. GS are therefore unlikely to play a major role as instrument against takeovers from SWFs.

As instrument for safeguarding national security, however, GS might retain a limited role. As declared in the EC Treaty, the ECJ has ruled that the free movement of capital may be limited when there are legitimate interests, especially in the case of national security (see above). In its 2003 rulings against the UK, for example, the ECJ has therefore ruled that the UK government has to abandon its GS in the airport operator BAA, but it accepted the GS in the defence contractor BAE Systems.

Strategically, as instrument against unwanted investments from SWFs, GS in the EU therefore have no additional scope than the existing national security-related restrictions of the various national Foreign Exchange Laws and the EC Merger Regulation Article 21.4. Furthermore, GS as instrument carry much higher economic costs because, unlike discretionary interventions against security-related takeovers, they constitute a constant public intervention into the working of a free and competitive market mechanism.

Figure 14 Protecting EADS

The latest development in the European debate on the pro and contra of using GS as an instrument for protecting security sensitive corporations, is a German-French proposal to protect Europe's flagship aerospace and defence company EADS. Both, the French and the German government have stakes in EADS, which is majority-owned by German and French companies, but has its HQ in Holland. To date, Dubai International Capital, a sovereign wealth fund, has bought 3.1 per cent in 2007 and VEB, a state-controlled Russian bank, took a 5 per cent stake in December 2007.

Now, after EADS has won a major Airbus-tanker contract from the U.S. military, security-related concerns for the company have increased, not least from the U.S. customer side. The French and German governments are therefore finalizing changes to EADS' corporate by-laws to prevent foreign investors from building stakes beyond 15%. One idea is to distribute GS to both governments on national security concerns, which might have a chance to evade sanction from the ECJ.

But even this security-related concern of the national governments has been rejected by the EC swiftly. "The general view on golden shares is clear," said Commission spokesman Oliver Drewes. "The European Commission doesn't think golden shares have their place in the single market." (BBC 2008.03.07)

Most likely, the Netherlands-registered EADS will therefore opt for some poison pill defence mechanism that has been adopted by other Dutch companies, such as Philips, the major electronics firm.

Source: © FRI 2008.

8 Public Security and Armament Control

Coordinated defence policy in Europe has been concentrated in the institutions of NATO and WEU (Western European Union; a defence cooperation organization of the EU). Beyond some cooperation on the fight of terrorism, however, both organizations have not been significantly involved in EU investment restrictions. A common security policy is only just evolving. Currently, the EU's defence coordination and its institutional setup are in flux because the WEU becomes integrated in the EU's Common Foreign and Security Policy (CFSP) and the 2004 established European Defence Agency (EDA). The defence related industries (the defence part of sectors such as aeronautics, space, electronics, land systems and shipbuilding) have been kept out of the range of the internal market. For the time being, security-related industry control remains a right and an obligation of the member states (Article 296 of the EC Treaty). The consequence is a continuing fragmentation of markets and industries at national level and a loss of competitiveness in particular against U.S. competitors.

But this situation is now changing. The economic pressure for reform that has been building up from shrinking European defence budgets after the end of the cold war, and the escalating development costs of high-tech equipment now require an integrated European armament policy. It is very important to stress, however, that the focus and direction of this evolving armament and defence policy is very different from the U.S. While the U.S., after 9/11 has increasingly focused on international arms control and nonproliferation, the EU's policy has focused on re-developing a competitive European defence industry with deep and integrated markets for its products.

Even the mission of the EDA remains very different form the U.S. Arms Control and Disarmament Agency (ACDA), is engaged in implementing effective arms control, nonproliferation, and disarmament policies, strategies, and agreements. The mission of the EDA and the CSFP, on the other hand, is to:

- developing defence capabilities;
- promoting Defence Research and Technology (R&T);
- promoting armaments co-operation;
- creating a competitive European Defence Equipment Market and strengthening the European Defence, Technological and Industrial Base.

All these functions relate to improving Europe's defence performance, by promoting coherence, cooperative research, and increasing armaments trade in the EU. Arms control and nonproliferation is an immediate part of the mission. With this focus on

promoting the EU's armament and defence market (and industry) the EU's policy so far has shown little interest in developing additional restrictions towards third-country investors and customers. Not even the EU "Code of Conduct on Arms Export" of 1998 has become legally binding so far. On the contrary, U.S. demands for more arms restrictions are often seen as a hidden tool to secure the dominance of the U.S. defence industry.

In a December 2007 Recommendation (No. 815) of the WEU, for example, the WEU council is explicitly weighing pressure from the U.S. towards a continuation of the arms embargo against China (and additional tightening of arms sales to other countries) against the virtuous of ongoing R&D cooperation and a modernization of China's army with EU technology and management styles. It finally recommends to "... launch a debate on the possible modalities for lifting the embargo on defence equipment exports to China…"

As a background of this policy it needs to be seen that the important EU armament market continuous to deteriorate in comparison to the U.S. Because of market fragmentation, increasing technology costs, and shrinking national defence budgets the EU sees the need to stabilize and promote the market. In the EU's 2007 "Defence Package" it therefore stresses the importance of strengthening the Defence Technological and Industrial Base (DTIB) by further opening the internal defence product market, prioritizing investment, and pushing for advancements in dual use technologies. A study on the additional "control of strategic assets", which might become necessary when the market becomes further liberalized, on the other hand, is only planned to be launched in 2008.

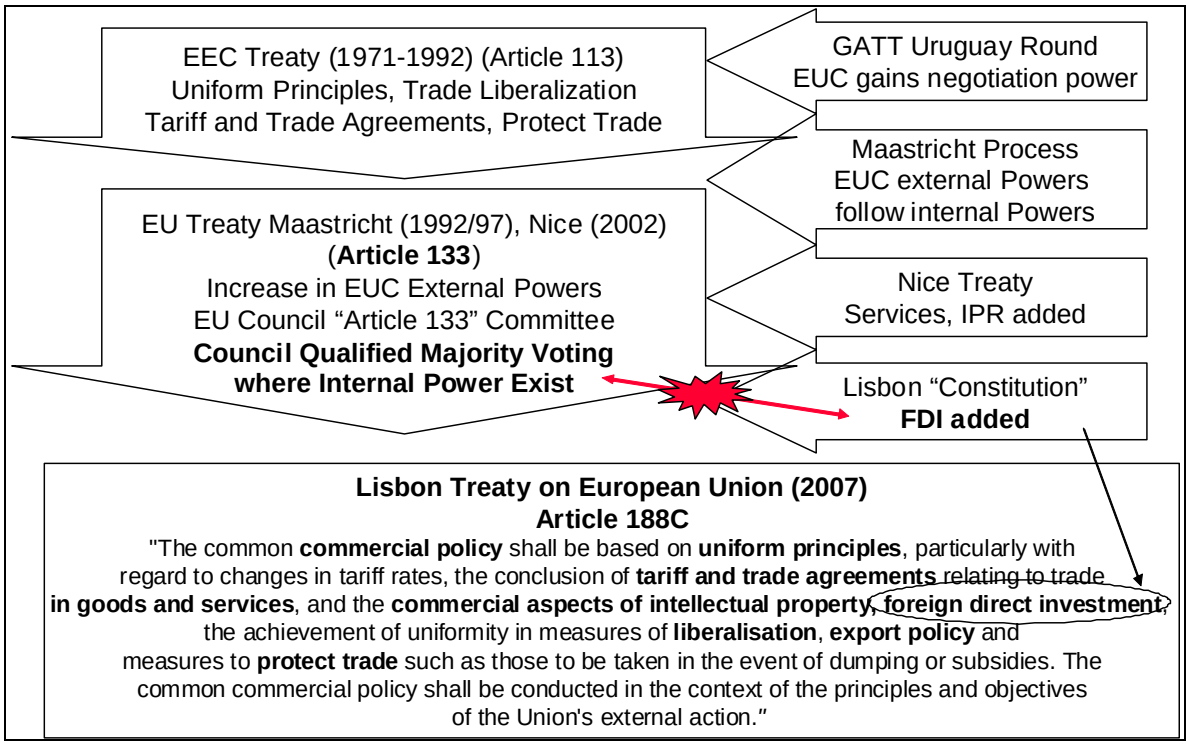
9 EU External Investment Policy

The external powers of the EU Commission in commercial policy have steadily increased with its internal regulatory powers. In Trade and Tariff Policy the Commission gained negotiation and representation powers during the GATT Uruguay Round. Its internal powers increased with the conclusion of the Internal Market, during the run-up to the Monetary Union, and during the negotiations for EU Enlargement.

Consequently, the Nice Treaty of 2002 added international agreements on Services and Intellectual Properties to the Commission's responsibilities.

On basis of the 2007 Lisbon Treaty, the Commission also becomes responsible for FDI framework negotiations. This, however, will remain contested by the Member States for many years to come because the member states have extensive networks of Bilateral Investment Treaties (BITs) with third countries.

Figure 15 EU (External) Commercial Policy Law: Article 188C



Source: © FRI 2008.

With the signing of the new constitutional treaty, the EUC gains the right to conclude investment negotiations with third countries without direct involvement of member state parliaments. As in WTO negotiations, these treaties will be binding to all member states.

But the EUC's ability to conclude investment treaties with third countries will remain limited by its "internal" rights. This means that the EUC cannot negotiate contracts that affect sectors where member states retain national control, such as security and defense sectors. It can also not negotiate tax issues, such as double taxation issues, because the member states retain veto rights on these issues, and it would also need explicit consent to negotiate in areas of special "public interest" such as audio-visual sectors.

Existing EU member state BITs basically focus on investor protection and usually only cover post-establishment rules. The provision of national treatment and most favored nation treatment are the hallmarks of these BITs. Based on these BITs, EU investors can take the host state to international arbitration directly, with no further home-government or EU involvement. Furthermore, UK BITs explicitly exclude any obligations of the host state towards other EU member countries, while the (often older) German BITs did not found such explicit exclusions necessary so far.

In contrast, EU investment policy focuses on partnership agreements with groups of countries. Pre-establishment rules and liberalization targets are the most important pillar of such treaties.

Although the fate of existing member-state BITs and the future of EU-wide BITs remain technically unclear, this different focus of EU treaties and national BITs points towards continued work-sharing. With the signing of the new constitutional treaty, the role of the EU in investment negotiations will certainly grow. Although discussions are ongoing, it seems extremely likely that the EUC will focus on negotiations towards investment liberalization, while the member states continue to negotiate BITs on investor protection. Technically, the EU will further upgrade its EPAs with investment provisions, while future BITs of member countries might add UK-type exclusions of obligations beyond bilateral obligations to their treaties.

The EU formulates (liberalization) target levels for all its partnership agreements. The most important examples are the Association Agreements towards Eastern Europe, which included a detailed catalogue of necessary investment liberalization measures, or the "Barcelona Process" negotiations with the "Mediterranean Partner Countries" (MED) in Northern Africa, which also require liberalization measures.

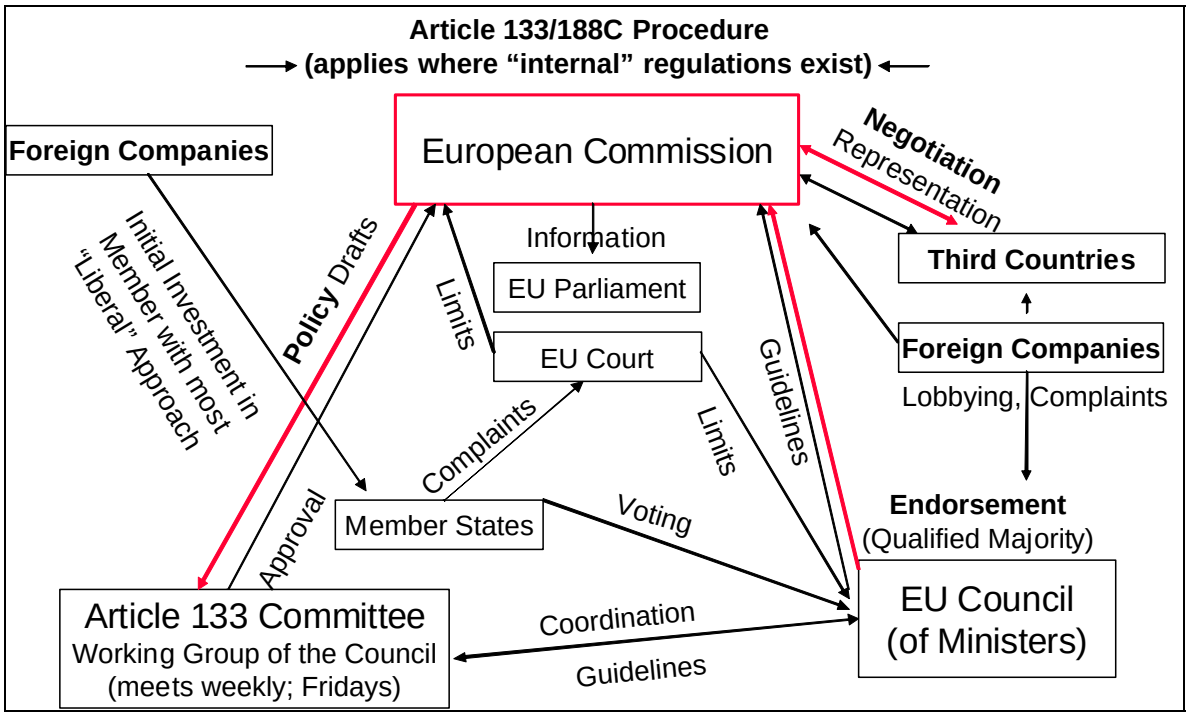
In future investment negotiations, the EUC explicitly sees its role in liberalization negotiations, and not in enhancing direct investor protection as it is typically the case in BIT negotiations. The reason for this focus on general investment liberalization is that most EU member states already have long lists of BITs that secure investor protection.

Member states can influence the formulation of the EU's liberalization standards through the EU Council, which has to endorse EUC's investment negotiations. Affected member states can also monitor and influence policy making through a (to be upgraded) new version of the current "Article 133 Committee", which formulates EU WTO positions and monitors the EUC's negotiations.

One important point in the EU's commercial policy setup is that the Commission leads and concludes negotiations with third countries without intervention from the parliament. This setup is comparable with the "fast track" powers of the U.S. president. As a result, the EU's commercial policy is a comparatively efficient policy process that is rather open to concerns and requests of corporations.

In cases where foreign corporations are unhappy with the results of the EU's commercial policy, they can either lobby the EU Commission, the Economics Ministries of the powerful Member States, or they can simply enter the EU through one of the most liberal member states, like the UK or Holland. EU-wide investments can then be done with few restrictions through EU affiliates or holding companies.

Figure 16 EU Commercial "Fast Track" Policy Setup



Source: © FRI 2008.

10 Reciprocity in External Investment Negotiations

Reciprocity and demands for partner-country liberalizations is, as in the case of WTO trade negotiations, an important target of EU investment negotiations. This policy stance has its roots in the EUC's role in liberalizing the Single Market. Negotiating liberal investment conditions with third countries therefore becomes a natural extension of the EUC's obligations. Furthermore, a main pillar of EU policy is competition policy, so the EUC wants to promote a competitive "level playing field" in investment relations with countries that do not yet allow access to important markets such as energy and infrastructure. Negotiating access to majority shareholdership in China's corporations and secure access to Russia's energy market, for example, are already high on the EUC's agenda.

But a forceful turn towards reciprocity in investment negotiations also faces important obstacles. First, the EU's negotiation powers for pre-establishment rules are limited because the EU has little retaliation powers against third countries that would not comply with liberalization demands. The EUC cannot easily restrict investment access of a third country, for example. Furthermore, the EU would also not lower its liberal internal investment standards as a reaction to negotiations with a group of third countries that refuse to accept the EU's standards.

Secondly, many member countries fear a backlash against their investors in third countries if reciprocity demands become enforced. The major member countries already consider their overseas investments rather well-protected by a carefully built network of national BITs. But even these limited BITs, which only target post-establishment investor protection, now face growing complaints from developing countries who claim that the underlying investment relations have become unbalanced to the EU's investors advantage. German investors, for example, protected by BITs with 133 countries, hold a stock of 400 billion direct investments abroad and have invested 29 billion Euro in the BRIC countries alone. But only less than 1 billion Euro is invested by the BRICs in Germany – a very unbalanced investment relationship indeed.

Additional requests for reciprocity could therefore easily result in requests for more favorable market access by increasingly bolder investors from China and Russia – including their SWFs. And indeed, especially Russian investors already call for more favorable treatment and support of their (often monopoly-backed) investors in Europe. They argue that "reciprocity" in actual investment flows, i.e. more balanced capital flows, need to be achieved before more liberalization of the Russian investment environment becomes necessary. Furthermore, they claim that Russian investors are often treated unequal and with more concerns when targeting takeovers in Europe,

than European investors in Russia.

Future problems for investment framework negotiations can be best described by comparing them with current trade negotiations (see the graph below).

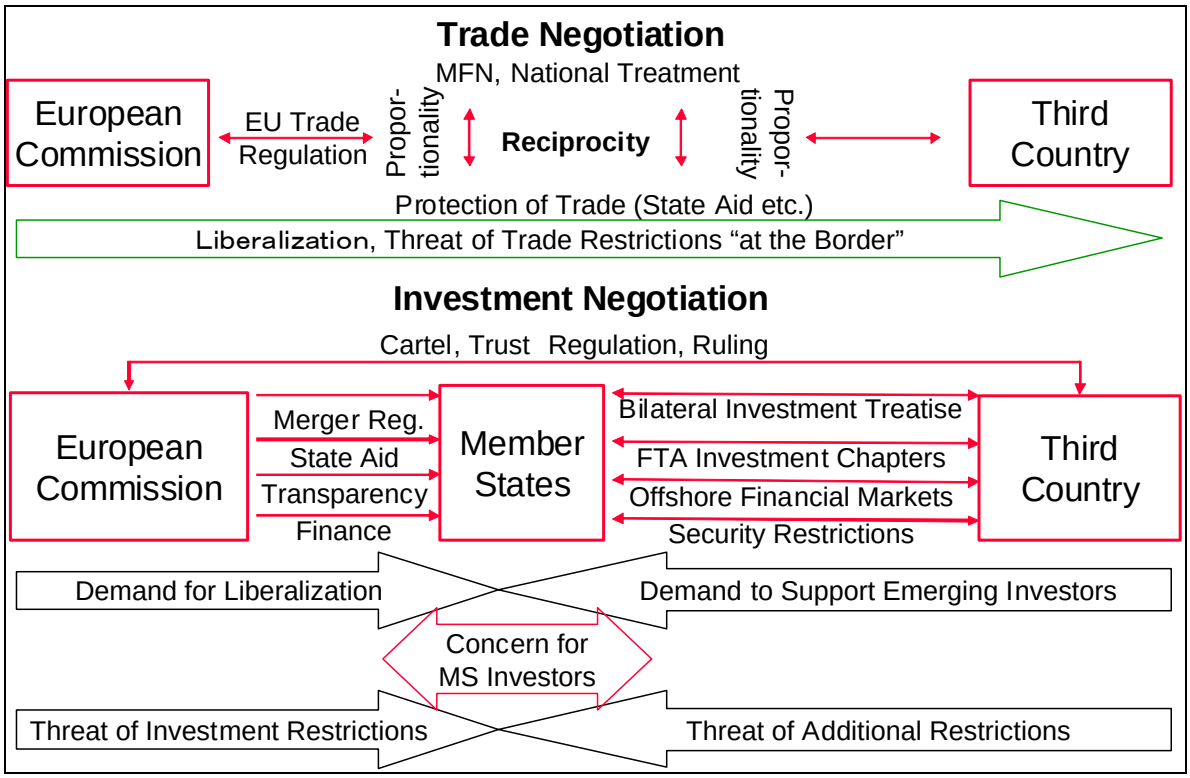
In trade negotiations, the Commission can argue on basis of a set of established EU trade laws and regulations. Just as third countries, it can offer most favorable market access conditions, such as Most Favored Nation (MFN) or National Treatment, to its partners or it can restrict market access where it sees dumping or undue state aid. With this, reciprocity has become an important instrument in commercial relations.

In investment negotiations, however, the same concept of reciprocity cannot easily be applied. As other countries, the EU seeks proportionality, transparency, and accountability for its investors, but it cannot convincingly ague that it has already achieved such a standard in its Internal Market. Furthermore, all member states already have extensive networks of Bilateral Investment Treaties (BITs) with third countries, and often offer partner countries special treatments in taxation and establishment support.

Finally, many EU countries are established investors in developing countries, while investments from these countries in the EU are still negligible. Insistence on reciprocity in regulations therefore runs a very high risk of a backlash against EU capital in those developing countries.

Most likely, the EU will therefore continue to liberalize its investment framework unilaterally, while keeping or implementing restrictions only in some special cases.

Figure 17 “Reciprocity” in Trade and Investment Frameworks



Source: © FRI 2008.

Most likely, the EU will therefore continue to liberalize its investment framework unilaterally, while keeping or implementing restrictions only in some special cases. Such “special cases” and demands for “Level Playing Fields” for acquisitions in the EU and third country markets already exist on a member-state-level in important sectors. Finance and communications acquisitions are generally subject to special scrutiny, such as transparency requirements. Similarly, “plurality of media” can be used as reason to restrict media acquisitions that would reduce the number of players in a national media market (see ECMR Art. 21). And in the network (utility) industries, foreign acquirer might become subject to EU competition policy that requires an unbundling of distribution networks from energy production. In other words, a monopoly in a third country market might become a sufficient reason to block an acquisition of a European network.

The EU will certainly gain importance in future investment negotiations and will have significant influence on liberalization policies in its third-country partner countries. As the U.S. already does today, the EU will most likely include more pre-establishment investment targets into its Economic Partnership Agreements. But, not least because of unsolved internal investment framework issues within the EU itself, this influence will

evolve only very gradual and cannot be used as an immediate instrument for dealing with SWFs.

11 Conclusion

Ongoing liberalization in the EU has led to a more transparent investment framework, but a regulatory "One Stop Shop" for investors has not evolved so far. On the contrary, member states retain wide scrutiny not only in cases of narrowly defined "Public Security" but also in cases of investment that affect broadly defined "Public Interest".

So far, member states have actively discouraged foreign investors in "sensitive" sectors such as banking, energy, media, infrastructure, and they to continue the facilitation of national champions. Many of such applied restrictions emerged on a discretionary, "sub-legal" level, but are now affecting the EU's regulatory stance. Important liberalization processes, such as the takeover directive, for example, remain largely mandatory, while the acceptance of public interventions and retained government holdings filter into the application of initially strictly deregulatory policies against merger restrictions and golden Shares.

An important reason for such renewed protectionism are concerns about capital flows and controlling investments in recently deregulated sectors, such as energy, where the EU's neighbors, most notably Russia, remain government and monopoly controlled. These concerns mix with reservations against swelling investments from Hedge Funds and Private Equity firms that might undermine government-supported social and co-determination models that governments are trying to retain as part of their national flavors of social market economies.

But such protectionism also faces close market-scrutiny. Countries with liberal investment frameworks, such as the UK, have wide and flexible margins for intervention in those cases where they see their interests affected. In contrast, countries with restrictive investment frameworks and a history of interventions, such as France, face the need to outline detailed and transparent FDI regulation to reassure foreign investors.

Similarly, the EU Commission will most likely use its new responsibility for investment policy to achieve "reciprocity" in external investment negotiations. But unlike in trade negotiations, increasing demands for "level playing fields" or third-country liberalizations where the EU has deregulated its market are hard to enforce and might politically backfire. Not only would the EU's liberalization project suffer, where new barriers against foreign investors would be erected, the enforcement of reciprocity demands vs. developing countries also runs a risk of an investment "backlash" against the EU's existing investments in those countries.

The limitation for such protectionist polices therefore comes not only from investment

flows that might turn against the EU, but also from the member states that see the overseas investments of their domestic investors at risk. The bottom-line is that protectionist regulations indeed seem to increase again. But the process rather seems to be related to efforts of securing achieved deregulation in combination with partial slow-downs where national economic models could not follow pace.

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富士通総研　経済研究所
〒105-0022　東京都港区海岸1丁目16番1号（ニューピア竹芝サウスタワー）
TEL.03-5401-8392　FAX.03-5401-8438
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