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„From Open to Closed – How, Why and When the EU Regulation for an EU-wide FDI Screening Mechanism Came About"

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Abstract

In 2019, the EU Regulation 2019/452 was issued with the aim of establishing an EU-wide FDI screening mechanism. This protectionist measure came as a surprise after decades of the EU praising itself as an open investment destination for foreign investors. This study aims to find out how, why and when this protectionist turnaround occurred. For this purpose, 8 official EU documents covering the time span from 2011 and 2022, as well as 48 peer-revied papers between the years 2004 and 2022 from the database Scopus were gathered. Within a semi-systematic literature analysis, the data was analyzed and coded with the program MAXQDA, and thus a model was developed to explain the protectionist shift in the EU. The results of the analysis showed that the protectionist turnaround took place around 2016, in line with the in-creasing Chinese FDI flows to the EU in that year. Due to the Lisbon treaties, and the thus transferred competence in international investment at the EU level, the EU was able to issue the regulation without being subject to a subsidiarity check by the national parliaments. A combination of fear, China's growing FDI flows into the EU, louder protectionist sentiments and the general realization of the negative effects of IFDI have led to the protectionist turnaround in the EU.

2019 wurde die EU-Verordnung 2019/452 mit dem Ziel erlassen, einen EU-weiten FDI-Screening-Mechanismus einzuführen. Diese protektionistische Maßnahme kam überraschend, nachdem die EU sich jahrzehntelang als offenes Investitionsziel für ausländische Investoren gepriesen hatte. In dieser Studie soll untersucht werden, wie, warum und wann diese protektionistische Kehrtwende erfolgte. Zu diesem Zweck wurden 8 offizielle EU-Dokumente, die den Zeitraum von 2011 bis 2022 abdecken, sowie 48 von Fachkollegen begutachtete Artikel aus den Jahren 2004 bis 2022 aus der Datenbank Scopus gesammelt. Im Rahmen einer semi-systematischen Literaturanalyse wurden die Daten mit dem Programm MAXQDA analysiert und kodiert und so ein Modell zur Erklärung des protektionistischen Wandels in der EU entwickelt. Die Ergebnisse der Analyse zeigten, dass die protektionistische Wende um das Jahr 2016 herum stattfand, im Einklang mit dem Anstieg der chinesischen FDI-Ströme in die EU in jenem Jahr. Aufgrund der Verträge von Lissabon und der damit übertragenen Zuständigkeit für internationale Investitionen auf EU-Ebene konnte die EU die Verordnung erlassen, ohne einer Subsidiaritätsprüfung durch die nationalen Parlamente unterworfen zu sein. Eine Kombination aus Angst, Chinas wachsende FDI-Ströme in die EU, lauter werdende protektionistische Stimmungen und die allgemeine Erkenntnis der negativen Auswirkungen von IFDI haben zu der protektionistischen Kehrtwende in der EU geführt.

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Abbreviations

AWV	Außenwirtschaftsverordnung
BIT	Bilateral Investment Treaty
BoP	Balance of Payments
CAI	Comprehensive Agreement on Investment
CCP	Chinese Communist Party
CEEC	Central and Eastern European Countries
CIFUS	Committee on Foreign Investment in the United States
CJEU	Court of Justice of the European Union
COD	Ordinary legislative procedure
Coreper	Committee of Permanent Representatives
COSCO	China Ocean Shipping Company
CSR	Corporate Social Responsibility
ECB	European Central Bank
EU	European Union
FDI	Foreign Direct Investment
IFDI	Inward Foreign Direct Investment
IMF	International Monetary Fund
INI	Own-initiative procedure
INTA	Committee on International Trade
IPA	Investment Promotion Agency
M&A	Merger & Acquisitions
MAXQDA	Max Qualitative Data Anlysis
MERICS	Mercator Institute for China Studies
MIC	Made in China
MNE	MultiNational Enterprise
MS	Member States
OBOR	One belt one road
OECD	Organisation for Economic Co-operation and Development
OFDI	Outward Foreign Direct Investment
OLI	Ownership, Location, Internalisation
R&D	Research and Development
SEO	State Owned Enterprise
SPD	Sozialdemokratische Partei Deutschland
SWF	Sovereign Wealth Fund
TFEU	Treaty on the Functioning of the European Union ('TFEU')
UK	United Kingdom
UNCTAD	United Nations Conference on Trade and Development
US	United States
US	United States (see USA)
USA	United States of America
WTO	World Trade Organization

1. INTRODUCTION

1.1 Context

From open to closed

The spirit of the neoliberalism in the 1990s and the beginning of the 2000s characterized a period with steady economic growth. A period were trade barriers as well as transportation costs decreased, thus promoting international networking and the emergence of international value chains . The advancing globalization and the resulting interconnectedness of the world further played into the hands of this trend. Global foreign direct investment (FDI) reached a worldwide peak and western countries in particular were able to gain high profits from increasing international trade (UNCTAD, 2022). Foreign Direct Investment as defined by the EU are foreign investments which establish or maintain lasting and direct links between investors from third countries and the host country (Regulation (EU) 2019/452, 2019). In recent years many states opened their markets to foreign investors and created liberal investment policies to promote and facilitate foreign investment (Bruno & Cipollina, 2018). Restrictions on foreign investors have been increasingly removed and replaced by incentives to attract those foreign investments. Chan and Meunier (2022) speak about an "increased FDI openness around the world" (p. 514). However, the growing globalization linking value chains across the world has paradoxically fueled two opposing trends in the years that followed. On the one hand, states liberalized their investment policies to attract foreign investors, on the other hand, a national, protective behavior emerged (Nicolas, 2014; Verellen, 2021; Witkowska, 2020). This "tension between investment liberalization (...) and protection against investment" (Chan & Meunier, 2022, p. 38) can also be observed within the EU. In recent years, the EU has established itself as a very liberal destination market that welcomes FDI (Rytter & Hansen, 2018). The OECD calls the EU one of the most open investment grounds (Kalinova et al., 2010; OECD, 2022b) and the EU wants to keep attracting FDI in the future, at least that's what the EU Commission said in 2020 (European Commission, 2020a). However, there is a growing concern that this openness might also bring negative side effects. Growing concerns, that foreign investors affect the domestic market balance and displace domestic firms, that EU companies are taken over for strategic reasons, that key technology and expertise is emigrating, that income inequality is fostered, or that through some investments the public safety is at risk (Regulation (EU) 2019/452, 2019; Rytter & Hansen, 2018).

As a result, in recent years numerous EU nations have tightened or are considering tightening their FDI screening processes. Screening of investments can take on different forms. The host country reserves the right to, for example, verify the intention of the investor and to reject the investment if the host market does not benefit from it or if national security might be endangered by the investment (Kalinova et al., 2010). By March 2019 twelve member states (MS) of the EU already had national screening mechanisms in place, from which six countries had strengthened their mechanisms in the past two years and four other member states were considering establishing a screening system soon (European Commission, 2022a). Other advanced economies have already adopted such a screening mechanism. The scope and design of FDI screening systems differ greatly in nations including Australia, Canada, China, New Zealand, Japan, South Korea, Russia, and the United States. But one thing they have in common, rather than liberalizing their FDI evaluation processes, most of these countries have tightened them in recent years (Bickenbach & Liu, 2018). A growing number of calls for the formation of an EU-wide framework for screening inward FDI have paralleled the ongoing changes in FDI screening systems inside individual member states, since the EU lacked a centralized FDI screening system based on security or public order. So far EU member states were solely responsible for their FDI screening, but now a crucial technology or infrastructure in one country may be critical for its neighbors and, in some cases, the entire Union. The "decentralized and fragmented" (European Parliament, 2019b, p. 1) national FDI screening mechanisms didn't seem adequate and efficient regarding the changing investment landscape in the EU.
Therefore on 13.09.2017 the Commission presented a proposal for a common, EU- wide screening mechanism. The parliament supported the Commission and stated that the goal "is neither to harmonise the formal FDI screening mechanisms currently used by half of the member states, nor to replace them with a single EU mechanism. Instead, it aims to enhance cooperation and information-sharing" (European Parliament, 2019b, p. 1). The focus of the proposal is on the intended cooperation between the member states and the Commission. In addition, a coordination group consisting of representatives of the member states and the Commission was established, which is meeting regularly to discuss matters relating to the screening of FDI. The **Regulation (EU) 2019/452** establishing a framework for the screening of foreign direct investments into the Union came into effect on 10 April 2019 after being adopted by the European Parliament and the Council in February and March 2019. After the transitional period, 18 months later, it became fully operational on 11th October 2020.

Security and Public Order

The EUs main arguments for FDI screening relate to security and public order. In the regulation (EU) 2019/452 the terms "public security" and "public order" are quoted repeatedly, but interestingly they are not defined in the regulation. Article 4 of the Regulation sheds some light on these terms: Public order or security can be endangered if foreign investors buy majority stakes in national companies located in the sectors, critical infrastructure, critical technologies or in the supply of critical inputs. Furthermore, access to sensitive information is to be protected, but also the freedom and pluralism of the media. It is not desirable that foreign companies own large shares in companies that are necessary for the national population. For example, water and electricity suppliers, pharmaceutical companies, or technology companies. Public security and order can also be affected, if foreign investors are controlled “directly or indirectly, for example, through significant funding, including subsidies, by the government of a third country or is pursuing State-led outward projects or programs” (European Commission, 2021a, p. 2). It appears that not only economic, but (geo)political reasons play a role here. Although EU institutions and the regulation do not explicitly mention China as a threat to the security of the EU, it quickly becomes clear, that they subliminally address Chinese investment (Chan & Meunier, 2022; Dudas & Rajnoha, 2020; Witkowska, 2020). These investments are mainly based on state funding and focus on M&As than on greenfield investments, thus 82% - 83% of Chinese M&A investments fall under the definition on concern for public security (Witkowska, 2020).

1.2 Literature Review

In this section, the opinions in the academic literature will be presented as to why such a screening mechanism occurred in the EU. Pandey (2019) isn’t sure what the true intention of the Commission were, when they established the screening framework. Indeed, he sees potential in the proposal to protect the security of the EU in the future. However, he believes the screening framework is not yet mature. A unified framework instead of a cooperation mechanism and the EU as enforcer and moderator is needed. Apart from that, it could be just another barrier for foreign investors, but no benefit for the EU. For him, proper implementation is the key to an effective EU investment policy. To put it in his words: “there is a difference between protecting one’s legitimate interests and adopting protectionist measures” (p. 65). Bismuth (2018) agrees with Pandey, that the Commission's Regulation Proposal did not add any value for the member states. The proposal did not say much more than the court of justice already stated in the movement of capital, only that the commission added a few specifics, like the notification of the commission of the existing national screening mechanisms. The author also finds it quite suspicious that the Commission had based the regulation on the common commercial policy (Article 207 TFEU) for which it has exclusive external competence. While the Article 64(2) TEFU would have been more appropriate as a legal ground for this regulation. Additionally, the author is of the opinion that, Article 207 TFEU does not grant the Commission with the competence over matters concerning Members States' public policy or public security. He furthermore believes that this might be a "food-in-the-door" (p. 57) strategy, to further expand the Commission's power in the future. Bismuth criticizes two major points in the regulation: first, it doesn't address the problem of reciprocity. Even Though this was the main request by the initiators Germany, France, and Italy. Second, the regulation asks all member states to give due consideration to the comments of other states and utmost account of the Commission's opinion; the author therefore analyzes that if a member state has not established a screening mechanism, it will face "conflicting obligations" (p. 53), because the Commission can initiate infringement proceedings against the host country. While Bismuth calls it an "invasive FDI mechanism" (p. 52) Schill (2019) calls the EU's FDI screening an "investment screening paradox" (p.4). In his opinion, the new screening framework aims less at tightening control, or to protect the EU's strategic economic interests with restrictions on foreign investors, but rather at creating a stronger basis for the EU to negotiate deals with third countries. In this way, the EU can demand access to foreign markets and in return offer more gentle screening when investing in the EU, the keyword being reciprocity. In other words, it's about gaining power instead of protecting public security. Also Verellen (2021) is paradoxical about the regulation. He believes the EU Screening Framework is another "suboptimal" (p. 21) EU policy outcome. Suboptimal because of two main reasons, it is not about the effectiveness of the tool, but about the transfer of power. He finds that while the EU requires MS to screen FDIs better, it does not provide them with an adequate tool. Therefore, the regulation does not lead to a harmonization of national screening mechanisms, but simply to an increased national screening effort. In other words, screening will still not take place at EU level. He wonders in this context why the task of screening was delegated back to the MS, after the Commission had received this competence within the Lisbon Treaty. Furthermore he claims "it will add an additional layer of complexity to an already complicated investment screening landscape within the EU" (p. 30). It may discourage investors because of uncertainty about whether their investments can be made at all, and it hinders countries in their agility in dealing with investment projects. For him it is just another step in European integration, it might lead to further cooperation in the future, but for now the outcomes are marginal. Kao (2020) rather sees the Regulation as a "novel design" (p. 182) he still regards it very critically; he cites it as an “intervention mechanism in disguise” (p. 176) which doesn’t support cooperation between the member states. Also, since the screening mechanism is not binding for the member states and they do not have to follow comments or opinions, “concerns are raised in vain” (p. 182). He goes even further by calling the regulation “toothless” (Ibid.), he writes “the function and effectiveness of the proposed Regulation are therefore in serious doubt” (Ibid.). The paper by Witkowska (2020) lists the consequences of the screening framework. First, new administrative costs due to a longer decision-making process; second, some, especially the new member states, now have poorer access to financial resources; third, a deterioration of the economic relationship with China. She is not sure if the screening framework will turn out to be a "solution or a problem" (p. 33), this will then become apparent in practice. The paper of Chan and Meunier (2022) explores the puzzling question of how 28 member states, which for decades have welcomed FDI with open arms, came to agree on a single supranational EU screening framework. They recognize that each country has its own "unique set of reasons to support or oppose FDI screening" (p. 535). Because some countries rely more than others on foreign investment and as well some countries have higher incentive to protect their own economy. In their qualitative and quantitative study, they show that especially MS with high technological levels tend to impose FDI restrictions for fear of a unilateral brain drain. Furthermore, they call the framework "barebones" (p. 535), as it only connects the "lowest common denominator" (p. 536) of the different opinions. At this point it doesn't really represent European integration. Rather it might do the opposite, namely when a country receives a comment or an opinion, but behaves oppositely, this might lead to disputes in the future. However, this could be only the first step in further integrations in the future. They claim that especially after the Covid-19 pandemic, MS should react cautiously to foreign investors who might just take advantage of the poor economic situation of some weak EU companies.

1.3 Relevance and Research Question

Almost all the literature listed above overlap in three points, first there is no comprehensive research yet whether a screening mechanism achieves the desired effect. Second, the Regulation is rather seen negatively. Third, the Commission's regulation seems to be something it is not. It doesn’t want to harmonize the mechanisms in place but asks the member states to amend and update their screening mechanisms to the Commission's standards. It wants to do something against the fragmented and decentralized system but does make its regulation binding. It does not want to deprive the member states of their power but enacts a regulation on a questionable basis and makes it binding in "disguise". Is the regulation just another "power grab" by the

Commission to advance European integration or are there other reasons behind it? The Commission does not want to create a regulation that excludes or discriminates against non-EU countries but bases its statement heavily on the FDI impact of one country, namely China. In addition, the question arises as to why the EU so vehemently resists building the regulation based on reciprocity. Although Chinese FDI had already declined before the introduction of the screening mechanism, it still seems to be the (hidden) reason for the introduction of the regulation.

We approach the possible research question by asking: Why did the EU enact the regulation? Although the EU gives some reasons why such a regulation was necessary, one wonders: **How, why, and when did it come to the (sudden) protectionist turnaround, whereby FDI was seen as hazardous by the EU actors?** This question shall be explored in the frame of my master thesis. Further sub-questions will be addressed in this context: What exactly influenced the EU Commission in its stance?

This research work aims to fill the still existing gaps in the attempts to explain why the screening framework came about. By examining the academic literature published on inward FDI into the EU and official EU-documents, these gaps shall be filled. Analyzing changes in the past might even allow us to make implications for the future. This topic is more relevant and timelier than it has ever been. On the one hand, our world is becoming more and more global and interconnected and it seems that this is an unstoppable trend. On the other hand, crises like the Covid-19 pandemic, the energy crisis, the war in Ukraine or the current inflation show what consequences this economic interconnectedness can have. This paper will contribute to the overarching question of how the balancing act between protectionism and liberalism can be mastered.

1.4 Methodology

Semi-systematic literature review

To get to the bottom of the questions posed above, a literature review shall be used as a research method. This is a systematic way of collecting and reviewing existing literature of a specific topic. Whereas the systematic literary review claims to analyze all empirical evidence, the semi-systematic review takes a different approach. Although at the beginning, as in systematic research, the literature is selected according to exact criteria, the researcher still has the freedom to add a narrative part (Zunder, 2021). Nevertheless, the research work must remain comprehensible, transparent and plausible. The semi-systematic literature research focuses on how literature has changed within a given time on a given topic. This method is therefore particularly accurate in answering the research question: How, why and when it came to this protectionist turnaround regarding FDI in the EU. Snyder (2019) also recommends choosing a semi-systematic review when knowledge from different scientific fields is collected, or if it is just not possible to examine every piece of literature. Especially in business research the amount of scientific publishing has been accelerating in the latest time, while at the same time becoming more and more fragmented (Snyder, 2019). Since this Master's thesis is an interdisciplinary research (it deals with policy issues, i.e. EU Regulations on Trade, and with economic aspects such as FDI flows and international trade) a semi-systematic literature review is particularly appropriate and can thus identify connections in a set of data that would remain hidden, if examined individually.

Data collection & Search Strategy

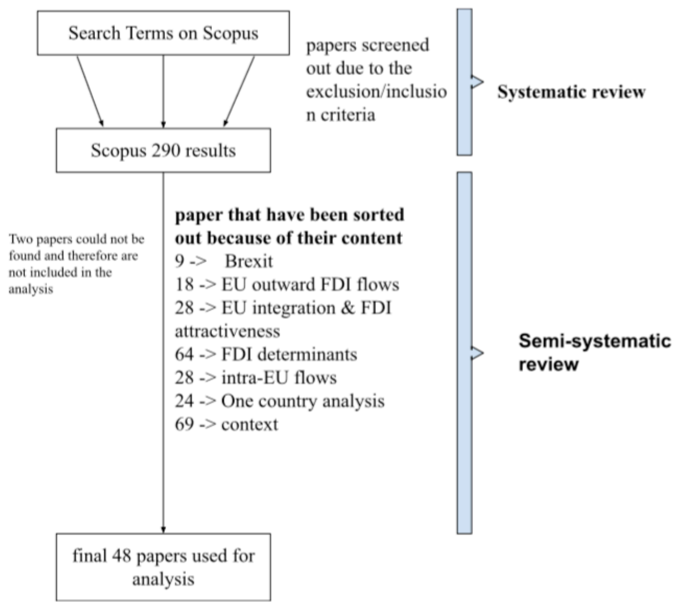
After deciding on a methodology, the search strategy, in other words, the concept of how to find and analyze relevant data, is one of the most important steps in the review process. The preparation of a review protocol is to ensure the reproducibility of the systematic review. All work steps should be precisely planned and documented in a comprehensible or replicable manner. Since the research question consists of how, why and when, we address these WH-questions separately. **How** and **when** the protectionist turnaround came about will be determined by looking at the inlays of official EU documents. **Why** the turnaround occurred will be discovered by sifting through academic publications. First, the analysis process of the academic literature will be discussed.

Analysis of the academic literature

The selection of the database is the first central planning step. The decision on how many and which databases to use depends on both the research question and the available resources (Gusenbauer & Haddaway, 2020). Subsequently, inclusion and exclusion criteria are defined, which determine the framework or the limits of the systematic review. These should be formulated so precisely that each literature source can be clearly included or excluded based on these criteria. In addition, they should be detailed enough that two independent people would classify the same sources as relevant; in qualitative research this is called inter-rater relatability. The search strategy should be adequate to the research question, and thus pave the way to finding exactly the answers that are sought. Therefore, a tightrope walk between high accuracy and completeness is necessary. Both are indispensable and at the same time opposed to each other. This means that the search terms must include all relevant studies and at the same time keep the number of irrelevant papers low. In the literature, this is referred to as the balance between sensitivity and specificity (Armstrong et al., 1997). After intensive examination of this methodology in other published papers, the following search strategy was developed:

Scopus was chosen as the database; this database has access to many peer-reviewed articles and was also chosen in other papers that used a semi-systematic literature review (Schmidt & Santamaria-Alvarez, 2022; Ukobitz, 2020; Zunder, 2021). The key words (FDI OR "foreign direct investment") AND (EU OR "European Union") were searched for in the title and keywords. The search was restricted to English language articles from the fields of "Economics, Econometrics and Finance" and "Business, Management and Accounting". With these search conditions 290 articles came up on the database Scopus.

Figure 1 *Article Selection*



Source: Adapted from Schmidt and Santamaria-Alvarez (2022), p.3

After the systematic review, the 290 academic papers were subject to the semi-systematic review. The abstracts of the papers were read, and a decision was made as to whether the papers should be examined using the qualitative content analysis. The focus was whether the content shed light on the effect of foreign direct investment on the EU. Based on this scheme, 48 papers were selected for the final analysis. Appendix 1 lists all those papers. 9 papers were screened out as they related to the impact of Brexit on UK EU trade. This does not correspond to the criterion of how foreign investment affects the EU, but rather how trade will change after Brexit (keyword: Brexit). 18 papers were screened out as they dealt with outward FDI. This also does not correspond to the question of how FDI affects the EU (keyword: EU outward FDI flows). 28 papers were sorted out, because they dealt with the topic of how the accession of the new member states affects their attractiveness for new investors, i.e. the change in inward FDI (keyword: EU-integration & FDI attractiveness). 64 papers have been sorted out as they deal with the determinants that positively or negatively affect inward FDI. This paper, however, will focus on the reverse consideration of how FDI affects the EU (keyword: FDI determinants). 28 papers were sorted out because they dealt with FDI flows within the EU, striking was the high number of articles dealing with financial flows between old and new member states (keyword: intra-EU FDI flows). 24 papers were sorted out because they dealt with only one country. In this work, however, the EU is observed as a whole, therefore all analyses that only consider one EU member state were not included in the analysis (keyword: one EU country analysis). Finally, 69 papers were excluded whose content had nothing to do with the effects of FDI on the EU (keyword: context). An example of this would be the text by Kersan-Škabić I. (2019), which deals with the Global Value Chain activities of individual EU states. Here, FDI ratios are used as performance indicators, but the text itself does not deal with FDI flows per se. Papers that were sorted out with the keyword context also have an explanation why the FDI context is missing. Of course, it was often possible to screen out papers based on two reasons, such as looking at Italy's outward FDI. Here the key word "One EU country analysis" or "EU outward FDI flows" could have been applied. However, in such a case, only one key word was given.

Analysis of the EU documents

In the analysis of EU documents, the selection of data is based on a paper by Chan and Meunier (2021). In their research paper, they speak of three incidents in which an EU institution initiated an official procedure (or similar action) to (not) establish an FDI screening mechanism. The Own-initiative procedure by the EU Parliament in 2011, the speech by the Commissioner Karel De Gucht in 2012, and finally the Ordinary legislative procedure in 2017, which resulted in the EU-wide FDI screening mechanism. For each of these procedures, all relevant documents can be found on the official website of the EU. The documents include for example committee opinions, (draft) reports or debates in parliament. The speech of commissioner De Gucht is also available on the official website of the EU Commission. The relevant documents of the three procedures are used for our analysis.

Analysis and Grounded Theory

Grounded theory according to Strauss and Corbin (1994) is a qualitative content analysis in which focuses on the formation of theories. Therefore, this is a less explorative research method than others. The researcher looks for differences, commonalities, patterns, similarities etc. using the open codes with the goal of forming categories. In the first step deductive codes are formed. Meaning even before reading the textual data, possible codes are written down. Using the deductive codes, the reader is guided through the data. Inductive codes are created during the research as deeper knowledge of the topic is gained. Later the codes are summarized, and categories are formed, this process automatically structures the textual data in terms of the research question. All this finally leads to the presentation of the results. The codes are sorted, subcodes and hierarchies are created in order to gain insights and correlations. The goal is to be able to work out relationships and connections that a single text alone could not convey.

1.5 Structure

The thesis will be structured as follows. In the first part (Chapter 2-5), the following background topics will be highlighted: What is FDI and why is it used as a market entry mode. Moreover, what are the opinions towards FDI. Then we talk about FDI trends of the world and the EU. The impact of China in the international investment landscape is highlighted in chapter four. In chapter five we talk about the EU Regulation on the FDI Screening Framework and how it came about. In the second part, the methodology is discussed in more detail, i.e. how and what data was collected. In the last part, the results are presented and put into context in the conclusion

2 INTERNATIONAL INVESTMENT

The growing FDI flows at the end of the 1990s go hand in hand with the neoliberal turn that began at the end of the 1970s (Koehler, 2015). The tenor of this school of thought was to help the crisis-ridden economy get back on its feet through a free market approach. This means the gradual elimination of trade barriers such as tariffs, exchange rates or non-tariff barriers. Deregulation of markets and privatization, and over all less state intervention in the market. The free-market view originated from the classical economics and the international trade theories of Adam Smith and David Ricardo. The perspective argues that international production should be distributed among countries according to the theory of comparative advantage. The free-market view is mostly embraced by developed economies, because those countries typically obtain the competitive advantage in the global market. By following the free-market ideology their companies acquire legitimacy to compete and gain profit from foreign countries. Companies were to specialize in the production of the goods which they could produce most efficiently, compared to their competitors. The other goods should be imported according to the comparative cost advantage. In this way, all countries produce most efficiently, since they specialize in one good and thus generate economies of scale. As already been said, those policies let to an economic upswing in the developed word. Spurred by this, many countries of the global West displayed liberal international investment policies at that time. Globalization and economic liberalization become a world trend (Sin, 2010). Especially the emergence of global value chains, with producers around the world have favored the openness for such policies. FDI is one option for a company to invest abroad, or to put it in other words: "to own or controls their activities in more than one country" (Kilic et al., 2014, p. 8). We will explore this type of entry mode a little deeper in the next section.

2.1 FDI as a Market Entry Mode

When a company invests money in assets abroad, these commitments are referred to as direct investments. These international engagements let the company become a multinational enterprise (MNE). The International Monetary Fund (2009) defines it as follows: "direct investment relationship arises when an investor resident in one economy makes an investment that gives *control* or a significant degree of *influence on the management* of an enterprise that is resident in another economy" (p. 101). Direct investment combines long-term economic interests with a claim to control. Such investments are to be distinguished from portfolio investments, in which the investor acquires shares or bonds in a company in order to profit from its appreciation in value and dividends (Geinitz, 2022). The literature differentiates between horizontal and vertical FDI (Teece, 1986). The first one occurs if a firm invests in the same industry abroad in which it operates domestically, the goal is to gain international market shares (Popovici, 2018). This behavior would be called strategic market seeking. Vertical FDI occurs when a company invests backward or forward along the value chain in a foreign company. If a wholesaler invests in a production site in another country, then he or she probably wants to take advantage of lower labor costs in the host market. Another example would be if a producer invests in R&D in another country, where he or she hopes to gain insights in innovation. This behavior would be called strategic asset seeking. There are different options for a company to invest abroad. Either by creating a completely new firm in a host country or by merging with a domestic firm. Creating a new firm would be called international greenfield investment or joint venture. The two types mentioned differ in that a greenfield is founded by one foreign parent company, while a joint venture is set up by two stand-alone companies as a joint project. In this scenario both partner companies can be foreign or only one of them while the other comes from the host country. A merger or acquisition takes place, by acquiring or investing in an existing foreign firm (Peng, 2008). There is a common belief, that M&As are less beneficial for the host country than greenfield investments. This is because a greenfield investment usually transfers new jobs, innovation or simply FDI stock to the host country. Whereas in an M&A deal mainly a transfer of ownership takes place. The foreign sources of finance can also lead to an imbalance of the existing market by displacing domestic competition and creating monopolies. In addition, there is the fear that domestic companies will be "cannibalized", meaning companies will be closed, jobs lost and the local expertise transferred to the investors home country (Eren & Zhuang, 2015). Interestingly, by number there are more greenfield projects than M&A deals, but in terms of monetary value, M&A accounts for a larger share (UNCTAD, 2022). Often it is a few deals that have such a significant value that they influence the global FDI statistics. So, it can happen that one year the largest FDI donor becomes the largest FDI taker the next year. This was the case in 2001, for example, when the largest M&A deal ever took place between the UK company Vodafone and Mannesmann from Germany. That year, Germany became the world's largest FDI recipient for the first and so far, only time. Before that, Germany was always among the top FDI donors (UNCTAD, 2001). This shows, FDI numbers are highly volatile and must be read carefully.

2.2 The big question: Is foreign direct investment beneficial or not?

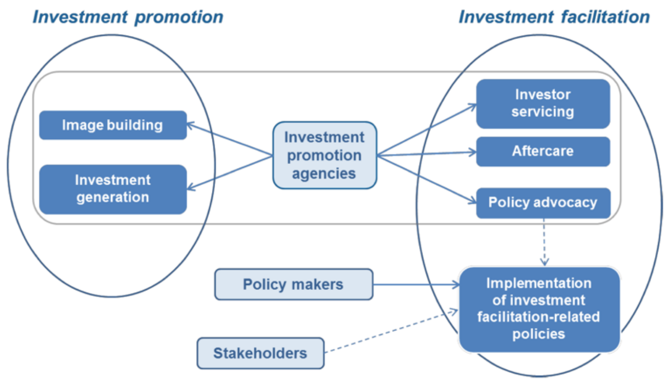
Above it was explained that a company chooses FDI as a market entry mode when a lot of control over the subsidiary abroad is necessary. However, it only considers the view of the investor or the firm, i.e. outflow from the home market. On the other side, there is the investment destination, the host market, where at least as many variables are involved in the decision whether to allow the inflow of investments into the country or not. Theories abound as to whether IFDI is beneficial for a country, has a negative impact, or has no impact at all. The OECD, UNCTAD and the IMF agree that FDI has a positive impact on the host country and supports economic growth (International Monetary Fund, 2015; OECD, 2022a; UNCTAD, 2022). Many researchers support this theory, it is widely spread that IFDI makes domestic production more efficient, boost domestic competition and results in higher tax revenues for the host government. Lejko and Bojnec (2012) talk of new studies supporting the positive association of IFDI and economic growth. Jungmittag und Welfens (2020) found that the higher the

IFDI flows, the higher the number of patents filed in that year. Therefore, they conclude that IFDI flows improve the real GDP in the long run. Leichenko and Erickson (1997) researched the relationship between FDI in the U.S. manufacturing sector and found that a one percent increase in FDI results in a 0.14 percent increase in exports in the following year. Many scholars speak of a positive relationship between IFDI and economic growth when certain factors are present in the target country. In the literature these factors are called absorptive capacities. Acaravci and Ozturk (2012) for example, speak of a minimum level of education, or technological or infrastructural development that must be present. Nicolini and Resmini (2010) say IFDI only benefits the host country, if some technological competence already exists. Eren and Zhuang (2015) are of the opinion that a developed financial system, or minimum human capital base is necessary. In turn, there are studies that explain that less industrialized countries tend to benefit more from foreign investment, as spillovers in technological know-how are more effective there. Josifidis et al. (2020), for example, found that the transition countries of the EU respond particularly well to foreign investors. They use these additional financial sources to catch up with the technological frontier. In addition to the direct exchange of capital to the host country, the literature also talks about indirect effects that can result from FDI, eg. the transfer of knowledge, management skills, technology, renewal of production strategies, organizational behavior etc. These indirect impacts on the host company are called spillover effects (Dunning & Narula, 1994; Gregori & Nardo, 2021; Oxelheim & Ghauri, 2008; Perugini et al., 2008). Interestingly not all academic literature supports the FDI - economic growth relationship. Some scholars go so far as to suggest that IFDI could even harm the domestic economy, for example when IFDI displaces domestic investors (crowd-out) (Josifidis et al., 2020). Witkowska (2020) also writes that "foreign investors, using ownership-specific-advantages, could harm a host economy by reducing infant domestic entrepreneurship, by deterring local technological deepening, or by transferring and exploiting new technology" (p. 21). Another negative standpoint related to IFDI (through M&As) is, of course, the transfer of domestic know-how and control of the company to a foreign investor and the resulting fear that the domestic assets will be siphoned off and transported back or companies will be closed, and jobs lost. Angelopoulou & Liargovas (2014) study the relationship between FDI and economic growth in the EU, the monetary Union and the then transition counties within a panel data analysis over 20 years. They concluded that there was no significant relationship between the two variables. Eren and Zhuang (2015) also find no significant impact of FDI on economic growth in their research. The different views in the literature may stem from the fact that some studies base their results on the neoclassical approach and others on the new-growth model. In the neoclassical approach, FDI is seen as an additional source of finance and can thus increase output in the short term but has no long-term impact on economic growth. In the new-growth model, FDI affects economic growth through human capital and R&D (spill-overs), which indeed has a long-term effect. Lejko and Bojnec (2012), Acaravci & Ozturk (2012), and Blomström and Kokko (1997) agree that different results are obtained when distinguishing between macro and microeconomics. Microeconomic studies tend to show no FDI-growth relationship, while macroeconomic studies do.

2.3 State influence on FDI flows

As shown in the last pages, there is disagreement in the academic literature on whether IFDI is positive or negative for the target country. Depending on whether the state perceives foreign investment as positive or negative for its country, it can encourage or restrict such investment. According to UNCTAD (2022), governments have different tools to do the one or the other. Investment promotion and facilitation is one such tools. Novik and De Crombrugghe (2018) explain "investment facilitation should be understood as a combination of tools, policies and processes that foster a transparent, predictable and efficient regulatory and administrative framework for investment that maximises the benefits to the host economy" (p.1). The transparency of investment rules is one of the most crucial parts of investment facilitation, this includes information offered to the investors, more effective administrative processes for investors, more predictable and stable policy environments. Investment promotion, on the other hand, describes the marketing of an investment destination. The goal is to attract potential investors. In summary, investment promotion takes place in the pre-establishment phase, when the investor has not yet decided where to invest. While investment facilitation takes place during and after the establishment phase. Investment promotion is mainly in the hands of so-called Investment Promotion Agencies (IPA). Such agencies may or may not be governmental, while investment facilitation involves a whole-of-government approach (Novik & de Crombrugghe, 2018). Investment facilitation and promotion can be considered as a *harmless* governmental

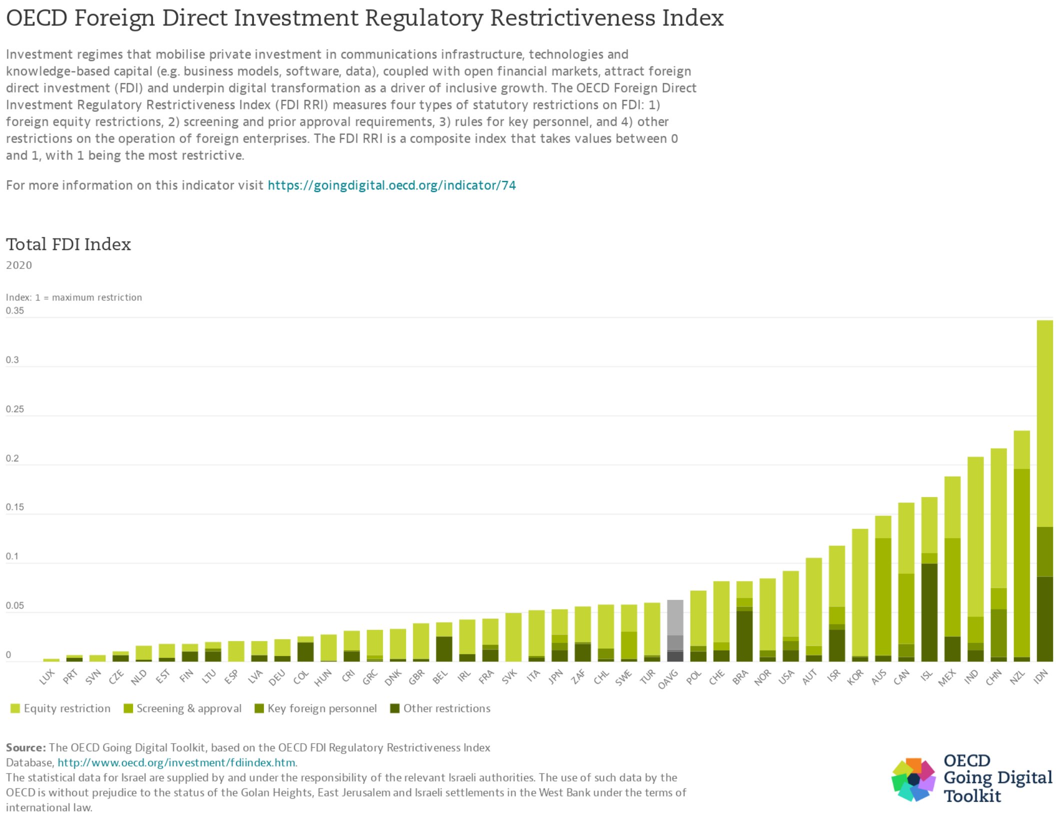
Figure 2 *Scope of investment promotion and facilitation*



Source: From Novik & de Crombrugghe, (2018), p. 4

tool in attracting foreign investment. Gonzales et al. write in their article that U.S. “state and local governments routinely offer companies billions of dollars in fiscal incentives, including cash grants, rebates, and tax credits, to entice them to relocate, expand, or stay in a specific locality” (p. 1). Such monetary incentives to attract foreign investment would rather be called *aggressive*. Ireland is a prime example of such financial investment incentives in the EU. Tax advantages for foreign investors have made the country a Mecca for IFDI. It even went so far that Ireland was sued by the European Commission for allowing tax incentives to the US company Apple. Giving such individual incentives to one single company is against EU law, which is why the Commission demanded Ireland to collect the unpaid taxes retroactively (European Commission, 2016). As discussed above, there are negative and positive effects of FDI, and there is disagreement in the literature about which effects predominate. It is therefore logical that not all countries want to attract IFDI. The OECD has created an FDI Restrictiveness index that measures and compares the statutory restrictiveness of 69 countries. OECD has identified four main types of restrictions governments typically use: Foreign equity limitations, screening or approval mechanisms, restrictions on the employment of foreigners as key personnel and operational restrictions (OECD, 2022b). Foreign equity limitation means foreign investors can only invest up to a certain amount, meaning the major part of the firm shares will remain in the hand of local investors. A screening mechanism allows the government to evaluate if the foreign investment is beneficial, or even a danger, for the host country, it can then block the investment if necessary. Restrictions on foreign key personnel explains itself, some businesses can only be operated by domestic personnel and other restrictions can be all sorts of obstacles for foreign investors, such as lack of transparency, opaque regulations, etc. Figure 2 shows the restrictiveness index of various countries, ranging from 0 to 1, with 1 indicating high restrictiveness.

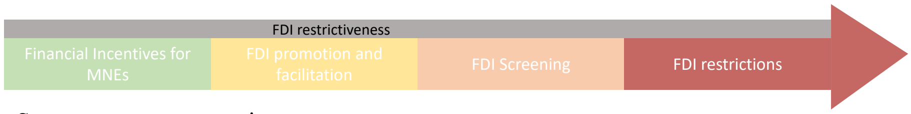
Figure 3 *OECD FDI Regulatory Restrictiveness Index*



Source: From OECD (2022b)

In the graph the OECD average is marked in gray, it becomes clear that the EU countries are below the average, meaning they have a low FDI restrictiveness. Countries like Indonesia, China and New Zealand show a high restrictiveness. We take a closer look at Indonesia to understand how and why a government would want to restrict FDI flows into the country. The Indonesian government mainly uses equity restrictions, key foreign personnel and other restrictions. Foreign investment in Indonesia is mainly regulated by Law No. 25 on Investment, which came into force in 2007. Although it states that foreign and domestic investors should be treated equally, there are some specific restrictions on foreign investors. For example, the Negative List, a list of 69 economic sectors that are to be operated exclusively by domestic SMEs. These include mainly traditional Indonesian industries such as the rattan industry or the industry to produce traditional clothing. In addition, there are 26 other sectors, which are partly restricted to foreigners, such as shipping or air transport, which may only include foreign investment of up to 49%. In the media industry, investment is limited to a maximum of 20% capital increase, and at the time of establishment, the investment must be 100% domestic. Last but not least, the Indonesian government has completely blocked foreign and domestic investments in industries such as alcohol, narcotics, gambling or casino, fishing of endangered species or chemical weapons. With this law, the Indonesian government wants to protect the country's traditional industries from foreign takeovers and does not want to expose domestic SMEs to competition with large, wealthy foreign investors. Also the state does not want to allow privatization in industries that are potentially addictive and bad for people's health (Ohno et al., 2022). So, we see that the government has different regulations at its disposal to make investing in its own country easier or more difficult. Figure 4 shows an overview of the tools and thus the influence the state can have on the FDI flows into the country. As already mentioned, after the neoliberal turn voices became louder that globalization does not only bring benefits and a shift from "promotion and facilitation" to "FDI screening" in investment policy became visible. The official reasons are mostly similar, to protect the national champions from foreign competition and/or to protect national security (Lenihan, 2018). Another reason for a state to tighten its investment policy can be a lack of reciprocity. If a country does not receive the same market access abroad as it grants to the same country at home, such restrictions can be used as a form of leverage. There is a fear that a lack of reciprocity will lead to dependence, which is why many countries conclude bilateral investment treaties. In this way, it is contractually stipulated how much market access both countries will receive in each case. Although most countries still want to create an open investment environment to benefit from the positive effects of FDI, at the same time they do not want to blindly allow all investments into the country. Therefore, FDI screening is an adequate instrument to restrict FDI. As the EU has always tended to be open to foreign investors, FDI screening mechanism has also been rare. However, some countries such as France had a screening mechanism in place long before the EU Regulation 2019/452 and therefore had other reasons for this very establishment. France, for example, already regulated FDI inflows in the 1990s to protect itself from the "Americanization" (Lenihan, 2018, p.106). The OECD (2022c) explains, that in countries like Italy, the high number of state-controlled enterprises is the reason for more FDI screening. Denmark is cited as an example of countries that are particularly active in defense production, where rudimentary control has always been essential. Austria, Germany or the Netherlands, on the other hand, asked for more control after a few questionable foreign takeovers. This led to the fragmented patchwork of screening mechanisms at the country level. Figure 5 shows when which EU member states

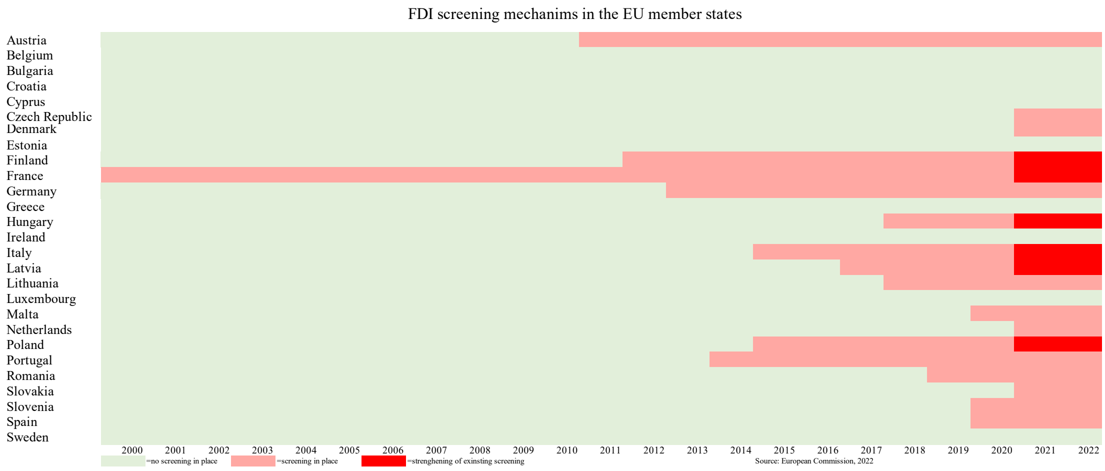
Figure 4 *FDI Restrictiveness policien*



Source: own representation

established an FDI screening mechanism. Here it becomes clear that especially from the mid-2010s onwards, more and more MS relied on state FDI interventions in the form of screening.

Figure 5 *FDI Mechanism of the EU Member States*



Source: Own representation, data from European Commission (2022a)

Therefore, the question arises as to why this shift occurred at that time. The book "Balancing power without weapons: State Intervention into Cross-Border Merger and Acquisitions" by In Lenihan (2018) addresses the question of why states blocked some M&A deals, even with states that were previously allies. The author is convinced, two factors must be present for the protectionist behavior of the state to occur, firstly geopolitical competition and secondly economic nationalism. He believes that states block foreign takeover rather because of competition than because of national security. Moreover, if a state has a high nationalism and regards globalization rather negative, the chances are higher that a state will block M&A deals. If this might also be the answer to why it came to the screening mechanism on EU level will be explored later. On the following pages, the FDI figures of the world and the EU will be described to give a more accurate picture of their international investment behavior[1].

[1] The following information is derived from UNCTAD's annual World Investment Reports. If "EU" is not explicitly stated, the figures for Europe represent the geographic area of Europe and not the European Union.

3 FDI TRENDS

3.1 FDI World Trends

1990 - 2000

At the end of the 1990s, a so-called neoliberal investment policy prevailed, which was particularly practiced by the Western states (UNCTAD, 2000). This was accompanied by the abolition of trade barriers, tariffs and generally a more liberal view towards cross-border investments. “Of the 140 changes in FDI laws in 1999, 131 liberalized conditions for foreign investors [...] over the period 1991-1999, 94 per cent of the 1,035 policy changes favoured investors.” (UNCTAD, 2000, XV). The rapid technological change and intensified competition were driving companies to change their way of thinking. Falling costs for communications and transportation were enabling multinational corporations to integrate production and other company processes across nations in previously unheard-of ways. As a result, the global average FDI in the time span from 1990 - 2000 increased from 204,888 million US$ to 1,356,685 million US$ which makes an increase of 562,15%. However, the increase in FDI values has not occurred equally around the world. In 1999 only ten nations generated 74% of all FDI flows worldwide. Developed countries attracted $636 billion in FDI flows in 1999, nearly three quarters of the world’s total. The top investors and receivers were the United States and the United Kingdom. The beginning of the interconnectedness of the world during this period is linked to the global value chains (GVCs) that emerged at that time. Companies began to move parts of their production processes abroad in search of new markets, resources or cheaper production opportunities and specially to make use of their ownership advantages. These changes in the global economy brought about a 3.8% increase in global GDP, but also led to an increase in global dependency.

2000 - 2010

After the record high in 2000 the global FDI numbers fell sharply between 2000 - 2003 by almost 60%. This was the first drop since the beginning of the nineteenth. The drop in cross-border M&As, particularly in the United States and the United Kingdom, was the most striking aspect of the reduction in FDI in the developed countries. UNCTAD stated, this was due to two paralleling trends. First, the slowdown in economic activity in key industrial economies and second, the decline in their stock market activity. These factors worked together to slow down new FDI, especially the cross-border mergers and acquisitions that had recently propelled FDI. The decline in FDI has primarily affected developed countries (by 59%). Interestingly the central and Eastern European Countries (CEEs) seemed to be immune to those changes. Why some countries are less affected by the recession than others can only be speculated. UNCTAD (2002) believes that developed countries react much stronger to the fluctuations of economic cycles. Moreover, CEEs are much less involved in global FDI flows and therefore not as intertwined in the fluctuations.

The fall in FDI figures in the years between 2000 and 2003 reflect a deep recession at that time. Economists at Dresdner Bank called 2001 the weakest economic year since 1982 (Kirschning, 2001). It should be noted, however, that it is completely normal for FDI numbers to fluctuate, since they depend on business cycles and, as the word cycle implies, they go up and down. These patterns in the world economy have been observed before. UNCTAD (2002) writes "this is the third downward cycle in FDI, each punctuating a long upward trend in FDI every ten years or so." (p. 4). The difference to the past years, however, is the more and more interconnected world, meaning fluctuations in one nation can create waves and thus cause other nations, or the whole world, to oscillate. What UNCTAD did not consider to be a factor influencing the recession of the time were the terrorist attacks on Sept. 11, 2001, in New York. Despite the attacks, there was no indication of reduced cross-border investment. The years between 2003 and 2007 were characterized by sharply rising FDI figures, culminating in an unprecedented record high of US$ 1,905,473 million in 2007. This represents an increase of 246.48% in 4 years. Surpassing even the record year 2000. The United States, the United Kingdom, France, Canada, and the Netherlands were the top five recipients of FDI, respectively. The largest host region, accounting for about two thirds of all FDI inflows into developed countries, was the European Union (EU). Developing countries hit their greatest level ever ($500 billion), up 21% from 2006. Together they scored a higher level than the EU in 2004, reflecting the re-localization of manufacturing sites to developing countries. Especially the advancing cross border M&A catapulted FDI numbers upwards and led to a record number of M&A deals, which in 2007 was even 21% above the record in 2000 (UNCTAD, 2007).

In its world investment report 2008 the UNCTAD speaks for the first time about the concerns about sovereign wealth funds (SWF). “SWFs are government investment vehicles that are funded by the accumulation of foreign exchange assets and managed separately from the official reserves of the monetary authorities” (UNCTAD, 2008, p. 22). Unlike equity funds, these are financed by governments. This type of funding has been around for a long time but has remained under the radar in the years before. In 2008, the volume of SWFs was already nine times higher than that of equity funds. Countries with high natural resources like oil can forgive particularly large SWFs, for example Saudi Arabia or China. In recent years, companies in these countries have invested in foreign firms with the support of government funds, targeting in particular developed nations such as Germany, the USA and the UK. Although in 2008 only 0.6% of global FDI flows came from such sources, the growth was that enormous that UNCTAD (2008) describes it as "dramatic" (p. 22) which “aroused some negative public sentiment in several developed countries, provoking new fears of protectionism and policy moves to change legislation on FDI (Ibid). After reaching a record high in 2007, FDI figures fell rapidly in the years thereafter (by 35% between 2007 and 2009), triggered by the financial crisis. In particular, the number of M&A deals declined dramatically. As already mentioned, countries that were less linked to the US banking system were less affected by the turmoil of the financial crisis. In addition, crisis-ridden companies in the global West were desperate to find rich partners in other parts of the world. They offered generous discounts to these potential buyers, which is why, supported by SWF, the eastern countries of the developing world invested vigorously in companies in the West. But that wasn't the only change in FDI landscape due to the crisis. In 2007, FDI flows into the least developed nations reached a record high of $13 billion. The importance of emerging nations as FDI sources increased at the same period, with outflows reaching a new record high of $253 billion, mostly as a result of the international development of Asian TNCs. The ongoing consolidation through international mergers and acquisitions (M&As) made a significant contribution to the global boom in FDI. Such M&A transactions had a value of $1,637 billion in 2007, 21% more than the previous peak in 2000. Globally and nationally, overall policy tendencies during the crisis have been mostly in favor of FDI. An approach to FDI that is more limited has, however, arisen in some nations. Growing evidence of "covert" protectionism can also be observed (UNCTAD, 2010a).

The years 2000 - 2010 were characterized by highs and lows. Starting with the prosperous economic times in 2000, followed by a recession, to the record figures in 2007 and again the drastic fall, due to the financial crisis. It is evident from these cycles that FDI numbers are highly responsive to external crises and shocks. And to mention it once more, the interconnected world can no longer insulate a national shock with the country's borders. Globalization also means shared economic crises.

2010 – 2022

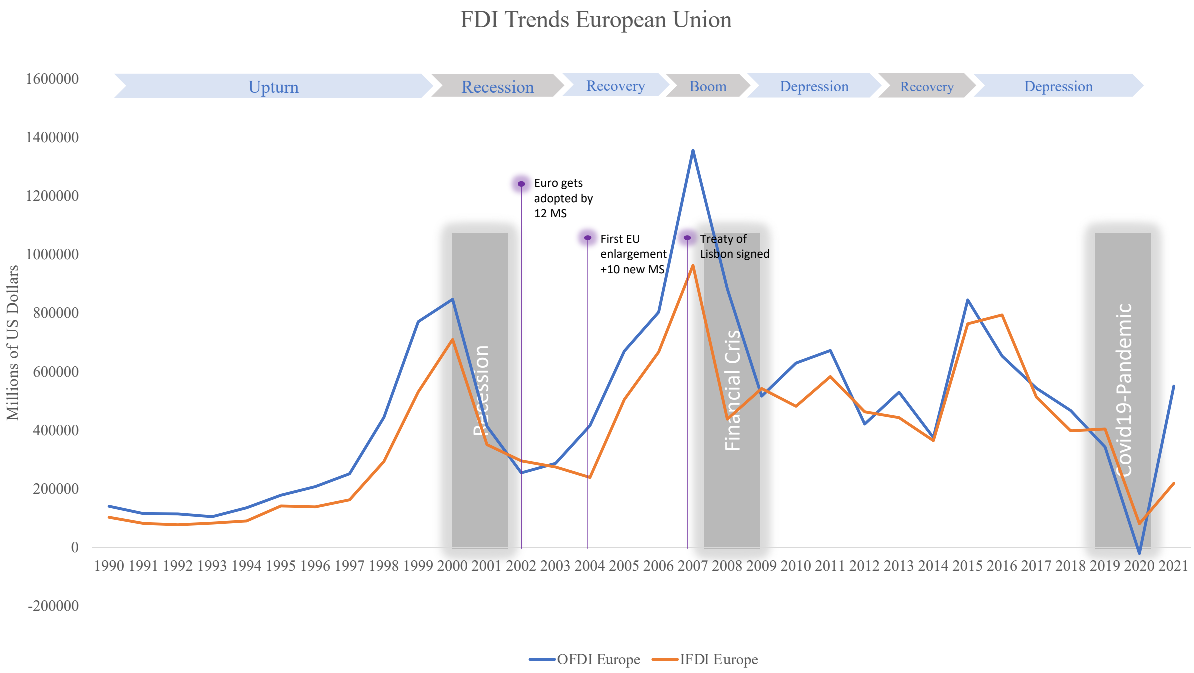
Between 2010 and 2014, global FDI figures fluctuated around US$1.4 trillion with a slight peak in 2011 at US$1.6 trillion. In the year from 2014 to 2015, FDI numbers increased by 47% to over US$2.06 trillion (UNCTAD, 2016). Between 2017 and 2019, global FDI numbers declined, these ups and down are mainly due to an increase or decrease in global M&A deals. FDI figures are massively dependent on the number of M&A deals per year, as these account for the lion's share of the global FDI numbers. Additionally, the 2017 tax reform in the United States led numerous multinationals to repatriate foreign earnings back to the US, which led to negative FDI outflows at the beginning of 2018. In the second half that year, the repatriation effects waned and the FDI outflows became positive again (UNCTAD, 2019). In the world investment report of 2018, the UNCTAD (2018) speaks of stronger restrictions of the individual nations. More and more governments are trying to protect themselves from takeovers in their critical core infrastructures. From 2019 to 2020, the Covid-19 pandemic punched another hole in already falling FDI statistics. In 2020, FDI flows were below $1 trillion for the first time since 2005. The pandemic attacked FDI flows in several ways. First, it affected global commodity chains, with lockdowns in producing countries leading to production stops, resulting in goods shortages around the world. Transportation chains suspended for similar reasons. In addition, demand fell as stores and most public outlets closed. Sales via the Internet increased but could not compensate for offline sales. The falling demand combined with the uncertain outlook and the general novelty of this crisis led to a decline in investment. In 2020, the magnitude of the pandemic came to light. The fall in FDI figures particularly affected the developed countries, where direct investment fell by 58%. Interestingly, only an 8% drop was recorded in developing countries. This was mainly due to the resilient countries in Asia, led by China. As a result, developing countries accounted for two-thirds of FDI figures in 2020, compared to less than half in 2019 (UNCTAD, 2021).

Admittedly, looking only at a short period of FDI flows does not say much about the fundamental attractiveness of a location or the economic power of a nation. After all, major projects that are completed in a particular year distort the statistics at that point in time. In 2021, the global economy recovered from the pandemic and, as a result, FDI flows increased by 64% from 2020 to 2021 (UNCTAD, 2022). Many governments provided investment stimulus packages to help their countries' businesses get back on their feet and boost international investments. However, it is uncertain prospect of 2022/23. The war in Ukraine, inflation in the global West and the ongoing energy and oil crisis suggest a decline in FDI numbers in the future. A look at the past shows that uncertain times are usually accompanied by risk aversion behavior. Admittedly, looking at short periods of time does not say much about the fundamental attractiveness of a location or the economic power of a nation. After all, major projects that are completed in a particular year distort the statistics at that point in time. Long-term observations are therefore more meaningful.

3.2 FDI Trends in the European Union

FDI flows in the EU follow a similar pattern to global FDI trends. Between 1990 and 2000, an upturn phase can be identified. This reflects the global upswing in FDI flows. At the beginning of the 2000s, the United Kingdom became the worlds, and thus Europe's, largest FDI donor and recipient. Sweden followed in second place. This was due to the mega merger between pharmaceutical manufacturers Astra (Sweden) and Zeneca (United Kingdom). At the end of the 1990s, the United States was the most important investment partner (extra-EU investor) of the EU. Most of the IFDI came from the United States and most of the EU's OFDI went there, while M&As made up most of the sums. In 2001, intra-EU investments overtook the USA in their place as the most important investor in the EU. In addition, investments in the eastern European countries, especially in the transition countries, increased in importance. The mega deal by Vodafone (UK) to buy the German company Mannesmann made Germany the largest recipient of FDI in the EU for the first time in 2000 (UNCTAD, 2001). This shows how volatile FDI indicators are and how it is always useful to look at long-term studies and to set the numbers in context. In 2001 after the record high the recession started in the EU, as it did in the rest of the world. IFDI and OFDI of the EU, including intra-EU FDI, declined by about 60 per cent in 2001 (to $323 billion and $365 billion, respectively). Including intra-EU FDI flows, the region as a whole continues to exceed the US as an investor and recipient, as it has since 1998. During that time one could observe much less M&A deals, the United States remained the most important investment destination outside of the EU (UNCTAD, 2002). By 2003, FDI figures had fallen worldwide, as well as in the EU. Interestingly, due to transshipped FDI, in "2002 Luxembourg was the world's largest outward investor and largest FDI recipient, accounting for about 19% ($126 billion) of world inflows and 24% ($154 billion) of outflows—and […] more than a third of the combined EU inflows and outflows. The country's share of EU GDP is only 0.2%. Compared with domestic investment of $4.4 billion in 2002, its FDI is impressive." (UNCTAD, 2003, p. 69). Transshipped FDI are FDI flows that enter one country and are subsequently transferred to another country. This happens, for example, when a holding is created in a country with special tax advantages. In the following year(s), the money is transferred to a third country to finance, for example, a merger deal or a greenfield investment. The country in which the money is only re-directed usually has no advantage from such transactions. “Such transshipped investment, is estimated at about 80% of the inflows to and outflows of FDI from Luxembourg.” (UNCTAD, 2003, p. 69). In 2007, FDI into the 27 EU nations increased by 43% to a total of $804 billion. 2007 brought a boom in FDI, both globally and in the EU. A new wave of cross-border acquisitions resulted from the enlargement of the EU. Across a wide spectrum of service and manufacturing industries, cross-border M&As increased significantly in value and volume (UNCTAD, 2008). The high in 2007 was followed by the global financial and economic crisis. The United Kingdom was hit particularly hard. In 2008, IFDI to the EU fell by 40%. This depression continued until 2014. In 2015, FDI indicators recovered Europe became the world's largest investor region and the world's largest investment region (UNCTAD, 2010b, 2016). FDI increased by 85% to $576 billion in Europe, making up more than one-third of the global total. With $113 billion in outflows, the Netherlands became the number one investor country, Ireland made second spot. Outflows from Ireland more than doubled to $102 billion. Germany continued to be one of the top investing nations despite its outflows declining by 11% to $94 billion. Ireland France and Belgium were the three largest FDI destinations within the EU (UNCTAD, 2016). Looking at the OFDI and IFDI curves of the EU in 2016, it becomes clear that for the first time a strikingly larger amount of OFDI was achieved compared to IFDI. In 2016, European outflows fell by 35%, while investments to Europe fell by 9%. In the years between 2017 and 2019, the IFDI and OFDI figures of the EU fell, this trend was further supported by the Covid-19 pandemic. It was not until 2020 that foreign investment was observed to increase again.

Figure 6 *FDI Trends in the European Union*

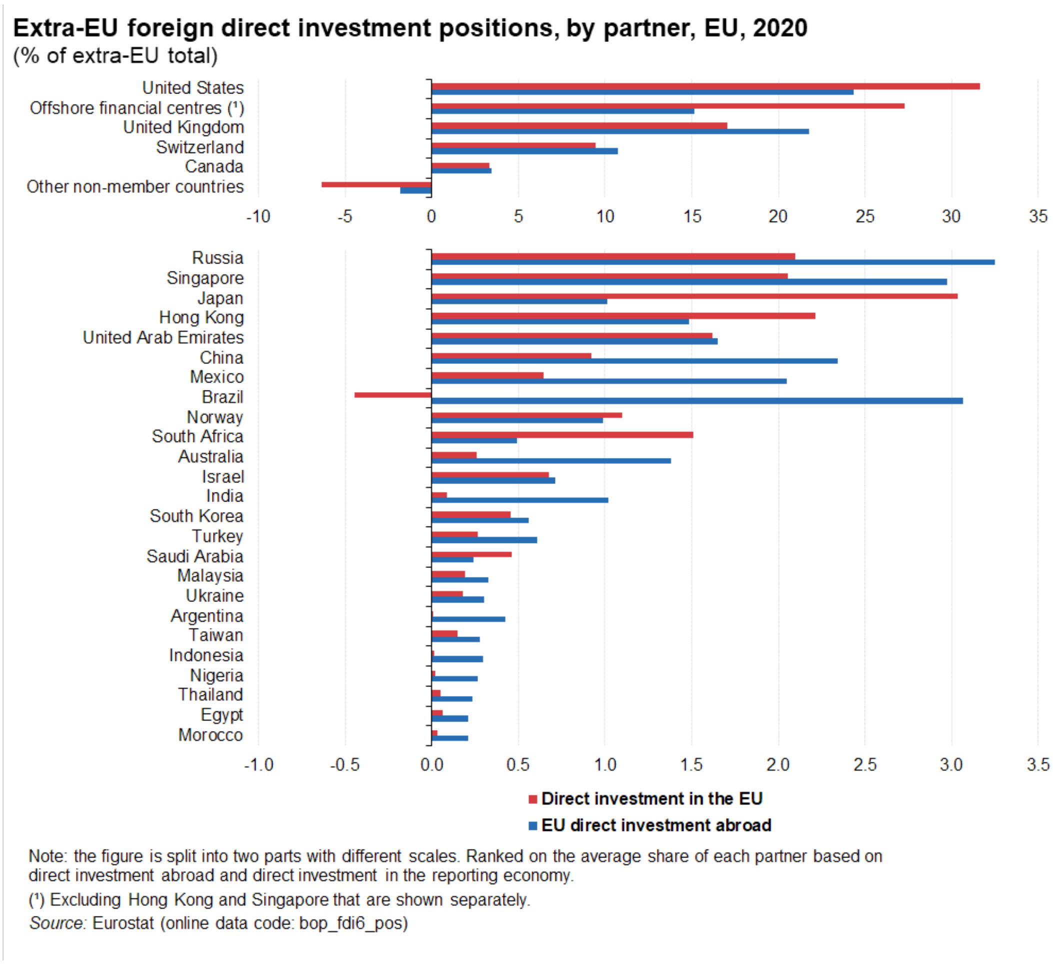


Source: Own representation, data from UNCTAD *(2022)*

3.3 EU's inward and outward investment by partner

If we look at the main investment partners of the EU, it becomes clear that the largest share of foreign direct investment in the EU comes from a handful of investor countries, mostly from the developed countries. Figure 8 makes this clear, between the five largest investors and the rest is such a large difference in volume that here two different scales had to be used. The list of investors in 2020 is headed by the United States, which accounts for 31.5% of FDI in the EU. The USA is followed by the UK, Switzerland and offshore financial centers. China in comparison accounts for only 0.9% of the investments. The EU on the other hand invests about 2.3% of its OFDI stock in China. The EU has this positive balance in most cases. The EU invests mainly in developed and developing countries. Again, the US leads the list of partner investors, in which the EU invested 24.3% of its OFDI. It is followed by the UK, Switzerland, offshore financial centers and Canada. A majority of the stocks of FDI in the EU held by off-shore financial centers were held by investors registered in Bermuda, Jersey, the Cayman Is-lands and the British Virgin Islands (Eurostat, 2022a).

Figure 7 *Extra-EU foreign direct investment positions, by partner, 2020*



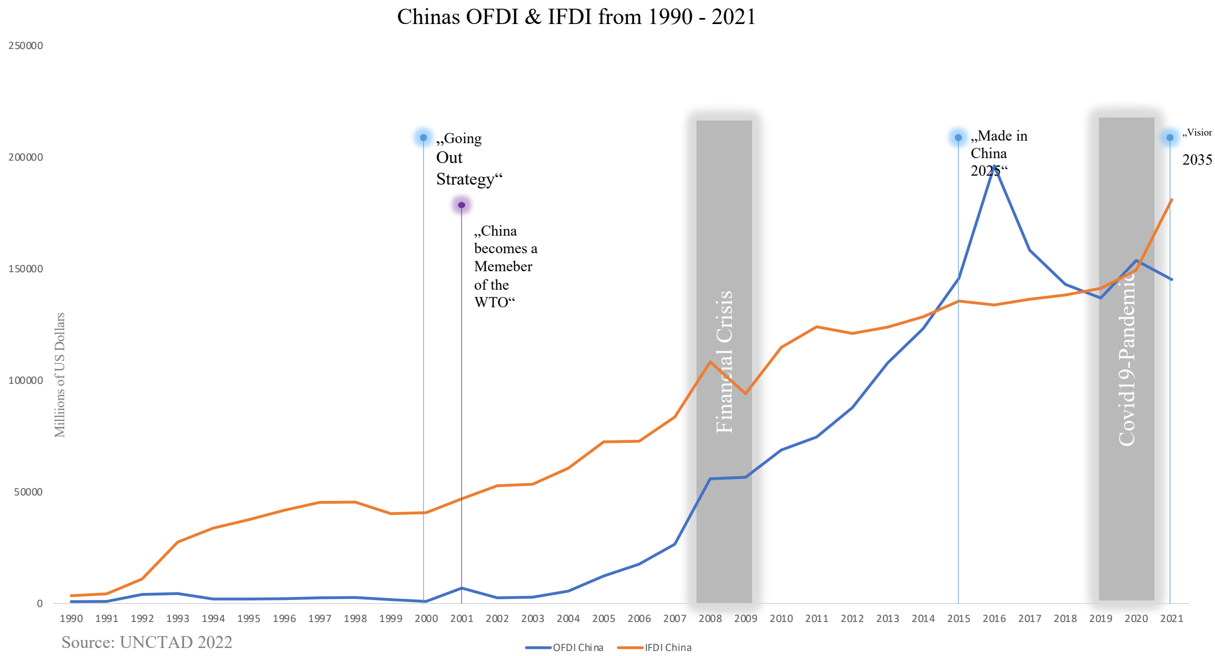
Source: From Eurostat (2022a)

4 CHINAS IMPACT

4.1 China and FDI

China's FDI figures, outward as well as inward, say a lot about China's investment policy. Unlike most other developed countries, China's IFDI and OFDI exhibit less severe cyclical fluctuations. Both values have shown more or less constant growth since 1990. From 1990 to 2014, China's inward direct investments were mostly higher than their OFDI, meaning it experienced a negative Net International Investment Position (NIIP). The NIIP measures the balance between a country's investment abroad and foreign investment at home. It includes direct investment, portfolio investment, other investment and foreign assets. A positive or negative NIIP thus shows whether a country is a creditor or debtor nation. "The NIIP is an important barometer of a nation's financial condition and creditworthiness." (Ganti & Estevez, 2021, p. 1). From the 2000s onwards, China became an increasingly interesting investment destination for the rest of the world, especially for the developed countries. Not for nothing China got the name "factory of the world". A large part of the production, which had previously taken place in the developed countries, was now outsourced to China. Low wages, less environmental regulations, lower safety standards played into the hands of foreign investors. But it was not only the nation's circumstances that made it attractive to foreign investors; also the Chinese government opened its borders to attract foreign funds with special tax and institutional reforms in 1979. This later led to the opening of special economic zones, namely Guangdong Province, which became the top IFDI recipient zones (Witkowska, 2019). In 2005 China became the third largest FDI host country, in 2008, particularly high IFDIs were achieved, in line with the global trend of record numbers the year before (UNCTAD, 2008). In the following year, the year of the financial crisis, IFDI fell sharply and then kept on rising like the years before. In 2015, China broke even for the first time, with OFDI exceeding their IFDI. This was due to the national economic policy, which placed great emphasis on the internationalization of domestic companies. China was thus able to keep achieving a positive NIIP until 2018, when OFDI fell below FDI again for the first time. Looking at the country's OFDI, a steady but moderate upward trend between 1990 and 2004 becomes apparent. However, from 2005 onward, OFDI flows grew much more rapidly. Between 2004 and 2005 OFDI increased by 123%, and between 2007 and 2008 by 111%. In the years after, it showed an annual growth of about 10% (UNCTAD, 2022). The geographical distribution of Chinas OFDIs shows that in the early 2000s, resource-rich countries such as Africa and Latin America were particularly interesting for Chinese Investors. To put it into the words of Dudas and Rajnoha (2020), China was particular interested in "markets with a combination of large natural resources and poor institutions" (Dudas & Rajnoha, 2020, p. 317). However, this changed after the financial crisis of 2008 - 2009, when Chinese investors started to buy up European companies that had got into financial difficulties at low prices. In 2016, the country reached an unprecedented record high in OFDI with a peak of US$ 196,149 million. This represents a percentage increase of 35% over the previous year. After that, OFDI leveled off until 2019, rose again briefly in 2020, and then fell again due to the aftermath of the Covid-19 pandemic. While the U.S. and the EU show classic "ups and downs" of a business cycle, China confirms with a steady growth trend, excluding the years that were affected by the pandemic. It is evident that China is only slightly linked to the economic cycles of these two economic groups. In 2016, China's OFDI figures approached those of the U.S., which long led the list of the world's largest investors, for the first time. Due to high profit repatriations of the US and the resulting low OFDI, China even overtook the US in 2018. And due to sharply declining EU figures during the pandemic, China even achieved higher numbers than the EU for the first time in 2020. However, it must be added that the EU and the US showed very resilient FDI flows in the years following the respective crises and directly overtook China again. From Chinas consistent growth numbers, we learn that the country seems less vulnerable to crises than the other economies (UNCTAD, 2022). Today, it is impossible to imagine the list of leading FDI nations without China. In 2021, China was the second largest host country for FDI after the USA and the fourth largest home country after the USA, Germany and Japan (UNCAD, 2022). However, compared to the other three it only makes a tiny share of the world total FDI flows.

Figure 8 *Chinas FDI figures, own representation*



Source: Own representation, data from UNCTAD (2022)

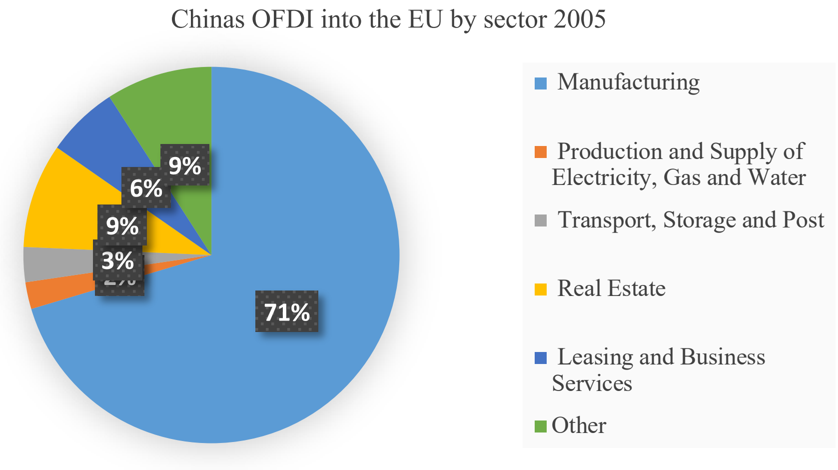
4.2 Going Out, Made in China Initiative and Vision 2035

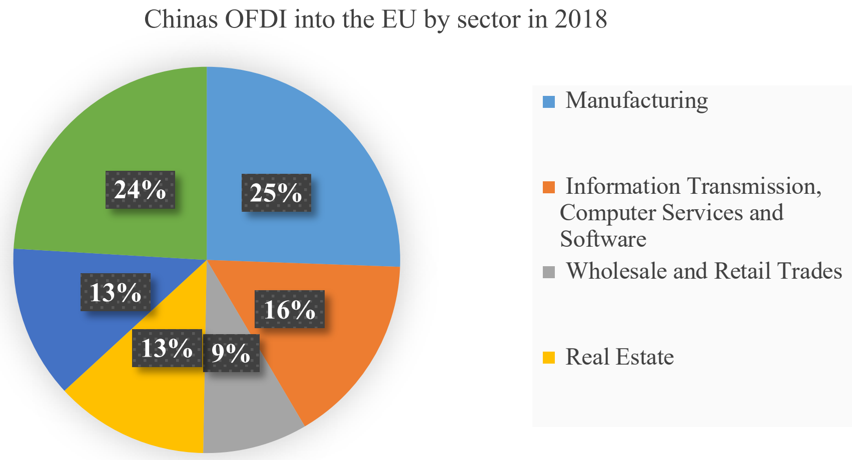
In May 2015, the Chinese government adopted the "Made in China 2025" (MIC) strategy. The strategy was modeled on the German "Industrie 4.0" concept. While the concepts are similar, the ambition measured in terms of budget, is much higher in China. In 2015 alone, the first year of the MIC strategy, 300 funds were set up with the equivalent of 202 billion euros at their disposal. In comparison, the Germany government provided about two billion euros (Geinitz, 2022). Made in China 2025 is a ten-year governmental plan of the "Chinese Dream of National Revival". Its goal is to become a "manufacturing superpower" by 2025 and a "leading manufacturing superpower" by the centennial of the People's Republic of China in 2049. By then, China shall have developed into a society with high prosperity (Zenglein & Holzmann, 2019). Originally, ten priority industries were identified, from information and agricultural technologies to new materials and medical and pharmaceutical products. Since 2017, the spectrum has differentiated into over 100 industrial sectors. With the revision in 2018, completely new aspects were added to China's innovation policy: the development of innovative financing instruments, brand design or new technologies such as blockchain or artificial intelligence. Companies in these fields are now financially supported by the government and in other ways. If entrepreneurs behave in line with the MIC principles, they can expect goodwill from the government; the opposite holds true for opponents of the system. However, the Made in China strategy is not the only ambitious plan for the future of the People's Republic. The “One Belt, One Road” (OBOR) initiative and the "Going Out” strategy should also be mentioned. The former aims to connect the far east physically with the Europe through adequate infrastructure, by rebuilding the ancient Silk Road into the New Eurasian Land Bridge and by adding a new sea route (China-Europea Sea Express Line). “Massive investments in these infrastructure networks have already been made. By April 2018, eighteen Chinese cities had opened direct railway container services to European cities. Furthermore, the Port of Piraeus in Greece is being transformed with Chinese capital into an important hub port as an element of the oceangoing route” (Witkowska, 2019, p. 93). The Going Out-Strategy is concerned with Chinese companies investing strategically in the Global West. In 2001, when China became a member of the WTO their export activities increased heavily. Low labor costs in the country attracted foreign investors, which accumulated high amounts of foreign exchange reserves (Jacimovic et al., 2018). These were mostly invested in US bonds for the time being. Due to low returns and the fear that US bonds would lose value during the financial crisis, Chinese companies were supported with these funds to invest in firms abroad (Lombardi & Wang, 2015; Popławski, 2017). As long as the foreign business was promising and not too risky according to the Chines government, the companies were even allowed to take on debt. The China Development Bank and Chinese bank Exim were encouraged to financially support these companies implementing the Going Out-Strategy. Geinitz (2022) estimates that the two banks together lend at least $50 billion a year to Chinese companies, that is more than the World Bank.

State-owned enterprises (SEO) play an important role when talking about the Chinese economy. Many key Chinese industries are dominated by SEOs, exemplified by transportation, finance, and utilities. At this point, it should be noted that Chinese SEOs are characterized by their unequivocal support for the government's plans and views. At both the national and provincial levels, politics has a say in business. It holds management positions, provides money to state banks or decides on deals. The influence and connection to the Chinese Communist Party (CCP) is beyond question (Geinitz, 2022). Or to put it into Blomkvists (2016) words "Chinese OFDI cannot be understood without reference to the Chinese government and its policies" (p. 346). Although the number of State-Owned Enterprises has declined during the opening policy, they continue to play a crucial role. They now account for only five percent of all Chinese companies, but because they are so large, they make up an enormous share of sales in the Chinese domestic economy. The European Chamber of Commerce in Beijing has counted 167,000 state-owned enterprises, which together account for half of the Chinese economy (Ibid.). Di Fabio et al. (2020) write that the SEOs are given preferential treatment by the government, are nurtured with loans and receive loans more easily from banks, which are also state-owned. 80% of all loans go to Chinese SEOs, which is why the debts of public enterprises have quadrupled since 2007. SEOs also play a driving force in foreign direct investment. Depending on how the state plans, this is how SEOs place their investments abroad. In 2017, the second year after the publication of the MIC, the share of SEOs in FDI in the EU increased from 29 to 73%.

In the early phase of Made in China, Chinese companies invested in European companies almost at random. Due to the lack of strategic purchases, some deals failed, and the Chinese investors lost large amounts of money (Geinitz, 2022). Since November 2016, the Chinese government has gradually tightened regulations on foreign acquisitions. The new regulations culminated in the so-called "Guiding Opinions for Outbound Direct Investments" in August 2017. They were jointly promulgated by the four most powerful state institutions entrusted with foreign economic affairs, the Foreign Affairs Bureau, the Ministry of Commerce, the Central Bank and the Ministry of Planning NDRC. Chinese enterprises are encouraged to invest abroad in the following fields: high technology, advanced industrial manufacturing, research and development, energy, financial services and logistics (ibid). The latest plans and expansion to the MIC lines are found in the 14th Five-Year Plan to 2025, Vision 2035, by which time China's gross domestic product is expected to double, which would finally see the country overtake the USA.

Figure 9 *Chinas OFDI into the EU by sector 2006 & 2018, own representation*



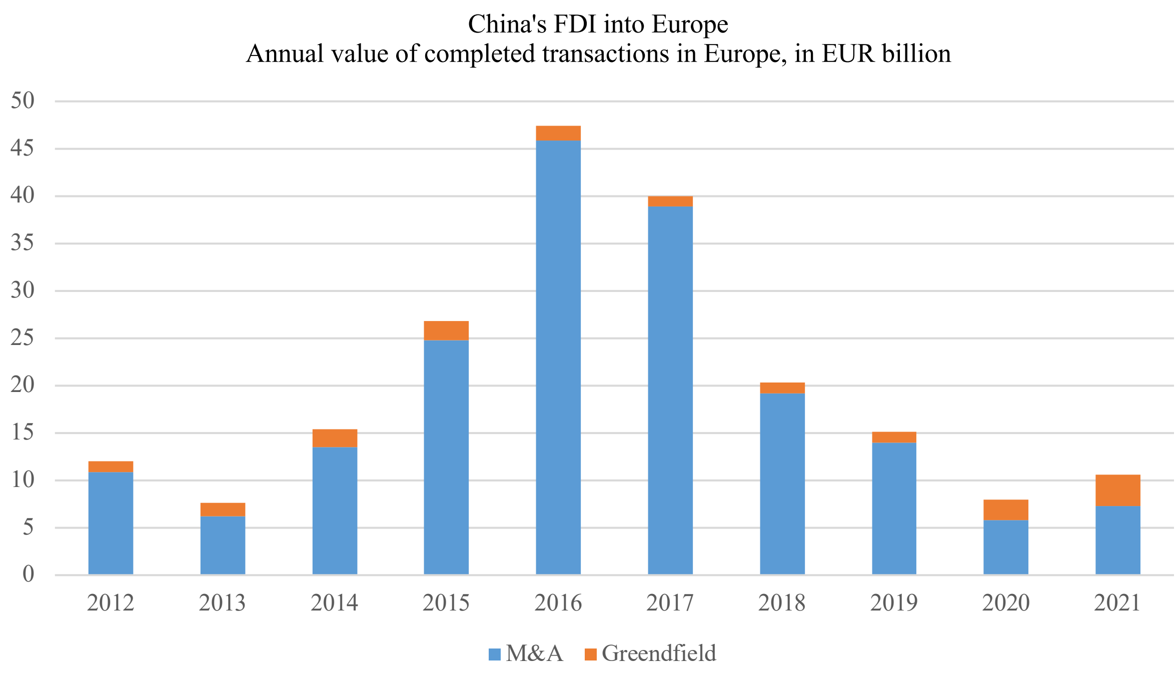


Source: Own representation, data from National Bureau of Statistics of China (2006, 2019)

4.3 China and the EU

China's interest in European companies started around 2001 - 2003. Until around 2010, China was also interested in emerging and developing countries as investment destinations like Africa and South-East Asia. However, in the meantime, mostly the developed economies dominate the table (Jacimovic et al., 2018; Nicolas, 2014). European companies were particularly interesting for Chinese investors. In 2014, 30% of all new Chinese FDI involved American and European companies; in 2016, 33% of all deals involved European companies alone. This high share has been maintained or even increased since then. Today, Europe still accounts for a third of the Chinese cross-border deals (Geinitz, 2022). From the European perspective, China is not the largest investor in Europe, but in terms of growth it is. No other investor, not even the USA, has been able to increase its investments so quickly (Nicolas, 2014). However, China's investments represent only a fraction of foreign investments in the EU (Eurostat, 2022a; Geinitz, 2022). But Nicolas (2014) is of the opinion that “the trend of rapidly rising Chinese investment in the EU matters more than the absolute amount being invested” (p. 104). Besides, China still has plenty of room to grow: The total stock of Chinese outbound direct investment worldwide still only represents 10 percent of its national GDP. This isn’t so much if we compare it to for example France or the UK, where OFDI represents more than 50% of the nation’s GDP (Germany 39 %, the United States 34 % and Japan 28%) (UNCTAD, 2017).

Figure 10 *Chinas FDI into Europe, by Rhodium Group 2022*



Source: Adapted from Kratz et al., (2022b), p. 5

The think tank MERICS summarizes the current trends of the Chinese in the EU: In 2021, China's FDI in the EU increased, but remained one of the lowest values since 2013. In addition to M&A, which was the preferred (but also more questionable) entry mode in recent years, greenfield investments are also receiving more attention. In 2021, Chinese greenfield investments in the EU already accounted for one-third of all Chinese FDI deals. The Netherlands, Germany and France were the most popular investment destinations for the Chinese in 2021. For another year in a row, the number of SOEs dropped by a full 10% from 2020 to 2021. Consumer products and the automotive industry were the most sought-after sectors for Chinese investors, followed by pharmaceuticals, information and communications technology and energy (Kratz et al., 2022a). By looking at the past it reveals that China does not invest in the same industries in all EU countries. It is noticeable that it chooses the respective industry for which the respective member state seems superior. For example, machinery in Germany or design in Italy (Nicolas, 2014). This suggests that Chinese investors are less market-oriented than strategic asset-oriented. In other words, it is a matter of strategically searching for and buying up know-how while at the same time diversify their industries (Geinitz, 2022). Blomkvist and Drogendijk (2016) show in their studies that between 2003 and 2012 strategically targeted firms with a high number of registered patents. Di Fabio et al. (2020) confirm that Chinese companies do indeed seek out firms with many patents. They add that Chinese investors focus on strong European companies with low profitability, lofty leverage and high asset values. For a long time, the EU member states welcomed Chinese money with "open arms" (Chan & Meunier, 2022, p. 523). Especially during the financial crisis of 2008-2009 and in the years that followed, Chinese investors turned out to be trustworthy sources of finance when it came to rescuing crisis-hit companies. Chan and Meunier (2022) explain: "Chinese investors were often the only bidders and therefore the "savios" when owners of family-run small and medium enterprises retired." (p. 526). The EU praises itself for its liberal and investment-open environment, which was apparently the reason for the economic growth there. The USA, for example, had introduced a screening mechanism for foreign investors much earlier, which led to a noticeable decrease in Chinese investment there (Chan & Meunier, 2022; Shuyan & Fabuš, 2019). Zhang and Van Den Bulcke (2014) even speak of "hostility that Chinese investors encountered in the USA where CFIUS indirectly blocked some notorious mergers and acquisition (M&A)" (p. 161). Nevertheless, voices were also raised within the EU that Chinese investments should not be accepted so blindly.

4.4 China and the CEEC's

With the EU enlargement in 2004 and 2007 of the Central and Eastern European Countries (CEEC), China's investment destinations also increased. By no means the new EU states were only seen as a "Trojan horse" to reach the other more restrictive but more prosperous states, but rather as a promising investment opportunity. This was due to several reasons. First, membership in the EU promised an economic upswing in the new member states and offered therefore a good investment opportunity. Second, CEECs were very open to Chinese financing, as U.S. investors, for example, continued to blindside them in terms from funding. China as an investor helped to diversify, as CEECs were heavily dependent on funds from the old MS (Witkowska, 2019). Third, all of the new MS are parts of the former Soviet Union and thus former communist countries. This explains an inherently closer bond with China than the other MS have(Clegg & Voss, 2011; Jacimovic et al., 2018). Fourth, China also preferred greenfield projects as an entry mode to invest in the new MS. In general, such investments are perceived more positively by domestic governments as they are linked to the creation of new jobs. Fifth, obviously the Eastern countries are geographically closer to China. The CEECs thus move the EU a bit closer to the planned "new Silk Road". The connection between the new MS and China is clearly demonstrated by the four consecutive summit meetings that have already taken place in Warsaw, Bucharest, Belgrade and Suzhou to discuss future investment projects. Looking at the type of investments, however, it becomes clear that the CEEC cannot compete with the old MS in any way. Only a fraction of the Chinese money flows to the East (mainly to Bulgaria, Poland and Hungary). Most of the money is invested in infrastructure projects such as port building, distribution and logistics, assembling or local production. The Chinese investors show an increased resource/production seeking approach (Witkowska, 2019).

4.5 EU's incipient concerns about Chinese IFDI

The concerns about Chinas impact through FDI grew mainly due to Chinas record OFDI in 2016, paired with the lack of reciprocity when it comes to market access. First, China indeed has easier access to the EU market, than the other way around. This means there is a reasonable concern that FDI into Europe may lead to a one-sided transfer of modern technology and related economic activities from Europe to China. Second, the key sectors selected for investments are in line with the focus of China’s current industrial policy (Made in China 2025), with which they aspire to become the world's economic superpower. In addition, the Chinese have an enormously high budget of foreign reserves, which allows them to "just go shopping in the West". France was one of the first EU-Members which had established a FDI screening mechanism and was eventually gaining support from Germany, after several questionable deals in 2016. One example of this is the case of the German robot manufacturer KUKA, which exemplifies the change from welcoming to rejecting Chinese investment. The takeover of the Chinese investor was initially greeted positively, with hopes of jobs, financial resources and access to the Chinese market (Popławski, 2017). However, there was growing concern in the German government that German technological and engineering know-how was flowing away to China - and that the Chinese were ultimately interested in gaining geo-economic supremacy. Therefore the German government wanted to block the deal and was even searching for other bidders, preferably from the EU (Geinitz, 2022; Popławski, 2017). This was futile, because fed with state funds, Chinese investors can pay top prices without having to worry about returns (Lamparter et al., 2016). Until now, the German government can only ban foreign investments if they endanger internal or external security or the critical infrastructure. This was not the case with the takeover of Kuka, which is why the takeover succeeded and the German flagship company was transferred to the Chinese. The shortly following visit of the then German Minister of Economics Sigmar Gabriel to Beijing therefore took place in a "cool" mood (Popławski, 2017, p. 6). Many of the meetings were canceled and within the German government a plan was thought about how such deals can be stopped by the government in the future. As mentioned earlier, the inconsistencies ended with EU Regulation 2019/452. Between 2016 and 2018, OFDI to the EU decreased significantly. To be precise, Chinese OFDI fell by 50% after the record high in 2016 (Kratz et al., 2022). It would be too easy to blame this solely on the stricter FDI controls in the EU. As mentioned above, controls in China on OFDI have also become stricter. The Chinese government no longer approved all overseas purchases if they did not follow the overarching strategy (Ibid.).

Now the question to be answered is, what makes China such a suspicious investor? In their paper Bickenbach and Liu (2018) tried to get to the bottom of this. They are of the opinion that China's investments might trigger concerns due to its nature: its “novelty and rapid growth” (p.15). Also, Chan and Meunier (2022) talk about China's “novelty” (p.521). But can the behavior of the Chinese really be considered "new"? Perhaps the rush of Chinese investors was unexpected, but the behavior is just history repeating itself. The French warned of Americanization as early as the 1960s, when they observed how more and more US companies were buying up European firms (Lenihan, 2018). And, this also happened the other way around: in the 1990s, EU firms invested in companies in the Silicon Valley in order to profit from the R&D hotspot there, or Japanese companies tried to gain access to the know-how of the automotive industry in the American market (Guimón, 2011). Already at the beginning of this paper, strategic asset seeking was cited as an explanation for direct investment (see section 2). Such behavior can therefore under no circumstances be labeled as "new". Another explanation must therefore be found. Bickenbach and Liu sum it up in their 2019 paper: “China has repeatedly demonstrated its willingness to use its economic power to exert political pressure on other countries, or to punish them for political decisions that violate China’s political interests – with some success. [Although], its economy is characterized by widespread state influence, ambitious industrial policies, and a multitude of restrictions and discriminations of foreign companies. Politically, China is a one-party authoritarian state with a tenuous record for protecting individual rights and the rule of law. It is also an emerging military superpower with geopolitical ambitions and foreign policy goals that are often at odds with those of European countries” (p. 15). It can be concluded that China is a thorn in the side of European companies in many respects. Likely, fear of the growing superpower from the West has driven protectionist economic policies, namely the regulation of the screening mechanism.

Digression: China and the EUs Trade Agreement - Comprehensive Agreement on Investment (CAI)

The Sino-EU trade partnership changed in the early 2000s as China emerged from primary FDI recipient to a serious FDI donor. China's importance in the global economy was growing and new rules were needed to ensure a level playing field between the economic powers. Already in 1982, Sweden was the first European country to sign a Bilateral Investment Treaty (BIT) with China, the other MS did the same and in 2014 all MS except Ireland had BITs with China. In 2000, the EU declared China as its strategic trading partner (Fallon, 2014). With the increasing financial flows between China and the EU, the need to negotiate a new EU-wide trade agreement with China increased as well. Some countries still had their BITs from the 1990s in place, thus it was important to align and update the individual BITs of the MS. Also, the EU countries still did not have the same access to the Chinese markets as the other way around. Therefore, the proposal for a Sino-EU trade agreement was developed in 2013, but not signed until 2022. First negotiations appeared to be on track as the Directorate-General for Trade said in (2016): “The outcomes of this week set the negotiations on a good track to expect a deal offering a real added value for EU and Chinese firms investing in their respective markets. The negotiators will continue working intensively throughout 2016 in order to hammer out the details of the agreement”. In 2020 when the EU and China had finally concluded the agreement, the Commission released press statement in which President of the European Commission Ursula Von der Leyen stated: “Today‘s agreement is an important landmark in our relationship with China and for our values-based trade agenda. It will provide unprecedented access to the Chinese market for European investors, enabling our businesses to grow and create jobs. It will also commit China to ambitious principles on sustainability, transparency and non-discrimination. The agreement will rebalance our economic relationship with China” (European Commission, 2020a, p. 1). However, delays occurred when in 2021 the EU imposed sanctions on the Chinese participation of the repression of the Urighur Muslim minority. In response, the Chinese government retaliated by announcing sanctions against ten European participants who raised the issue of China's human rights violations. The Embassy of the People's Republic of China denied the accusations: "[The EU] must stop lecturing others on human rights and interfering in their internal affairs. It must end the hypocritical practice of double standards and stop going further down the wrong path. Otherwise, China will resolutely make further reactions."(Ministry of Foreign Affairs of the People's Republic of China, 2021). Despite other disagreements, such as China's sanctions against Lithuania for allowing a Taiwanese embassy in their country, Germany and China countries were able to sign on the Trade Agreement 2022. The Comprehensive Agreement on Investment will be the "most ambitious agreement that China has ever concluded with a third country. [...] The overall package is far more ambitious than what China has committed to before." (European Commission, 2020b, p. 1). This rocky path to a sino-EU trade agreement shows clearly the change of attitudes between the two. From first calling each other "strategic partner" to accusing each other of being hypocritical.

5 The FDI Screening Regulation of the EU

5.1 Stricter FDI restrictions in the EU

On the previous pages it was shown what an important international investor and investment destination the EU is. As mentioned before, the EU is one of the most investor-friendly geopolitical areas. Nevertheless, in recent years the EU has gradually built-up restrictions in order to better scrutinize foreign direct investment. Some member states established screening mechanisms in the mid-2000s that allowed the state to prohibit certain investments, e.g. those affecting the critical infrastructure. During that time voices became louder to establish such a screening mechanism at the EU level as well. Until in February 2017, when the Ministers of Economy Brigitte Zypries from Germany, Michel Sapin from France, and Carlo Calenda from Italy sent a common letter to the then EU Commissioner of trade Cecilia Malmström that would allow member states to restrict FDI not only on grounds of national security and public order but also based on economic criteria. The three ministers asked for a uniform instrument to prevent a lack of reciprocity in investment conditions, or a lack of market compatibility of the transaction due to state influence on the investor (Zypries et al., 2017). This is particularly evident in comparison with China, where the EU is not granted the same degree of market access (Bickenbach & Liu, 2018; Rytter & Hansen, 2018). With this request they urged the Commission to identify solutions for missing reciprocity and enable fair competition between EU and foreign investors. The EU, despite its single market, still consists of a fragmented patchwork of different markets and economies. Therefore, it is not surprising that the EU countries have very different views on FDI. While France has always had a rather reserved attitude toward foreign investors, Ireland is behaving quite the opposite way. Since Ireland's accession to the EU, the country has created an attractive investment environment (low wages but skilled labor, tax incentives, generous industrial policy, etc.) and thus experienced an influx of new multinational companies. Greece, Malta and Cyprus are also among the countries that welcome foreign investors. Greece, for example, has offered quasi-free movement of capital, tax incentives and low institutional transaction costs since the 1950s, which allowed high levels of FDI to flow into the country (Barrios et al., 2004). Then it has been shown that countries with strong technology sectors tend to prefer a stricter screening mechanism (Chan & Meunier, 2022) while countries that are heavily dependent on foreign investment are understandably skeptical of such a regulation like Cyprus or Malta. The CEECs also show a higher acceptance of FDI, they appreciate the additional sources of finance and are happy about a faster catch-up to the level of the old MS. Especially since they are still stigmatized and especially excluded from funds of the US (Witkowska, 2019). Countries in financial crisis also tend to be more open to FDI. During the financial crisis in 2008, national governments as well as the EU government were welcoming FDI as they were helping the government coffers to recover. The privatization of the Greek port, for example, was actively promoted by the European Commission and the International Monetary Fund during the euro crisis so that Greece could pay off part of its national debt (Claas, 2022). We see, as different as the countries of the EU, so are their opinions toward FDI. They are influenced by the financial situation, the main economic sectors, the culture and many other variables. Not surprisingly, the respective attitudes towards an FDI screening mechanism are also different. The European Council therefore had difficulty reaching an agreement in June 2017, as countries like Greece, Romania, Cyprus, Luxembourg, Malta and Portugal in particular voiced criticism (Chan & Meunier, 2022). So far EU member states were solely responsible for their FDI screening, but now a crucial technology or infrastructure in one country may be critical for its neighbors and, in some cases, the entire Union. The "decentralized and fragmented" national FDI screening mechanisms didn't seem adequate and efficient regarding the changing investment landscape in the EU (European Parliament, 2019b, p. 1). Now, equipped with the exclusive competence over investment by the Lisbon Treaties, the Commission took up this task in 2017 and published a proposal for an EU wide FDI screening framework in September 2017. While the proposal missed the request from Germany, Italy and France, who had wished to address the lack of reciprocity, it still got adopted in April 2019.

5.2 The Regulation (EU) 2019/452

The regulation was enacted on 10.04.2019 and includes 17 articles. It is based on 207 TFEU and applies to all EU member states, regardless of whether they have a screening mechanism or not. It is considered a guide for the member states to maintain, amend or adopt a screening mechanism. The adoption of a screening mechanism is recommended, but it is by no means binding. The 17 articles are briefly summarized below.

Article 1: Subject matter and scope

The first article briefly summarizes the purpose of the regulation. Namely, the framework for the screening by Member States of foreign direct investments into the Union on the grounds of security or public order and for a mechanism for cooperation between Member States, which includes opinions of the Commission. It is already pointed out in the first article that it is ultimately up to the Member States whether and to what extent they introduce a screening framework.

Article 2: Definitions

In Article two the Commission defines the seven terms “foreign direct investment”, “foreign investor”, “screening”, “screening mechanism”, “foreign direct investment undergoing screening”, “screening decision”, “undertaking of a thirst country”.

Article 3: Screening mechanisms of Member States

Article 3 sets out the right of MS to maintain, amend or adopt mechanisms to screen FDI on the grounds of security or public order. Paragraph 2 states that no third country may be discriminated against. The MS should also inform the Commission if they have a screening mechanism in place or if they have amended an existing one.

Article 4: Factors that may be taken into consideration by Member States or the Commission

Article 4 lists the sectors in which investments are likely to affect security or public order. It also lists characteristics of investors where FDI is also to be screened in terms of security or public order.

Scope of security and public order:

(a) critical infrastructure, for example energy, transport, water, health
(b) critical technologies, for example artificial intelligence, robotic or cybersecurity

(c) supply of critical inputs, for example raw materials or food security

(d) access to sensitive information, including personal data, or the ability to control such information;
(e) the freedom and pluralism of the media.

Characteristics of investors:

(a) whether the foreign investor is directly or indirectly controlled by the government
(b) whether the foreign investor has already been involved in activities affecting security or public order in a Member State
c) whether there is a serious risk that the foreign investor engages in illegal or criminal activities.

Article 5: Annual Reporting

Each year, by March 31, each member country that has a screening mechanism in place shall submit an annual report to the Commission. This report shall contain the accumulated information on inward FDI, as well as information on FDI in neighboring countries. The Commission must publish an annual report to the Parliament and the Council, which will be made public.

Article 6: Cooperation mechanism in relation to foreign direct investments undergoing screening

A member country that screens foreign investment must report it to the Commission. If other member states are also affected by the investment, then this must be included in the statement. Where another member state considers that this transaction is likely to affect its security or public order, it may issue a comment. Where the Commission considers that a transaction is likely to affect security or public order in more than one member state, it may issue an opinion. Comments and the opinion are addressed to the member state where the investment is planned or completed. Paragraph 9 states the MS undertaking the screened "*shall give due consideration to the comments of the other Member and to the opinion of the Commission" (Article 6,9)*

Article 7: Cooperation mechanism in relation to foreign direct investments ***not*** *undergoing screening*

Article 7 states that if a MS makes an investment in another EU country that could affect the security or public order of a MS or the EU, it may make a comment. The Commission may issue an Opinion under the same conditions. Furthermore, additional information may be requested from the country in which the suspicious investment is made. Again, "*A Member State where a foreign direct investment is planned or has been completed shall give due consideration to the comments of the other Member States and to the opinion of the Commission*." (Article 7, 7)

Article 8: Foreign direct investments likely to affect projects or programmes of Union interest

Article 8 describes the same procedure as articles 6 and 7 but related to investments that could affect EU projects or programs.

Article 9: Information requirements

Article 9 describes what information must be provided when requested by the Commission or another member country.

Article 10: Confidentiality of information transmitted

Article 10 states that sensitive data must be handled confidentially

Article 11: Contact Points

Each county shall establish a contact point which is taking care of all relevant matters concerning the regulation and the subject of FDI screening.

Article 12: Group of experts on the screening of foreign direct investments into the European Union

A confidential expert group shall advise the commission on all relevant matters concerning the subject of FDI screening.

Article 13: International Cooperation

MS and the Commission can cooperate with third countries on all relevant matters concerning the subject of FDI screening.

Article 14: Processing of personal data

Article 14 states that personal data must be protected

Article 15: Evaluation

Every five years, i.e. for the first time on 12.10.23, the Commission must evaluate the effectiveness of this regulation and, if necessary, adjust the regulation.

Article 16: Exercise of the delegation

Article 16 states that the Commission will now have the competence to screen on an EU basis and that the Council and Parliament have the power to revoke the delegation.

Article 17: Entry into force

The regulation enters into force on the 20th day after its publication.

5.3 Annual reporting

Article 5 of the regulation states that the Commission must publish an annual public report. Since the adoption of the regulation, two annual reports have been published. In both reports the Commission emphasizes that MS are still not obliged to establish a screening mechanism, but it is stressed how important such mechanisms are. Since the regulation came into force, all but Cyprus and Bulgaria have established a screening mechanism or at least have a legislative process underway that will lead to one. France, Germany, Hungary, Italy, Latvia and Lithuania have made their screening process even more rigorous since the last report. In 2020, 1,793 authorization requests were submitted to the Commission, of which only 20% were ultimately screened. The other 80% did not fall under the scope of security or public order. Of the 20% screened cases, only 7% were banned, 8% were discontinued for other reasons, and 12% were authorized with conditions (European Commission, 2021b). In 2021, 1,563 authorizations were requisitioned at the Commission, of which 29% had to be formally screened. This shows that MS can better assess when an investment threatens security or public order. Of the 29%, 7% were canceled, 2% prohibited and 12% authorized with conditions. Four countries accounted for about 70% of the authorization requests (European Commission, 2022b). According to Article 6, a MS must inform the Commission when an investment is screened in the respective country. In 2020 there were 265 notifications of such screenings, 414 notifications were reported in 2021. Five MS namely Austria, France, Italy and Spain were responsible for more than 85% of these 414 cases. 11% of them proceeded to phase 2, which means the Commission required additional information on the investment plans (in 2020 it was 14%). The three main investors, listed by number of cases, of the 414 reported notifications were USA, UK and China. The main sectors in which the noted FDI took place were the manufacturing, wholesale and retail sector. The Commission has given an opinion in 3% of the notification, but since these are confidential, there is no additional information on them shared in the Annual Report.

5.4 Digression - On COSCOs Hamburg port investment

In November 2022, a particular case of foreign investment in Germany caused a stir in the national as well as European government. The port of Hamburg was allowed to sell a minority stake to the shipping company China Ocean Shipping Company (Cosco). In this way, the Port of Hamburg secured permanent landings from the Chinese state-owned company. This deal caused discord, especially in the coalition of the German government. While the Green Party wanted to call off the deal, Chancellor Scholz (SPD) campaigned for it. In the end the Chinese were allowed to acquire up to 24.99 percent of the terminal. In fact, Hamburg is one of the last major ports in Europe that has not yet sold shares of a terminal to Cosco. The Chinese shipping company already owns shares in eleven European ports, with three more in the pipeline. The port of Piraeus is 100% owned by the Chinese (Claas, 2022). Hamburg therefore already experiences disadvantages compared to its competitors who host Cosco. The larger Cosco's share of a terminal, the greater the chance for a port to capture as many trade flows as possible. While politicians and journalists warn of the next dependency (Schöneberg, 2022) (referring to gas supplies from Russia), the Port of Hamburg's boss Titzrath says: "To survive in international competition, we have to retain shipping companies like Cosco permanently" (Titzrath, cited in Claas, 2022, p. 1). Apparently, the EU Commission has given an opinion on the deal and insisted on prohibiting the investment (Camesasca et al., 2022). In the end, however, it was left up to the German government and, despite the sale of critical infrastructure, the deal was waved through with the partial prohibition of the Chinese. The Port of Hamburg-Cosco case is particularly interesting due to three reasons. First, because it clearly illustrates the dilemma between protectionist behavior and liberal economics. Second, if reports are to be believed, the Chinese influence in this case is rather small compared to other FDI deals. This means that Chinese investors are in fact stigmatized and blocked because of the origin of the money and not because of their intention. Thirdly, despite the Commissions opinion on that deal, the German Government supported it. This shows the influence of the Commission and thus of Regulation 2019/452 is rather negligible.

6 ANALYSIS & RESULTS

6.1 Summary of the EU-documents

In 2012, the European Parliament initiated Procedure **2010/2301(INI)**, which proposed to establish an EU-wide FDI screening framework like CIFUS in the US. Four documents were analyzed in connection with the procedure, together with some code examples they are listed in table 1. In 2015, the think tank Bruegel hosted an event on "China invests in Europe: patterns, impacts and policy issues" where the then European Commissioner for Trade Karel De Gucht gave a speech **(SPEECH/12/421)** in which he also addressed the issue of EU-wide screening of IFDI. 2017 the European Commission started the procedure **2017/0224 (COD)** which ended in the establishment of the Regulation 2019/452**.** Seven documents were analyzed regarding this procedure; these are listed in table 3. All analyzed official EU documents regarding those events shall provide an insight on **when** and **how** it came to the (sudden) protectionist turnaround, whereby FDI was seen as hazardous by the EU actors. Or to put it in other words: **when** and **how** came the Regulation (EU) 2019/452 about? The documents were analyzed according to the rules of grounded theory. Codes were assigned, which were later subordinated to one of the two code groups, namely "restrictiveness" or "openness". The two code groups will be used to illustrate the change from openness to FDI restrictiveness.

INI - Own-initiative procedure 2010/2301(INI): "EU and China: Unbalanced Trade?"

Table 1 *List of documents regarding procedure 2010/2301 (INI)*

Document included in analysis	Date	Code example	Code group
Draft Report by the European Parliament on "EU and China: Unbalanced Trade?"	02.12.2011	*[The European Parliament] asks the Commission to set up a body entrusted with the ex ante evaluation of foreign strategic investment, along the lines of the Committee on Foreign Investment in the United States (CFIUS), in order to obtain a clear picture of businesses operating and investing in the territory of the EU"* (European Parliament, 2011, p. 7)	restrictiveness
Report by the European Parliament on "EU and China: Unbalanced Trade?"	20.04.2012	*"the EU does not know exactly how deeply China has penetrated the Member States' economies, […]. This ignorance is, of course, damaging to the European interest and likely to encourage all manner of wild ideas. The EU should equip itself with measuring instruments modelled on the Committee on Foreign Investment in the United States (CFIUS) in order to shed light on the foreign holders of sovereign debt"* (European Parliament, 2012a, p. 15)	restrictiveness

Debate in parliament on "EU and China: Unbalanced Trade?"	22.05.2012	*"The report also states that we need to strengthen transparency regarding foreign direct investment in Europe. I agree with this in principle, but also we need to be careful not to create new investment barriers at a time when Europe needs to remain attractive to maintain growth and jobs"* (Commissioner Reding in European Parliament, (2012b), p. 2)	openness
Answer given by Commission Malmström on "EU and China: Unbalanced Trade?"	29.01.2015	*"While several EU Member States currently maintain mechanisms to screen investments for national security purposes, the Commission has no such plans at the current moment. The Treaty on the European Union sets out clearly the EU's commitment to openness towards foreign direct investment (FDI) including from third countries. As the world's largest source and destination of FDI, the EU is a major beneficiary of an open world economic system and is committed to ensuring that markets remain open."* (Malmström, 2015, p. 1)	openness

Source: Own representation

In Procedure 2010/2310, the European Parliament questioned the open trade relationship with China and at the same time asked for an EU-wide FDI screening mechanism. The relevant documents related to this procedure are discussed below. In the European Parliament's report by Marielle De Sarnez on "EU and China: Unbalanced Trade?" dated April 20, 2012, the Parliament calls for improvements in the following five areas. First, "improving market seeking", i.e. the unequal market access between EU-companies in China and Chinese investors in the EU. The aim is to create a "level playing field" (p.7) between the two economic powers. China is called upon to meet the WTO criteria of a market economy, to create greater transparency and to lower tariffs and non-tariff barriers. Secondly, "Defending the interests of European Industry", which is about better laws to protect intellectual property rights and negotiate ambitious and balanced EU-China investment agreement. Third, facilitating currency competition, emphasizing that China owns one-third of the world's foreign exchange reserves and thus has an unfair advantage over firms in other countries. The ECB should accordingly introduce policies to regulate this and prevent unfair competition. Fourth, "Towards a new institutional framework for EU-China trade relations," here the Parliament calls for establishing an EU-wide screening mechanism to screen foreign investors, "including social and environmental standards, to ensure the protection of patents and to contribute to efforts promoting the sustainability of employment when they purchase European businesses or set up subsidiaries in the EU" (p. 11), like the framework CIFUS in the US. Fifth, "Accessing Chinas Global Role," emphasizing that China's growing importance in the global economy means it must also shoulder the responsibilities that come with it, for example, in corporate social responsibility (CSR) practices, environmental issues and climate change goals, and social and labor law. Sixth, "Reinforcing the EU to cope with global competition", where the Parliament aims to strengthen the EU from within and to strengthen its position as a global player through innovative financing arrangements and economic, budgetary, fiscal and political governance. The EU should act as a single voice to the outside world and conclude valuable trade agreements with third countries, in particular with China, in order to create a strategic, long-term partnership. In the following explanatory statement, it is once again made clear that "Europe needs China and China needs Europe" (p. 13). It is emphasized how powerful China has become as an economic power and how there is now an imbalance between the two countries. China still has obstacles in place for foreign investors such as, for example, the subsidies and export credits granted in some sectors, national certification requirements, or unclear standards. Moreover, the Chinese joint venture arrangement debars foreign investors from becoming majority shareholders in the motor or telecommunications industry. Therefore, there is a call for more reciprocity in market access and new instruments such as the FDI screening mechanism to create a level playing field between the two powerhouses.

Voices were also raised in the plenary session of the Parliament that reciprocity must be demanded vis-à-vis China. Parts of the coded data are listed in figure 9. It shows that the Commission agrees with the trade imbalance between the EU and China but is in favor of leaving the European single market open to third countries. The analysis of the debate shows that there is a certain "fear" that restricting the market for China could lead to a possible weakening of trade between the two. This idea is underlined by the analysis of the answer of the Commission, which should follow almost five years later, on 29.01.2015. Ms. Malmström on behalf of the commission writes in her answer: “While several EU member states currently maintain mechanisms to screen investments for national security purposes, **the Commission has no such plans at the current moment**. The Treaty on the European Union sets out clearly the EU's commitment to openness towards foreign direct investment (FDI) including from third countries. As the world's largest source and destination of FDI, the EU is a major beneficiary of an open world economic system and is committed to ensuring that markets remain open". The documents of procedure 2010/2310 show clearly that, while the European Parliament was trying to initiate a FDI screening mechanism on behalf of reciprocity, the Commission was against it.

SPEECH/12/421 - Karel de Gucht on EU-China Investment: A Partnership of Equals

Table 2 *List of documents regading the speech of Karel de Gucht*

Document included in analysis	Date	Code example	Code group
Karel de Gucht on EU-China Investment: A Partnership of Equals	07.06.2012	*"We need the money" (De Gucht in, European Commission, (2012) ,p. 1)* *"China's economic development and is a positive step [...] there are massive benefits to the European economy from these increased inflows. Europe needs to be in the game as China becomes a major global player on foreign direct investment over the next few years." (p. 3)* *"a full European security screening of new investments is neither desirable nor feasible" (p. 5)*	Openess

Source: Own representation

Commissioner Karel de Gucht's speech once again clearly shows the Commission's position in the context of an EU screening mechanism. De Gucht begins his speech with the importance of international trade, whether as investor or recipient. He emphasizes the importance of foreign investment as a source of finance for the EU: "we need the money" (p.2). He goes on to praise the openness of the EU single market and stresses that this openness must exist, especially if they want to participate in China's ongoing economic growth. He calls business with the Chinese a "massive opportunity" (p. 3), further saying "Europe needs to be in the game as China becomes a major global player on foreign direct investment over the next few years" (p. 3). De Gucht, however, also believes that the EU's openness should apply equally in the Chinese market and that CSR, environmental and labor standards must be respected on both sides. Standards must not be lowered for the sake of money. He also points out that the Chinese appreciate the open European market and that this should continue to be the case. This could be supported by an EU-China trade agreement; however, a "European security screening of new investments [...] is neither desirable nor feasible" (p. 4). In summary, in the own-initiative procedure 2010, the Parliament pointed out that there is an imbalance and lack of reciprocity between China and the EU. Among other things, it also called for a single instrument to screen foreign investment. The Commission, however, prohibited this, citing the importance of the EU's market openness. That is also what De Gucht demanded in his speech. It is striking that in 2012 the focus of the

Commission was rather on the negotiations of an EU-China investment agreement. It becomes clear that it was more a matter of being equally involved in the economic upswing of China. In other words, not to be left behind while China became possibly the most powerful economic power in the world. The opinions and reports are mostly about reciprocity and the unfair treatment of EU companies. When they talk about screening foreign investment, it seems to be more as a means of exerting pressure to better defend European interests in international negotiations and less about protecting the know-how or technical expertise of the EU.

COD - Ordinary legislative procedure (ex-codecision procedure) 2017/0224(COD)

Table 3 *list of documents regading procedure 2017/0224*

Documents included in analysis	Date	Code examples	Code group
Letter from Germany, France and Italy to Commissioner Malmstöm requesting a framework for FDI Screening on EU-level	02.02.2017	*"we are worried about the lack of reciprocity and about a possible sell-out of European expertise, which we are currently unable to combat with effective instruments*" (Zypries et al., 2017, p. 1)	restrictiveness
European Commissions Reflection Paper On Harnessing Globalisation	10.05.2017	*"Openness to foreign investment remains a key principle for the EU and a major source of growth. However, concerns have recently been voiced about foreign investors, notably state-owned enterprises, taking over European companies with key technologies for strategic reasons. [...]These concerns need careful analysis and appropriate action" (European Commission, 2017a, p. 15)*	restrictiveness
European Councils Conclusions from the European Council Meeting on 22-23.06.2017	23.06.2017	*"[The Council] welcomes the Commission's initiative to harness globalisation and, inter alia, to analyse investments from third countries in strategic sectors"*(European Council, 2017, p. 8)	restrictiveness
Proposal for a establishing a framework for screening of foreign direct investments into the European Union	13.09.2017	*"The objective of the draft Regulation is to establish a framework for the Member States, and in certain cases the Commission, to screen foreign direct investments in the European Union, while allowing Member States to take into account of their individual situations and national circumstances."* (*Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Establishing a Framework for Screening of Foreign Direct Investments into the European Union*, 2017, art. 1)	restrictiveness
European Commission Press Release: State of the Union 2017 -	14.09.2017	*"Let me say once and for all: we are not naïve free traders. Europe must always defend its strategic interests [...] However,*	restrictiveness

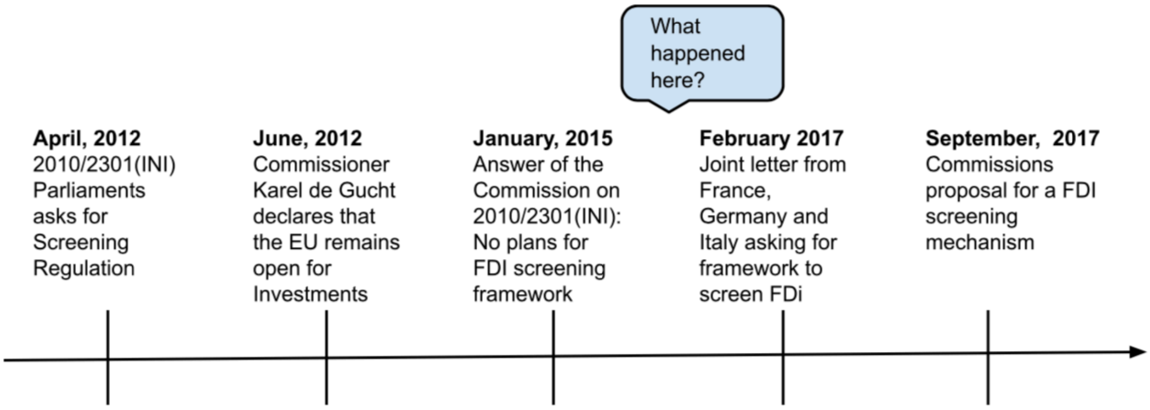
Trade Package: European Commission proposes framework for screening of foreign direct investments		*we cannot turn a blind eye to the fact that in certain cases foreign take-overs can be detrimental to our interests."* (Juncker cited in European Commission (2017b))	
Text adopted by Parliament, 1st reading/single reading	14.02.2019	*"The European Parliament adopted by 500 votes to 49, with 56 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing a framework for screening foreign direct investment in the European Union"* (European Parliament, 2019a, p. 1)	restrictiveness
Press Release - Commission welcomes European Parliament's support for investment screening framework	*14.02.2019*	*"The speed at which we were able to reach an agreement pays testimony to the urgent need to create European level rules on foreign investment screening."* (Juncker cited in European Commission, (2019) ,p. 1))	restrictiveness

Source: Own representation

The procedure 2017/0224 was initiated by a joint letter from France, Germany and Italy to the commissioner Anna Cecilia Malmström on February 02, 2017. In this letter, strategic takeovers of European companies are mentioned for the first time and the lack of an instrument at EU level to prevent such takeovers. In the Commissions reflection paper from May 2017 "Harnessing Globalisation" it is emphasized that "openness to foreign investment remains a key principle for the EU" (p. 15) "but it is acknowledged here for the first time that "state-owned enterprises, taking over European companies with key technologies for strategic reasons" (Ibid.) and that such must be carefully analyzed. In June 2015, the European Council picked up this thread again by welcoming the Commission's initiative to analyze certain FDI. Subsequently, on 13.09.2017, the Commission's proposal for a Regulation was published, which provides explicit guidance on the establishment of an EU-wide framework for screening FDI. The Commission states that the regulation will not force the MS to create such a screening framework, but rather strengthen the cooperation between the MS and the EU institutions. It is based on Articles 3(1)(e) and 207(1) of Treaty on the Functioning of the European Union ('TFEU') which gives the EU competence over the EU's Common Commercial Policy, including foreign investment. Together with the proposal, the Commission published a press release in which the Commissions President and then European Commissioner for Trade Malmström stressed the importance of the EU not selling "naive" or "blind" (p.1) EU assets to foreign investors. Between May and June 2017, the Council and the Parliament formulated their sides in the framework of the co-decision. The European Parliament as well as the Council supported the Committee in its statement that some foreign investments are worrying on the grounds of security or public order. The Parliament also addresses the problem of the fragmented patchwork of national screening frameworks and advocates for a cooperation mechanism at the EU level. The non-binding nature of the regulation was supported by all EU institutions. In May and June 2018, the European Parliament's Committee on International Trade with the rapporteur Frank Proust (European People's Party) and the European Council adopted their respective stances, and intersectoral discussions ended in November 2018 with a preliminary text. In December 2018, the Committee of Permanent Representatives of the member states (Coreper) and INTA approved the text. The regulation came into effect on 10 April 2019 after being adopted by the European Parliament and the Council in February and March 2019. After the transitional period, 18 months later, it became fully operational on 11th October 2020 (European Parliament, 2019, S. 1)

The documents that comprise the procedure 2017/0224(COD) clearly show how far views have changed towards an EU-wide FDI screening mechanism since 2012. The Commission, which previously blocked such an instrument and referred to the openness of the European market, is now the driving force behind the debate. Interestingly, China is no longer referred to in the discussions. Now, concerns about the security or public order of the Union or its member states are the focus. One does not want to trade "naively" or "bind" with third countries. Concerns about the loss of key infrastructure and existential assets of the EU overshadow the debates. Striking is also, that the Commission repeatedly emphasized that opinions will be non-binding for the MS. The countries will continue to be able to decide sovereignly on their FDI screening. Also, whether an actual screening framework is introduced is ultimately left to the MS. The Parliament describes the regulation as follows: "is neither to harmonise the formal FDI screening mechanisms currently used by half of the member states, nor to replace them with a single EU mechanism. Instead, it aims to enhance cooperation and information-sharing" (European Parliament, 2019b, p. 1). The focus is therefore clearly on a cooperation mechanism within the EU. This rather cautious wording shows that a complete handover of this task to the EU would not have been supported by the MS.

Figure 11 *Timeline Regulation (EU) 2019/452*



Source: Own representation

6.2 First Results: when and how did it come to the protectionist turnaround?

Against this background, parts of the research question will now be answered, namely **when** and **how** did it come to the (sudden) protectionist turnaround, whereby FDI was seen as hazardous by the EU actors? Starting with the question of **when**: the Parliament was already in favor of a screening mechanism in 2012, the Council rather stayed out of the discussions, the Commission changed its mind towards the establishment of an FDI screening mechanism around 2016. This becomes clear when looking at figure 9, on which the FDI restrictiveness of the EU institutions is shown. Restrictiveness is measured by statements made by the institutions in the texts shown above. A low restrictiveness is assumed if the code "openness" was used. A high restrictiveness was implied if the code "restrictiveness" was used. The graph also shows some examples/code snippets of the EU institutions.

Figure 12 *from open to closed - FDI restrictiveness of the EU institutions, own representation*

Source: own representation, source of the quotations can be found in the figure

In the second part we will be answering the question of **how** the protectionist turnaround came about, therefore we look at how the EU came to have competence over investment in EU policy in the first place. Or: How the EU gained competence over FDI.

First step: Treaty of Lisbon and the competence over the EU Common Commercial Policy

With the Treaty of Lisbon, which was signed on December 13, 2007 and implemented two years later, the EU gained new competences. One of them is the Common Commercial Policy (Art. 207) which brought foreign investment under supranational reach. It says the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy. Also, the Article 64 allows the European and the Council to adopt measures on the movement of capital to or from third countries involving direct investment. The CJEU clarified in Opinion 2/15 that investments do not cover Portfolio Investments.
Previously, the competences related to FDI were shared between the MS and the Commission. Countries negotiated Bilateral Investment Treaties with their trading partners and the Commission was responsible for market liberalization through Free Trade Agreements (Nicolas, 2014; Zhang & Van Den Bulcke, 2014). Apart from that, the EU played only a minor role in international investment policy. It had only exerted influence through its participation in the WTO and OECD (Schill, 2019). However, it was not the first time that the Commission had tried to usurp powers over foreign investment. The Commission has raised the issue of bringing FDI under EU competence four times, at the Intergovernmental Conferences that led to the Maastricht, Amsterdam, Nice and the Constitutional Treaties. This request however was rejected by the member states every single time. Meunier (2017) explains that the countries did not want to give up this competence and vehemently held on to it. On the one hand, all MS were in international competition to attract FDI. For some countries, liberal FDI policies were therefore an effective tool to differentiate themselves from other countries and attract investors, while other countries preferred restrictive FDI screenings to have leverage, when it came to international investment negotiations. In the hope of reciprocity, they would open their restrictive measures, if their trading partner would also do so. She writes that the transition of FDI competence to the supranational level happened in stealth "through a combination of historical serendipity and procedural prioritization in a busy, complex agenda" (p. 604). In fact, the MS took their task of international investment very seriously. By the time of the Treaty of Lisbon, the countries had concluded almost 1,600 international investment agreements within the EU (intra-EU) and with

third countries (extra-EU) (Schill, 2019). When we look at it from the intergovernmentalism' point of view, it is true that the MS BITS were all very different and individualistic, which meant that there was a fragmented investment environment that differed from country to country. In addition, each MS had its own version of an FDI screening mechanism in place. These varied from non-existent to very strict (Tavassi, 2012). This made it harder for the EU to compete with the other big players in global economic policy. With its new power the "EU can now take over negotiation of all international investment agreements for the member states in order to liberalize foreign markets, protect European investment abroad, and settle investment disputes, it can also harmonize the rules governing the establishment of foreign investment inside Europe" (Meunier, 2017, p. 459). Therefore, in the school of thought of intergovernmentalism the transfer of power to the EU was the next logical step. The EU shall present itself as a unified investor abroad, maximize the EUs bargaining power, and at the same time create unified investment opportunities for foreign investors.

Second step: Filling the new competence with life

Even before the Treaty of Lisbon, the EU had competence over foreign trade. Meunier writes of "increasing blurred lines between trade and investments" (p. 597). According to the neo-functionalists, it was only a matter of time before the competences spilled over from trade to investment. It is therefore not surprising that the EU did not hesitate to fill its new position with life shortly after the Lisbon Treaties came into force, for example by publishing the 2011s future investment plans of the EU in the Communication "the frontier for the common commercial policy". In 2012, the EU adopted a regulation setting out conditions for BITs of the MS. This was to ensure that all BITs currently in place were also concluded in accordance with EU law. In 2015, the reforms on investment dispute resolution were adopted, which brought the Investment Court System into being. The aim was to create a body that would establish clear rules in the international investment landscape and promise the highest standards of legitimacy and transparency. In addition, the EU could now contribute with a single voice in discussions with the WTO, for example on investment facilitation. In 2017, it used its competence and presented the proposal for Regulation (EU) 2019/452.

Third step: Using the new competence to create the screening regulation

As already indicated on the previous pages, the Commission presented the proposal for a regulation on the EU-wide screening of FDIs on 13 September 17. The trilogue between Council, Parliament and Commission phase started on 10 July 2018 and ended on 20 November 2018 with an agreement on a provisional text. By entering into force, the Commission acquired a new competence to screen FDI in the MS and issue a non-binding opinion. "As the proposal is based on Article 207(2) TFEU, which concerns the common commercial policy, an area of exclusive EU competence as, it is not subject to a subsidiarity check by national parliaments. Proposals in the area of exclusive EU competence are nevertheless transmitted to national parliaments as part of the informal political dialogue which allows for an exchange of views on proposals between national parliaments, the European Parliament and the Commission." (European Parliament, 2019b, p. 7). These three steps explain how the protectionist turnaround, or EU regulation, came about.

Digression: Principles of Subsidiary

When the European Parliament talks about the subsidiary check it refers to the principles of subsidiary which are part of the Treaty of Lisbon and state that in cases where the intervention of the EU is not necessary, the sovereignty and exclusive competence remains with the member states. Only when the power of the member states is not sufficient, the EU should take collective power.

With the above information in mind, we will now answer the second part of the research question, namely **how** did it come to the (sudden) protectionist turnaround, whereby FDI was seen as hazardous by the EU actors?
The turnaround started with some member states, and then was increasingly transferred to other EU institutions. Some member states, such as France, always showed a rather protectionist attitude towards FDI, and over time other MS have also developed such attitudes. The Parliament, the institution closest to the European people, was the next to take on a more protectionist opinion. The Commission was for a long time the last EU body to reject this protectionist change. This probably changed when the most powerful[2] countries in the EU approached the Commission directly (letter from Germany, Italy, and France) and asked for an EU instrument to protect themselves from foreign investment takeovers. Thus, a process of change has taken place, starting bottom-up. From a legal point of view, the protectionist turnaround took place, with the Commission gradually acquiring exclusive competence over investment policy. Starting with the Lisbon Treaty, which granted it this competence, and in the next step the use of the competences by issuing Regulation 2019/452. With the exclusive power of the Commission, it no

[2] Most powerful countries measured by GDP (Eurostat, 2022b)

longer needed the consent of the MS, so it could override even the countries that were actually against such a regulation.

6.3 Summary of the academic literature

The last part of the results will answer the question **why** did it come to the (sudden) protectionist turnaround, whereby FDI was seen as hazardous by the EU actors? The how and when questions could be answered by analyzing the EU (i.e. in our case the data documenting the behavior of the EU). Since we believe that the EU does not give a sufficient answer why it acted the way it did, the answer must be found elsewhere. In the academic literature, there are various explanations of why the EU behaved the way it did. As Snyder (2019) said, a semi-systematic literature review is particularly informative when an "overview [of a] research area and track development over time" (p. 334) of research articles is to be presented. Thus, we believe that our analysis can bring together different explanatory approaches from the academic literature to form new concepts and provide a holistic answer to the why question.

In the 48 documents covering the period from 2004 to 2022, 141 codes were assigned. The codes could be divided into 7 subcategories. The groups “China is an important investor for the EU”, “Liberalism” and “Positive effects for the host country”. These groups can be assigned a positive attitude towards IFDI. While the groups “Fear”, “Protectionism”, “China is the problem” and “Negative effects for the host country” were assigned a negative attitude towards IFDI. Table 4 shows how many codes were assigned to which categories.

Table 4 *Code groups with code count*

Chinas is an important investor for the EU	
The role of the state should not be overblown	1
China's bad reputation is disproportionate to its size	1
Chinas investment is ill-founded	2
China's bad reputation is mostly made by the media	2
Chinas investment is a win for the EU	4
CEECs welcome Chinese investment	3
screening mechanism is aggressively targeting China	2
The EU needs to attract Chinese investment	3
less regulation for China to prompt positive reciprocity	3
sum	**21**
Liberalism	
Call for less regulation to attract more FDI	3
Call for attractive measures for foreign investors	6

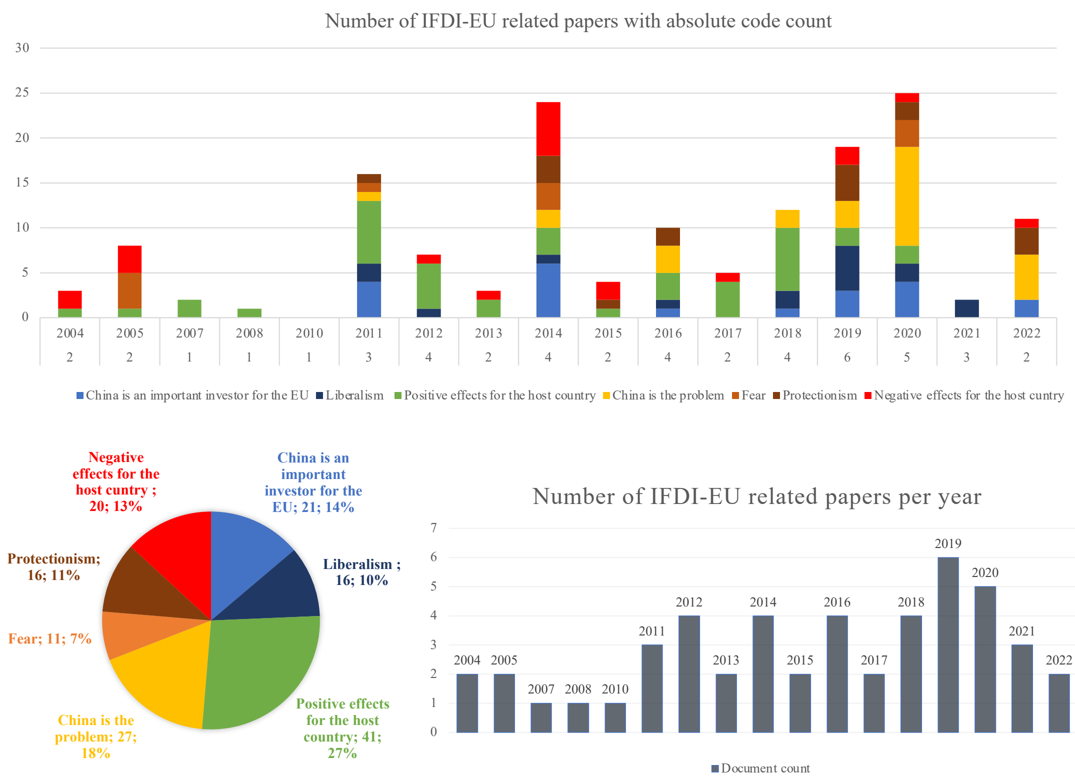
FDI screening is hurdle for investors	2
Screening mechanism as a protectionist measure	2
The EU will suffer from its tight regulations in the future	1
Screening mechanism is illegal	2
sum	**16**
Positive effects for the host country	
FDI helps new MS to catch up	4
FDI a transfer of social partnership	2
FDI as a post crisis recovering	2
FDI promotes green energy	2
FDI promotes innovation	7
Investment positively impacts technical effectivity	2
Efficiency spillover	7
Higher wages for domestic workers	2
IFDI does not have negative effects on the environment	1
FDI promotes economic growth	13
sum	**41**
China is the problem	
China tries to acquire strategic European assets/technology	6
Non-reciprocal trade behavior between the EU and China	5
Chinas OFDI in recent years has caused concern	3
China strategically invests in firms with financial problems	5
Fear of the superpower China	1
China is the reason for the regulation	7
Sum	**27**
Fear	
unclear source of investment	1
fear of state-owned ownership	5
concerns about the security of the EU	1
EU needs to protect its critical infrastructure	1
fear of losing technology to foreign investors	1
fear of losing control over the vital aspects of the economy	2
sum	**11**
Protectionism	
Call for a more protectionist FDI screening	1
Need for governmental FDI regulation	3
Even stronger regulation in the future is needed	1
Reasons for the screening regulation	11
sum	**16**
Negative effects for the host country	
FDI increases CO2 emission	1
M&A might have negative impacts on host country	3
tax incentive for foreign firms at the expense of domestic ones	1
exploitation of the periphery	1
unequal distribution of FDI between new and old member states	1
periphery benefits less from FDI inflows	2
FDI displaces domestic producers	3
FDI as a driver of social dumping	3
No FDI-growth relationship	3
FDI affects economic growth negatively	2

sum	**20**
Sum	**152**

Source: Own representation

Based on the number of documents per year, it becomes clear that after 2010, more attention was paid to the topic of effects of IFDI on the EU. The most papers (15) on this topic were published between 2018 and 2020. Most codes could be assigned to the group "Positive effects on the host country", this group accounts for 27% of all codes. Followed by the code group "China is the problem", which accounts for 18% of all codes.

Figure 13 Codes and Documents Overview, own representation



Source: Own representation, data extracted with MAXQDA and visualized with Excel

6.4 Results: why did it come to the protectionist turnaround?

We already know that the protectionist turnaround in the EU occurred around 2016. The code group “Fear”, “Protectionism”, “China is the problem” and “Negative effects for the host country” shall now provide information on why this happened. In the qualitative content analysis content-related causalities are to be identified. It is less about quantifiable codes. Therefore, less emphasis should be placed on the frequency of codes and rather on the meaning of the codes. In the next step, we take a closer look at the four code groups with a negative attitude towards IFDI.

Figure 14 *Code groups with negative connotation towards IFDI, own representation*

Source: Own representation, data extracted with MAXQDA and visualized with Excel. Data of Chinas OFDI stems from UNCTAD (2022)

Protectionism

The code group "Protectionism" was given 16 codes. The codes were assigned to statements why or explanations for more protectionist behavior, as well as to reasons for the screening mechanism. It is interesting to note that this code group first appeared in the mid-2000s and has become increasingly stronger over the following years.

The reasons cited in the academic literature for why more protectionist policies should be adopted can be divided into the following overarching statements.

1. Economic security
2. The sharp rise of Chinese investments and missing reciprocity
3. The need for additional instruments to control foreign investments
4. Enhancing the EUs- negotiation power

In the academic literature, several explanations can be found as to why the protectionist turnaround occurred. One is **economic security**, which refers to the protection of a country's own economy. It is about "protecting their 'national champions' from foreign n acquirers" (Guimon, 2011, p. 78). Companies in core industries should not be taken over completely by foreign investors, because of fear that the expertise or technological advantage which has been built up over a long period could be migrated abroad. The national governments are afraid that their resources, which give them a competitive advantage, could disappear in the long run. The sudden **increase in Chinese IFDI flows** can be seen as a "wake-up call" to the EU institutions. The EU has long taken on the role of the most important FDI actor. Probably some ignorance plays a role here, that the officially planned Going-Our strategy of the Chinese was not taken quite seriously. Only when measurable facts were on the table with the 2016 IFDI figures, it became clear how intensely China had invested in the EUs core industries. The concerns about Chinese investments are supported by the number of SEOs and investments by SWFs, which are always assumed to have intrinsic links to the Chinese Communist Party. However, it became clear that **the member states do not have the instruments to screen and, if necessary, block all foreign investments**. For example, Germany can examine foreign investments via its Foreign Trade Ordinance (AWV) if foreign investors acquire at least 25% of the voting rights in a company based in Germany. This affects companies operating in particularly security-sensitive areas or involving critical infrastructure. However, the German government is not able to prohibit deals on the grounds of lack of reciprocity (e.g. as in the case of KUKA and Midea). To close this gap, it was hoped to enact such a law at the EU level (see Appendix B, letter from France, Germany, Italy to Commissioner Malmström). This lack of competence of the national governments is cited as another reason for the turnaround in the EU. A final recurring reason why the EU screening mechanism came about is that such an instrument would strengthen the **EU's negotiation power**. It would provide a single voice to the outside world and thus have more leverage in negotiations with other major economic powers such as the US and China. Table 5 shows again the four statements with some example codes from the textual data.

Table 5 *Statement in the academic literature, why the screening mechanism came about with code examples*

Statements for the EU FDI Screening mechanism	Code examples
Economic security	*"many governments are not interested in receiving FDI in R&D through acquisitions and may even act to protect their 'national champions' from foreign acquirers"* (Guimon, 2011, p. 78)

The rise in Chinese OFDI	*"German politicians have grown increasingly concerned about investments by SWFs and SOEs."* (Nicolas, 2014, p. 117)
Need for additional screening instruments	*This acquisition made the German government realize that it does not have enough instruments to control the acquisitions by Chinese companies of their competitors in Germany and, therefore, it is vital for the future to create such instruments.* (Dudas, 2020, p. 321)
Enhancing the EUs negotiation power	*"The coexistence of fragmented national approaches highlighted in the foregoing section and the lack of consistency between existing regulations constitutes a major weakness for the EU."* (Nicolas, 2014, p. 119) *"The EU is in the process of introducing a common investment policy which would enhance its negotiation position. The new screening framework for FDI could play the same role"* (Witkowska, 2019, p.89) *"[The Regulations] purpose is not only to shield the EU market from certain foreign investment on an individual basis, but also to help the EU achieve its constitutional mandate for further investment liberalization through treaty negotiations with third countries."* (Schill, 2019, p. 21)

Source: Own representation

The above-mentioned reasons are certainly important to explain why there was a protectionist turnaround within the EU. However, they only shed light on one part of the explanation. To get a holistic picture, more pieces of the puzzle need to be added.

Fear

The Fear group includes 11 codes. The codes are distributed rather irregularly over the period from 2004 to 2022. Fear of the unknown very often results in protectionist behavior (Jost et al., 2003). This pattern was already recognized in the EU during the refugee crisis in 2014. As people from foreign backgrounds came into the EU, conservative, protectionist attitudes towards refugee policy grew. On the one hand people were afraid of something that was foreign to them, on the other hand, that something could be taken away from them by the strangers, at that time it was the jobs or social benefits. This behavior pattern can also be observed in the FDI context of the EU. It is the underlying fear of something unknown, such as an unclear source of investment or the fear of state-owned ownership. An economic model that is so alien to the market economy in the Global West. Coupled with the fear of losing something that the EU owns, for example, the critical infrastructure of the EU, or vital aspects of the economy. Here, too, we see that the growing number of investors with a state-owned background is increasing the tendency toward protectionist behavior. Fear can therefore be seen as another part of the explanation why the protectionist turnaround in the EU occurred.

Table 6 *Code group Fear, with code examples*

Code group “Fear”	Code examples
Fear of losing control over vital aspects of the economy	*“However, FDI from Russia have been met with suspicion in the Baltic States. The two main reasons for trying to avoid Russian investments have been the fear of losing control over the vital aspects of the economy and sometimes unclear source of investment.”* (Kilvits et al. 2005, p. 63)
Fear of state-owned ownership	*“In some cases, foreign investors owned or controlled by States of third countries could abuse their position through the acquired assets in order to damage the EU’s interests. Such potential situations led to considerable public concerns about security and public order in the EU”* (Witkowska, 2020, p. 27)
Fear of losing technology to foreign investors	*“With this deal, ChemChina purchased cutting-edge technologies […] but also increased the fears of European policymakers about Chinese investors purchasing European patents and technologies and transferring them to China.”* (Dudas, 2020, p. 321)

Source: Own representation

Negative effects for the host country

This group reflects the counterpart of the code group "Positive effects for the host country". Thus, they are in line with the on holding debate in the academic literature as to whether the positive or negative effects of IFDI on the host country predominate. It proved difficult to extract from this code group a clue as to why the turnaround occurred, because, as mentioned earlier, negative and positive aspects of IFDI have always been discussed in the literature. Therefore, each text that spoke of negative effects of IFDI was analyzed in more detail. What was the conclusion of the authors after mentioning those negative affects? Table 7 shows for each author an example of a negative effect mentioned, plus a statement on how IFDI should now be dealt with; in particular, what advice is given to policymakers. After studying the conclusions of the authors, it became clear that even when scholars talk about negative effects of

IFDI, they never recommend going completely without IFDI. Most authors refer to the absorptive capacities of the host country. A potential IFDI host country must ask itself whether it has enough absorptive capacity to create the desired spillover effects. It is recommended to analyze the incoming investment, to find out if and how it can benefit the own country. Furthermore, it is advised to attract investments smartly and to tunnel them into projects that have a long term benefit, such as the catch up process of the new MS or clean energy projects (Angelopoulou & Liargovas, 2014; Paramati et al., 2017). Only in this way the negative effects of IFDI can be avoided and the positive effects enhanced. So, we can learn from this code group that the call for a smarter treatment of inward FDI has also become louder in the academic bubble. IFDI should not be accepted solely because it brings promising sums of money into the country. The negative effects must be analyzed and prevented, and a long-term added value for the country must be obvious. This change in thinking is another factor that has played into the protectionist turnaround.

Table 7 *Negative effects of IFDI on the host country with code examples*

Author	Example code for negative effects	Authors conclusion
Kottaridi (2005)	Exploitation of the periphery *"the pursuit of rent-seeking without much technological transfer to the periphery"* (p. 110)	*"Policy-making bodies should rather engage in more sophisticated targeting of their economic strategies, departing from generic subsidies and focusing on particular industries […]Special attention has then to be paid to advancing existing human resources through well-performing educational and labour-training programmes." (p. 110)*
Uzagalieva et al (2012)	FDI displaces domestic producers *"Subsidiaries can also capture parts of the market and squeeze out domestic producers"* (p. 63)	*"Subsidiaries can also capture parts of the market and squeeze out domestic producers. Still, once foreign subsidiaries are firmly established and become part of a country's innovation system, the overall benefit is hard to dispute. We concur with Costa and Filippov that national policy makers should "foster the development of the existing foreign-owned subsidiaries located in their countries" (2008, p. 388) in order to reap maximum benefits from their presence in domestic economies."*(p. 63)

Albu (2013)	Unequal distribution of FDI between old and new MS *"Although the less developed countries need foreign capital to accelerate their convergence to the EU average level, today the developed countries continue to be the main attractor of FDI in the EU."* (p. 16)	*"To take into account FDI as an important variable for post-crisis recovering it is justified for Romania, given that currently 70-75% of the export volume is produced by firms receiving FDI."* (p. 16)
Krzywdzinski, (2014)	FDI as a driver for social dumping "*social dumping is capital mobility. The media frequently report cases of companies threatening to relocate production and demanding lower labour costs, flexible employment contracts or additional investment subsidies. The empirical evidence about this kind of social dumping is, however, far from*" (p. 927)	*"The investment decisions of companies are not simply determined by labour costs and the flexibility to dismiss employees, but also by the educational level of the work-force, the capabilities of potential suppliers, infrastructure and the knowledge base at the destination of investment."* (p. 927)
Angelopoulou & Liargovas (2014)	FDI affects economic growth negatively *"For the EMU countries, we find now that an increase in FDI no longer has a positive impact on GDP growth. In particular, we find that a 1% increase in FDI affects the GDP growth of the EMU member-countries negatively by less than 2%."* (p. 489)	*"policy makers should be aware that there is a positive causal relationship between FDI inflows and GDP growth, which is evidenced empirically (but is not statistically significant) in the case of Transition economies. This finding suggests that measures that attract FDI from more developed countries such as FDI subsidies, should be taken, in order to improve the economic development of Transition countries and to speed up their economic integration with more developed European countries."* (p. 492)
Eren & Zhuang (2015)	No FDI-growth relationship *„We find that FDI alone does not have a significant impact on economic growth, either in aggregate or disaggregate form. Rather, the growth effects of M&As and greenfield investment depend on the*	*"Host-country governments need to examine the status of domestic absorptive capacities in human capital, infrastructure, and financial development before setting up policies to attract FDI. Furthermore, the growth effect of different modes of FDI depends on different types of absorptive capabilities. Therefore, the government can determine what type of FDI to promote depending on its domestic advantage*

	availability of absorptive capacities in the host countries." (p. 120)	*in order to benefit from the activities of multinational enterprises."* (p. 120)
Paramati (2017)	FDI increases CO2 emission *"The findings also suggested that clean energy consumption had a con-siderable positive and negative effect on output and CO2 emissions, re-spectively, across all three groups. The results also indicated that political globalization had a considerable negative effect on CO2 emis-sions across all country groups."* (p. 70)	*"policy makers are urged to pay greater attention towards making use of stock markets to acquire additional funding for clean energy projects, plus converting FDI inflows into such projects"* (p. 70)
Bayar & Sasmaz (2019)	FDI displaces domestic producers *"In this context, the countries should use the borrowed funds in productive investments with relatively higher returns and also use incentives to attract green-field investments and also be careful to ensure the survival of national firms against foreign firms in the same industry."* (p. 120)	
Witkowska (2020)	M&A might have negative effects on host country *"To sum up, foreign investors might acquire control of or influence strategic sectors in the EU by using M&As as the mode of entry into the EU market."* (p. 27)	No comment
Gaspareniene et al. (2022)	Tax incentives for foreign firms at the expense of domestic ones *"This can be explained by the fact that FDI can produce tax revenue losses [...]. These incentives reduce the tax base and distort the allocation of resources for the benefit of foreign companies at the expense of domestic ones. Moreover, a substantial share of tax revenue can be lost owing to profit shifting"* (p. 56)	*"Since the inward FDI negatively impacts tax revenue performance, governments seeking national competitiveness to attract FDI should be careful with offering tax incentives. They need to develop appropriate policies to prevent tax revenue degradation caused by FDI; thus, the governments should consider gradually limiting FDI by diminishing the incentives provided to foreign investors."* (p. 56)

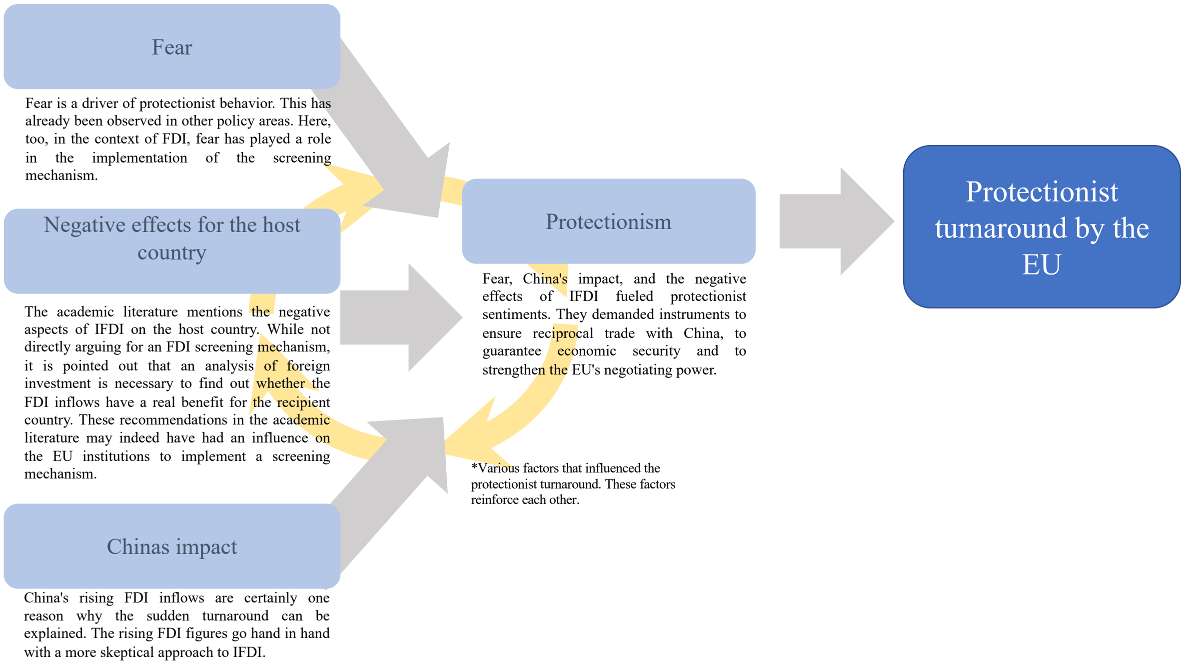
Source: Own representation

Chinas Impact

The code "China is the problem" was given 27 times, which represents 18% of all codes. The code was assigned when an author made a comment about the EU losing competitive edge, knowhow or innovation to China. Or that China offers fewer markets access to EU companies than it enjoys in the EU (missing reciprocity). Also, one reason why China has been degraded in the literature is because they strategically invest in firms in financial distress and strategically look for innovative, high-technology companies. The code “China is the problem” was first given in 2011 and then more frequently from 2014 onwards with a peak in 2020. This fits together with the Chinese OFDI flows to the EU. We see, that with increasing FDI flows from China also the antipathy against China grew. These two correlating trends are also shown in figure 11. Between 2011-2014 Chinese FDI was still welcomed and strategies were considered how to attract the most of it. As FDI numbers increased, suspicions grew that the EU was not benefiting as much from the money as initially thought. Especially when putting the academic literature in context with the speech of Karel de Gucht, it seems that the EU was watching China's rise and was greedily waiting to jump on China's success bandwagon. They wanted to bind China as a "strategic partner" to profit from the country's traction. Trade agreements were planned and the metaphorical doors to the European market were opened to China. However, things turned out differently, when China made no effort to "share" its success. The EU had to admit that China was serious about its MIC and going-out strategies, where China was alone in center on the way to become the world market leader and at the same time trying to stay independent from the rest of the world. In China's visions there was no place for the EU. At least not as a strategic partner, but at best as a means to an end. China was not looking for a partner, but for a supplier of technology, innovative spirit, and know-how to advance its own geopolitical goals. The realization of this must have occurred around 2014-2016 and is definitely one reason why the protectionist turnaround in the EU occurred.

In summary, the scientific theories about the negative effects of IFDI, the fear of the unknown and China's sudden increase in FDI into the EU let the protectionist voices for the need of a screening mechanism become louder and ultimately led to the protectionist turnaround in the EU. Figure 17 shows the relationships in more detail. We believe the reasons for the turnaround of the EU were not so much concerns about the national security of the EU, but of a geopolitical nature. We refer here to the findings of Lenihan from 2018, who posited that geopolitical competition and nationalism are the two factors driving state protectionist measures. Clearly, the former is also the case here. The sudden rise of China and the accompanying fear of no longer being number one in the global investment market has brought about the protectionist shift in the EU.

Figure 15 *Coding Paradigm, factors influencing the protectionist turnaround by the EU*



Source: own representation

7 CONCLUSION

On the previous pages, an attempt was made to give an answer to the question "**How, why, and when did it come to the (sudden) protectionist turnaround, whereby FDI was seen as hazardous by the EU actors?"** Therefore, some fundamental theories had to be summarized first. It was discussed what the advantages of FDI as a market entry mode are and why this form was so popular especially in the late 90s. Decreasing transportation costs, improving technology, global interconnectedness, increasing demand and growing consumption are all drivers and consequences of the FDI boom at that time. It was then discussed when, how and why a state intervenes in investment behavior and what instruments are available. Here, too, it became clear that there has been a protectionist shift in investment policy at the EU country level in recent years. In the following section, the global, as well as the EU, FDI flows between 1990 and 2020 were discussed. We saw the crucial role of the EU at the center of the global FDI flows, both as a recipient and as an investor. Until the late noughties, the EU prided itself on its open, investor-friendly environment. This brought us directly to the next section, the emergence of

China as a serious international investor. In the late 90s, the country was mainly labeled as the factory of the world. Thus, it was able to grow a hundredfold between 2002 and 2003 through strict adherence to its own regulations, such as the Going Out, Made in China initiative. In 2016, it overtook America for the first time with their OFDI numbers. The surprising rise in China's FDI figures shook up the global system of international investors. FDI was no longer perceived solely for its positive aspects; the negative aspects also became clear. For example, the migration of jobs or expertise abroad, the emergence of tax havens, the transfer of production cities, and thus the support of countries with low wages and low labor or environmental standards. With these growing negative aspects, the voices of not granting access to the European single market to every foreign investor became louder. Which brought us to the fourth section, the road to the EU FDI Screening Regulation of 2019. In the penultimate part of this master thesis, the results of the semi-systematic content analysis were presented. In order to answer the question of how and when the protectionist turnaround in the EU occurred, EU documents from the years between 2010 and 2020 were analyzed. It turned out that the European Commission defended the open market of the EU until 2015 and opposed an EU-wide screening mechanism. Only in 2016, all three EU institutions agreed, although not all member states were in favor of a screening mechanism. Countries like Cyprus, Bulgaria or Malta were against such a regulation until the end. Which brings us to the question of how this regulation came about. This started in 2007 with the Lisbon Treaties, which gave the EU exclusive competence over investment policy. Thus, it could now issue such a regulation without the approval of the member states. The question why this turnaround occurred was answered by an analysis of the academic literature on this topic. For this purpose, 48 papers dealing with the effect of FDI on the EU were examined. These were coded according to the ground theory and thus searched for an answer why this change in the EU occurred. Four code groups were synthesized, namely "China's impact", "Fear", "Negative effects on the host country" and "Protectionism”. With China's growing FDI figures, the EU also hoped for more financial flows, more market access in China, in general a strong strategic investment partner. However, it quickly became clear that China was acting opportunistically, solely in pursuit of its goal of becoming the world's largest economic power. Thus, the tide turned, and attempts were made to make the European market less easily accessible. Either out of defiance or in order to build up a power of action vis-à-vis China. Fear is another point that ties in exactly here, the fear of losing the "national champions", expertise or know-how to foreigners. We could already observe this behavior from politics like the refugee crisis, fear leads in many cases to protectionist attitude. In 2019, we were able to observe this pattern of behavior in the form of Regulation 2019/452. In addition, the negative aspects of IFDI flows were also presented more and more clearly in the academic literature. States became more cautious and no longer wanted to blindly let every investor into the country. These three factors strengthened the protectionist attitude in the EU. Like a spiral, these factors interact and reinforce each other. Interestingly, they support parts of the findings of Lenihan (2018), who writes that geopolitical competition and economic nationalism are reasons why states block foreign investment deals at home. We believe that geopolitical competition is much more behind the protectionist turnaround than a threat to public order and security.

These factors have led to the protectionist turnaround in the EU, resulting in the introduction of Regulation (EU) 2019/452. Although we were able to find out in the course of this work why the EU regulation came about, one question still remains: what is the EU Commission's aim with Regulation 2019/452? The Commission had been arguing that something must be done against the fragmented patchwork of national screening mechanisms. However, the regulation does not force the states to do so, still there are a few countries that do not operate investment screening, and do not plan to do so. Moreover, additional tools should be created to screen suspicious investments. However, the regulation does not create such tools, countries still decide themselves when and how to regulate IFDI. The European Commission can only give an opinion, which is not binding. Therefore, once again the question, what is the actual goal of this regulation? Is it hoped that the regulation in its current form will continue to grow and bring more power to the EU in the future? Or is the Commission only interested in creating a cooperation and communication mechanism for the member states and the EU institutions. This would be a relatively weak outcome, or weak instrument, for such a vehemently discussed topic. These questions offer room for further research or will clarify themselves if one waits long enough and does not lose sight of the EU institutions.

Appendix

A. List of all papers included in the analysis

Author	Title	Year
Barrios S., Dimelis S., Louri H., Strobl E.	Efficiency spillovers from foreign direct investment in the EU periphery: A comparative study of Greece, Ireland, and Spain	2004
Belderbos R., Vandenbussche H., Veugelers R.	Antidumping duties, undertakings, and foreign direct investment in the EU	2004
Kilvits K., Purju A., Pädam S.	Russia's Foreign Direct Investments in new EU member states: The case of the Baltic States	2005
Kottaridi C.	The 'core-periphery' pattern of FDI-led growth and production structure in the EU	2005
Girma S., Görg H.	Evaluating the foreign ownership wage premium using a difference-in-differences matching approach	2007
Perugini C., Pompei F., Signorelli M.	FDI, R&D and human capital in Central and Eastern European countries	2008
Nicolini M., Resmini L.	FDI spillovers in new EU member states	2010
Clegg J., Voss H.	Inside the China-EU FDI bond	2011
Guimón J.	Policies to benefit from the globalization of corporate R&D: An exploratory study for EU countries	2011
Witkowska J.	Foreign Direct Investment and Sustainable Development in the New EU Member States: Environmental Aspects	2011
Acaravci A., Ozturk I.	Foreign direct investment, export and economic growth: Empirical evidence from new EU countries	2012
Lejko I., Bojnec S.	Internationalization and economic growth in the new member states of the european union	2012
Tavassi J.	The EU Investment Policy: How to ensure a fair regulation of the concerned interests?	2012
Uzagalieva A., Kočenda E., Menezes A.	Technological innovation in new EU markets	2012
Albu L.-L.	Foreign trade and FDI as main factors of growth in the EU	2013
Puig R.V.	The scope of the new exclusive competence of the European Union with regard to 'Foreign direct investment'	2013
Angelopoulou A., Liargovas P.	Foreign direct investment and growth: EU, EMU, and transition economies	2014
Krzywdzinski M.	Do investors avoid strong trade unions and labour regulation? Social dumping in the European automotive and chemical industries	2014
Nicolas F.	China's direct investment in the European Union: Challenges and policy responses	2014
Zhang H., Van Den Bulcke D.	China's direct investment in the European Union: A new regulatory challenge?	2014
Eren M., Zhuang H.	Mergers and acquisitions versus greenfield investment, absorptive capacity, and economic growth: Evidence from 12 new member states of the European union	2015
Hart J., Miljkovic D., Shaik S.	The impact of trade openness on technical efficiency in the agricultural sector of the European Union	2015
Blomkvist K., Drogendijk R.	Chinese outward foreign direct investments in Europe	2016
Ersoy I., Erol K.O.	The impact of Euro-zone crisis on foreign direct investment inflows in the EU-15	2016

Simionescu M.	The relation between economic growth and foreign direct investment during the economic crisis in the European union [Odnos između ekonomskog rasta i izravnih stranih investicija u vrijeme ekonomske krize u Europskoj uniji]	2016
Götz M.	Policies towards the OFDI and IFDI in the European Union after the 2008+ crisis	2016
Paramati S.R., Apergis N., Ummalla M.	Financing clean energy projects through domestic and foreign capital: The role of political cooperation among the EU, the G20 and OECD countries	2017
Meunier	Integration by Stealth: How the European Union Gained Competence over Foreign Direct Investment	2017
Bruno R.L., Cipollina M.	A meta-analysis of the indirect impact of foreign direct investment in old and new EU member states: Understanding productivity spillovers	2018
Chapman S., Meliciani V.	Explaining regional disparities in Central and Eastern Europe: The role of geography and of structural change	2018
Jacimovic D., Dragutinović Mitrović R., Bjelić P., Tianping K., Rajkovic M.	The role of Chinese investments in the bilateral exports of new E.U. member states and Western Balkan countries	2018
Popovici O.C.	The impact of FDI on EU export performance in manufacturing and services. A dynamic panel data approach	2018
Andrijauskiene M., Dumčiuvienė D.	Inward foreign direct investment and national innovative capacity	2019
Bayar Y., Sasmaz M.U.	Foreign borrowing, foreign direct investment inflows and economic growth in European Union transition economies	2019
Pandey G., Rovetta D., Smiatacz A.	How many barriers should a steeple chase have? Will the EU's proposed regulation on screening of foreign direct investments add yet more delaying barriers when getting a merger deal through the clearance gate, and other considerations	2019
Schill S.W.	The European union's foreign direct investment screening paradox: Tightening inward investment control to further external investment liberalization	2019
Shuyan L., Fabuš M.	Study on the spatial distribution of China’s outward foreign direct investment in eu and its influencing factors	2019
Witkowska J.	The Attitudes of the European Union and China towards Foreign Direct Investment: Implications for Bilateral Relations	2019
Dudas T., Rajnoha R.	Chinese high-tech foreign direct investments in the EU - Trends and policy responses	2020
Evenett S.J., Sud J.D., Vermulst E.	The European Union’s New Move Against China: Countervailing Chinese Outward Foreign Direct Investment	2020
Josifidis K., Supic N., Doroskov N.	Foreign Direct Investment and Income Distribution: Evidence from Post-Communist New EU Member States	2020
Jungmittag A., Welfens P.J.J.	EU-US trade post-trump perspectives: TTIP aspects related to foreign direct investment and innovation	2020
Witkowska J.	The European Union's screening framework for foreign direct investment: Consequences for external relations [Screening bezpośrednich inwestycji zagranicznych w Unii Europejskiej: Konsekwencje dla stosunków zewnętrznych]	2020
Gregori W.D., Nardo M.	The effect of restrictive measures on cross-border investment in the European Union	2021
Josifidis K., Supić N., Bodor S.	Distributional effects of foreign versus domestic investment: Evidence from post-communist EU member states	2021
Verellen T.	When Integration by Stealth Meets Public Security: The EU Foreign Direct Investment Screening Regulation	2021
Chan Z.T., Meunier S.	Behind the screen: Understanding national support for a foreign investment screening mechanism in the European Union	2022

B. Letter from Germany, France and Italy to Commissioner Malmström

Bundesministerium
für Wirtschaft
und Energie

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Carlo Calenda
Ministro

Ministero dello Sviluppo Economico
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Italien

Berlin, February 2017

Ms
Cecilia Malmström
Commissioner
European Commission
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BELGIUM

E-Mail: cecilia-malmstrom-contact@ec.europa.eu

Dear Commissioner Malmström,

Freedom of investment constitutes a core principle for the European Union and its member states. The EU is open to foreign investment and is proud of the attractiveness of its territory for foreign companies, ready to contribute to the development of innovation, production and employment in Europe.

In the last few years, non-EU investors have taken over more and more European companies with key technological competences for strategic reasons. At the same time, European investors do not enjoy the same rights in the respective countries of origin as these non-EU investors in the investment-friendly European Union.

As a consequence, we are worried about the lack of reciprocity and about a possible sell-out of European expertise, which we are currently unable to combat with effective instruments. For this reason, the German, French and Italian governments have reflected on possibilities of reacting at EU level and have elaborated a common paper, which you will find attached to this letter.

The same concern prevails regarding public procurement where EU companies still face great difficulties to benefit from a fair access and equitable treatment abroad in a number of countries, whereas the EU market is open to competitors.

We would be grateful if we could hold a discussion at European level on this basis with the aim to reach agreement on how to tackle these two challenges that European companies are facing.

Yours sincerely,

Brigitte Zypries | Michel Sapin | Carlo Calenda

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