

The EU Commission Urges Member States to Review Outbound Investments

January 22, 2024

On January 15, 2025, the European Commission (the “EC”) published a recommendation (the “Recommendation”)¹ addressed to all EU Member States urging them to review “outbound investments” in certain critical technologies sectors, notably semiconductors, artificial intelligence (“AI”), and quantum technologies.

The Recommendation and the steps envisaged thereunder seek to address risks of “technology leakages” to “actors” that may use such technologies to “undermine international peace and security”.

Unlike the U.S. outbound investment regime,² which took effect earlier this year, the Recommendation does not target specific third countries, although Member States are encouraged to focus their efforts on individual countries presenting higher risk profiles.

The Recommendation is the latest step taken by the EC towards the review of outbound investments, as part of its EU economic security strategy published in 2023 and as outlined in greater detail in its subsequent white paper³ of January 2024 (the “White Paper”).

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¹ [Commission Recommendation](#) (EU) 2025/63 of 15 January 2025 on reviewing outbound investments in technology areas critical for the economic security of the Union, C/2025/39.

² See our [alert memorandum](#) of November 4, 2024.

³ See our [alert memorandum](#) of February 1, 2024.
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I. Background

An assessment of risks associated with “outbound investments” has been on the EU table at least since 2023, when the Parliament, Council and the EC issued a [joint communication](#) on “European Economic Security Strategy” noting that investments made by EU companies in third countries entailed the risk of technology and know-how leakage, at least in connection with certain advanced technologies.⁴

However, the EC flagged that there was no clear understanding (at EU or national level) of such risks, including because of a major lack of data, and that none of the existing instruments would in any event be sufficient to duly address these risks.

Accordingly, by means of its White Paper, the EC outlined a path towards possible policy decisions and mitigation actions, which would consist of: (i) a more specific understanding on the scope of the exercise (notably, which outbound investments would need to be considered), also based on a public consultation; (ii) a data gathering effort, to be conducted by Member States on the basis of an EC recommendation; and (iii) a more informed discussion, building up on the outcome of the previous two steps, to make a final decision on the concrete steps to be taken.

The mentioned consultation was launched in January 2024 and closed in April 2024, with mixed responses⁵ showing however an overall support towards further developing a policy approach. Accordingly, as outlined in the White Paper, although 6 months later than envisaged therein, the EC has issued the Recommendation as a further step.

⁴ The matter has remained of central relevance thereafter, as confirmed by the fact that the [Mission Letter](#) to Commissioner Šefčovič of September 2024 includes the analysis of how to tackle risks entailed by outbound investments among the tasks of his office.

⁵ https://policy.trade.ec.europa.eu/news/dg-trade-publishes-results-targeted-consultation-outbound-investment-2024-07-23_en

⁶ For instance, semiconductors include technology and “know how” related to the design of integrated circuits, including assembly, testing and packaging thereof, and extends to “core components or software of

II. Scope

The Recommendation identifies in detail the scope of the proposed review, providing a granular definition of three critical technologies and clarifying what an “outbound investment” is for these purposes.

More specifically:

- the relevant technologies are, broadly speaking, semiconductors, AI, and quantum technologies, each as identified in more detail in the Recommendation.⁶ However, biotechnologies – which were mentioned in the White Paper – have not been included in the list;
- an “outbound investment” is defined as the (direct or indirect) investment made by an individual resident or legal entity established in the EU to carry out an economic activity related to a relevant technology in a non-EU country.

These investments comprise acquisitions of controlling stakes,⁷ mergers, and transfer of tangible or intangible assets (including IP), and also extend to greenfield investments, joint ventures, and venture capital transactions.

On the other hand, contrary to what was originally envisaged in the White Paper, the Recommendation does not contain an express reference to R&D cooperation and practices to attract highly specialized personnel as actions that should be subject to the Member States’ review.

semiconductor manufacturing equipment”, as well as “materials” used to such end; as regards AI, this includes floating point operations, generative AI systems trained on biological / genomic data; quantum technologies are defined as quantum computing, communications, and sensing.

⁷ More specifically, acquisitions enabling “an effective participation in the management or control of the company”. On the other hand, minority investments intended to seek a return on investment capital should be excluded.

Further, from a geopolitical perspective, as noted, the Recommendation does not target specific third countries, although Member States are encouraged to focus their efforts on individual countries presenting higher risk profiles.⁸

III. Authority and review

Consistent with foreign direct investment (“FDI”) reviews, and at least at this early stage, it will be for each Member State to review these investments, as opposed to a single central EU authority, such as the EC (as, for instance, in the case of concentrations that are subject to the foreign subsidies regulation - “FSR”⁹). Whether the EC will acquire a more central role presumably will be defined at a later stage (i.e., no earlier than the second half of 2026), when the EC and Member States will take stock of the understanding acquired in this intermediate phase and will make a more advanced policy decision.

Accordingly, Member States are urged to require a “voluntary or mandatory provision of information” regarding the relevant transactions. The Recommendation specifically identifies the minimum set of information that Member States should receive, including any contractual arrangement for research and development, intellectual property licensing and personnel movement entailed by the transaction, and whether the investor has received any public funding from the EU or the Member State in the relevant sector.

The Member States’ review may not be limited to new or pending transactions, but may extend to transactions completed as early as January 2021 (the White Paper referred to January 1, 2019), or even

earlier if Member States identify transactions of particular concern.

On the other hand, the Recommendation does not seem to clarify what Member States should be able to do once they are notified and receive this information, including whether they should or could go as far as blocking the proposed transaction or authorizing it subject to commitments (again, as in the case of FDI screening).

This ambiguity may suggest that the primary goal of this proposed screening is to collect sufficient information to perform a detailed¹⁰ risk assessment to identify possible risks to economic security (primarily, technology leakages).

Similarly, the Recommendation does not specifically regulate how Member States should implement it and, in particular, whether they should set up new tools or make use of (and adapt) existing ones. In fact, while this partly depends on each national legislation,¹¹ it may well end up being a mix of the two options, consistently with the Recommendation itself that suggests that national authorities “where possible apply existing instruments, including dual-use export controls”.

IV. Timing and next steps

The Recommendation envisages that Member States regularly exchange (and share with the EC) information collected in their reviews (subject to appropriate confidentiality arrangements), setting July 15, 2025 as a first date to do so, whereas, by June 30, 2026, Member States are required to submit

⁸ To such end, they should coordinate with each other and the EC, including in light of such countries’ past behaviors (such as violations of the UN Charter).

⁹ Regulation (EU) 2022/2560, where, under certain circumstances, investors having received certain financial contributions from non-EU governments in the previous three years must seek the EC clearance prior to closing the proposed transaction. See our [alert memorandum](#) of October 12, 2023 (among others).

¹⁰ To this end, Member States should carry out a case-by-case assessment, prioritizing the transactions most likely to impact the economic security, considering, among other factors, the maturity of the relevant

technology and the availability of such technology in the country of destination, whether the investment could accelerate the country of destination’s ability to counter or surpass the EU’s relevant capabilities, global interconnectivity, and participation in EU projects or programs.

¹¹ For instance, under the Italian FDI regime, certain outbound investments may be caught by the requirement pursuant to which intra-group transfers of certain IP rights (regarding AI, semiconductors, cybersecurity, aerospace, energy storage, quantum, and nuclear, as well as food technologies) from an EU group entity to a non-EU group entity must undergo a full FDI review by the Italian government.

a comprehensive report regarding their implementation of the Recommendation.

Based on such report, Member States and the EC will discuss the outcome of their respective reviews with a view to achieving a shared understanding of risks with the “Expert Group” established in 2023, composed of the EC and experts appointed by each Member State. Accordingly, we expect that any further policy decision and possible additional mitigating measures will be postponed to no earlier than the second half of 2026.

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