November 21, 2024

EU FDI: State Of The Union (2024)

I. Introduction

On October 17, 2024, the European Commission ("**Commission**") published its fourth annual report on the screening of foreign direct investments ("**FDI**") into the Union (the "**Report**"),[1] following previous editions published in October 2023, September 2022 and November 2021.[2] Notable findings include the following:

- The majority of M&A-driven FDI into the EU have originated from investors in the U.S. and the UK.
- FDI continues to land primarily in Western Europe, and targets 5 sectors – Manufacturing, ICT, Professional, Scientific and Technical activities, Finance, and Retail.
- 22 EU Member States have an active FDI regime; the remaining 5 are expected to join shortly.
- Despite a significant decline in the overall number of M&A in the EU, FDI filings reviewed within the EU screening cooperation mechanism have further increased - 488 in 2023 (56% leading to a decision), up from 423 in 2022, 414 in 2021 and 265 in 2020.
- 85% of those 488 filings originated from 7 EU Member States – Austria, Denmark, France, Germany, Italy, Romania and Spain.
- Only 8% of the cases went to Phase II (down from 13% in 2022); in <2% of the cases the Commission issued an opinion; in 6% of the cases another Member State submitted comments.
- 85% of notified deals were cleared unconditionally; 10% required remedies and 5% were prohibited/abandoned, in line with statistics from recent years. Notable exception is France where 44% of clearance decisions in 2023 were subject to remedies.
- Defense (26%), aerospace (22%) and semiconductors (17%) were the main sectors subject to a Phase 2 review.

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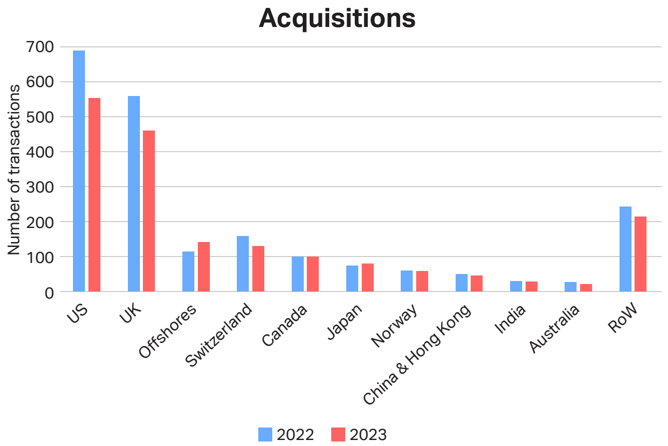
[1] Report from the Commission to the European Parliament and the Council: Third Annual Report on the screening of foreign direct investments into the Union, SWD (2023) 329 final of October 19, 2023.

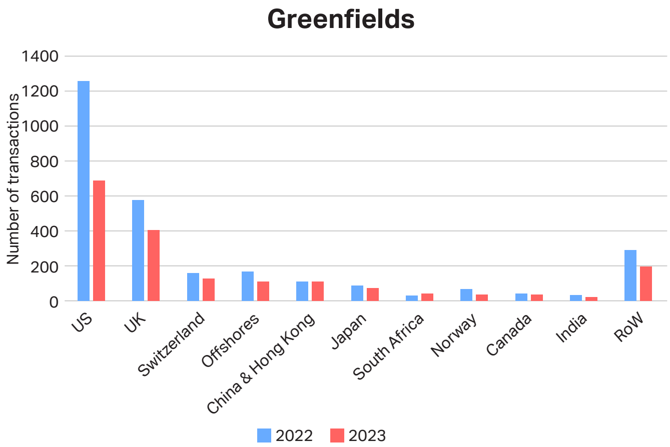
[2] See our Alert Memo on the EU FDI: State of The Union, on the Report from the Commission to the European Parliament and the Council: Third Annual Report on the screening of foreign direct investments into the Union, SWD (2023) 329 final of October 19, 2023, and our Alert Memo on the First Review Of The EU FDI Screening Regulation, the Report from the Commission to the European Parliament and the Council: First Annual Report on the screening of foreign direct investments into the Union, SWD (2021) 334 final of November 23, 2021.

These findings are addressed in more detail below.

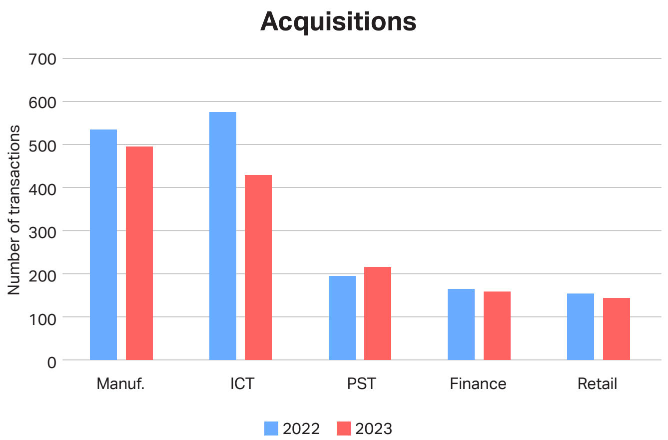
II. EU FDI Overview

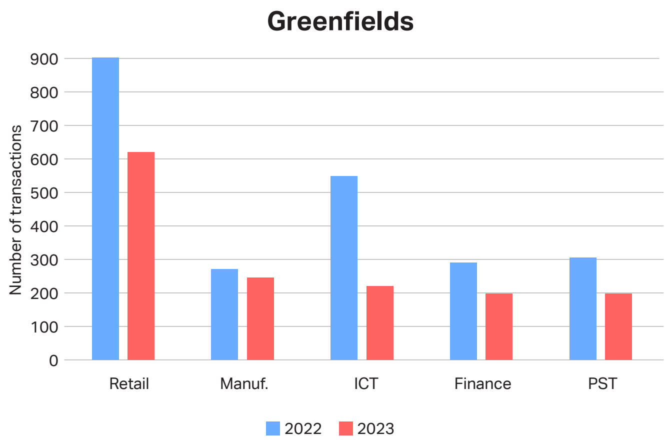
Global FDI flows in 2023 totaled EUR 1 trillion, a year-on-year decrease of 15% compared to 2022. Similarly, the number of M&A deals and greenfield investments into the EU declined on a year-on-year basis for most Member States, except for M&A in countries such as Poland, Finland and Ireland. EU FDI was attracted primarily from the U.S., which accounted for c. 30% of M&A and c. 36% of greenfield investments, and the UK, which accounted for c. 25% of M&A and c. 21% of greenfield investments. Just over a third of FDI M&A landed in Germany and Spain, followed by France, Italy, Ireland and the Netherlands. Italy and France experienced sharp year-on-year decline in the number of deals, at -29% and -40% respectively. The number of year-on-year greenfield investments also declined sharply in Germany (-48%), France (-29%), and Spain (-9.9%).





FDI M&A focused on Manufacturing, which overtook Information Communication and Technology (**ICT**), followed by Professional, Scientific and Technical activities (**PST**),[3] Finance, and Retail. Greenfield investments were primarily made in Retail, followed by Manufacturing, ICT, Finance, and PST.



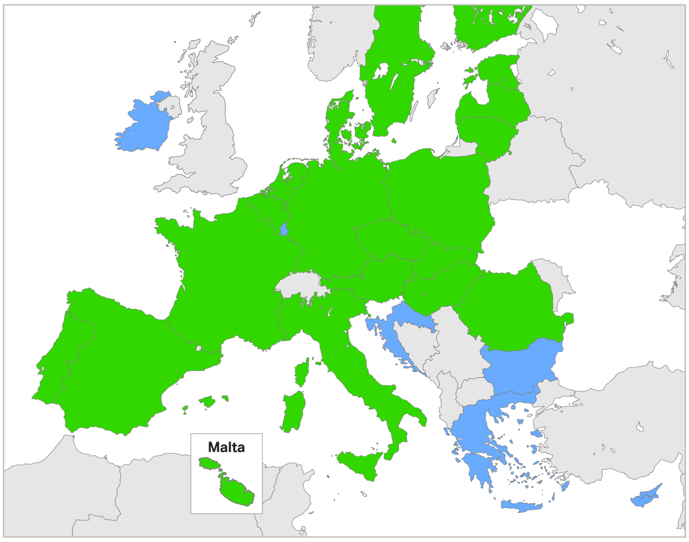


[3] Professional activities include activities by law and accounting firms, as well as consultancy and engineering activities. For example, this encompasses activities of head offices, market research and public opinion polling, consultancy, and research & experimental development on biotechnology. Scientific and technical activities include, among other things, R&D facilities.

III. EU FDI Expansion – 4 EU Member States To Go

As of November 2024, 22 EU Member States have an active FDI regime. Ireland's FDI regime is imminent (entry into force is expected in January 2025) and the remaining 4 EU Member States – Bulgaria, Croatia, Cyprus, and Greece – are expected to join the FDI block in the course of 2025.[4]

Under the current EU FDI regime, Member States are only encouraged to screen FDI investments. In contrast, under the proposed new EU FDI Regulation, all EU Member States will be obliged to adopt and maintain active FDI regimes.[5]

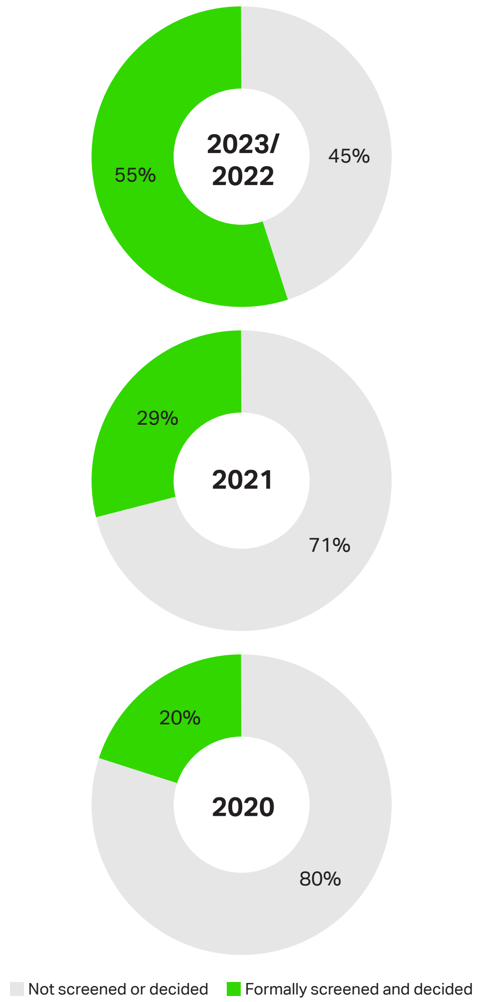


IV. EU FDI Enforcement Trends

Member States received 1,808 filings (including *ex officio* matters) in 2023, a significant increase from 1,444 filings in 2022. 56% of the 2023 filings were screened and decided, in line with the decision rate in 2022.

Similarly, the number of filings undergoing screening within the EU FDI screening cooperation mechanism[6] continues to increase — 488 notifications in 2023, up from 421 in 2022, and 414 in 2021. Accordingly, c. 1 out of every 4 FDI filings made at the EU Member State level was shared across the EU for a collective review and comments.[7] 17 EU Member States submitted filings to the EU FDI screening cooperation mechanism in 2023, 85% of which by Austria, Denmark, France, Germany, Italy, Romania, and Spain.

The Commission and other Member States were involved only in a limited number of cases. Only 8% of the notified cases went to Phase II (down from 13% in 2022); in <2% of the notified cases the Commission issued an opinion; in 6% of the cases another Member State submitted comments.



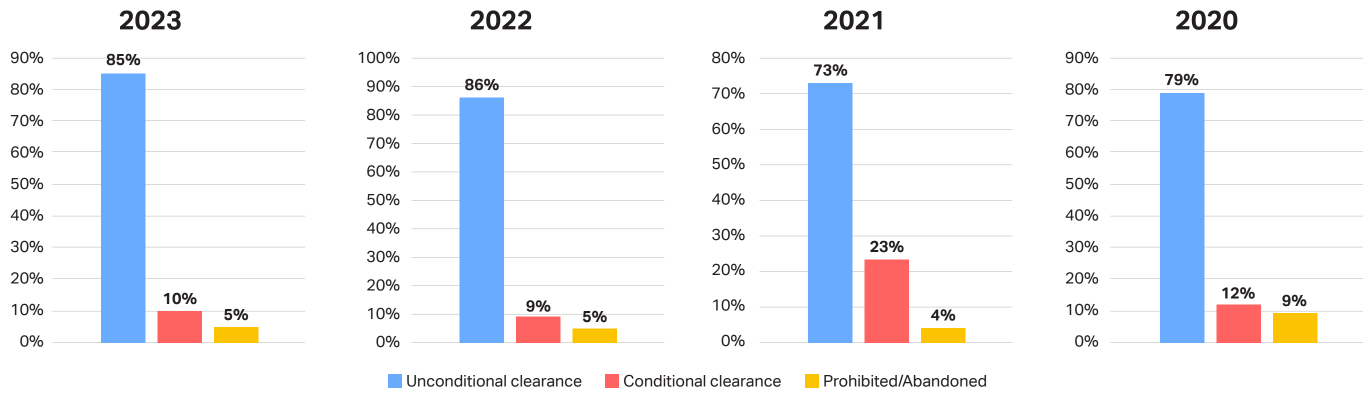
[4] For more granular information on each Member State, please see Commission Staff Working Document: Screening of FDI into the Union and its Member States, COM (2023) 590 final.

[5] See our Alert Memo on the proposed new EU FDI Screening Regulation of earlier this year.

[6] Unlike well-established FDI regimes in the United States, Canada, and Australia, the EU does not have the power to review and authorize foreign investments nor, more generally, act as an overarching regulator. Instead, the EC facilitates the cooperation among Member States screening foreign investments under their national FDI screening regimes, and provides views and opinions for the Member States consideration where relevant. In practice, Member States must notify the EC and all other Member States of FDI undergoing screening. The EC or other Member States can intervene if they wish by providing an opinion within a statutory period of 35 calendar days (this normally suspends the course of the national screening). If a third of Member States consider a particular FDI to likely affect security or public order in a Member State or in the EU, the EC must provide its opinion. While such opinion is not binding, this process creates pressure on the host Member State, which should take due account of the EC opinion.

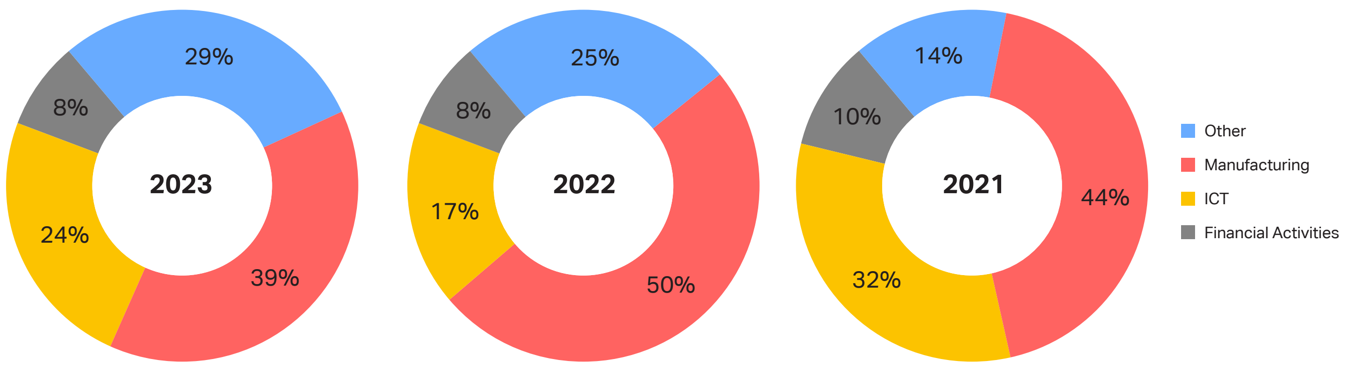
[7] The discrepancy between the number of filings received by the Member States and those that were shared across the EU under the EU FDI Cooperation Mechanism is primarily due to the fact that the scope of the latter is narrower than that of national screening regimes. In certain sectors, national regimes also extend to intra-EU investments, which national authorities normally do not share with the Commission and the other Member States.

The vast majority of formally screened deals in the EU Member States continue to be cleared unconditionally – 85% in 2023, compared to 86% in 2022, 73% in 2021, and 79% in 2020. 10% of 2023 matters required remedies (primarily behavioral) and 5% were prohibited/abandoned, mirroring the statistics in 2022. This is in line with the Commission's statement that the EU is open to FDI and that "*Member States only deny transactions that pose very serious threats to security and public order*".[8] Notable exception is France where 44% of clearance decisions were subject to remedies.

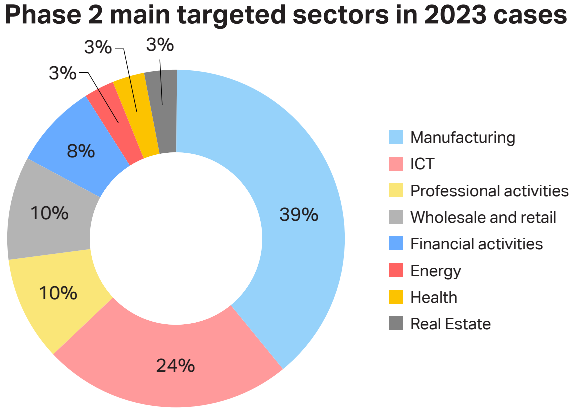


Phase II FDI reviews continued to focus on manufacturing and ICT sectors, and particularly on Defence (26%), Aerospace (22%), and Semiconductors (17%).

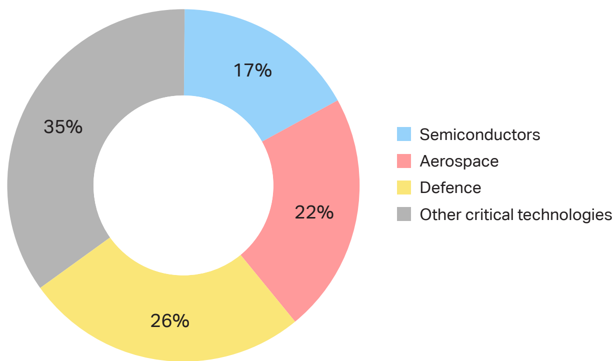
Phase 2 main targeted sectors in 2021-2023 cases



Phase 2 main targeted sectors in 2023 cases



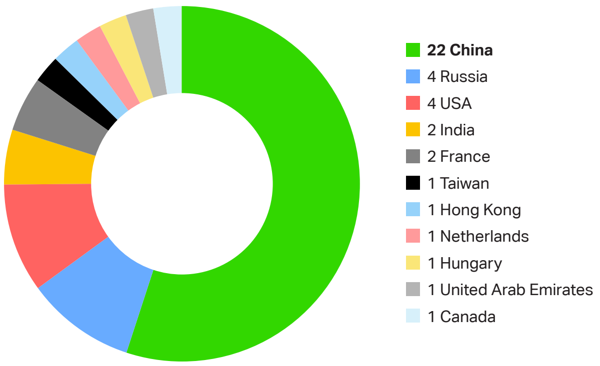
Types of critical technologies in Phase 2 cases



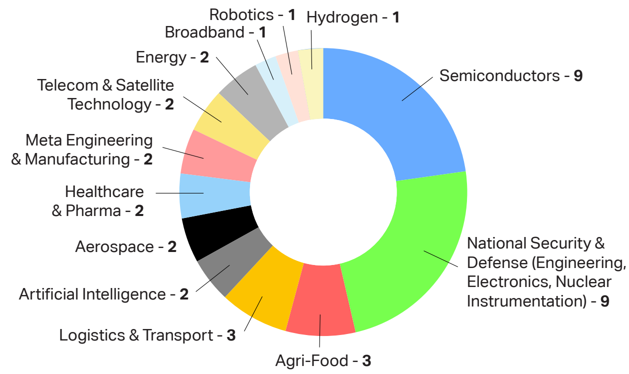
[8] *The Report*, p. 12. The same message was included in the 2023 report.

Considering publicly known prohibitions in the EU/UK in the last decade, the vast majority targeted investors from China and Russia. Intra-EU prohibitions have been rare in the last 10 years, with only 1 case in 2024 (Spain-Hungary).

Prohibitions in EU/UK per country



Prohibitions in EU/UK per sector



Prohibitions/Deal Abandonments In The EU In 2023-2024	
BC Partners et al – Biograran (France, 2024)	The French Government (Ministry for the Economy) raised concerns regarding Servier's decision to sell Biogaran, its wholly owned French generics subsidiary, which had received offers from British investment fund BC Partners and two Indian pharmaceutical companies, Torrent Pharmaceuticals and Aurobindo. The French government considered Biogaran to be a "*national jewel*", and Servier officials emphasized that any "*non-European buyer should expect stringent conditions if they had any hope of acquiring Biogaran.*" On September 8, 2024, Servier announced its decision to abandon the sale.
CSIC Longjiang GH Gas Turbine Co – MAN Energy Solutions (Germany, 2024)	The German Government (Federal Ministry for Economic Affairs and Climate Action) prohibited the acquisition of the gas turbines business of MAN Energy Solutions (a subsidiary of Volkswagen) by Chinese CSIC Longjiang GH Gas Turbine Co, an entity which belongs to the shipyard group China State Shipbuilding Corp (CSSC), which also builds ships for the Chinese navy. The Germany Government considered that the acquisition would have endangered the public order and security of Germany, because the gas turbines can be used not only for power generation or to drive pipelines, but also for warships.
Ganz-Mávag – Talgo (Spain, 2024)	The Spanish Government (Ministry of Industry, Commerce and Tourism) prohibited the proposed acquisition of Talgo by Ganz-Mávag's, a Hungarian company. The Government considered Talgo a strategic company in a key sector for Spain's economic security, territorial cohesion and industrial development.
Flowserve – Segault (France, 2023)	The French Government (Ministry for the Economy) prohibited the proposed acquisition of Segault by a US company, Flowserve. Segault is specialized in valves for the nuclear boilers on board all the French nuclear submarines and the Charles de Gaulle aircraft carrier.

Prohibitions/Deal Abandonments In The EU In 2023-2024	
Nebius – Tecnologia Intelligente (Italy, 2023)	The Italian Government (Presidency of the Italian Council of Ministers) prohibited the proposed acquisition of control over Tecnologia Intelligente S.r.l. by Nebius, a Dutch group reported to have close ties with Russia's Yandex. Tecnologia Intelligente is a small Italian company active in the AI sector and other advanced technologies.
Petro Mat FZCO – FBM Hudson Italiana (Italy, 2023)	The Italian Government (Presidency of the Italian Council of Ministers) prohibited the proposed acquisition of FBM Hudson Italiana, active in the energy transition field, by Petro Mat Fzco, a UAE-based group.

V. Conclusion

The number of FDI filings reviewed by EU Member State authorities and within the EU screening cooperation mechanism continues to increase, including due to the introduction of new active FDI regimes and expansion of the sectoral scope of the existing FDI regimes.

However, the overall EU-wide decisional trend remains essentially the same — 85% of filings are cleared unconditionally in Phase I, c. 10% require remedies (mostly behavioral) and c. 5% are prohibited or abandoned, almost exclusively in relation to investors based in, or with significant links to, China and Russia.

In line with the low intervention rate, the Commission is involved in a limited number of cases.

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