LUISS

Department of Business and Management

Chair of Cases in Business Law

Why Europe Slept?

A prospective over the missed opportunity of a joint regulation over FDI

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Academic Year 2023/2024

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PREFACE

This thesis is devoted to the study of the regulation on foreign direct investment screening, in particular on the enormous historical opportunity missed by European countries to pass a joint legislation on the matter that could have enhanced a better role for Europe at international level, as greater protection for its citizens. Caught in inertia and swayed by liberal ideology, the European Union and its Member States have overlooked a crucial historical opportunity. We often find ourselves asking: why is Europe not working, and why is it losing its international relevance? This question has haunted European policymakers for years. Our Union grows increasingly divided, especially on shared foreign policies, just when unified regulations from the European Union are more critical than ever. Political leaders are questioning the very utility of this Union, citing its inefficiencies. President Macron of France has even called Europe a “mortal entity,” and Mario Draghi, former president of the ECB, highlighted that European countries view each other as competitors and fail to look outward enough[1]. We lag behind the United States and China, which actively craft policies to strengthen their competitive positions and direct investment to their advantage. We recognize the significant risk to the state of the Union. Politicians bear the blame for their failure to effectively engage public opinion on this issue. Similarly, the media is at fault for not prioritizing a matter so vital to our future development at both national and supranational levels, for both the public and private sectors. There has been little discussion about our inability to confront the political, economic, and relative power of the US, China, India, and Russia if we are not united. Draghi suggested that “we must consider moving forward with a subgroup of member states” if the entire Union cannot align with its needs. Unfortunately, this seems more like a weak attempt rather than a decisive call to action, likely to be overshadowed by bureaucratic obstacles and a lack of genuine commitment to a cohesive political, economic, and social direction. In the last two year, the word “War” is surrounding us and is frighteningly surrounding the

[1] Baccini F. (April 16, 2024). Draghi’s report holds the key to Europe’s future competitiveness

future of a lot of countries in the world. In February 2022 Russia has invaded Ukraine and has started a war that is still ongoing; in October 2023 the conflict in the Middle Est has started and it dramatically risks to widen. The world "disorder", as described by Enrico Letta in his report on the European Single Market[2], it's spreading and conflicts that ten years ago were considered only a distant possibility are now taking place. In other parts of the world other tensions are rising, we can cite the newspapers from all over the world that report the Chinese wonder to regain Taiwan, or BRICS countries that are wondering to create and use another currency for international trade other than the dollar, the reserve currency par excellence in our economic system around which the world balance is built. Divisions are quietly rising not only between countries of the European Union, but also within the same countries, with the greater polarization of ideas in the US. Meanwhile, a new industrial revolution is happening with the development of new technologies as semiconductor, raw materials for the green transition, microchip or artificial intelligence, and it will reshape global production and global wealth. The international geopolitical tension and the risks on international trade routes, increase risks for companies, and generates the general strategic need to "decouple[3]" from unstable or "misaligned" countries. National governments for the security and stability of the supply of critical resources as the one of their economies, are incentivizing roll-back investments or foreign-allied investments, as US did with the Reduction Inflation Act [4]and with the Chip Act [5]or as

[2] Definition given by Enrico Letta in his report, "Much More Than A Market, Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens", of April, 2024.
[3] Decoupling refers to the process of separating or disengaging two interconnected systems or entities, often to reduce dependency and mitigate risks. In economics and geopolitics, it typically describes efforts by countries to become less dependent on each other, particularly in terms of trade, technology, and supply chains, to enhance resilience and national security.
[4] The Inflation Reduction Act (IRA) is a U.S. legislative measure enacted in 2022 aimed at curbing inflation through various economic strategies. It focuses on reducing the federal deficit, lowering prescription drug prices, and investing $1 trillion in clean energy to mitigate climate change. Key provisions include corporate tax reforms, incentives for renewable energy, and healthcare cost reductions. The IRA represents a significant effort to stabilize the economy, promote sustainable growth, and enhance affordability for consumers.
[5] The Chips Act, or Creating Helpful Incentives to Produce Semiconductors for America Act, is a U.S. legislative initiative passed in 2021. It allocates $52 billion in funds to boost domestic semiconductor manufacturing, aiming to address chip shortages and enhance national security. The act incentivizes

Europe did with the Green Deal [6]or the Italian PNRR[7]. Our economies are changing and with them the role of the State in the economy. Governments try to be more present both with strategic intervention in the definition of the sectors in which the grow of their country will happen, both by scrutinizing foreign direct investments (FDI). We will study when and why this restrictiveness trend rose worldwide and in particular in Europe, generating the phenomenon that is the argument of our thesis.

In traversing the intricate landscape of foreign direct investments (FDI) and regulatory frameworks, our expedition embarks upon a quest for comprehension, guided by the imperative to unravel the multifaceted dynamics at play. As we navigate through the corridors of supra-national decision-making, we are compelled to probe beyond the veneer of policy prescriptions, seeking to unearth the underlying imperatives and exigencies that shape the global economic order. Our thesis commences with a concerted effort to decipher the fundamental nature of FDI, delving into the motivations that impel corporations to venture beyond their national borders in pursuit of new markets and opportunities. At the heart of this inquiry lies a fundamental question: What compels companies to undertake the risks inherent in foreign investment, and what benefits accrue to the nations that receive them? This initial exploration sets the stage for a broader examination of global trends, framed within the context of globalization—a phenomenon that has catalyzed unprecedented interconnectivity and interdependence among nations. Yet, even as the forces of globalization propel capital flows across borders, we discern a curious trend: a discernible reduction in the

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research, development, and production of semiconductor technologies to reduce dependence on foreign suppliers, particularly in critical industries like automotive and electronics.

[6] The Green Deal, officially known as the European Green Deal, is a comprehensive policy initiative launched by the European Commission in 2019. It aims to make the European Union carbon-neutral by 2050 while fostering economic growth. The Green Deal commits €1 trillion in investments over a decade to various sectors, including renewable energy, sustainable transport, and biodiversity conservation.

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movement of capital into and out of Europe since the onset of the global financial crisis in 2008. We will study the most important of the possible reasons that generate this phenomenon, the so-called "China Effect". As we seek a deeper understanding of China's emergence as an economic powerhouse, we find ourselves confronted with the far-reaching implications of its ascent for the global economic stage. Through a meticulous analysis of China's economic strategies and its conduct on the international front, we strive to untangle the intricate network of connections that shape the modern ebb and flow of global capital. With China's emergence as a central protagonist in the global economic narrative, Western regulators have been prompted to reevaluate their approach to FDI policies. Against this backdrop, in the third paragraph of the first chapter we turn our gaze towards Europe, tracing the evolution of FDI regulations within the continent. From the foundational principles enshrined in national constitutions to the imperatives of privatization that have reshaped the regulatory landscape, we seek to uncover the historical antecedents that have shaped contemporary policy frameworks. This historical inquiry leads us to a comparative analysis of the legislative frameworks of Europe's preeminent economies—Germany, France, and Italy. Through this comparative lens, we aim to discern the commonalities and divergences in regulatory approaches, shedding light on the complex interplay of national interests and supranational imperatives. At the nexus of these national and supranational dynamics lies the European Union's quest for regulatory harmonization—a journey marked by incremental steps towards the creation of a unified regulatory framework for FDI. From the signing of the Maastricht Treaty to the ratification of the Treaty of Lisbon, we trace the evolution of European integration and the concomitant expansion of EU regulatory authority, until the actual contraction. Turning our attention to our case study, we will focus on the Italian Regulation. Undertaking a granular examination of the country's regulatory landscape, tracing the evolution of FDI regulations from legislative edicts to their intersection with EU directives. From the Law Decree n. 12 of 2012, to the most recent Law Decree n. 21 of 22. Through this case study, we aim to illuminate the interplay between domestic imperatives and supranational mandates, highlighting the challenges and opportunities

inherent in the pursuit of regulatory convergence and the possible risks related to the lack of it. In the second section of the second Chapter we will then focus on the failed acquisition of Microtecnica (controlled by Collins Aerospace) by the French company Safran because of the exercise of the Golden Power by the Italian Government. In the concluding chapter, we will explore theories offering practical insights into the genuine rationales driving the imperative to embrace regulatory measures Realist theories, particularly those proposed by Mearsheimer, challenge the EU's economic interdependence narrative by suggesting that security concerns may override economic considerations, potentially leading to conflicts that cannot be mitigated by economic penalties alone. This thesis also contemplates the cyclical patterns of global power, as delineated by Dalio's theories, to argue for a European strategy of strategic realism that anticipates and adapts to these inevitable shifts. The structure of this thesis is meticulously crafted to dissect the multifaceted nature of FDI in the EU. We will additionally examine all the documentation required from companies seeking to initiate operations within the Union. Consequently, we will draw connections between FDI regulations and merger regulations to underscore the potential drawbacks of excessive regulatory requirements. Moreover, we will provide evidence of its adverse effects on the transaction industry. Furthermore, we will introduce Rodrik's theory, which will serve as a lens through which we analyze the European dilemma. Through his framework, we aim to elucidate Europe's current position vis-à-vis three primary forces, while also identifying the attendant risks to its continued viability. Subsequent chapters will address the need for strategic realism in Europe's policy-making and the crucial role of media in engaging the public on these union-wide issues. In the final paragraph of our expedition, we pivot to the practical implications of FDI regulations, exploring their impact on corporate behavior, market dynamics, and economic growth. Moreover, studying the need to revise the concept of national security at Member States level. In the tentative to answer the research question.

Our endeavor takes inspiration from one statement and from a successive book discussing the causes of England's slumber before the Second World War, notably penned by Winston Churchill [8]and J. F. Kennedy[9]. These works critique England's passive and hesitant stance towards rearmament prior to the global conflict, lacking pragmatic vision of power. Today, the landscape has markedly shifted, with peace prevailing in Europe since the war's end. However, mounting apprehensions loom regarding Europe's role amidst shifting global power dynamics and equilibriums. The absence of a unified European Regulation signals vulnerability externally and discord internally. As debates surrounding the state of our Union persist and impediments to investment flow between European nations endure, the research question arises: “Why Europe slept?”.

[8] One of Churchill's notable statements regarding England's stance before World War II can be found in his speech delivered in the House of Commons on November 12, 1936: "So they go on in strange paradox, decided only to be undecided, resolved to be irresolute, adamant for drift, solid for fluidity, all-powerful to be impotent."

[9] Why England Slept" is a book authored by John F. Kennedy and published in 1940. In it, Kennedy examines the reasons behind England's unpreparedness for World War II. He explores various factors such as political leadership, military strategy, and societal attitudes that contributed to England's vulnerability leading up to the war. The title is a play on Winston Churchill's earlier work "While England Slept," which criticized England's lack of preparation for the conflict.

Why Europe Slept ?

CHAPTER 1

1.1 What’s known about FDI

In the dawn of our modern capitalist era, the flame of globalization ignites brightly through Foreign Direct Investments (FDIs). These investments, bearing the torch of cultural exchange, illuminate distant lands, bridging continents and fostering the diffusion of shared principles across corporate and consumer realms. Otherwise, before beginning any discussion on the reasons why European Union was able to miss a great meeting with history, we need to dive deep into the concept of Foreign Direct Investment (FDI). Professor Riela defines them as “cross-border capital movement that widens business opportunities and may increase the capital stock, the productivity and, ultimately, the standard of living in the recipient country.” (Stefano Riela, 2023). Another definition is given, instead, by the OECD, as a FDI is an operation that involves an investor from one nation establishing a lasting interest and significant influence over an enterprise in another nation, typically demonstrated by ownership of 10 percent or more of the voting power in the target company (OECD, 2015). Furthermore, we can find another definition, not dissimilar by the other, in art.2 of the European Regulation 2019/452 that is the juridical base from which actual European legislations on FDI nowadays took their formal inspiration. In this one, FDI is defined as “an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity; It is usually good for both the party involved in the transactions, meaning the acquiror and

the country economy that received it."[10] However, foreign direct investment (FDI) stands distinguished from alternative modes of foreign investment, such as greenfield investments and portfolio investments. Greenfield investments encompass the establishment of new infrastructure or facilities in a foreign nation, whereas portfolio investments typically involve the acquisition of stocks or bonds without the intent to wield influence over the targeted company (Chen, 2020). FDI sets itself apart due to its dynamic nature; FDI investors actively pursue control over the targeted company, often with the objective of shaping its strategic direction or operational activities. This juxtaposes portfolio investments, which tend to be more passive, primarily focusing on financial gains rather than operational oversight. Moreover, FDI diverges from greenfield investments in its approach to entering foreign markets: while FDI involves investing in existing businesses along with their established ecosystems in a foreign country, greenfield investments entail the creation of entirely new operations or facilities from the ground up in the host nation. In essence, FDI primarily manifests through cross-border mergers and acquisitions (M&A), serving as a strategic maneuver by investors to safeguard long-term interests in foreign enterprises. This underscores a deeper level of engagement and commitment compared to other forms of international investment. This also gave the investor a medium liquidity risk[11], given the possibility to sell their participation in almost every moment, while a greenfield investment is one of the reasons of the generation of interdependency among nations.

Coming back to FDI, it also offers several potential benefits to recipient countries. As we will see it facilitates knowledge transfer, technological advancements, and can contribute to economic growth through increased productivity and occupation.

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[10] Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2019.
[11] Liquidity risk is the risk that an entity will be unable to meet its short-term financial obligations due to an inability to convert assets into cash quickly without significant loss in value. This can result in the entity facing difficulties in funding its operations or settling debts when they come due.

Additionally, FDI can stimulate local economies by generating tax revenue and fostering competition, which can lead to improved efficiency and innovation. It can also take some risks to national security. These include the foreign investor's capacity to limit or block output from the acquired producer, potentially harmful deployment or sale of sensitive technology detrimental to the host country's national interest, and infiltration of the host country's systems for purposes such as monitoring, surveillance, steal technologies or introducing destructive malware (Moran T.H., 2009). Further, the strategic significance of FDI for companies cannot be overstated. FDI serves as a conduit for corporations to expand their operations beyond domestic boundaries and access new markets, thereby diversifying their revenue streams and reducing reliance on saturated or volatile domestic markets. Those are typically used in the life cycle of Small-Medium Enterprises (SME), big corporations and Multi Nationals Companies (MNC). FDI remains a cornerstone in the strategic arsenal of corporations owing to its multifaceted advantages. It is very common for companies today to differentiate their production in outside economies, driven by three fundamental motives as delineated in the paper “Why do firms invest abroad? An analysis of the motives underlying Foreign Direct Investments”: resource seeking, market seeking, and non-marketable asset seeking (Franco C. & Co., 2008). Delving deeper into these motives unravels the intricate dynamics through which FDI catalyzes economic progress and industrial advancement in host nations. The "cherry-picking" strategy, as elucidated in the paper, underscores the meticulous selection process involved in choosing among alternative investment options and determining the optimal location (Franco C. & Co., 2008). This decision-making process hinges on various factors, including but not limited to, accessing foreign markets, capitalizing on cost-effective labor pools, and considering macroeconomic variables like exchange rates and the quality of infrastructure.

Resource seeking constitutes the first motive underpinning FDI. It encapsulates the endeavor of firms to invest in foreign jurisdictions with the aim of procuring specific resources at a lower cost compared to their home country. These resources encompass a spectrum ranging from natural reserves to skilled or unskilled labor (Franco C. & Co.,

2008). For instance, companies may venture into foreign territories to tap into natural resource reservoirs such as minerals or oil, or to leverage cost-effective labor pools or specialized expertise. An example of these types of FDIs is represented by the acquisition by China National Offshore Oil Corporation (CNOOC), a major state-owned oil company in China, of Nexen Inc., a Canadian oil and gas firm, for about $15.1 billion (Rocha, 2013). This acquisition granted CNOOC entry to Nexen's worldwide oil and gas assets, notably its substantial interests in the Canadian oil sands. It facilitated CNOOC's global expansion and enabled the company to obtain crucial energy reserves, addressing China's escalating energy needs.

Market seeking emerges as the second motive propelling FDI. It represents a strategic maneuver adopted by enterprises to penetrate foreign markets, either for direct market servicing or as gateways to adjacent markets. Market-seeking FDI manifests in two primary forms: direct, wherein the primary focus lies on catering to the host market, and indirect, where the host market serves as a springboard for accessing neighboring markets (Franco C. & Co., 2008). An example of the direct approach first happened in 2000, when Vodafone, a multinational telecommunications company based in Britain, purchased Mannesmann, a German telecommunications company, in a huge operation for about $180 billion (Nikunj A., 2021). The main objective of this acquisition happened in the period of the great privatizations was to directly penetrate the German market, enabling Vodafone to provide its mobile telecommunications services directly to consumers in Germany. An example of indirect market seeking is the acquisition of ARM Holdings by SoftBank in 2016 for approximately $31 billion. SoftBank, a Japanese multinational conglomerate, acquired ARM to bolster its technological capabilities in fields like IoT, AI, and mobile technologies, rather than directly entering the semiconductor market. The acquisition allowed SoftBank to expand its influence and operations in Europe and other regions, aligning with its vision of a globally connected tech ecosystem. ARM continued to operate independently, enabling SoftBank to leverage ARM's relationships and partnerships with major tech companies, thus strengthening SoftBank's market position indirectly.

This last operation can also be described as a non-marketable asset seeking (NMAS). It constitutes the third motive propelling FDI initiatives. It materializes when firms invest in specific locales to gain access to assets that are unique to those regions and aren't readily tradable (Franco C. & Co., 2008). These assets encompass intangible benefits accruing from proximity to other firms or business ecosystems, such as shared knowledge and specialized skills within a particular industry. For instance, a technology conglomerate might funnel investments into Silicon Valley not merely for its geographical allure but also for the collaborative ecosystem it fosters. Similarly, the acquisition of another firm might be driven by the quest to harness the expertise of its workforce, which isn't easily transferable. In this context is insertable the acquisition of Pirelli by ChemChina in 2015. It was driven by the Chinese company's strategic need for access to Pirelli's advanced technology, distribution network, and brand reputation in the global tire industry. This move facilitated China's ambition to strengthen its presence in high-tech manufacturing sectors. Pirelli's ecosystem offered ChemChina valuable expertise and resources to enhance its competitiveness and innovation capabilities in tire manufacturing (Arosio & Masoni, 2015).

In few words, FDI are fundamentally both if the company wants to grow vertically or horizontally. Moreover, strategic investments in foreign jurisdictions enable firms to harness unique resources and capabilities that may not be readily available domestically, thereby enhancing their competitive positioning and fostering long-term sustainability. However, the importance of FDI extends beyond the purview of individual corporations to encompass broader socio-economic implications for the recipient countries. For developing nations, in particular, as we will repeat, FDI inflows represent a vital source of capital infusion, technology transfer, and employment generation, which are indispensable for fostering economic growth and development. FDI inflows stimulate domestic investment, spur innovation, and enhance productivity, thereby contributing to the overall competitiveness of the host economy. For this reason, countries have always tried and should always try to attract these types of investments through their regulations (Franco C. & Co., 2008). Additionally, FDI

inflows can facilitate the integration of domestic firms into global value chains, enabling them to access new markets, enhance their competitiveness, and upgrade their production processes. To sum up, it's essential to highlight, as mentioned earlier, that this form of investment fosters mutual reliance and potentially significant interdependence between two nations, along with a societal dependency on the recipient country. Moreover, the aforementioned mutual benefits remain valid as long as external political influences or third-party interventions don't steer activities away from the principles of free market and private interest.

Previously, we briefly addressed certain risks, with further exploration planned in subsequent sections. To grasp the full scope of Foreign Direct Investment (FDI) and its impact on the global economic equilibrium, it's imperative to direct our focus towards its trends since the 1990s. As since now on we will focus on the analysis of the flows of this particular part of the Balance of Payments [12]. In particular, a deeper understanding necessitates a closer examination of inbound FDI patterns, given FDI's pivotal role in propelling globalization forward by generating movement of capital and people, so of interest around the globe. This era coincides with significant global shifts, such as the historic collapse of the Berlin Wall, marking the end of the Cold War epoch, and the widespread privatization of state-owned enterprises in Western economies at the end of the 90's. These pivotal events unfolded during a period characterized by a unipolar world that saw the United States reigning as the sole hegemon, as articulated by Mearsheimer in "The Great Illusion" (2018). The integration of European economies, underscored by the establishment of the Eurozone and the inception of the

[12] The balance of payments (BoP) is a comprehensive record of all economic transactions between a country and the rest of the world over a specified period, typically a year. It includes the exchange of goods, services, income, and financial assets between residents and non-residents. The BoP is divided into three main components: the current account, the capital account, and the financial account. The current account captures trade in goods and services, income from investments, and transfer payments like foreign aid and remittances. The capital account includes capital transfers and transactions involving non-produced, non-financial assets. The financial account tracks investment flows, such as foreign direct investment (FDI), portfolio investment, and other financial transactions. Foreign Direct Investment (FDI) is a crucial element of the financial account in the BoP. It involves investments by foreign entities in a country's businesses through significant ownership stakes or establishing new operations.

European Central Bank in 1999, alongside China's "open door policy" (as we will soon explore), propelled globalization further. The principles underpinning the formation of the European Union emphasized cooperation and the facilitation of cross-border trade and investment, embracing the tenets of a free market. These principles catalyzed Europe's transformation into the primary global recipient of foreign FDI. During this epoch, globalization experienced an unprecedented surge, evidenced by a staggering 250% increase in worldwide cross-border M&A deals between 1997 and 2001 (REUTERS T., 2018). Asian nations beyond Japan emerged as pivotal hubs for global investment during this period, capturing the attention of multinational corporations eager to optimize production processes and tap into burgeoning consumer markets. This trend underscored the shifting dynamics of the global economy, with emerging economies increasingly becoming key players on the world stage. Moreover, this period witnessed a convergence of cultures as nations adopted new growth models aligned with Western economic paradigms. Of particular significance during this period was China's transformative shift towards embracing globalization and integrating into the international economic system, starting to surpass Japan as the biggest among the Asian economies. Furthermore, there was a prevailing sense of optimism and trust in the future of the global economy during the late 90's and the early 2000's. The prospects for economic growth and prosperity appeared promising as nations embraced market-oriented reforms and pursued closer economic integration (Witt M.A., 2019). Foreign Direct Investment (FDI) served as a crucial pillar in the architecture of global economic integration, facilitating the cross-border flow of capital, technology, and expertise. Globalization is commonly defined in International Business as the process of retrieved from increasing interdependence among nations (Witt M.A., 2019). It is evident from the graph that the pinnacle of the globalization wave was attained prior to the financial upheaval of 2008 (FIGURE 1). As of 2022, the net worth of transactions designated as Foreign Direct Investment (FDI) at the global scale has yet to ascend to the heights witnessed in 2007. Clearly, an intervening force has disrupted the organic progression of globalization, stalling the natural integration

of international markets and we will see the ones who started to lose ground were the Europeans (Figure 1.1).

	NET OUTFLOWS		
	China	European Union	United States
1985	$ 629,000,000.00	$ 15,256,390,950.50	$ 3,680,000,000.00
1990	$ 830,000,000.00	$ 111,002,569,694.28	$ 59,940,000,000.00
1995	$ 2,000,000,000.00	$ 118,772,118,820.31	$ 110,060,000,000.00
2000	$ 4,612,000,000.00	$ 616,402,045,760.37	$ 186,370,000,000.00
2001	$ 9,696,000,000.00	$ 409,503,372,227.82	$ 146,041,000,000.00
2002	$ 6,284,049,718.62	$ 211,560,300,443.97	$ 178,985,000,000.00
2003	$ 8,456,083,723.56	$ 266,055,336,822.93	$ 195,218,000,000.00
2004	$ 7,972,601,713.71	$ 410,255,354,679.42	$ 374,004,000,000.00
2005	$ 13,729,566,302.86	$ 897,699,614,068.49	$ 52,591,000,000.00
2006	$ 23,932,198,467.54	$ 1,181,715,355,698.50	$ 283,801,000,000.00
2007	$ 17,154,799,701.59	$ 1,637,573,273,335.55	$ 523,890,000,000.00
2008	$ 56,742,276,629.70	$ 1,185,692,716,158.12	$ 343,583,000,000.00
2009	$ 43,889,985,500.00	$ 576,665,271,791.84	$ 312,597,000,000.00
2010	$ 57,953,599,366.36	$ 636,083,842,607.02	$ 349,828,000,000.00
2011	$ 48,420,641,059.65	$ 929,119,956,443.12	$ 436,616,000,000.00
2012	$ 64,963,386,524.00	$ 571,935,587,289.92	$ 377,240,000,000.00
2013	$ 72,970,879,683.31	$ 734,213,014,956.90	$ 392,796,000,000.00
2014	$ 123,129,554,305.76	$ 574,733,928,782.04	$ 387,529,000,000.00
2015	$ 174,390,681,862.62	$ 936,690,055,960.21	$ 302,071,000,000.00
2016	$ 216,424,460,753.58	$ 779,340,955,458.96	$ 299,815,000,000.00
2017	$ 138,292,767,802.14	$ 621,105,153,946.06	$ 409,413,000,000.00
2018	$ 143,026,576,683.86	$ 147,446,818,621.28	$(130,720,000,000.00)
2019	$ 136,910,000,000.00	$ 510,714,873,097.25	$ 114,927,000,000.00
2020	$ 153,720,808,338.11	$ 175,167,832,111.99	$ 286,662,000,000.00
2021	$ 178,797,739,982.88	$ 893,953,582,817.12	$ 394,070,000,000.00
2022	$ 149,692,325,677.08	$ 437,654,150,364.48	$ 426,251,000,000.00

Figure 1.1: FDI NET OUTFLOWS, IMF Data Retrieved from: https://data.worldbank.org/indicator/BM.KLT.DINV.CD.WD

	NET INFLOWS		
	China	European Union	United States
1985	$ 1,659,000,000.00	$ 10,479,696,702.50	$ 9,630,000,000.00
1990	$ 3,487,000,000.00	$ 64,506,841,223.22	$ 71,230,000,000.00
1995	$ 35,849,200,000.00	$ 110,526,695,018.42	$ 69,080,000,000.00
2000	$ 42,095,300,000.00	$ 633,986,714,307.46	$ 349,125,000,000.00
2001	$ 47,053,000,000.00	$ 366,252,770,235.31	$ 172,496,000,000.00
2002	$ 53,073,618,897.40	$ 295,343,566,624.83	$ 111,055,000,000.00
2003	$ 57,900,937,467.39	$ 293,507,610,674.62	$ 117,106,000,000.00
2004	$ 68,117,272,181.22	$ 313,836,058,138.36	$ 213,641,000,000.00
2005	$ 104,108,693,867.09	$ 731,279,014,292.92	$ 142,344,000,000.00
2006	$ 124,082,035,618.51	$ 911,860,089,994.71	$ 298,463,000,000.00
2007	$ 156,249,335,203.20	$ 1,477,512,334,051.61	$ 346,613,000,000.00
2008	$ 171,534,650,311.57	$ 828,460,948,198.92	$ 341,092,000,000.00
2009	$ 131,057,052,869.50	$ 478,991,025,004.12	$ 161,083,000,000.00
2010	$ 243,703,434,558.18	$ 539,582,758,001.16	$ 264,039,000,000.00
2011	$ 280,072,219,149.94	$ 877,745,479,520.75	$ 263,497,000,000.00
2012	$ 241,213,868,161.42	$ 565,178,435,825.29	$ 250,345,000,000.00
2013	$ 290,928,431,467.00	$ 617,100,206,501.00	$ 288,131,000,000.00
2014	$ 268,097,181,064.34	$ 432,596,924,443.65	$ 251,856,000,000.00
2015	$ 242,489,331,627.40	$ 817,289,334,837.31	$ 511,434,000,000.00
2016	$ 174,749,584,584.05	$ 722,640,340,926.01	$ 474,388,000,000.00
2017	$ 166,083,755,721.65	$ 529,597,236,416.02	$ 380,823,000,000.00
2018	$ 235,365,050,036.34	$ (76,790,049,426.56)	$ 214,715,000,000.00
2019	$ 187,169,822,364.76	$ 507,462,024,001.28	$ 315,984,000,000.00
2020	$ 253,095,616,058.58	$ 211,006,240,404.38	$ 138,363,000,000.00
2021	$ 344,074,977,062.48	$ 547,772,918,101.77	$ 493,085,000,000.00
2022	$ 180,166,881,345.04	$ 135,032,010,343.45	$ 388,078,000,000.00

Figure 1.2: FDI NET INFLOWS, IMF Data Retrieved from: https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD

We stand at a critical juncture, tasked with discerning the factors that have impeded this trajectory and charting a course towards revitalizing global economic interconnectedness. In our quest, we must delve into the trend of inward Foreign Direct Investment (FDI), for therein lies the key to comprehending the fluctuations from one year to the next. Numbers and data serve as the bedrock of our understanding, revealing the essence of unfolding events. These phenomena can be elucidated by scrutinizing policy shifts or momentous occurrences that characterized each respective year or epoch. As we embark on a retrospective journey from the year 1990 to the culmination of 2022, a narrative of economic ebbs and flows unfolds, revealing four peaks and their

corresponding downturns. These peaks in inward Foreign Direct Investment (FDI) occurred notably in the years 2000, 2007, the period spanning 2015 to 2016, and finally in 2021. Yet, with each zenith came a relative downturn, witnessed in the years 2002 to 2003, 2009, 2018, and the most recent year on record, 2022. Now, let us delve deeper into the underlying causes behind these fluctuations from one year to the next. As we have discussed above, the late 1990s witnessed a brisk pace in the FDI market, fueled by the surge of globalization and the opening up of economies. This momentum propelled FDI values to their first peak in the year 2000. However, this ascent was curtailed by the financial crises of 2001 to 2002, catalyzed by a myriad of factors including the burst of the dot-com bubble, corporate scandals, and geopolitical tensions, notably the September 11 terrorist attacks in the United States, which precipitated new conflicts. The subsequent era saw the integration of the European Union into the global economy and a burgeoning optimism towards globalization, accompanied by significant deregulation of the financial sector. From 2003 onwards,

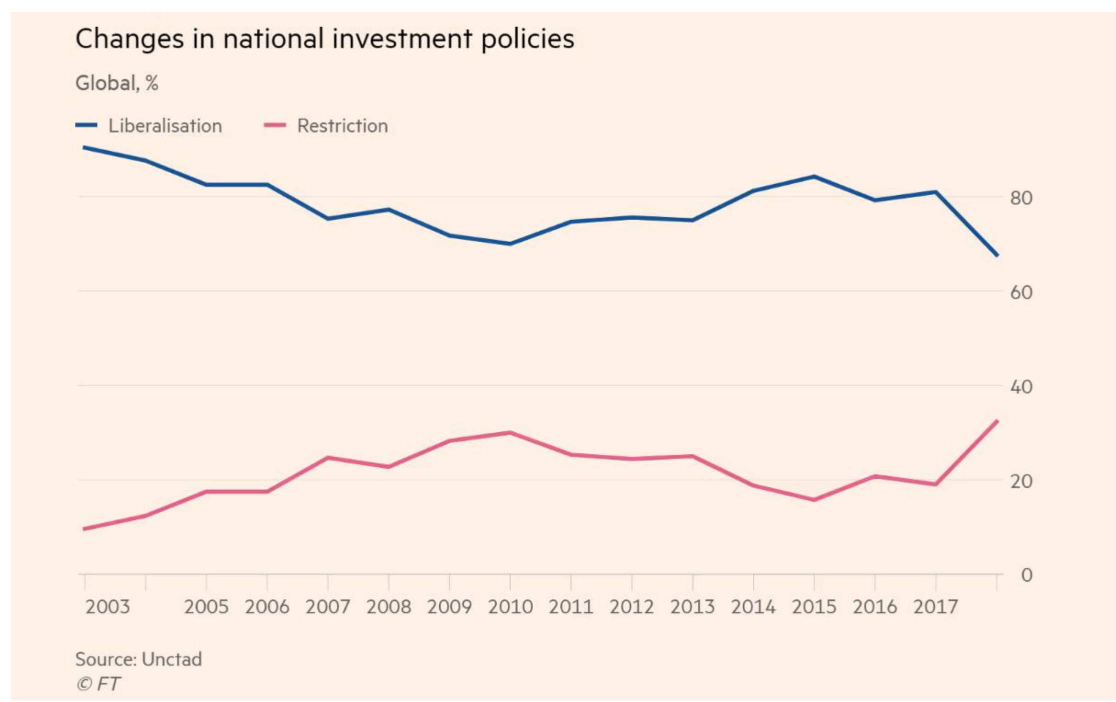

Figure 1.3: Changes in national investment policies. Financial Times. Retrieved from: https://www.ft.com/content/c5fbb9fa-893d-11e9-a028-86cea8523dc2

FDI values surged, culminating in the peak of global economic integration in 2007.Nevertheless, the onset of the 2008 financial crises ushered in a new phase characterized by market stagnation and widespread investor apprehension. Figure 1.3. Changes in national investment policies. Financial Times. (Romei V., 2019)

As the world recovered from this downturn, FDI values once again surged, notably observed between 2015 and 2016. However, ensuing years witnessed a shift in dynamics, as new leaders in various countries voiced concerns over the potential financial vulnerabilities posed by emerging players. This growing apprehension led to heightened attention to national security considerations, prompting Western economies to enact new legislation governing foreign direct investments. Reported by the Financial Times, supported by the UNCTAD data, in 2017 the number of restrictive policy measures affecting foreign investment was close to a record high and that were blocked M&A transactions worldwide worth 153 billion dollars (Romei V., 2019). As a consequence, this regulatory climate cast a pall over international capital flows, precipitating a notable downturn in the inward flow of FDI in 2018. It was against this backdrop that the European Union identified a significant opportunity for growth through concerted foreign policy actions. Despite this setback, the global economy saw a resurgence post-2018, accompanied by a revitalization in outward company activities. The prevalence of negative interest rates further stoked investment endeavors, particularly in mergers and acquisitions (M&A) as well as greenfield projects.

However, the emergence of the COVID-19 pandemic in 2020 disrupted global markets, necessitating unprecedented government interventions to spur economic recovery and safeguard national interests in strategic industries. This infusion of substantial capital, coupled with favorable market conditions, spurred another upsurge in inward FDI in 2021. Yet, the post-pandemic landscape, marked by the ascent of new international powers, witnessed a renewed emphasis on national economic sovereignty and security considerations. This shift prompted nations to bolster control over their economies, resulting in heightened legislation governing the screening of foreign investments.

Moreover, against the backdrop of escalating global tensions and rising borrowing costs, the inward flow of FDI experienced a downturn in 2022. Consequently, companies adopted a more cautious approach to investment decisions, leading to a decline in FDI activity. During the first half of 2023, completed cross-border M&A deal values witnessed a significant drop of 28%, reflecting a slowdown in deal-making activity amidst economic uncertainties and geopolitical tensions. This decline was particularly pronounced in emerging markets and developing economies, where completed deal values plummeted by 49%. The uncertainty surrounding the economic outlook and the risk of further financial instability prompted investors to adopt a more risk-averse stance, dampening the flow of capital across borders. Coming back to the actual values, the global landscape of FDI is quite unstable, influenced by economic uncertainties, geopolitical tensions, and regulatory changes.

The European Union (EU) position has been impacted by these shifting tides and different events. Historically, the EU has stood as both the largest recipient and the most significant investor abroad, a testament to its steadfast commitment to free market principles and openness to foreign investment. However, since the onset of the 2008 financial crises, which spiraled into a significant European debt crise, there has been a noticeable decline in both inward and outward investment within the EU (Figure 1.1; Figure 1.2). Inward investments have passed from the yearly value of $1,477,512,334,051.61 in 2007, to $135,032,010,343.45 in 2022. The same with outflows FDI from Europe, that have passed from $1,637,573,273,335.55 in 2007, to $437,654,150,364.48 in 2022. Since 2017, the EU has unequivocally been eclipsed by both Eastern Asian countries and the United States in terms of both inward and outward investment values. These shifts in investment patterns underscore the dynamic nature of global economic relationships and the evolving landscape of globalization. They highlight how foreign investments, when properly harnessed, can drive internal development in poorer nations and propel them to become international investors themselves. Yet, alongside these transformations, there's been a palpable sense of apprehension in the West, leading to an uptick in FDI screening mechanisms (Figure

1.3). These mechanisms, enshrined in regulations, serve not only as a means to safeguard security and public order but also as instruments of national assertion and internal market regulation. It is defined in art. 2 of the European Regulation 452/2019 as "an instrument of general application, such as a law or regulation, and accompanying administrative requirements, implementing rules or guidelines, setting out the terms, conditions and procedures to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments on grounds of security or public order". In Europe, this surge in regulatory measures could have been viewed as a collective response to external pressures, fostering unity amidst political divisions within EU member states. It was an opportunity to forge a shared vision on business law, yet regrettably, this harmonization remains elusive. The shift we are witnessing transcends mere data fluctuations; it marks a significant geopolitical and power realignment among nations, with Europe enormously losing ground to other countries. FDI regulations, wielded as tools of diplomacy and internal governance, underscore the evolving dynamics of global economic interdependence[13] and the imperative for proactive adaptation in the face of change, and the one in Europe, as we will see, has been largely influenced by the rising Chinese presence.

[13] Economic interdependence refers to the intricate relationship between different economies, where they rely on each other for various economic activities such as trade, investment, and financial transactions. It implies that changes or disruptions in one economy can have significant effects on others due to the interconnectedness of global markets. This concept is exemplified by the trade relationships between countries, where they exchange goods and services based on their respective comparative advantages. Economic interdependence can foster cooperation and mutual benefit but also carries risks, such as vulnerability to economic shocks or conflicts. Overall, it reflects the complex web of interactions that define the modern global economy.

1.2 Influence and nature of the “China threat theory”

Nestled within the tapestry of global economics lies China, a communist nation whose economic prowess ranks second in the world by GDP and first by Purchasing Power Parity (PPP) GDP (Figure 1.4). Yet, despite its economic might, China holds second place when measured by population after India. To comprehend the mounting apprehensions felt by Western nations towards China's ascent, one must embark on a journey tracing the trajectory that propelled this nation into the heart of the globalized economy.

The foundation of China's current regime can be traced back to the aftermath of the internal revolution of 1949, which saw the ascent of communist political leader Mao Zedong (Dalio R, 2021). Under Mao's governance, China's economy operated under strict isolationist policies, making it one of the most closed economies globally. Despite efforts to achieve economic self-sufficiency, epitomized by the Maoist period as summarized by Lardy N.R. (1994), the country remained entrenched in poverty, with average annual salaries languishing at less than $200, in 1972 the GDP per capita was of about $113. The demise of Mao Zedong and Zhou Enlai in 1976 heralded a succession crisis, culminating in the emergence of Deng Xiaoping as the new Chinese political leader. Deng, representing the reformist faction, espoused a markedly different economic approach, emphasizing openness to the external market and the belief that economic growth should benefit the entire populace (Dalio R, 2021). Since assuming power in 1978, Deng Xiaoping initiated sweeping reforms, famously known as the policy of "opening up," which marked China's integration into the global economic arena. His policies were characterized by the principles of "reform" and "openness," effectively blending elements of capitalism into the communist framework (Dalio R, 2021). Upon Deng's ascension, China operated under a regime where individuals had limited autonomy in choosing their professions, and private property rights were virtually non-existent. Economic activities were guided by multi-year plans, with limited engagement in international trade or adoption of best practices. Despite starting

with a GDP per capita of less than $200 annually, Deng Xiaoping orchestrated a remarkable transformation, quadrupling China's GDP per capita within 16 years (FIGURE 2). His really long-term vision extended to elevating China's status to that of a moderately developed nation by 2050 (Dalio R, 2021).

	GDP			GDP PER CAPITA		
	China	European Union	United States	China	European Union	United States
1980	$ 306,165,314,855.85	$ 3,302,959,936,728.90	$ 2,857,307,000,000.00	$ 312.02	$ 8,100.24	$ 12,574.79
1985	$ 309,835,803,013.59	$ 2,677,481,057,422.58	$ 4,338,979,000,000.00	$ 294.79	$ 6,469.42	$ 18,236.83
1990	$ 394,565,747,349.06	$ 6,497,764,960,998.87	$ 5,963,144,000,000.00	$ 347.58	$ 15,459.50	$ 23,888.60
1995	$ 734,484,834,573.58	$ 8,295,832,183,149.51	$ 7,639,749,000,000.00	$ 609.60	$ 19,464.09	$ 28,690.88
2000	$ 1,211,331,651,829.85	$ 7,276,390,991,857.45	$ 10,250,947,997,000.00	$ 959.36	$ 16,947.76	$ 36,329.96
2001	$ 1,339,400,897,153.44	$ 7,393,612,739,232.78	$ 10,581,929,774,000.00	$ 1,053.11	$ 17,198.04	$ 37,133.62
2002	$ 1,470,557,654,824.11	$ 8,083,519,004,561.54	$ 10,929,112,955,000.00	$ 1,148.51	$ 18,759.70	$ 37,997.76
2003	$ 1,660,280,543,870.95	$ 9,932,133,486,284.80	$ 11,456,442,041,000.00	$ 1,288.64	$ 22,967.93	$ 39,490.27
2004	$ 1,955,346,768,757.64	$ 11,418,900,352,971.10	$ 12,217,193,198,000.00	$ 1,508.67	$ 26,307.20	$ 41,724.63
2005	$ 2,285,961,149,904.26	$ 11,910,068,707,011.70	$ 13,039,199,193,000.00	$ 1,753.41	$ 27,341.73	$ 44,123.41
2006	$ 2,752,118,657,221.64	$ 12,712,635,610,430.10	$ 13,815,586,948,000.00	$ 2,099.22	$ 29,089.71	$ 46,302.00
2007	$ 3,550,327,803,024.69	$ 14,727,519,982,190.60	$ 14,474,226,905,000.00	$ 2,693.96	$ 33,587.35	$ 48,050.22
2008	$ 4,594,336,785,752.06	$ 16,295,383,915,395.20	$ 14,769,857,911,000.00	$ 3,468.33	$ 37,044.04	$ 48,570.05
2009	$ 5,101,691,124,358.41	$ 14,762,732,184,092.90	$ 14,478,064,934,000.00	$ 3,832.23	$ 33,480.55	$ 47,194.94
2010	$ 6,087,191,746,738.57	$ 14,556,037,351,406.00	$ 15,048,964,444,000.00	$ 4,550.47	$ 32,965.58	$ 48,650.64
2011	$ 7,551,545,703,518.14	$ 15,765,045,684,120.10	$ 15,599,728,123,000.00	$ 5,614.39	$ 35,767.08	$ 50,065.97
2012	$ 8,532,185,381,696.43	$ 14,641,507,897,977.10	$ 16,253,972,230,000.00	$ 6,300.58	$ 33,169.12	$ 51,784.42
2013	$ 9,570,471,111,847.82	$ 15,294,695,568,087.00	$ 16,843,190,993,000.00	$ 7,020.39	$ 34,564.58	$ 53,291.13
2014	$ 10,475,624,944,290.10	$ 15,651,155,752,825.70	$ 17,550,680,174,000.00	$ 7,636.07	$ 35,282.03	$ 55,123.85
2015	$ 11,061,572,618,594.70	$ 13,553,676,666,875.90	$ 18,206,020,741,000.00	$ 8,016.45	$ 30,487.16	$ 56,762.73
2016	$ 11,233,313,730,288.50	$ 13,888,512,857,169.00	$ 18,695,110,842,000.00	$ 8,094.39	$ 31,174.03	$ 57,866.74
2017	$ 12,310,491,333,980.90	$ 14,765,543,450,855.00	$ 19,477,336,549,000.00	$ 8,817.05	$ 33,090.63	$ 59,907.75
2018	$ 13,894,907,857,925.90	$ 15,980,992,271,824.80	$ 20,533,057,312,000.00	$ 9,905.41	$ 35,751.57	$ 62,823.31
2019	$ 14,279,968,506,242.80	$ 15,693,432,719,569.60	$ 21,380,976,119,000.00	$ 10,143.86	$ 35,079.53	$ 65,120.39
2020	$ 14,687,744,162,801.00	$ 15,381,174,426,002.40	$ 21,060,473,613,000.00	$ 10,408.72	$ 34,356.57	$ 63,528.63
2021	$ 17,820,459,508,852.20	$ 17,315,218,527,836.10	$ 23,315,080,560,000.00	$ 12,617.51	$ 38,721.08	$ 70,219.47
2022	$ 17,963,171,479,205.30	$ 16,746,544,871,112.00	$ 25,439,700,000,000.00	$ 12,720.22	$ 37,433.28	$ 76,329.58

Figure 1.4: GDP and GDP per capita according to World Bank data. Retrieved from: https://data.worldbank.org/indicator/NY.GDP.MKTP.CD

The subsequent years witnessed a dramatic surge in China's GDP per capita, passing from $4550 of 2010 to $12720 of 2022, propelling it to the ranks of the world's top economies (FIGURE 2). This unprecedented growth was facilitated by support and collaboration from the United States and its allies, among which the European Union, that through FDI in the country helped them achieving an impressive internal growth.

In the early days of the 1980s, China found itself distant from the embrace of foreign investments. Recognizing this deficit, the Chinese government took bold action, carving out economic enclaves where foreign enterprises could thrive unhindered by the strictures of domestic regulations. These zones became havens for export-oriented manufacturing, drawing nearly seventy percent of foreign direct investment to their shores by 1990 (Institute for International Economics). Yet, as the decade unfolded, so

too did the political landscape of China. Amidst significant changes, China resolved to fully embrace the forces of globalization. In 1999, with a sense of purpose, they joined the World Trade Organization, signaling their readiness to engage with the wider world. From a modest foundation of nineteen billion dollars in 1990, the river of foreign investment surged to an impressive five hundred and sixty-two billion dollars by 2005. (Institute for International Economics). As we have stressed above, FDI can generate a very good effect in the receiving economy. That is what happened with China during the early 2000's, in which FDI has yielded substantial positive effects, particularly in enhancing its technological capabilities. Through its FDI policies, China not only facilitated the influx of technology into the country but also actively promoted the establishment of Research and Development (R&D) centers, like Microsoft (Institute for International Economics). Various surveys indicate that a significant proportion of Foreign Invested Enterprises (FIEs) in China had adopted advanced technologies (Li Keqiang, 2015). Furthermore, FDI have played a pivotal role in upgrading China's technological landscape through increasing competition. This resulted in a substantial proportion of FIEs reporting significant technological advancements, further contributing to China's technological prowess (Li Keqiang, 2015).

Additionally, Chinese government in a lot of cases imposed to foreign companies to invest in the country through joint ventures, being the economy basically a state planned regime (Lu Yuan & Tsai T., 2000). These investments were always made in new technologies, thereby fostering technological spillover effects. Furthermore, FIEs have contributed to the training of local employees, thereby enhancing the overall skill level of the workforce in China. This has been significantly bolstering China's position as a global leader in technological innovation and industrial development and has also allowed national companies to grow in important sectors. In this period of the beginning of the 2000's, Chinese were producing goods with great cost efficiency and at the same time were lending money to the American to buy those goods by acquiring US bonds. In fact, China is, after Japan, the biggest foreign owner of US national debt, with a stake of almost $1 trillion (Amodeo K, 2023) (Dalio R., 2021).

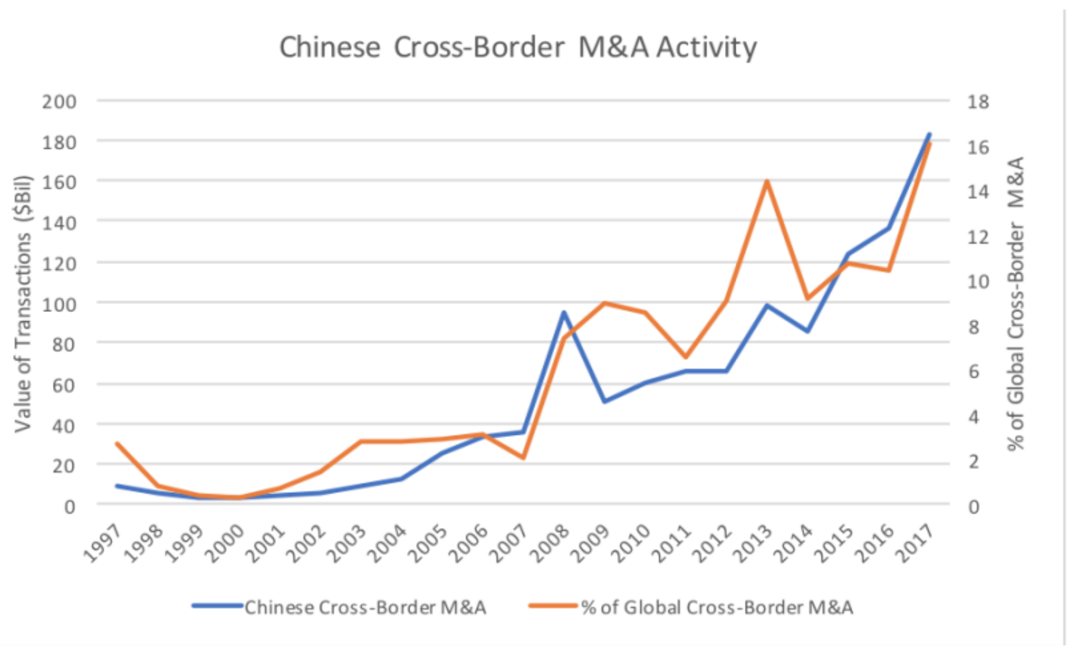

Figure 1.5: Chinese Cross-Border M&A Activity in terms of Value transaction and % of Global Cross-Border M&A

Throughout that era, China's stance leaned more towards assuming the role of a factory for Western capitalism rather than actively engaging in international markets. While some outside investments trickled in, they paled in comparison to the tidal wave that was yet to come. The proportion of their cross-border mergers and acquisitions remained modest, lingering below the 2% mark in terms of global transactions of such nature (FIGURE 4). Trade ties between China and the United States burgeoned, with Chinese goods infiltrating markets across Europe and America, capturing the attention of both media outlets and public discourse. Even as early as 2005, glimpses of China's potential for massive overseas investment emerged. The proposed acquisition of the American oil giant Unocal Corporation by China's state-owned CNOOC Ltd. sparked considerable controversy in Washington. This bid elicited vehement opposition from US policymakers, who endeavored to thwart the takeover in favor of the American firm Chevron (Lenihan, 2018).

Another harbinger of what lay ahead was the acquisition of IBM's PC business by Lenovo, an event that spurred the involvement of the Committee on Foreign Figure 6:

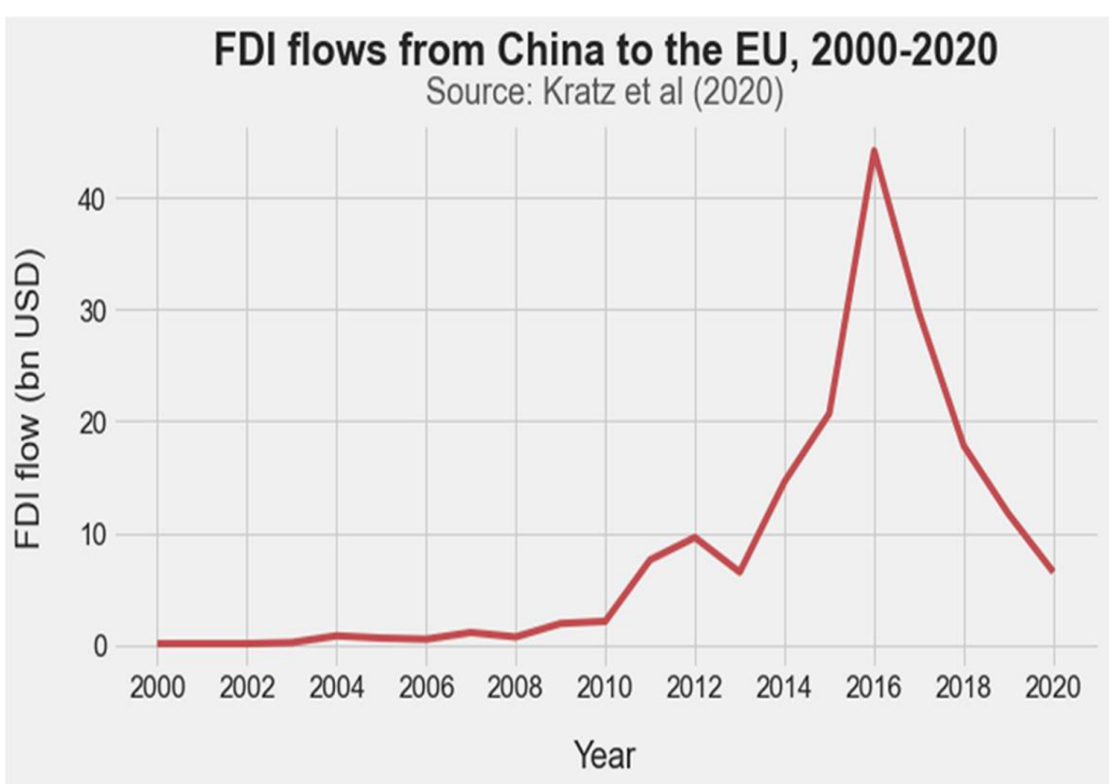

FIGURE 1.6. FDI flows from China to the EU, 2000-2020. Kratz et al, 2020

Investment in the United States (CFIUS), a governmental interagency committee tasked with assessing the national security implications of foreign investments in U.S. entities or assets (Lenihan, 2018).

A seismic shift in China's global engagement commenced in 2012 with the ascension of Xi Jinping to leadership. They underscored a Western reluctance to engage with such investments, prompting the emergence of concerns over China's burgeoning influence abroad and its adoption of more assertive growth strategies perceived as potentially threatening. Under the leadership of Xi Jinping, China embarked on a strategic path aimed at elevating its standing on the world stage. This endeavor wasn't merely about gaining power, but about breaking free from supply chain constraints (oil and energy) and fostering robust internal growth. It led China to craft more precise, long-term plans,

notably unveiled in 2015 with the "Made in China 2025" initiative (Dalio R. 2021). This visionary blueprint aimed to position China at the forefront of high-tech industries, driven by innovation and self-reliance. In contrast to earlier strategic plans that focused on broader economic goals, "Made in China 2025" boldly declared China's intent to lead in sectors traditionally dominated by the United States and Germany (Dalio R. 2021). Another bold move was the Belt and Road Initiative, which sought to rejuvenate ancient trade routes, fostering connectivity and cooperation across continents.

As we look back, we witness the trajectory of China's political strategy, which had already begun shaping Western economies at the turn of the millennium. Looking more into numbers, Chinese direct investments in Europe experienced a meteoric rise, with a 660% increase from 2005 to 2015, culminating in Chinese FDI surpassing EU investments in China. This surge extended beyond Europe, with Chinese investments becoming increasingly prominent in global cross-border transactions, reaching 16% by 2017 (Figure 1.6). This evolving landscape underscores the importance of foresight and adaptability in navigating the currents of change in global economics and diplomacy. As we forge the foundation of our future endeavors, it's imperative to highlight a crucial aspect. In the year 2016, the influx of Chinese foreign direct investment (FDI) into the European Union surged to an astonishing $538 billion, a significant leap from the previous year's $470 billion, even surpassing the peak recorded before the 2007 financial crisis. For the past two decades leading up to 2015, the United States has stood as the largest investor in the European Union, wielding considerable influence in foreign affairs. However, the American share of direct investments into the EU declined from 51.3% in 1995 to 41.4% by 2015 (Alvaro S. & Co., 2019).

Research conducted by the Mercator Institute for China Studies and Rhodium Group, as reported into the Quaderni Giuridici, sheds light on the remarkable rise of Chinese FDI in Europe, which soared to over €40 billion in 2016, marking a staggering 77% surge from the preceding year. This surge propelled Chinese FDI in Europe to surpass, for the first time in contemporary history, the value of EU FDI ventures in China (Alvaro S. & Co., 2019). Chinese investments, until reaching their peak, were

distributed across all EU countries, with a focus on nations boasting specialized industries, such as Germany, Italy, and France. An examination of the CONSOB report (aforementioned Quaderni Giuridici research) on the strengthening of foreign direct investment regulations reveals that Chinese investments in German companies

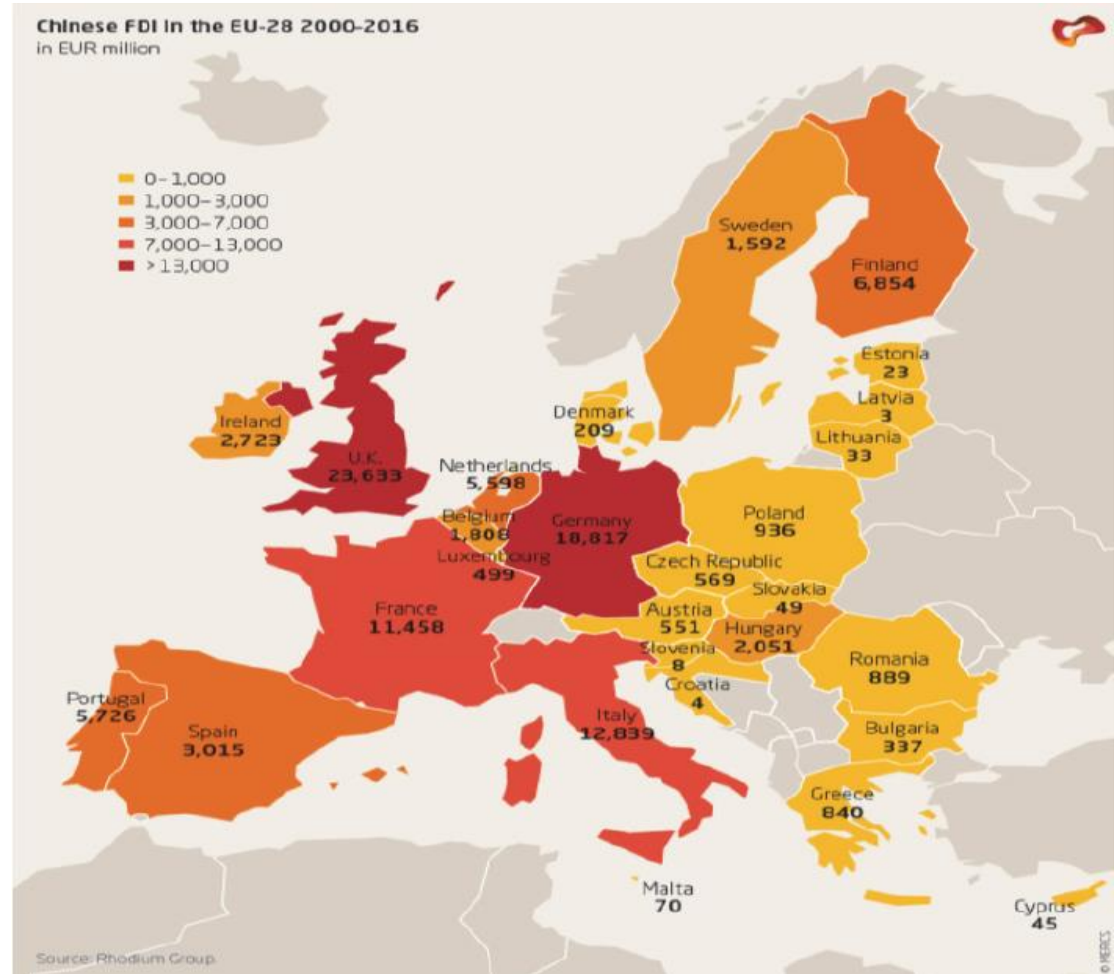

Figure 1.7: Chinese investments in Europe in terms of value per country. Alvaro S. & Co., (2019).

amounted to nearly €19 billion. Additionally, Italy emerged as the second-largest recipient of Chinese FDI stock capital until 2016, garnering nearly €13 billion (Figure 1.7). Another pivotal consideration, as we have emphasized, when analyzing the flow of investments from China into the EU, revolves around the sectors targeted by these Chinese ventures. This facet holds profound significance, serving as a gateway to comprehending the imperative for heightened scrutiny of such investments. Industries

such as Industrial Machinery and Equipment, ICT (Information and Communication Technology), Energy, Utilities, Transport and Infrastructure, Health and Biotech, and Entertainment emerged as prime targets for Chinese transactions (Alvaro S. & Co., 2019) (Figure 1.7). An illuminating example lies within the German landscape. Germany, notably, became a focal point, with Chinese investments strategically aimed at acquiring expertise in technologies where German companies held preeminent positions on the global stage. A recent analysis by economists at Allianz suggests a noteworthy transition in the relationship between these two nations—from complementary to substitutive (Allianz SE, 2024). China is progressively substituting Germany in high-value manufacturing endeavors. A case in point: since 2019, German machinery exports to ASEAN countries have declined by 14%, while Chinese exports of similar goods surged by 31%. The German trade balance with China, a longstanding concern, has witnessed a pronounced tilt over the past two years. Moreover, we observe a deepening critical dependency of Germany on China, soaring from 6% of imports in 2004 to a staggering 22% in 2022 (Allianz SE, 2024). China's ascent in Europe is palpable, particularly in sectors such as solar panels and essential pharmaceutical ingredients. Through a strategic blend of knowledge importation via collaboration and investment in highly innovative manufacturing enterprises abroad, China has tactfully ascended the value chain, gradually monopolizing market share in advanced industrial sectors while displacing European products from its domestic market. The ramifications are starkly evident in shifting trade dynamics. China's global export market share has surged from under 4% in 2000 to 14% in 2022, surpassing Germany's share in three out of four primary export sectors: machinery & equipment, chemicals, and computers & telecom, electronics, and household equipment. Highly specialized German machinery companies, combustion engine vehicle manufacturers, and producers of specialized chemicals now face formidable competition from Chinese counterparts, bolstered by price competitiveness and policy support from Beijing. While Germany maintains a lead in certain sectors, such as auto manufacturing and transport equipment, this lead has marginally narrowed in recent years (Allianz SE, 2024). Notably, German exports of passenger cars to China, once on an upward

trajectory, have recently experienced a sharp decline. There different study that evidence how China decided to enter the same nice of Germany, and within year taking their position. This led to German 2030 plan for their economy and to a more critique industrial as social public opinion.

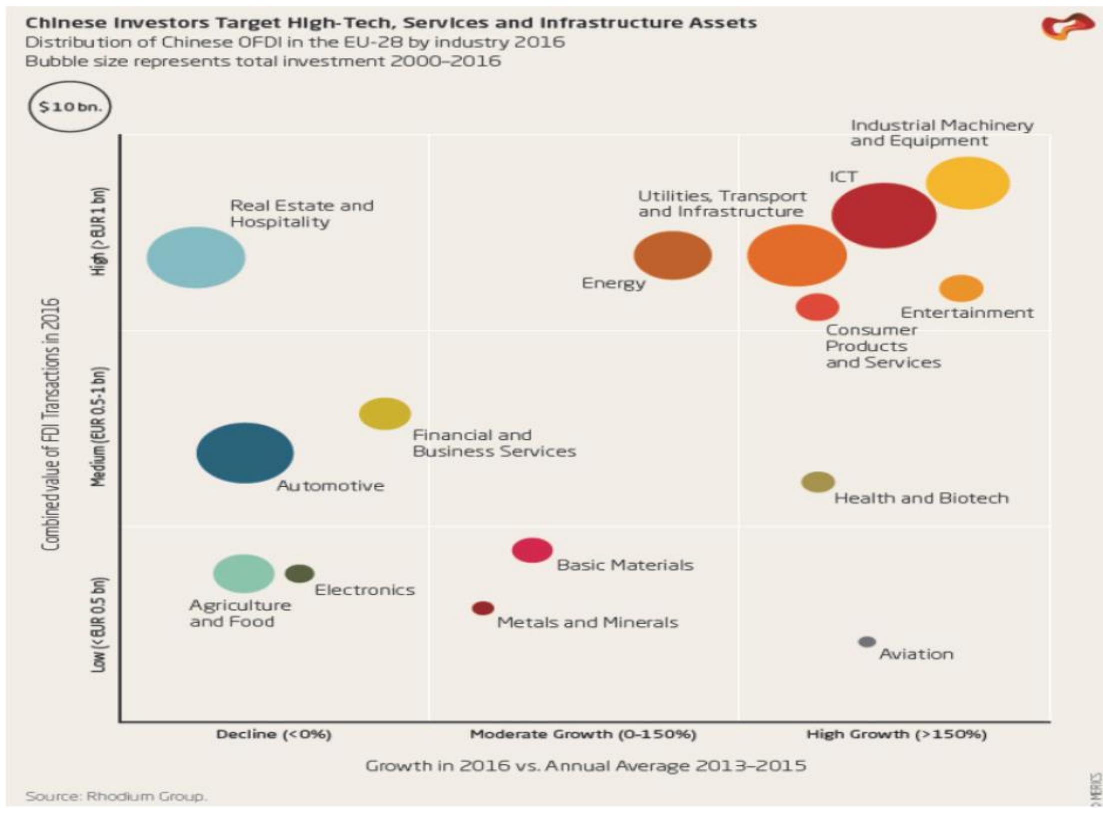

Figure 1.8. Chinese Investors Target High-Tech, Services and Infrastructure Assets. Rodium Group, 2016. Alvaro S. & Co., 2019

All of this knowledge on this Chinese ascent and on its relation with Europe it's fundamental to better understand the context that has delineated first the "China Effect" and the consequent regulation of FDI.

We will not study in deep other three possible reasons that could have caused this increasing restrictiveness of European Regulations, but we will briefly cite them in this section in order to better understand also the limits of our deduction.

The first reason is in the fact that we are part of the NATO, and being so, as Europeans, we are the great ally of the US. It could have been interesting to study the influence of their policies on our attitude toward the overall approach to the regulation, otherwise we will not do it. We will just say that being that European foreign affairs are completely dependent upon American one, perhaps the regulation formulated in 2019 of FDI could be a child of this discipleship. In fact, we know that during negotiations between the Commission, the European Parliament, and the Council in 2018, the United States shared some of its experience and best practices, worried that the absence of a unified EU screening mechanism could accelerate technology transfers to China and render its own screening efforts moot (Chan Z. T. & Meunier S., 2021). We will not delve into the regulation framework applied into the US and its evolution, but we have to say that the investment review process involving the CFIUS[14] was strengthened for the first time in 2007 through the Foreign Investment and National Security Act (FINSA) after one of the first investment attempts by a Chinese company in the U.S., the failed 2005 CNOOC acquisition of Unocal (Lenihan, 2018). The scope of this review process was broadened and strengthened again in 2018 through the rare bipartisan Foreign Investment Risk Review Modernization Act (FIRRMA) (Canes-Wrone et al., 2020). CFIUS, when evaluating an investment from a foreign company mainly focus on two aspects: if the company is owned by a foreign state, and if the transaction is able to threat US national security. These were also the starting points of the European Regulation, as we will see.

The second point that we are not going to study, but that could have been interesting to see in depth, is the influence, over this switch in international balances, of the Russia increasing aggressiveness. In particular the influence that the invasion of Crimea in

[14] The Committee on Foreign Investment in the United States (CFIUS) is an interagency body responsible for reviewing the national security implications of foreign investments in U.S. companies and operations. Often concluding matters in the post-notification phase, CFIUS enforces mitigation measures negotiated with foreign investors to protect sensitive technologies and information. These measures typically include ensuring access restrictions, setting guidelines for managing contracts and sensitive information, and imposing requirements for U.S. citizenship in certain roles. CFIUS's role expanded significantly with the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which broadened its jurisdiction and enhanced its structural capabilities to address new security challenges, particularly in the context of increasing U.S.-China technological conflicts.

2014 gathered in the bordering European Union countries. As Russia was and is, basically, an oligopoly in which almost every economic decision made has a direct relationship with the influence of the power exercised by the Government and an historical opponent to the actual world order, this could have generated some influence.

The last point is about the fact that between 2005 and 2007 there was a significant increase in foreign direct investment flows, particularly those from Sovereign Wealth Funds (SWFs) (Alvaro S. & Co., 2019). The financial crisis of 2008 transformed many of these funds from potential hostile acquirers into providential investors through bank recapitalizations or even bailouts. This surge drew attention from international organizations and national governments to operational issues surrounding SWFs, established or owned by a government, national monetary authority, or public agency (Alvaro S. & Co., 2019). Main concerns revolved around the lack of transparency regarding managed capital size, portfolio composition, investment objectives, risks of market abuse, and the potential for politically or strategically motivated investments. Internationally, there was apprehension about SWFs' objectives, fearing they might seek advanced technology, natural resources access, or improve competitiveness of national firms. At the G7 meeting in Washington on October 19, 2007, finance ministers and central bank governors addressed these concerns, urging multilateral organizations like the International Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD) to reflect on SWF roles and challenges they pose. Worries about SWFs making strategic investments prompted countries worldwide to enact or revise national legislation governing foreign direct investments to protect strategic national enterprises. These measures, largely motivated by concerns about SWFs, were evident in the European Commission's February 27, 2008 communication titled "A Common Approach to Sovereign Wealth Funds," which highlighted the opaque nature of some SWFs' functioning and their potential for strategic control (Alvaro S. & Co., 2019).

Anyway, focusing on China we need to specify what ambiguities this category of FDI has had, and still has, that were able to generate a reasonable effect over the European policymakers. To this extent, we have categorized them into three main points.

First of all, the way in which State-Owned Enterprises are built and the Communist Party presence in the corporate bodies. We need to comprehend that Chinese SOEs (State Owned Enterprises) are structured as extensive business groups, a model inspired by the successful economic development strategies of Japanese keiretsu and South Korean chaebol in the 1990s. The parent company of these SOE business groups, known as the holding company, has a singular shareholder: the State-Owned Assets Supervision and Administration Commission (SASAC), an agency under China's State Council (Gordon J.N. & Curtis J. Milhaupt., 2019). SASAC serves both as an investor on behalf of the Chinese people and as a regulatory body, coordinating strategies, resource allocation, and policy transmission within the group. Its responsibilities include preserving and enhancing the value of state-owned assets, appointing top executives, regulating income distribution, and drafting asset management regulations (Gordon J.N. & Curtis J. Milhaupt., 2019). SASAC has under its control more than 100 companies, these companies in the last few years undergone a profound change and a lot of very big M&A operations have happened in order to constitute international Chinese champions.

However, understanding the governance mechanics of Chinese SOEs requires considering their connections with government and Communist Party institutions. Leaders of national SOEs often hold positions in governmental and party bodies, blurring the lines between corporate and political leadership. These entities operate under two parallel personnel systems: the regular corporate management system and the party system. While corporate appointments are made in consultation with party organs and ministries, party committees within SOEs exert significant influence, especially in companies where party leadership is enshrined in the articles of association. These committees, established within SASAC and individual SOEs, perform corporate functions and are empowered to guide material business decisions

and senior management appointments, effectively surpassing the authority of the board of directors in certain cases. The pervasive presence of the party within SOEs underscores the intertwining of political and corporate interests in China's state-owned sector (Gordon J.N. & Curtis J. Milhaupt., 2019). This institutionalized fusion of party and corporate governance highlights the unique nature of Chinese SOEs and their entanglement with broader political objectives. This is the main feature of the Chinese economy and it is useful to know given that these companies are the one that generally have been investing in EU. The government manage the hole economy and all the SOE as a unique entity that has the main goal to generate growth and wellness for China (Chan Z. T. & Meunier S., 2021).

The second point regard the way in which China economy is built. The capitalistic model in China does not work as in the “West”. In fact, while defining the forementioned multi-year plans, Chinese leaders defines direct KPI with which to evaluate the goals of the plans. China is managed in a top-down way that allows to focus on the good of the overall collectivity (Dalio R., 2021). So, China leaders thinks about the hole China and focus on results for the collectivity. Differently, our western system is instead based on the opposite logic, from “the bottom to the top,” and in this case the optimization is not for the collectivity but for the singular human being. So, the main problem with Chinese investments is related to the fact that it may harbor non-economic strategic objectives, for example those could be done in order to gain an advanced technology that could enhance to the hole Chinese economy a better future position in respect to the others (Chan Z. T. & Meunier S., 2021). As we have seen from the graph that was reporting the sector in which the investments are arriving, for sure it could appear as a reality. This phenomenon is called "policy channeling," (Gordon J.N. & Curtis J. Milhaupt., 2019). It involves the government utilizing the corporation to achieve public policy goals, such as maintaining employment, implementing industrial policies, or exerting control over strategic sectors of the economy. The governance structures of Chinese SOEs, characterized by significant party penetration, amplify the influence of policy channeling, as these firms are viewed

as instruments for maximizing social welfare at the national level, rather than solely prioritizing shareholder interests (Gordon J.N. & Curtis J. Milhaupt., 2019). It's very easy to connect this overall attitude to what was already described above, and in particular to the plans cited above, like Made in China (MIC) 2025 plan or the BRI. These plans are another important feature of this economy. MIC 2025 sets ambitious domestic market share goals for various products and emphasizes targets for innovation, quality, digitization, and environmental sustainability (Kennedy S., 2015). To implement MIC 2025, the Chinese government has utilized a range of policy tools, including forced technology transfers, government-backed investment funds, and the acquisition of foreign technology through outbound investment. It functions as a roadmap guiding Chinese firms in their pursuit of profitable investments. The initiative sends a clear message to provincial and local governments, State-Owned Enterprises (SOEs), and private companies regarding the government's priorities. This clarity enables these entities to anticipate where government subsidies and support are likely to be directed, thus identifying near-term opportunities for profit (Gordon J.N. & Curtis J. Milhaupt., 2019). Reports from the European Union Chamber of Commerce in China and the United States Chamber of Commerce [15] expressed concerns about the implications of MIC 2025 for international investment. They highlighted the surge in Chinese investment in European firms following the initiative's publication, driven by directives encouraging SOEs to pursue acquisitions aligned with strategic goals. The second of these great and threatening plans for the West is the BRI initiative. This project led China to be among the top 5 countries for FDI in 2021, while still targeted by western regulation. China's Belt and Road Initiative (BRI), also known as 'One Belt One Road', is a strategic endeavor launched by the People's Republic of China under President Xi Jinping's leadership in 2013. Inspired by the historic Silk Road, which facilitated trade between China and the Mediterranean over 2,000 years ago, the BRI aims to enhance regional integration, boost trade, and foster economic growth by establishing land and maritime networks connecting Asia with Africa and Europe

[15] Retrieved from: https://www.europeanchamber.com.cn/en/publications-annual-report.

(European Bank for Reconstruction and Development). The BRI prioritizes policy coordination, infrastructure connectivity, unimpeded trade, financial integration, and people-to-people connections. It involves significant investments in infrastructure development, including ports, roads, railways, airports, power plants, and telecommunications networks. Investments in this business areas can be considered to be under the legislative umbrella of national security, as those assets can be considered as critical infrastructure, which a possible investment could therefore endanger (European Bank for Reconstruction and Development). The main fears that they generated are related to the Chinese wonder to gain international power through the knowledge and the advancement of foreign companies and by the possibility to generate an unbalanced relationship with other Government thought the debt trap [16]in order to exert a dominant influence over them.

The third point regard the dichotomy existing between Chinese State-Owned Enterprises (SOEs) and Private-Owned Enterprises (POEs). The historical tradition of state intervention in the economy, coupled with evolving notions of property rights and economic reform strategies, has led to a convergence of interests between public and private enterprise in China. As stressed in the paper written in 2019 by Gordon J.N. and Curtis J. Milhaupt and called “China as a "National Strategic Buyer": Toward a Multilateral Regime for Cross-Border M&A” state-generated benefits extend beyond SOEs to encompass POEs perceived to align with state objectives. Decision-makers in both SOEs and large POEs cultivate close ties with government and party organs, prioritizing political alignment to ensure success. This convergence challenges traditional distinctions between SOEs and POEs, particularly regarding market access, state subsidies, and proximity to state power. Notably, Chinese cross-border M&A activities have witnessed a notable shift from SOEs to POEs, perhaps due to the relatively lower regulatory scrutiny faced by POE acquisitions. This strategic transition

[16] The debt trap between two governments occurs when one government extends loans to another government, leading the borrower to accumulate a significant debt burden that becomes increasingly difficult to repay. This situation can arise due to unsustainable borrowing practices, high interest rates, or economic mismanagement. As the debt grows, the borrower may become reliant on additional loans to service existing debt, creating a cycle of increasing indebtedness and financial instability.

reflects an effort to navigate regulatory hurdles, with POEs being encouraged to acquire high technology for China's economic advancement. The shifting landscape is reflected in the data, with POE cross-border acquisitions surpassing SOE acquisitions in both quantity and value, signaling a transformative shift in Chinese M&A strategies.

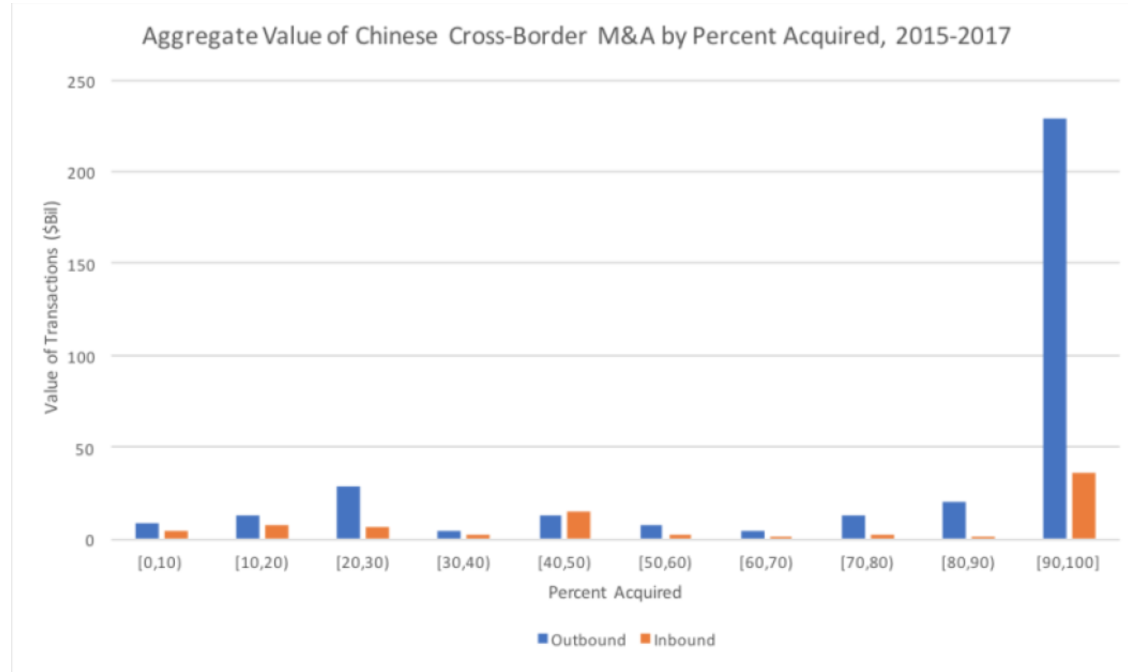

Figure 1.9: Aggregate Value of Chinese Cross-Border M&A by Percent Acquired. Alvaro S. & Co., (2019).

However, it's essential to note the potential for ambiguity within this context, where the influence of party bodies may exert pressure on POE owners, as exemplified by the case of Alibaba and its founder, Jack Ma[17]. Furthermore, factors such as the delisting

[17] The disappearance of Jack Ma, founder of Alibaba Group, in late 2020 drew international attention after he publicly criticized Chinese regulators and state-owned banks. Speculation arose that his remarks had irked authorities, leading to his vanishing act following a critical speech at a Shanghai forum in October 2020. Jack Ma's case isn't isolated; other instances underscore China's stringent control over dissent. Ren Zhiqiang, a real estate tycoon, was sentenced to 18 years in prison after criticizing President Xi Jinping's COVID-19 response. Billionaire financier Xiao Jianhua was reportedly abducted from Hong Kong in 2017, and actress Fan Bingbing vanished amid tax evasion allegations in 2018 before reemerging with a public apology and hefty fine. These incidents highlight

of foreign companies upon acquisition and the utilization of financing from state-owned entities or banks contribute to the complexity surrounding Chinese investments. (Alvaro S. & Co., 2019).

While instances like Chinese companies holding stakes in renowned European enterprises like Mercedes[18] showcase collaboration, acquisitions like those in Pirelli[19] underscore the concerns and uncertainties prevalent among Western policymakers (Fonte G & Piovaccari G., 2023).

In our quest for clarity amid the complexities of international trade and investment, it becomes imperative to address the nuanced challenges presented by foreign direct investments (FDI), of particularly those stemming from China's economic activity. These intricacies have sown seeds doubt and uncertainty within the halls of Western governance, prompting us to adopt a stance of vigilant scrutiny. One crucial aspect we must confront regarding these ambiguities in foreign direct investments is a concern articulated within the EU-China joint agenda. The agenda emphasizes the need for the European Union to vigorously pursue more balanced and reciprocal conditions governing the economic relationship (European Commission and HR/VP contribution to the European Council, 2019). Indeed, as China experienced substantial growth in inward FDI during the 1990s and 2000s, mergers and acquisitions (M&A) activities played a minor role, largely due to strict prohibitions in China concerning these

China's authoritarian approach to dissent and its influence over the private sector, where outspoken critics face severe repercussions. The cases of Ma, Ren, Xiao, and Fan reflect the Chinese government's readiness to employ various tactics, including detention and coercion, to stifle opposition and maintain its grip on power.

[18] Mercedes-Benz, a renowned German automotive manufacturer, is significantly influenced by Chinese ownership through its parent company, Daimler AG. In 2013, BAIC Group, a major Chinese state-owned enterprise, acquired a strategic partnership and a considerable share in Daimler. In 2018, Geely Holding, led by Chinese billionaire Li Shufu, purchased approximately 9.7% of Daimler AG's shares, making it one of the largest single shareholders.

[19] The Pirelli Chinese case involves the acquisition of the Italian tire manufacturer Pirelli by the Chinese state-owned enterprise ChemChina in 2015. This acquisition marked one of the largest Chinese investments in Europe at the time. ChemChina acquired a majority stake in Pirelli, taking control of the company. The move was seen as part of China's broader strategy to expand its presence in the global automotive industry and gain access to advanced technology and manufacturing expertise. The acquisition raised concerns about the potential impact on Pirelli's operations and strategic direction, including questions about the protection of intellectual property and the influence of the Chinese government on the company's management.

operations. For instance, in 2003, the value of such operations accounted for a mere 3% of the total capital invested in China. This cautious approach could have stemmed from concerns about potential international imbalances or a desire to align with prevailing norms in financial markets and FDI organization. While China progressively opened up its economy over time, stringent controls remained firmly in place. Concurrently, the national Chinese government, in its tenth five-year plan for economic growth, began urging Chinese companies to pursue greater investments abroad, with a defined objective to "go global" (Institute for International Economics). Returning to the European document outlining its relations with China, it identifies other pressing issues, such as shielding domestic markets for national champions, imposing selective market opening, licensing restrictions, investment barriers, and heavy subsidies provided to both state-owned and private sector companies. Furthermore, foreign firms often encounter obstacles when seeking access to the Chinese market, including requirements to form joint ventures with local companies or transfer key technologies to Chinese counterparts. The necessity to insert this new regulation was a sort of backlash toward Chinese attitude. This multifaceted scenario has given rise to the phenomenon termed the "China effect" (Gadocha P. M., 2020).

As we will see later, rather than advocating for an open and equitable trade and investment environment, the EU and its member states have apparently shifted towards protectionist measures under the pressure of the EU Commission. This happened because as we have seen the Chinese presence, after the early 2000's was increasing in size and power. We have also seen that the nature of those investments coming from China could have been deemed as threatening according to the three reasons that we have presents. All of this took to the increasing scrutinize of Chinese economic involvement under the pretext of geopolitical and security concerns. In this era of rising populist movements and the expanding influence of the Chinese economy, is evident that the geopolitical dimension of trade and investment has become increasingly pronounced. It is imperative that we navigate these complexities with discernment,

recognizing the intricate interplay between trade, investment, geopolitical strategies and remembering our constitutional tradition.

1.3 Earlier national regulations of the biggest European economies at the time of the privatization and the creation of the Golden Power

Policies regarding specific facets of the economic terrain in European nations, such as their openness to foreign direct investment (FDI), are deeply intertwined with their legislative traditions and historical receptivity. These dynamics find their roots in the post-Second World War era, where the reconstruction and evolution of economies and political frameworks set the stage for contemporary economic policies. However, conducting an exhaustive analysis spanning seven decades of policy transitions and evolutionary paths regarding FDI is beyond the scope of our present discussion. Moreover, this paragraph was crafted with the intention of providing readers with insights into the attitudes and underlying cultures shaping regulatory developments in key European countries, namely France, Germany, and Italy. Understanding these dynamics is crucial for grasping the significant challenges they faced when jointly requesting a regulatory intervention from the European Commission in 2017 because of the reasons presented in the earlier chapter. Another pivotal reason for studying these regulations is their utilization as case studies, particularly focusing on the Italian framework that will be discussed in the next chapter. Although our examination will remain within the confines of the past forty years, it is essential to emphasize that the authority of the Italian government over specific economic sectors stems from the fundamental principles enshrined in the Italian Constitution, crafted between 1945 and 1947. Notably, Articles 41 and 43 of the Constitution articulate[20] the delicate balance

[20] Articles 41 and 43 of the Italian Constitution outline the principles of economic activity and the conditions under which private and public enterprises may operate within Italy.
Article 41 emphasizes the freedom of private economic enterprise, stating that "private economic initiative is free." However, it must not be conducted in a manner that is harmful to public safety, liberty, or human dignity. The Constitution allows the state to establish appropriate programs and

between public intervention and private enterprise. Article 41 rejects the notion of “unchecked economic initiative”, emphasizing that economic activities must align with social utility and respect fundamental values such as security, freedom, and human dignity. Moreover, akin to the provisions outlined in Article 43 of the Italian Constitution, which recognize the potential for state intervention in sectors vital for the public good, such as essential public services or monopolistic domains, the preamble of the French Constitution[21] of October 27, 1946, echoes similar sentiments. In this preamble, it is asserted that any asset or enterprise whose utilization assumes characteristics akin to a national public service or de facto monopoly should be vested in the ownership of the community. This provision effectively grants the French government the authority to intervene in economic circumstances that may jeopardize the general interest. Moreover, akin to the provisions outlined in Article 43 of the Italian Constitution and the preamble of the French Constitution of October 27, 1946, Germany's Basic Law (German Constitution of 1949) also underscores the importance

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controls so that public and private economic activity can be directed and coordinated for social purposes.
Article 41: "Private economic initiative is free. It cannot be conducted in conflict with social utility or in a manner that could damage safety, liberty, or human dignity. The law shall provide for appropriate programs and controls so that public and private economic activity may be directed and coordinated for social purposes."
While Article 43 allows for the nationalization of certain enterprises and sectors. It states that for purposes of general utility, the law may reserve or transfer, by means of expropriation and with the payment of compensation, to the State, public bodies, or workers' communities, specific enterprises or categories of enterprises that relate to essential public services, sources of energy, or monopolistic situations and which are of pre-eminent general interest.
Here is the full text of Article 43: "For the purposes of general utility, the law may reserve or transfer, by means of expropriation and with the payment of compensation, to the State, public bodies, or workers' communities, specific enterprises or categories of enterprises that relate to essential public services, sources of energy, or monopolistic situations and which are of pre-eminent general interest."

21 The preamble of the French Constitution of October 27, 1946, is an introductory statement that sets out the foundational principles and values upon which the French Republic is established. It outlines key ideals such as liberty, equality, and fraternity, which are central to the French national identity and are derived from the principles of the French Revolution. The preamble also emphasizes the importance of social justice, solidarity among citizens, and the protection of individual rights. Additionally, it recognizes the significance of economic and social progress, as well as cultural diversity within the French nation. Overall, the preamble serves as a philosophical and ideological framework for the French Republic, reflecting its commitment to democratic governance and the welfare of its citizens.

of state intervention in economic affairs for the common good. While Germany's constitution may not have a direct equivalent to Article 43 or the French preamble, its principles do provide a basis for state intervention in economic matters. For instance, Article 14 of the Basic Law [22]addresses property rights, emphasizing that property entails obligations and should serve the welfare of the general public. Furthermore, Article 20[23] establishes the principles of the social market economy, which combines a free market system with social welfare policies. This framework allows for state intervention when necessary to maintain economic stability and protect public welfare. Throughout the 20th century, various European countries, including Germany, underwent significant transformations, resulting in diverse regulatory landscapes. With this foundational understanding established, we can now turn our attention to the initial legislative shifts catalyzed by the privatization of public sector enterprises. Furthermore, implicitly asserting the fundamental role of the political power also within the economic life of enterprises and underlining the dependency on its bureaucratic needs, the privatization of the economy, notably initiated in England during the late 20th century, marks a significant turning point in economic policy and ideology. This process involved transferring ownership and control of state-owned enterprises and assets to private individuals or entities.

Rooted in the ideology of neoliberalism, which gained prominence during the Thatcher era in the British privatization, one prominent argument in favor of the privatization was the belief in the superiority of market mechanisms over state intervention in allocating resources efficiently. Proponents argued that privatization would increase efficiency, competition, and innovation while reducing bureaucratic inefficiencies inherent in state-run enterprises. Scholars such as Milton Friedman and Friedrich

[22] The Basic Law, or Grundgesetz, is the constitution of the Federal Republic of Germany. Article 14 states that property and the right of inheritance are guaranteed. However, it also specifies that the use of property must also serve the public good. This means that private property rights are protected, but they are subject to limitations if they conflict with the common welfare.

[23] Article 20 of the Basic Law establishes Germany as a democratic and federal republic. It emphasizes the sovereignty of the people, the rule of law, the separation of powers, and the protection of fundamental rights. This article forms the constitutional bedrock of Germany's democratic system.

Hayek[24] provided theoretical underpinnings for privatization through their advocacy of free-market principles. Friedman's concept of the "Efficient Market Hypothesis"[25] posited that markets are the most efficient allocators of resources when left to operate without interference. Hayek's ideas [26]on the limitations of central planning and the importance of market signals further influenced the push for privatization. The privatization drive in England began, as we said, under Prime Minister Margaret Thatcher's government in the 1980s. British Telecom, British Airways, and British Gas were among the high-profile state-owned enterprises that underwent privatization during this period (KAY V.J.). The rationale behind these initiatives was to reduce the size of the state, increase competition, and spur economic growth. In those transformative years, the winds of a new conservative ethos swept across the political landscapes of both England and America, birthing ideologies famously known as "Thatcherism" and "Reaganomics." [27]Across the Atlantic, in Europe, particularly in France and Italy, the state held sway over a multitude of mammoth corporations spanning various sectors. This ideological shift saw a redefinition of the state's role in

[24] Milton Friedman and Friedrich Hayek were influential economists known for their advocacy of free-market principles and critiques of government intervention in the economy. Friedman, an American economist and Nobel laureate, championed monetarism and emphasized the role of monetary policy in controlling inflation. Hayek, an Austrian-British economist and Nobel laureate, promoted classical liberalism and warned against the dangers of central planning, arguing for the importance of individual liberty and the price mechanism in coordinating economic activity.

[25] In the context of economic theory, Milton Friedman's "Efficient Market Hypothesis" asserts that financial markets are highly efficient at allocating resources optimally when allowed to function freely without external intervention. This theory suggests that markets swiftly incorporate all available information into asset prices, leading to efficient resource allocation without the need for external regulation or intervention.

[26] Friedrich Hayek's theory underscores the inefficiency of central planning and emphasizes the significance of market signals in directing economic activities. He contends that central planners lack the necessary knowledge to allocate resources effectively, while market signals, such as prices, offer valuable guidance for decision-making. These ideas are elaborated in Hayek's seminal work "The Road to Serfdom."

[27] "Thatcherism" and "Reaganomics" are terms that encapsulate the economic and political ideologies of two influential leaders: Margaret Thatcher and Ronald Reagan. Thatcherism emerged during Margaret Thatcher's tenure as British Prime Minister from 1979 to 1990. It was characterized by policies promoting deregulation, privatization, free markets, and a reduced role of the state in the economy. On the other side of the Atlantic, "Reaganomics" was the economic doctrine associated with Ronald Reagan's presidency in the United States during the 1980s. Coined by economist Paul Harvey in 1980, Reaganomics emphasized supply-side economics, featuring tax cuts, deregulation, and decreased government spending. These policies aimed to stimulate economic growth and prosperity by fostering a business-friendly environment.

the economic realm, prompting these behemoth State-Owned Enterprises to debut their stocks on financial markets, while the state reaped the benefits of these transactions through sales to private market operators. In Italy, the formal privatization journey commenced with the enactment of decree-law no. 33312 on July 11, 1992, which transformed state-owned entities like IRI, ENI, INA, and ENEL into joint-stock companies. Subsequent legislative measures, such as decree-law no. 11813 of April 23, 1993, saw the abolition of the Ministry of State Holdings, paving the way for substantial privatization efforts under decree-law no. 33214 of May 31, 1994, which transferred ownership of these enterprises (Tullio Fenucci).

However, mindful of safeguarding national interests enshrined in the Constitution, Law no. 474/1994 endowed the government with special powers over privatized companies. This was based on the legal framework introduced in the UK and in particular on the creation of the "golden share." This legal mechanism aimed to empower the government to prevent unwanted takeovers and changes in the control of privatized companies (Tullio Fenucci). Through ownership of the golden share, the public shareholder could wield dormant voting rights, nominate one or more directors within the company, and receive notifications of shareholdings exceeding 5% of the share capital. The most commonly used scheme, termed the "relevant person," mandated that if an entity held more than 15% of the company's capital, the company's directors would be required to demand the sale of shares exceeding this limit (SODI J, 1996). Failure to comply with the notification resulted in the shareholder losing the right to participate and vote at meetings, with the company obliged to sell the excess shares at the best reasonable price obtainable. We can observe that the use of the golden share starkly contradicted the neoliberal ideology championed by the Thatcher government, which emphasized "rolling back the frontiers of the State"[28] (Dorey P., 2015). This practice undermined a core principle of the free market.

[28] "Rolling back the frontiers of the State" was a metaphorical expression frequently used by Margaret Thatcher to describe her political agenda during her tenure as Prime Minister of the United Kingdom from 1979 to 1990. It symbolized her commitment to reducing the size and scope of government intervention in the economy and society. Thatcher believed in limiting state control and empowering individuals and businesses to thrive through free-market principles. Her policies included privatization

Drawing inspiration from the British privatization model, Italy's Minister of Economy and Finance was entrusted with wielding these powers. In fact, specific clauses, mandated by Article 2 of Decree-Law 332/1994, were incorporated into the bylaws of privatized companies operating in strategic sectors, including defense, transportation, telecommunications, and energy sources. These clauses empowered the Minister of the Treasury, in collaboration with the Ministers of Budget and Industry, with various prerogatives, ranging from approving significant share acquisitions to vetoing certain resolutions and appointing board members (Tullio Fenucci). Meanwhile, the concept of the "golden share" opened out differently in France. There, the privatization process unfolded years prior to Italy's endeavors, characterized by distinct legal attributes. In fact, the French government utilized what are known as "noyaux durs"[29] to establish a system of cross-shareholdings aimed at safeguarding privatized companies from hostile takeovers (Tullio Fenucci). Under Article 4, II of Law no. 86-912 of August 6, 1986, the Minister of Economy was granted the authority to sell shares of the privatized company, benefiting specifically chosen buyers from major industrial, banking, and insurance groups in the country. These "noyaux durs" were created by selling off-market shares to selected buyers, known as "de gré à gré" (friendly or consensual), at a fixed price and representing a variable portion of the company's capital. Similarly, what came next was the "action spécifique". It was introduced by Law no. 86-912 of August 6, 1986, it shared similarities with the Anglo-Saxon golden share, granting the government veto power over acquisitions exceeding 10% of the share capital, initially for a five-year period, later extended indefinitely in 1993. The establishment of an "action spécifique" conferred additional powers to the government, including pre-

of state-owned industries, deregulation of markets, tax cuts, and reductions in government spending. This approach aimed to promote economic growth, individual freedom, and personal responsibility, reflecting Thatcher's conviction in the superiority of free-market capitalism over socialism.

[29] The "noyaux durs" represents a societal model based on the identification and co-optation by the Government of a small group of reference shareholders, i.e., a group of selected private companies aimed at creating a stable control nucleus. For further reference, see X Legislature of the Chamber of Deputies, "Privatizations in Europe," pp. 29 ff.; C. GRAHAM and T. PROSSER, "Golden shares: industrial policy by stealth?," pp. 420 ff.; CNEL documents, "The Privatizations of Public Enterprises," pp. 50 ff.

approval of shareholder ownership thresholds, appointment of state representatives to the board without voting rights, and the ability to oppose asset sales by the privatized company that could harm national interests (Tullio Fenucci). One notable example is the establishment of special rights or shares held by the government or state-owned entities in certain companies. While not termed "golden shares," these mechanisms can serve similar purposes, allowing the government to influence decision-making or protect national interests in privatized enterprises. Meanwhile, after the fall of the Wall of Berlin in 1989, Germany pursued privatization in tandem with sector-specific regulations and oversight mechanisms, ensuring alignment with national interests and regulatory goals. These measures ranged from limitations on foreign ownership to approvals for significant transactions and provisions for government intervention as warranted. This transition gave rise to a multifaceted legal framework governing privatization, encompassing federal and state laws regulating the sale of state-owned assets, competition, antitrust, and sector-specific regulations.

At its core was the establishment of the Treuhandanstalt[30], tasked with privatizing East German enterprises post-reunification, marking a pivotal juncture in Germany's economic trajectory. Across sectors such as telecommunications, transportation, energy, and banking, privatization surged, exemplified by Deutsche Telekom's partial privatization in the 1990s. We can see that already in that period the main goal of all of these regulations was to grant to the governments the power to veto a possible corporate takeover from a foreign investor (Webber, 1995). We cited the UK regulation as in that period of time the relation with EU countries were stimulated by their interaction as members signatories of the treaty of Maastricht (1992) and before as partner in different EU supra-national cooperation agreements, like the CEE or the EURATOM. Analyzing further the regulations of the three largest economies in the European Union reveals significant differences in their approaches. France, for

[30] The Treuhandanstalt was a trust agency established in East Germany in 1990 to oversee the privatization of state-owned enterprises following German reunification. It was tasked with selling off East German assets, managing bankruptcies, and facilitating the transition to a market economy. The agency faced criticism for its handling of privatization, with accusations of asset stripping and job losses.

instance, has implemented a dual strategy in its regulatory framework. Firstly, it has empowered authorities to monitor and, if necessary, prohibit acquisitions in specific strategic enterprises. Secondly, it has imposed broad transparency obligations regarding significant shareholdings and investment objectives, representing a paradigm shift in regulatory practices. Since 2005, French legislation has granted the Ministry of Economy the authority to approve investments or acquisitions in sectors deemed "strategic" by individuals or entities outside the European Union, provided they seek to acquire control of French-based companies or exceed certain ownership thresholds. Moreover, France compelled foreign investors to disclose both substantial shareholdings and their investment intentions, a provision reinforced during the implementation of the Transparency Directive (2004/109/EC)[31], which mandated enhanced disclosures upon reaching specific ownership thresholds in French enterprises. Notably, France revisited its commercial code in 2010 through legislative acts No. 2010-1249 and No. 2010-1250[32], signaling its commitment to bolstering regulatory oversight in the face of evolving investment landscapes. What Italy did we will see in the analysis took further in the next chapter of the Italian framework. While, on April 24, 2009, the German federal government enacted amendments to the Foreign Trade and Payments Act[33] and its accompanying regulation.

[31] The Transparency Directive (2004/109/EC) is an EU directive aimed at ensuring transparency in financial markets. It requires companies whose securities are admitted to trading on a regulated market to disclose certain information to the public. This includes periodic financial reports, major shareholdings, and information about corporate governance. The directive aims to enhance investor confidence and promote fair and efficient markets by providing investors with access to relevant information about publicly traded companies.

[32] Act No. 2010-1249 and Act No. 2010-1250 are French legislative acts passed in 2010. Act No. 2010-1249, also known as the Banking and Financial Regulation Act, aimed to strengthen the regulation and supervision of the banking and financial sector in France. It introduced measures to enhance transparency, stability, and consumer protection within the financial system. Act No. 2010-1250, also known as the Banking and Financial Sector Reform Act, complemented Act No. 2010-1249 by further restructuring and regulating the banking and financial sector. This act focused on improving risk management practices, increasing accountability, and addressing systemic vulnerabilities within the financial industry.

[33] The Germany Foreign Trade and Payments Act (Außenwirtschaftsgesetz, AWG) regulates foreign trade, payments, and investments to protect national security interests. It enables the government to control cross-border transactions, especially involving sensitive technologies or critical infrastructure, ensuring economic activities align with strategic goals.

This legislative update empowered authorities to scrutinize and potentially prohibit investments made in Germany by non-EU residents or entities not affiliated with the European Free Trade Association [34](EFTA). The law, designed to protect the nation's public order and security, imposed restrictions on acquisitions of German companies or acquisitions exceeding a 25% voting rights threshold, underscoring Germany's resolve to safeguard its economic sovereignty amidst global economic integration.

In conclusion, the intricate web of regulations governing foreign direct investment (FDI) in European nations reflects not only their legislative traditions but also the deeply ingrained cultural attitudes toward economic sovereignty and national interest. Rooted in post-World War II reconstruction efforts, these policies have evolved over decades, shaping the regulatory landscape in countries such as France, Germany, and Italy. While each nation's approach may vary, a common thread emerges: the prioritization of societal welfare and protection of strategic sectors from undue foreign influence. The legislative mechanisms employed, from the "golden share" in the UK to the "golden power" in Italy and the "action spécifique" in France, underscore the pivotal role of government intervention in safeguarding vital assets and industries. These regulations, were born in a liberal world and were influenced by neoliberal ideologies. They always kept the in the single economy the relationship with the national constitutional roots. Perhaps these roots when geopolitical considerations rose, because of the renewed significance in the face of increasing Chinese investments, prompted European nations to assert their autonomy and fortify defenses against perceived threats to national security and economic stability. As such, the regulatory frameworks examined here not only illuminate historical trajectories but also provide crucial insights into contemporary challenges and the ongoing struggle to balance economic openness with strategic autonomy. We must ask ourselves: Does the potential loss of

[34] The European Free Trade Association (EFTA) is an intergovernmental organization fostering free trade and economic cooperation among its member states. It consists of four countries: Iceland, Liechtenstein, Norway, and Switzerland. EFTA promotes trade liberalization, economic integration, and cooperation with the European Union (EU) through various agreements, while maintaining the sovereignty of its member states in trade policy decisions.

international power to other nations threaten our national security? Is the risk of stagnation due to other countries operating more efficiently a national security concern? Can the European Union better serve the national security interests of its member states? Understanding where we come from and our core values is essential to charting our future course. This is why we have dedicated this paragraph to exploring the origins of the regulation central to our thesis.

1.4 Not more a "naïve" European Union? A view within European path to 2019 Regulation

Due to the inherent inertia of human thought, both nations and individuals undergo gradual changes in their ideas over time. This process is particularly sluggish in democracies, where consensus among the majority is essential for ideas to become ingrained in the national viewpoint and subsequently translated into legislation. In this context, the role of public opinion and the understanding of what shapes it, are fundamental. Moreover, it is readily apparent why the European Union has struggled to garner full recognition from its member states, a phenomenon that has complicated the formulation of a cohesive foreign policy, including regulations pertaining to foreign direct investment (FDI). Throughout the annals of European Union history, the prerogative to delineate regulations governing inbound FDI has predominantly rested within the purview of individual member nations. Reflecting on the early 1990s, one finds oneself peering into the regulatory milieu surrounding FDI within the largest economies of the EU. Envisioned during this epoch was the Union's ascension as a formidable bastion straddling the crossroads of global commerce, a nexus of unfettered trade where diverse cultures converged to forge the path towards a shared future. It was envisaged as the epicenter, if not the very nucleus, of globalization, wherein both East and West would converge in a symphony of economic cooperation. Indeed, as we traverse the tapestry of history, it becomes apparent that in terms of sheer magnitude,

both inbound and outbound FDI during the early 21st century eclipsed that of all other regions, thus solidifying the Eurozone's position as the linchpin of the global economic interdependence paradigm. As we have seen, this was true at least until 2016. Given that we want to study why Europe slept in the adoption of a joint FDI regulation, in this paragraph we are going to see in depth the evolution of this European theme.

The evolution of foreign direct investment (FDI) regulation within the European Union (EU) reflects a complex interplay between supranational authority and the sovereign interests of Member States, as outlined in Basedow's analysis (Basedow R., 2018). Initially, the EU's involvement in FDI regulation was limited, with individual Member States largely retaining control over their investment policies. However, with the rise of neoliberal economic philosophies in the 1980s, emphasizing market liberalization and efficiency, there was a growing recognition of the need for a coordinated approach to international investment within the EU. The European Commission played a central role in advocating for expanded EU authority in FDI regulation. It proposed reforms to the Common Commercial Policy[35] (CCP), seeking to broaden its scope to encompass investment liberalization and protection, alongside trade in goods and services. However, Member States were hesitant to cede control over their investment policies, leading to protracted debates during treaty negotiations (Basedow R., 2018). Despite resistance, incremental progress was made in consolidating EU authority. The Treaty of Amsterdam in 1997 introduced provisions aimed at strengthening the EU's role in regulating FDI, albeit falling short of the Commission's ambitious proposals. Subsequent treaty revisions, including the Treaty of Nice and the Constitutional Treaty, grappled with the question of FDI regulation within the EU. It was not until the Treaty of Lisbon entered into force in 2009 that the EU finally solidified its legal competence to regulate FDI flows. This landmark treaty provided a comprehensive framework for

[35] The Common Commercial Policy (CCP) is a set of trade policies established by the European Union (EU) that governs its trade relations with non-EU countries. It includes policies related to tariffs, import quotas, export controls, and other trade-related measures. The CCP aims to ensure a unified approach to international trade negotiations and agreements among EU member states, allowing the EU to negotiate trade deals on behalf of all its members collectively. This unified approach strengthens the EU's bargaining power and promotes consistency and coherence in its external trade relations.

navigating the complexities of investment within the single market, marking a significant milestone in the evolution of EU economic governance (Basedow R., 2018).

The process leading to the Treaty of Lisbon included the Convention on the Future of Europe, which convened between February 2002 and July 2003 to draft the Treaty Establishing a Constitution for Europe. Additionally, the Treaty of Lisbon faced challenges following the rejection of the Constitutional Treaty by the French and Dutch public in referendums held in spring 2005. These negative outcomes influenced subsequent decision-making regarding EU reforms and institutional changes. In general, European Union before the Treaty of Lisbon of 2009, was regulated by the Treaty of Nice, which was signed in 2001 and entered into force in 2003. The Treaty of Nice was considered by many to be inadequate in addressing the institutional challenges and complexities arising from the EU's expansion. Consequently, this led to the subsequent drafting and adoption of the Treaty of Lisbon as a replacement. Entered into force on December 1, 2009, this monumental treaty envisioned a more unified and cohesive union of European nations, transcending the mere establishment of a common currency. The treaty ushered in structural reforms and new regulations governing the functioning of the Union, encapsulated within the Treaty on European Union[36] (TEU) and the Treaty on the Functioning of the European Union [37](TFEU). Additionally, it bolstered the EU's capacity to tackle emerging challenges by enhancing its capabilities in justice, security, and foreign policy. Of particular relevance to our discussion and the focus of our thesis, the treaty expanded the purview of the Common Commercial

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[36] The Treaty on European Union (TEU), also known as the Maastricht Treaty, is one of the primary treaties governing the European Union (EU). It was signed on February 7, 1992, in Maastricht, Netherlands, and entered into force on November 1, 1993. The TEU established the EU as a political and economic union, outlining the EU's objectives, institutional framework, decision-making processes, and areas of cooperation. It introduced the three pillars of the EU: the European Communities, Common Foreign and Security Policy (CFSP), and Police and Judicial Cooperation in Criminal Matters (PJCC).

[37] The Treaty on the Functioning of the European Union (TFEU) is one of the primary treaties governing the European Union (EU), alongside the Treaty on European Union (TEU). It was signed in 2007 and entered into force on December 1, 2009, replacing the Treaty establishing the European Community (TEC). The TFEU outlines the functioning of the EU's internal market, competition policy, monetary policy, and the EU's policies in various sectors, including agriculture, fisheries, transport, and energy. It also establishes the EU's decision-making procedures, including the roles of the European Parliament, the Council of the European Union, and the European Commission.

Policy (CCP), vesting the European Union with exclusive competence over regulations concerning foreign direct investment. Article 207 of the TFEU articulates this stance, emphasizing the common commercial policy's reliance on uniform principles, especially concerning foreign direct investment. The overarching aim was to promote an unrestricted market within the European Union, with a strong emphasis on facilitating the free movement of capital. However, it's essential to acknowledge that these regulatory discussions intersect with the national security priorities of individual member states, which vary case by case. Within the EU, security endeavors are coordinated through collaborative mechanisms like the Common Security and Defence Policy[38] (CSDP) and engagements with NATO[39] operations.

Nevertheless, the ultimate authority over defense decisions still lies with the respective national governments, reflecting the intricate balance between collective security efforts and sovereign interests within the Union. The Commission's Communication recognized the intricate nexus between foreign direct investment, national security and economic growth, acknowledging that outward FDI enhances European industry competitiveness, while inward FDI fosters job creation, technology transfers, and heightened competition. Thus, as we said and will say the Commission advocated for maintaining an open economic environment for foreign investors while ensuring equitable conditions for European investors abroad. Here, the Court discerns a hierarchical relationship, wherein national measures regulating such investments primarily pertain to the exercise of the right of establishment, with the free movement of capital playing a secondary role—a doctrine known as the "centre of gravity approach." (Alvaro S. & Co., 2019). Under this doctrine, the protective mantle of the

[38] The Common Security and Defence Policy (CSDP) is the European Union's (EU) framework for managing crises, promoting peace, and enhancing security through civilian and military missions, conflict prevention, and crisis management operations. It strengthens the EU's global role by coordinating defence capabilities, industry collaboration, and strategic partnerships.

[39] NATO, or the North Atlantic Treaty Organization, is an intergovernmental military alliance established in 1949. It consists of 30 member countries from North America and Europe who have committed to mutual defense in response to an attack by an external party. NATO operates through a system of collective defense, where an attack against one member is considered an attack against all members. The alliance aims to promote stability and security in the Euro-Atlantic area through political and military cooperation.

free movement of capital extends to certain investments, such as portfolio investments or modest financial participations, fostering a climate of economic openness and dynamism. It can be limited only if one of the motives indentified in the art. 65 of the TFUE arise or for one of the imperative reasons identified by the European Court in sentences like the judgment of February 14, 2008, in cases C-274/06 Commission/Spain and Commission/Poland, establishes that reasons purely of an economic nature cannot be considered imperative grounds of general interest, as already stated in the judgments of January 16, 2003, in cases C-388/01 Commission/Italy (Alvaro S. & Co., 2019).

However, reasons of an economic nature pursuing an objective of general interest can be such, as indicated in the emblematic judgment of September 11, 2008, in case C-141/07 Commission/Germany[40]. It should be noted, however, that such interests must be declared beforehand, and decisions promoting them must be adequately motivated and subject to judicial review. However, when the stakes escalate, as evidenced by significant ownership or control, the terrain shifts towards the realm of establishment rights. Here, the non-EU investor finds recourse limited, as the protective aegis of establishment rights extends only to European citizens, leaving non-citizens subject to the vagaries of national regulations. In practical terms, this implies that, for instance, a sovereign wealth fund's investment of 1% in a bank situated within a Member State, along with a direct investment of 5% in the same bank, is covered by the protections afforded by the free movement of capital, which can also be invoked directly by non-EU investors. Consequently, any constraints introduced by national legislation or EU secondary legislation must adhere to the Treaty on the Functioning of the European Union (TFEU) to be lawfully applicable. However, if the sovereign wealth fund were to acquire a stake of 20% or control, as indicated by the precedent set by the ECJ in the

[40] The judgment of September 11, 2008, in case C-141/07 Commission/Germany concerned a dispute between the European Commission and Germany regarding alleged violations of EU law by Germany. The Commission accused Germany of failing to fulfill its obligations under EU law, prompting legal proceedings before the Court of Justice of the European Union (CJEU). The judgment likely provided a resolution to the legal dispute, clarifying the responsibilities of Germany under EU law and potentially imposing sanctions or remedies if Germany was found to be in breach of its obligations.

case C-244/11, Commission v. Greece, points 23-25, the matter would fall under the right of establishment.

Consequently, non-EU investors could not contest any restrictions by invoking this freedom, which is not endowed with "erga omnes" effect and therefore does not extend to non-EU citizens.

The first proposal for a pan-European ISM came in February 2011. Antonio Tajani, then EU Commissioner for Industry and Entrepreneurship, and Michel Barnier, then Internal Market Commissioner, wrote a joint letter to Commission President José Manuel- Barroso, warning against Europe's naiveté on foreign investment and recommending the development of a supranational body to vet FDI in the EU, analogous to the CFIUS system in place in the United States, to make sure that non-EU investments in Europe are not attempts to close down businesses after having stolen all of their 'know-how' (Alvaro S. & Co., 2019). They were already pointing the finger to Chinese and Russians possible investments, that was described by Tajani as "a political strategy that Europe needs to respond to politically" (Wishart I. & Rankin J., 2011). The majority of Commission officials, however, dismissed this proposal, on the grounds that this would be interpreted as a protectionist move, could alienate Chinese investors in Europe, and have repercussions for European investment in China. Warning against a European version of CFIUS, European Trade Commissioner Karel De Gucht cautioned against a "neither desirable nor feasible" screening system for investment at the EU level, recalling the multiple benefits of foreign investment (increased productivity, increased trade, access to capital, etc.) and reminding his fellow Europeans of the reality: "we need the money" (Alvaro S. & Co., 2019). At the same time, we must emphasize that the newspapers and public opinion were not adequately informed about the real trade-offs at stake, and so the public opinion. In that period, we were for sure naïve for the first time, because as we have seen, the "money" that the Commissioner were citing in the end stopped to arrive in the Union anyway.

After this phase and this first big occasion to implement a joint Commission or Regulation the situation changed as we know by the text above, with a great Chinese

presence into the European Union (Danzman S. B. & Meunier S.). What we have come to recognize as the "China Effect" encapsulates Chinese ventures into critical industries, their aspirations to establish themselves as major European players in key markets, and the intense scrutiny from the media that accompanies such investments. In February of 2017, the collective voices of France, Germany, and Italy resonated as they publicly expressed reservations regarding foreign investment in strategic technology sectors. They stressed the imperative of reciprocity and voiced concerns over the potential erosion of European expertise, highlighting perceived inadequacies in existing safeguards. The watershed moment that galvanized public attention and spurred political action was the acquisition of KUKA. Indeed, the acquisition of KUKA by China's Midea Group in 2016 marked a pivotal juncture in the domain of industrial robotics and automation. KUKA, a German company, revered for its cutting-edge technology and engineering acumen, drew the interest of Midea Group, a prominent Chinese appliance manufacturer keen on broadening its scope and footprint within the robotics domain. The acquisition, valued at approximately €4.5 billion, ignited fervent debate and fueled apprehensions regarding its potential ramifications for German industrial primacy and national security. This event, among others of its kind during that era, catalyzed a collective consciousness and gave rise to the perceived apprehension regarding Chinese intentions, materializing into what we now term the "China Treat Theory"[41].

The resurgence of European pride in its traditional industrial sectors became palpable. However, one factor that arguably hindered our pace in responding to these developments was our limited comprehension of the trajectory of future industries. The nascent stages of this new industrial revolution left policymakers grappling with the unfamiliar terrain, lacking the requisite foresight and policy frameworks to navigate this transformative landscape, while the main problem was still the fight against the consequences of the 2008 financial crises. Despite the absence of comprehensive Foreign Direct Investment (FDI) regulations at the European level during that time,

[41] Retrieved from: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8475392/).

there existed inherent limitations on the Union's ability to exert influence and control. Nevertheless, this renewed zeal to reclaim the present and shape the future found resonance in the 2017 State of the Union Address delivered by European Commission President Junker (Juncker J.C., 2017). President Junker reaffirmed Europe's steadfast commitment to safeguarding its strategic interests, advocating for transparency in trade negotiations and heightened scrutiny of foreign investments, particularly in critical sectors. President Junker's clarion call to industries, exemplified by the automotive sector, emphasized the imperatives of innovation, digitization, and decarbonization. In an attempt to move away from the role of "naïve free traders" (Juncker J.C., 2017). These imperatives underscored Europe's resolve to fortify its strategic interests and enhance its industrial competitiveness amidst the backdrop of an increasingly interconnected global economy. The proliferation and tightening of investment screening mechanisms, both within Europe and globally, have precipitated robust debates regarding the broader implications of such regulatory frameworks, juxtaposed against the generally favorable perceptions of the benefits of Foreign Direct Investment (FDI) (Danzman S. B. & Meunier S.).

The public opinion was shaped, as skilled workers, whose incomes are likely to increase with FDI, tend to support liberal policies toward foreign investment (Pandya, Sonal S., 2014) and tends also to be that national and in this case European elite that at the same time is liberalist and open, but could generally accept a regulation like the one cited above. Large domestic business groups often favor openness, especially toward mergers and acquisitions, to overcome financing constraints (Danzman, S. B., 2019). Policymakers have sought to reduce restrictions on FDI due to its potential benefits, including knowledge transfer, technological spillovers, and tax revenue (Kobrin, S. J., 2005).

From our perspective, we interpret this overall changing environment as a fundamental shift in the fundamental fabric of our economic requirements and the government's role within it. We're witnessing a transition away from a predominantly laissez-faire capitalist model, where the market's invisible hand holds sway, towards a new

economic paradigm driven by the challenges presented by the evolving global landscape. In this new era, nations with diverse social and economic models are experiencing faster growth rates than Western counterparts, often due to direct state intervention. In this context, the West confronts a pivotal imperative: to sustain its growth and maintain relative power on the global stage. The Treaty of 2009 signed in Lisbon had the objective to assure this, as all of the other treaties and decision taken by Brussels ever since. Achieving this necessitates and aligning our growth strategies with the realities of a State-centered economy, identifying growth opportunities, and effectively seizing them is time by time always more difficult European level. There are always differences between ideas and consequents actions and implementations. As we delve into these discussions, it is paramount to recall back and repeat President Junker's resolute words from his 2017 State of the Union Address. He emphatically emphasized Europe's unwavering commitment to safeguarding its strategic interests. In this view, he boldly declared that Europeans shall no longer be "naïve free traders." Such a stance underscores the imperative for decisive action and the recognition that preserving our strategic interests requires proactive measures, as the concept of national security will be widened. When the President of the European Commission referred to Europe in such terms, it was a clear indication that it was already too late and action had to be taken. There arose a pressing need to instigate change, a palpable shift on the horizon that demanded immediate action. Equipped with the necessary tools, our greatest challenge at that moment was overcoming the inertia and political uncertainties inherent in the democratic process, where divergent ideologies regarding Europe's role prevailed. Anyway, on one front, the UK's decision to depart through Brexit casted a shadow over the European landscape. While simultaneously, countries party to the 16+1 treaty [42] stood firm, resolute in their stance to safeguard their autonomy in foreign

[42] The "16+1" initiative, or China-CEEC cooperation, involves 16 Central and Eastern European countries collaborating with China since 2012. It aims to enhance economic ties, trade, investment, and cultural exchanges. While fostering infrastructure projects and joint ventures, concerns exist about its impact on EU unity, with critics suggesting it could favor China's strategic interests. Despite criticism, the initiative remains significant for China's engagement with the region and continues to shape relations between China and Central and Eastern European countries.

direct investment decisions, staunchly resisting EU encroachment. The division was already winning over us and we weren't able to define a regulation that could have enhanced a greater role for the European Union. Franck Proust, a French politician, called for a joint regulation that could have given to the Commission the power to veto particular transaction, but nothing happened under this point of view (Chan Z. T. & Meunier S., 2021).

Furthermore, extensive discussions took place during the formulation of the regulation. Given that unanimous approval from all involved parties was required, it took two years to finalize, delaying the resolution until 2019. As illustrated in FIGURE 8, it is evident that the five largest European countries, which account for nearly 85% of the GDP, were in favor of the regulation. The remaining countries' positions are also represented in the figure, raising some doubts. Finally, on October 11, 2020, the regulation came into effect, marking a milestone in our collective journey toward a unified approach to addressing these pressing issues. Issuing a Regulation that as will see in the next chapter in its terms will reveal be a boomerang for the Union's interests.

Table 1 Initial National Preferences for the EU-wide Investment Screening Mechanism

Oppose	Somewhat Oppose	Neutral	Somewhat Support	Support
Cyprus	Belgium	Bulgaria	Denmark	Austria
Estonia	Czechia	Croatia	Lithuania	France
Greece	Finland	Slovakia	Spain	Germany
Hungary	Latvia	Slovenia		Italy
Ireland	Luxembourg			Poland
Malta	Netherlands			
Portugal	Romania			
United Kingdom	Sweden			

Figure 1.10: Initial National Preferences for the EU-Wide Investment Screening Mechanism. Chan Z. T. & Meunier S., (2021).

CHAPTER 2

In the annals of our democratic journey, the pace of change, both within nations and individuals, is often a slow and deliberate march. Democracy, the cornerstone of our collective destiny, demands the chorus of the majority to shape our national character and legislative path. In the intricate tapestry of international relations, European nations have often looked across the Atlantic for validation, finding solace under the protective canopy of the United States' defense umbrella. However, this heavy reliance, though providing a sense of safety, has ironically hindered progress towards establishing a collective regulatory framework. This is simply because it has heightened dependence on Americans for foreign political determination. A prevailing inertia, rooted in the hesitancy to challenge established norms, has overshadowed hopes for unified action into the European Union. Getting to the heart of the European political stance regarding foreign affairs policies, such as those concerning FDI, this inertia originates from a reluctance to step away from familiarity and a fear of the unknown, as mostly, fear of action. Policies ought to be shaped by ideas and public opinion. Policies shape economy. If the public is not adequately informed about important EU matters, political will is unlikely to develop, and public opinion will remain unformed, lacking the force to compel action.

The repercussions of this inertia are profound, as evidenced by the example of what a European regulatory framework can create, as expressed by the Italian case that we will later explore in this chapter and that is based over a veto by the Italian Government over a European consolidation transaction in a key sector for our Union, in light of what we have said above on the US. When the media fail to illuminate pivotal shifts and critical junctures, the political resolve required to enact consequential legislation is weakened. This inertia, this reticence to act, finds its foothold in a multitude of sources, whether internal tumult or the cautious posture of the European Union in foreign affairs. In his 2017 State of the Union address, President Junker sought to awaken Europe from its slumber, urging us to uphold and elevate our continent collectively. Nevertheless, until we confront the underlying causes of inertia and embrace a spirit of boldness and innovation, meaningful progress will remain a distant dream, as we think will poorly be. The inertia we speak of involves shaping public opinion towards a

broad, intelligent, and inspiring European framework on FDI, ultimately favoring the realization of a genuine single market. Europe crafted legislation, but as evidenced, it was merely a compromise between parties that failed to instigate real change, instead exacerbating division, as we will delve into. Indeed, the development of regulations influenced by the investment concerns of other member states is not beneficial overall, as explained previously.

As we said, public opinion shapes politics, and it is dangerously easy to trigger a cascade that could undermine a union currently ceding ground to national interests, both domestically and internationally, with reckless and at the same time resonant political gestures. Throughout history, the seeds of tensions, often culminating in armed conflicts, are sown in the realm of economics. While we are not an advocate for liberal policies[43], the notion that interdependent and globalized economies deter war holds true for me, particularly if applied to Europe, where the formulation of unified policies could prove decisive. Nevertheless, as elucidated by Ray Dalio in his treatise on the "Principles for dealing with a changing World Order", burgeoning conflicts frequently stem from economic frictions. In the first chapter we have discussed the evolution of regulations in Europe, tracing back to privatization, and delved into the cultural underpinnings of European nations regarding FDI control. Now, as we introduce a case study, we illuminate an instance where such regulations were utilized, to some degree, against the establishment and consolidation of the European industry within our market, and how this could generate further juridical as political division.

[43] Chapter 3

2.1 Italian Framework

Italy's initiation of the Golden Power Regulation in 2012 signified a pivotal moment, emerging from a series of trials and challenges. As we have seen, everything escalated with the privatization process. It witnessed the introduction of private investors into the share capital of public entities. This process was generally described as consisting of two phases: 1) the formal phase, in which a private entity such as a stock company was established but remained under public control regulations, and 2) the substitutive phase, during which decision-making authority shifted and ownership fully transferred to the private entity, eliminating public sector influence. Furthermore, some scholars have termed a “tertium genus” (SALERNO L., 2002) of privatization, as the Italian model, positioned between formal and substantive phases. In fact, it did not give rise to private subject entirely to company discipline, but to private legal persons for which special discipline was created (BELVISO L., 2023).

Now we will provide a quick review of the path followed by the specific Italian regulation that took to the 2012 and then the actual regulation over FDI. According to the Decree Law of the 31/05/1994 n. 332, companies operating in defense, transportation, communications, and public utilities sectors, as designated by decree from the President of the Council of Ministers, were mandated to include specific clauses in their articles of association before selling shares on the open market. These clauses bestowed a range of special powers upon the Minister of the Treasury. Among these powers were approving significant share acquisitions, with a temporary voting restriction until approval; endorsing shareholder agreements where at least one-twentieth of the share capital was represented; and vetoing resolutions pertaining to company dissolution, transfer, merger, demerger, or relocation of the registered office abroad. This arrangement effectively created a division between formal ownership and substantive control. These powers, operational even after share loss, provided the government with a mechanism—the "golden share"—to intervene in the market, thus

preventing shareholder actions deemed contrary to the public interest. It has been noted that through this mechanism, the Treasury, despite no longer holding the majority of shares, retains a privileged role in overseeing and safeguarding the public interest in formerly publicly-owned companies (Amiconi C., 1999). The Italian regulation established in 1994 initiated these practices. However, these practices began to collide with fundamental principles that underpin community life in European countries, starting from 1999.

To succinctly summarize the conditions required to activate special powers and to evaluate their compatibility with EU law in light of judgments from the Court of Justice, it was essential not only to identify the active agent—the government—but also the passive subjects, namely the involved companies. These companies were designated by decree from the Prime Minister and were chosen based on their representation of "strategic interests." These interests were categorized as those in which the national public interest held greater significance than private interests, regarded as paramount and constant. In the Italian regulation the determination of the strategic significance of these interests, and consequently of the companies involved, provided ample room for discretion (Tullio Fenucci). Shielded by its political authority, the government had the liberty to expand or restrict the scope of this assessment as it deemed fit. The period following 1999 witnessed significant shifts in European legal frameworks, particularly concerning the balance between national sovereignty and EU regulations. This tension often manifested in debates surrounding the protection of strategic industries and national interests versus the principles of the EU single market and competition law. The concept of strategic interests and the mechanisms for their protection became subject to scrutiny, as they intersected with broader discussions about the role of governments in the economy and the limits of their intervention in market activities. In this context, the regulatory framework referenced in the subsequent text concerns the exercise of "special powers" by the Italian government, as interpreted and contested by rulings from the Court of Justice of the European Union (CJEU) (Tullio Fenucci). Specifically, it mentions a decree issued by the President of

the Council of Ministers[44] on June 10, 2004, which outlines the criteria for exercising these special powers as defined in the decree-law of May 31, 1994, no. 332, converted with amendments by Law no. 474 of July 30, 1994. The CJEU rulings, notably the judgment of May 23, 2000, (case C-68/99, and the judgment of March 26, 2009, case C-326/07), concluded that certain provisions of the Italian regulatory framework concerning special powers violated obligations imposed by the European Union" (Alvaro S. & Co., 2019). Italy has faced repeated sanctions from European Union institutions due to its unique authorities. Specifically, in the sentence the Court of Justice ruled against the Italian Republic, finding its legislation, notably Articles 1, paragraphs 5 and 2, of Decree-Law No. 332 of 1994, in violation of EU regulations concerning the free movement of capital and services, freedom of establishment, and competition rules. Despite the Court's judgment, Italy was slow to amend its laws accordingly (Alvaro S. & Co., 2019). Subsequently, on June 2, 2005, the Court of Justice once again censured Italy. The focus of this condemnation was decree-law No. 192 of 2001 [45], later transformed into Law 301 of 2001. The Commission's rebuke centered on the automatic suspension of voting rights for shares exceeding 2% of a company's share capital in the electricity and gas sectors. This provision, applied to public entities not listed on regulated financial markets and holding a dominant position in their domestic markets, was deemed to impede capital mobility, contravening EU law. In this context, the words with which Advocate General Ruiz-Jarabo Colomer opened his conclusions on November 6, 2008, in yet another case against Italy's special powers were: "All that glitters is not gold." This is the famous phrase that William Shakespeare places in the scene where the King of Morocco chooses the silver casket to win the heart of Portia in "The Merchant of Venice." Concerning "golden shares," this proverb should be well known to Member States, who, like King Midas, endeavor to transform shareholdings in companies operating in strategic sectors or providing public services into a substitute for the precious metal (Sacco Ginevri A., 2019).

[44] Definition of the criteria for exercising special powers, referred to in Article 2 of the decree-law of May 31, 1994, No. 332, converted, with amendments, by Law No. 474 of July 30, 1994.. (GU Serie Generale n.139 del 16-06-2004).
[45] https://www.parlamento.it/parlam/leggi/decreti/01192d.htm.

Following that, on March 26, 2009, the Court of Justice once more censured Italy. This time, it found fault with the special authorities held by the Italian government in companies such as ENI, Telecom Italia, Enel, and Finmeccanica, operating in the petrochemical and energy, telecommunications, electricity, and defense sectors, respectively. Specifically, the Court deemed these powers incompatible with EU regulations concerning freedom of establishment and the free movement of capital. It criticized the disproportionate use of these powers outlined in Italian law, particularly in achieving the goals outlined in the D.P.C.M. of June 10, 2004. The Court highlighted the vagueness of the criteria for exercising these powers, noting that Article 1, paragraph 1 of the aforementioned decree, which allowed the use of special powers only under EU law, failed to make the application of such criteria compatible. This was due to the potentially numerous and indeterminate situations permitting the exercise of veto power, granting authorities broad discretionary powers. In the realm of European Union law, the principles of freedom of establishment and free movement of capital stand as fundamental pillars, ensuring the smooth operation of the single market and fostering economic integration among member states. These principles, enshrined in Article 43 and Article 56 of the EC Treaty (now consolidated into the Treaty on the Functioning of the European Union), respectively, guarantee individuals and businesses the right to establish themselves or their operations in any EU member state and to freely move capital across borders within the EU[46]. However, instances arise where national regulations or provisions conflict with these foundational principles, leading to legal challenges and assessments by EU institutions and courts. In was found that Italian law was not allowing other Member States to establish themselves and conduct business activity into the country. In response to legal challenges and rulings from the Court of Justice of the European Union (CJEU), it was concluded that the

[46] Treaty establishing the European Community (Nice consolidated version) - Part Three: Community policies - Title III: Free movement of persons, services and capital - Chapter 2: Right of establishment - Article 43 - Article 52 - EC Treaty (Maastricht consolidated version) - Article 52 - EEC Treaty. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=celex%3A12002E043 and https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX%3A12002E056%3AEN%3AHTML

Italian provisions needed to be revised to ensure compliance with EU law. This process involved reassessing the criteria for activating special powers, particularly regarding the designation of companies deemed to represent "strategic interests." Additionally, it necessitated aligning the regulatory framework with the principles of freedom of establishment, free movement of capital, and non-discrimination among EU member states, thereby fostering a more conducive environment for cross-border economic activities and investment within the EU. Ultimately, the case of Italy's regulatory provisions serves as a reminder of the importance of ensuring coherence and compatibility between national regulations and EU law, particularly concerning the principles underpinning the single market. The Court clarified that these violations pertained to both the special powers outlined in Article 2, paragraph 1, letters a) and b) of the aforementioned decree-law, as amended by Law no. 350 of December 24, 2003 [47], and the special power outlined in Article 2, paragraph 1, letter c) of the same decree-law. The exercise of such special powers, in fact, took place in the absence of clearly delineated criteria that could guide investors, especially foreign investors, and shelter them from an arbitrary and uncertain exercise of those powers" (Alvaro S. & Co., 2019). The European Court noted, moreover, that such discipline was at odds with the principle of the free market, taking on the features of a true protectionist measure, such powers being 'vague and of indefinite scope' and the Government having 'wide discretionary powers in judging the risks to the vital interests of the State' (Tullio Fenucci). Italian legislator, inserted also a different way in which to protect companies operating in a strategic sector. In particular, the legislation pertaining to special powers, designated as No. 266, which grants companies with significant State ownership the authority to issue shares and financial instruments with rights to request the issuance of new shares or participatory instruments with voting privileges, should also be viewed in connection with Articles 381 to 384 of Article 1 of the Law dated December 23, 2005 (Tullio Fenucci). This law was integrated into the Italian legal framework as a

[47] This law defines the criteria for the exercise of special powers as outlined in Article 2 of the decree-law issued on May 31, 1994, No. 332. It was later converted into law by Law No. 474 on July 30, 1994. Essentially, it lays out the guidelines and conditions for using these specific powers within the legal framework of Italy.

mechanism, akin to those found in other legal systems, aimed at resisting hostile takeovers or takeover attempts involving unsolicited bids by controlling parties. This mechanism, is known as "poison pill," it shares similar objectives with the golden share, chiefly safeguarding the interests of public shareholders in companies operating within sectors deemed vital for the national economy. The poison pill's purpose is to facilitate the resolution of a capital increase, enabling the public shareholder to bolster its stake by thwarting any efforts to gain control in the event of a hostile takeover bid targeting public enterprises (Tullio Fenucci).

Moreover, other methods have been used in other European countries and namely in the US. In numerous instances where a foreign acquirer targeted a company operating in a strategic sector, the state intervened not with a poison pill or the use of golden power, but through a white knight strategy. In such cases, the state seeks to prevent the acquisition by engaging a third-party operator, whether public or private, to buy the company in place of the foreign acquirer. A notable example is ENEL's bid to acquire the French company Suez SA. This instance, referred to as "internal intervention" by author Lenihan in Balancing Power Without Weapons, involved the state intervening through Gaz de France (GdF), which thwarted the acquisition by initiating a consolidation merger within its own industry. Another example, as documented by Lenihan, involved CNOOC's attempt to acquire the American oil company Unocal, where intervention came from another U.S. company, the oil giant Chevron (Lenihan A.T., 2018). In both cases, public companies acted in their national interest, securing favorable conditions.

Coming back to the path of the Italian Regulation, we can consider that the sanctions that were defined over Italy served as a catalyst for change, prompting Italy to adopt Law No. 21 of 2012. In the regulation the legislator tried to reassess the criteria for activating special powers, particularly regarding the designation of companies deemed to represent "strategic interests." Additionally, it necessitated aligning the regulatory framework with the principles of freedom of establishment, free movement of capital,

and non-discrimination among EU member states, thereby fostering a more conducive environment for cross-border economic activities and investment within the EU. The regulation was approved as Law decree no.21 of 15 March 2012, and then converted into Law no. 56 on 11 may 2012.

Since now on, we are going to explain Italian Regulation on Golden Power in depth, giving the fact that this regulation is the root from which all the other Italian Regulation on the matter that has come later have drawn foundation. Law decree no.21/2012 delineates the sectors deemed strategic by the State. Within its first two articles, the Italian Government is granted authority to intervene with companies engaged in activities of strategic significance within the realms of national defense and security (Article 1), or those possessing significant assets in the energy, transportation, and communication sectors [48](Article 2).

The Golden Powers regulation identifies as the triggering events for the potential exercise of the powers by the Italian Government in the sectors cited in Article 1:

- ❖ Any resolution adopted by the shareholders meeting or by management bodies of a strategic company concerning (i) company's merger and de-merger, (ii) the transfer of the business and/or of company's branches or subsidiaries, (iii) transfer abroad of the legal headquarter of the company, (iv) amendment of the company's purpose, (v) company dissolution, (vi) amendment of certain provisions set forth in the by-laws adopted pursuant to article 2351, paragraph 3[49], of the Italian Civil Code (vii) the right to use certain material or immaterial

[48] the Law Decree was implemented by the Decree of the President of the Council od Minister no. 108 of 2014, concerning the activities deemed to have a strategic relevance for national security and defense; by the Presidential Decree no. 35 of 2014, concerning the procedures to be followed for the use of the Golden Power in the aforementioned sectors; by the Decree of the President of Council of Ministers no. 180 of 2020, concerning the identification of the relevant assets in the energy, transportation and communication sectors; the Decree of the President of the Council of Ministers no. 179 of 2020, that identifies the assets deemed as of national interest in the sectors provided by the art 4, of the regulation EU 2019/452 and art 2 of the Law Decree cited above; the Decree of the President of the Council of Ministers of 2014 concerning the identification of the activities needed to put in place the use of the Golden Power

[49] Article 2351, paragraph 3 of the Italian Civil Code likely pertains to provisions related to corporate governance, particularly concerning the adoption and amendment of company by-laws, shareholder

assets or certain assumptions regarding their use; or any acquisition, at any title whatsoever, of any shareholdings in "strategic" companies, in particular any acquisition of a stake exceeding 3% of the share capital of the company (listed or not), as well as any other acquisition exceeding the thresholds of 5%, 10%, 15%, 20%, 25% and 50% of the share capital.

Basically, the main areas of action are linked with cross-border M&A operations and with certain types of other Board of Directors resolutions. After the analysis of the triggering events, let's analyze the power granted to the Italian government whenever one of these relevant reasons rises. In this particular context, art 1 of this 2012 law decree assure the Italian government different powers that we will see in brief:

- ❖ Exercise veto on one of the already identified resolutions, including the transaction itself, whenever the national defense or security are put under threat.
- ❖ Impose specific conditions to the transaction, in particular on the security of supplies, information, technological transfer and the exportation in the event of significant acquisition pursuant to art 1 of the law decree;
- ❖ Forbid acquisitions made by an entity other than the Italian State, Italian public entities or controlled Italian entities, this action can be namely performed every time an actor has the possibility to jeopardize the interest of national defense and security.

This last point is basically what we will see in depth when describing what happened during the case that we will present in the second section of this chapter as our case study. Going in deep in the analysis of the regulation, under the provisions set forth by art1 of the Law Decree and by the Presidential Decree No. 35 of 19 February 2014, the company that operate in the strategic sector and the "relevant purchaser" are required to submit a notification to the Italian Government. In particular, the Presidential Decree No.35 of 2014 cited above, states that the purchaser is required to notify in any of the above presented events in the corporate life of a strategic company to the Presidency

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rights, or corporate decision-making processes. Retrieved from https://www.brocardi.it/codice-civile/libro-quinto/titolo-v/capo-v/sezione-v/art2351.html.

of the Council of Ministers a document with all the relevant information upon the transaction within 10 days starting from the beginning of the acquisition. Of course, in this particular phase is very important to communicate in the proper way the acquirer intentions as well as future projects and business idea toward future possible strategic action, in order to gain the public sector and public decision maker trust, as approval. In terms of deadlines, the decision concerning the exercise of the special power remains pending for 45 days started from the cited notification, with the possibility given to the government to ask the parties only once further information, extending the deadline to 30 days from the said request. Green light is implicit whenever the Government, within the defined deadlines, does not issue any relevant resolution, a sort of silence assent. Instead, while the notification will be pending, the acquiror rights as a shareholder, including its voting rights, are suspended, as any effectiveness of any significant resolution. Now that we have seen how does the notification period works, with its deadlines and with the imposition of the companies, now let’s focus on the sanctions identified in the regulation for the companies involved.

The sanctions could be:

- Nullification and Reinstatement of Resolutions, any resolution adopted or implemented in breach of the provisions set forth under art 1 of the Law Decree shall be deemed null and void. The paragraph 4 also stated that the Government could also force the parties involved to reinstate the previous situation at their expenses.
- Administrative Fines for Non-Compliance, in paragraph 4 and 5 of the art 1 are also defined the situation in which the parties or one of the parties does not act in compliance with conditions or prescriptions, imposed on a resolution or significant transactions, by the Government. In this case, the party that do not comply will be forced to pay a pecuniary administrative fine up to the double of the value of the transaction, this value could not be less than 1% of the cumulative turnover realized by the involved companies as resulting from the last approved financial statements.

- Penalties for Failure to Notify Obligations, any person who fails to comply with the notification obligations referred to in the entire art1 of the Law Decree, in regard to both significant resolution or acquisition, is subject to a pecuniary fine up to the double of the value of the transaction and, in any case, not less than 1% of the cumulative turnover realized by the involved companies as resulting from the last approved financial statements of the companies. (Art 1, par 8 of the Law Decree).

This was the treatment reserved for who breach the regulation for the sectors identified in Article 1. Furthermore, concerning Article 2 of the aforementioned Law Decree, the Italian Government is endowed with special powers to maintain control over strategic assets within the energy, transportation, and communications sectors. The triggering events for utilization of the Golden power in this specific case are:

- Any resolution adopted by the Board of Directors, or by the company in general, that pertains to an asset deemed relevant under Article 2 of the aforementioned regulation, is subject to specific scrutiny. This applies to all transactions or actions that result in a loss of ownership, control, or availability of the asset, or a change in its intended use. This includes resolutions on mergers and de-mergers, relocating the registered office abroad, changing the corporate purpose, dissolving the company, amending by-laws, transferring a going concern or business unit related to the relevant asset (even if used as collateral), and any transfer of subsidies that include relevant assets.
- Any acquisition by investors from countries that are not part of the European Union versus Italian companies holding relevant assets pursuant to Article 2 of the Law Decree. If the investments by the foreign investor will take him to exercise control over the company [50] and if the investment let the regulator believe that it could generate a possible damage for the interest of the State.

[50] Article 2359 of the Civil Code, Controlled companies are those in which another company holds the majority of votes exercisable in the ordinary assembly; companies in which another company holds sufficient votes to exert dominant influence in the ordinary assembly; companies that are under the dominant influence of another company by virtue of specific contractual constraints with it.

These powers are to be wielded based on objective criteria that eliminate any form of discrimination and consider the transaction's nature. As the regulation is established, the government must assess whether intervention is warranted. In this regard, the regulation provides insights into this aspect, thus:

- ❖ When objective reasons which lead to deem possible the existence of links between the purchaser and third countries which do not recognize the principles of democracy or the rules of State of law, which do not comply with the rules of International law or which have assumed risky behaviors vis a vis the international community, as can be inferred by the nature of their alliances, or which have relationships with terrorist organizations.
- ❖ This second part is instead based on the way in which the transaction was financed, having regard to the patrimonial situation of the purchaser in order to ensure: (a) safety and continuity of supply, (b) the safety and maintenance of the network and installations, (b-bis) the danger to security or public order shall be assessed in addition to the threat of serious prejudice to the public interest (art 2 par 7).

The powers, according to art 2 of the Law Decree, that could be exercised are:

- ❖ Veto power in relation to significant resolutions of the company shareholders' meeting that could be able to trigger an exeptional situation threatening serious prejudice to the public interest relating to the safety and functioning of the networks and installations as well as for the continuity of supplies. Exercisable through the imposition of conditions and prescriptions.
- ❖ conditioning the effectiveness of the significant acquisition by imposing on the purchaser duties and prescriptions, whenever the transaction threat a serious prejudice to the essential public interest (in term of safety and operation of networks and installation of supplies) and a danger for security or public order. In extraordinary case of danger for the national security the government is also able to use this power to stop the acquisition (Art 2, Paragraph 6)

According to these powers granted to the Government, failure to do so will result in sanctions commensurate with those detailed for breaches of Article 1. After years of stall, and some utilization by the Government of the Regulation, (stop of the selling participation in Telecom of a Russian company in 2013), in 2017, European regulators bestowed their approval upon this Italian regulatory framework. However, amidst this approval, a confluence of new dynamics emerged, as elucidated in our inaugural chapter. Among these dynamics, a heightened scrutiny over such investments by Western nations burgeoned. Notably, major economies subscribing to the capitalist and liberal economic model began implementing analogous regulations. Concurrently, the specter of the Chinese threat loomed larger, while political tensions escalated. Despite the European approval, adjustments to the Italian regulatory framework were necessitated due to the introduction of the EU framework. This initial collaborative Regulation[51], underscored by the collective need of France, Germany, and Italy[52] to fortify their respective economies, and the protection over possible foreign investment, that culminated in Regulation No. 2019/452. As previously iterated, following two years of deliberations, this regulation was formally adopted on 19 March 2019. The Regulation (EU) 2019/452, enacted by both the European Parliament and the European Council, expanded the scope of powers wielded by individual governments. Articulated in its Article 4, the regulation stipulated that when assessing the potential impact of a foreign direct investment on security or public order, due consideration must be given to its effects across various sectors, including: (a) a critical infrastructure including energy, transport, water, health, communications, media, data processing or storage, aerospace, defense, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure; (b) critical technologies

[51] EU regulation refers to a type of legislative act that is binding in its entirety and directly applicable in all member states of the European Union. Unlike directives, which require member states to achieve a particular result but allow them to choose the form and method, regulations automatically become law in all member states upon their adoption. This means that EU regulations have immediate legal force without needing to be transposed into national law. They aim to ensure uniformity and consistency in the application of laws across the EU, facilitating a more integrated and cohesive internal market.

[52] Retrieved from: https://www.trt.net.tr/italiano/mondo/2017/02/15/francia-germania-e-italia-chiedono-nuove-regole-investimenti-esteri-in-ue-672602

including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies; (c) supply of critical inputs, including energy or raw materials, as well as food security; (d) access to sensitive information, including personal data, or the ability to control such information; or (e) the freedom and pluralism of the media. Moreover, in art. 4 "in determining whether a foreign direct investment is likely to affect security or public order", Member States should take into account, in particular: (a) whether the foreign investor is directly or indirectly controlled by the government, including state bodies or armed forces, of a third country, including through ownership structure or significant funding; (b) whether the foreign investor has already been involved in activities affecting security or public order in a Member State; or (c) whether there is a serious risk that the foreign investor engages in illegal or criminal activities. What we find objectionable is a specific segment of the regulation, namely the one establishing an internal collaboration mechanism facilitating information exchange between governments upon request, namely art.1 of the Regulation. Furthermore, each government within the Union is mandated to keep the Commission abreast of its regulations and furnish an annual report[53], offering insights into progress within respective countries. However, our critic is related to the nature of this soft law that does not confer any authority upon the Commission, in stark contrast to the powers previously possibly vested in them by the treaties.

Consequently, foreign direct investment has transitioned into a concern relegated to individual nations, deviating from the vision which foresaw it as a possible vehicle for multinational implementation, enhancing the potency and development of the single market. It is imperative to clarify that the framework, as initially issued, serves as a means for member states and the Commission to enhance their cooperation concerning

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[53] The report on Foreign Direct Investment (FDI) from the EU provides an analysis of FDI flows between the European Union and other countries or regions. It typically includes information on the volume and direction of FDI, sectoral breakdowns, policy developments, and potential impacts on economic growth, employment, and innovation. The report aims to assess the overall performance of EU FDI, identify trends, and inform policymakers and stakeholders about opportunities and challenges in the global investment landscape.

foreign direct investments that may impact security or public order. Under the regulation, the Commission is empowered to provide opinions addressed to member states conducting screenings, with due consideration required for these opinions. Additionally, the Commission can offer opinions on foreign direct investments planned in member states not undergoing screening, as outlined in Article 7. Article 8 of the 2019 regulation issued by the EU elaborates on this, granting the Commission the authority to issue opinions when it deems that a foreign direct investment may impact projects or programs of Union interest related to security or public order. These projects or programs include those receiving substantial Union funding, or those covered by Union law concerning critical infrastructure, technologies, or inputs essential for security or public order. This European regulation holds significance as it marks the first collaborative effort in regulation, expanding upon the initial Italian framework by identifying new critical sectors necessitating greater state intervention and protection. Notably, its adoption in Italy in October 2020, amidst the onset of the pandemic, underscores its relevance. During this period, the economic landscape witnessed a dramatic downturn, with the value of companies plummeting due to widespread lockdowns and bleak economic forecasts. Escalating commodity prices fueled inflation, eroding both consumer savings and corporate revenues, leading to decreased sales and widespread market panic.

Against this backdrop, regulatory bodies across nations grew apprehensive, fearing potential fire sales and predatory acquisitions of vital EU companies by foreign investors. Responding swiftly, the Commission issued a Communication[54] on March 25, 2020, just two weeks into the COVID-19 pandemic, urging member states to fully utilize their existing screening mechanisms in accordance with the regulation. This proactive stance by the Commission, driven by concerns over the safeguarding of critical EU companies, prompted an expedited implementation of the regulation. Consequently, it widened the scope of the golden power wielded by various

[54] Retrieved from: https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex%3A52020XC0326%2803%29.

governments, thereby reinforcing the protective measures surrounding strategically significant entities vital to the broader European economy, but more in depth the single economies. Amidst an evolving European policy landscape, the regulation notably diverges from Article 63[55] of the TFEU, which underscores the unrestricted movement of capital and payments, both within member states and with third countries. This article primarily mandates non-interference by individual country governments, necessitating the elimination of restrictions on capital movement, aligning with the overarching aim of liberalizing financial markets across European Union territories. In essence, Article 63 of the TFEU stipulates that to adhere to this principle, member states need only to reduce or eliminate restrictions on capital import and export. As interpreted broadly by the Court of Justice of the European Union (Sportoletti J., 2023), such restrictions cannot be narrowly interpreted. Consequently, Article 63 limits all restrictions between member states, the sole right that can be derogated by national governments is situations stated in Article 65. This article affirms that any restriction, regardless of its nature or justification, is deemed permissible if it is proportionate to the national interest safeguarded. However, a potential issue with this regulation in the already stated backfire to the European overall interests in the interpretation of "national interest" as a concept distinct from a country's own interest (Sportoletti J., 2023). Law Decree 23/2020[56] amended the Italian golden power regulation of 2012, empowering the Italian government to initiate ex officio proceedings for the exercise of special powers granted in the event of breach of notification obligations outlined in the decree (Sportoletti J., 2023). After Decree No. 23 of 2020 the terms of this

[55] Article 63 of the Treaty on the Functioning of the European Union (TFEU) concerns the freedom of movement of capital within the EU. It prohibits restrictions on capital movements between Member States and between Member States and third countries, except in specific cases justified on grounds of public policy, public security, or public health. This article is essential for promoting economic integration and facilitating investment and financial transactions within the EU. Retrieved from https://www.treccani.it/enciclopedia/circolazione-dei-capitali-dir-ue_(Diritto-on-line)/

[56] The Decree-Law No. 23 of April 8, 2020, is a legislative measure enacted by the Italian government to address various urgent issues arising from the COVID-19 pandemic. It includes provisions aimed at facilitating access to credit for businesses, easing tax obligations, and implementing special powers in strategic sectors to safeguard national interests. Additionally, the decree addresses matters related to healthcare and employment, along with extending administrative and procedural deadlines. Overall, it represents a comprehensive response to the multifaceted challenges posed by the pandemic.

emergency discipline were extended by Decree-Law No. 137 of 2020 (to 30 June 2021), by Decree-Law No. 56 of 2021 (to 31 December 2021) and by Decree-Law No. 228 of 2021 to 31 December 2022. The new ex officio powers supplemented the ordinary sanctioning mechanism in the event of non-compliance with the obligations arising from the golden power regulation.

Additionally, now the notification must provide comprehensive details regarding the resolution, action, or transaction in question, facilitating the prompt exercise of authority. Failure to fulfill the notification requirement may result in administrative penalties and civil law repercussions, such as the potential nullification of any resolutions adopted, as defined also for breach of Law Decree 21/2012. It's important to note that Decree-Law No. 23 of 8 April 2020 authorizes, in the absence of notification, the automatic initiation of a preliminary investigation procedure to assess the conditions for exercising special powers (Sportoletti J., 2023). Anyway, there was a full alignment with the European Regulation and wonder, in fact the Commission advise each Member state to take into account "the risk to critical health infrastructure, supply of critical inputs, and other critical sectors as envisaged in the EU legal framework". Another significant development pertained to the adjustment of the threshold triggering notification obligations, extending the screening not only to European investors, but even to Italian investors. Furthermore, additional powers were introduced, potentially exercisable ex officio by the President of the Council of Ministers in instances of non-compliance with notification obligations (Sportoletti J., 2023). Particularly noteworthy was the authority bestowed upon the Italian Prime Minister to scrutinize all investments across various sectors of the economy, as delineated in Article 4, paragraph 1 of the aforementioned regulation, which includes sectors such as banking and insurance[57] (Sportoletti J., 2023). Moreover, the new legislative framework stipulated that until December 30, 2021, any acquisition

[57] Regulation for the identification of assets and relationships of national interest in the sectors referred to in Article 4, paragraph 1, of Regulation (EU) 2019/452 of the European Parliament and of the Council, of 19 March 2019, pursuant to Article 2, paragraph 1-ter, of Decree-Law No. 21 of 15 March 2012, converted, with amendments, by Law No. 56 of 11 May 2012. (20G00199)

exceeding a 10% stake by any investor, provided the investment surpassed a value of 1 million, necessitated notification to the Italian government. This exemplifies Europe's decision to fortify its economy against external influences, driven by overarching public security concerns intricately tied to the union's economic state. Additionally, acquisitions by non-EU entities exceeding thresholds of 15%, 20%, 25%, and 50% must undergo notification through the same protocol. Furthermore, the heightened state intervention in the economy, particularly within companies holding substantial assets and relationships in strategic sectors, mandated notification of all transactions involving transfers of ownership, control, or availability of strategic assets, irrespective of the entity's location within the European Union. These encompassed transactions involving Italian shareholders and intra-group transactions. In this context we can state that according to the initial idea of privatization (and further of globalization) the Italian State should have left the field to private operator, after that it had had a long and deep relationship with economic entities in the country. This relation has changed over time. The State was first an 'entrepreneur' (Sacco Ginevri A., 2019), at the time of the public economic entities, then a 'regulator', at the time of privatization processes, and now, after the new reforms that we will see, a 'supervisor' (ARDIZZONE L. & VITALI M. L, 2013). Nowadays, following Law Decree no. 187 of 2022[58], we would seem to be witnessing the assumption of a further function, that of the 'indirect' and tendentially temporary intervention of the State in the economy (Sandulli A., 2023). Sandulli, in his paper on the comment of the cited Law Decree, states that after huge injection of capital into the economy, due to the sovereign debt financial crises[59], we are now approaching

[58] Law Decree no. 187 of 2022 in Italy is a legislative act that addresses urgent matters related to various sectors including green investments, digital innovation, infrastructure development, public asset management, economic recovery in earthquake-affected areas, and measures to strengthen the health system in response to the COVID-19 pandemic. It aims to promote sustainable and digital growth, streamline administrative procedures, provide incentives for strategic investments, and support the country's overall economic recovery and resilience.

[59] The European sovereign debt crisis, also known as the Eurozone crisis, occurred primarily in the early 2010s and affected several countries in the Eurozone, particularly Greece, Portugal, Ireland, Spain, and Italy. It was triggered by a combination of factors, including high levels of public debt, weak economic growth, banking sector vulnerabilities, and fiscal imbalances. The crisis led to concerns about the sustainability of government debt and raised doubts about the future of the Eurozone. It prompted extensive bailout programs, austerity measures, and structural reforms in

a situation in which countries are coming back with industrial planning. We consider this point of view as a reality, otherwise we think that this is also linked with the role of China and with the necessity to understand a way in which there could be competition while fighting a different economic system.

Law Decree No. 21 of 2022 introduced a new procedure aimed at streamlining and expediting the preliminary investigation, with a clarifying function. This procedure is known as the pre-notification procedure. The instrument brings advantages both to the structures in charge of managing the proceedings and to the notifying companies themselves, as it constitutes a fast-track procedure aimed at expediting the proceedings, without prejudice to the freedom of negotiating self-determination[60]. In seeking a deeper understanding of the preliminary investigation procedure preceding the activation or non-activation of special powers, it becomes evident that the primary entity overseeing this process is the Coordination Group on Special Powers. Implemented by Prime Ministerial Decree No. 133 of 1 August 2022, in accordance with Law Decree No. 21 of 2022, this group is empowered to decide against transmitting acts to the Council of Ministers if there is unanimous agreement among its members and notifying parties regarding the absence of prerequisites for invoking the golden power. This arrangement is detailed in Article 3 of the Prime Ministerial Decree [61]of 6 August 2014 (Sportoletti J., 2023). The Group is housed within the Presidency of the Council of Ministers, and led by the Secretary General of the Presidency with executives from various administrations also participating. Consequently, decisions devoid of political considerations can lead to the exclusion of the political body from the process. In such instances, the technical decision not to exercise special powers is promptly communicated to the company involved.

affected countries, as well as institutional reforms within the Eurozone to strengthen fiscal discipline and financial stability.

[60] Retrieved from : https://www.europarl.europa.eu/doceo/document/CRE-9-2024-02-28-ITM-004_EN.html.

[61] Retrieved from: https://www.esteri.it/en/ministero/struttura/uama/

It's noteworthy that this regulatory innovation appears to align the Italian golden power mechanism closely with the US model, akin to the operations of CFIUS, there was a notable uptick in the number of notifications received by the Council Presidency. This increased value is also visible by the report on the actual situation issued by the European Union. According to the “Third Annual report on the screening of the foreign direct investments” issued by the European Commission, in 2022, EU Member States handled 1,444 requests for authorizations of acquisitions by foreign investors and ex officio cases. Not all requests were screened, depending on national legislation and classification. Approximately 55% of these cases were formally screened, a significant increase from 2021. About 45% were deemed ineligible or did not require formal screening. The distribution of authorization requests varied across Member States, with the top four accounting for 66% of requests in 2022, down from 70% in 2021 and 87% in the first report. Of the cases formally screened in 2022 and for which decisions were reported, 86% were authorized without conditions. While in Italy, as of December 31, 2021, a total of 496 notifications were recorded, of which 458 had reached conclusion, marking a 45% increase from the previous year's 341 notifications. Of the concluded investigations, veto power was exercised in two cases, while special powers were invoked with prescriptions and conditions in 22 instances (European Commission, 2023).

Additionally, in four cases, non-exercise was accompanied by recommendations. The majority of notified transactions (263, constituting 57% of the total) were deemed excluded from the framework's applicability (Sportoletti J., 2023). Moving to the realm of the Law Decree No. 21 of 2022, it has established provisions, previously only considered as temporary and prorogated time to time, and unified some existing practices. Article 24 of this Law Decree introduces a redefinition of special powers pertaining to defense and national security matters. As we said, Article 1 of Decree-Law No. 21 of 2012 sets forth the conditions under which special powers may be exercised within the security and defense sectors. It highlights the necessity of a perceived threat to vital defense and national security concerns. These powers enable

the government to: veto specific resolutions of assemblies or governing bodies; impose conditions on share acquisitions related to security, technology transfer, and export control; and oppose share acquisitions by entities other than the Italian State or its controlled entities if deemed detrimental to defense and security interests[62]. With Article 24 we had a further refining of these powers by specifying the scope of veto power over resolutions, acts, or transactions impacting ownership, control, or asset availability. Notably, these amendments align provisions applicable to the national defense and security system with those governing energy, transport, and communication sectors.

Furthermore, Article 24 introduces amendments to the obligation of notifying the Presidency of the Council of Ministers regarding resolutions, acts, or transactions. Notably, operations related to strategic defense and security activities are exempted from this obligation if already under assessment for associated powers. Additionally, Article 24 introduces a notification requirement for the establishment of companies engaging in strategic activities, further expanding governmental oversight, but always with the powers described in the Law Decree 21/2012. Such developments reflect the government's broader intent to bolster economic control. Moreover, as stated on the page on Legance-Avvocati Associati[63] Article 1-bis of Law Decree No. 21/2012 has been replaced by the cited Law Decree No. 21/2022, which expands the scope of mandatory filings for acquisitions related to strategic assets and activities.

Every European country, since now on, is expanding its relative power and personalistic interests upon its economy, and if everybody is doing so, this will lead to worst relations and less development of the single market. This is the wider framework

[62] Article 1(1)(c) of Decree-Law No. 21 of 2012 introduces amendments to the acquisition notification process for enterprises. It mandates joint notification of acquisitions, provides for essential information provision by the acquiring company to the target company, and grants the target company the right to submit documents to the Presidency of the Council of Ministers. Non-compliance consequences now apply to both the acquiring and target companies.

[63] Retrieved from: https://www.legance.it/italian-legislation-regarding-foreign-direct-investment-screening-recent-changes-introduced-under-law-decree-no-21-2022/#:~:text=21%2F2022%20extends%20the%20scope,in%20a%20change%20of%20ownership%2C.

that has taken the Italian Regulation in the actual status and that has allowed Italy to exercise the Golden Power against another member state in an industry that in this moment is living a fundamental period, concerning the survival of the European Union as political and joint community of country that perceive a common vision and a common defense.

2.2 Safran-Microtecnica Case Study

In our introduction, we posed a vital question: "Why did Europe sleep?". In the above section of this Chapter we have traced the intricate legal journey in Italy leading to the creation of the legislation for the use of the Golden Power, arriving to the point in which we outlined the actual extensive power of the Italian Government, possibly applicable in all sectors of Italian economy and in all transactions with a value higher than 1 million, defining also a shift in the role of the State into the country power paradigm. The case that we will study in this section might have unfolded differently without such strict regulation. Regardless, it illustrates a scenario in which a European Government can prevent the acquisition of a national entity by a foreign investor, even when that investor is another European company and the owner of the target is not European. Europe slept because it failed to address the situation adequately and in time, missing the opportunity to unite the industries of its largest nations, doing the real interest of its citizens[64] and foster economic integration by creating "European champions."[65]

The transaction in question took place during a period of heightened international tensions. The ongoing war in Ukraine dominates headlines, and a new conflict erupted

[64] according to principles outlined in Chapter 3.1
[65] Cited in “European champions: what now for EU merger control after Siemens/Alstom?”, by Alex Nourry, Dani Rabinowitz; in which appeals the concept of European Champions as companies being able to grow sustainable and able to gain a large market share in their particular business at worldwide level.

in the Middle East between Hamas and Israel. While other tensions are rising all over the world. These escalating frictions are causing a global panic, prompting countries to rearm and reinvest in their military industries. NATO countries, for instance, are pushed by the organization to allocate up to 2% of their GDP to military expenditures (Davies A., 2024). Europe is significantly increasing its expenditure. This period could see significant consolidation within the military sector. Increased government spending leads to a higher backlog of orders for these companies, resulting in higher revenues and margins, increasing cash in balance sheets and the potential for mergers and acquisitions to obtain sustainable and further growth. According to the Stockholm International Peace Research Institute (SIPRI), the five largest arms-producing companies globally are all American: Lockheed Martin Corp., Raytheon Technologies (owner of Collins Technologies, target of the acquisition and owner of Microtecnica), Northrop Grumman Corp., Boeing, and General Dynamics Corp (SIPRI, 2024). This is currently a highly profitable business, and given the global trajectory of defense spending, we can anticipate further growth in their fundamental values. Italy's production and export values in the defense sector are increasing more than those of any other major country, indicating a high level of specialization. Leonardo, the largest European (excluding UK companies) defense contractor by revenue, exemplifies this specialization according to SIPRI's databases (SIPRI, 2024). In this environment, one of the largest defense industry companies in Europe, Safran (specialized in the aerospace sector) attempted a purchase.

We will now introduce the two companies involved in the transaction and endeavor to explain what transpired. Despite the challenges posed by limited information, we have consulted every possible source, and this thesis will present all available details about the transaction.

2.2.1 The target subject to the veto power

Originating in Turin in 1929, Microtecnica was founded by Daniele Agostino Derossi. It began its journey as a manufacturer of compasses and gyroscopes and has undergone a remarkable journey, transitioning from its humble beginnings to its current status as a vital component supplier in the global aerospace market. To arrive to the actual outlook, we have to consider that post-World War II, amidst shifts in demand due to Allied bombings, the company started already to diversify, producing instrumentation and equipment for the film industry. In 1983, it entered the American group Hamilton Standard and expanded its focus to include in its operations precision instrumentation for civilian use and electromechanical and hydraulic actuation systems for military applications. In 2011, Microtecnica was acquired by Goodrich Corporation, forming part of a larger ecosystem in the worldwide aerospace industry. At the time of the acquisition, Goodrich Corporation was one of the premier providers of flight control actuation systems tailored for helicopters, regional and business aircraft, missile actuation, and aircraft thermal and environmental control systems. This acquisition, valued at approximately 331 million Euros ($478 million at an exchange rate of 1.44), marked a strategic move for Goodrich Corporation into key sectors of aerospace, defense, and homeland security (Bloomberg, 2011). Furthermore, given a rising consolidation wind in the defense American industry, Goodrich merged with Hamilton Sundstrand and Hamilton Standard to form UTC aerospace systems. To further look to the actual owner of Microtecnica, in 2018 UTC aerospace systems acquired Rockwell Collins to form the aerospace subsidy Collins Aerospace. In further consolidation operation, in 2020, United Technologies merged with Raytheon Company to form Raytheon Technologies (actually the second world producer of military equipment according to SIPRI as cited above). So, today Microtecnica is a subsidiary of this latter colossus. Its share capital is of 800.000 euro, is fully owned by Keeney Hill Ltd, a UK company completely controlled by Raython Technologies Corporation. (Rossi C., 2023). Over the years, Microtecnica has earned a reputation as a crucial supplier to the Pentagon, particularly for its flight actuators utilized in helicopters, military fighters,

and targeting systems (Benna C., 2023). With its main facilities located in Turin, including its historical site in Piazza Arturo Graf, alongside plants in Luserna San Giovanni and Brugherio, Microtecnica is strategically positioned to serve important clients as Leonardo, Airbus or Boeing efficiently (Rossi C., 2023). Today, it has evolved into a leading force in the aerospace industry, boasting revenues of 172 million Euros in 2022, up from 165.7 million Euros in 2021. Despite high costs relative to revenues, amounting to 158 million Euros in 2022, the company achieved a net profit of 10.1 million Euros, nearly matching the 10.2 million Euros earned in 2021 (Rossi C., 2023). Almost all the revenues came from foreign sources. In fact, only 34% of the overall production is sold in Italy. The main production fields of the company are the Original Equipment Manufacturer [66](OEM) sector, military program and space-related sales. Moreover, a string of the revenues come from development programs, which are customer-funded projects, encompassed various initiatives such as the AW249 program, Eurofighter test benches, A220 anti-ice valves, Falcon, and TAI (Rossi C., 2023). Microtecnica assumes a dedicated workforce of approximately 750 employees. The Turin company stands out as one of Europe's leaders in the aerospace sector, and in particular is specialized in the design and development of components and systems, particularly in hydraulic and electromechanical actuation, as well as thermal controls. Its contributions are integral to various segments of the aerospace market, including regional civilian aircraft, business jets, commercial planes, civilian and military helicopters, combat aircraft, guided weapons, and space launchers. Under the direction and coordination of Raytheon Technologies Corporation, Microtecnica continues to excel in its operations, guided by a seasoned board of directors led by Laura Anne Holmes (Rossi C., 2023). It is an Italian based company with Italian technologies and with a great know-how, it is involved in important European projects, as the

[66] An Original Equipment Manufacturer (OEM) is a company that produces components or products that are purchased by another company and retailed under that purchasing company's brand name. OEMs typically specialize in specific parts or subsystems, which are then integrated into larger products by the purchasing company.

Eurofighter[67] and is operating is a sector considered as strategic for the national security as the one of defense. Microtecnica srl is considered as company operating in a sector that is surely subject to intervention by the Italian Government regarding the use of Golden Power.

2.2.2 The offeror

Safran is a public listed company incorporated in Paris, France. It is among the biggest European companies that are operating in the defense sector. In particular it is the first European firm in terms of market capitalization and one of the first 25 firms in terms of revenue that operates also in the defense industry (Defense News., 2024). In the annals of the company, the origins of what we now recognize as Safran date back to 1896, when it produced its first airship for sports and tourism activities. (Safran site. 2024). Its chronicles are illuminated by a constellation of pivotal innovations that have left an indelible mark on the course of aviation history. Among these milestones stand the engine that propelled the inaugural flight across the Mediterranean skies, piloted by the intrepid Rolland Garros in the year 1913. Further chapters unfold with the dawn of aeronautical engineering, as evidenced by the pioneering creation of the world's premier aeronautical autobrake in 1930. The company's narrative reaches new heights with the advent of the first mass-produced helicopter engine, ushering in an era of vertical flight. Yet, perhaps the most illustrious achievement adorning its legacy is the commissioning of the CFM56, a paradigm-shifting marvel hailed as the preeminent commercial aircraft engine worldwide (Safran site., 2024).

[67] The Eurofighter, the most significant aeronautical program in European industrial history and one of the largest on an international scale, is an advanced multirole fighter jet, crucial for the protection of airspace. Retrieved from: https://aircraft.leonardo.com/it/focus-detail/-/detail/leonardo-has-achieved-programmes-most-advanced-ever-eurofighter#:~:text=L'Eurofighter%2C%20il%20pi%C3%B9%20importante,la%20protezione%20dello%20spazio%20aereo.

Safran has passed a myriad of different phases, in fact it is the consequence of the consolidation merger between SNECMA and SAGEM, two enormous French companies operating in the aircraft industry, that happened in 2005. In the realm of enterprise, the tales of these two entities diverge, each carving out its unique narrative amidst the tides of history. The story of "Société des moteurs Gnome" (later known as SNECMA) unfolds with the inception of the Seguin brothers' vision in Gennevilliers at the beginning of the 20th century. Their endeavor, rooted in the crafting of rotary engines for aircraft, laid the foundation for a legacy steeped in innovation (Safran site., 2024). Through a series of strategic mergers and acquisitions, during the first 40 years of the century, the company emerged as a pioneer and trailblazer in the realm of aircraft engine manufacturing, charting a course marked by milestones of progress and excellence. Conversely, in 1925 a 26 years old Marcel Môme founded "the Société d'Applications Générales Electriques et Mécaniques" (SAGEM). From its modest beginnings with a team of seven individuals and a humble abode on avenue de Clichy, SAGEM burgeoned into a formidable force in the realms of mechanical innovation and precision engineering. Through the decades, the company's evolution mirrored Marcel Môme's indomitable spirit (Safran site, 2024). In 1939, SAGEM's acquisition of Société Anonyme de Télécommunications (SAT) marked a significant milestone in the company's trajectory. SAT specialized in telecommunications equipment and solutions, including the design and manufacture of communication systems, devices, and infrastructure. Their product offerings ranged from telecommunication networks to equipment such as telephones, switchboards, and radio systems. By acquiring SAT, SAGEM strategically positioned itself at the forefront of the burgeoning telecommunications industry, expanding its portfolio to encompass a wide array of communication technologies. This acquisition enabled SAGEM to diversify its business and tap into new markets, leveraging SAT's expertise and product lines to enhance its offerings. By the dawn of the 1960s, Under Marcel Môme's stewardship, the company blazed a trail of innovation, pioneering the world's first infrared guidance system for air-to-air missiles (Safran site., 2024). Meanwhile, after second World War, SNECMA was privatized by the French state and became a public operator.

Main shareholder of the SEP (Société Européenne de Propulsion), which had been created in 1944 as the SEPR (Société d'Etude de la Propulsion par Réaction), SNECMA takes full control of the company, specialized in rocket propulsion and so, diversifying its specializations. Furthermore, between 1967 and 1970, SNECMA acquired Turbomeca, Hispano-Suiza and Messier-Bugatti. The first of these companies concentrated on helicopter engine production, the second on power transmissions and thrust reversers, and the third on landing gear, wheels and brakes (Safran site., 2024). SNECMA took part in a huge number of projects, like the development of General Electric's GE90 engine as of 1989 for the civil market, the Atar 101V military engine that is the first French jet engine, the Alouette II that is the first turbine helicopter in the world to be mass produced or the one that allowed the company to enter the commercial aviation engine market, the CFM56 turbofan. It was produced thanks to a joint participation between Safran and General Electric (50/50), via their joint company, CFM International. This was the effect of a joint wonder in the NATO environment, in which Presidents Georges Pompidou and Richard Nixon had already laid the foundations for this partnership, which is still going on and has been renewed in 2008 until 2040 (Safran site., 2024). The CFM56 today remains the best-selling aircraft engine in the world. It is also the best-selling engine in the history of civil aviation reached the 30 000th delivery milestone in 2016[68].

Given this path, we arrive to the 2005, in this year happened the merger of SNECMA and SAGEM, creating Safran. The civilian activities of Sagem Défense Sécurité were spun off in 2007 to form Sagem Sécurité, which was renamed Morpho in 2009 and sold in 2016 (Safran site., 2024). After the completition of the fusion and the creation of all the synergies between the two companies, eleven years later, in 2016, all group companies gather under one single logo and their historic names changed to reflect the Safran brand. After divesting its broadband communications and mobile phone businesses in 2008, Safran focuses even further on its core businesses of aerospace and defense with the completion of the sale of the Group's identity and security activities

[68] (https://www.safran-group.com/).

to Advent International. Safran took control of Zodiac Aerospace, significantly expanding its aircraft equipment activities. The Group created 4 new companies, specialized in aero systems and aircraft interiors (Safran site., 2024).

Name	Equities	%	Valuation
Government of France	47,983,131	11.23 %	10 885 M €
Sagem SA Employee Stock Ownership Plan	24,483,013	5.730 %	5 554 M €
TCI Fund Management Ltd.	22,223,357	5.201 %	5 041 M €
Crédit Mutuel Asset Management SA	7,939,960	1.858 %	1 801 M €
SAFRAN	5,127,126	1.200 %	1 163 M €
Amundi Asset Management SA (Investment Management)	3,478,093	0.8140 %	789 M €
Silverbay Capital Management LLC	1,880,204	0.4401 %	427 M €
Oddo BHF Asset Management SAS	1,465,081	0.3429 %	332 M €
Eurizon Capital SGR SpA	1,339,152	0.3134 %	304 M €
Groupe des Assurances du Crédit Mutuel SA	1,300,592	0.3044 %	295 M €

Figure 2.1: Shareholding structure of Safran. Retrieved from: https://www.marketscreener.com/quote/stock/SAFRAN-4696/company/

Actually, the shareholding system of the company is as represented in the Figure 2.1. Mainly it can be defined as a state owned company, with the Government of France owning 11.23% of the sharecapital and with another 6.93% owned by both compnaies employees and by the company itself (Sagem SA Empolyee Stock Ownership Plan and SAFRAN). Furthermore, the results of the company, as the performance of its stock price in the last 2 years, have been influenced by the need of world Governments to increase their defense expense (calculated as % over the GDP), as we have seen in the introduction. In the span of just over a decade, the company has experienced remarkable growth. Following its merger in 2006, its revenue stood at approximately €11,256 million. By 2017, adjusted revenue had surged to around €16,521 million. Fast forward to the 2023 financial statement, and the company's revenue soared to approximately €23,651 million. This represents a staggering 43% increase over the six-year period from 2017 to 2023.

Remarkably, in the preceding 11 years, the company's revenue had grown by 46.77%. According to the analysis made by Safran, the forecast for FY 2024 indicates a robust outlook for the company, with anticipated growth across key financial metrics compared to the consolidated data from FY 2023. Firstly, the projected revenue for FY 2024 is expected to increase to around €27.4 billion, signaling a notable expansion in the company's top-line performance. This growth suggests continued market demand for the company's products and services. Moreover, the forecasted recurring operating income is anticipated to rise close to €4.0 billion in FY 2024, up from 3.3 billion of 2023, reflecting an improvement in operational efficiency and profitability (Safran 2, 2024.) . Additionally, the projected free cash flow for FY 2024 is estimated to be around €3.0 billion, underscoring the company's ability to generate cash after accounting for operating expenses and capital expenditures, up from 2.945 billion of 2023. In particular their performance is divised between three main business: 1. The areospace propulsion (51.2%), mainly specialized in civil enginesh, elicopter turbines and miliatry engines, grown by 24% in terms of revenues and increased the mergin by 3.2%; 2. Equipment and Defense (38%), also grown in revenue value by 17.3%; 3. Aircraft interiors, with products like cabin and seats (10.8%) , this is a branch in recovery and at the moment is producing an operating loss for the business. Otherwise, the remarkable performance of the company in recent years has been reflected in its stock price, which has witnessed significant appreciation. At the start of 2006, the stock was valued at €20 per share. By the beginning of 2017, this figure had surged to €67.7 per share, and currently, the price has skyrocketed to over €200 per share nowdays. This substantial growth can be largely attributed to the growing margins, given the escalating international tensions, the growing attention toward European security and the increasing backlog to protect and support Ukraine as the European borders.

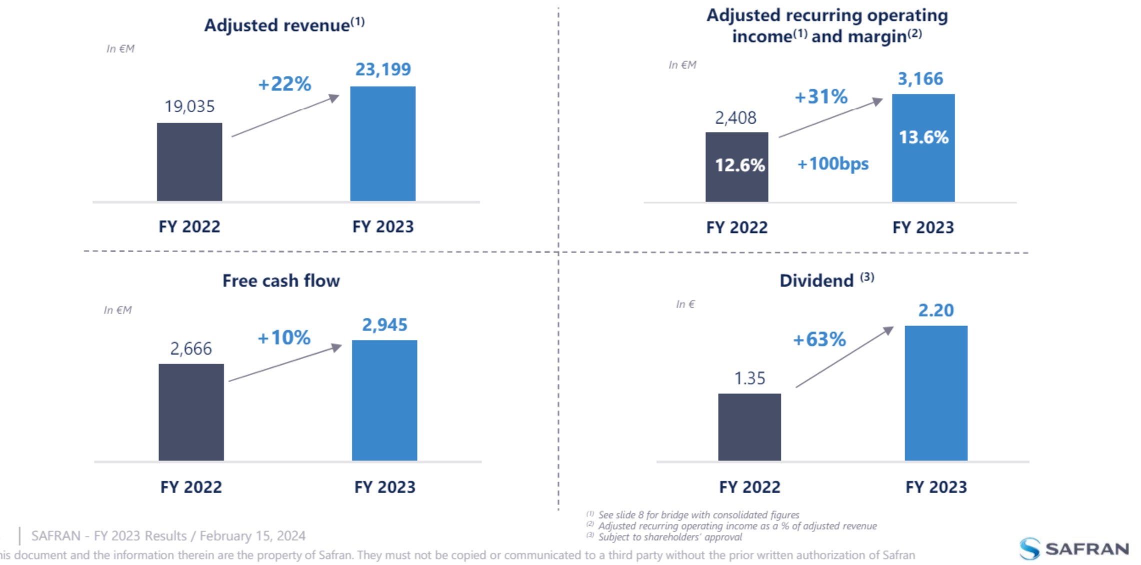

Figure 2.2: YoY growth of main balance sheet indicators: Adjusted Revenue, Adjusted Recurring Operating Income and Margin, Free Cash Flow, Dividend. Retrieved from Safran 2023 Balance Sheet.

2.2.3 The failed transaction

Paris, July 21, 2023: Safran issued a public communication for the market and for the investors on its site in which it was expressed the consideration to acquire Collins Aerospace's high-tech actuation and flight control operations, integral to military and commercial aircraft as well as helicopters (Safran Communication, 2023). The business, according to Safran forecasting, in 2024E is projected to generate sales of around $1.5 billion and an EBITDA of $130 million. The planned transaction is anticipated to yield pre-tax run-rate cost synergies of about $50 million, expected to materialize gradually between 2025 and 2028 (Safran Communication, 2023). Being the two business models pretty similar or at least complementary, these synergies would stem from optimized sourcing and production flows, R&D-procurement complementarity, and procurement economies of scale. Additionally, integrated

offerings and diverse customer and geographic mixes would provide commercial benefits, with ongoing synergies even beyond 2028. They state in the document that the offer for the business is at $1.8 billion, implying a multiple of around 14x pre-cost and approximately 10x post-run-rate cost synergies based on 2024E EBITDA (Safran Communication, 2023). The reason for the definition of this transaction is defined by Safran in the note on their site, specifically, the acquisition would provide Safran with highly complementary products, positioning it as a dominant player with an end-to-end product portfolio. It would enhance Safran's exposure across commercial, military, and helicopter industries, leveraging robust legacy programs and enabling strong positions on mature and emerging platforms.

Furthermore, as stated by Safran in their communication, the acquisition aligns them for next-generation aircraft programs, capitalizing on complementary hydraulic and electromechanical actuation capabilities. With a significant aftermarket presence, the acquisition would augment Safran's revenue streams, complemented by well-identified cost synergies and potential commercial benefits (Safran Communication, 2023). Of course, one reason that is not written but that could be considered, is the wonder of the French government (as we said the owner of Safran) to improve the quality and the quantity of its defensive sector, while introducing new technologies and trying to innovate the existing arsenal.

What happened later has been reported by all the international newspaper and in another communication by Safran.

On the 20th of November 2023, the Italian government has communicated to Safran that they have decided to use their Golden Power to veto the transaction. As we already said above, the transaction was about a total value of 1.8 billion dollar, of these values, 15% was represented by Microtecnica. The transaction was about the sale of the aerospace business of Raytheon Technologies Corp., now known as RTX, named as "Collins Aerospace" (Hollinger P., 2023). Sources within Italy, familiar with the situation, indicated that the prevailing geopolitical climate deems it inappropriate to proceed with such transactions, as they might compromise the Italian military's vital

access to key components (Bloomberg, 2023). The comments on what was done were different and are also useful to understand the reasons behind the decision by the Italian Government to use the Golden Power. Safran CEO Olivier Andries told the Financial Times he opposed the veto, in particular he said: "They assume the worst about our intentions that we will not fairly support or prioritize the Eurofighter" (Abboud L. & Kazmin A., 2023). Furthermore, in an interview on BFM Business Television he said "We were totally surprised, we have read the Italian decree carefully. It's a trial of intention that's been made against us". The Italian state made the decision on the basis that the transaction would represent an "exceptional threat to Italy's national security," Andries kept saying in the BFM interview. (Torsoli A., 2023). He also questioned the decision saying that it would be "ironic" that they will become no more reliable supplier to the Eurofighter project, because of their participation in the Rafale project[69]. For the CEO of the company is "ironic" because in light of the fact that Safran, in its main shareholder, is already providing parts for the pan-European project, in fact the French state, being the largest shareholder in Safran, is also one of the main shareholders of Airbus SE that is part of the Eurofighter consortium that sponsor the Eurofighter project. Another point that was touched by the French defense company CEO was about the way in which the utilization of this power happened, in fact he said: "There was no dialog with us before this decree, we would have been ready to discuss with Italy about this, to reassure them". He also criticized Italy for its failure to initiate a constructive dialogue or engage in a peaceful and open discussion about the reasons behind this decision. Additionally, he expressed surprise at the choice, given that, as

[69] The Eurofighter Typhoon and Rafale projects represent distinct approaches to the development of advanced combat aircraft in Europe. The Eurofighter Typhoon is a collaborative effort involving multiple European nations, including the United Kingdom, Germany, Italy, and Spain. Managed by a consortium of aerospace companies from these countries, the Eurofighter emphasizes agility, maneuverability, and advanced avionics technology to fulfill various roles such as air superiority and ground attack. On the other hand, the Rafale project is a national endeavor led by France's Dassault Aviation. As the sole manufacturer responsible for design, development, and production, Dassault Aviation ensures the Rafale's versatility in roles like air defense, air-to-ground strikes, and reconnaissance. While both aircraft are multi-role fighters capable of diverse missions, the Eurofighter Typhoon showcases collaborative efforts among European nations, while the Rafale highlights France's autonomous approach to military aircraft development. These projects reflect different strategies in European defense cooperation and demonstrate the continent's commitment to maintaining advanced capabilities in aerial combat.

we have noted, the company has been part of American conglomerates and owned by US companies since the early 1980s (Abboud L. & Kazmin A., 2023). On the transaction also the head of RTX's global government relations, Jeff Shockey, expressed his opinion on the decision of the Italian Government, stating that both them and Safran "will be filing appeals, which is necessary to preserve the global transaction," adding, "We acknowledge the Italian government's decision. However, we remain convinced the transaction would be good for Microtecnica, its customers, its employees, and all the other stakeholders involved. For this reason, we continue to be committed to the transaction and look forward to finding a solution to address any concerns that the Italian government may have". Moreover, he triggered the possibility to solve the problems of this deal outside of a courtroom, given the reliability of the Italian Government (Torsoli A., 2023). Bloomberg report also the opinion of the Italian union leaders. In particular they questioned about the motives of this choice and about how is the one that has the responsibility for the decision, adding "Microtecnica is healthy and profitable, and it is not professional if Defence Minister Crosetto and Prime Minister do not explain this choice, which could have a significant economic impact on the regions of Lombardy and Piedmont." (Kigton T., 2024). These sentences were justified because this sale could have been given by the possibility that the US investor have not anymore interest in produce weapon in Europe through a subsidy. Anyway, the description of this deal will not be full of details because of this way of action. In fact, the only statement made by the Prime Minister Georgia Meloni's Government was about the threat that Safran may not give "the necessary priority to the production lines industrial interest for national defense", and also that "the potential slowdowns in logistics chain supplies resulting from the acquisition by Safran did not appear compatible with the operational needs of the armed forces" (Torsoli A, 2023).

Defense Aerospace's speculation raises the question: could American interests be influencing this decision, given Microtecnica's involvement in supplying flight controls for the F-35 program? (Cameron D., 2023) However, Safran CEO Andriès dismisses this notion, asserting that he detects no American involvement in Italy's veto. He

suggests that Washington could have intervened directly with RTX to prevent the deal. This incident underscores the internal dynamics within Europe. French officials express dismay over what they see as a setback for European defense collaboration, underscoring the importance of unity. This aligns with the main theme of our thesis and will be further explored in the next chapter. The extensive authority granted to national governments and the discord in political priorities within the European Union create significant challenges. (Cameron D., 2023) The proposed deal, intended to make the company a European champion in flight controls would have been the biggest acquisition by Safran since Zodiac in 2017. Otherwise, it did not happen.

In our quest for potential explanations, we stumble upon a concept that we will delve into further in the upcoming chapter. This concept is intertwined with the notion that countries often operate and behave autonomously, akin to individuals. This choice may have stemmed from the strained relations since France and Germany initiated a future fighter aircraft program in 2017 without involving Italy. "Italians perceived themselves as significant players in combat aircraft, yet they were not consulted," remarked an executive familiar with the Italian defense sector during that period. Consequently, Italy subsequently joined the competing fighter program led by the UK, which had also been overlooked. (Hollinger P., 2023). Another significant incident more similar to this one and that further strained trust among these nations, occurred when Italy's Fincantieri attempted to acquire the French shipyard Chantiers de l'Atlantique from South Korea's STX in 2017. Paris temporarily nationalized the shipyard to thwart the acquisition, leading to contentious negotiations. Subsequently, in 2019, the deal was referred to the Competition Commission in Brussels but never gained approval, marking yet another failure of the European Union to uphold the principles of the Single Market as the one of joined defense, which has been extensively discussed (Leali G., 2021). Ultimately, two years later, the deal collapsed before the commission could conclude its investigation (Hollinger P., 2023). This transaction could have created the biggest European player in the sector, let the technology and the idea spread among Europeans in a crucial sector for the evolution of Europe. This issue ties directly into

the main theme of our thesis and will be examined in greater detail in the next chapter. The extensive authority vested in national governments, combined with the discord in political priorities within the European Union, presents significant challenges. Other possible theory and events that could have led to the Italian decision are in the rumors abound (with fair disclosure: mostly from British sources) that Berlin might abandon the trilateral FCAS [70] in favor of the Italo-British Global Combat Air Program [71] (GCAP) (Cameron D., 2023). Meanwhile, Berlin seems uneasy about Safran's potential increased involvement in the Eurofighter via the Microtecnica acquisition (Cameron D., 2023). Dassault Aviation, on the other hand, has been tight-fisted, withholding technology transfers with Airbus concerning flight controls for FCAS, which seems to have irked the Germans. We truly believe that this policy of continuous backlash and the continuous law of taglion, whereby 'you do me and then I do you', is anything but in the real interest of Europe, its member states and its citizens. Could Berlin be scheming to curb French dominance in the continent's flight control industry? Was this move driven by a strategic desire for Microtecnica to contribute meaningfully to GCAP, or simply out of spite? (Cameron D., 2023) As Collins Aerospace prepares to offload the company, one wonders if a German entity - Airbus, Rhode & Schwartz, Jenoptic, or Hensoldt - might make a bid in a event that could be similar to the one described in the last chapter in which a State could call upon a "white knight". In the end, the quagmire involving Safran and Microtecnica underscores Paris's isolation, with its defense initiatives with the UK stalled post-Brexit, German collaborations under scrutiny, and Italy now openly wary (Cameron D., 2023).

[70] The trilateral FCAS (Future Combat Air System) is a collaborative defense project involving France, Germany, and Spain. It aims to develop a new generation of air combat systems, including a sixth-generation fighter jet, drones, and advanced communication networks. The FCAS initiative seeks to enhance the military capabilities of the participating nations and ensure European sovereignty in defense technology. The project focuses on integrating cutting-edge technologies such as artificial intelligence, stealth, and enhanced connectivity to create a versatile and powerful air combat system for future warfare scenarios.

[71] The Italo-British Global Combat Air Program (GCAP) is a defense collaboration between Italy and the UK to develop a next-generation fighter jet. It focuses on integrating advanced technologies like stealth, avionics, and network-centric warfare.

In the mosaic of media responses, a nuanced blend of surprise and recognition of government concerns emerges. This marks a peculiar instance where a French enterprise grapples with the weight of the Golden Share, underscoring Italy's legitimate anxieties amidst competitive globalization, where friendships can quickly transform into rivalries, or even enmities (Cameron D., 2023). France, however, finds itself on the defensive too, having previously voiced concerns about human rights in Italy after the election of Giorgia Meloni as Prime Minister or limited the above-cited operation propelled by Fincantieri. (Cameron D., 2023). Such tensions were not lost on the Italian press, which, as early as July, had aired apprehensions about Microtecnica employees' futures. The Italian media speculated that certain contracts might be imperiled due to national and geopolitical industrial strategies. Across the Rhine, German media maintained a more subdued stance, with some outlets even throwing support behind Safran. The Frankfurter Allgemeine Zeitung[72], for instance, justified French ire and censured Berlin for perhaps being overly aligned with Washington's interests, to the detriment of Eurofighter and Tornado programs. This rare German statement underscored the imperative for Europe to foster its own defense initiatives, lamenting the recent blockade as a harbinger of deeper discord (Cameron D., 2023).

As we have observed, this event has sparked varied perspectives and opinions across European countries. It was a contentious decision, made in a climate of tension, without considering the broader European interest. Without recognizing that today's decisions shape the future, even a seemingly minor transaction like this one could have altered the paradigm of political behavior. The juridical framework, as effect of the political will, could have changed the actual situation, and the Italian Law 21 of 2022 that protects Italian interest could have been a European Law protecting the European interests. Moving away from the abovementioned inertia over joint regulations could have been a little step to make. The significance of regulations lies in their ability to

[72] Frankfurter Allgemeine Zeitung (FAZ) is a leading German daily newspaper, established in 1949, known for its comprehensive coverage of news, business, and culture, with a conservative editorial stance and high-quality journalism.

influence the future behavior of operators. With a joint regulation perhaps we would not find ourselves here, reflecting on the ways in which Europe slept.

CHAPTER 3

3.1 Conceptual foundations of our critic

This paragraph offers a comprehensive analysis grounded in two primary perspectives: the economic cycles theory of Ray Dalio, one of history's most successful hedge fund investors, and the political realism championed by John Mearsheimer, a leading contemporary political scientist. Both Dalio and Mearsheimer commence their analyses with the study of historical behaviors of nations to better understand their trajectories in the international environment. These analysis will be very valuable to better understand the limit of the consequences of the actual European Regulation, that could generate a counterproductive division.

We begin with an exploration of Ray Dalio's economic cycles and their pertinence to the current geopolitical landscape, particularly in defining the factors that enhance a nation's relative power. Dalio's insights into economic patterns elucidate the dynamics between China's rising economic power and the relative decline of the United States. Europe, situated at the crossroads of this intensifying rivalry, faces the complexities of a deeply interconnected world where two superpowers vie for hegemonic status. Transitioning to the political realm, we delve into John Mearsheimer's realist theory, which critically examines the efficacy of liberalism [73] in international relations. Liberalism that has dominated Western political ideology since the fall of the Berlin Wall in 1989. Mearsheimer contends that liberal principles often mask a realist approach to global affairs.

Positioned between the United States and China, Europe encounters unique challenges and opportunities to achieve a coveted independence. However, the lack of a unified and robust regulatory framework has impeded Europe from asserting its political will and safeguarding its interests against external influences. Mearsheimer's theories

[73] John Mearsheimer, a prominent international relations theorist, views liberalism as a political ideology that emphasizes the importance of individual rights, democracy, and economic interdependence. According to Mearsheimer, liberalism advocates for the spread of democratic institutions and market economies, believing that these systems inherently promote peace and cooperation among states. Liberal theorists argue that the international order should be structured around rules and institutions that protect human rights and foster global cooperation.

illuminate the strategic missteps Europe has made by not adopting a realist approach sooner. This paragraph posits that a unified, realistic stance could have significantly bolstered Europe's internal economic growth and its external perception as a formidable, cohesive force. By synthesizing the economic and political insights, we will elucidate why Europe missed critical opportunities to fortify its global position. Through a critical examination of liberalism's inefficiencies and an advocacy for a realist approach, we will reveal how Europe could have harnessed a unified regulatory framework to enhance its economic and political power. Such a unified stance would not only stimulate internal growth but also position Europe as a formidable entity on the world stage, committed to collective development and progress, as we will further explore.

In his book “Principles for Dealing With the Changing World Order: Why Nations Succeed and Fail”, Ray Dalio has studied all the dynasties and empires throughout history that have held dominant positions in the world. His analysis spans from the Dutch Empire of the sixteenth century, through the English Empire, to the current dominance of the United States. He also examines the significant roles played by other notable powers during this period, including Germany, Russia, India, Japan, China, and France. In this book he begins by asserting that the future we face will be markedly different from what we have experienced since birth, yet it will resemble certain epochs of history. He posits that the events unfolding now echo past periods, suggesting a cyclical pattern in historical developments. To write this book that took principles that he also uses in his investment strategy, Dalio has meticulously studied what he calls the "rise and fall of great empires," seeking to understand the reasons behind their decline in relative power, as they ceded dominance to new world hegemons, leading to new world orders. This forms the basis of what he defines as the "Big Cycle." Within this Big Cycle, Dalio identifies two primary phases. The first is a period of peace and prosperity, characterized by a spike in the quality of life, creativity, and productivity. The second phase is marked by depression, revolution, and wars, during which there are intense struggles over the distribution of wealth and power that will lead to a

"natural" redistribution of them. Dalio also highlights that within this Big Cycle, smaller cycles—such as the long-term cycle of debt[74], internal order and disorder cycle[75], and external order and disorder cycle[76]—affect a nation's health. He asserts that when these cycles align at a particular point in history, significant changes occur, akin to the shifting of tectonic plates. Dalio further notes that these periods of boom and bust typically occur once in a person's lifetime, making them seem astonishing to those unfamiliar with the historical and economic patterns. Moreover, he emphasizes that no system of government, economic system, currency, or empire endures forever. This insight serves as a starting point for discussing Europe and the mistaken assumption of its permanence. Recognizing this fragility forces us to consider the potential for change and the transient nature of our current systems. This perspective can help us better understand Europe's position and the erroneous belief in its perpetual stability. Dalio's perspectives are deeply connected to the concept of capitalism and its long-term effects. He argues that capitalism has generated significant wealth and opportunity gaps, as well as substantial debt burdens on nations and individuals. These factors have led in these years to economic crises, revolutions, wars, and shifts in the world order[77]. Every nation that finds itself at the pinnacle of relative power standings

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[74] this cycle last for almost 50 to 75 years, its conclusion is characterized by the restructuring of the debt and of the monetary system in use. Basically, it is organized in three phases, the first of creation of value with the resources present in the economy, the second with the expansion of debt, the third with the default and the restructuring of the debt.

[75] This is the cycle that explain the conflict on the creation, assignment and distribution of wealth and power among the population, considering that people tend to fight also for other reasons like religion and ideology. This cycle influence not only the life of people, but also the economy. It is divided in six phases, the first one begins when the new order and the new leadership take power. In the second phase the system in which to allocate wealth are organized, together with the bureaucratic organizations. If this system works the country arrives to the third phase, characterized by peace and prosperity. This leads to the fourth phase, in which the big excesses of expenses and indebtment happen (linked with the cycle of the debt), and in this phase the wealth gap and political ideology gap expand. This leads to the phase 5 in which the economic conditions are very bad and conflicts are intense. At the end this leads to internal conflicts and revolutions that generates the cycle again.

[76] Dalio explains that a conflict arises every time that the international power (or the empire) starts to lose relative power, according to eight measures of relative power, and another country at the same time start increase its relative power. The highest level of risk is present when: 1) this two powes have similar military forces, and when 2) they have divergences that are irreconcilable.

[77] According to Ray Dalio, the world order is a cyclical system where nations rise and fall based on economic strength, military power, innovation, and governance. Stability is influenced by sound policies, while mismanagement leads to decline. The balance of power shifts, causing tension and conflict as new powers emerge. Debt, monetary policy, technological advancements, and social

can be regarded as the custodian of the world's greatest empire. This signifies that the nation wields the most substantial influence over other countries, thereby becoming the leading global power. Ray Dalio has devised an indicator capable of quantifying the factors influencing a country's relative power. He notes, however, that not all nations prioritize achieving this status, as being the leading world power does not necessarily mean that its citizens enjoy a better quality of life than those in other countries, it's a matter of national priorities. By studying the history of economies and empires, Dalio has identified eight key determinants that influence a nation's position in the relative power standings. These factors are: education, competitiveness, innovation and technology, economic output, share of global trade, military strength, the significance and power of financial sectors, and reserve currency status. Dalio asserts that by examining these factors and their evolution over time, we can discern where a nation stands in the Big Cycle, whether it is in its ascendant phase, at its zenith, or in a period of decline[78].

In his seminal work, Ray Dalio delves deeply into the Big Cycle of external order and disorder, a concept strikingly relevant to the current state of Europe. To fully grasp this,

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changes significantly impact these cycles. Effective leadership and governance are crucial for navigating these dynamics and maintaining national strength in the global landscape.

[78] The ascent of a nation to greatness begins with strong leadership that establishes an efficient system capable of generating wealth and relative power. This involves fostering robust education, encouraging technological innovation, and maintaining openness to external ideas. During this phase, the country experiences increased productivity, a growing share of world trade, enhanced competitiveness, and substantial military power. These factors contribute to significant growth in per capita GDP, improved infrastructure, and the development of capital markets, particularly those involving debt and credit, enabling citizens to convert savings into investments. Consequently, all great empires in history have developed major global financial centers, and their currencies have become the world’s reserve currencies. This combination propels a nation to the status of a great world empire. At its peak, the seek more leisure and luxury, leading to decreased productivity. In this capitalist context, financial dividends are unevenly distributed, widening the wealth gap within the population. The global reserve currency, during this period, is that of the leading power, enabling the country to accrue more debt. Initially, the purchasing power of the currency is strong, but it begins to weaken over time. As indebtedness and spending increase, the empire may appear strong, but its finances are actually becoming fragile. High levels of debt sustain the country's power beyond its fundamentals, financing excessive national consumption and military expenditure. Eventually, the cost of maintaining the empire outweighs its profitability. In this dynamic, richer countries become indebted to poorer nations, which save more. When the empire starts to deplete its reserves, those holding its currency may begin selling it instead of saving, signaling the empire's decline. This decline can be triggered by conflicts or crises, where internal disorder intersects with external challenges, leading to a downward spiral

it is essential to understand Dalio's foundational principle: international relations are profoundly influenced by power dynamics. At the supranational level, governance systems should rely on laws and regulations, enforcement mechanisms (such as police forces), regulatory institutions (like courts), and clear consequences for those who violate these rules. Dalio underscores the importance of clarity in these systems. However, this clarity vanishes in the realm of international relations, a point also emphasized by John Mearsheimer. On the global stage, countries operate in an anarchic environment. Europe exemplifies how this phenomenon can function, yet it faces significant challenges, as we have discussed throughout this thesis. Dalio further elaborates on resolving conflicts in this anarchic context, identifying five types of wars: economic/commercial wars (including import/export restrictions), technological wars (involving FDI regulations), geopolitical wars, capital wars (such as restrictions on foreign capital, essentially FDI screening regulations), and military wars. Dalio's framework urges us to reconsider how we view restrictions among European countries. In the "jungle" of international relations, Europe endeavors to act as a unified entity to avoid subjugation by more powerful nations, thus protecting its members from adverse impacts. FDI regulation and application are anyway a type of war, a capital war. According to Dalio, these wars are fundamentally power struggles, often escalating from economic or technological disputes to full-scale military conflicts. For instance, the application of "golden power" over a company from another nation within the same international alliance, sharing borders and defense programs, is not an optimal exercise of this power. Dalio asserts that nations, like individuals, seek both wealth and power. He concurs with Mearsheimer, stating that wealth equates to power, as it enables a nation to build or buy military strength, control trade, and exert influence over other nations. Dalio has observed that the greatest power a nation can wield is the ability to outspend its rivals. In this sense, the creation of value is fundamental for each economy, also the one of the members of EU.

According to Dalio, real potential conflicts arise when a dominant power begins to decline and an emerging power starts to gain relative strength. Studying more of his

ideas, Dalio in his book illustrates another critical principle: the cyclical nature of relationships. The transition from win-win to lose-lose relationships, and vice versa, follows a cyclical pattern. During prosperous times, cooperative relationships flourish, while in challenging times, conflicts arise—much like the present situation. Understanding and managing these power dynamics is crucial to preventing destructive outcomes and maintaining stability in the international order. Dalio's insights provide a valuable lens through which to view the dynamics of international power and conflict. Applying Dalio's theory to Europe, we see a continent striving for unity amidst these global dynamics. The internal conflicts and regulatory restrictions can lead to fragmentation, threatening the very cohesion that gives Europe strength. Dalio's principles, mirrored by Mearsheimer's realist perspective, suggest that understanding and navigating these power shifts are crucial for maintaining stability. In conclusion, Dalio's analysis of historical cycles and power dynamics offers profound insights into the current geopolitical landscape. By learning from the past, Europe and the world can better manage their future, aiming for a stable, cooperative international order that mitigates the risks of conflict and decline. This understanding is essential for fostering a more harmonious and prosperous global community. Ray Dalio's insights into the rise and fall of empires underscore the necessity of strategic realism in contemporary geopolitics. As Dalio elucidates, nations that ascend to great power status do so through pragmatic and strategic approaches, often prioritizing economic growth, technological advancement, and military strength. In this context, Europe must adopt a similar realist strategy to preserve its influence and stability amid global power shifts, for sure a solution could have been the argument of this thesis.

Now, we turn to the other foundational perspective: the positions of John Mearsheimer. In his seminal work, " The Great Delusion: Liberal Dreams and International Realities," written in 2018, offers a profound critique of the liberal international order that has shaped Western foreign policy since the end of the Cold War, a perfect example is the Government of the European Union. Mearsheimer, a leading proponent of the realist

school of international relations, argues that the liberal vision of spreading democracy, human rights, and free markets worldwide is fundamentally flawed and often counterproductive. The book asserts that liberalism's core tenet, he belief in the universal applicability and desirability of liberal democratic values, ignores the complex realities of international politics. Mearsheimer contends that this ideological stance leads to foreign policy decisions that are not only ineffective but also potentially dangerous. Mearsheimer critiques the notion that international institutions and norms can effectively manage global affairs, arguing instead that power and self-interest are the true drivers of state behavior. The book provides historical examples and contemporary case studies to support its arguments, examining U.S. interventions and the consequences of liberal policies in various regions. Mearsheimer highlights the failures of liberal internationalism, including the wars in Iraq and Afghanistan, and the strained relations with Russia and China, as evidence of the delusions inherent in liberal foreign policy. He argues that the fundamental flaw of this political approach lies in its emphasis on resolving individual issues and maximizing personal utility. This focus, he asserts, neglects the promotion of a cohesive community, instead prioritizing egoistic principles and the concept of goods exchange. Mearsheimer contends that this liberal approach encourages individuals to pursue their own selfish interests, operating under the misguided belief that such behavior will ultimately benefit society as a whole. Furthermore, we can find seeds of this ideological approach to the international affairs and jurisdiction also in Article 2, 7 of the Decree Law 21/2012. In it are outlined considerations for determining whether a foreign investment poses national security or public order concerns. These considerations include the potential links between the acquirer and non-democratic countries and the acquirer's adherence to international law. Additionally, the regulation assesses the acquirer's capacity to ensure the security and continuity of supply and the operation of critical networks and infrastructure. This is an example of the liberalism approach. Mearsheimer criticizes this perspective, particularly the liberal elite's presumption that their way of living is superior and should be universally applied. We write this thesis with the understanding that our Western world, full of freedom and knowledge, is something we have built over time and is the

greatest wealth we can ask for according to our culture. Liberalism essentially promotes human rights internationally, tolerance among populations, and these features are believed to create an international community that will mitigate nationalism and allow countries to transcend power politics. Moreover, liberals believe this vision is achievable. With these ideas and influences, the Italian regulation of 2012 was written. This is why we are analyzing political behavior, as regulations are the effect of political decisions, and political decisions are influenced by public opinion or international pressures, especially in a democracy. Otherwise, think that all the countries in the world will have the wonder to became a democracy is not the reality. In liberal cultures and among liberal countries, there is supposed to be complete trust, with nations being part of the same community, such as the European Union.

However, as seen in the Safran Microtecnica case, this trust is no longer 100% guaranteed. This may indicate a shift towards a more realist approach by individual European Union countries in their interactions with the international community, but not as a sole entity. We are talking about liberalism because it soaks the political field of Europe as we are stressing the necessity to really consider that a further fragmentation of Europe is possible (Brexit) and because it is one of the foundations of our actual regulatory framework on FDI in Italy.

In his book, Mearsheimer provides a thorough exposition of the principles of realism and liberalism in international relations. He observes that Europe has historically aligned itself with American liberalism. However, the European policymakers have often exhibited a naivety and a lack of realist thinking in the formulation of their international policies. As we proceed, we will briefly outline the realist and liberal approaches to foreign policy.

Mearsheimer probes the understanding of liberalism, exploring the consequences when a nation that champions individual rights and employs social engineering to promote these rights endeavors to export the liberal model abroad. Such a nation often adopts an interventionist stance, aiming to defend democratic values and overthrow authoritarian regimes with the ultimate goal of fostering a world of liberal democracies.

Mearsheimer argues that transforming a country into a liberal democracy is an extremely complex task. This complexity arises not only from the differing histories and cultures of third countries, which are difficult to manipulate, but also because many countries around the world do not uphold individual rights. Furthermore, nationalism, which is based on self-determination, positions countries to resist external interference in their national policies. They are generally averse to the idea of outsiders telling them that their way of life—perhaps the same one followed by their grandparents and parents—is unsustainable and must be replaced with another model. In this context, a nation pursuing liberal hegemony strives to reshape the international system in its own image, advocating for an open international economy and the proliferation of international and supranational entities. Moreover, Liberalism places a profound emphasis on inalienable rights[79], necessitating vigilance and enforcement to ensure these principles are upheld globally. When these rights are threatened, a powerful liberal nation feels compelled to intervene to protect them, resulting in a foreign policy marked by frequent international interventions aimed at transforming non-liberal regimes. Mearsheimer also highlights that one primary motivation for democracies to embrace liberalism is the aspiration to create a world populated by nations sharing their political philosophy. This, they believe, will eliminate ideological competitors in terms of internal political order and ultimately achieve global peace. Liberals maintain that this vision is feasible, rooted in the belief that humans inherently understand their

[79] Inalienable rights, also known as natural or unalienable rights, are fundamental and inherent to every human being, incapable of being surrendered, transferred, or taken away. These rights are self-evident and universal, bestowed by nature or a higher power rather than by human laws or governments, and are essential for human dignity and freedom. Commonly recognized inalienable rights include the right to life, which ensures every individual's right to live without being unjustly harmed or killed, and the right to liberty, encompassing personal freedom and the freedom to act according to one's own will within legal bounds. The right to the pursuit of happiness allows individuals to seek personal fulfillment in their own way, provided they respect the rights of others, while the right to property guarantees ownership, use, and management of personal possessions and resources. The right to equality ensures fair and non-discriminatory treatment, regardless of race, gender, nationality, religion, or other status. These rights are often enshrined in foundational political documents like the United States Declaration of Independence, which states, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness" (United States Declaration of Independence). The recognition and protection of inalienable rights are fundamental to democratic principles and the rule of law.

individual rights and in the power of social engineering. However, Mearsheimer counters this viewpoint with two arguments: first, that in practice, liberal nations do not operate strictly according to liberal principles because they are perpetually in competition with other nations at the international level. This competitive dynamic necessitates a realist approach, even for nations espousing liberal ideologies. Second, that countries operate at international level, and as we will see in that particular field of rights and laws there are not real regulators, this makes everything like an environment typically governed by anarchy. Mearsheimer identifies Liberalism prominent in Western politics as also adhering to realism. This is because no major power can pursue hegemonic liberalism in an international system where another major power exists. In multipolar or bipolar world[80], a powerful country is compelled to adopt realist policies, prioritizing national security over individual rights in its foreign relations. According to Mearsheimer, liberalism thrives only when there exists a state or authority capable of maintaining order; however, in the absence of such an authority in the international system, realism takes precedence. This approach to politics posits that international relations are inherently perilous, with states striving to amass as much relative power as possible for survival. Furthermore, the international system is structured in a manner that allows a country to gain relative power at the expense of another nation.

[80] In the realm of international relations, the concepts of bipolar and multipolar worlds delineate the prevailing structures of global power distribution. A bipolar world characterizes a scenario where two superpowers dominate the international stage. This configuration was prominently exemplified during the Cold War era, with the United States and the Soviet Union serving as the primary power brokers. In such a setup, global dynamics revolve around the rivalry and interactions between these two behemoths, often leading to alliances and conflicts shaped by their influence. In contrast, a multipolar world denotes a scenario where power is dispersed among multiple significant players. Unlike the bipolar model, where power is concentrated between two superpowers, a multipolar world sees various nations or blocs wielding considerable influence. Major players such as the United States, China, the European Union, and Russia share the global stage, contributing to a more complex and distributed power structure. In this setup, no single entity holds overwhelming dominance, fostering a dynamic landscape of alliances, rivalries, and negotiations. Understanding these concepts is crucial for comprehending the nuances of international relations and geopolitical strategies, as they provide insight into the evolving dynamics of global power and influence.

Now, as we have introduced it, it will be very useful to focus on the concept of political realism. According to this above cited book of Mearsheimer, “The great Delusion”, at the heart of political realism lies a set of foundational assumptions that underpin its understanding of international relations. These assumptions provide a framework for comprehending the dynamics of state interaction and the pursuit of national interests in an anarchic global arena. These assumptions are:

1. Anarchy as the Fundamental Condition: Realism posits that the international system operates in a state of anarchy, where sovereign states are the primary actors, and there exists no overarching authority to regulate their behavior. This absence of a central governing body necessitates that states rely on their own capabilities to ensure their security and survival.

2. Offensive Capabilities and Security Concerns: Central to realism is the acknowledgment that all states possess varying degrees of offensive military capabilities. This recognition underscores the persistent threat of aggression and the imperative for states to prioritize security measures to safeguard their territorial integrity and national sovereignty.

3. Uncertainty in State Intentions: Realism contends that states cannot definitively ascertain the intentions of other actors in the international system. While states may speculate and analyze, the true motives of others remain opaque, leading to a climate of perpetual uncertainty and caution in diplomatic engagements.

4. Primacy of Survival Imperatives: Survival emerges as the paramount objective of states within the realist framework. The formation and sustenance of the state itself are driven by the imperative to ensure its continued existence, compelling states to adopt strategies aimed at preserving their sovereignty and territorial integrity.

5. Rationality and Strategic Calculations: Realism assumes that states act as rational actors, guided by calculated assessments of their national interests and strategic objectives.

While strategies may vary in their efficacy, they are inherently designed to maximize the prospects of state survival within the anarchic international system because of the five points above, and this is what he defines the tragedy of the great power. Grounded in these core tenets, realism manifests in distinct behaviors and strategic orientations that shape state interactions on the global stage. As we can define typical countries attitude toward the foreign balances:

1. Fear and Insecurity: The pervasive uncertainty surrounding state intentions fosters an atmosphere of mutual apprehension and distrust among nations. States operate under the shadow of potential threats, driven by the fear of aggression and the need to preemptively safeguard their interests.

2. Self-Reliance and Defensive Postures: Realism underscores the imperative for states to prioritize self-reliance in security matters. In the absence of dependable international support mechanisms, states must cultivate robust defense capabilities and defensive postures to mitigate external threats and ensure their survival.

3. Power Projection and Strategic Balancing: A core tenet of realism is the pursuit of power as a means of ensuring security and influence in the international system. States engage in strategic balancing acts, seeking to augment their power capabilities while simultaneously navigating the complex web of alliances and rivalries to maintain a favorable balance of power.

In his book Mearsheimer states that realism finds its philosophical roots in the works of thinkers such as Thomas Hobbes[81], whose seminal treatise "Leviathan" delineates the inherent state of nature characterized by a perpetual struggle for survival. Hobbes' conceptualization of the Leviathan as a sovereign authority underscores the realist emphasis on the necessity of order and stability in the absence of a global governing

[81] Thomas Hobbes (1588-1679) was an English philosopher best known for his work "Leviathan," where he outlined his social contract theory. Hobbes argued that in a state of nature, life would be "nasty, brutish, and short," advocating for a strong central authority to maintain order and prevent chaos.

body. Realist positions are always described as amoral and largely hosted by liberal viewers.

In conclusion, Mearsheimer's elucidation of political realism offers profound insights into the complexities of international politics and the imperatives that shape state behavior. As nations navigate the evolving contours of the global landscape, realism serves as a critical lens through which to understand the strategic calculations and power dynamics that underpin diplomatic engagements and geopolitical rivalries. In " The Great Delusion: Liberal Dreams and International Realities," he also reported Sebastian Rosato's observations on American intervention in emerging countries, in reflecting upon the liberal perspective, that illustrate a fundamental truth: trust and respect, hallmarks of democratic governance, often take a backseat to security and economic interests. While security comes first in the government priorities, it is highly dependent upon the overall economic situation of the country as we will see in a brief and already pointed out by Ray Dalio’s position.

In “The Tragedy of Great Power Politics”, Mearsheimer introduces two critical concepts that shape our understanding of European regulatory attitudes: effective power and potential power. Potential power is rooted in a nation's wealth and demographic strength, often measured by GDP growth. Mearsheimer argues that large populations drive economic growth, which is essential for building strong military structures. He highlights that the creation of new wealth relies on technological innovation and internal market growth. In this context, wealth fuels both economic and military innovation, thus creating power. A country with significant wealth and a growing population is better positioned to become a great power. Effective power, on the other hand, is defined by a nation's military capabilities, specifically the actual forces it can deploy if threatened. This includes both the number of soldiers and the capacity for war production. Mearsheimer emphasizes that wealth and population growth directly impact these defensive capabilities, enhancing a nation's security and international bargaining power. Thus, a country's effective power is a tangible manifestation of its potential power, translating economic strength and demographic

advantages into military readiness and strategic influence. As these concepts may seem brutal, they represent the positions that a country have to consider when operating in an international context that has the features expressed above.

Additionally, Mearsheimer discusses how the distribution of power among countries influences the level of global tension. Specifically, the way power is divided—whether uniformly or asymmetrically among powers—affects international stability. The configuration most likely to generate supranational tension is a multipolar world with one hegemon and a potential hegemon[82]. We can understand that the potential hegemon [83]is the country that Dalio defines as rising and that Mearsheimer defines as the one with increasing power.

What we learned is that the creation of wealth is fundamental, as the wealthiest countries often become the most powerful. Being powerful is key to surviving in the international context. Ray Dalio’s book illustrates this with examples like the Netherlands, the British Empire, and the US. Similarly, Mearsheimer notes that the three great European powers over the last 200 years—France, England, and Germany—were also the continent’s largest economies. Thus, any action boosting the national economy also enhances relative power. But why is this important for Europe? In a world where tensions are rising and nations act unpredictably, Europe must consider its relative power, and how to increase it by implementing a different type of Regulation. This discussion is relevant not only for the FDI regulation, as we have seen, but also for specific regulations that, while aimed at controlling mergers, might limit the development of European wealth and military capabilities. As will be discussed in the next paragraph. Furthermore, we provided the foundation of our critic to the defined Regulation of 2019.

[82] A potential hegemon is a powerful nation with significant military capabilities and wealth, capable of dominating other powers in its region.
[83] A potential hegemon is a state that has the capacity and resources to become the dominant power within a particular region or globally. This potential is based on a combination of economic strength, military capability, and demographic size, allowing it to exert significant influence over others and potentially establish leadership or control in international affairs.

3.2 Limits to the development of European wealth through investment regulations

The development of European wealth is fundamental to increase, as we said, relative power and so defense, to assure survival. We aim to offer a comprehensive understanding of how economic and political strategies intersect. The fusion of Dalio's economic cycles and Mearsheimer's political realism underscores the interdependence of economic strength and national security, highlighting that a robust economy not only bolsters a nation's security but also enhances its relative power globally. In this chapter, I will delve into other problems related to why Europe is pandering in inertia and naiveness. The interplay between a nation's economic conditions and its national security has gained paramount importance, especially as internal economic pressures, such as inflation or rising unemployment spurred by international tensions, can polarize public opinion. Moreover, if we consider the actual regulation over FDI in Italy, for example, the Government has today the power to operate upon all the operations happening in the market. In this light and in light of the positions presented above, we understand that economic strength is now a cornerstone of national security. A thriving economy, reflected in an increasing GDP, is vital for a nation's progress and stability. Additionally, the development of the single market is a crucial theme for the European Union. Enrico Letta emphasizes that in this current "world disorder[84]," the single market will be fundamental due to the high instability of international trade. Furthermore, politicians argue that Europe needs to enhance its competitiveness. Despite our economies being predominantly composed of small and medium-sized enterprises, it is concerning that, while being a major player in global markets, Europe has fewer than ten companies in the top 100 of the Forbes Global 500. Current FDI regulations and its relation with market operator and merger control regulations hinder businesses from freely operating and consolidating within our unified economy, posing significant challenges to achieving greater worldwide competitiveness.

[84] Definition given by Enrico Letta in his report, “Much More Than A Market, Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens”, of April, 2024.

In the view that national interest and security are represented also by the economic condition and sectors of a country, in 2020 one study proposes that economics and security are intersecting in novel ways, potentially reshaping the core of the international economic law regime, illustrating a phenomenon termed the 'New Geoeconomic World Order' (Dimitropoulos G., 2020).

According to the study, this trend is evident in the actions of economic superpowers, which are restructuring the rules and institutions governing international trade and investment to promote their own economic and security interests. Notably, this has sparked ongoing 'trade wars,' primarily between the US and China. An idea also in line with what presented above about realism and liberalism. Besides the investment control and screening laws discussed in this chapter, states' overall legal frameworks are adjusting to this New Geoeconomic Order. This shift is notably articulated in the National Security Strategy of the United States of America of 2017, which emphasizes revitalizing the domestic economy and underscores the link between national security and maintaining US leadership in innovation. Similarly, China had enacted National Security Law in 2015, delineating political and economic security as two categories of national security. We could cite also the development of the regulation in Europe and the point to which is arrived today. Anyway, these developments reflect efforts by both economic and political superpowers to reaffirm national sovereignty in a post-globalization international economic law context. The convergence of economic stability and national security is reshaping the landscape of international economic law. In this context, regulatory frameworks are increasingly designed to balance domestic economic vitality with the imperatives of national security (Dimitropoulos G., 2020). This evolving paradigm highlights the strategic recalibration by states to secure their interests in an interconnected yet competitive global environment. Furthermore, in most of them also the role of state, as we cited, in changing and evolving according to the perceived need of the country and in particular of the economy, and that is another reason why we consider the economic interest as an integral part of the national security interest.

As we navigate these changes, it becomes clear that the traditional boundaries between economic and investment policy and national security are blurring. The intertwining of economic and security concerns underscores a paradigm shift, where economic imperatives now mirror those of security, in a sense that could retake the concepts of Dalio and Mearsheimer. Foremost among these is China's "Made in China 2025" initiative, perceived as a direct challenge to Europe's economic standing, with Chinese investments in related sectors posing a significant threat. This dynamic has sparked a modern-day "arms race," with pivotal battlegrounds including 5G internet, robotics, and artificial intelligence (Vangeli, 2018). On the political field, employing a strategic "divide-and-conquer" approach, China orchestrates discord among European nations, cultivating close ties with those who undermine EU cohesion. Exploiting intra-European rifts, China leverages platforms like the 16+1 framework and potential Nordic and Mediterranean alliances to sow discord and weaken European unity (Vangeli, 2018). Meanwhile, we have considered another regulation, different from the Regulation 2019 /452, for its somewhat misaligned use with the interests of the Union as a collective of countries operating within the anarchic international system is the Council Regulation (EC) No 139/2004 of 20 January 2004. This regulation, which deals with the control of concentrations between companies (Merger Regulation), is highly pertinent to the screening of Foreign Direct Investment (FDI) within the EU's jurisdiction (Godocha P.M., 2020). The Merger Regulation aims to assess the compatibility of mergers and acquisitions involving EU-incorporated companies with the internal market, ensuring they do not impede effective competition. Notably, it grants the European Commission exclusive authority to oversee concentrations within the Community dimension (Godocha P.M., 2020). However, Member States retain the prerogative to implement measures to protect legitimate interests beyond those addressed by this Regulation, provided they comply with the general principles and other provisions of Community law (Godocha P.M., 2020).

Nowadays, if a transaction has to take place within the European borders, as part of the notification process, Member States will need to receive all the documentation needed

to check if the FDI ahead could threat the internal security according to each defined regulation. Furthermore, companies involved in the transaction should also provide relevant information to ensure compliance with the Merger Regulation, where applicable. Specifically, if a foreign direct investment constitutes a concentration within the meaning and scope of the Merger Regulation, the Framework Regulation should be applied without prejudice to Article 21(4) of the Merger Regulation. This article addresses the adoption of appropriate measures by Member States to protect legitimate interests beyond those considered by the Merger Regulation, provided these measures are compatible with the general principles and other provisions of Community law. The European Merger Regulation, formally known as Council Regulation (EC) No 139/2004, is a critical legislative framework for controlling mergers and acquisitions involving companies operating within the EU (Council of the European Union, 2004). The primary objective of the Merger Regulation is to ensure that mergers do not significantly impede effective competition in the internal market. The European Commission is granted exclusive authority to review and approve concentrations that meet specific turnover thresholds, indicating a Community dimension. This centralized control aims to prevent the creation or strengthening of market dominance that could harm consumers and the overall market structure (Council of the European Union, 2004). However, Member States retain the right to protect legitimate interests beyond competition concerns, such as public security, media plurality, and prudential rules, as long as these measures adhere to EU principles and laws. When screening FDIs, Member States must ensure that their actions align with both the Merger Regulation and the overarching principles of the EU, safeguarding public interests without compromising the integrity of the internal market (Council of the European Union, 2004). We could think that this regulation should be applied taking under consideration a wider vision of the overall economic and political landscape, so applying it with principles of realism and with the idea to generate, though its application a good effect over the overall European economy and the single market in general.

Furthermore, as of October 12, 2023, the European Commission requires an FSR (Foreign Subsidies Regulation) filing prior to the implementation of an M&A transaction if the EU turnover of either the target, one of the merging parties, or the JV itself was at least €500 million in the prior financial year, and the combined foreign financial contributions of the parties involved were at least €50 million in the three years prior to the signing of the transaction (White & Case LLP, 2024). By promoting transparency and compliance, the FSR requires companies benefiting from foreign subsidies (non-EU countries) to notify the European Commission when participating in certain transactions or bidding for public contracts. It enables the Commission to investigate suspected distortions and impose remedial measures if unfair advantages are found. The regulation encourages cooperation between the Commission and EU member states to address harmful subsidies effectively. The FSR adds a third mandatory and suspensory filing regime to the increasing number of merger control and FDI regimes. At the time of the writing, all the FSR notifications that the EC has received so far run parallel to merger review. In 2024, we will likely see the FSR regime becoming a key feature of substantial M&A deals, with corresponding effects on transaction timetables and deal certainty (White & Case LLP, 2024), being as it is another step and another bureaucratic process and a Regulation of an already existing Regulation. Coming back to the regulation on Merger Control and on the problem related to it, one of the primary concerns with the current regulation is the burden of proof placed on authorities to demonstrate that a merger is anti-competitive (Motta M & Peitz M., 2019). This places a considerable reliance on data and information held by the merging parties, which may not always be fully disclosed. Allocating the burden of proof to the merging parties themselves would incentivize them to provide all relevant information, ensuring a more thorough assessment of the potential competitive impacts of the merger. Another important problem is instead in what we have stressed until this moment about the realism needed to understand the European need to have "European Champions" and big player able to operate on the world market at the level of the

others. The 2017 Siemens/Alstom[85] merger case serves as a poignant example of the challenges in merger control. The European Commission's decision to block the merger has in fact sparked calls for reform from the German and French governments, who advocated for the creation of European champions to compete on a global scale (Motta M & Peitz M., 2019). Otherwise, allowing anti-competitive mergers under the guise of fostering European champions risks undermining competition and innovation in the long term (Motta M & Peitz M., 2019), we emphasize the necessity for a sound application that aligns seamlessly with our meticulously structured environment. Its effects are predominantly internal. Nonetheless, the Regulation could also influence the behavior of international players in the M&A arena and advisory firms on the whole. Due to the legal intricacies, prolonged procedural durations, and susceptibility to the political climate of specific jurisdictions, companies aspiring for growth may opt for alternative avenues. As underscored in a study by EY on the appeal of the European market, it becomes apparent that the foremost factor impacting the current European landscape is the amplified regulatory burden. EY Leaders surveyed identified the top three threats to Europe's attractiveness over the next three years as follows (Teingland J. & Co., 2024):

First, the increased regulatory burden. Europe has been a pioneer in implementing new regulatory initiatives, including carbon disclosure, supply chain due diligence, data protection, and the safe use of artificial intelligence (AI). Meanwhile, Europe is using the all the regulations on investments present above. While these regulations aim to address critical issues, investors are worried that the expanding regulatory framework may stifle European business growth and agility. The complexity and cost of

[85] The Alstom-Siemens case involved a proposed merger between two major European rail companies, Alstom of France and Siemens of Germany, aiming to create a European rail champion to compete with Chinese rivals. However, the European Commission blocked the merger in 2019, citing concerns about reduced competition and potential harm to consumers. Proponents argued that the merger would enhance European competitiveness against Chinese state-owned enterprises, but critics, including smaller competitors, feared it would stifle competition. The decision highlighted tensions between fostering European industrial champions and maintaining fair competition within the EU's single market, prompting debates about the bloc's approach to industrial policy and competition regulation.

compliance with these regulations could deter investment and innovation, reducing Europe's competitiveness on the global stage (Teingland J. & Co., 2024).

Secondly, energy prices and supply issues pose significant threats. The energy crisis

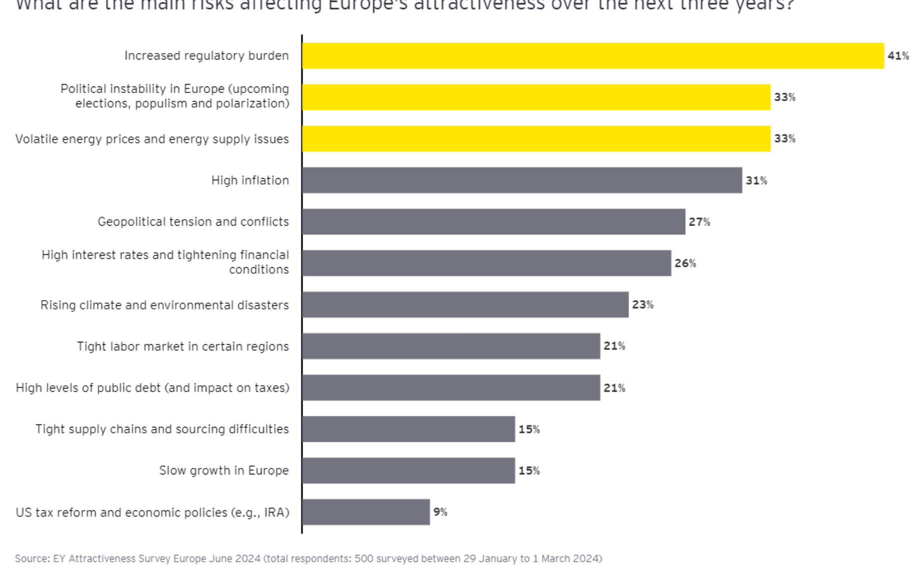

Figure 3.1: Attractiveness Survey Europe June 2024 (total respondents: 500 surveyed between 29 January to 1 March 2024). Retrieved from: https://www.ey.com/en_gl/foreign-direct-investment-surveys/optimism-remains-in-europe-as-foreign-direct-investment-declines

experienced over the past two years has highlighted Europe's vulnerability in this area. High energy prices and concerns about the reliability of supply can have widespread economic impacts, affecting industries and consumers alike. The ability to secure stable and affordable energy supplies is crucial for maintaining economic growth and attractiveness to investors (Teingland J. & Co., 2024).

Thirdly, the important political instability in Europe is a growing concern. Executives are worried about the uncertainty leading up to the European elections, as well as rising social tensions and political radicalism at local levels. Political instability can create an unpredictable business environment, making it difficult for companies to plan for the future and for investors to assess risks accurately. Stability and predictability are essential for fostering a conducive investment climate (Teingland J. & Co., 2024).

These regulatory initiatives may have negative impacts from two perspectives (Teingland J. & Co., 2024). From a geopolitical and relative power standpoint, regulations could affect Europe's economy, defense, society, and overall fragility, including the stability of the single market. The regulatory burden organized as it is today could hinder Europe's ability to respond to geopolitical challenges and maintain its influence on the global stage (Teingland J. & Co., 2024), in confirmation of our point. Moreover, the increased bureaucratic time and the complexity of regulatory compliance could decrease the attractiveness of the European mergers and acquisitions (M&A) market. Different regulations, such as the above cited related to merger control and foreign subsidy notification requirements, can add layers of complexity that deter investment and reduce market dynamism and we have not to forget that the costs of these operations could abruptly increase given the high amount of notification and documents that has to be prepared by advisers. These challenges raise concerns about Europe's future stability and growth. The title of this analysis is framed in the past tense to reflect the belief that there is a low probability of significant change occurring to alter the current situation. The apprehension is that Europe might be on the brink of decline, unable to generate substantial transformation in the near term (Teingland J. & Co., 2024). Moreover, if we look at data, the number of projects announced by US companies in Europe fell by 15% in 2023. Data from the United Nations Conference on Trade and Development (UNCTAD), which tracks foreign investment flows globally, shows that greenfield FDI increased by 2% in the US, 8% in China and 17% across Asia in 2023, but declined by 20% in Europe. Recognizing Europe's demand for foreign investment is as crucial as acknowledging the reciprocal necessity of Europe for foreign investors. (Teingland J. & Co., 2024). According to reports, United States is seen as increasingly separating from Europe as it prioritizes its domestic affairs and a very complex international situation. The effectiveness of the US Inflation Reduction Act (IRA) and the implementation of new, more protective policies may have redirected certain investments from Europe to the US. This underscores how other nations consider their internal development while striving to maintain international influence through "realist" economic policies spanning from the public to private

sectors. Using regulation to transform the country in an attractive place in which to invest and not by implementing regulation that today are used by European against Europeans, as the real possible threat is among us and not outside our borders in this moment.

As of today, Europeans regulation on FDI in the single regulations of the biggest European countries are applicable upon almost all the operation that are happening on the market, starting to consider the economic interest of the country as part of the national security, as also Germany slightly woke up to it as represented in the 2030 plan for the internal development of industry. We should play in the same team in order to protect ourselves from the possible outcomes of history and in order to improve our economic situation, now stopped for 10 years, as seen in the first chapter. Retaking the words of Macron over the state of the Union, saying that “a civilization can die, and the end can be brutal”, that “Things can happen much more quickly than we think”, and finally that “America future commitment to Europe has gone wobbly” (The Economist 1, 2024). Furthermore, in an interview with Bloomberg upon Europe he stresses the need to attract more investment and to better develop our internal market dynamics (Interview 2, 2024). The French President underlined the need to create a more unified market and in particular the capital markets, in the view to open up to more consolidations operations in different important sectors (Interview 2, 2024). Otherwise, only three days later there was a statement that perhaps represents the attitude of the international financial community toward European Union. In particular, Jamie Damion, the CEO of the biggest bank in the western world, J.P. Morgan, in an interview made with Bloomberg on the 16th of May 2024, answered to the question of a journalist about the possibility to start an M&A deal in Europe with the words: “‘Wouldn’t Even Try’ to Buy a European Bank”, basically further explaining the fear for the extra-bureaucratic environment (Interview 1, 2024).

As we navigate the complexities of our time, we are reminded of the crucial interplay between economic strength and national security. Our analysis underscores the

imperative for Europe to shed its inertia and embrace a more assertive, realistic approach to its economic policies. In the words of Ray Dalio and John Mearsheimer, the intersection of economic cycles and political realism reveals a fundamental truth: a robust economy is the bedrock of national security and global influence. The current regulatory framework within Europe, highlights the necessity for economic strength as a cornerstone of national security. The single market, a pivotal element in this equation, is crucial for Europe's stability amidst global turmoil. Yet, despite being a major player on the world stage, Europe's competitiveness is stifled by regulations that hinder business operations and consolidation. We stand at a crossroads, facing a 'New Geoeconomic World Order' where economic and security concerns are intertwined. The strategies of economic superpowers like the US and China, which prioritize their economic and security interests through strategic regulations, serve as a stark reminder of the need for Europe to recalibrate its policies. The European Merger Regulation and the Foreign Subsidies Regulation, while aimed at protecting internal markets, are in this sense counterintuitive and impose burdens that can deter investment and stifle growth. To secure our future, we must adopt a realist approach. Reforming merger control regulations to facilitate competitive mergers and fostering "European Champions" is essential. The current environment of regulatory overreach must be balanced with the need for economic vitality. It is through this balance that we can maintain national security, ensure long-term stability, and enhance our global standing. In the words of President Macron, "A civilization can die, and the end can be brutal." The urgency of our situation demands decisive action. We must recognize that America's commitment to Europe is wavering, and our response must be to strengthen our internal market dynamics and attract more investment. International investments and relative international power in this case are two faces of the same coin. By reducing regulatory burdens and fostering a competitive business environment, we can transform Europe into a beacon of economic strength and security.

3.3 The Rodrik trilemma and what we have ahead of us

"Europe is in mortal danger," proclaimed the headline of "The Economist," capturing the anxiety surrounding the continent's future. We've previously outlined the reasons for Europe's increasing fragmentation, driven by external pressures such as the 16+1 Treaty and ineffective joint policies that fail to serve the Union's interests. Now, we turn our focus to a political theory that illuminates the workings of international relations and the present threats to the Union's cohesion and future, as we will after consider the actual status of the European situation according to the dynamics described below.

Dani Rodrik's analysis on market globalization and its intersection with political institutions offers profound insights into the complex dynamics shaping our global economy. Rodrik's work, particularly his "trilemma of the world economy," provides a theoretical framework that addresses the inherent conflicts between democracy,

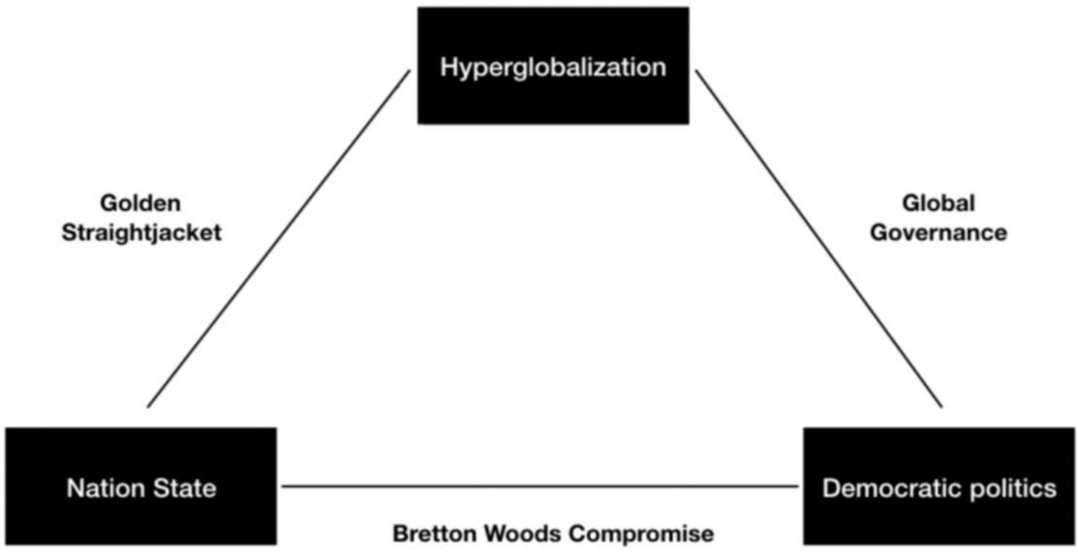

Figure 3.2: NOME Diagrammatic representation of the Political Trilemma of the World Economy. Format by Caitie Doogan, in Power and Digital Technologies: A Transdisciplinary Discourse. Pineda M.G. (2024).

national self-determination, and economic globalization. This trilemma underscores the challenges Europe faces as it navigates the delicate balance between these three critical elements, highlighting the difficult choices policymakers must make to sustain the Union in an increasingly interconnected world. (Capriglione F., 2019). By examining Rodrik's trilemma and its implications for the EU, we explore the tensions and potential pathways for balancing globalization, sovereignty, and democracy in a rapidly changing global landscape. At the heart of Rodrik's framework lies the concept of the "trilemma of the world economy," a theory that underscores the inherent conflict between democracy, national self-determination, and economic globalization. In his book "The Globalization Paradox," published in 2010, Rodrik introduces the concept of the "trilemma," which delineates the trade-offs faced by policymakers between national sovereignty, hyperglobalization, and democracy (Pineda M.G., 2024). Rodrik contends that it is impossible to fully achieve all three objectives simultaneously,

necessitating that policymakers choose two while compromising on the third. Rodrik started his work based on the past systems, he illustrates this trilemma through three epochs of globalization. In the 19th century, during the gold standard era, states prioritized globalization and the nation-state over democracy, in this period we had the pound as international saving currency and it was a world still governed by empires. Domestic policies were restricted to adhere to pre-established principles and the globalization in that period was stunning, thereby undermining democratic decision-making (Pineda M.G., 2024). The post-World War II period witnessed the Bretton Woods regime, where there was a compromise on hyperglobalization. States were encouraged to balance capital flow restrictions with national economic policy-making, permitting some level of sovereignty alongside globalization (Pineda M.G., 2024). Arriving to the actual shape of this relation, the European Union is a prime example of the undermining of the nation-state, as member states cede some sovereignty to a supranational entity in order to be more part of the international trading system. As we can see from the graph presented in the first chapter since the beginning of the new millennium capital flows were arriving and leaving Europe in very large amount and Europe was at the center of the world economy, being the biggest among all the world economies. Otherwise, then arrived the crisis and GDP stagnation, and also an increasing reduction in the level of exchanges with other countries and systems, decreasing the level of the inflows and outflows of investments since the peak of globalization in 2008.

This relationship between forces is depicted graphically in a diagrammatic representation of the Political Trilemma of the World Economy. Rodrik, assigned three names to the three scenarios within the trilemma: a state can be sovereign and democratic but must limit globalization (Bretton Woods regime); it can be democratic and hyperglobalized but must relinquish sovereignty to a global or regional government (Global Governance); or it can be sovereign and globalized but at the expense of democratic governance (Golden Straitjacket) (Pineda M.G., 2024). Europe was, because we do not know if we can say still "is", in the Global Governance phase of this

relationship. This is because within the European Union framework, the manifestation of Rodrik's Trilemma becomes evident at a regional level. The EU's foundation rests on the principles of European interdependence and democratic governance, aligning with two vertices of Rodrik's trilemma (Pineda M.G., 2024). Consequently, in pursuit of hyperglobalization and democratic values, member states have relinquished aspects of national sovereignty. This phenomenon resonates with liberal theorists who argue that economic interdependence undermines state sovereignty, echoing Rodrik's assertion that achieving all three vertices simultaneously and fully is impractical. In Europe in this day the stability of this situation is tricky. The recent backlash against globalization reflects a quest to reclaim national sovereignty, echoing Rodrik's premise that achieving all aspects of world politics simultaneously is unattainable (Pineda M.G., 2024). As nations seek to gain ever more relative power against the European Union, we see the effects of liberalism and a lack of realism come into sharp focus. John Mearsheimer articulates in his book “The Great Delusion”, that liberalism naturally leads to intervention in wars across various countries, particularly in North Africa and the Middle East, with the aim of implementing democracy and ensuring respect for inalienable human rights. These interventions, however, often result in conflict and destruction, driving massive waves of migrants from these regions to Europe, without citing what it cause to their economy. European politicians have pointed to this influx of migrants as a root cause of the continent's stagnant economy, fueling renewed criticism of the EU and its open-border policies. This has heightened tensions between European countries, impacting the investment sector we are analyzing in this thesis. As we have already stressed, public opinion influence, because of the voting machine, the politicians view, and so the regulations of the different countries.

Furthermore, increasing levels of de-democratization exacerbate fractures within the trilemma. The EU's numerous treaties have steadily eroded control over socio-economic matters, encroaching on domestic policymaking under the concept of pooled sovereignty. As a result, Dani Rodrik suggests that undermining economic integration becomes unavoidable amidst these pressures (Pineda M.G., 2024). Underlining the

direction that we are taking. At the heart of this discourse lies the question of how the EU should navigate national sovereignty issues. Cases like Poland and Hungary illustrate the EU's declining role as a champion of democracy, coinciding with the rise of populism across Europe. Nationalistic sentiments resonate widely, with EU populists demanding greater influence in policymaking. Brexit exemplifies the challenges of reconciling sovereignty and European integration, leading to Britain's departure. The EU faces three options: member states may opt to leave, seek more policymaking influence, or undermine the democratic foundations of the Union (Pineda M.G., 2024). To bolster its legitimacy, the EU must adeptly balance national interests with those of the Union and with those of the single countries, though what we have defined a "joint Regulation" as it is the FSR presented in the last paragraph. However, the relevance of the globalization paradox within the EU is waning due to mounting economic and political pressures and shifts in the global landscape. Various factors contribute to this trend, but they converge on disagreements regarding the direction of European integration. While EU member states endorse the concept of a unified Europe, they diverge in their views on the extent of integration and the strategies for achieving it (Pineda M.G., 2024). Anyway, we need to stress the point that this theory is limited, being that it does not consider the influence of international player in the possibility to shape international balances between these three forces. Anyhow, the gradual unraveling of Rodrik's Trilemma within the EU presents profound implications for the organization's future trajectory. Applying Rodrik's theories to the European Union illuminates the challenges facing the bloc as it grapples with economic integration and governance capacity, letting it shine through the European Dilemma. The EU finds itself torn between national-statist tendencies, which prioritize sovereignty and autonomy, and federalist aspirations aimed at deeper integration and cooperation (Capriglione F., 2019). The particular point of view of the professor Capriglione is that Rodrik's framework suggests a potential solution rooted in the transfer of national sovereignty to supranational entities, while still upholding democratic principles. By embracing the principle of subsidiarity, which allows for self-regulation at the local level while preserving overarching regulatory functions at the EU level, the bloc can

strike a delicate balance between unity and diversity (Capriglione F., 2019). Furthermore, diminishing democracy within member states and the divergence of socio-political ideals domestically compound the challenges. Stepping away from the single market is deemed impractical due to its disruptive and costly nature, so the idea to consider the European hyperglobalization as something from which countries could rollback could be a big error completely bucking what we have stressed until now. Some experts advocate for global federalism and the complete erosion of national sovereignty, viewing this path as essential for true globalization and democratic commitment. While these assertions certainly possess a boldness, they appear somewhat disconnected from the intricate realities we confront, and may even be perceived as naive. I contend that this viewpoint fails to fully grasp the significance of national sovereignty and decision-making autonomy, which remain vital for many member states hesitant to relinquish further powers to the Union. What is truly crucial is not merely to examine the relations among European countries, but to begin viewing Europe as a distinct entity beyond the confines of its borders, rather than within. Furthermore, as Rodrik argues, the initial flawed approach to globalization treated it as an end rather than a means to achieve domestic socio-economic objectives (Pineda M.G., 2024). The realignment of globalization strategies is imperative, aligning national objectives with the goals of trade agreements and openness to investments. Additionally, recognizing the EU's reliance on sovereignty restraints is essential for its sustainability (Pineda M.G., 2024). Pragmatic handling of the trilemma necessitates policies firmly rooted in democratic principles, fostering public discourse and negotiation to enhance the EU's legitimacy and mitigate potential backlash (Pineda M.G., 2024). Rodrik's theories bear significant implications for Italy as it navigates the intricacies of globalization and European integration. The country stands at a crossroads, faced with difficult choices in charting its path towards a new socio-economic paradigm (Capriglione F., 2019). Embracing Rodrik's vision of a pluralistic EU grounded in democratic values and effective economic integration offers a compelling way forward. Italy must actively engage in shaping the future of the EU, advocating for policies that prioritize the interests of its citizens while fostering greater

cohesion and solidarity among member states (Capriglione F., 2019). Italy, as the third-largest economy in the Union, stands at a critical juncture. For Italy to implement an effective growth strategy, it must advocate for a broader shift in European policy attitudes. Without this change, we risk dismantling the current state of globalization, potentially reverting to the fragmented world that existed before World War II. At this moment, it is hard to envision an alternative outcome given the constraints of this theory. Studying all the possible couples, a reduction in national sovereignty appears highly improbable given the current political landscape of European governments and the entrenched power of European entities. This is without even delving into the significant cultural differences across the continent. Europe finds itself in "mortal danger." To resolve this dilemma, the continent faces two stark choices: either reduce democratic governance, reverting to what Dani Rodrik terms the "Golden Straitjacket," or scale back the levels of globalization, coming back to the “Bretton Woods Compromise”. Both options would inevitably increase intra-country tensions and diminish Europe’s role on the international stage. Countries with rapidly growing populations and increasing potential power will overshadow a fragmented Europe. As we retreat into a smaller playing field, Europe risks becoming a multipolar region. According to John Mearsheimer, multipolar regions are breeding grounds for conflict and tension. We must recognize the gravity of our choices and the profound impact they will have on our collective future.

Why Europe Slept? and why we gave a huge importance to the regulation on which this thesis is based? We are starting to see the horizon and the haze of argument is dissipating. It is understood that the evolution of the FDI European regulation has become a way in which to reduce globalization within the Eurozone and how the merger control is doing the same. The good thing is that the European Dilemma is still pending, otherwise it is pending not in a good direction for the overall state of the Union as we have pointed out.

3.4 What we did not get

Having considered EU FDI screening regulations effected by the impact of China, traced their history from the privatizations of the 1990s to their evolution in the new millennium with a new Europe, studied the European as the Italian regulation itself and the Safran-Microtecnica case, discussed realism and its differences with liberalism, cited the factors that contribute to a country's long-term GDP growth, defined relative and effective power, examined other regulations limiting European internal development, assessed how markets perceive this instability and extra regulation as key factors in European operations, and studied Rodrik's trilemma as it applies to Europe, we can now clearly address the research question: “Why Europe Slept?”

In this paragraph, we will examine the two main issues associated with the current FDI regulation: the concept of national interest and its close connection to a country's economic security, considering the State's growing role in this domain, and the lack of realism among European regulators who have failed to create a unified regulation on a crucial matter. This failure could have significantly influenced future European policymaking and the perception of the Union, and with the evolution and increasing importance of the Golden Power in the individual country economy, it may cause further negative effects and deepen divisions.

John Mearsheimer, in "The Tragedy of Great Powers," predicts that China would have continued its economic growth, emulating the United States. Specifically, that according to the type of policies followed by China, it would have aimed to dominate its region of Asia much as the US dominates North America, leveraging its growing power to resolve territorial disputes in its favor. As we have seen in the first chapter China is State centered country that employs several strategies to enhance its influence and secure its interests. These include unfair trade practices such as dumping and subsidies, a 'going out' strategy encouraging domestic companies to invest overseas, and a non-transparent review system for foreign investments (Meunier & Nikolaidis, 2019). Additionally, the development of the aggressive screening mechanism was

driven by the lack of reciprocity in bureaucratic burdens for foreign firms operating in the country. These firms often faced requirements to collaborate with local counterparts, which could potentially lead to forced transfers of knowledge and technology. (Meunier & Nikolaidis, 2019). Moreover, another reason that justified the decision at the time was the multi-year plan known as The Belt and Road Initiative (BRI) or policies such as 'Made in China 2025', as well as currency manipulation, highlighting China's industrial ambitions. (Meunier & Nikolaidis, 2019). This led to the definition of China by the European Commission as not just an economic competitor but a "systemic rival promoting alternative models of governance" (The editorial board, 2019). Moreover, they also embarked on a strategy that appeared to be a divisive force among the powers of the European Union. The "16+1" platform, which includes China and 16 smaller European nations, exemplifies the balance of power: a multitude of small European countries juxtaposed against the formidable Chinese giant (The editorial board, 2019). They initiated personal relations with individual European countries, despite trade policies being a matter of the Union. Also Italy entered into the Belt and Road Initiative (BRI) in 2019, to then come out in 2023. In response, the Vienna Institute for International Economic Studies proposed a "European Silk Road," envisioning €1 trillion in investments for climate-friendly transport infrastructure to enhance European connectivity (The editorial board, 2019). China's engagement with Central, Eastern, and Southeastern European (CESEE) countries through the 16+1 initiative is considered vital by Beijing but raises sovereignty concerns for these European nations. These countries may have prioritized maintaining control over their foreign direct investment (FDI) policies to safeguard their ties with China, reflecting Realist politics where national interests supersede collective decision-making, as discussed in the conclusion of the first chapter of this thesis.

During the period when governments were debating regulations on FDI, it was crucial to have informed public discourse through news outlets. This could have helped stimulate public opinion and clarify the benefits of these regulations, emphasizing the importance of broadening the concept of national security to encompass the entire

European Union. The rationale behind this is straightforward: the necessity to survive in an increasingly Realist and conflict-prone world. Ensuring unity and cohesion within the EU is essential to avoid facing the dire threat of dissolution within a few years, a situation that, by 2024, places us in a state of "mortal danger." (The Economist 2, 2024). Key figures like Emma Marcegaglia, president and CEO of the Marcegaglia group and B7 chair, have recently shed light on the complexities of international trade and European integration. Marcegaglia's insights underscore the widening gap between the US and Europe on tariff issues, emphasizing the detrimental effects of protectionism and advocating for economic security, autonomy, and reshoring in a world shaped by the pandemic, wars, and conflicts (de Forcade R., 2024). Her caution against allowing these priorities to morph into protectionism resonates deeply within the broader context of global economic relations. An increased protectionism, if not decided by Europe at European level, will only cause a detrimental effect for the internal economy, because it generates other possible case like the Safran-Microtecnica one. For instance, a document issued by the Federal Foreign Office of the German Government in 2023 underscored the critical importance of international collaboration. Germany seeks to closely coordinate with EU partners, the United States, and other like-minded allies to effectively counter new investment strategies. By engaging in EU processes and participating in dialogue within the G7 framework, Germany aligns its approach with global efforts to safeguard economic security and technological sovereignty. (Federal Foreign Office, 2023).

Returning to the Regulation, within the European Union, there has been a notable uptick in the scrutiny of investment dossiers. As of 2022, 54% of these dossiers underwent foreign direct investment (FDI) screening, a substantial increase from the 29% recorded in 2021 (European Commission, 2023). This surge can be attributed to the broadening scope of transactions subject to scrutiny and the increasing acceptance of this regulatory framework across European nations. Meanwhile, the merger control Regulation, as discussed earlier in this chapter, has encountered certain obstacles. Noteworthy instances include the European Commission's (EC) intervention in the

Illumina/Grail merger in September 2022, prompted by vertical concerns alone, and the blockage of the Booking/eTraveli merger in September 2023, which was based on an "ecosystem" theory of harm. The latter case marked the inaugural use of this theory, highlighting a growing apprehension toward make-or-buy decisions and potential monopolistic practices. Moreover, mergers like Meta/Within and Adobe/Figma serve as examples of regulators' caution regarding the disruption of innovation ecosystems and the preservation of future competition. There has been a perceptible shift in regulatory focus from conventional market delineations to the evaluation of dynamic competition. This change underscores apprehensions such as the curtailment of prospective competition, the consolidation of dominant positions, and the hindrance of future innovation (Godocha P.M., 2020).

As asserted in the initial chapter, investments represent a significant source of growth for a country's internal economy, particularly within the EU context. This is corroborated by the graphs presented in the first paragraph (Figure: 1.1; 1.2; 1.3), indicating a possible correlation between the influx of new investments and the growth of the European GDP. With a further confirmation given by the stagnation of the economy after the fall of investments in 2008. In fact, investments can catalyze value creation within the country, foster positive ecosystems of companies, enhance employee retention, reduce unemployment, and crucially, propagate innovation and the adoption of new technologies, which are pivotal drivers of wealth in contemporary times. Indeed, as reported by the Financial Times, the innovation gap underscores the repercussions of reduced investment within a country (Arnold M., 2024). Additionally, Paolo Gentiloni, the EU's economy commissioner, has emphasized the necessity for both European and foreign investments, particularly in critical areas such as the green transition and defense, amidst a sluggish economic backdrop (Arnold M., 2024). He highlighted the challenge of maintaining a sufficient level of investment to address these emerging needs, juxtaposing the issue against Europe's accustomed low growth rates.

Moreover, in a joint letter published in the Financial Times, Macron and Scholz, the President of the French Republic and the Chancellor of Germany, underscored the imperative for a revitalized Europe capable of meeting contemporary challenges (Macron E. & Scholz O., 2024). They advocated for increased innovation, a strengthened single market, enhanced investment, a leveled playing field, and reduced bureaucracy within the EU. They emphasized the importance of an ambitious, open, and sustainable European trade policy to foster fair trade agreements and promote EU interests while creating reciprocal market access opportunities. The waning attractiveness of the Union also presents a relative power predicament, as Europe's stagnation undermines its international influence and jeopardizes the Union's survival. As in Figure 3.3, also a problem with population growth is evident.

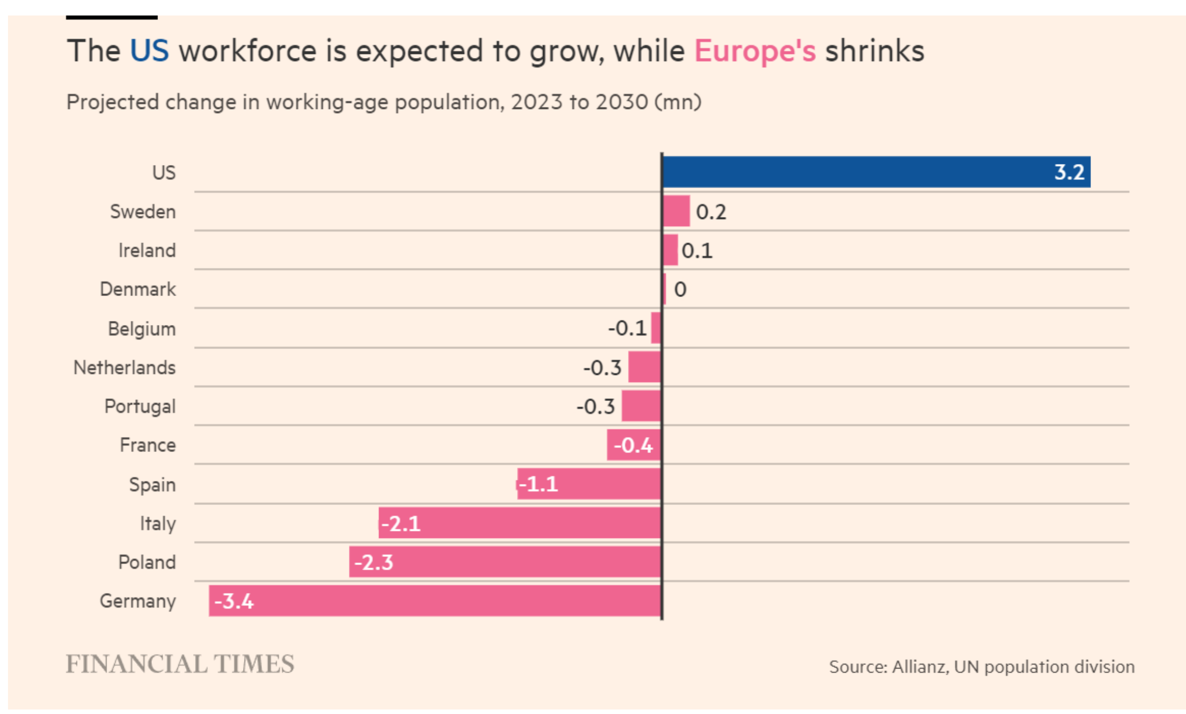

Figure 3.3: The US workforce is expected to grow, data on projected change in working-age population, 2023-2030. Retrieved from: https://www.ft.com/content/c5fbb9fa-893d-11e9-a028-86cea8523dc2

These recent years have been characterized by unforeseen catastrophic events that were previously unimaginable, such as Brexit, the COVID-19 pandemic, and notably, the invasion of Ukraine, which poses an ongoing threat to northern European countries by Russia.

In contrast, the US gross domestic product has exhibited greater resilience to these shocks, rebounding faster and surpassing pre-pandemic levels by 8.7 percent in the first quarter of this year (Arnold M., 2024). This growth exceeds the 3.4 percent rise in Eurozone GDP and the 1.7 percent equivalent increase in the UK economy during the same period. These data underscore the urgent need for increased investments and the imperative to address these significant challenges.

Additionally, amid the trend of new state interventions in the economy, that is particularly evident in the US with the approval of multi-billion-dollar programs, European companies are increasingly drawn to the US due to the combination of high European energy costs and attractive subsidies offered for green energy and semiconductor projects (Arnold M., 2024). Furthermore, US in response to China's actions as highlighted in the first chapter, is beginning to subsidize its industry, as evidenced by the Chips Act and the Reduction Inflation Act (The Economist 2, 2024). Moreover, the US may shift its focus away from the international arena and reduce its inclination to define foreign policies for European countries. They may prioritize their domestic economy and refrain from dictating policies that could face criticism from their supporters and the general public (The Economist 2, 2024). Essentially, their aim is to attract new investments, and European companies are contemplating leaving the Union to operate in a more stable and rapidly growing market, such as the American one. Joint policies are useful also for this reason, a joint European security concept will be useful to generate a real dialogue with international counterparts that otherwise will keep using realism on our naiveness.

Apart from the potential decrease in investment levels due to this regulation, another significant concern is the possibility of heightened tensions among major European economies. The concept of national security interest, as outlined in the regulation,

should address the genuine needs of not just individual countries but the entire European system. The lack of a clear direction for our European politicians, moving away from the singular focus on liberalism they were previously urged to adopt, could lead to numerous problems in a divisive environment where regulations fail to ensure the unity of the Union and the coherence of intentions. Hence, we believe that this FDI regulation requires significant revision or even a complete overhaul. Certainly, the challenging outlook we are presenting isn't solely attributed to the absence of determination and the great political inertia in shaping the FDI screening regulation. Rather, it is wider and more complex problems over the constitution of the European Union. Furthermore, within the European sphere, where the liberal theory of "economic interdependence" has gained traction since the late 90s, Mearsheimer's realistic assessment holds valuable insights for policymakers. In his seminal work "The Tragedy of Great Powers," Mearsheimer delves into the intricacies of this theory. While economic interdependence can sometimes ease tensions and deter wars, its sway over policymakers is often limited. Political decisions consistently prioritize national interests. For instance, the Brexit episode in 2017 illustrated how a seemingly destructive solution could be perceived as beneficial for the domestic economy. Mearsheimer identifies three key points where this theory diverges from reality. Firstly, the costs of wars, whether military or economic, are not always prohibitive. In certain scenarios, wars may even yield positive economic outcomes. Secondly, nations frequently prioritize security over economic concerns, even in the face of high costs. During conflicts, countries often anticipate swift victories, further diminishing the perceived deterrent effect of economic interdependence. Lastly, there is insufficient evidence to support the notion that economic interdependence inevitably leads to international peace. While advocates argue that the high costs of conflict will eventually outweigh political gains, they overlook the paramount importance of national survival. Moreover, Mearsheimer's studies, pertinent to the current European scenario as presented in his seminal work, suggest that heightened economic interdependence may escalate conflict, particularly during crises. Given the cyclical nature of relationship underlined by Dalio in his theory over the principles of the World

Order. Anyway, it is clear: Europe is experiencing its Zeitenwende[86]. Furthermore, Macron's cautionary remarks, “a civilization can die, and the end can be brutal” (The Economist 1, 2024), underscore the potential for rapid and unforeseen developments. The erosion of adherence to established norms signals a seismic shift, indicating that the "old order has been broken" (The Economist 1, 2024). The potential division we are discussing is also highlighted by Rodrik in the cited work mentioned in the third paragraph of this chapter. Specifically, we've observed how Europe is steering its politics towards reducing internal globalization to reclaim internal sovereignty, assuming that never it could happen a reduction in the democracy principle within our continent. A notable instance of this transformation can be observed in the FDI regulation and the significant concessions granted to respective governments in terms of Golden Powers. One potential solution to these issues, which could also circumvent all the political processes of the European Union and Member States, is to envision the adoption of multilateral international commitments under which buyers of foreign strategic assets, influenced by public ownership or control, could operate in other legal systems without excessive restrictions, provided they demonstrate the existence of organizational and governance requirements capable of safeguarding their sound and prudent management and decision-making independence (Sacco Ginevri A., 2019). In this manner, however, the tension between competition and sovereignty would once again be managed – as it was not too long ago – in the field of corporate law (Sacco Ginevri A., 2019). Thus, foreign buyers operating purely on entrepreneurial logic – and therefore in fair and transparent competition with other industrial and financial players – rather than as the "armed arm" of political forces or on behalf of foreign public interests, would be able to benefit from government approval. This could also establish a standard that could be followed by all potential investors. Nonetheless, this remains an idea and a potential resolution of the problem. Yet, it is also a speculative piece,

[86] Zeitenwende, which in German means "epochal turning point," has now become a well-known term and is particularly associated with the speech delivered by the German Chancellor three days after the event of February 24, 2022. In that historic address, Scholz once again included foreign and security policy in the toolbox of his country's international politics, thus allowing Germany to "return to history.

contemplating the possibilities achievable through the implementation of joint regulation in terms of relative power and future potential growth.Responding to the increasing and evolving role of the State, which is dramatically altering the global order, countries must become more proactive. In this transformation of the capitalist model, states need to define growth strategies, as strategic planning consistently outperforms free-market approaches in this changing market landscape. Europe should adopt strategic realism, which entails recognizing and responding to the inherent power dynamics that shape international relations. As Dalio points out, nations like China and Russia have long operated under realist principles, emphasizing tangible measures of power such as economic strength and military capability. The United States, despite its historical advocacy for liberal ideals, fundamentally operates on realist principles, especially in foreign policy and defense strategies. Europe, however, has often found itself caught between its liberal democratic values and the stark realities of global power politics. To navigate this complex landscape, we need to adopt a more strategic and realist approach. This means prioritizing its economic and military strengths, fostering technological innovation, and maintaining robust defense capabilities, or at least try to improve it.

Moreover, in light of the theories presented in the first chapter, we will need to look at the strategic realism for Europe as a solution, involving being aware of and prepared for the cyclical nature of global power dynamics. As Dalio emphasizes, nations rise and fall in predictable patterns, influenced by economic cycles, technological advancements, and military conflicts. Furthermore, Europe should take in consideration the 8 measures that allow a country, in our case a Union, to grow in relative power terms. In this sense the development of the single market, as the single financial market, as the European M&A market could be influenced by this regulation.

Our perspective leans towards realistic pessimism. We believe the window for amending the regulation has closed. Member States Government can spread their tentacles over everything that breathes in their economy, chasing a personalistic and egoistic interest, when the height of selfishness would be to barricade oneself under the European flag and within the world's largest market.

Nevertheless, maintaining public attention on these matters through media channels is crucial to enlighten citizens about our Union's critical imperatives and to underscore the dire consequences of failure. Hope persists, even amidst our skepticism, amidst inertia. Our democracy, both at European and National level, needs realism and needs politicians who looks at things as they are. What will happen will be the effect of our action, today.

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