

European Economic Security Strategy: Confirmation of the change in policy

In the new geopolitical context following the pandemic and the invasion of Ukraine, the EU is redesigning its policy of openness to foreign investment in favour of a more measured approach, reconciling the need for foreign investment with ensuring the security of supply in strategic sectors. Some call this protectionism, while others describe it as a realistic approach in the new global context, but undoubtedly, there has been a shift in the regulatory landscape, which will particularly affect companies operating in the European Union. This has particularly crystallised in the European Economic Security Strategy, published by the European Commission on 20 June 2023.

The **starting point** of the Strategy is the precise identification of the risks facing the Union and the recognition of the inherent tensions that exist between strengthening economic security and a favourable investment climate that does not lead to protectionist measures: (i) resilience of supply chains; (ii) physical and cyber security of critical infrastructure; (iii) technology security and technology leakage; or (iv) weaponisation of economic dependencies or economic coercion.

Three priorities have been identified:

- 1) Promoting the Union's competitiveness and growth**, by strengthening the Single Market, contributing to a strong and resilient economy and fostering the Union's research, technological and industrial base.
- 2) Protecting the Union's economic security.**
- 3) Partnering** with the broadest possible range of countries to address common economic security concerns or interests.

The Strategy comprises, among others, **three initiatives** that are expected to be implemented before the end of the legislative cycle in 2024 and most likely during the Spanish presidency of the Council of the EU. Specifically:

- **The European Critical Raw Materials Act.** It seeks to facilitate the extraction, processing and recycling of key raw materials in the EU, thereby reducing dependency on external sources. This proposal currently includes the following: (i) the list of strategic and critical raw materials for the EU; (ii) the criteria and procedural rules for the application, recognition and designation of strategic raw materials projects in the EU, as well as for the granting of authorisations by Member State authorities; (iii) rules on the accelerated implementation and coordination of financing of Strategic Projects; (iv) obligations for Member States and the Commission, both in terms of preparing national exploration programmes for key raw materials and coordinating strategic reserves or even the joint purchase of strategic raw materials to meet the

collective demand of EU companies; and (v) the creation of a range of obligations aimed at promoting sustainability along the entire value chain of key raw materials (e.g., the obligation to establish measures to promote circularity and the EU's extraction, processing and recycling capacities for key raw materials; the declaration of the environmental footprint of a given raw material or the identification of EU strategic partnerships with third States).

- **The European Chips Act.** It seeks to increase the production of semiconductors in Europe in order to ensure a secure supply that contributes to the competitiveness and technological leadership of the Union. The key elements of the European Chips Act as it currently stands are: (i) the detailed description of the Chips for Europe Initiative, by setting out its objectives, components, and even implementing bodies; (ii) the establishment of a framework aimed at ensuring the security of supply of semiconductors in the EU through the creation of integrated production facilities and open foundries, which may benefit from public support and funding; (iii) the creation of an entire crisis prevention and management strategy (supervision and alert rules, risk assessments and early warning indicators, anti-crisis response measures such as common purchase by the Commission, among others); (iv) the establishment of a European Semiconductor Council and the obligation for Member States to designate competent authorities in charge of the implementation of the Regulation; and (v) the presence of a series of measures concerning confidentiality issues, sanctions and fines.
- **The EU Net-Zero Industry Act.** It aims to contribute to net-zero emission production in the EU, an objective outlined in the **Commission's communication on the Green Deal Industrial Plan**. The proposal includes a range of measures aimed at: (i) favouring the manufacturing of net-zero emission technologies in the EU by simplifying the administrative and permitting procedures by the competent national authorities; (ii) identifying and selecting strategic net-zero emission projects; (iii) clearly determining the CO₂ injection capacity target at EU level; (iv) facilitating access to markets (holding auctions for the deployment of renewable energy sources, allowing public authorities to support the procurement of net-zero emission technologies, among others); and (v) enhancing the capacities of those working in this field, promoting technological innovation in this field and creating the European Zero Emissions Platform, which will assist the Commission and the States in the implementation of the objectives of the Regulation.
- **The EU Cyber Resilience Act.** It aims to establish the necessary rules to promote and improve the cybersecurity of products with

European Economic Security Strategy: Confirmation of the change in policy

digital elements and critical products with digital elements, in terms of design, development and manufacturing. The Proposal establishes (i) essential obligations and requirements that manufacturers of such products must comply with (e.g., the need to carry out cybersecurity assessments of the products and to include the results of such assessment when placing the products on the market); (ii) obligations for importers (mainly to check that the products comply with the requirements of the Regulation) and distributors (to check that the manufacturer and the importer have fulfilled their obligations before placing the products on the market); (iii) criteria for the conformity of products with digital elements with the Regulation, through the determination of a set of common characteristics and specifications, an EU declaration of conformity or a system of product marking; (iv) obligations for collaboration between Member States and the Commission, including provisions for conformity assessment bodies and notifying authorities, as well as common rules for notification procedures; and (v) finally, measures to improve market surveillance and control procedures for products covered by the Regulation, both at national and EU level.

Alongside these measures, mention should be made of others already in place, which reflect this new approach:

- **The Foreign Subsidies Regulation (FSR)** It will allow the European Commission, under certain conditions, to investigate subsidies from third States received by companies active in the EU internal market and, where appropriate, to address the distortions that such subsidies may cause to market competition, helping to ensure a level playing field for all companies in the EU market.
- **The Regulation on the Screening of Foreign Direct Investments** It allows for some coordination between Member States on the screening of investments, although the ultimate responsibility for screening for reasons of public order and public security rests with each State. The Regulation is currently **being evaluated by the European Commission** with the intention of determining whether this instrument is still fit for purpose and, if so, proposing a revision of the Regulation before the end of 2023.
- **The International Public Procurement Instrument (IPI)** It aims to promote reciprocity in access to international public procurement markets by, *inter alia*, implementing procedures that allow the European Commission to investigate measures by third States that hinder or prevent EU businesses, goods and services from accessing non-EU procurement markets, or even, where appropriate, allowing

the Commission to impose IPI measures to restrict access to EU public procurement procedures for businesses, goods and services from the non-EU countries concerned.

This new approach is explained by the EU's High Representative for Foreign Policy: "Security is a concept that has new and multiple dimensions. One of them is economic security. We have learned how dependencies can be weaponised. With this strategy, we are combining economic security policy measures to reduce our excessive dependencies while preserving a global open rule-based trade system".

Businesses need to be aware of this "change of scenery" and seize the opportunities within this outlined regulatory framework. However, the risk of protectionist measures in the face of this new approach is clear. Against this background, the Communication itself creates the basis for a strategic debate between Member States and the European Parliament on the economic security of the Union with a view to creating a common framework in order to develop a comprehensive approach to protect the economic security of the Union, in which businesses must necessarily be involved as key players.

FURTHER INFORMATION

- ⑦ Joint Communication to the European Parliament, the European Council and the Council - A European Economic Security Strategy (JOIN (2023) 20 final).
- ⑦ Factsheet - European Economic Security Strategy.
- ⑦ Conclusions of the European Council of 29 and 30 June 2023.

Legislative developments

The following legislative developments in June and July are worth highlighting:

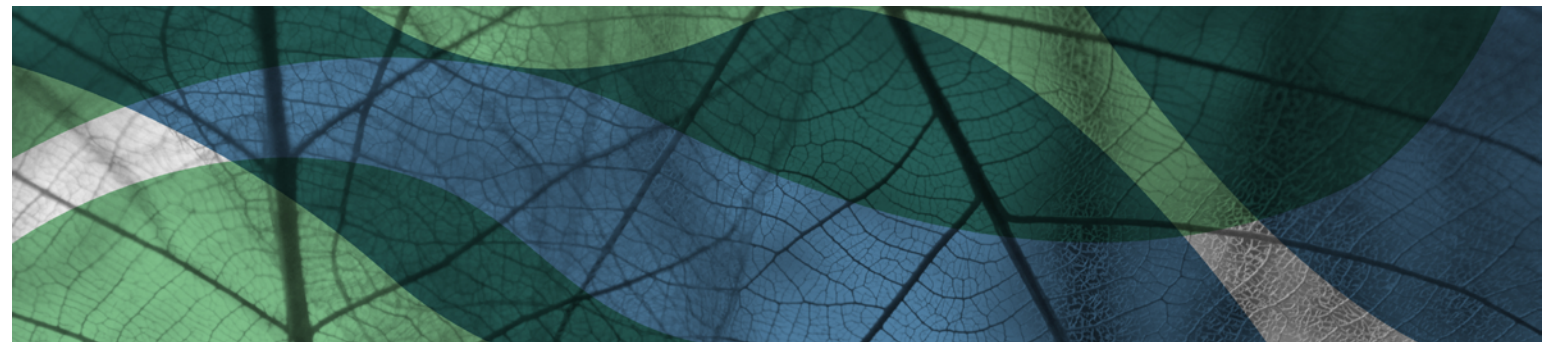
I. New legislation:

- a. **New European Unitary Patent System:** After more than ten years, on 1 June 2023, the Regulations governing the European Unitary Patent have entered into force together with the Agreement for the creation of the Unified Patent Court.
- b. Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market [C (2023) 4622], DO L 177 of 12.7.2023, p.1-44. Entered into force on 13 July 2023.
- c. **Circular economy: New rules for producers of smartphones and tablets.** In particular, we would like to highlight Commission Regulation (EU).../... of 16 June 2023 laying down ecodesign requirements for smartphones, mobile phones other than smartphones, cordless phones and slate tablets pursuant to Directive 2009/125/EC of the European Parliament and of the Council and amending Regulation (EU) 2023/826 of the Commission [C (2023) 3538 final].

However, it should be noted that this Regulation has not yet been published in the Official Journal and therefore its rules have not yet entered into force.

II. New Commission proposals:

- a. **Sustainable financing package.** The Commission has adopted new proposals aimed at sustainable financing. Among the rules proposed by the Commission, the following should be highlighted:
 - Proposal for a Regulation of the European Parliament and of the Council, of 13 June 2023, on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities [COM (2023) 314 final].
- b. New proposals under the European Green Deal. As reflected in the Communication from the Commission of 5 July 2023 - Ensuring resilient and sustainable use of EU's natural resources [COM(2023) 410 final], on 5 July 2023 the Commission presented several legislative proposals, among which we highlight:
 - Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste [COM (2023) 420 final]; one of the fundamental pillars for the European strategy for sustainable and circular textiles.



Pérez-Llorca's Brussels Insights

BRU



Sonsoles Centeno

Managing Partner, Brussels office
scenteno@perezllorca.com
T: +32 (0) 2 79 67 51



Inmaculada Vigón
Associate



Irene González Campos
Associate



Federico Bernaldo de Quirós
Legal Advisor

Judicial news

- **Judgment of the Court of Justice of the EU of 8 June 2023 in Case C-50/21, *Prestige and Limousine***: The Court of Justice held that the system of “dual” authorisation, which is required in addition to the national authorisation in order to be able to provide urban transport services in a metropolitan area does not infringe the freedom of establishment under certain conditions, but that the limitation of the number of licences for private hire vehicles (PHV services) to one for every thirty taxi service licences, adopted by the Barcelona City Council, does infringe the freedom of establishment under certain conditions, as long as it is not proven that such a measure is appropriate to ensure the objectives of the sound management of transport, traffic and public space, as well as environmental protection.
- **Judgment of the Court of Justice of the EU of 29 June 2023 in Case C-211/22, *Super Bock Bebidas***: The Court of Justice has interpreted Article 101 TFEU as meaning that the fixing of minimum resale prices for a given product involves a restriction of competition by object only where it is established that such an agreement shows a sufficient degree of harm to competition having regard to the content of the agreement, its objectives and the economic and legal context in which it operates. The Court also held that the fact that the vertical price-fixing agreement extends to virtually the entire territory of a Member State does not preclude such an agreement from being capable of affecting trade between Member States.
- **Judgment of the Court of Justice of the EU (Grand Chamber) of 4 July 2023 in Case C-252/21, *Meta Platforms and others (Conditions générales d'utilisation d'un réseau social)***: The Court of Justice has interpreted various provisions of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) and, *inter alia*, has confirmed that it is possible for a Member State competition authority to consider, in the context of an examination of possible abuse of a dominant position under Article 102 TFEU, that the general terms and conditions of service relating to the processing of data of a particular business do not comply with the General Data Protection Regulation where such a finding is necessary to establish the existence of the abuse under scrutiny.
- **Judgment of the Court of Justice of the EU of 6 July 2023 in Joined Cases C-212/21 P and C-223/21 P, *European Investment Bank v ClientEarth and Commission v ClientEarth***: The Court of Justice dismissed the appeals brought by the European Investment Bank and the European Commission against the judgment of the General Court of 27

January 2021 in **Case T-9/19, *ClientEarth/EIB***, which overturned a decision of the European Investment Bank (“EIB”) that rejected ClientEarth’s request for a review of the EIB Board of Directors’ agreement approving the financing of a biomass power plant project in Galicia.

- **Judgment of the Court of Justice of the EU of 6 July 2023 in Case C-593/22, *First Bank***: Directive 93/13/EEC on unfair terms in consumer contracts must be interpreted as meaning that, in order to determine whether a clause included in a loan agreement concluded between a consumer and a seller or supplier is excluded from the scope of the Directive on the basis of that provision, the fact that the consumer was not aware that the clause reflects a mandatory statutory or regulatory provision of national law is irrelevant.
- **Judgment of the Court of Justice of the EU of 13 July 2023 in Case C-376/20 P, *Commission v CK Telecoms UK Investments***: The Court of Justice set aside the judgment of the General Court of 28 May 2020 in **Case T-399/16, *CK Telecoms UK Investments v Commission***, in relation to the acquisition of Telefónica Europe (“O2”) by Hutchison 3G UK (“Three”) and referred the case back to the General Court to rule once again on the lawfulness of the European Commission’s decision prohibiting the acquisition in question.
- **Judgment of the Court of Justice of the EU of 13 July 2023 in Case C-106/22, *Xella Magyarország***: The Court of Justice held that the TFEU provisions on freedom of establishment prevent a foreign investment control mechanism provided for in the legislation of a Member State, which permits the prohibition of the acquisition of ownership of a resident company, regarded as strategic, by another resident company which is part of a group of companies established in several Member States and in which a company from a third country has a decisive influence, on the grounds that such an acquisition damages or is likely to damage the national interest in ensuring security of supply in favour of the construction sector.

FURTHER INFORMATION

- ⑦ Full list of judgments issued by the Court of Justice of the European Union - June 2023.
- ⑦ Judicial calendar of judgments of the Court of Justice of the European Union - July 2023.