

European Economic Security Strategy: The Commission proposes concrete measures to strengthen the EU's economic security and maintain openness to EU trade, investment and research

On 24 January 2024, the European Commission, following on from the [Communication of 20 June 2023 - European Economic Security Strategy \[JOIN \(2023\) 20 final\]](#) (see Pérez-Llorca's Brussels Insights - June and July 2023), announced the adoption of five key initiatives aimed at strengthening the EU's economic security while upholding openness to trade, investment and research in the EU internal market.

This package consists of the new [Communication from the Commission of 24 January 2024 - Advancing European economic security: an introduction to five new initiatives \[COM \(2024\) 22 final\]](#); as well as five measures aimed at achieving three objectives: (i) **promoting the EU's competitiveness and growth** while safeguarding the internal market, supporting a strong and resilient economy and strengthening the EU's scientific, technological and industrial bases; (ii) **protecting the EU's economic security** with specific instruments; and (iii) **partnering and further strengthening cooperation with third countries** with which the EU shares economic security interests.

The specific measures taken are as follows:

1. A proposal for a new Regulation on the screening of foreign investments in the EU

This concerns the Proposal for a Regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council [[COM \(2024\) 23 final](#)] of 24.01.2024. Specifically, the new Proposal deepens harmonisation and introduces highly relevant new features when compared to the previous Regulation (EU) 2019/452. In particular, the following measures should be highlighted:

- i) The obligation for all Member States to establish mechanisms to screen foreign investments for reasons of security and public order.
- ii) The harmonisation of the core elements of national screening mechanisms, including the scope of application (the investments to be screened) and the essential features of the screening process and of the cooperation mechanisms between national authorities and between national authorities and the EU.
- iii) The introduction of homogeneous standards and criteria for determining when an investment involves a risk for the Commission.

- iv) The possibility for Member States to extend the scope of their screening mechanisms to include types of investments, sectors or economic activities that the Member State considers critical for its security or public order.
- v) The scope of application of the new Foreign Investments Regulation is extended to "include" the Judgment of the Court of Justice of the EU of 13 July 2023, [C-106/23, Xella Magyarország](#). It will now also cover investments made between companies in Member States where the investor is ultimately controlled directly or indirectly by a foreign entity, regardless of whether the ultimate owner of the foreign entity is located in the EU or elsewhere.
- vi) Member States are obliged to screen foreign investments related to projects or programmes of EU interest and technologies of particular importance. Similarly, Member States will have to screen foreign investments related to projects where the purpose of the investment is active in areas where the foreign investment may affect the security or public order of more than one Member State.
- vii) Portfolio investments with no intention of influencing the management and control of the undertaking concerned are excluded from the scope, as are restructuring operations within a group of companies or the merger of several legal entities into a single legal entity, provided that there is no increase in additional shares or rights held by foreign investors that would alter their participation in the management of an EU target.
- viii) It is intended to standardise notification forms to ensure that notifying Member States do so in an orderly manner and include a minimum level of information. However, this will require the adoption of an Implementing Regulation by the Commission.

Negotiations will then take place between the Council and the Parliament until a final text is adopted.

2. The White Paper on Outbound Investments

The White Paper on Outbound Investments [[COM\(2024\) 24 final](#)] is the Commission's first initiative in the area of outbound investments. It addresses growing concerns about the flight of sensitive technologies and know-how (e.g. advanced semiconductors, artificial intelligence, quantum technologies and biotechnologies) to countries where the boundaries

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between civil and military activities are blurred, and which could possibly strengthen adverse military capabilities. With this White Paper, the first public consultation, featuring a questionnaire for stakeholders, is being launched. Stakeholders can participate in this consultation until April 2024.

The Commission's starting point is the necessity to adopt a more rigorous approach to outbound investments from a security perspective. Specifically, it proposes an in-depth analysis of such outbound investments in order to understand the potential risks associated with them. Accordingly, a consultation of stakeholders and a 12-month national monitoring and assessment of outbound investments is proposed, which will contribute to the preparation of a joint risk assessment report. This would allow the Commission to propose measures in autumn 2025.

The White Paper includes a number of proposals for monitoring or screening. These include the screening by Member States of investments by EU investors for economic activities outside the EU (including mergers, acquisitions and joint ventures, asset transfers, greenfield investments and venture capital investments) or the monitoring of critical activities such as R&D cooperation between EU and third country operators or for the transfer of highly specialised personnel in sensitive areas.

3. The White Paper on Export Controls

The White Paper on Export Controls [COM (2024) 25 final] analyses the main features (and weaknesses) of the current Export Control framework and, in light of recent developments, proposes possible solutions.

Among the weaknesses of the current regulatory framework, the Commission has identified the following: (i) the existing divergences between national control systems and the lack of transparency and coordination between Member States and between Member States and the Commission; (ii) the risks of "forum shopping" and the resulting ineffectiveness of national controls; (iii) the lack of a common approach at EU level and of a "common voice" at international level allowing for quicker reactions by the EU with a "joint" geopolitical perspective and increasing the bargaining power of the EU and Member States in multilateral regimes at international level; and (iv) the risks arising from excessive concentration of supply chains.

As possible solutions, the Commission says it will propose measures to: (i) expand the list of items subject to export controls (Annex I to [Regulation](#)

(EU) 2021/821 on dual-use items), either through a proposal for a Regulation or through a Delegated or Implementing Regulation; (ii) create a coordination forum between the Commission and the Member States; (iii) adopt a Recommendation for Member States to coordinate new national control lists through prior notification to the other Member States and the Commission; (iv) adopt specific opinions and comments when the Commission considers that a national control list may affect the security of more than one Member State or the interests of the EU; and (v) bring forward the evaluation of Regulation (EU) 2021/821 on dual-use items to the first quarter of 2025 and make concrete proposals to fill the gaps in the Regulation.

4. The Proposal for a Council Recommendation on enhancing research security

The Proposal for a Council Recommendation on enhancing research security [COM (2024) 26 final] proposes a strategy based on the principle of being "as open as possible, as closed as necessary" to protect the EU research and innovation sector from emerging threats such as cyber-attacks, foreign interference and the illicit transfer of critical technologies in the new geopolitical environment.

Guiding principles for responsible internationalisation include: (i) promoting academic freedom; (ii) ensuring proportionality in safeguard measures; and (iii) adopting a risk-based approach that is country-agnostic in order to prevent discrimination and ensure proportionality in protection measures.

On this basis, a number of recommendations have been proposed which seek, among other things: (i) enhanced cooperation at both national and EU level, including the creation of a European Centre of Expertise on Research Security; (ii) increased collaboration with research funding organisations; and (iii) support for higher education and other research organisations.

5. The White Paper on enhancing support for research and development involving technologies with dual-use potential

The White Paper on enhancing support for research and development involving technologies with dual-use potential [COM (2024) 27 final] serves as a basis for launching a consultation on existing EU support for R&D in technologies with dual-use potential and its appropriateness in the current geopolitical context. The consultation will remain open until 30 April 2024.

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In this White Paper, the Commission identifies the challenges and opportunities for improving R&D support for these technologies (software and other technologies that can be used in both civil and military domains), analyses the current legislative framework and presents possible improvements for the future.



Specifically, the Commission proposes the following: (i) a new approach on the basis of the existing legislative framework through measures such as the possibility of funding dual-use technology companies through InvestEU or the obligation to exploit the results of research in dual-use technologies in the EU; (ii) the elimination of the “exclusive focus” to civil applications in the next Horizon Europe programme, which would allow defence projects in dual-use technologies to be funded under this programme; and (iii) the creation of a specific instrument for R&D in these technologies; or of an executive agency, a dedicated Joint Undertaking or public procurement with EU operators; or even the creation of projects of common European interest in this area.



Assessment

The European Commission is following the approach begun by the Communication on EU Economic Security of June 2023, adopting concrete measures, some more innovative, such as the White Paper on Outbound Investments, but all with the aim of maintaining greater control over investments in the face of a new geopolitical environment. Special attention should be paid to the proposed Foreign Investments Regulation, since, as we said, it broadens its objective scope and deepens its harmonisation. Specifically, care should be taken to ensure that the new Regulation has a balanced approach, which does not allow protectionist decisions to be adopted which, rather than guaranteeing security in strategic sectors, would amount to unnecessary interference in the economy.

FURTHER INFORMATION OF INTEREST

-  [European Commission Q&A - Memo on European economic security.](#)
-  [European Commission press release – Commission proposes new initiatives to strengthen economic security.](#)

Legislative developments

Among the legislation published in the OJEU, the following should be highlighted:

- Council Regulation (EU) 2024/223 of 22 December 2023 amending Regulation (EU) 2022/2577 laying down a framework to accelerate the **deployment of renewable energy** [ST/16270/2023/INIT], OJ L, 2024/223, 10.01.2024.
- Commission Delegated Regulation (EU) 2024/436 of 20 October 2023 supplementing Regulation (EU) 2022/2065 of the European Parliament and of the Council, by laying down rules on the performance of **audits for very large online platforms and very large online search engines**, [C/2023/6807], OJ L, 2024/436, 02.02.2024.
- Commission Implementing Regulation (EU) 2024/482 of 31 January 2024 laying down rules for the application of Regulation (EU) 2019/881 of the European Parliament and of the Council as regards the adoption of the **European Common Criteria-based cybersecurity certification scheme** ("EUCC"), [C/2024/560], OJ L, 2024/482, 07.02.2024.
- Council Regulation (EU) 2024/576 of 12 February 2024 amending Regulation (EU) No 833/2014 concerning **restrictive measures in view of Russia's actions** destabilising the situation in Ukraine, [ST/5438/2024/INIT], OJ L, 2024/576, 14.02.2024.
- **Regulations on fluorinated gases and ozone-depleting substances:** (i) Regulation (EU) 2024/573 of the European Parliament and of the Council of 7 February 2024 on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014 [PE/60/2023/INIT], OJ L, 2024/573, 20.02.2024; and (ii) Regulation (EU) 2024/590 of the European Parliament and of the Council of 7 February 2024 on substances that deplete the ozone layer, and repealing Regulation (EC) No 1005/2009 [PE/61/2023/REV/1], OJ L, 2024/590, 20.02.2024.

Concerning rules adopted but not yet published in the OJEU, the following should be noted:

- The Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards **empowering consumers for the green transition** through better protection against unfair practices and better information [COM (2022) 143 final], of 30.03.2022 - Adopted by the Council following the Parliament's first reading approval on 20 February 2024.

Finally, it is worth mentioning some political Agreements reached between the European Parliament and the Council for which there is already a formal commitment by the Council to proceed with the adoption of the act if the Parliament adopts them upon first reading. These are:

- The Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (**European Media Freedom Act**) and amending Directive 2010/13/EU [COM (2022) 457 final], of 16.09.2022 - Letter of commitment from the Council to the Parliament of 19 January 2024.
- The **Anti-Money Laundering Package:** (i) the Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [COM (2021) 420 final], of 20.07.2021; and (ii) the Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 [COM (2021) 423 final], of 20.07.2021 - Letter of commitment from the Council to the Parliament of 16 February 2024.
- The Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/1242 as regards strengthening the **CO2 emission performance standards for new heavy-duty vehicles** and integrating reporting obligations, and repealing Regulation (EU) 2018/956 [COM (2023) 88 final], of 14.02.2023 - Letter of commitment from the Council to Parliament of 9 February 2024.
- The **EU Listing Act Package:** (i) the Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises [COM (2022) 762], of 08.12.2022; and (ii) the Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC [COM (2022) 760], of 07.12.2022 - Letter of commitment from the Council to the Parliament of 14 February 2024.

Legislative developments

- The **Single Market Emergency Instrument Package**: (i) the Proposal for a Regulation of the European Parliament and of the Council establishing a Single Market emergency instrument and repealing Council Regulation (EC) No 2679/98 [COM (2022) 459 final], of 19.09.2022; (ii) the Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2016/424, (EU) 2016/425, (EU) 2016/426, (EU) 2019/1009 and (EU) No 305/2011 as regards emergency procedures for the conformity assessment, adoption of common specifications and market surveillance due to a Single Market emergency [COM(2022) 461 final], of 19.09.2022; and (iii) the Proposal for a Directive of the European Parliament and of the Council amending Directives 2000/14/EC, 2006/42/EC, 2010/35/EU, 2013/29/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU and 2014/68/EU as regards emergency procedures for the conformity assessment, adoption of common specifications and market surveillance due to a Single Market emergency [COM(2022) 462], of 19.09.2022 - Letter of commitment from the Council to the Parliament of 16 February 2024.
- The Proposal for a Directive of the European Parliament and of the Council on **common rules promoting the repair of goods** and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 [COM (2023) 155], of 22.03.2023 - Letter of commitment from the Council to the Parliament of 14 February 2024.
- The Proposal for a Regulation of the European Parliament and of the Council on the transparency and integrity of **Environmental, Social and Governance (ESG) rating activities** [COM(2023) 314 final], of 13.06.2023 - Letter of commitment from the Council to the Parliament of 19 February 2024.
- The Proposal for a Regulation of the European Parliament and of the Council on establishing a framework of measures for strengthening Europe's net-zero technology products manufacturing ecosystem (**Net Zero Industry Act**) [COM(2023) 161 final], of 16.03.2023 - Letter of commitment from the Council to the Parliament of 16 February 2024.
- The **Capital Markets Union Improvement Package**: (i) the Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets [COM (2022) 697 final], of 7.12.2022; and (ii) the Proposal for a Directive of the European Parliament and of the Council amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivatives transactions [COM (2022) 698 final], of 07.12.2022 - Letter of commitment from the Council to the Parliament of 19 February 2024.
- The Proposal for a Decision of the European Parliament and of the Council amending Directive 2013/34/EU as regards the **time limits for the adoption of sustainability reporting standards** for certain sectors and for certain third-country undertakings [COM(2022) 596], of 17.10.2023 - Letter of commitment from the Council to the Parliament of 14 February 2024.

Judicial developments

From a judicial point of view, the following developments are worth mentioning:

1. Judgment of the CJEU of 25 January 2024, *Joined Cases C-810/21 to C-813/21, Caixabank (Prescription de remboursement des frais hypothécaires)*.

Judgment of the CJEU delivered in the context of a referral for a preliminary ruling by the Provincial Court of Barcelona. The referral for a preliminary ruling was made in the context of various proceedings between different individuals and banks (Caixabank, S.A.; BBVA, S.A.; Banco Santander S.A.; and Banco Sabadell S.A.) regarding the consequences arising from the annulment of an unfair term in mortgage loan contracts concluded between the aforementioned banks and various individuals, whereby the borrowers were obliged to pay all the costs arising from the formalisation of the contracts.

The CJEU responded to the questions referred for a preliminary ruling by stating that Directive 93/13/EEC on unfair terms in consumer contracts must be interpreted as precluding a judicial interpretation of national law: (i) under which, following the annulment of an unfair term such as that at issue in the present case, an action for restitution relating to the costs paid under that term is subject to a limitation period of 10 years from the date on which that term ceases to have effect, regardless of whether the consumer was aware of the unfairness of that term; and (ii) which provides that, in order to determine when the limitation period for such an action for restitution starts to run, the existence of well established national case-law on the invalidity of similar terms may be regarded as evidence that the clause relating to “the consumer’s knowledge of the unfairness of the term and its consequences” is satisfied.

2. Judgment of the General Court of 21 February 2024, *Joined Cases T-29/14 and T-31/14, Telefónica v Commission and Banco Santander v Commission*.

Judgment of the General Court (“GC”) delivered in the context of an action for annulment brought by Telefónica Gestión Integral de Edificios y Servicios, S. L. and Banco Santander against a Decision of the European Commission in which the Commission declared the “Spanish tax lease system” (“SEAF”, a tax scheme applicable to certain agreements for the acquisition of ships built by Spanish shipyards) incompatible with the internal market except in certain cases.

The GC held that: (i) due to the partial annulment of the contested Decision in the **Judgment of the CJEU of 2 February 2023, *Spain and Others v Commission, Joined Cases C-649/20 P, C-658/20 P and C-662/20 P***, the subject-matter of the dispute had partially disappeared; (ii) the partial annulment of the Decision by the CJEU provided the applicants with the result they sought to achieve with some of the grounds of their action and therefore, the GC did not have to rule on it; and (iii) in principle, the GC could only decide to annul the contested Decision to a greater extent than that previously decided by the CJEU if it concerns parts of the contested Decision which had not been annulled by the CJEU.

Regarding the remaining grounds of appeal, the GC held that: (i) the ground of appeal alleging errors of law by the Commission in its analysis of the tax measures forming part of the SEAF was manifestly inadmissible as it was based on an erroneous premiss which had already been refuted by the CJEU; (ii) the appellants’ argument alleging an error by the Commission in finding that the SEAF early repayment scheme conferred an advantage on its beneficiaries was manifestly unfounded; and (iii) the Commission did not exceed its powers by ordering Spain to recover the aid from its beneficiaries without the latter being able to transfer the burden of that recovery by virtue of indemnification clauses concluded between private individuals (and that argument was therefore dismissed as unfounded).

3. Judgment of the CJEU of 1 February 2024, *Case C-251/22 P, Scania and Others v Commission*

Judgment of the CJEU delivered in the context of an appeal brought by Scania AB, Scania CV AB and Scania Deutschland GmbH against the **Judgment of the GC of 2 February 2022, *Case T-799/17, Scania and Others v Commission***, in which the GC dismissed the appellants’ action for the annulment of a Decision in which the Commission found that the appellants had infringed Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (“EEA”). The CJEU dismissed the appeal, ordered the appellants to pay the costs and held that: (i) the involvement of the same Commission services in the adoption of both the transactional Decision and the contested Decision did not pose a problem in terms of compliance with the so-called “tabula rasa” principle; (ii) the GC did not err in law in finding, following the analysis of the evidence, that the Commission was entitled to conclude that, through the exchanges of information at the German level, Scania DE obtained information with a scope going beyond the German



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Judicial developments

market; (iii) in order to find a single and continuous infringement, it is sufficient for the Commission to show that the various collusive contacts form part of a “joint plan”, and it is not necessary for each of those acts, taken in isolation, to be capable of being characterised as a separate infringement of Article 101(1) TFEU; and (iv) the cartel constituted a single and continuous EEA-wide infringement which lasted until 18 January 2011, meaning that the Commission’s power to impose a fine was not time-barred.

4. Judgment of the CJEU of 22 February 2024, **Joined Cases C-701/21 P and C-739/21 P, Mytilinaios v DEI and Commission and Commission v DEI.**

The CJEU annulled the **Judgment of the GC of 22 September 2021, *Joined Cases T-639/14 RENV, T-352/15 and T-740/17, DEI v Commission***, and referred the cases back to the GC for it to rule on the parties’ arguments and submissions on which the CJEU had not ruled.

The CJEU held that the GC erred in law in its Judgment by holding that since the arbitral tribunal at issue in that case formed an integral part of the Greek judicial system, it could be considered to exercise a power of public authority and, consequently, the tariff established by its arbitral award could constitute a Greek State measure which had not been communicated to the Commission. Furthermore, the CJEU held that the arbitral tribunal of the regulatory authority could not be considered to be equivalent to an ordinary court and its award could not be considered to be equivalent to a State measure without first examining whether that arbitral tribunal had mandatory jurisdiction independent of the will of the parties. Finally, the CJEU held that the Commission was correct in finding that the only State measure that could constitute State aid was the decision of DEI (a public company and the main Greek electricity supplier) to conclude the arbitration agreement with Mytilinaios (DEI’s largest customer) since DEI is controlled by the Greek State.

5. Judgments of the CJEU of 16 January 2024, **Case C-33/22, *Österreichische Datenschutzbehörde.***

Judgment of the Grand Chamber of the CJEU in a preliminary ruling in the main proceedings between the Austrian National Data Protection Authority and an individual.

The CJEU responded to the questions referred for a preliminary ruling by stating that: (i) Article 16(2) TFEU (on the duty of the European Parliament

and the Council to adopt rules on the protection of personal data) and the exception to the application of the **General Data Protection Regulation (“GDPR”)** where the processing of personal data takes place in the exercise of “an activity which falls outside the scope of EU law”, do not allow an activity carried out by a committee of enquiry of the parliament of a Member State in the exercise of its power of scrutiny over the executive to be considered “an activity which does not fall within the scope of EU law” and, therefore, not subject to the General Data Protection Regulation; (ii) the aforementioned exception (provided for in the General Data Protection Regulation) does not allow activities such as those mentioned above and aimed at investigating the activities of a police State-protection authority to be considered “activities concerning national security which fall outside the scope of Union law”; and (iii) the provisions of the General Data Protection Regulation concerning the competence of national supervisory authorities and the right to complain to a supervisory authority directly confer on the data supervisory authorities of the Member States the competence to hear complaints about the processing of personal data by committees of enquiry set up by the Parliament of a Member State when monitoring the activity of the executive, even if that Member State has not conferred on that authority the competence to monitor the application of the General Data Protection Regulation by the said parliamentary committee in the exercise of its activities.

FURTHER INFORMATION OF INTEREST

- [↗](#) Full list of judgments issued by the Court of Justice of the European Union - January 2024.
- [↗](#) Judicial calendar of judgments of the Court of Justice of the European Union - February 2024.