

A Comparative Study of the EU and the US Approaches in Screening Foreign Direct Investment on Security Grounds

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Abstract

There are an increasing number of countries taking recourse to the FDI screening mechanism to protect their national interests and security. The 2016 acquisition of German industrial robot maker Kuka AG by China's Midea Group Co. led to heated debate over security and the transfer of cutting-edge technologies. In 2017, U.S. President Donald Trump blocked a Chinese-backed investor from buying Lattice Semiconductor Corporation on national security grounds. These deals are believed to be behind regulatory changes in both the EU and the US. This paper examines trends in the EU and the US to frame FDI as a potential security threat. Taking Regulation (EU) 2019/452 for screening FDI and US Foreign Investment Risk Review Modernization Act (FIRRMA) as the regulatory background, this paper aims to juxtapose American and European approaches to investment security to clarify how the EU and US seek to tackle the security and/or public order implications of foreign investment. The challenge for both is to stay true to their principles of openness while adopting efficient measures addressing security concerns in order to prevent those principles from turning into a strategic vulnerability.

Key Words: FDI screening, national security, public order, Foreign Investment Risk Review Modernization Act (FIRRMA), Regulation (EU) 2019/452