

Call for Papers

2021 CELIS Forum on Investment Security

1-3 December 2021

The 2021 CELIS Forum on Investment Security will be held in Warsaw from Wednesday 1 December until Friday 3 December 2021.

The 2021 CELIS Forum will address:

**“The Emerging Law of Investment Control in Europe:
Screening, Sanctions and Subsidies”.**

“...Overhauling existing, introducing new investment control regimes...”

2020 was a watershed moment in the history of European investment control. The entry into full effect of Regulation 2019/452 not only elevated investment screening to a top priority in the EU’s common commercial policy, but it also set in motion a process of reform at the national level. Some Member States overhauled their existing, in part antiquated, laws on investment screening. Others introduced new investment control legislation. On the eve of its first anniversary, what are the early lessons of Regulation 2019/452 and the new EU investment screening framework it established?

“...From the New Industrial Strategy for Europe to Strategic Autonomy...”

Meanwhile, the new self-proclaimed “geopolitical” European Commission of Ursula von der Leyen came to office. It launched the ambitious twin policy agenda of the green and digital transitions, coming together in the “New Industrial Strategy for Europe”. Rather than throwing this new policy agenda off course, the Covid-19 pandemic led to many of the policy initiatives being fast-tracked. At the same time, the pandemic highlighted the role of public health as a paramount societal interest and critical health infrastructures, critical medical supplies and critical health technology as essential strategic interests. “Strategic autonomy” became the catchphrase that encapsulated Europe’s desire to remain resilient against threats to European security and public order, whether man-made or of natural origin. Can we detect an expanded “soft security” concept as a “new grand narrative” to link climate change and sustainability with public health and perhaps other matters of *ordre*



CELIS



public, such as public morality, public order and public security? Is the Covid-19 trauma giving rise to a new doctrine of “*Europe qui protège*”?

“...Foreign take-over of EU companies financed with third-country subsidies...”

In a parallel development, in July 2020, the Commission presented the White Paper on Foreign Subsidies, which outlined a comprehensive approach to ensuring that the EU would no longer be on the receiving end of alleged unfair practices in the area of trade and investment. The White Paper envisioned a policy blueprint addressing distortions of competition caused by foreign subsidies facilitating the acquisition of EU companies. The White Paper seeks to ensure that foreign subsidies do not confer an unfair benefit on their recipients when acquiring (stakes in) EU companies, either directly by linking a subsidy to a given acquisition or indirectly by de facto increasing the financial strength of the acquirer. Under this initiative, the Commission would review acquisitions of EU companies by third-country companies benefitting from financial support of a non-EU government, above a given threshold. If the acquisition is facilitated by the foreign subsidy and distorts the EU Internal Market, the Commission could either accept commitments by the notifying party that effectively remedy the distortion or, as a last resort, prohibit the acquisition. Are we moving towards using investment control as a means to address global economic distortions and can this be linked to the concepts of resilience, strategic autonomy and economic security?

“...Economic sanctions in geoeconomic conflicts...”

Throughout the past year, the use and importance of EU restrictive measures (sanctions) as a foreign policy tool continued to grow. With geopolitical tensions rising and unresolved geoeconomic conflicts growing ever more infected, particularly as between the United States and China, economic sanctions retained their central role in foreign and security policy. Europe too came under the threat of sanctions by its longstanding and closest partner, the United States, with attention focusing on the EU’s relationships with Iran and Russia. The effect, including the chilling effect, on foreign investments of the ever more widespread use of economic sanctions added yet another dimension to the increasingly complex investment environment. Is the regulatory and legal asymmetry between various forms of investment, payment and capital mobility restrictions necessary and desirable? What parallels and lessons can be drawn from sanctions caselaw in the area of investment screening?

* * *

These broad strands of development raise the prospect of re-cast notion of the law of investment control, spanning not only general and sector-specific FDI screening in a strict sense on grounds of security or public order, but also “subsidies-screening” as proposed in the Commission White Paper on grounds of equality of competitive



opportunities in international economic relations and, furthermore, investment control by way of economic sanctions. Can the outlines of such a composite conception of investment control regulation be defined?

To address the main theme of the CELIS Warsaw Forum, three sub-themes will be further explored:

- **New European Security: Health Security, Climate Security, Digital Security.** The concept of “security” lies at the heart of investment screening. The Covid-19 pandemic, the European Green Deal, and the EU’s digital strategy parallel notions that have been analysed in the area of security studies. At its core, security denotes the ability to prevent, withstand, and recover from (i.e. resilience against) harmful potential behaviour of others. As such, security goes beyond the traditional notion of military security to other areas of societal vulnerability and threats to the orderly functioning of a state, including economic security, food security, cybersecurity, health security, climate security or environmental security, to name a few. Europe’s current core priorities should focus attention on the particularities applicable to the security dimension of those priorities.
- **Promoting Investments and Strategic Autonomy: Essential Resources and Critical Capabilities.** The developments of 2020, notably the Covid-19 pandemic, has highlighted Europe’s potential and actual supply-side vulnerabilities and the importance of supply-chain resilience and access to critical resources and capabilities, as exemplified by the early experiences of personal protective equipment supply disruptions and the problems associated with vaccine delivery. While reshoring of supply chains may in some cases be warranted for reasons of political risk management and strategic operational resilience, taking such factors into consideration may come at an economic cost. This raises the question of how to facilitate strategic investments and whether some offsetting benefits may be required in that regard.
- **Defence Against Investments Made in Pursuit of Goeconomic Statecraft and Organized Crime.** Viewed holistically, the rules restricting third-country investments into the EU and their enforcement are highly uncoordinated and incoherent, both at the EU and national levels. This leaves the EU and its Member States ineffective and vulnerable to regulatory arbitrage. Assuming that this state of affairs is not intentional, how can loopholes and inconsistencies in EU investment control regulation be tackled? How can investment control be made more efficient, transparent, swift and predictable, so that unproblematic investments are not negatively impacted, while effectively addressing problematic investments? How can enforcement of investment control be made more effective and consistent?



The Organizing Committee welcomes original contributions in the form of submission of proposals for papers addressing the theme and sub-themes above. In addition, submissions are invited on any of the following topics:

- Multiplying instruments for investment control: screening, sanctions and subsidies
- Sustainability screening: climate change and investment control
- Digital sovereignty and investment screening: data, media and freedom of speech
- Health security: Covid-19 implications for screening mechanisms in the Member States
- Threat analysis and the concept of security in practice, including the nature of threats to security and public order, subjects and objects of threat and approaches to threat analysis
- Administrative process in connection with investment screening, anti-subsidies enforcement and sanctions, including the application and limitations of fundamental principles of administrative process and the role of mitigation
- Investment screening in the context of state-owned enterprises (SOEs)
- Interaction between investment screening and financial supervision
- Investment screening and dispute resolution, including the nature and availability of recourse against screening decisions, and the scope and standard of review
- Investment screening, investor-state dispute settlement (ISDS), and security exceptions
- Conformity of screening mechanism with international law / EU law / OECD codes.
- Are Member State screening mechanism converging, because of Regulation 2019/452 or for any other reasons?

Submission Procedure and Instructions

Paper proposals, including abstracts of no more than 500 words and the speaker's contact details and bio-note or CV (including current main affiliation, relevant experience, and pertinent publications, as well as date of affiliation with the CELIS Institute, if applicable), must be submitted by

Monday, 31 May 2021 (midnight CEST)

via the dedicated web-form, available at www.celis.institute.

Every proposal will be reviewed on a double-blind and confidential basis. In evaluating proposals, please note that priority will be given to unpublished papers and works in progress. The Organizing Committee anticipates announcing the results of this call for paper proposals by **Tuesday, 15 June 2021**.



Speakers whose paper proposals are selected should be prepared to submit draft papers (no more than 5,000, including footnotes) by **Friday, 1 October 2021**.

Conference papers will be made available to conference participants prior to the conference. The conference proceedings and the papers presented at the conference, will be summarized in the conference report, the CELIS Investment Security Report, to be published shortly after the conference. In addition, the organizers consider publishing papers presented at the conference either as a special issue in a leading journal or as an edited volume published by a leading academic publisher. In the selection of proposals, preference will be given to those interested in publication. Willingness to submit a paper should be indicated in the response to this Call for Papers. Speakers whose paper proposals are selected should be prepared to submit draft papers (between 5,000 and 10,000 words, including footnotes) by **Monday, 31 January 2022**. All proposals and finalized papers must be written in English.

Conference Fees

Speakers whose paper proposals are selected are expected to register for the conference. The applicable registration fee is EUR 120 (CELIS Fellows receive a waiver).

Hybrid Format

The conference will be held in a hybrid format, with speakers and some participants joining a live on-site meeting and other participants and some speakers joining virtually. The number of on-site conference participants will be restricted in accordance with applicable health regulations in force at the time of the conference. Participants who wish to keep an option to join on-site should indicate this on the registration form. Option requests will be queued on a first-come, first-served basis. The conference organizers will be in touch regularly regarding the availability and relevant number of live seats.

Contact

Please submit enquiries to events@celis.institute.

The Organizing Committee

Konrad Czech

Steffen Hindelang

Marek Jaśkowski

Szymon Pawłowski

Jens Hillebrand Pohl



About the CELIS Institute

The CELIS Institute is an independent non-profit, non-partisan research enterprise. It is dedicated to promoting better regulation of foreign investments in the context of security, public order, and competitiveness. We produce expert analysis and foster a continuous trusting dialogue between policymakers, the investment community, and academics. The CELIS Institute is the leading forum for studying and debating investment screening policy.

The CELIS Institute's activities focus on policy-oriented analysis through its publications and events organised around the flagship CELIS Forum on Investment Security and conference publication CELIS Investment Security Report. The CELIS Knowledge and Research Hub hosted on the CELIS Institute website www.celis.institute is the most comprehensive and up to date online tool available for foreign investment screening. Through its network of Country Reporters, the Institute provides full coverage of EU and global screening regimes, including legislation, guidance, court judgments, summaries, academic articles, policy briefs, and is updated up to several times a day. The Hub provides news updates in this rapidly developing area, a target search tool, an FDI screening map, and other resources including podcasts.