

## AGENDA AT A GLANCE

All speakers confirmed, except otherwise indicated as of 12 May 2022.

### Tuesday, 31 May 2022

Clarion Hotel Gillet Uppsala • top floor

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#### EARLY ARRIVALS

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19:00 – 21:00 *Informal drinks reception*

### Wednesday, 1 June 2022

University Main Building (Universitetshuset) • Hall IX

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#### FORUM OPENING & EXPERT SESSIONS

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08:30 – 09:00 CEST **REGISTRATION AND OPENING RECEPTION**

09:00 – 09:30 CEST **CONVENERS' OPENING REMARKS**

09:30 – 10:30 CEST **OPENING PLENARY DEBATE ON THE EMERGING INVESTMENT CONTROL IN EUROPE: SCREENING, SANCTIONS AND SUBSIDIES**

chaired by Joanna Warchoł (European Parliament) and featuring Carl Bildt (ECFR)(tbc), Alexander Stubb (EUI)(tbc), John E. Smith (Morrison & Foerster), Andrzej Szumański (Jagiellonian University in Kraków), and Jaap van Etten (Datenna).

10:30 – 11:00 CEST *Networking Break*

11:00 – 12:15 CEST **FOREIGN INVESTMENT SCREENING: THE LINKAGE BETWEEN RESPONSIBLE INVESTING AND DEMOCRATIC RESILIENCE**

chaired by Kim Holmes (CIPE) and featuring Laura Black (CFIUS), Sofia Bournou (Business Europe), Jonas Parello-Plesner (Alliance of Democracies), and Ruslan Stefanov (Center for the Study of Democracy)

12:15 – 13:15 CEST **LUNCH AND BOOK LAUNCH: The International Law of Economic Warfare (Springer)** by Teoman M. Hagemeyer-Witzleb

13:15 – 14:30 CEST **PARALLEL EXPERT SESSIONS**

**PARALLEL SESSION A: INVESTMENT SCREENING AND THE ROLE OF DIFFERENT MEASURES TO MITIGATE NATIONAL SECURITY CONCERNS** chaired by Leonard von Rummel (BLOMSTEIN) and featuring Damien Levie (European Commission), Clémence Largé (Ministère de l'Économie) and Angelika Milger (BMWK)

**PARALLEL SESSION B: TOWARD REGULATORY CONVERGENCE WITH EU INVESTMENT SCREENING: THE CASE OF THE WESTERN BALKANS** chaired by Eric Hontz (CIPE)

and featuring Ivana Gardasevic (RCC), Dario Jovanovic (CCI), Zoran Nechev (Institute for Democracy), and Dragan Tilev (Government of North Macedonia) (NB: different location: Fakultetsrummet ▪ Trädgårdsgatan 1)

14:45 – 15:30 CEST **HIDDEN DEFENCE INVESTORS FROM CHINA: THE FUTURE OF SCREENING MECHANISMS IN EUROPE** featuring Jaap van Etten, Julia Kern, and Gareth Heywood (Datenna)

15:30 – 16:00 CEST *Networking and Refreshment Break*

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#### FORUM OPENING KEYNOTE EVENT

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16:00 – 16:15 CEST **INTRODUCTION TO THE KEYNOTE EVENT**  
*by Tobias Pierlings (CIBA)*

16:15 – 16:45 CEST **OPENING KEYNOTE ADDRESS**  
Speaker: *Denis Redonnet (European Commission)*

16:45 – 18:15 CEST **HIGH-LEVEL ROUNDTABLE ON INVESTMENTS AND NATIONAL SECURITY STRATEGY**  
Panelists: *Laura Black (CFIUS),  
Daniel Fiott (EUISS)  
Maria Chiara Malaguti (UNIDROIT)  
Peter Muchlinski (SOAS)  
Tobias Pierlings (CIBA)  
Denis Redonnet (European Commission)*  
Moderator: *Jonathan Hackenbroich (ECFR)*

18:15 – 19:00 CEST *Drinks Reception, courtesy of Institute for Democracy "Societas Civilis", Skopje ▪ Uppsala Castle*

19:00 CEST *CFIS Speakers' Dinner (by special invitation) ▪ Uppsala Castle*

## Thursday, 2 June 2022

Gamla Torget ▪ Brusewitz Hall

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#### 09:00 – 10:30 CEST **SESSION I: THE RISE OF SOVEREIGN-DRIVEN INVESTMENT**

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Themes: (1) the changing course of foreign direct investments; (2) sovereign wealth funds; (3) state-owned enterprises; and (4) publicly subsidized private foreign acquisitions and investments

Chair: *Steffen Hindelang (Uppsala University)*

#### **The Geoeconomics of Foreign Direct Investment Flows**

- Changing patterns of FDI flows and changing attitudes towards foreign investment
- Special concerns generated by sovereign-driven investment
- A new role for state capitalism and the new dimension of investment law



Speakers: *Joachim Pohl (OECD)*

### **The Changing Landscape of Sovereign Wealth Funds: Implications for Investment Screening**

- Defining sovereign wealth funds (SWFs), their aims, characteristics, and renewed role in the field of investment
- Transparency about structure, governance and investment strategies
- Potential national security risks arising from SWFs and the development of national and international responses

Speaker: *Adam Dixon (Maastricht University)*

### **State-Owned Enterprises and Investment Control**

- Defining State-Owned Enterprises (SOEs) and their increasing role in international investments
- Geoeconomic challenges posed by SOEs and possible responses
- SOE investments: sovereign-subsidized vs. adversarial investments

Speaker: *Alexandr Svetlicinii (University of Macau)*

### **Fair Play? The Politics of Evaluating Foreign Subsidies in the European Union**

- Direct and indirect foreign acquisition subsidies
- Subsidised participation in foreign public procurement
- Means of subsidization: transfer of funds or liabilities; in-kind subsidies; tax incentives; regulatory incentives

Speakers: *Sophie Meunier (Princeton University) and Robert Basedow (LSE)*

### **The Quest for Autonomy and the Rise of Corporate Geoeconomics**

- Re-emergence of geoeconomics and the challenge to economic interdependence
- “Balancing dependence”: government’s strategies in the pursuit of autonomy
- How companies are reacting to this changing landscape

Speaker: *Henrique Choer Moraes (Brazilian Embassy in New Zealand)*

10:30 – 11:00 CEST *Networking and Refreshment Break*

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## **11:00 – 12:30 CEST SESSION II: NATIONAL SECURITY AS A LIMIT TO SOVEREIGN-DRIVEN INVESTMENT**

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Themes: (1) sovereignty, strategic autonomy, and national security; (2) delimiting the concept of national security; (3) the multidimensional scope of national security; (4) protection of critical resources and strategic assets; and (5) creating assessment methodologies for national security threats

Chairs: *Caitríona Heint (Azure Forum) and J. Hillebrand Pohl (Maastricht University)*

### **Delimiting the Concept of National Security**

- National essential security interests
- The elusive and variable notion of national security
- The search for a normative yardstick

Speaker: *Alejandra Torres Camprubí (Foley Hoag LLP)*



### **Cybersecurity Investments in Critical Sectors**

- How operators in critical sectors invest their cybersecurity budgets
- How has the NIS Directive influenced this investment?
- What is the cost of cybersecurity incidents?

Speaker: *Athanasios Drougkas (ENISA)*

### **Protection of Critical Resources and Strategic Assets**

- Critical infrastructures and technologies
- Critical inputs, supplies, and resources
- Data and media

Speaker: *Alessandro Lazari (F24 AG)*

### **Creating Assessment Methodologies for National Security Threats**

- Goals, aims, and possible models of threat assessment
- Key principles: criticality, plausibility, competitiveness
- Risk assessment of investors: tracing the origin, attribution to States, changes in the origin

Speaker: *John Lash (Darkhorse Global)*

### **Inward FDI Regulation in the UK: Closing the “Open Door”?**

- Historical origins and development of current UK FDI policy
- The regulatory framework of the National Security and Investment Act 2021
- Wider regulatory and policy implications of the 2021 Act

Speaker: *Peter Muchlinski (SOAS)*

12:30 – 14:00 CEST *Luncheon*

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## 14:00 – 15:30 CEST **SESSION III: ECONOMIC AND OTHER PUBLIC ORDER JUSTIFICATIONS FOR RESTRICTING SOVEREIGN-DRIVEN INVESTMENT**

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Themes: (1) geoeconomic competition and its policy implications on sovereign-driven investment; (2) balance of payments-related restrictions on the freedom of investment; (3) investment subsidies and distortion of competition; (4) enforcement of investor obligations; and (5) economic security

Chair: *Sarah Bauerle Danzman (Indiana University) and J. Hillebrand Pohl (Maastricht University)*

### **Protection or Protectionism? Why China’s “socialist” market economy justifies EU investment screening measures**

- Profit maximization and sovereign-driven investment
- State capitalism, neo-mercantilism and the state as an economic actor
- Public-private enterprise, competition, and commingling of public and private interests

Speaker: *Naoise McDonagh (University of Adelaide)*

### **Balance of Payments-Related Restrictions on the Freedom of Investment**

- Exchange controls and exchange-reserve management
- Inbound capital controls and hot-money flows
- Capital-account liberalization post-Washington Consensus



Speaker: *Claus Zimmermann (Noerr)*

**The EU Regulation on Foreign Subsidies: What, Why, and How?**

- Subsidies as barriers to protect domestic industries
- Subsidies to gain unfair advantage in international trade
- The Draft EU Regulation on Foreign Subsidies in an overview

Speaker: *Lena Hornkohl (Max Planck Institute Luxembourg)*

**Investor Obligations Through the Prism of the EU Foreign Investment Screening Framework**

- Enforcement of civil law obligations
- Criminal law enforcement: anti-money laundering/counter-terrorist financing, anti-corruption and other economic crime, tax evasion
- Enforcement of insolvency laws

Speaker: *Yulia Levashova (Nyenrode Business University)*

**The Concept of Economic Security and its Implications for Foreign Investment Control**

- Geoeconomics, economic policy autonomy, and safeguarding strategic economic sustainability and resilience
- Countering abusive and illicit trade, including produce of forced labour, trade in endangered species, counterfeits, blood minerals, stolen artefacts, narcotics, and stolen personal data
- Countering economic espionage and unauthorised technology transfer, and the avoidance of vulnerabilities and dependencies

Speakers: *Francesca Ghiretti (Mercator Institute for China Studies)*

15:30 – 16:00 CEST *Networking and Refreshment Break*

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16:00 – 17:30 CEST **SESSION IV: FOREIGN INVESTMENT CONTROL AND INTERNATIONAL LAW**

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Themes: (1) the international legal framework for foreign investment control; (2) economic sanctions as foreign investment control; (3) regulating sovereign-driven investments in international trade and investment agreements; and (4) common principles for an integrated system for foreign investment control

Chairs: *Dominik Eisenhut (Airbus) and Joanna Warchol (European Parliament)*

**The International Legal Framework for Foreign Investment Control**

- Absence of comprehensive regulation or any institutional structure
- The WTO and Article XXI GATT as the model for national security provisions
- Interpreting Non-Precluded Measures (NPM) clauses in international investment agreements

Speaker: *Pascale Accaoui Lorfing (CREDIMI)*

**Economic Sanctions as an Instrument of Foreign Investment Control**

- The rising importance and types of investment-related economic sanctions



- The relationship between economic sanctions and investment screening mechanisms
  - The limits of applying economic sanctions for investment control
- Speaker: *Tamás Szabados (Eötvös Loránd University)*

#### **Regulating Sovereign-Driven Investments in International Trade and Investment Agreements**

- Market access measures, limits on equity, and maintenance of state monopolies
  - Compulsory registration and screening systems on national security grounds
  - Checks and balances
- Speaker: *Georgios Dimitropoulos (Hamad Bin Khalifa University)*

#### **Screening Systems to Evaluate FDI: Searching for Common Principles or (Just) a Toolbox?**

- Transparency, predictability, accountability and due process
  - Non-discrimination: national and most-favoured-nations treatment
  - Proportionality, legitimate expectations, and other relevant principles
- Speaker: *Carlos Esplugues Mota (University of Valencia)*

17:30 – 19:00 CEST *Drinks Reception, courtesy of BLOMSTEIN • Orangery in the Linné / Linne / Lineaus Garden*

19:00 CEST *CFIS Reception & Banquet • Orangery in the Linné / Linne / Lineaus Garden*

## **Friday, 3 June 2022**

University Main Building (Universitetshuset) • Hall IV

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### **09:00 – 10:30 CEST SESSION V: SCOPE OF FOREIGN INVESTMENT CONTROLS**

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Themes: (1) the definition and scope of investment: direct vs. foreign, IMF Balance of Payments Manual, OECD Benchmark Definitions, international investment agreement (IIA) definitions, EU free movement of capital; (2) definition and scope of investor: domestic vs. foreign, IIA definitions; (3) investment screening thresholds: the case for or against, types, calibration; and (4) notification and disclosure requirements: ex ante vs. ex post, due diligence, ongoing notifications

Chairs: *Naboth van den Broek (Akin Gump) and Carolina Dackö (Mannheimer Swartling)*

#### **Foreign Direct Investment and Security: What is Actually the Problem?**



- How can FDI impact state security?
- Framework for analyzing state security interests in FDI
- Complexity and trade-offs in the FDI – security relationship

Speaker: *Wolf Zwartkuis (Leiden University)*

#### **Raising Security Considerations Before International Courts and Tribunals**

- How do international courts and tribunals approach security concerns?
- Does the state enjoy discretion in raising security exceptions?
- To what degree does the approach converge or diverge across international legal regimes?

Speaker: *Hannes Lenk (Aarhus University)*

#### **National Security and Essential Security Interests in CJEU Jurisprudence**

- What does the national security clause in EU law mean?
- What is its content, what role does it play, what is the extent of MS discretion when applying this clause?
- What are conditions for its application?

Speaker: *Marek Jaśkowski (UKSW)*

#### **Investments Subject to Screening**

- FDI vs. portfolio investment, contractual rights as investments
- The investment concept in international agreements and domestic law; new approaches to defining investments
- Territorial nexus, corporate restructuring, and jurisdictional overlap

Speaker: *Yarik Kryvoi (Investment Treaty Forum)*

#### **Nature of the Investor: Foreignness, Transparency and Foreign State Control**

- Domestic vs. foreign investors; the “foreignness” of investors
- Transparency and state control
- Chinese investments and “Yellow Peril” discourse

Speaker: *Jochem de Kok (Allen & Overy and University of Amsterdam)*

10:30 – 11:00 CEST *Networking and Refreshment Break*

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### 11:00 – 12:30 CEST **SESSION VI: ADMINISTRATIVE PROCEDURE FOR INVESTMENT SCREENING**

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Themes: (1) screening authorities: governance, powers, staff, procedures, and internal review; (2) sector-specific procedures: defence, dual use, financial, media, transport, energy, and telecommunications sectors; (3) national coordination: general, sector-specific, inter-authority, sanctions; and (4) international coordination: multilateral cooperation, creating workable multilevel coordination

Chairs: *Damien Levie (European Commission) and  
Bärbel Sachs (Noerr)*

#### **Screening Authorities**



- Governments as decision-makers and the use of separate agencies, with considerations about independence and (political) accountability
  - Powers generally available to screening authorities and considerations about margin of discretion and (lack of) transparency in FDI/national security matters
  - Process: confidentiality and lack of publicity; parallel reviews
- Speaker: *Jacques Bourgeois and Alessandra Moroni (Sidley)*

#### **Sector-Specific Screening Procedures**

- Defence, security and dual use sectors
  - Critical infrastructure: telecommunications and transport sectors
  - Other sectors: energy and water, financial services, and media
- Speaker: *Christoph Arhold and Henning Berger (White & Case)*

#### **National Coordination of Domestic Screening Procedures**

- Coordination of cross-sectoral and sector-specific procedures
  - Lead authorities and their coordination of national authorities in screening procedures
  - Coordination of investment-screening procedures with sanctions and other ad hoc investment control
- Speaker: *Sabrina Robert-Cuendet (Le Mans University)*

#### **International Coordination of National Screening Procedures**

- Multilateral coordination and cooperation in foreign investment control
  - The EU investment-screening coordination mechanisms
  - Creating workable multilevel coordination: states, authorities, procedures
- Speaker: *Fabien Gehl (European Commission)*

12:30 – 13:30 CEST *Luncheon*

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### 13:30 – 15:00 CEST **SESSION VII: TREATMENT OF FOREIGN INVESTORS AND TARGETED INVESTMENTS UNDERGOING SCREENING**

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Themes: (1) standards of treatment in national law: proportionality, legitimate expectations, non-discrimination, due process; (2) standards of treatment in international law: national treatment, most-favoured-nations treatment, fair and equitable treatment; and (3) mitigation arrangements: functions, structure, legal basis, procedure, disputes, monitoring

Chairs: *Gerd Morgenthaler (University of Siegen) and Prabhash Ranjan (Jindal Global University)*

#### **Economic perspectives when screening FDI**

- Role of economic FDI impact analysis
  - Need for further research on effects of ownership and infrastructure in economic FDI analysis
  - Closer look at the economic benefits of inward FDI in the host country
- Speaker: *Jonas Hallberg and Patrik Tingvall (National Board of Trade Sweden)*





### **Key changes in FDI screening in 2022: the case of the Netherlands**

- Existing sector-specific screening mechanisms
- New draft of a general investment screening act
- Exciting developments at the EU level

Speaker: *Pim Jansen (Erasmus University Rotterdam)*

### **Standards of Treatment in International Law**

- Non-discrimination standards
- Fair and equitable treatment
- Specific standards, including market access

Speaker: *Csaba Rusznak (Sovereign Arbitration Advisors)*

### **Mitigation Arrangements**

- Function, legal basis, and relation to investor rights
- Procedure and negotiation; monitoring of mitigation arrangements
- Adjudicating claims arising out of mitigation arrangements

Speaker: *Tatiana O. Sullivan (Skadden, Arps, Slate, Meagher & Flom LLP)*

15:00 – 15:30 CEST *Networking and Refreshment Break*

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## 15:30 – 17:00 CEST **SESSION VIII: REVIEW OF INVESTMENT SCREENING DECISIONS**

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Themes: (1) non-adjudicative national administrative remedies: internal review, negotiation, mediation, other means; (2) adjudicative remedies at the national level: justiciability and scope of review, standard of review; and (3) investor-state arbitration and other international legal remedies: arbitrability and scope of review, ECHR and other investor-state remedies, interstate remedies

Chairs: *Robyn Briese (Australian Government Solicitor) and Christoph Herrmann (University of Passau)*

### **Non-Adjudicatory National Administrative Remedies**

- Internal administrative review and complaints mechanisms
- Negotiation and administrative agreements
- Other non-adjudicative dispute resolution

Speaker: *James M. Brower (Morrison & Foerster)*

### **Determining the Role of Investment Screening in International Investment Law**

- Investment screening in the pre- and post-establishment phase of investment protection
- Investment protection standards for the screening procedure
- Treaty-based safeguards for the state

Speaker: *Kilian Wagner (University of Vienna)*

### **Investor-State Arbitration and Other International Legal Remedies**

- National security and arbitration: arbitrability, enforceability, and the consent to arbitration in matters of national security
- ICSID and non-ICSID jurisdictional prerequisites
- Non-precluded measures clauses and other devices of arbitral deference

Speaker: *Jens Hillebrand Pohl (Maastricht University)*



**Sovereign Investors as ICSID Claimants: a Historical Assessment**

- ICSID Convention drafting documents
- Jurisdiction *ratione personae*
- Case analysis and *jurisprudence constante*

Speaker: *Dini Sejko (Chinese University of Hong Kong)*

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**FORUM CLOSING KEYNOTE EVENT**

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17:00 – 17:30 CEST **CLOSING KEYNOTE ADDRESS**  
 Speaker: *Damien Levie (European Commission)*

19:00 CEST *Dinner (by invitation) ) ▪ Restaurant Granhof*

**Saturday, 4 June 2022**

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**Farewell**

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10:00 – 11:30 CEST *Farewell Brunch (optional)*

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