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**PROTECTION WITHOUT PROTECTIONISM? FOREIGN
INVESTMENT SCREENING IN EUROPE AND THE V4
COUNTRIES TODAY – A COMPARATIVE ANALYSIS**

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Protection without Protectionism? Foreign Investment Screening in Europe and the V4 Countries Today – A Comparative Analysis

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Protection without Protectionism? Foreign Investment Screening in Europe and the V4 Countries Today – A Comparative Analysis¹

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Abstract

European governments have shown growing interest in investment screening mechanisms in order to restrain access of non-EU investors to strategically sensitive industries. Most of this interest comes as recent high-profile takeovers by Chinese companies are increasingly perceived as detrimental for national security. While the practice of screening investments is not new, the strengthening of regulatory oversight in major European countries like the UK and Germany indicates a more challenging investment landscape for non-EU investors like Chinese companies. The EU also adopted a new framework to screen foreign investments, but it relies primarily on member state input and cannot veto actual acquisition plans on behalf of the community. While Slovakia has no dedicated investment screening mechanism, Czechia is in the legislative process of establishing one. Poland and Hungary, with generally similar screening processes, differ in their respective relations with China, spelling doubt over potential foreign and investment policy cooperation in the V4. This working paper provides an analysis of recent developments in investment screening regulations in Europe, with a special focus on the V4 countries.

JEL: F21, P33, P45, E61, O52

Keywords: FDI, investment screening, national security, V4

1. Introduction

This working paper provides a comparative analysis of foreign investment screening mechanisms in the V4 countries today. As the trade war between the United States and the People's Republic of China wages on, economic relations continue to be weaponized

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between East and West (Harding and Harding 2017), informing a global context in which discussions about trade and investment become bound up with discussions about security and protection. This trend is also clearly visible in something of a *protectionist turn* in Europe and beyond, with major Western countries worrying about the potential security implications of Chinese investments made in key industries and businesses. While not every V4 country currently has a national investment screening mechanism in place, certain recent changes indicate a growing awareness that exposure to third country investors may spell trouble for the respective security interests of the individual countries. Therefore, this paper will assess and compare the national mechanisms already in place in the V4 countries, focusing on differences and similarities, as well as analyzing their potential consequences and intended effects.

As the national level interest in legal investment screening tools cannot be detached from similar developments across the European Union, the paper will also briefly discuss the new European framework to screen foreign direct investments originating from third countries (EC Press Release 2019b), as well as changes in regulatory oversight in two major European countries, the UK and Germany. Therefore, the paper assumes that the V4 countries' motivation to establish investment screening mechanisms is not limited to domestic concerns. In fact, in the case of Hungary, for instance, some observers claim that the introduction of a national screening mechanism, in effect from 1 January 2019, took place in anticipation of an EU-level regime that may constrain member states' discretion to screen foreign investors on their own. While the exact consequences of the interplay between national and EU-level screening mechanisms are hard to assess, the fact that this particular economic activity will be regulated on both national and international levels necessitates some familiarity with the broader European context.

As for the paper's primary scope and methodology, the comparative analysis focuses on the actual legal mechanisms already in place across the V4 countries. Each of the mechanisms will be presented in details, drawing out the specifics of the screening procedure and its expected effects. In the absence of a legal tool, such as in the case of Slovakia, recent developments in investment practices will be discussed instead. Overall, the analysis relies primarily on the texts of the national legal mechanisms themselves,

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coupled with news analysis and media reports that will help reconstruct the region's contemporary investment landscape.

The paper is structured as follows. First, it begins with a brief conceptual discussion clarifying key concepts of the research like foreign direct investment and investment screening. The paper then continues with a presentation of recent policy developments in Europe, focusing on the EU-level investment screening framework as well as changes in German and British foreign investment regulations. The paper will then turn to its empirical focus, assessing and comparing the individual investment screening mechanism in the V4 countries. The paper concludes by summarizing the key findings of the research.

2. Conceptual overview

2.1. Foreign direct investment

The term 'foreign direct investment' carries mostly straightforward connotations, but differences in wording may nonetheless lead to variations in interpretations of what counts as a case of foreign direct investment (IMF 2004). Depending on various approaches, the actual measurement of foreign direct investment also poses inevitable methodological challenges. Conceptually, an authoritative definition is provided by the 2003 Foreign Direct Investment statistics, published jointly by the IMF and the OECD. According to this definition:

"The term describes a category of international investment made by a resident entity in one economy (direct investor) with the objective of establishing a lasting interest in an enterprise resident in an economy other than that of the investor (direct investment enterprise). "Lasting interest" implies the existence of a long-term relationship between the direct investor and the enterprise and a significant degree of influence by the direct investor on the management of the direct investment enterprise. Direct investment involves both the initial transaction between the two entities and all subsequent capital transactions between them and among affiliated enterprises, both incorporated and unincorporated" (IMF and OECD 2003, 152).

Importantly, notions of "lasting interest," "long-term relationship" and "significant degree of influence" all imply the existence of some degree of dependency and exposure between the investor and its investment. In other words, foreign direct investment

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inevitably results in transfer of control that benefits the foreign investor. Depending on the size of the shares acquired, the influence of the foreign investor over its investment can range from relatively insignificant to dominant or overwhelming. The investor's control over its investment is maintained and ensured over time through three key components. According to the 2016 World Investment Report of the UNCTAD, equity capital (1), or the actual purchase of stakes, is coupled with two additional control mechanisms: reinvested earnings (2) and intra-company loan and debt transactions (3) (UNCTAD 2016c, 2-3).

However, since all of the above is a fundamental attribute of *any* foreign direct investment, the recent EU-wide interest in investment screening tools must be understood as a reaction to a *certain category* of third country investors, as well as to the group of industries and businesses in which acquisitions take place. The dilemma of welcoming foreign direct investment traditionally boiled down to juxtaposing the expected benefits and advantages of a planned investment with the potential risks that the transfer of control would pose to the recipient country. While the underlying premise of this dilemma remains fundamentally unchanged today, the potential consequences of a bad decision may leave the recipient country severely exposed to foreign actors in key areas of national sovereignty. This explains why the question of who exactly controls what industry, and for what purpose, has only become more acute in recent years, driving the introduction of national and international protection mechanisms in the form of investment screening.

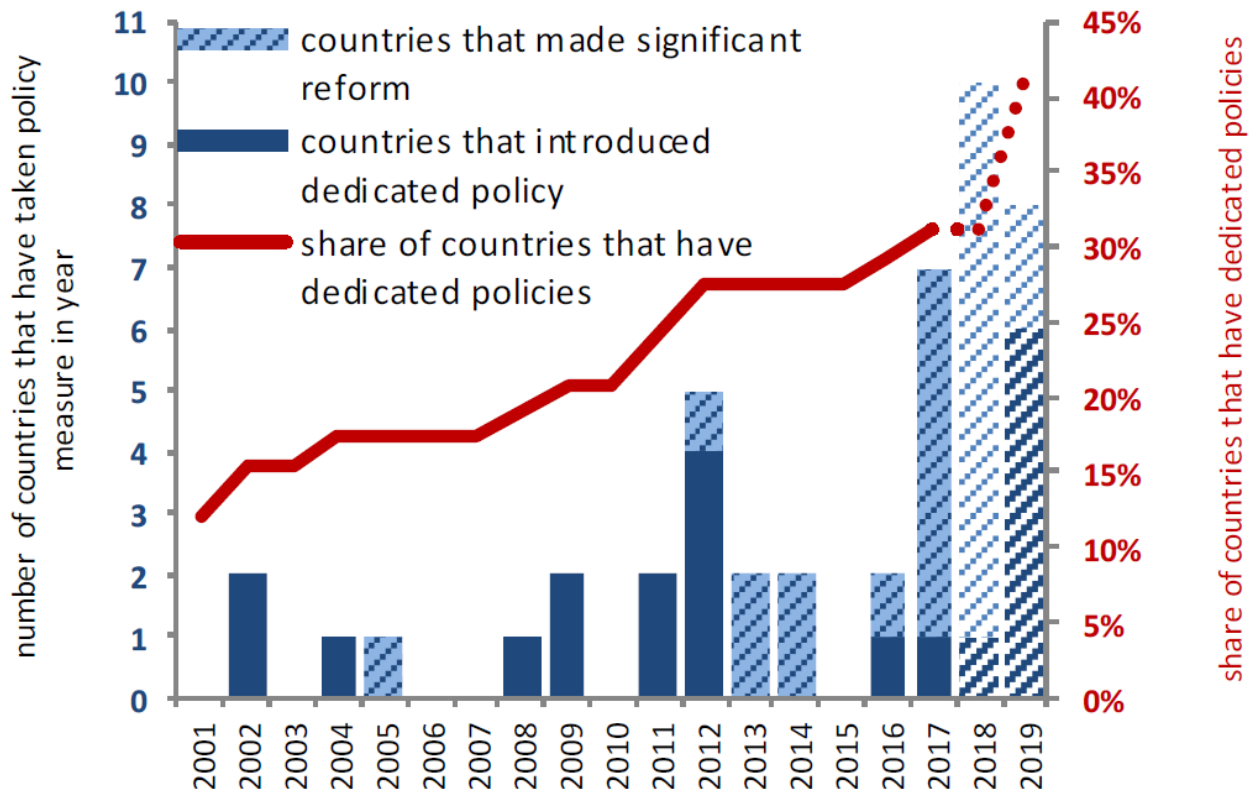
2.2. Investment screening

According to the 2016 World Investment Report issued by the UNCTAD, the number of “investment-related national security reviews” has been on the rise for the past decade (UNCTAD 2016a, 95). Despite becoming more and more widespread across the globe, the practice of screening foreign investments has no commonly accepted definition. However, most manuals and guidelines refer to any national regulatory review or screening process whose purpose is the evaluation of planned investments in light of their future effects on the recipient country's national security. The process itself

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vests the national government with the possibility of rejecting the investment on grounds stipulated by the relevant legal provisions.

Figure 1. OECD countries that implemented changes in investment oversight policies or introduced new ones, data for 2018 and 2019 projections, 2001-2019



Data source: (UNCTAD 2016b, 3)

Figure 1 indicates OECD data for 2018 and 2019 projections of countries that implemented changes in already existing investment restriction policies or introduced new ones. Importantly, a sharp increase is visible in 2017 and 2018 in the number of countries further strengthening investment screening policies, a trend that is expected to continue in 2019. The trajectory also indicates that the amount of countries with dedicated policies is approaching 50% of all OECD members. In addition, the figure shows that while investment restriction tools were not predominant in the 2000s, they have been steadily gaining popularity in the past few years.

Generally speaking, screening processes begin with the **notification** of the relevant national authority that a particular investment is planned, although in certain cases the

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procedure can be initiated at the discretion of the government itself. The second part of the process entails the actual **assessment** of the planned investment, to which the investors are legally expected to contribute with detailed information. Indeed, many national governments reserve the right to reopen a screening case if it comes to light that the investors failed to reveal all relevant information with regards to their planned investment. The process concludes with the **decision** of the national government to authorize or forbid the planned investment. To varying degrees, the investors are often legally allowed to appeal against the decision. In the case of Hungary, for instance, the investors do have this option, although their appeal can be made only on procedural grounds.

Substantively, all screening mechanisms refer to criteria of national security to judge the potential risks of a particular acquisition. According to most accounts, the invocation of national security interests inevitably fuses the screening process with a fair degree of discretion at the government's disposal. In fact, national security entails a long list of potential barriers, on the basis of which planned investments can be rejected. These include, among other things, references to "public safety, social order, plurality of the media, strategic national interests, foreign relations, disclosure of State secrets, territorial integrity, independence of the State, protection of rights and freedoms of citizens, continuity of public procurements or terrorism related concerns" (UNCTAD 2016a, 95). In order not to discourage foreign investors from national markets, governments need to employ reasonable entry restrictions, keeping in mind that such legal obstacles may render other destinations more appealing to investors. More specifically, while national security criteria give a wide margin of discretion and flexibility for the government, they often fail to deliver clarity and transparency to the process, inevitably raising the entry costs for foreign investors.

Even though investment screening mechanisms are becoming more popular, the global currents of investment liberalization remain predominant. According to the UNCTAD report, China and India, the two largest emerging economies in the region, were at the forefront of gradually opening their respective domestic markets for foreign investors (UNCTAD 2016a, 90). This means that despite growing concerns about investments originating from certain countries and the rise of protectionist trade

rhetoric embraced by US President Donald Trump, the 2018 World Investment Report issued by the UNCTAD claimed that the global commitment to open international trade and investment appears to be generally intact (UNCTAD 2018, 16).

3. The European investment screening framework and recent developments in German and British investment screening regimes

The V4 countries' motivation for national investment screening mechanisms cannot be meaningfully understood without an appreciation of the larger European context. Two particular points will be discussed here, both of which have far-reaching implications for the V4 countries. The first is the European framework for screening investments that was adopted in April 2019. Even though China is rarely ever singled out explicitly as the primary driver of investment screening in the EU, commentators agree that Chinese state-owned companies are one of the main reasons for the introduction of an EU-level investment regulation. The second topic concerns recent developments in German and British investment regulations.

3.1. The EU framework for screening foreign investments³

While the EU remains the primary destination of foreign direct investment, with FDI stocks owned by third country investors amounting to 6,3 billion euros in 2017 (EC Press Release 2019b), European concerns have been growing over a number of trends in third country investment practices that are detrimental to EU interests and make necessary some kind of protection to be put in place. The following factors are most often invoked to explain why the EU needs an investment screening framework.

First, while the EU market is generally open and accessible to third country investors, European investors face significant hurdles when entering the domestic markets of third countries. The negative effects of this kind of discrepancy are obvious, as European companies are at a disadvantage compared to their non-EU competitors. The EU prides upon being one of the most open investment regimes in the world (EC Press Release

³ The regulation's full English text is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0452> (accessed: 5 May 2019).

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2019b), and the European framework for screening investments does not intend to change this state of affairs significantly. However, until non-EU countries sufficiently open up their domestic markets to EU investors, certain restrictions are required in the EU to make up for the lack of reciprocity in market access.

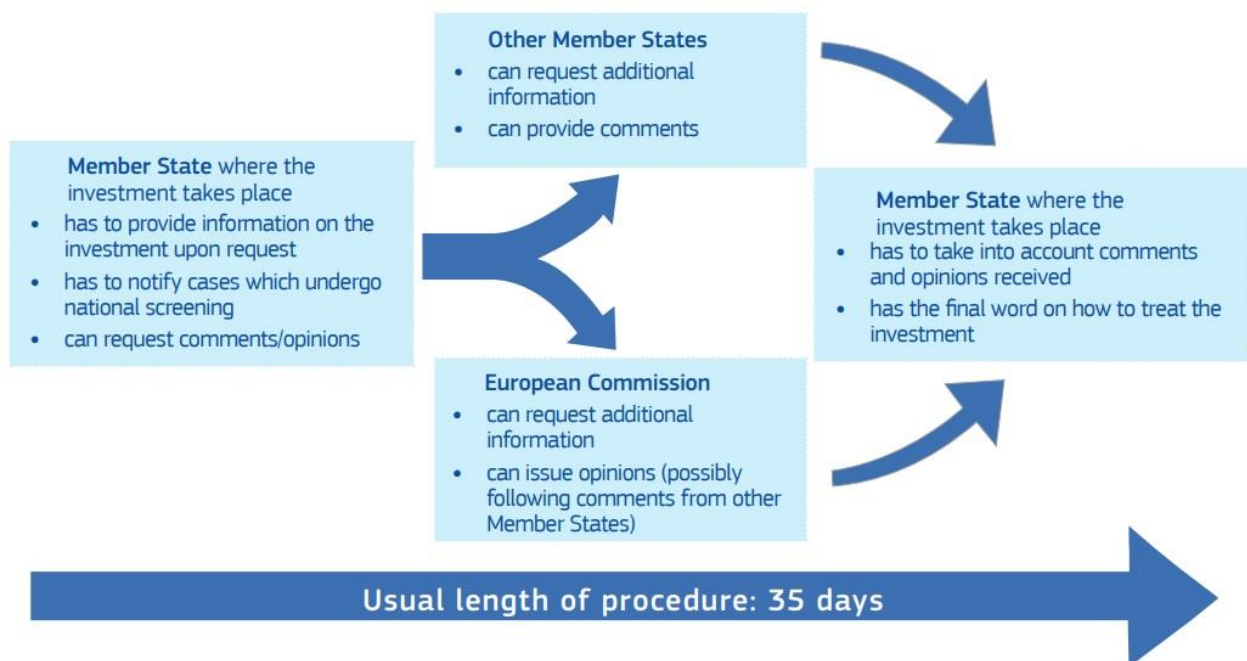
Second, a working document prepared by the European Commission revealed that while advanced economies like the US, Switzerland, Norway, Canada, Australia and Japan retain their dominant investor positions in the EU, with 80% of foreign-owned assets belonging to them, foreign ownership is remarkably concentrated in key sectors of the European economy, such as “oil refining (67 percent of total assets of the sector), pharmaceuticals (56 percent), electronic and optical products (54 percent), insurance (45 percent) or electrical equipment (39 percent)” (European Commission 2019a, 1). In other words, the EU’s potential exposure and vulnerability to foreign control is most severe in areas of critical significance, necessitating more systematic regulatory oversight of what kind of investors have access to them.

Third, foreign companies investing in the EU often operate with shady ownership chains that are difficult to identify in the absence of a more robust screening mechanism. These companies also often entertain close ties with government circles in their home country, which spells doubt about their exact intentions and objectives when it comes to major acquisitions. This problem has been noted most emphatically with regards to Chinese investors. Supported with state subsidies as well as with preferential market access domestically, Chinese companies have grown into economic powerhouses that are remarkably competitive and successful on the global stage (García-Herrero and Xu 2017, 2). To fight against these oversized Chinese companies, the EU would need to breed its own league of industry champions (Sanderson and Keohane 2018), but major merger attempts, like most recently between Siemens and Alstom (EC Press Release 2019c), tend to be blocked by Brussels following strict competition regulations. Therefore, the investment screening framework may help European companies fight an otherwise uphill battle by constraining the presence of more competitive foreign companies in the European market. As a recent survey showed, more than 80% of Chinese companies feel discriminated against in the European market after the introduction of the EU-level investment screening mechanism (Lee 2019).

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The above considerations played a crucial role in driving the creation of an EU-level investment screening framework. Following up on the September 2017 proposal of the European Commission, the European Parliament and the Council adopted the new EU legislation on 19 March 2019 (EC Press Release 2019a). The regulation is expected to be implemented over the following 18 months. Figure 1. indicates the primary phases and steps, as well as the length, of the procedure.

Figure 2. The primary phases of the EU-level screening mechanism.



Date source: (European Commission 2019b, 2)

According to European Commission President Jean-Claude Juncker, “the adoption and entry into force of this proposal in an almost record time shows that we mean business and that when it comes to defending Europe's interests we will always walk the talk” (EC Press Release 2019a). Juncker’s boasting may seem at odds with a framework that some commentators called no more than a “technocratic empty shell” (Meunier 2019). In fact, while the mechanism encourages the sharing of best practices and provides a cooperation framework that improves transparency, the ultimate decision about foreign investment projects remains in the hands of individual member states. The framework

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limits the role of other member states and the EC to providing comments and opinions, without requiring the adoption of screening mechanisms at the national level, or the standardization of the ones that currently exist across 14 member states.⁴ The framework nevertheless provides more oversight to the EU when projects of “union interest” are at stake, such as the Galileo or Horizon 2020 projects. The primary sectors that enjoy the protection of the framework are related to “security and public order,” such as critical infrastructure and technologies, the supply of energy and raw materials, access to sensitive information, and the freedom and pluralism of the media (European Commission 2019b).

Overall, the framework boils down to a loose “coordination and cooperation” tool (Percy 2019), rather than a robust screening mechanism similar to the American system headed by the Committee on Foreign Investment in the United States (CFIUS). Most importantly, the EU as a collective actor still cannot block investments targeting its member states. Nevertheless, the Mercator Institute for China Studies estimates that roughly 82% of Chinese mergers and acquisitions in Europe last year, by virtue of the sectors targeted, would have come under more scrutiny if the European regulation had been in force already in 2018, a number that speaks volumes of the implicit target of the EU-level legislation (Hanemann, Huotari, and Kratz 2018, 7). While it remains to be seen how the regulation will affect FDI trends and practices, Chinese investments in Europe already declined significantly from 111 billion US dollars in 2017 to just 30 billion in 2018, conforming to a global trend in the past few years (Lee 2019). The EU-level framework also has the potential to shed light on foreign investment projects that would otherwise pass under Brussels’s radar, as national governments will have to clarify more systematically why certain investment plans receive the green light. While the regulation is unclear what happens if a member state approves an investment project despite a negative opinion from the Commission, there are likely to be some political costs of non-compliance.

⁴ These are: Austria, Denmark, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Spain, United Kingdom

3.2. Recent developments in German and British investment screening regulations

The introduction of the European investment screening framework comes at a time when member states become ever more sensitized to protecting key industries and businesses from potential foreign abuse. This part of the paper will only sketch the most noteworthy changes in Germany and the UK in order to provide further context for the discussion of investment screening regulations followed by the V4 countries.

Germany has been at the forefront of restricting foreign investment in strategic sectors of the German economy. In December 2018, the German government lowered the threshold from 25% to 10% for screening and even blocking acquisitions made by non-European investors in strategic sectors, a move that most commentators agreed was meant primarily against Chinese companies (Hansen and Nienaber 2018). While investment opportunities recently expanded between Germany and China as Sino-US trade relations worsened (Lin 2018), a few high-profile acquisitions made by Chinese companies in the German economy warranted a tightening of regulations. In July 2016, the German Kuka Robotics was acquired by the Chinese Midea, which now holds 95% of the German company. While the new owners tried to assuage fears associated with the takeover, Kuka's CEO Till Reuter, who headed the company from 2009 and was supposed to remain in his post until 2022, was forced out in November 2018, indicating a more hostile management policy than previously expected (McGee 2018). In February 2018, the Chinese Geely purchased a 9,7% stake in Daimler AG, becoming the biggest investor in the German car giant. In response to the deal, Economy Minister Brigitte Zypries stressed the importance of keeping "an open economy that welcomes investment" but warned that the German government must "keep an especially watchful eye" (BBC 2018). The fear is that Chinese companies abuse Germany's openness in a way that serves Chinese industry interests, which contributes to China's growing technological edge over the rest of the world. Lastly, Germany's influential industry association, the BDI, issued a position paper on China that called for a stronger stance by the EU against Chinese investors and urged companies to reduce their reliance on the Chinese market (Nienaber 2019).

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The **UK** has similarly tightened its regulatory oversight of foreign investments, specifically in defense and technology sectors. In a white paper published in July 2018, the British government revealed details about a legislative reform that aims to expand so-called “trigger events.” These include mergers and acquisitions leading to more than 25% of shares or votes, or “significant influence or control over an entity” (Clark 2018, 13). Interestingly, the white paper estimates that around 200 projects fall into this category each year, which will have to be “called in” for governmental investigation, but half of them are expected to receive official approval after the initial analysis clears them of national security concerns (Clark 2018, 72). According to the Department for Business, Energy and Industrial Strategy, the British government generally refrained from screening foreign investment projects, having screened only one such project last year (MacAskill and Martin 2018).

Much like in Germany, a number of high-profile foreign acquisitions explain the drive for more governmental scrutiny in the UK. Though one of the most open investment regimes in the world, the UK has seen a few takeovers recently targeting sensitive and technologically advanced industries. In July 2018, the planned sale of Northern Aerospace to the Chinese-owned Gardner Aerospace was halted after the British government intervened for reasons of national security. The project was cleared, however, and the acquisition was completed at the end of July (This is Money 2018). In May 2017, the Chinese Hytera, a Shenzhen-based manufacturer of radio systems, acquired Sepura, a similar company, after scrutiny from both British and German regulators cleared the takeover. The project was particularly sensitive, as Sepura is a supplier of the UK’s Metropolitan Police as well as the German army (Urquhart 2017). It was for this reason that turnover thresholds for review have been reduced from 70 million GBP to just 1 million in military, dual-use and advanced technology sectors (Hanemann, Huotari, and Kratz 2018, 17).

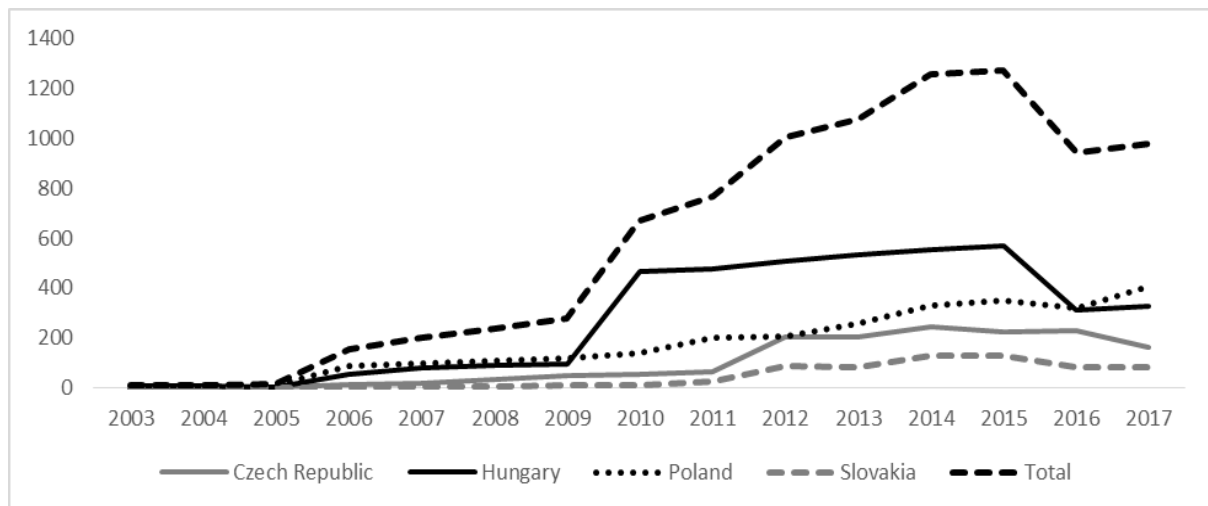
4. Investment screening in the V4 countries today

The EU-level investment screening framework, along with the strengthening of regulatory oversight in major European countries, indicates a general wave of

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protectionist policy tools sweeping across Europe. As will be discussed below, the V4 countries are not exceptions to this regulatory mainstream, even if each of the screening mechanisms already in place or under consideration has country-specific characteristics. This part of the paper sketches the role and purpose FDI fulfilled in the V4 region, followed by a country-specific analysis of developments in investment screening legislation.

Figure 3. Chinese FDI in the V4 countries, million USD, 2003-2017



Data source: MOFCOM⁵

Foreign direct investment in the V4 countries appeared quickly after 1989 and served multiple purposes. Foreign capital was meant to satisfy the short-term needs of national economies going through a transformational crisis, filling in the gaps left by a retrenching state in the domestic market. On the long term, foreign investments were expected to provide new technologies and knowledge, along with an entrepreneurial culture on the basis of which the transfer to the free market can be completed. After the turn of the millennium and the integration of the region into the NATO and the EU, the attractiveness of the V4 region consisted of a number of pull factors, such as the relatively cheap but skilled labor force as well as its proximity to major European markets (Szent-Iványi 2017, 1–4). In the absence of large domestic markets and national

⁵ First published in (Szunomár 2018b).

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resources, most of the V4 countries feature in global value chains as export-oriented manufacturing bases (Szent-Iványi 2017, 3), best illustrated by Czechia and Slovakia. However, more recent trends also indicate growing interest towards the service industries, such as banking, IT or telecommunications.

Today, the primary foreign investors in the V4 countries come from Europe. In Poland, German investments, along with those originating from the Netherlands and Luxembourg, amount to half of all FDI stock, with manufacturing and financial and insurance activities being the primary target sectors (30% and 20%, respectively) (Santander 2019). As for Czechia, the same cluster of countries, coupled with Austrian companies, are responsible for 60% of FDI stock, operating primarily in the same set of industries (Czechinvest 2018, 7). The biggest investors in Slovakia are French and German companies, focusing on the energy, automotive, telecommunications and services sectors. The picture is similar in Hungary, with 75% of investments originating from European partners (Szunomár 2018a).

Therefore, the V4 countries are not excessively exposed to foreign investors coming from outside the European Union. This partly explains why Hungary and Poland have only recently established a national investment screening mechanism, in 2019 and 2015 respectively. Czechia is in the middle of the requisite legislative process, while Slovakia shows no interest in such a mechanism yet. Accordingly, there is little to no room yet for coordination in screening policy among the V4 countries.

4.1. Hungary

In November 2018, the Hungarian parliament passed legislation establishing a national investment screening mechanism, which entered into force on 1 January 2019.⁶ Act LVII of 2018 “on the supervision of foreign investments violating the national security interests of Hungary” introduced a mandatory review process for the acquisition of stakes by foreign entities in strategically sensitive industries. Foreign entities are understood as legal entities unincorporated in the EU, EEA or Switzerland,

⁶ The full text of the law is available in Hungarian at:
http://njt.hu/cgi_bin/njt_doc.cgi?docid=210606.359458 (accessed: 5 May 2019).

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or private individuals not residing in any of the said areas. According to the government decree 246/2018 (XII. 17.),⁷ foreign investors are required to announce planned acquisitions to the Minister of Interior, who conducts the screening process under 60 days and reviews the specific details of the acquisition and its expected effects on national security interests.⁸ The threshold levels at which the investment has to be announced are 25% ownership stake for Hungarian companies and 10% for publicly listed Hungarian companies, or if the total share of foreign ownership were to exceed the percentage limitations after the acquisition under investigation is completed.⁹ The process also has to be triggered if the foreign investor would acquire, directly or indirectly, a “controlling interest” in the company as interpreted according to Hungary’s relevant civil law provisions. The category of industries and businesses under the protection of the new legislation are the armaments and defense industry, the production of dual-use goods, the financial services industry and the banking sector, energy industry, the water utilities, as well as information technology. If a foreign investor fails to meet its obligations under the new law, HUF 10 and 1 million, roughly EUR 30 000 and 3 000, can be imposed upon legal entities and private individuals, respectively. The foreign investor can appeal on procedural grounds against the ministerial decision at the Budapest-Capital Regional Court. The court, however, cannot overturn the decision but can only require the minister to conduct the review process again (Peragovics 2018).

There is no record yet of any foreign investment project under investigation. It should be kept in mind, however, that roughly 75% of foreign investments in Hungary originate from EU countries, with German investments responsible for 25%, none of which fall under the scope of the new legislation. In turn, the investments made by Chinese companies, always the implicit targets of European investment restriction policies, amount to a meagre 2,4% (Szunomár 2018a). While outstanding in comparison with the

⁷ The full text of the decree is available in Hungarian at:

http://njt.hu/cgi_bin/njt_doc.cgi?docid=211634.361766 (accessed: 5 May 2019).

⁸ Under exceptional circumstances, the minister can extend the review period with an additional 60 days, potentially suspending the completion of a deal for a total of 120 days. In addition, if the information submitted along with the notification is not sufficient, the minister can require the foreign investor to provide additional details about the acquisition within 45 days.

⁹ This means that an expected increase of even a few percentage points in overall foreign ownership can make a difference.

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rest of the V4 countries, this is still a relatively insignificant number overall. In the absence of technologically advanced sectors, the Hungarian economy is also less exposed to potential foreign theft of intellectual properties and patents. In addition, the Hungarian government maintains excellent political ties with the People's Republic of China today, with Prime Minister Viktor Orbán having announced on 25 April in Beijing that the Belt and Road Initiative “is fully in harmony with Hungarian interests” (Belt & Road News 2019). Orbán's is an exceptional voice in the chorus of widespread Western concerns about China's global economic offensive. Indeed, considering Budapest's pro-Chinese foreign policy, the new investment screening is meant neither to deter Chinese companies from the Hungarian market, nor to indicate a general deterioration of economic relations between the two countries.

Instead, it seems more likely that the new legislation came in anticipation of the European investment screening framework, and as a response to the growing popularity of investment oversight tools across the continent. Fearing that an EU-level regulation would constrain Hungarian autonomy, legislators may have pushed ahead with the law hoping that the principle of subsidiarity would leave the country less implicated in the European framework. As mentioned above, the EU's regulation does not require member states to establish national screening mechanisms, but it recommends a few key principles like transparency and non-discrimination if a member state chooses to adopt one. With the Hungarian law already in effect, the process it sets up foreshadows a rather obscure and politicized oversight mechanism that is less bound by these principles. Another notable difference is that while the EU's procedure is expected to run its course within 35 days, the Hungarian procedure alone lasts for 60, resulting in significant delays with which an investment deal can be completed. Overall, while the new legislation is not for the purpose of scaring investors away, it does introduce new restrictions that make access to certain key sectors more burdensome and lengthier than before.

4.2. Poland

On 24 July 2015, the Polish Parliament adopted the ‘Act on Control over Certain Investments,’ which entered into force on 30 September 2015. The law requires foreign

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investors to seek prior approval from the Minister of State Treasury before the acquisition of stakes in a Polish company operating in a strategic sector. Entities protected by the law are listed in the relevant ordinance issued by the Council of Ministers, which is subject to change each year (Kulak 2018). The trigger threshold at which notification is mandatory is designated at 20%, understood as a ‘material stake’ or ‘significant participation’ according to the legislation’s terminology. Polish companies protected under the law operate in sensitive sectors, such as in the gas, power generation, chemical, petrochemical and defense industries (Stawicki 2015). The minister decides within a maximum of 90 days, considering the market share of the entity and the scale of the business, whether the acquisition poses a risk to “public order or public security” (Caramihai 2016). Failure to comply with the legal obligations may result in serious penalties of up to PLN 100 million (circa EUR 25 million), or a prison sentence of 6 months to 5 years.

The Polish mechanism constitutes a much more invasive policy tool compared with the Hungarian regulation. For instance, the annual listing of entities protected under the 2015 law means that the government reserves the right to manually restrict access to Polish companies each year, which may translate into an aggressive manipulation of, and interference with, foreign investment practices in the country. In addition, the 90-day screening period allows the Polish government to hold hostage a planned project for an exceptionally long time, potentially forcing investors to consider alternative destinations where deals can progress much faster with lower entry restrictions. Bypassing or circumventing the law is also more severely punished, as the financial penalty coupled with a possible prison sentence can be expected to produce tangible deterrence effects. In fact, certain commentators claim that the Polish law may come into conflict with EU treaty provisions. Specifically, the Treaty on the Functioning of the European Union contains prohibitions stipulated by articles 52 and 65 that bar member states from imposing arbitrary and discriminatory restrictions on the free movement of capital (Caramihai 2016). It remains to be seen whether provisions of the Polish law indeed fall into this category.

As for Chinese investments in Poland, they have been relatively modest, demonstrating a steady but rather slow increase across the 2011-2015 period. While

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Chinese FDI stock in Poland pales in comparison with Germany or even Hungary, 2016 turned out to be a record year (Lubina 2018, 164). In 2016, China's Everbright International acquired a major Polish waste management firm, Novago, for EUR 123 million (Messenger 2016). Other notable investments in that year were the construction of the Suzhou Chunxing prototype in Gdansk for EUR 37 million, or the acquisition by the China Three Gorges Corporation of a 49% stake in EDPR-owned wind assets in Poland for an estimated value of EUR 289 million (Vsquare.org 2018).

Despite this exceptional surge in 2016, Chinese FDI expansion in Poland remains wishful thinking rather than reality (Sarek 2018), and the current state of affairs in Chinese-Polish relations is no cause for future optimism either. Poland's unambiguous siding with the United States in 2018, best exemplified by the interest in the construction of the so-called 'Fort Trump' and the ongoing persecution of Polish and Chinese Huawei officials, are all signs of tectonic changes in the Chinese-Polish relationship (Bachulska and Turcsányi 2019). Citing espionage charges and national security risks, the Polish government may implement a blanket ban against Huawei to exclude the Chinese company from 5G networks. In fact, Poland also called for a joint EU-NATO stance on Huawei (The Guardian 2019), even though the chances of a consensual approach are slim as Hungary is unlikely to support an anti-Chinese position.

Interestingly, it appears that the recent deterioration in Polish-Chinese ties came about not because of Chinese companies' alleged invasion of sensitive industries, even though this has been the primary cause of worsening relations between China and major Western European countries. Instead, it may be an indirect consequence of Warsaw's raw geopolitical calculation, which prioritizes relations with Washington in the ongoing US-China trade war. Of course, the ongoing investigations against Huawei officials confirm that the Polish government is also somewhat disillusioned and worried about Chinese companies. Regardless of the primary underlying cause, one can expect that the Polish investment landscape, with key areas protected by a draconian screening mechanism since 2015, will continue to be a challenging environment for Chinese investors.

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4.3. Czechia

Czechia is currently in the process of considering a strengthening of existing investment restrictions or setting up a dedicated screening mechanism. Partly in response to the EU's ongoing legislative steps as well as to recent Chinese investments in Czechia, the National Security Council created a working group in June 2018 with the purpose of assessing the potential establishment of an FDI screening process for reasons of national security. According to media reports as well as information available on governmental websites (Ministry Release 2018), the Minister of Industry and Trade leads an expert-level group tasked with exploring the types of investments and economic sectors whose protection warrants specific legal tools. On 24 April 2019, the working group held its 4th meeting, focusing on the exact wording of the act, which is expected to set up a dedicated investment screening process in the near future (Ministry Release 2019). Since the provisions and stipulations of the law have yet to take their final form, any assessment of changes in the Czech investment screening environment is necessarily tentative at this point.

In 2016, Chinese investments surged in Czechia, due to acquisitions made by the Shanghai-based China Energy Company Limited (CEFC). CEFC established its European base in Prague in 2015, supported by the Slovak-Czech-owned J&T Financial Group and President Miloš Zeman. In 2016, CEFC wished to increase its share in J&T to 50%, with the planned acquisition amounting to EUR 980 million, but the Czech National Bank raised concerns and eventually rejected the bid for lack of transparency about the Chinese company's financial resources (Muller 2018). Certain commentators claim that successful projects are little more than "trophy acquisitions" that are not followed by a further expansion of Chinese investments and have little effect on Czech economic growth (Kafkadesk 2019). Another notable investment is CRRC's, the Chinese train manufacturer, acquisition of shares in Skoda Transportation, a key investment step towards developing trains for the European market.

Despite these illustrative projects, investment opportunities have not materialized according to previous expectations. In fact, Chinese FDI stock in 2017 amounted to less than 1% of total FDI stock in Czechia, falling behind the country's traditional Western

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European as well as Korean and Japanese investors (Kafkadesk 2019). In addition, an incident gave a sobering example of Czech exposure to foreign abuse. Media reports in 2017 revealed that the Chinese strategic partner of HE3DA technologies, a pioneer in lithium battery production, engaged in intellectual and technological theft. The incident was a main driver behind the ongoing legislative process, with growing concerns about the potentially malign intentions of Chinese investors. A recent Czech media analysis conducted by Chinfluence also revealed that 45% of Czech media between 2010 and 2017 portrayed China in a negative light, with only 14% of media outlets presenting the country in positive terms (Chinfluence 2017).

In addition, political relations between Prague and Beijing have also soured recently. The Czech cybersecurity agency issued a warning in December 2018 about the potential threats that Huawei poses to Czech national security. Even though Miloš Zeman, seemingly unshakable in his pro-Chinese position, scolded the agency for employing “dirty tricks” (Santora and Goeij 2019), the warning indicated that the Czech government followed in the footsteps of Poland and the United States. In response, the Chinese side stated that the warning had made a “very bad impact.” More recently, Mayor of Prague Zdeněk Hřib met with Taiwanese President Tsai Ing-wen on 30 March 2019 (ROC-Taiwan 2019), in clear defiance of the One-China policy that China’s international partners are expected to adhere to. The Beijing government retaliated by canceling the Chinese tour of the Prague Philharmonic Orchestra, after the musicians had refused to distance themselves from the political position of the Prague leadership (Kajinek 2019). As politics and economics are not neatly separable dimensions in the Chinese mindset, these developments foreshadow difficulties ahead and even a potential loss of interest of Chinese investors in the Czech market unless Prague offers visible remedies to the Beijing government. Therefore, Miloš Zeman’s hope for Czechia to become “an unsinkable aircraft carrier of Chinese investment expansion” remains to be substantiated by actual investment projects, as well as with an unambiguous and consistent Czech political commitment towards China (Barboza, Santora, and Stevenson 2018).

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4.4. Slovakia

Slovakia currently has no dedicated investment screening mechanism, and there is no indication that the country is planning to adopt one in the near future. The EU-level framework for screening investments falls under the portfolio of the Ministries of Finance and Economy, but a statement released by them indicates no interest in strengthening entry restrictions for foreign investors in economic sectors of strategic significance. Current restrictions are limited to sector-specific regulations, such as in the banking or media industries, where acquisitions can be halted for lack of transparency or concentration of power.

Until 2016, Slovakia did not feature as a major destination of Chinese FDI. In 2016, Chinese investments amounted to around EUR 33 million, a small number especially in comparison with investments realized by other East Asian countries, such as Japan's EUR 57 million (Davis 2018), or South Korea's EUR 1 billion (mzv.sk 2019). The biggest Chinese investment in Slovakia was the acquisition of Prologis Park Galanta by CNIC, a company owned by the Chinese government, for roughly EUR 140 million (Prologis Press Release 2017). Other important projects fell through, however, such as the joint acquisition of TV Markíza by the Penta Group and the Chinese CEFC. The planned takeover also fueled domestic discussions about media pluralism and the potentially negative consequences of Chinese-owned media disseminating information in Slovakia (Šimalčík 2017). Another acquisition that did not materialize concerned the sale of U.S. Steel Košice to Chinese bidder Hesteel Group (The Slovak Spectator 2018).

In 2017, the Slovak government adopted a strategic document on the country's economic and political relationship with China. This indicated a sharp turn towards a more conscious approach to developing relations with China. In addition to taking advantage of the 16+1 framework, Slovakia is no exception in wishing to become a 'hub' and 'gateway,' or any of the other geopolitical metaphors used in the region, for Chinese trade and investment. While Slovak experts believe that this hope is largely misplaced and unrealistic, the country's railway capacity coupled with its strategic location puts Slovakia at an advantage as a possible transit hub in the region, a niche that can still be

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developed, despite initial slowdowns and hiccups in 2017, in the context of China's Belt and Road Initiative (Van Leijen 2018).

To make the best of its China relationship, the Slovak government kept a relatively low-key, non-antagonistic foreign policy towards the Beijing government. In January 2019, Slovak Prime Minister Peter Pellegrini stated that Slovakia has no evidence of Huawei posing any security threat to the country (Reuters 2019), defying American calls to scrutinize the Chinese telecommunications giant more seriously. At the 2019 China-CEEC summit in Dubrovnik, Pellegrini likewise made clear that Slovakia welcomes Chinese investors with "fair, equal and non-discriminatory treatment" (Xinhua 2019). However, none of this should be taken as Slovak surrender to Chinese pressure. No fundamental change of direction is expected in Slovak foreign policy, whose primarily Western orientation seems to be set in stone. Therefore, Bratislava continues its balancing act, cautiously exploring and expanding economic relations with China, while safeguarding its commitments to the West.

5. Conclusion – protection without protectionism?

In general, none of the screening mechanisms and oversight policies analyzed above are meant to force investors out of domestic markets. Rather, the objective is to achieve the best of both worlds: protection without protectionism, a system in which European governments directly intervene in acquisition plans without sending the wrong message that their country is no longer open for foreign capital. However, by the very focus of regulatory oversight, the perception that economics can be decoupled from politics will be hard to maintain. Foreign investors may just perceive new investment screening policies as inaugurating a more protectionist era in Europe and beyond. After all, access will be restricted precisely in those key sectors of the national economy that attracted large amounts of FDI in recent years from countries like China. While little information is available about how FDI practices and trends change with regards to targeted countries and sectors, there is evidence that Chinese companies consider national and EU-level screening tools to be discriminatory, meant to curtail China's burgeoning economic presence in Europe.

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Another finding of the research is that most of the investment screening policies are fundamentally reactive, and subject to change in view of ongoing FDI trends and practices. The German and British legislative developments neatly illustrated how regulatory oversight strengthened in response to specific investment projects. The same logic applies to Slovakia, where the very absence of such takeovers explains the lack of interest in investment screening. One apparent exception is Hungary. Despite introducing a national screening mechanism before the European regulation came into force, no takeovers took place recently in key industries that the Hungarian government considered hostile or detrimental for national security. Rather, Budapest seems to have simply followed the regulatory mainstream in Europe, adopting new legislation that is of questionable relevance in the Hungarian investment landscape. The country boasts few advanced and technologically sensitive sectors to protect, but maintains excellent political ties with non-EU investors like China.

Within the V4, Poland and Hungary differ in their respective motivations to restrict foreign investments. There is little in common between the two national mechanisms, except for the generic underlying structure. The Polish law introduced a much more invasive system than the Hungarian mechanism, allowing the Polish state to police more directly the domestic investment market. As relations deteriorated between Warsaw and Beijing following the Huawei scandal, Chinese companies are likely to feature among those foreign actors against whom this protection is at least partly intended. Coupled with the lack of screening mechanisms in Czechia and Slovakia, this divergence in Polish-Hungarian policy motivations implies that V4 coordination in FDI screening is currently unlikely. In fact, the different approaches Poland and Hungary exhibit to developing relations with China also spell doubt over future foreign policy cooperation in the V4.

Lastly, while the EU-level regulation is seen as a step in the right direction, it establishes no more than a cooperation and coordination process, with no ability to actively intervene in member state screening decisions. What the framework does achieve nonetheless is the further politicization of FDI projects. As governments are expected to share sensitive details about acquisition plans with the European Commission and other member states, they need to prepare to be scrutinized by the

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community with regards to their attitude towards third country investors. Therefore, as a tool of soft pressure, rather than a robust and invasive screening mechanism, the EU framework can still influence member state behavior about welcoming FDI from outside of the European Union.

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