

# Resilience Through Othering? “Foreignness” in the European Law of Economic Security

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# How does the European Law of Economic Security construct “foreignness”?

## Background: (Re-)Emergence of economic security policies

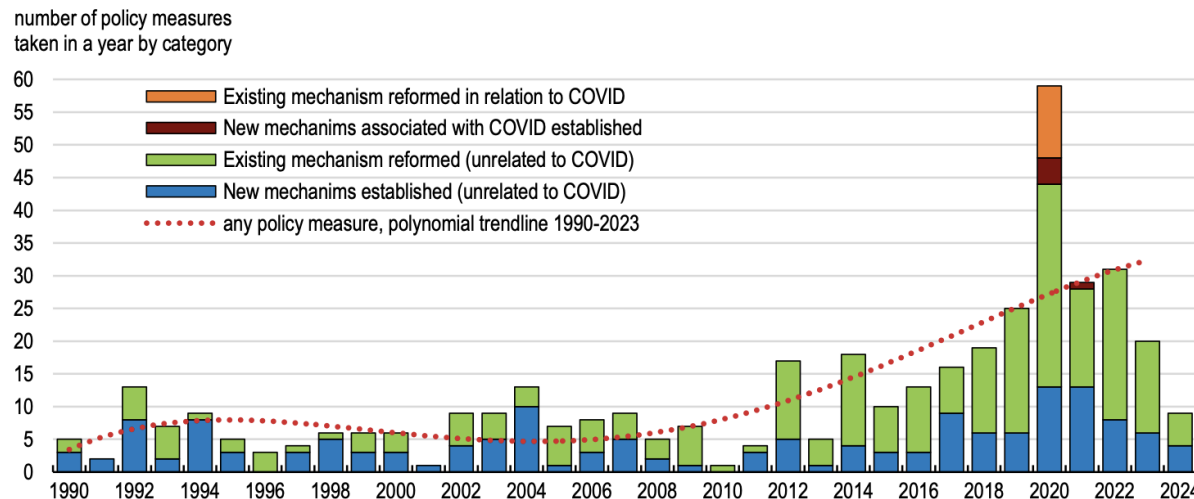
Research question

Theory

EU Economic Security Law

Implications

Figure 5.1. Introduction and reform of investment policies to safeguard national security interests



Note: Sample includes 72 advanced, emerging, and developing economies from within the subset of 83 economies. More than one measure may be counted for a given country in a year. A new mechanism or reform is associated with COVID-19 if the government explicitly justified its introduction, at least in part, with the pandemic or its fallout.

Source: OECD.



# How does the European Law of Economic Security construct “foreignness”?

## Existing interpretations in literature

### Research question

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### EU Economic Security Law

### Implications

#### **Economic**

liberalisation vs. protectionism

Eichenauer & Wang (2025); Bencivelli & others (2023)

#### **Security**

trade and technology transfers as security threat

Chan & Meunier (2022); Mola (2023); Heath (2022)

#### **Strategic**

weaponisation of economic interdependences

Farrell & Newman (2019); Roberts, Moraes & Ferguson (2019); Danzman & Meunier (2024)

# How does the European Law of Economic Security construct “foreignness”?

## Small but growing literature on re-bordering

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Journal of European Public Policy >

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1,227 Views

3 CrossRef citations to date

3 Altmetric

Special Issue: European Integration in the Geopolitical Age. Guest Editors: Christian Freudlsperger & Lucas Schramm.

## Geopolitical rebordering? External boundary formation in the European Union

Buket Buse Demirci , Christian Freudlsperger & Frank Schimmelfennig

Received 17 Feb 2025, Accepted 11 Aug 2025, Published online: 20 Aug 2025

Cite this article <https://doi.org/10.1080/13501763.2025.2548346>

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References

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Citations

Metrics

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Dialogues in Human Geography

Impact Factor: **9.6**

5-Year Impact Factor: **12.1**

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### Foreign investment screening mechanisms and emergent geographies of (post)globalization

[Ilias Alami](#) [View all authors and affiliations](#)

[OnlineFirst](#) | <https://doi.org/10.1177/20438206241278733>

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# The construction of "foreignness" through law

Research question

**Theory**

EU Economic  
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Implications

**Legal Othering  
through Sources  
of Rights**

**Substantive  
Filtering  
(Border Theory)**



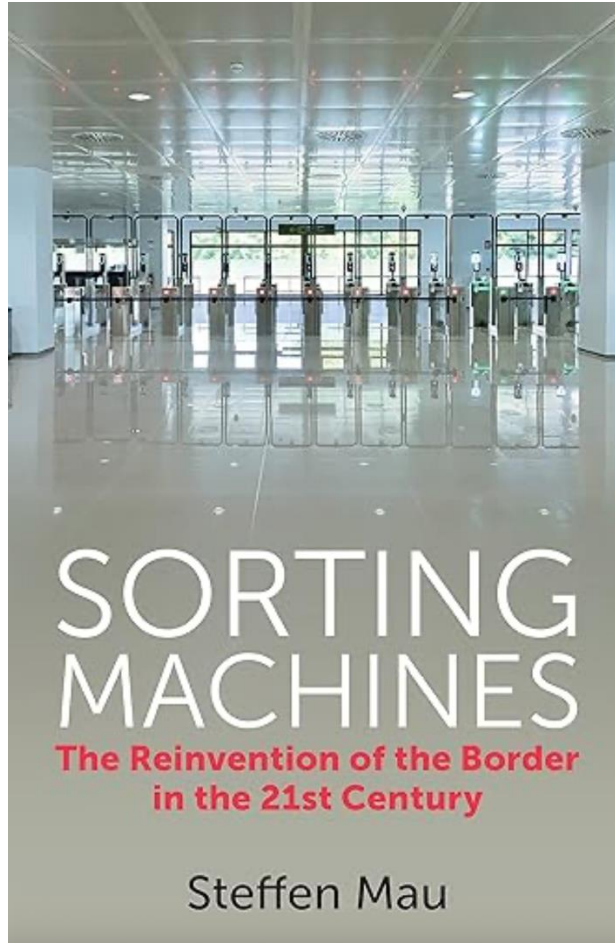
# The construction of "foreignness" through law

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## Theory of bordering practices

→ Substantive filtering criteria

- **Bordering:** continuous social practices of differentiation
- Borders as **semipermeable membranes**, selectively letting in and out (like a filter)
- Filtering '**the other**' from 'us'

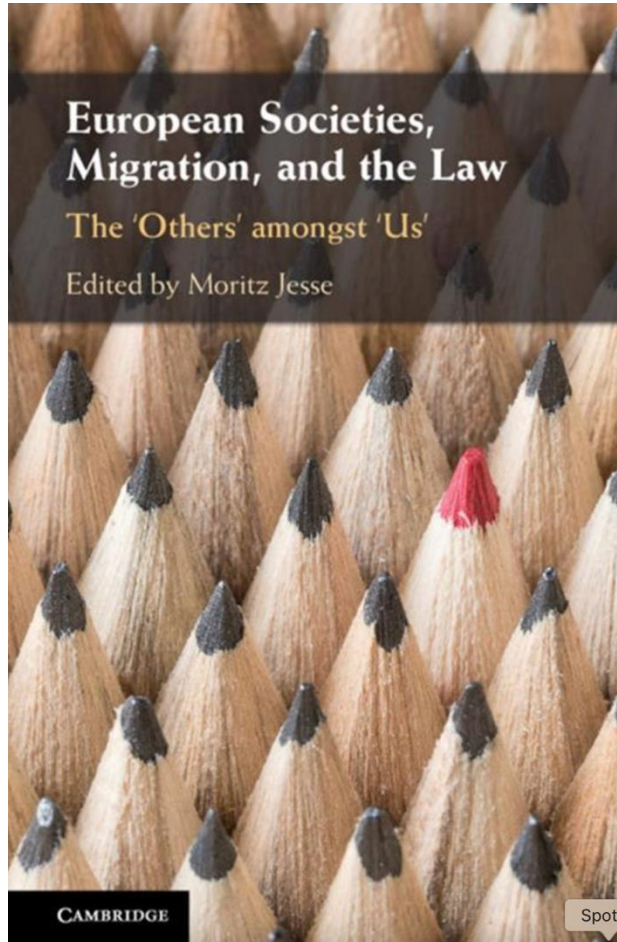
# The construction of "foreignness" through law

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## 'Legal othering' in EU Migration Law

| Paradigm                                  | Decisive Legislation                       | Decisive Status  | Dichotomy (the legal 'other')                                     |
|---|--|--|---|
| Classic                                   | National legislation                       | Nationality/Citizenship                                      | Citizen v. Foreigner  |
| EU Free Movement                          | EU legislation (primary and secondary law) | Citizenship of the Union                                     | Citizen of the Union v. Citizen (static) & third-country national |
| EU Area of Freedom, Security, and Justice | EU legislation (secondary law)             | Third-country national within scope of application of EU law | Citizen of the Union & third-country national v. Citizen (static) |

Figure 1. Moritz Jesse, 'The Immigrant As the "Other"' in Moritz Jesse (ed), European societies, migration, and the law: the 'others' amongst 'us' (Cambridge University Press 2020).

# What *European* Law of Economic Security?

## EU Primary Law

- Nowhere in the Treaties
- EU exclusive (CCP) vs. MS exclusive (national security)

## EU Secondary Law

- FDI Screening, Dual-Use Export...
- Cooperation frameworks, but not centralised EU-level action

## Member States Law

- National-level legislation and administration
- Domestic policy preferences

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# Foreignness in FDI Screening

21.3.2019

FR

Journal officiel de l'Union européenne

L 79 I/1

I

(Actes législatifs)

## RÈGLEMENTS

**RÈGLEMENT (UE) 2019/452 DU PARLEMENT EUROPÉEN ET DU CONSEIL**

**du 19 mars 2019**

**établissant un cadre pour le filtrage des investissements directs étrangers dans l'Union**

LE PARLEMENT EUROPÉEN ET LE CONSEIL DE L'UNION EUROPÉENNE,

vu le traité sur le fonctionnement de l'Union européenne, et notamment son article 207, paragraphe 2,

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# Foreignness in FDI Screening

## Regulation (EU) 2019/452, Article 2 — Definitions:

...

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(2) ‘foreign investor’ means a natural person **of a third country** or an undertaking of a third country, intending to make or having made a foreign direct investment;

...

(7) ‘undertaking of a third country’ means an undertaking constituted or otherwise organised **under the laws of a third country**.

# Foreignness in FDI Screening

## Regulation (EU) 2019/452, Recital (10) — Circumvention:

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... to prevent circumvention ... should cover investments from within the Union by means of artificial arrangements that do not reflect economic reality and circumvent the screening mechanisms.

# Foreignness in FDI Screening

## Regulation (EU) 2019/452, Article 4 — Factors:

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In determining whether a foreign direct investment is likely to affect security or public order ...

- Paragraph (1) — Investment-related factors
- Paragraph (2) — **Investor-related factors**

# Foreignness in FDI Screening

6.4.2022 EN Official Journal of the European Union CI 151/1

## COMMUNICATION FROM THE COMMISSION

**Guidance to the Member States concerning foreign direct investment from Russia and Belarus in view of the military aggression against Ukraine and the restrictive measures laid down in recent Council Regulations on sanctions** [\(1\)](#)

(2022/C 151 I/01)

movement of capital and establishment.

Sanctions are distinct legal instruments, whose purpose, and with a different way of operating, is to exert pressure on a country or entity. The Commission's decision against Ukraine calls for greater vigilance against Russian and Belarusian direct investments within

the Single Market. This goes beyond investments by persons or entities that are subject to sanctions. In the current circumstances, there is a heightened risk that any investment directly or indirectly related to a person or entity associated with, controlled by or subject to influence by the Russian or Belarusian government into critical assets in the EU may give reasonable grounds to conclude that the investment may pose a threat to security or public order in Member States.

Furthermore, EU sanctions apply to any person inside the territory

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# Foreignness in FDI Screening



**InfoCuria**  
Case-law

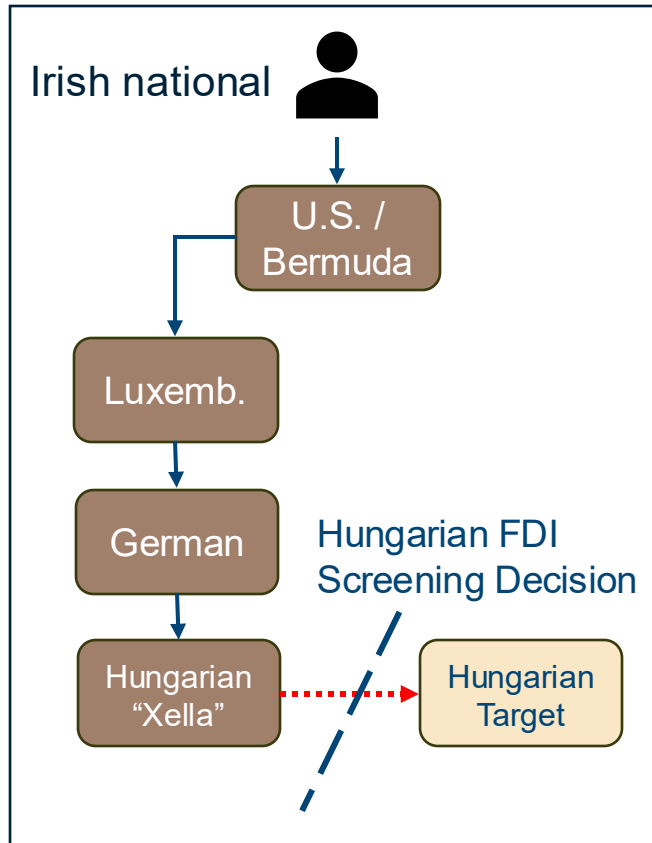
**C-106/22 (13 July 2023) – Xella Magyarország**

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Interpreting ‘foreign investor’ (paras 33–34):

“the foreign investment filtering mechanism provided for by the national legislation (...) applies not only in such a case of investments made by undertakings of a third country, but also in the situation where investments are made by undertakings registered in Hungary or in another Member State over which an undertaking registered in a third country has ‘majority control’ (...)

Consequently, since that second situation is not covered by Article 1 of Regulation 2019/452, that national legislation, to that extent, falls outside the scope of that regulation (...)



# Foreignness in FDI Screening

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Implications



EUROPEAN COMMISSION

Brussels,  
24.1.2024

COM(2024) 23  
final

2024/0017(COD)

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**

{SWD(2024) 23 final}  
{SWD(2024) 24 final}

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**EXPLANATORY MEMORANDUM**

**1. CONTEXT OF THE PROPOSAL**

**1.1. Reasons for and objectives of the proposal**

## Commission Proposal (2024)

Additional legal basis:

- Article 207 TFEU (CCP) +
- **Article 114 TFEU** (Internal Market)

# Foreignness in FDI Screening

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## Commission Proposal (2024)

New definition of ‘foreign investment’, Article 2(1):

“(...) means a foreign direct investment or an investment **within the Union with foreign control**, which enables effective participation in the management or control of a Union target;”

# Foreignness in other ES Instruments

## Export controls

Export as transmission  
“outside the **customs territory of the Union**”

But also technical assistance to a third country resident  
“temporarily **present in the customs territory**”

Regulation (EU) 2021/821 on Dual-Use-Exports, Article 2(10)(c)

## Outbound Monitoring

“carry out an economic activity (...) **in a third country**”

Country-neutral but  
“may prioritise their review activities based on the **risk profiles of individual countries.**”

Commission Recommendation on (EU) 2025/63 of 15 January 2025 on reviewing outbound investments

## Research cooperation

Horizon Europe Programme is “open to the world” (Recital 7)

But distinction between  
“**non- / associated third countries**” + Exceptions

Regulation (EU) 2021/695 establishing Horizon Europe

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# Implications

## How does each regime construct foreignness?

*[work-in-progress]*

|                       |  |
|-----------------------|--|
| <b>FDI Screening</b>  | Tracing ultimate ownership – malign influence of third country governments |
| <b>Export Control</b> | (Customs) Territoriality – Personal via knowhow                            |
| <b>Outbound</b>       | Territoriality – risk-based and dynamic                                    |
| <b>Research</b>       | Geographic origin – embeddedness in controls, norms                        |

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**Implications**



# Implications?

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