

# The EU Lobbying Directive on Foreign Governments

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☞ Acquisitions; EU law; Foreign investment; Merger control; National security; State aid; Subsidies; Third countries; Transparency

## Introduction

Anti-competitive behavior is not an exclusive company discipline. Governments do the same. Some call that protectionism. Others call it trade policy.

In the past, the EU watchdog's main focus on that was an inbound one, directed towards its member states. Germany not behaving anti-competitively towards France for example. When trouble was initiated by a company, antitrust rules were the go-to tools. When trouble was initiated by the government of a member state, state aid supervision was mostly the solution.

This watchdog focus has become more of an outbound one recently. And there's a reason for that. Third country governments like the US and China have turned more aggressive lately when it comes to protecting their national champions. They started creating rules that hamper foreign competition on their turf. While at the same time they are assisting their national companies in penetrating markets on foreign turf, like the EU markets. That happens often through subsidies, dumping, politically motivated antitrust decisions, lobbying, sanctions—and espionage.

To counter such trade protectionism, countries normally equip themselves with what they call trade defense instruments. Some of the existing EU trade defense instruments designed to combat such third country influence include the EU's so-called foreign subsidies regulation, the foreign direct investment screening mechanism, and anti-dumping rules. These instruments are all EU laws that are constantly amended and revised. They follow a lawmaking process, a legislative process that involves the EU institutions, i.e., European Parliament, European Commission, and European Council.

And when it comes to the implementation of such EU legislation on the member state level, their national legislations and the respective member states' institutions are the ones involved.

This is where the problem arises. All law making is prone to influence peddling. Lobbying by stakeholders such as industry, but also by foreign governments. And it is not always clear for legislators whether it is a foreign corporation or a foreign government pulling the strings. It can be one company only, but it can also be the bigger picture.

Now, if the very competition laws and trade laws which are supposed to protect the EU and its member states from foreign governments' anti-competitive behavior are being watered down during the law making process by exactly these foreign governments, the EU has a problem.

If on top of that you don't know which foreign government lobbied whom on what in that law making process and to which end, resulting in what outcome, you have an even bigger problem.

This has forced the European Union to overhaul its previous stance on foreign government influence peddling. To pave that way, the European Court of Auditors analysed the status quo on EU lobbying, giving the other EU institutions recommendations on how to set up a properly functioning framework.<sup>1</sup>

According to that, on the EU level, the so-called EU Transparency Register is supposed to do the job. Though the focus of this register was always the corporate industry, not third country governments and their embassies. The European Commission first launched a voluntary lobbying register for this in 2008. In 2021 a new Joint Transparency Register was launched through an inter-institutional agreement between the European Commission, the European Parliament, and the European Council. Starting in 2022, registration to this Transparency Register became mandatory. A revision of this framework is imminent to better meet bribery scandals like Qatargate or the latest allegations about MEPs being paid to disseminate Russian propaganda in the political arena.

On the Member State level, however, that problem is so to say 27 times bigger. So far, there is no harmonized approach to regulating foreign influence in the EU member states' arena. As the European Commission points out, only 15 out of the 27 member states have national transparency registers for lobbying activities, whereas 12 member states have no transparency requirements at all.<sup>2</sup> This has led to member states following different approaches, and as such there has been a lack of transparency in terms of which third country governments undertake what type of activities within the EU area. Which means spies of foreign powers could potentially infiltrate one member state's politics and lawmaking and thereby “poison” the entire EU. That's

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<sup>1</sup> European Court of Auditors, Special Report EU Transparency Register, 2024.

<sup>2</sup> Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A4637%3AFIN>.

why the EU now proposed a new framework that will reform how third country lobbyists shall operate inside the EU.

## The obligations of foreign government lobbyists

Political lobbying can be a powerful tool to influence competition on the market, as it usually results in law making that shapes competition rules. As President Roosevelt put it: *“You convinced me, now go out there and bring pressure on me”*.

The new EU framework to counter third country anti-competitive behavior is therefore included in the proposal for the so-called Directive on Transparency of Interest Representation on behalf of Third Countries.<sup>3</sup> This EU lobbying directive did not originate in a vacuum. It is part of the EU’s Defense of Democracy package,<sup>4</sup> a plan to protect EU democracy from third country influence, building on the 2020 European Democracy Action Plan.<sup>5</sup> The need for such initiative became evident after Russia’s invasion of Ukraine which is why on the other side of the Atlantic, the United States—which also entered an elections year in 2024 like the EU—is taking steps to update its Foreign Agents Registration Act (FARA),<sup>6</sup> their foreign government defense instrument which was first introduced in 1938 to avoid Nazi propaganda undermining the US politics.

The new EU directive will introduce new obligations on EU Member States to establish or adjust their existing rules and national registries regarding the transparency of interest representation activities on behalf of third countries. And on those who are carrying out such interest representation activities on behalf of a third country. These entities will be obliged to register in the respective Member States’ transparency registers.<sup>7</sup> So, the objective here is not to restrict lobbying per se but rather to enforce transparency as a mean to mitigate unfair competition. In so far, this new directive complements the Foreign Subsidies Regulation, too. Companies from outside the EU will be required to disclose who sponsors them and to what extent so that the European Commission gets an idea of who the players are that participate in tenders or takeovers inside the EU.

Financial details such as the annual amounts received, the relevant third countries, and the primary objectives of the interest representation activities will be made publicly accessible. Entities acting on behalf of third

countries will be required to maintain records of pertinent information or materials related to their activities for a period of four years after the end of this activity.<sup>8</sup>

The targets of this directive encompass a wide range of entities. This range currently includes law firms, lobbying firms, public relations agencies, think tanks, private research institutes, public research institutes offering research services, as well as consultants, in-house lobbyists, media outlets, or civil society organizations. These entities fall within the scope if they conduct activities with the intention of influencing public life and the democratic process within the EU. The proposal maintains a neutral tone, and its provisions remain relatively broad, necessitating further work by the European Parliament and the Council to discern tangible impacts at the national level. The EU has deliberately refrained from naming specific third countries in its proposal. Nevertheless, the neutral stance of the EU may not be universally embraced by Member States, and the EU has limited insight (or control) into how laws are implemented and enforced within Member States, as well as which communities may be “targeted” or negatively labeled as agents acting on behalf of foreign powers.

In the context of lobbying and influence from third countries, the European Parliament has taken a firm stance against lobbying from third countries that combine industrial interests with foreign political goals, particularly when they align with the interests of what the EU considers an authoritarian state which is seen as a security risk. Notably, the EU addressed how countries such as “China and Russia, Qatar, the United Arab Emirates and Turkey, have invested heavily in lobbying efforts in Brussels”.<sup>9</sup> And there are reasons for that.

In December 2022, allegations emerged regarding Qatar’s unlawful influence over former and current Members of the European Parliament (“MEPs”) to advance its foreign policy objectives. While the case was labelled “Qatargate” it should be kept in mind that the same allegations in that context were raised against Morocco.

In 2024, an assistant of the MEP Maximilian Krah was arrested and suspended because he was allegedly employed by the Chinese secret service to pass on information about negotiations and decisions in the EP.

This follows the recent criminal investigation into suspicions that a network of European politicians including MEPs were paid by a media outlet operated by a pro-Russian Ukrainian oligarch, as well as a separate

<sup>3</sup> Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A4637%3AFIN>.

<sup>4</sup> European Commission, Defense of Democracy Package, [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/protecting-democracy\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/protecting-democracy_en).

<sup>5</sup> European Parliament, “European Democracy Action Plan”, COM (2020) 790, 2020.

<sup>6</sup> US Department of Justice, Foreign Agents Registration Act, <https://www.justice.gov/nsd-fara>.

<sup>7</sup> Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A4637%3AFIN>.

<sup>8</sup> Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A4637%3AFIN>.

<sup>9</sup> Recommendations for reform of the European Parliament’s rules on transparency, integrity, accountability and anti-corruption European Parliament resolution of 13 July 2023 on recommendations for reform of European Parliament’s rules on transparency, integrity, accountability and anti-corruption (2023/2034(INI)) P9\_TA(2023)0292 [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0292\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0292_EN.html).

case in Latvia, where an MEP is being investigated on suspicion of collaborating with the Russian secret service.<sup>10</sup>

While in the Russia case the lobbying activity seems to circle more around geopolitics, the China, Morocco and Qatar cases on top seem to have clear economic interests involved, where fair competition was seen at stake by the EU.

In the face of these challenges, the European Parliament has been adopting several measures aimed at strengthening the implementation of the EU Transparency Register, the main tool to enforce transparency on lobbying activities in EU policy and decision-making. These measures include a 14-point proposal to enhance rules for MEPs, including stricter scrutiny of lobbyists and the mandatory disclosure of meetings.<sup>11</sup>

Through an interinstitutional agreement between the European Parliament and the European Commission in 2011, with the Council becoming a signatory institution in 2021, the EU Transparency Register introduced the principle of conditionality, requiring all representatives of interests to register in the Transparency Register, provided their activities align with the EU's fundamental values.<sup>12</sup> The signatory institutions enforce this principle by ensuring that only lobbyists registered in the EU Transparency Register can engage with European Commissioners' staff and participate in certain activities.<sup>13</sup>

The respective European Court of Auditors' Special Report on the EU Transparency Register<sup>14</sup> highlights several loopholes and gaps across various aspects and criteria of the existing EU lobbying framework. First, even if registration is mandatory, registrants can self-declare to which category they belong, thus determining their financial disclosure requirements. Consequently, lobbyists funded by third parties, might not disclose financial information, including their funding sources, for example, third countries governments, by declaring that they represent their own interests or the collective interests of their members. This is because the responsibility to ensure that the information provided is accurate falls upon the lobbyists themselves.

Each EU institution also established its own set of conditionality and transparency measures, defining the scope of the activities for which registration is a preconditions and other activities for which registration is encouraged. The result is different approaches in applying the conditionality in relation to the activities or which staff and member this applies, as well as the information that needs to be published. For example, requirement for lobbyists to be registered before meeting institutional representatives applies only to high-level

decision makers at the Council and Commission. There is currently no requirement for Parliament's staff to meet only registered lobbyists.<sup>15</sup>

The Parliament's definition of lobbying encompasses a wide array of activities, including involvement in intergroups, holding speaker roles in committee hearings, co-hosting, and participating in Parliament events. Conversely, the Council's scope is narrower, focusing mainly on thematic briefings and speaking engagements organized by the General Secretariat. Meanwhile, the Commission interacts with specific individuals and organizations through expert groups.

Distinct approaches to meetings are evident across the EU institutions, defined by specific criteria. A meeting is characterized as a bilateral encounter initiated by an organisation, self-employed individual, Member of the Commission, Member of their Cabinet, or Directorate-General, aimed at discussing matters related to policy-making and implementation within the Union. Excluded from this definition are encounters falling under administrative procedures outlined by Treaties or Union acts, overseen directly by a Member of the Commission or Directorate-General, as well as those of private or social nature or spontaneous encounters.

For the Commission, video conferences and all forms of conference calls convened to discuss issues pertinent to EU policymaking and implementation are considered meetings, whereas one-to-one phone conversations do not meet this criterion. Similarly, unscheduled phone conversations and email exchanges are not classified as meetings according to the 2021 Inter-Institutional Agreement.<sup>16</sup>

This implies that lobbying activities may occur beyond the scope of transparency provided by the Transparency Register, encompassing a spectrum of interactions wherein lobbyists endeavor to exert influence upon members or staff.

Within the Council, there exists no obligation to disclose information regarding meetings with lobbyists. Conversely, within the Commission, it is mandatory for all Commissioners and Directors-General to publicly divulge all contacts and meetings conducted in their capacity with organizations or self-employed individuals. No public record concerning lobbyists' meetings with Council staff, MEPs, or Parliamentary staff exists.

In case of non-compliance with the rules, measures exist to address this, but no sanctions are provided. This is because the 2021 Inter-Institutional Agreement is not a legislative act and therefore, cannot establish sanctions for lobbyists. So, if lobbyists on the register breach the rules and principles of the code of conduct, the main

<sup>10</sup> Eddy Wax, Pierre Emmanuel Ngendakumana and Hans Von Der Burchard, Germany arrests EU Parliament aide over bombshell China spying claims, POLITICO, 23 April 2024, <https://www.politico.eu/article/germany-arrests-eu-parliament-afd-staffer-afd-spy-china-jian-g-mep-krah/#:~:text=German%20police%20arrested%20the%20aide,staffer%2C%20identified%20as%20Jian%20G>.

<sup>11</sup> Press release, Group leaders endorse first steps of parliamentary reform, 08 February 2023, <https://www.europarl.europa.eu/news/it/press-room/20230208IPR72802/group-leaders-endorse-first-steps-of-parliamentary-reform>.

<sup>12</sup> European Court of Auditors, Special Report EU Transparency Register, provides useful but limited information on lobbying activities 2024.

<sup>13</sup> European Court of Auditors, Enforcement of EU competition policy, Information on a forthcoming audit September 2018.

<sup>14</sup> European Court of Auditors, Special Report EU Transparency Register, provides useful but limited information on lobbying activities 2024.

<sup>15</sup> European Court of Auditors, Special Report EU Transparency Register, provides useful but limited information on lobbying activities 2024.

<sup>16</sup> European Court of Auditors, Special Report EU Transparency Register, provides useful but limited information on lobbying activities 2024.

enforcement measure available is their removal from the EU Transparency Register. Depending on the seriousness of the breach, lobbyists can be prohibited from registering again for a period of between 20 working days and two years.<sup>17</sup>

Compared to the EU transparency rules, the proposed directive defines interest representation activities broadly, including meetings, conferences, consultations, parliamentary hearings, communication campaigns, network organization, policy papers, legislative amendments, opinion polls, surveys, and research and education activities.<sup>18</sup> Thus, the definition of meetings will be equally important here to determine registration requirements and transparency measures. Nonetheless, to effectively apply the directive, a clear link between the activity and its potential to influence the political lifecycle must be established.<sup>19</sup>

Think tanks illustrate the case, as these might function as a channel for unofficial interactions with foreign partners. Where an alignment between the activities of some think tanks with the political agenda of some governments exists, understanding their roles in official and unofficial political communication becomes pivotal for the EU.

The directive excludes activities carried out by officials of third country governments that are related to the exercise of official authority, including activities related to the exercise of diplomatic relations between States or international organization. It also excludes activities supporting or aligned with the interests of a third country without a nexus with that country.<sup>20</sup> In other words, lobbying by the ambassador is not being regulated.

A significant difference from the EU Transparency Register is the prerogative of the Member States to take measures against entities that breach the directive's provisions. These measures take the form of administrative fines, which should be "*effective, proportionate, and dissuasive*".<sup>21</sup> The directive excludes criminal sanctions, thereby attempting to shield Civil Society Organisations ("CSO") that might be targeted by not facing criminal penalties or disbandment.

Some national systems that have a register for representative of interests in place and based on legislation, already encompass sanction and fines for non-compliance, alongside the removal from the relevant register. In some of these systems, criminal sanctions can also be applied. For example, in Germany, national lobbying arrangements are mandatory for lobbyists and

actually cover a broader range of staff than at EU level. If the registration does not follow the established criteria or is missing, fines may be imposed for a negligent violation and for an intentional violation.<sup>22</sup>

But still, measures taken by Member States to regulate the transparency of interest representation services diverge, particularly concerning the record-keeping and registration requirements. While certain Member States, like Germany, require registration in their national transparency register, others, like Italy, establish a voluntary register, where lobbyists and representatives of interests could decide whether to do so. The interplay of different, sometimes conflicting, interests can further complicate matters, revealing varying sensitivities regarding influence from interest representatives, from third countries, and contributing to further fragmentation.

This shows the rationale of Commission's decision to put forth this initiative aimed at accelerating the adoption of rules to ensure transparency in the face of foreign influence, particularly in those Member States that are still lacking any frameworks. This becomes imperative for the EU given the current geopolitical landscape, wherein the EU requires an increased awareness of the risks of foreign interference by third countries in the domestic democratic legislative process. In the vein of harmonizing the standards and ensuring uniformity, the directive mandates that Member States refrain from maintaining or introducing provisions that deviate from those outlined in the directive, including provisions aimed at ensuring different levels of transparency in these activities.<sup>23</sup> The Hungarian parliament's adoption of a "national sovereignty law" illustrates the gravity of the issue. Under this law, a new authority would possess investigatory powers and the ability to prohibit foreign-financed groups or parties, with breaches punishable by imprisonment. Concerns have been raised by human rights and media freedom advocates regarding the broad wording of the law, which could potentially endanger activists and the press.<sup>24</sup> Budapest's new law would fall afoul of the EU standard since Member States must harmonize their approach to registries and refrain from applying stigmatizing labels or criminal sanctions.

### Third country influence on EU competition policy

The EU Single Market with its competition policy is a product of an era when both the EU and the world were smaller, simpler, and less integrated, and many of today's

<sup>17</sup> European Court of Auditors, Special Report EU Transparency Register, provides useful but limited information on lobbying activities 2024.

<sup>18</sup> Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A4637%3AFIN>.

<sup>19</sup> Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A4637%3AFIN>.

<sup>20</sup> Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A4637%3AFIN>.

<sup>21</sup> Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A4637%3AFIN>.

<sup>22</sup> European Court of Auditors, Special Report EU Transparency Register, provides useful but limited information on lobbying activities 2024.

<sup>23</sup> Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A4637%3AFIN>.

<sup>24</sup> Sara Wheaton, Disharmony over Hungary and foreign lobbyists, 14 December 2023, POLITICO, <https://www.politico.eu/newsletter/politico-eu-influence/disharmony-over-hungary-and-foreign-lobbyists-2/>.

key players had not yet entered the scene. When Jacques Delors conceived and presented the European Single Market to the world in 1985, the EU was known as the European Communities. The number of Member States was less than half of what it is today. Germany was divided into two, and the Soviet Union still existed. China and India together constituted less than 5% of the global economy, and BRICS was unknown. At that time, Europe, on par with the US, was at the centre of the world economy, leading in terms of economic weight and innovation capacity, representing a fertile ground for development and growth. The Single Market was established to strengthen European integration by eliminating trade barriers, ensuring fair competition.<sup>25</sup>

Several factors call for updating this Single Market along with its competition and trade rules, aligning them with the European Union's new vision for its role in a world that has grown larger and undergone significant structural transformations. The global demographic and economic landscape has dramatically shifted. Over the past three decades, the EU's share of the global economy has diminished, with its representation among the world's largest economies sharply decreasing in favor of rising Asian economies. This trend is partially driven by demographic changes, with the EU facing a shrinking and aging population. Furthermore, even without considering Asian economies, the EU Single Market is lagging behind the US market. In 1993, the two economic areas had a comparable size. However, while GDP per capita in the US increased by almost 60% from 1993 to 2022, in Europe the increase was less than 30%.<sup>26</sup>

The rules-based international order faces serious challenges, entering a phase marked by the resurgence of power politics. The European Union has traditionally committed to multilateralism, free trade, and international cooperation, principles that have formed the bedrock of its global governance and economic strategies. These values have steered the EU's interactions on the international stage, fostering a rule-based order that has been central to its foundational ethos and operational framework. However, wars and trade conflicts are increasingly undermining the principles of a rules-based international system, posing significant threats to the very foundation upon which the EU has constructed its external relations and policies.<sup>27</sup> That explains the latest shift towards a more defensive EU industrial policy towards third countries, which competition rules can't ignore.

To comprehend the extent of third countries' influence on EU competition policy, it is imperative to initially delineate the types of influence these countries can wield, the areas of interest they might target, and the probable recipients of such influence. The most obvious currently is for sure the application of the Foreign Subsidies Regulation, which clearly uses competition policy in the context of international trade, political lobbying and diplomacy, shielding off the EU from what it perceives to be undue foreign influence.

In general, the influence exerted by any player, whether a third country or otherwise, within the legislative process aims to advance and maximize the preferences of that player. Third countries can exert influence in overt and intentional ways or through covert and indirect means, either through political and administrative actors or as a result of broader economic or ideational contexts.<sup>28</sup> Covert interest representation activities carried out on behalf of third countries are the targets of the proposed directive as activities capable of affecting the Union's internal and external policies, including economic and security interests.<sup>29</sup>

Concerning the competition rules that might be more exposed to influence by third countries, competition policy aims to protect a fair competition process, regardless of the company, its country of origin, and sector, and encompasses effective enforcement across three main areas: antitrust, merger review, and state-aid control.<sup>30</sup> For instance, looking at the EU proceedings of the last years, those related to abuse of dominance in the EU market have predominantly targeted American companies like the anti-trust investigation against Google Inc. in 2021,<sup>31</sup> or recently Apple in March 2024.<sup>32</sup> Similarly, investigations into distortive subsidies increasingly focus on Chinese companies, particularly in sectors like solar, wind, trains, electric cars, and medical devices, or anti-dumping investigations such as regarding imports of polyethylene terephthalate ('PET') originating in the People's Republic of China.<sup>33</sup>

While it is true that the EU applies the competition rules to regulate and create a level-playing field within its single market, today the boundaries between internal and external dimensions of the EU Single Market have become increasingly blurred. The current global political landscape, marked by the widespread use of sanctions, export controls and restrictions, and scrutiny on investments, necessitates EU competition policy to extend

<sup>25</sup> Enrico Letta, Much more than a market—Speed, Security, Solidarity Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens, April 2024, p.3.

<sup>26</sup> Enrico Letta, Much more than a market—Speed, Security, Solidarity Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens, April 2024, p.4.

<sup>27</sup> Enrico Letta, Much more than a market—Speed, Security, Solidarity Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens, April 2024, p.4.

<sup>28</sup> Sandra Lavenex and Marja-Liisa Öberg, Third Country Influence on EU Law and Policy-making: Setting the Scene, JCMS 2023 Volume 61. Number 6. pp.1435–1453.

<sup>29</sup> Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A637%3AFIN>.

<sup>30</sup> European Court of Auditors, Enforcement of EU competition policy, Information on a forthcoming audit September 2018.

<sup>31</sup> European Commission, Antitrust: Commission opens investigation into possible anticompetitive conduct by Google in the online advertising technology sector, press release, 22 June 2021, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3143](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3143).

<sup>32</sup> European Commission, Commission fines Apple over €1.8 billion over abusive App store rules for music streaming providers, Press release, 04 March 2024, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_1161](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1161).

<sup>33</sup> Commission protects EU industry from PET plastic dumping for next five years, press release, 3 April 2024 [https://policy.trade.ec.europa.eu/news/commission-protects-eu-industry-pet-plastic-dumping-next-five-years-2024-04-03\\_en](https://policy.trade.ec.europa.eu/news/commission-protects-eu-industry-pet-plastic-dumping-next-five-years-2024-04-03_en).

beyond its Member States' borders to protect its market from anti-competitive behavior, compete with the global competitors, and maintain 'the Brussels effect'.

Inevitably, EU competition policy aligns with the broader objectives set by the EU across various sectors, seeking a balance between integration into the global market and ensuring security, competitiveness, and resilience on the global scale. EU competition policy, being politically driven, thus assumes significance as a tool for its external relations.

Notably, amid the COVID-19 pandemic, the Commission introduced the NextGenerationEU European recovery plan. In response to geopolitical shifts like the Ukraine crisis and disruptions in Russian gas supply, Member States supplemented this plan with RePowerEU, directing a portion of the funds towards energy transition initiatives. The 2023 Amendment of the General Block Exemption Regulation (GBER) further facilitates and expedites this transition.

Ensuring so-called "economic security" has become paramount in the EU's view for the sustainability of the Single Market, particularly amidst recent challenges. The new framework seeks to strike a balance between minimizing risks and maintaining economic openness and dynamic. To this end, the Commission has introduced a comprehensive Communication outlining five key initiatives aimed at bolstering the EU's economic security. These initiatives entail refining Foreign Direct Investment (FDI) screening mechanisms, strengthening controls on dual-use technology exports, evaluating risks associated with outbound investments, promoting research and development in dual-use technologies, and offering guidance on research security strategies at both national and sectoral levels.<sup>34</sup>

In response to the assertive economic policies of global powers, particularly the United States and China, the EU has implemented a range of measures addressing both external and domestic dimensions. These measures include legislative acts such as the Critical Raw Materials Act, the European Chips Act, and the Net-Zero Industry Act, complemented by tools like export controls and the Single Market Emergency Instrument. Furthermore, strategic initiatives such as the Anti-coercion Instrument, the Toolkit on Tackling Foreign Research and Innovation Interference, the 5G Toolbox, and the Global Gateway have been devised. Moreover, reforms in public procurement tenders within Member States are underway, incorporating requirements related to cybersecurity and environmental criteria. All these laws are trade related EU competition policy, directed to outside, potentially triggering diplomatic interference and lobbying action. As these issues of competitiveness, strategic autonomy,

and the single market become closely linked, third countries naturally find an interest in shaping EU policies in this domain.

Concerning the targets of third countries' influence, the EU aims to operate as a unitary actor, where the EU top level coordinates vertically the Member States' actions and horizontally the EU policies juxtaposing them. Nonetheless, in addressing competition, a dichotomy appears to exist that the Commission aims to resolve. At the EU level, the Commission, as the principal enforcer of EU competition rules, holds the authority and responsibility to investigate suspected anticompetitive conduct, to issue prohibition decisions, to impose fines, and to conclude binding agreements with companies.

In relation to the cooperation with third countries, the Commission can cooperate with them at bilateral and multilateral levels. The existence of fora of discussions with other actors, being in the form of ministerial bilateral meetings or institutionalized structures like the World Trade Organisation ("WTO"), United Nations Conference on Trade and Development ("UNCTAD") and International Competition Network ("ICN"), or the Trade and Technology Council ("TTC"), can create occasions for exerting influences for the actors involved as well. The extent of the influence exerted will depend on the political and juridical framework of these fora. Free Trade Agreements ("FTAs") can be also used to establish bilateral rules and provisions regarding subsidies. Subsidy provisions vary from FTA to FTA and are adjusted to the trade relationship with the third country in question.<sup>35</sup>

## Conclusion

Enrico Letta in his Report on the Single Market<sup>36</sup> acknowledges the need of an EU industrial policy to "play big" as he puts it, while at the same time warning that the EU "should not use competition policy to engineer a specific market outcome. Our goal must be to ensure our rules remain effective in a market that is rapidly evolving."<sup>37</sup>

But this is what happens these days. The EU is using its lobbying, competition and trade rules to fence off its market towards (unfair) competition. Such third countries' influence can potentially be exerted at all EU levels and stages of the political and legislative life-cycles, from the agenda-setting phase to the preparation, adoption, implementation, and enforcement of EU policies<sup>38</sup>.

The concurrent enforcement of EU competition policy and the existing challenges in ensuring its equal application may facilitate attempts to exert a covert and undue competition influence on the political landscape at the Member States' level throughout various stages of

<sup>34</sup> COM(2024) 22 final, Communication from the Commission to the European Parliament and The Council Advancing European economic security: an introduction to five new initiatives, Brussels, 24 January 2024, <https://commission.europa.eu/system/files/2024-01/Communication%20on%20European%20economic%20security.pdf>.

<sup>35</sup> European Commission, Facing the challenges of globalisation, [https://competition-policy.ec.europa.eu/international-relations\\_en](https://competition-policy.ec.europa.eu/international-relations_en).

<sup>36</sup> Enrico Letta, Much more than a market—Speed, Security, Solidarity Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens, April 2024. <https://www.consilium.europa.eu/media/my3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf>.

<sup>37</sup> Enrico Letta, Much more than a market—Speed, Security, Solidarity Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens, April 2024, p.50.

<sup>38</sup> Alber & Geiger, "EU Lobbying Handbook", (3rd edn, 2024).

the political cycle. Especially where competition rules mingle with trade laws and foreign diplomacy. Which is a natural context in an EU industrial policy.

This is facilitated by a non-coherent EU lobbying framework, a Transparency Register on the EU level, the absence of lobbying rules in some Member States and the existence of different standards in others. National interests and goals, bilateral relations with third countries, as well as the fragmented geopolitical context, interplay in this dynamic.

The proposed EU directive aims to solve the transparency standardization concerning influences from third countries at a national level and to identifying which countries request the representation of interest, whether they aim to promote their objectives by potentially evading transparency requirements existing at the EU level.