

Key recommendations for a positive approach to Economic Security

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Executive Summary

The European Semiconductor Industry Association (ESIA) believes that the EU should adopt a holistic approach to economic security. The semiconductor industry relies on a highly globalised supply chain to be able to design and manufacture its products and bring them to the market. As such, ESIA encourages the EU to prioritise the development and implementation of a comprehensive industrial strategy aimed at promoting the competitiveness of the European industrial base while partnering with like-minded countries to address common interests and concerns.

The current dual-use and sanctions regimes provide a sufficient tool set to control **outbound investments**. Any additional measures ought to be targeted and balanced to avoid chilling effects on EU industrial business. On **export controls**, greater harmonisation between EU Member States on the dual-use export controls is necessary. On **foreign direct investment (FDI) screening**, a balanced approach is desirable, to allow strategic FDIs to flow into Europe, thus attracting capital investment and supporting the global competitiveness of the European industry. Preserving the distinction between **civil and military research and development programmes** is important, as it serves to uphold international norms and promote stability.

Introduction

On 24 January 2024, the European Commission issued the *Economic Security Package*¹ a series of initiatives in the context of its *European Economic Security Strategy*² published in June 2023. The *Economic Security Package* provides concrete tools “to enhance the EU’s economic security while upholding the openness of trade, investment, and research for the EU’s economy”³.

ESIA, representing Europe-based leadership in semiconductor design, manufacturing, and research, sees the *Economic Security Package* as a crucial opportunity to develop a sovereign

¹ European Commission (24/01/2024). *Commission proposes new initiatives to strengthen economic security*, Press corner. URL: https://ec.europa.eu/commission/presscorner/detail/en/IP_24_363 (retrieved 17/04/2024)

² European Commission (20/06/2023). *An EU approach to enhance economic security* *, Press corner. URL: https://ec.europa.eu/commission/presscorner/detail/en/IP_23_3358 (retrieved 17/04/2024)

³ European Commission (24/01/2024). *Op. cit.*

EU approach to economic security, which is needed in light of the strategic supply chains built in the global semiconductor ecosystem, and the current tensions around technology and geopolitics.

I. A Positive Approach to Economic Security is Needed

The initiatives published as part of the *Economic Security Package* in January 2024 clearly address the changing political environment Europe is facing. While it is necessary that the EU acknowledges these challenges and acts accordingly, ESIA believes that a comprehensive approach to economic security should particularly focus on achieving technological leadership by building on areas of strengths, thus supporting Europe's internationally connected industrial base.

Semiconductor companies in Europe are part of complex international value networks that thrive on an open international trade environment. The semiconductor industry is one of the most highly globalised sectors, with a manufacturing process including hundreds of steps that are necessary to design, manufacture, test, and deliver chips to the customers. These steps may involve different companies or can be carried out within a single company at different locations around the world. Consequently, the semiconductor ecosystem is best viewed as a global common, with interdependencies built into it almost by design. Therefore, ESIA strongly believes that a positive approach to economic security is required, based on promoting international cooperation, as well as on support and incentives to build a strong European position.

While having protective measures in place is important, the European semiconductor industry would benefit from a comprehensive industrial strategy that prioritises competitiveness and technological leadership to achieve long-term growth. In the face of global competition, the European semiconductor sector must be supported through favourable framework conditions and less bureaucratic burden, as stated by the objectives of the *European Chips Act*⁴.

In this context, the EU should seek a high level of access to global markets and investments for the European industry and pursue deep industrial partnerships with third countries. For this reason, ESIA emphasises the need for the European Commission to adopt a positive approach to economic security that focuses on measures that promote European competitiveness while partnering with like-minded countries. Tighter constraints and safeguards may apply in high-risks collaborations / technology areas.

II. Outbound Investment Screening Mechanism

Outbound investments are a fundamental instrument for companies to access new markets, expand production capacity, and engage in innovative joint-ventures, thereby strengthening

⁴ Regulation (EU) 2023/1781 of the European Parliament and of the Council of 13 September 2023 establishing a framework of measures for strengthening Europe's semiconductor ecosystem and amending Regulation (EU) 2021/694 (Chips Act), *OJ L 229*, 18.9.2023, p. 1-53. URL: <https://eur-lex.europa.eu/eli/reg/2023/1781/oj> (retrieved 17/04/2024)

the European capital investment and the industry's competitiveness, as such achieving greater economic security in the long term. State controls that are ill-designed can constitute an interference in companies' business decisions and might risk stifling international investments.

For the semiconductor industry in particular, trade and investment freedom at international level is vital. The effective functioning of the global semiconductor supply chain depends on a high level of cross-border investment and cooperation. Without it, companies risk losing their global competitiveness.

In reference to the *White Paper on Outbound Investments*, ESIA considers that the current dual-use and sanctions regimes provide a sufficient tool set to control outbound investments. The proposed monitoring mechanisms might create additional burden for industry and may have a chilling effect on companies, worsening the current investment climate. Moreover, the mixing of concepts (e.g., investments <> exports) and tools implied in the *White Paper* may increase legal uncertainty and ambiguity for companies. Given the lack of specific results of the working group referenced in the *White Paper*, ESIA further recommends identifying problems, assessing risks, using the EU's existing toolbox (e.g., dual-use and sanctions regimes) more effectively before considering new instruments, and monitoring requirements that increase the administrative burden for companies while lowering their global competitiveness. Member States and all relevant industry stakeholders must be closely consulted, even beyond the official public consultation published by the European Commission. This is the best way to ensure that only effective measures are taken, which are needed on the basis of security considerations, or that are aimed at promoting international peace, with minimal impact on the competitiveness of the European semiconductor industry. To the extent that adopting additional measures beyond export controls is strictly necessary, more guidance will be needed to ensure economic operators can comply, for the sake of legal clarity and effective compliance.

III. Better EU Coordination on Export Controls of Dual-Use Item

ESIA supports the goal of the *White Paper on Export Controls* to foster uniform and effective controls across the EU. The *White Paper* sets the right impulse to start a discussion with Member States, the European Parliament, and industry stakeholders, to evaluate the functioning of the *Dual-Use Regulation*⁵. Indeed, it is necessary to assess whether the current framework can effectively meet the EU's present and future security needs.

A key objective of the upcoming review of the *Dual-Use Regulation* must be to achieve greater coordination and harmonisation between EU Member States on the dual-use export controls, including their practical application.

⁵ Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast), OJ L 206, 11.6.2021, p. 1-461. URL: <https://eur-lex.europa.eu/eli/reg/2021/821/oj> (retrieved 17/04/2024)

As several semiconductor devices are classified as dual-use, achieving a clear legislative framework in this field is paramount to the semiconductor industry. We note that the objective of the *Dual-Use Regulation* is to avoid the proliferation of military goods and weapons of mass destruction, based on detailed technical characteristics, thus promoting international stability.

A review of the *Dual-Use Regulation* should support the efforts of the European Commission towards achieving greater convergence across all EU Member States, to minimise the margin for different national interpretations, and to preserve the level-playing field across different countries. Against the backdrop of the recent geopolitical tensions, it has also become increasingly necessary for the EU to speak with one voice on the issue of export controls, to effectively protect the interests of the European industry at global level. In the current context of increasing global competition in the semiconductor industry, the EU should further avoid introducing controls that worsen the economic framework conditions for European exporters. The global level playing field should be preserved and improved, and European semiconductor industry should enjoy the same facilitation and advantages that are available to exporters from third countries. Aiming for closer coordination with like-minded countries, controls should be implemented on a multilateral basis to provide greater consistency and to avoid subjecting industry to restrictions that do not apply to non-EU countries. The EU-U.S. Trade and Technology Council (TTC) can provide a forum to align export control approaches both within the EU and multilaterally.

While ESIA understands the concerns arising from the stalling of outcomes of the international control regimes, we would caution against an EU-only approach and also against a situation where national measures become prevalent. Given the above security and competitiveness concerns, it would seem appropriate that any update to Annex I of the *Dual-Use Regulation* should be firmly based on the technical work in the international regimes on items with a clear need to install controls and follow the current legislative route. The EU should develop a structural and objective approach (including consultation with industry) how to move forward with such work for an EU dual-use update in case an outcome in these regimes is blocked by only one or two members.

IV. Foreign Direct Investment (FDI) Screening

ESIA acknowledges the desire of the European Commission to increase control over FDI in critical sectors. However, ESIA believes that a balanced approach is needed to allow for the necessary investments to flow into Europe to support the global competitiveness of the European industry.

ESIA welcomes an FDI screening mechanism that is clear, transparent, uniform throughout the EU, and that is objective and non-discriminatory. We observe, however, that the proposed revision of the FDI screening mechanism may fall short of a number of those criteria.

The proposed regulation threatens to diminish the predictability and transparency that investors need. The 15-month period for comments for non-notifiable transactions threatens to leave investors in limbo. In addition, the proposed regulation risks to create a framework which will likely tend towards minimum flexibility and maximum restrictions and may distort the internal market with regard to investments and the promotion of national champions.

In conclusion, ESIA strongly encourages the European Commission to develop an approach to FDI that is targeted at addressing EU's weaknesses and create opportunities to strengthen the whole ecosystem.

V. Conclusions and Recommendations

To effectively achieve greater economic security, the three-pillar approach to EU economic security established in the *Economic Security Strategy* should be fully upheld, by equally leveraging the three elements in it: **promoting** the EU's competitiveness, **protecting** against risks, and **partnering** with the broadest possible range of countries to advance shared economic security interests. ESIA strongly encourages the EU to implement a comprehensive plan accordingly.

ESIA calls on all relevant EU policymakers to carefully consider the following policy recommendations:

- Adopt a holistic approach to economic security that focuses on promoting competitiveness and partnering with third countries, especially through deep and comprehensive international industrial partnerships and that explicitly prohibits discrimination.
- Assess in-depth existing mechanisms at the national and European level, in close consultation with Member States and industry, prior to considering the implementation of stricter controls on European investments abroad.
- Adopt a clear common EU policy approach on export controls and coordinate this with like-minded countries.
- Prioritise harmonisation of controls on dual-use items across Member States and avoid introducing new controls which would put European exporters at a disadvantage versus their competitors in third countries.
- Prevent far-reaching due diligence, monitoring, risk management, and reporting obligations that increase administrative burden for companies and that may have a chilling effect on investments and cooperations.

For further information:

Giovanni Corder
Acting Director General
European Semiconductor Industry Association (ESIA)
Tel: + 32 2 290 36 60 • Web: <https://www.eusemiconductors.eu/>

ABOUT ESIA

The European Semiconductor Industry Association (ESIA) is the voice of the semiconductor industry in Europe. Its mission is to represent and promote the common interests of the Europe-based semiconductor industry towards the European institutions and stakeholders in order to ensure a sustainable business environment and foster its global competitiveness. As a provider of key enabling technologies, the industry creates innovative solutions for industrial development, contributing to economic growth and responding to major societal challenges. Being ranked as the most R&D-intensive sector by the European Commission, the European semiconductor ecosystem supports approx. 200.000 jobs directly and up to 1.000.000 induced jobs in systems, applications and services in Europe. Overall, micro- and nano-electronics enable the generation of at least 10% of GDP in Europe and the world.