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The European Union, Southern Multinationals and the Question of the "Strategic Industries

Judith Clifton and Daniel Díaz-Fuentes

1 Introduction[1]

Much of the controversy around foreign direct investment (FDI) in European policy-making circles in the recent period has crystallized around the notion of incoming FDI (IFDI) as a potential threat to "strategic industries." Definitions of what constitutes a "strategic industry" vary by country (Schulz, 2008) and even by government ministry, since those responsible for finance or competition will not necessarily share the same vision as those working in defense, employment, innovation, environment, transport or energy. In the recent period, debates and usage of "strategic industry" to question and even block IFDI have come to the forefront in the European Union (EU). Probably the most controversial case of a Southern Multinational in the EU is Russia's state-owned Gazprom. Many policy-makers suspect that Gazprom has geopolitical, rather than commercial, interests in EU gas markets (Clifton and Díaz-Fuentes, 2009). There have, however, been less high-profile instances where potential investors from the South have been unsuccessful in entering the EU, such as Mexican billionaire Carlos Slim's frustrated attempt to enter the Italian telecommunications market. Identifying and quantifying EU protectionism vis-à-vis Southern Multinationals in methodological terms is a challenge, however. Firstly, this is because details of why mergers & acquisitions (M&A) are blocked are usually quite opaque. Secondly, there is significant evidence of "economic nationalism" as regards IFDI into certain "strategic industries" from many countries, including other EU member states. Then Italian Prime Minister

Romano Prodi spoke of an “Italian solution” for Telecom Italia when foreign takeover by an American consortium was on the cards, while France’s former Prime Minister Dominique de Villepin celebrated “*patriotisme économique*” (*Le Monde*, 2005) when faced with the prospect of the takeover of food company Danone by US multinational PepsiCo (*Financial Times*, 2005). In Spain the “Endesa saga” ended with the European Commission (EC) criticizing the government for avoiding a legitimate takeover by E.ON. So protectionism in the EU is not only applicable to IFDI from the emerging markets.

How, then, to evaluate recent EU policies affecting IFDI? This chapter analyzes responses to IFDI from emerging markets in the “strategic industries” from within the EU in a fast-changing environment. Diverse sectors are analyzed though most attention is paid to two sectors that have been widely considered to be strategic by most countries around the world for several decades: energy and telecommunications. In order to understand the dynamics of the EU’s international investment climate, particularly from the perspective of emerging markets, three main levels of analysis are required. First, the changing international context needs analysis, in particular the extent to which IFDI from emerging markets has challenged the status quo of the traditional investment climate, as well as the unfolding financial crisis and economic recession. Second, the European authorities, principally the EC, require analysis as the main institution responsible for forging the European Single Market and ensuring the “four freedoms,” meaning movement of goods, services, capital, and people. Third, individual member state behavior needs examination, since it lies with national governments to establish FDI policy, and satisfy domestic political economy and welfare demands. This chapter is organized into four sections. In the second section, the EU IFDI regime for energy

and telecommunications is set in international context. Thirdly, the evolution of recent European-level policy reform that directly or indirectly impinges on IFDI in these sectors is analyzed, and the role of the Commission as "neutralizer" of potential or real restrictive attitudes towards IFDI at the national level is considered. Conclusions follow in section four.

2 The changing EU FDI regime in international context

The EU boasts one of the world's most liberal FDI regimes (OECD, 2007). EU member states are hosts to multinationals in most sectors from virtually all corners of the globe, and many of the new FDI players from emerging markets opt for the EU as host. In the context of increased FDI flows from 2004, peaking at an historic US$ 1.8 billion in 2007, the EU—like most other countries—was rightly criticized for increasing the implementation of restrictive policies and practices with an aim to limit IFDI as and when governments thought barriers necessary or desirable (UNCTAD, 2008). The EU has also been criticized by various business executives from emerging markets for raising protectionist barriers to their firms, including Gazprom (Traynor, 2007) and Mittal (as chronicled by Bouquet, 2008). The financial crisis and economic recession triggered by the collapse of the sub-prime market in the United States since 2007 changes the international context for FDI policy significantly. UNCTAD (2009) estimates that IFDI and cross-border mergers and acquisitions (M&A) to the EU would decline by around one-third in 2008: this represents the largest decline in any other part of the world. Similar or even larger declines are predicted for 2009. Governments in the EU are divided between requiring short-term capital investment to guarantee jobs and economic growth, and the need to satisfy medium to long-term political and economic

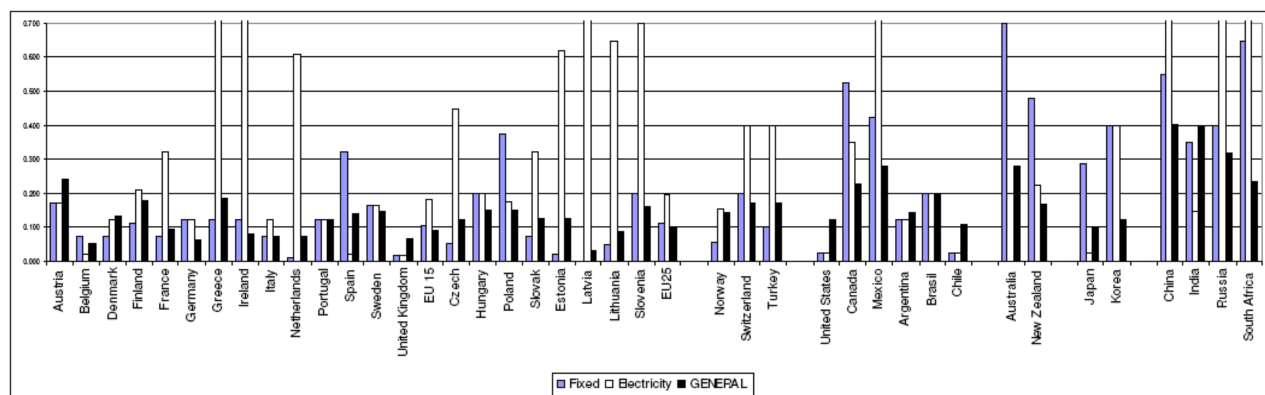
concerns that fueled the rise of FDI restrictions in the first place. These concerns could escalate if the temptation towards protectionism is not firmly resisted.

When comparing the openness of the EU IFDI regime at the international level using OECD (2007) methodology, the EU can be classified, on average, as being one of the most open regimes in the world, comparable to the US, and more open than Australia, Canada, Mexico, and New Zealand, as shown in Figure 1. Here, on a scale of 0 to 1, countries' openness to IFDI is shown, 0 meaning no legal restrictions and 1 meaning full restrictions. The EU is much more open than most emerging markets: of the BRIC countries, Brazil is the most open of the four, which helps to explain why OFDI from the EU is largely concentrated there. That said, openness is uneven, since there are important differences in the extent to which individual member states protect diverse sectors. Generally speaking, the EU's most open regimes are the UK, Ireland, Netherlands, Germany, Belgium, and Italy, while Norway, Finland, and Spain pose the greatest restrictions. As regards sectoral openness, EU countries tend to protect much more utilities and services than manufacturing (OECD, 2007: 140).

If much of the tension in the EU's IFDI regime is concerned with protecting "strategic industries," it is interesting to see how that debate has evolved. Traditionally, concern focused on military-related sectors but, recently, increased attention is being placed on network industries (energy, communications, transportation, and water) and the financial and banking sectors. Though the EU is as open as the US in general, both its electricity and telecommunications sectors are more protected than their American counterparts. For the bulk of the twentieth century, these sectors, along with other network industries, were organized as state-owned monopolies, managed according to

particular social welfare principles, and heavily unionized. Even at the beginning of the twenty-first century, they are still broadly perceived as being "public services" and thought to require special regulation. Despite this, the telecommunication sector is much more open to IFDI than the electricity sector. Explanations can be found in geopolitics or political economy. Smaller EU countries located near to the Russian borders have established the greatest restrictions to IFDI in electricity. It seems that these countries are concerned about foreign takeovers of their energy sector, a concern exacerbated by their small size and their Russian neighbor (Klinova, 2007). France, however, also maintains above-average protection of its electricity sector. The most liberal electricity regimes are Belgium and Spain (which historically had regionally based companies, with limited competition, and significant private sector involvement) and the UK (which implemented market-oriented reforms, including unbundling, in the 1980s). Somewhat paradoxically, these "liberal" companies were taken over by other ex-incumbents (Electrabel by Suez-GDF, and Endesa by Enel and EDF). In the UK the main operators are E.On and RWE. In contrast, the telecommunication sector in the EU, which is often described as a "strategic" sector in many countries, is on average as open to IFDI as any other industry sector in the EU.[2]

Figure 1 "Openness" to IFDI in general, fixed telephony and electricity



Source: Elaborated by the authors, based on OECD (2006), Golub (2003), and Koyama and Golub (2006).

In terms of the direction of recent IFDI flows into EU member states, nearly 70 percent were intra-EU flows, though in some countries, such as Austria, Belgium, Italy, Spain, Romania, Bulgaria, Poland, and the Czech Republic, this ratio was higher (Table 1). Albeit still marginal in terms of volume, IFDI from emerging markets has grown rapidly in recent years. The BRIC economies account for the larger part of these IFDI flows, some 1.4 percent of total IFDI on average over the 2004–8 period (up from 0.7 percent over 2004–6). Brazil and Russia account together for one percent. Russian inflows have been mainly directed towards Germany, Austria, Bulgaria, and Spain, as well as towards other smaller countries such as Latvia, Estonia, and Cyprus (not included in the table). Meanwhile, Brazilian inflows have focused on Hungary,[3] Spain, the Netherlands, Portugal, Denmark, and Italy.

Table 1. Inward foreign direct investment: total flows (million Euros) by main receptor country and percentage by zone and investing country, EU-27, 2004–2008

Inward Foreign Direct Investment; total flows (million euros) by main receptor country and percentage by zone and investing country; European Union (27 countries) 2004-2008

	Total IFDI (million EUR) 2004-2008	percentage ot total IFDI in the receptor country by investing country or group of contries								
		Intra-EU27	Extra-EU27	USA	BRIC	Brazil	Russia	India	China (excluding Hong Kong)	Hong Kong (SAR China)
European Union (27 countries)	2,356,976	70.9	29.1	12.7	1.4	0.56	0.44	0.15	0.11	0.16
United Kingdom	466,710	53.7	46.3	20.0	0.3			0.14		0.13
Luxembourg	447,448	55.7	44.3	9.0	-0.4	0.12	-1.18		0.47	0.25
France	352,469	76.6	23.4	13.8	0.7	0.07	0.12	0.02	0.09	0.41
Belgium	166,435	90.2	9.8	7.3	0.7			0.07	0.11	0.56
Netherlands	132,180	81.8	18.2	13.7	0.7	0.44	0.12		0.12	
Spain	128,501	87.8	12.2	7.0	1.7	0.77	0.81	0.03		0.04
Germany	124,400	78.7	21.3	1.5	3.3	0.06	2.60	0.08	0.42	0.10
Hungary	93,151	60.4	39.6	7.9	0.6	1.34	-1.07			0.35
Italy	85,818	92.4	7.6	2.7	1.0	0.39	0.19			0.36
Sweden	63,960	74.5	25.5	13.1	-0.3		-0.59		0.07	0.41
Poland	61,898	86.4	13.6	4.7	-0.8		-1.21	0.04	0.39	
Austria	46,546	92.7	7.3	1.8	2.2	0.28	1.18	0.15		0.60
Czech Republic	31,767	89.0	11.0	3.0	0.2			0.04	0.22	0.06
Romania	30,411	93.6	6.4	1.4	0.7		0.25	0.09	0.35	
Denmark	28,641	75.0	25.0	10.8	2.3	1.38	0.55	0.07	0.30	0.02
Bulgaria	24,577	84.2	15.8	2.6	2.9		2.82	0.02	0.02	0.03
Portugal	20,254	67.5	32.5	2.4	2.3	1.07	0.06	1.19		

Source: Elaborated by the authors based on Eurostat: Direct investment inward flows by main investing country, extracted on 24 August 2009 - last updated 15 June 2009, Hyperlink to the tables http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tec00049

As regards the M&A track record, the EU regime is also relatively open when compared internationally. The entry of multinationals from emerging markets into both Northern and Southern markets has increasingly attracted the attention of scholars.[4] In recent years, dozens of "Southern" Multinationals have entered the EU, including Tata, Mittal, Nanjing, Marcopolo, Cemex, Weg, Orascom, Lukoil, Gazprom, PEMEX, Hyundai, Sungwoo, Samsung, Sabó, Sonatrach, Orascom, Grupo Bimbo, and Petrobras, to mention a few, sometimes taking over flagship European firms. Of course, a considerable number of the attempts by multinationals from emerging markets to enter the European energy and telecommunications infrastructure have failed, such as recent failures experienced by Russia's Gazprom and Mexico's Grupo Carso. However, just as emerging market multinationals have been frustrated, so have many multinationals based within the EU. To illustrate: Catalunya's Gas Natural and Germany's E.ON energy firms were frustrated in their attempts to take over Spanish Endesa; in 2006, Spanish Abertis was blocked when it tried to merge with Italian Autostrade, even though the Commission later ruled that Italy had violated EU law. While it is possible to

catalog a list of M&A failures and success stories, it is difficult to conclude whether the EU is becoming increasingly more protectionist in the light of the emerging Southern Multinationals or whether its increased protectionism is more general. One way to evaluate the EU's current climate for IFDI, especially from emerging markets, is to follow the way in which policy has evolved—which directly or indirectly affects the FDI regime of the EU and its member states. This is done in the next section.

3 EU and member state FDI policy: Recent developments

3.1 FDI governance and instruments in the EU

Because of its "multilevel" governance structure, the EU offers an interesting arena for analysis of FDI policy. With different remits and objectives, policy developments in the Commission and at the national levels do not necessarily move in the same direction. The EU's liberal FDI regime both with regard to EU member states and third parties can be traced back to the Treaty of Rome (1957) where the "four freedoms" were upheld: the free circulation of goods, services, people, and capital, as well as the right of establishment. However, the extent to which the four freedoms were implemented in the first decades of the EU was irregular and uneven. Though the main beneficiaries in these processes were the member states, increased liberalization at the international level occurred as a "spillover effect:" as non-member state capital entered the EU, it became increasingly difficult to discriminate against these capital flows. The Commission is legally responsible for overseeing member states' application of treaty law with regard to the free movement of capital.[5] The freedom of capital movement also applies to third countries, though Articles 57, 59, and 60 of the treaty allow for specific exceptions, sanctions, and safeguard measures. The Commission also establishes and supervises European law regarding cartels, antitrust, mergers, state aid, and takeovers.

All of these rules must be implemented by the national government, and failure to do so can result in infringement cases taken against individual governments.[6] One of the aims of the Treaty of Lisbon is to increase the Commission's competence in investment policy, and this development is still ongoing.

In contrast, the FDI regime of each member state is decided at the national level and is usually implemented via bilateral agreements. It is the interaction of European and national layers of governance that causes friction. Generally speaking, the responsibilities of the Commission are economic and legalistic, while national governments are responsible for the political, economic, legalistic, *and* social dimensions of FDI, including national security and welfare. National governments have the final word in the defining which industries are "strategic" for the nation, as well as the degree of protection these industries enjoy from IFDI. The Commission, on the other hand, has to ensure liberalized markets, unless this would threaten national security. In practice, this is a gray area in legal and political terms. Events, as usual, throw up new challenges. Most dramatically, the recent spate of terrorist attacks since September 11 targeted infrastructure (metros, trains, buses, planes) while mobile phones, postal services, and the Internet were used to orchestrate the attacks. This has led to renewed debate on how "critical infrastructure" can be protected, including aspects about its ownership and regulation. For many Europeans, the cold month of January 2009 was accompanied by the threat or actual lack of gas due to the stand-off between Russia and the Ukraine. Certainly, if there is a blackout, an energy or water failure, or paralysis in the urban transportation system, European citizens hold their national government accountable, regardless of who owns and runs the network (Clifton, Comín, and Díaz-Fuentes, 2007). The same perception characterizes the

current financial crisis: national governments are held accountable by their citizens. There is some evidence that this belief in national accountability is getting stronger: according to special Eurobarometer surveys regarding energy issues, in 2006, 57 percent of Europeans stated that energy challenges should be managed at the local or national level, and not at the European level, up from 45 percent in 2005 (EC, 2006). Unsurprisingly, this change was particularly strong in countries near the Russian border (Estonia, Latvia), near the Ukraine (Romania, Hungary), as well as smaller countries, such as Austria, Cyprus, Greece, and Ireland.

Another reason for the tensions between the Commission and member states is the need for the latter to attend to domestic political economy interests. A number of member states have opted to protect business in certain sectors using "national champion" policies. In particular, former monopoly incumbents have enjoyed temporary "respite" from the European liberalization directives by delaying opening up at home while aggressively pursuing expansion opportunities abroad. A case in point is Spanish Telefonica, which, while enjoying virtual monopoly privileges at home until 1998, expanded aggressively into the Latin American telecommunications markets, which were privatized from the early 1990s onward after the debt crisis in the region (Clifton and Díaz-Fuentes, 2008).

Particularly since the current financial crisis spread to most other areas of economic life, there have been many threats and declarations by governments and trade unions from various EU countries about the need to buy nationally produced goods. In the UK, strikes have taken place to protest about firms' hiring of non-British (Italian) workers. Protectionism, it would seem, could spiral out of control if left unchecked. At

the same time, most of these threats have been countered by reminders as to the cause of the Great Depression and the futility of isolation. Political rhetoric and action are often contradictory, however.

The most common, formal instruments to restrict FDI are ownership restrictions, obligatory screening and approval procedures, and other formal restrictions, such as rules on the composition of the board, restrictions on the employment of foreign nationals, and so on. All of these instruments have been used by one EU member state or another in recent years. There are, of course, numerous other policies, which do not necessarily focus directly on IFDI, but work in other ways to restrict it. These mechanisms may be more subtle, such as the existence of complex regulatory frameworks or systems of corporate control. In addition, informal practices, such as the publicizing of opinions by policy-makers or members of the business community in order to steer an "unfriendly" investment climate, are also likely to affect the climate for IFDI. An evaluation of the importance of these formal and informal instruments on FDI must be made carefully. Just as the WTO prefers "transparent" tariffs to other forms of protectionism, since they are easier to quantify and therefore compare, formal instruments relating to FDI, such as laws, regulations, and screening mechanisms are easier to quantify than their informal counterparts. However, even though an analysis of formal FDI rules provides a useful—if impressionistic—picture of an economy's position vis-à-vis IFDI, of greater importance is the *use made* of the FDI framework. For instance, there have been some important cases of restricting FDI in EU member states using *existing* FDI regulations. To complicate matters more, it is not always straightforward to know the facts about why one deal is blocked and another accepted, and the real role of IFDI restrictions in that process. With these caveats in mind, this

section analyzes policy responses first by the member states themselves and then by the Commission. Two main areas are covered: the policy responses based on concerns about security, however defined, and EU member states' responses to the rise of sovereign wealth funds.

3.2 EU member states and IFDI policy

At the individual member state level, Germany has perhaps gone furthest in the introduction of new policies that restrict IFDI. In September 2008, the German cabinet approved a new bill that would allow prospective IFDI that involves 25 percent or more of a company's stake by non-European firms to be screened for approval. According to German officials, one of the triggers for this reform was in 2003, when a US private equity investment firm acquired a German submarine manufacturer (Government Accountability Office, 2008: 61). Alarm was raised about the lack of legal clarity in the protection of German military and strategic interests and, the following year, section 7 of the German Foreign Trade and Payments Act was enacted, which established limits to the free movement of capital into Germany on the grounds of "security." IFDI would be subject to review if it involved acquisition of a domestic company producing or developing weapons or other military equipment. German Chancellor Angela Merkel claimed that Germany needed a "light CFIUS" (Benoit, 2008) and, while the German government has downplayed the importance of this new bill, many local businesses have expressed their concern about the negative signals this may send to international markets. The stated concern behind this bill was the need to clarify German law in order to ensure "strategic" industries were protected, and officials stress that Germany is only adapting its policy framework to the US or UK model. As shown in Table 1, Germany is more exposed relatively to Russian IFDI than most other EU member states, which

could partly explain their concerns. In addition, as seen in Figure 1, Germany has been more “open” to IFDI into the electricity and telecommunication sector than the EU member states’ average. This confirms the interpretation that the new bill could be interpreted as a move away from relative openness towards the EU average, though it remains to be seen how the Commission will respond. This is already the second version of the bill, since the first version was rejected by the Commission (Walker, 2008).[7]

France has also attracted much attention for its recent IFDI reforms. In 2005, the French government compiled a list of “strategic” and “sensitive” industries in which foreign investors would be subject to government screening (UNCTAD, 2006; OECD, 2007).[8] The Decree (2005–1739) was criticized by the Commission, which stated that it did not respect the principle of “proportionality,” was unnecessarily unfavorable toward IFDI, included “casinos” (which were already protected by another French law), and discriminated between EU and non-EU investors, since potential investors from non-EU countries would be required to provide more data to the review process board. In the face of criticism, the French government appealed to the principle of subsidiarity, and claimed that it had the ultimate duty to defend the “national interest” as well as the legal responsibility to define what constitutes a “strategic” industry. The Commission formally requested France to modify the decree in October 2006 and discussions were still ongoing throughout 2008. At the same time, concerns in French policy circles have grown about the security of their energy infrastructure and supply. Since winning the presidential elections in 2007, President Sarkozy has publicly declared his preference for an active industrial policy approach. In June 2007, inspired by developments in Germany, the French Parliament produced a report suggesting that the energy sector

should be added to the list of protected industries. This debate has been "uploaded" to the European level, as we shall see later in this section. Finally, with the onset of recession in 2008 and, in response to a concern that distressed assets in the EU could be bought up cheaply by foreigners, Sarkozy proposed the creation of a European Sovereign Wealth Fund in order to protect Europe's "strategic" industries, though nothing has come out of this initiative so far. Appealing to populist sentiment, he was quoted as saying "I don't want European citizens to wake up in several months' time and find that European companies belong to non-European capital, which bought at the share prices' lowest point" (Bennhold, 2008).

There are several other developments at the national level. Hungary has earned the disapproval of the Commission, which issued a formal letter of concern to its government about the new company law on FDI passed in 2007. The Commission perceives this law as incompatible with European law. While Hungarian authorities claim this law aims to secure the public supply of services such as energy and water, the Commission argues that it has two main and undesirable effects: firstly, the Hungarian government will have the right to place politicians on the boards of energy firms; and secondly, it will slow down and publicize potential M&A, which could eliminate the element of surprise, thus increase prices, and open up more opportunities to block operations (EC, 2007).[9] Hungary had also been asked by the Commission in 2006 to modify its privatization law, which, the Commission claimed, conferred golden shares to firms in sectors including the food industry, pharmaceuticals, financial services, telecommunications, energy, and defense.

The retention of ‘golden shares’ in privatized industries has been an area where the EU has been active vis-à-vis national governments. Infringement procedures have been initiated with regard to various countries and firms, and the Commission states that special rights are still being conferred on privileged investors, preventing capital from flowing freely. In January 2008, the Commission referred Portugal to the European Court of Justice over its alleged special rights in Portugal Telecom (EC, 2008a) and Energias de Portugal (EC, 2008b), while in July 2008, the European Court of Justice found the requirement that potential acquisitions of Spanish energy firms had to be approved by the Comisión Nacional de la Energía (National Energy Commission) to violate Community law (EC, 2008c).

Nation states’ behavior has thus been subject to review by the Commission in the areas in which it has competence. In general, the Commission functions as the “liberalizing machine,” correcting national economic policies if they violate the free movement of capital. Two important developments, however, have emerged at the supranational level that concern—directly or indirectly—IFDI flows: energy policy and responses to sovereign wealth funds.

European energy policy can be traced back to the Treaty of Rome (1957), particularly in regard to the European Coal and Steel Community Treaty and the Euratom Treaty on the civil use of nuclear energy. However, until the 1990s, little was done to forge an internal market in energy and other infrastructure, and providers were usually organized as national or local state-owned monopolies. From the late 1990s onward, market-oriented reforms began, particularly for telecommunications, electricity, and gas. Though belated, these reforms generated great expectations and,

between 1993 and 2000, the worldwide ‘race’ for FDI was dominated by investment in telecommunications and energy utilities. Nearly two-thirds of world FDI during this period took place within the EU, and the utilities sectors were responsible for nearly three-quarters of privatization proceeds (Clifton, Comín, and Díaz-Fuentes, 2003). As world FDI flows dropped by around a half between 2000 and 2003, in the EU, delays dogged the implementation of European liberalization directives on electricity and gas, while the reforms already implemented did not always deliver what had been promised in terms of competition, price reductions, and market power. A second round of reforms was launched in 2003 (European Directives on Electricity, 2003/54/EC and Gas, 2003/55/EC) with the stated aims of providing more competition (highest priority), improving service quality and universal services, and ensuring the security of supply. Despite the rhetoric, the main focus of the Commission was economically driven: market competition was sought above all, at the expense of the other two objectives. One year later, the Commission found that 18 member states had not implemented the new directives adequately. In 2005, the Commission took Estonia, Greece, Ireland, Luxembourg, and Spain to court for failing to adapt national laws to the directives. The following year, the Commission took action against 17 countries for failing to implement legislation. After several years of attempted reform, the largest generator in the electricity market in EU member states often enjoys huge market shares. Thomas (2003) predicted that these liberalization reforms would lead to monopolistic competition between the “seven brothers,” though there were arguably only six or five by 2009. While some member states privatized and liberalized quite deeply (the UK and Spain), other member states were much more reluctant. Some electricity firms aggressively exploited opportunities opened up by liberalization programs abroad, while they enjoyed restricted or delayed liberalization at home. Smaller economies,

particularly those located at the Russian borders, avoided M&A into their energy markets based on "security" concerns (they had been highly dependent upon Russian gas since the Soviet era). Many governments and their firms were simply flouting the European legislation in terms of unbundling and liberalization. In 2006, a further directive (2005/89/EC) was passed concerning measures to safeguard the security of the electricity supply and infrastructure investment.

In 2007, the new energy policy was launched by the EU, which included issues beyond purely economically driven concerns, such as increased attention to the promotion of new or diverse energy sources, climate change, and the coordination of energy "security of supply." Security of supply is understood as an emphasis on diversity of energy types and sources, dialogue and agreements with trading partners, and preparation for an energy crisis (European Council, 2006). In the face of maverick firms and member states delaying or refusing to unbundle, the Commission has relaxed its policy stance somewhat, opting for "competition for the market" rather than "competition in the market." Some European politicians claim that Russia's decision to cut off energy supplies to the Ukraine in 2006 triggered this shift in European energy policy. One development is that the Commission is seeking to impose a "reciprocity" clause (sometimes called the "Gazprom clause") so that companies buying EU energy transmission assets would have to abide by similar rules to those of the EU as regards liberal markets. A further clause stipulates that "third-country individuals and countries cannot acquire control over a Community transmission system or transmission system operator unless this is permitted by an agreement between the EU and the third country." The clause, once adopted as law, would remove national competence in the area and require that any bilateral energy agreements with third countries are dealt with

exclusively at Community level. Current Energy Commissioner Andris Piebalgs justified the reciprocity clause on the grounds that it would give third-country suppliers clear rules for investment in the European market (Euractiv, 2007 and Wolf, 2007). Discussions are ongoing, and the Council adopted the development as part of the internal energy market package in February 2009.

The second area where significant developments have occurred is with regard to sovereign wealth funds. Already controversial before the current financial crisis and recession, the falling asset values in the EU have made this topic even more contentious. The main thrust of the development has been to work on guidelines for both the recipient country and the agent behind the fund in order to increase transparency and predictability of this kind of investment. Here, the ongoing work of the OECD (2009) has been helpful for EU policy-makers in drawing up key principles, and a common EU code was drafted at the end of 2008 (EC, 2008d).

Thus, the Commission has been active in reversing "golden shares," rejecting or diluting national government's lists of "strategic industries," and enforcing the free movement of capital both within the EU and with regard to third countries. Yet there remains a grey area between market liberalization on the one hand, and nationally defined "security interests" on the other, into which the majority of disputes fall. Moreover, there are delays to the liberalization process of some industry sectors, such as energy, where for instance unbundling policies will not be easy to enforce.

4 Conclusions

The EU enjoys one of the most liberal FDI regimes in the world, and is increasingly a host for IFDI and multinationals based in emerging markets. At the same time, the EU is not immune to a generalized increase in concern about IFDI by governments around the world. Member states have, in recent years, introduced new measures that aim to restrict IFDI, particularly from third countries. Informal practices have also proved unfavorable to IFDI. The main reason provided by EU and national policy-makers to justify any increase in FDI restrictions revolve around questions of "national security" and "strategic industries." Behind these concerns lies a diverse, contradictory set of interests, including bitter experiences with Europe's dependency on Russian gas, demands of incumbent business groups to protect national champions, economic nationalism sentiment and, perhaps most importantly, knee-jerk protectionist impulses based on fears about job losses and firm closure in the face of recession. The rise of Southern Multinationals is a newly emerging issue for EU leaders, and comes at an already "difficult" time: the Single Market is mature though becoming blocked in "complex" sectors. These internal tensions are only compounded and intensified as new global players from emerging markets strive to enter as recession sets in. Financial crisis and economic recession may make distressed EU assets attractive to international investors. From a purely economic point of view, this is to be welcomed, though when the other wider dimensions, such as national interests in the long term are considered, the picture is much less clear. The leading light in this period of relative darkness is the maturity of institutions repeatedly insisting on rational, thought-out collective action, an element missing in the 1930s.

Notes

[1] We would like to thank Andrea Goldstein, Louis Brennan, and Karl Sauvant for their valuable comments on presentations of the preliminary versions of this chapter.

[2] However, there are above-average levels of protectionism in Austria, Hungary, Poland, and Spain. In the case of Spain, the telecommunications sector was organized as a private monopoly, and its main players treated as "national champions."

[3] This is largely via the investment of Sabó, a car component manufacturer that is a global supplier to Volkswagen. Sabó was founded by a Hungarian immigrant in the 1950s.

[4] See, for instance, Lall, 1983; Amsden, 2001; International Finance Corporation, 2006; UNCTAD, 2006; Goldstein, 2007; Ramamurti and Singh, 2008; Sauvant, 2008.

[5] As a general rule, and according to the principles of subsidiarity and proportionality, policy should be, by default, conducted at the national level, with European-level policy only occurring when the EU enjoys legal competence to act, and where subsidiarity and proportionality are respected.

[6] An ongoing list of infringement cases is available at: http://ec.europa.eu/internal_market/capital/analysis/index_en.htm.

[7] Also in September 2008, the Commission made a final warning to the German government about the "VW law," which was found in 2007 to violate the EU free flow of capital rules. This law prevents the car company from being taken over as the Lower Saxony state government owns 20 percent of Volkswagen (Schäfer, 2008).

[8] The decree protects: gambling and casinos, private security, R&D in substances of potential interest to terrorists, equipment designed to intercept communication, testing of information technology systems, products for information systems security, cryptology equipment, activities carried out by firms entrusted with defense secrets,

research or production of arms or war materials, and activities carried out by firms for the design or supply of equipment for the Ministry of Defence.

[9] Ongoing developments in the completion of the single market are available at: http://ec.europa.eu/internal_market/capital/analysis/index_en.htm.

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