

**ICI Global Response to the European Commission Consultation on the  
White Paper on Outbound Investment<sup>1</sup>  
April 16, 2024**

ICI Global<sup>2</sup> appreciates the opportunity to provide feedback to the European Commission on its targeted consultation on the White Paper on Outbound Investment.<sup>3</sup> ICI Global members manage more than €5 trillion in UCITS; these UCITS pursue a myriad of investment strategies, including strategies that contemplate investment in developing and emerging markets, technology companies, and other types of entities that may present an increased governmental security risk.

We appreciate the thoughtful, multi-step approach the Commission is pursuing to determine whether an EU policy response is necessary in this sensitive area. As the Commission notes in the White Paper, the European Union is not alone in considering a policy initiative on outbound investment. Japan and China have already adopted controls and the United States is in the process of adopting rules implementing an Executive Order setting forth an outbound investment framework.

In September 2023, ICI responded to the U.S. Treasury’s Advance Notice of Proposed Rulemaking regarding Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern (ANPRM), which was issued as the first step in implementing regulations to effectuate the August 9, 2023, Executive Order “Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern.”<sup>4</sup> In our response to the ANPRM, we expressed support for the U.S. Treasury’s intention and efforts to tailor the regulations appropriately to address the stated national security policy goals while mitigating unintended

---

<sup>1</sup> This document supplements the response ICI Global completed through the online survey.

<sup>2</sup> ICI Global carries out the international work of the [Investment Company Institute](#), the leading association representing regulated investment funds. With total assets of \$43.6 trillion, ICI’s membership includes mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in Europe, Asia, and other jurisdictions. ICI’s mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. ICI Global has offices in Brussels, London, and Washington, DC.

<sup>3</sup> <https://circabc.europa.eu/ui/group/aac710a0-4eb3-493e-a12a-e988b442a72a/library/51124c0d-58d8-4cd9-8a22-4779f6647899/details?download=true>.

<sup>4</sup> The comment letter is available at <https://www.ici.org/system/files/2023-09/23-cl-treasury-anprm.pdf>.

consequences and without unnecessarily burdening U.S. persons.<sup>5</sup> We stressed that careful calibration is essential for the adoption of a program that prescribes actionable requirements in order to achieve the U.S. government's goals, while also seeking to maintain the longstanding commitment to open investment that has served the U.S. capital markets well for decades.

The legal framework applicable to the European Union, and the process currently being undertaken by the Commission, is notably different from that of the United States. However, the issues we raised in our response to the ANPRM, and particularly the application of the outbound investment program to regulated funds and asset managers, may be useful for EU policymakers to consider as they chart a path forward. We also believe it is important for the United States and the European Union to coordinate and, as much as possible, seek alignment on their approach.

We provide below further explanation for certain of our responses to the Commission's survey.

**E.1. Should the monitoring of outbound investments by Member States focus on the four technology areas of advanced semiconductors, artificial intelligence, quantum technologies and biotechnologies?**

Our response to Question E.1. is "yes." As provided for in our survey response, we believe that the proposed monitoring exercise should focus on the most sensitive technology and know-how. Limiting the monitoring to the technology areas that the Commission has identified as "highly likely to present the most sensitive and immediate risks related to technology security and technology leakage" would allow both investors and national authorities to focus on the most relevant transactions at this time, rather than a potentially significant number of transactions that pose much lower concern or no concerns. Requiring reporting on a broad range of transactions would be unduly burdensome from an operational and compliance perspective, and would be of lesser utility for national authorities than more targeted reporting.

We also suggest that the Commission consider applying a de minimis threshold of activity related to a critical technology that an entity should be required to meet before they enter the scope of either the

---

<sup>5</sup> The Executive Order defines a "United States person" as any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States, including any foreign branches of any such entity, and any person in the United States.

proposed monitoring period or any future regime. This would avoid capturing firms or conglomerates for whom activities related to a critical technology are an immaterial part of their business.

**E.9. Should the monitoring exclude portfolio investments? (NB “portfolio investment” here means non-direct foreign investment undertaken with the purpose of making a financial investment without any intention to influence the management and control of an undertaking)**

Our response to Question E.9. is “yes.” The Commission believes that the monitoring exercise should cover a wide range of transactions, including “all kinds of active investments,” but that it should exclude “portfolio investments,” described as “non-direct foreign investment with the purpose of making a financial investment without any intention to influence the management and control of an undertaking.” The Commission further describes the types of investments for which there should be monitoring, including acquisitions, mergers, asset transfers, greenfield investments, joint ventures, and venture capital.

We agree in principle with the Commission’s proposed approach of targeting for monitoring only certain types of investments based on the recognition that such transactions pose more potential security risks. We agree that transactions such as acquisitions, mergers, asset transfers, greenfield investments, joint ventures, and venture capital investments are appropriate to be considered in scope of any monitoring exercise, and that “portfolio investments” should clearly be outside of the scope. In its ANPRM, the U.S. Treasury Department similarly expressed the view that certain categories of transactions could aid in the development of technological advances and pose a risk to U.S. national security, whereas other types of transactions are unlikely to pose a security risk. The U.S. Treasury Department therefore focused its prohibitions on those transactions they viewed as posing greater risk and proposed a carveout or exception for investments in publicly-traded securities and into mutual funds, exchange-traded funds, and similar instruments, based on its assessment that these types of transactions present a low likelihood of being a risk to national security.

As the Commission moves forward with drafting its recommendation to Member States, we raise the concern that the description of what constitutes a “portfolio investment” in the White Paper may be too narrow and inadvertently exclude from “portfolio investment” certain investments that do not pose a security risk. For example, we believe that the mere voting of proxies under a fiduciary obligation is, in and of itself, insufficient to cause a finding of influencing management or control. However, based on the description of “portfolio investment” in the White Paper, it is not clear that this would be the case.

We therefore urge the Commission to carefully and clearly describe the types of transactions that are in or out of scope of the term “portfolio investment.” We also recommend that the Commission clarify that “portfolio investments” include subscriptions to initial public offerings (IPOs), since after an IPO is completed, the new stock becomes a publicly traded security.

**E.19. Should the monitoring cover new and ongoing transactions, as well as transactions completed since 01 January 2019?**

Our response to Question E.19 is “no.” The Commission proposes that Member States undertake the monitoring exercise within a 12-month period from the date of the adoption of a Commission Recommendation regarding the monitoring exercise. The monitoring period that the Commission proposes – meaning the data range for which information regarding in-scope transactions should be gathered and assessed – is proposed to be new and ongoing transactions, as well as transactions completed since January 1, 2019. In order to ensure that they have adequate monitoring tools and sources of information, the Commission encourages Member States to consider adapting existing tools or putting new ones in place for the purpose of the proposed monitoring activities.

It is uncertain precisely how Member States will gather the detailed information and data on individual transactions that will be needed to conduct a risk assessment, and it is further uncertain how complicated and burdensome the collection of this data will be – for both the Member State and the investor (to the extent Member States will request investors to produce response information). We therefore strongly recommend that the time period in scope of the monitoring exercise be substantially reduced. We believe that an evaluation of transactions from January 1, 2022, onward would provide sufficient data for conducting a risk assessment. Should a Member State feel that the information it has received is not adequate, it could determine to evaluate some or all in-scope transactions from an earlier period.