

Acquisition- and ownership-related policies to safeguard essential security interests

New policies to manage new threats

Agenda

12 March 2019

OECD Conference Centre
Paris, France

Hosted by the OECD Freedom of Investment Roundtable

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- Venue and logistical information
OECD Conference Centre, CC12
2, rue André-Pascal
75016 Paris, France
www.oecd.org/conference-centre/
- Suggested reading
Acquisition- and ownership-related policies to safeguard essential security interests – Current and emerging trends (2019) – oe.cd/natsec2019
Current trends in investment policies related to national security and public order (2018) – oe.cd/natsec2018
Guidelines for Recipient Country Investment Policies relating to National Security (2009) – oe.cd/natsecgl2009
Investment policies related to national security (2016) – oe.cd/natsec2016
- Past events
Investment policies related to national security: *New policies to manage new threats?* – workshop, 13 March 2018
- Contact
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OECD Investment Division
oe.cd/natsec

- A sizeable number of advanced and emerging economies are currently **re-evaluating** their policies to manage risks to their essential security interests that are associated with acquisitions and ownership of sensitive assets. In the past two years alone nine out of the world's ten largest economies and a dozen jurisdictions from among the 62 economies that are invited to participate in the OECD-hosted policy dialogue on this matter have reformed or introduced new policies to manage such threats. An ever greater proportion of global FDI inflows is being subjected to review mechanisms to manage risks for essential security interests.

Since 2006, the OECD investment policy community has been hosting an **inclusive dialogue** on such policies to build trust and a common understanding on how such policies should be designed to minimise their impact on desirable economic activity. They laid down their conclusions in *Guidelines for recipient country investment policies relating to national security* in 2009.

The **tenth anniversary** of these guidelines this year coincides with the steep increase in the number of new policies or reforms, which reflect an evolving risk-assessment, new challenges, and learning from own and others' policy implementation and experiences. The current proliferation and expansion of such policies entails new challenges and potentially obstacles to individual businesses, to international investment, and to economic exchanges more broadly. As in many other policy areas, governments will need to cooperate among each other to meet these challenges to safeguard not only their immediate essential security interests, but also the conditions for prosperity on which their security ultimately relies.

This conference on "*Acquisition- and ownership-related policies to safeguard essential security interests*" seeks to

- enhance understanding of the **drivers and features** of recent trends and future perspectives for policymaking in this and closely related areas;
- exchange views among governments and with stakeholders about **challenges** of current policy designs and practices, and mutual contributions to manage these challenges; and
- assess to what extent and which forms of **international cooperation** – e.g. harmonisation of policies, information exchange, or mutual recognition – could enhance outcomes in the public interest and for businesses.

The conference will bring together policy-makers from the relevant policy communities of the 62 jurisdictions that are invited to participate in the Freedom of Investment (FOI) Roundtables, as well as businesses, stakeholders and other specialists that interact with these policies. A **research note by the OECD Secretariat on current and emerging trends** is available for more information; it provides background for conference participants and context for the individual sessions.

The Conference is not a public event and, thus, beyond government representatives, participation is on invitation only. Officials from Member governments are invited to register through their Delegations in the OECD's Event Management System (EMS); officials from non-Member governments and other interested individuals are invited to express their interest by writing to investment@oecd.org. The Conference languages are English and French, with simultaneous translation between the two languages.

■ Schedule

09:15 – 09:30 *Welcoming remarks*

Greg Medcraft, Director, Directorate for Financial and Enterprise Affairs, OECD.

09:30 – 09:40 *Overview of the objectives of the conference*

The introductory session will set out the purpose of the workshop, the structure of the conversation and the objectives of the event.

Ana Novik, Head, Investment Division, OECD.

09:40 – 11:10 *EVOLUTION OF THREATS, EVOLUTION OF POLICIES*

What drives reform of acquisition- and ownership-related policies to safeguard essential security interests and how do governments respond?

Recent years have seen a significant upward trend in the introduction of acquisition- and ownership-related policies or reform of existing mechanisms that strengthen governments' means to protect essential security interests. What are the drivers for this proliferation and expansion of powers? What explains the apparent polarisation in views and approaches between countries that enhance their control over certain types of investment and those that do not see benefits in introducing such policies at this time?

Have new threats emerged that existing policies did not address? What role does technological development play? Has the origin or nature of threats changed? Are countries rebalancing their degree of openness with new perceptions of national security imperatives? Are countries learning from implementation and others' examples and adjust?

Policy-makers from governments will offer insights on what drives the changes in investment policies related to national security concerns, why the number of policy changes in this area is growing so rapidly at this time, and why some governments do not consider such policies to be beneficial.

Moderator

Carlos Esplugues, Professor of Law, University of Valencia, Spain.

Panellists

Joffrey Célestin-Urbain, Chef du Service de l'Information stratégique et de la sécurité économiques (SISSE), Direction générale des Entreprises, France.

Laura Black, Director, Policy and International Relations, Office of Investment Security (CFIUS), Department of the Treasury, United States.

Hidetaka Nishimura, Director for Security Trade Control Policy Division, Trade and Economic Cooperation Bureau, Ministry of Economy, Trade and Industry, Japan.

Stefan Flückiger, Ambassador, Delegate of the Federal Council for Trade Agreements, Switzerland.

Coffee break 11:10-11:30

11:30 – 13:00 **MUTUAL CONTRIBUTIONS TO MINIMISING IMPACT**

**How do new policies impact businesses and stakeholders?
How can policymakers attenuate these impacts, and what role
do businesses have in reassuring implementing authorities that
transactions are innocuous?**

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Acquisition- and ownership-related policies to safeguard essential security interests impose costs on businesses, governments and societies. For acquirers, these costs materialise as delays, expenditure to seek expert advice, and reputational risk, among others. Owners of acquisition targets may fetch lower prices in a restrained market; companies that develop innovative technologies may be under-priced as a result, as fewer suitors compete for them.

Regulation in the public interest comes at a price. Good policy design however may reduce such costs to the necessary minimum.

Experts that advise companies in transactions and businesses will explain which policies drive costs for businesses upwards, and what governments can do to limit the financial burden on businesses resulting from acquisition-reviews.

Businesses may also have a role to play: Acquisition- and ownership related policies pay as much attention to features of *acquirers* as they do to features of the *assets under acquisition*. Risks for essential security interest are a product of sensitivities of acquirer and of the acquisition target.

Acquirers may have thus a role and responsibility to reduce the costs that acquisition- and ownership-related policies have for them and for societies. What can businesses do to convince governments that transactions they are involved in will not threaten essential security interests?

Moderator

Ana Novik, Head, Investment Division, OECD.

Panellists

Winand Quaedly, Chair, *BIAC Investment Committee*, Business and Industry Advisory Committee to the OECD (BIAC).

Agatha Kratz, Associate Director, Rhodium Group.

David Fagan, Partner, Covington&Burling, United States.

Pascal Dupeyrat, Relians Consulting, France.

Tara Deshpande, Department for Business, Energy and Industrial Strategy, United Kingdom.

Lunch break (13:00-14:30)

14:30 – 15:30 **PREDICTIONS ABOUT PREOCCUPATIONS*****Emerging and future challenges related to safeguarding essential security interests in the context of acquisition and ownership-related policies***

Acquisition- and ownership-related policies to safeguard essential security interest are diversifying and differentiating. New approaches to manage ownership-related risks are being developed, and newly identified vulnerabilities or circumvention techniques are likely to accelerate this trend.

Most recent policy innovations include ownership-related policies to complement more traditional acquisition-focused mechanisms; and control over outward transactions that involve technology transfer, for example. These trends may have repercussions on the international allocation of capital, in particular research and development, and research financing and international research mobility.

Policy developments in these related and emerging areas and that are still in infant stages in only a few countries are likely to develop and proliferate, as perceptions over threats to essential security interests continue to evolve: Research partnerships involving foreign firms in host countries and academic exchanges recently came to some countries' attention as other forms of technology transfer that are not ownership-related, but operate through similar channels and may be used as substitutes.

Countries that have recently introduced innovations or are considering whether some developments need a policy response are invited to share what motivates specific acquisition- and ownership-related policies and how they see their role in relation to more traditional instruments. Likely secondary effects of policies will also be considered to anticipate the overall results of policy trends that can be expected in the near future.

Moderator**Joachim Pohl**, Investment Division, OECD.**Panellists****Stephanie Segal**, Deputy Director and Senior Fellow, Simon Chair in Political Economy, Center for Strategic and International Studies (CSIS), United States.**Robert Williams**, Executive Director, Paul Tsai China Center and Senior Research Scholar and Lecturer in Law, Yale Law School.**Hosuk Lee-Makiyama**, Director, European Centre for International Political Economy.**Dan Leeman**, Deputy Director, Division for Legislation on Public Order and Safety and Crisis Preparedness, Ministry of Justice, Sweden.**Coffee break (15:30-15:50)**

15:50 – 17:00 **BETTER OUTCOMES FOR ALL FROM INTERNATIONAL COOPERATION**

Merits and potential of mechanisms to minimize the impact of acquisition- and ownership-related policies on legitimate international business: Harmonisation of criteria and procedures, information exchange, mutual recognition and the role of policy guidelines



The proliferation and expansion of acquisition- and ownership-related policies is likely to lead to an accumulation of review requirements for certain transactions in multiple jurisdictions where the acquisition target holds assets. At present, these reviews follow different procedures and apply different criteria in each jurisdiction, increasing cost and uncertainty of the outcome.

International cooperation may attenuate these consequences: harmonised criteria or procedures; exchange of information; and mutual recognition may, at least among some countries, facilitate acquisitions and help mitigate the impact of multiple additional review requirements.

Such international cooperation is successful in many policy areas where multiple jurisdictions are triggered, such as regulation, merger reviews, and even in sensitive areas such as international law enforcement and money-laundering.

What is the potential for different forms of cooperation in managing essential security risks related to acquisitions and ownership of sensitive assets? Which practical conditions need to be met to make these successful and worthwhile? What role do internationally agreed policy guidelines, such as the Guidelines for Recipient Country Investment Policies relating to National Security (2009) play to foster international cooperation? Would additional or updated guidance better reflect today's conditions?

Moderator

Ana Novik, Head, Investment Division, OECD.

Panellists

Maria Martin-Prat, Director, DG TRADE, European Commission.

Antonio Gomes, Deputy Director, Directorate for Financial and Enterprise Affairs and former Head, Competition Division, OECD.

Manfred Schekulin, Chair, OECD Investment Committee.

17:00 – 17:30 **CONCLUSIONS AND CLOSING**

International cooperation on acquisition- and ownership-related policies: What role for common standards?

■ Speaker biographies



Laura Black is the Director of Investment Security Policy and International Relations (CFIUS) at the U.S. Department of the Treasury. Since joining Treasury in 2007, Ms. Black has held a variety of positions, including Senior Advisor to the General Counsel, Senior Advisor to the Assistant Secretary for International Markets and Development, and attorney within the offices of the General Counsel supporting the Office of International Affairs and the Office of Foreign Assets Control (OFAC). She also was detailed to the U.S. Executive Director's Office at the Inter-American Development Bank for several years to represent U.S. interests on the Bank's Board of Directors. Prior to joining Treasury, she was a Senior Associate in the Washington, DC and Brussels, Belgium offices of Cleary Gottlieb Steen & Hamilton LLP where her practice focused on cross-border mergers and acquisitions. Ms. Black holds a J.D. from Harvard Law School and a B.A. in economics from Bucknell University.

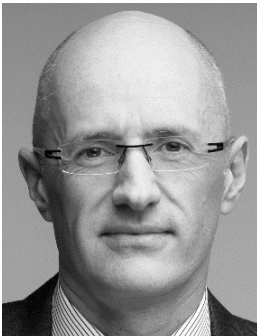


Joffrey Célestin-Urbain heads the department for Strategic Information and Economic Security (SISSE) at the Directorate General for Enterprises (Ministry of Economy and Finance). Born in 1981, he graduated from 'Sciences Po' Paris and the Ecole Nationale d'Administration (ENA).

Before he joined the SISSE in October 2018, Mr. Celestin-Urbain was Deputy Assistant Secretary for bilateral economic relations at the Directorate General of the Treasury (2017-2018). Before this, he held positions as Executive Director for France, Spain, Austria, Sweden, Finland, Denmark and Norway at the Interamerican Development Bank; Head of the Environment, Agriculture and Climate change policy office at the Directorate General of the Treasury; Advisor on trade finance and bilateral trade between Africa and the MENA Region; Head of carbon markets at the Directorate General for Energy and Climate change, Ministry of Environment and Energy; and Deputy Secretary General of the *Paris Club*, among others.



Tara Deshpande is from the United Kingdom's Department for Business, Energy and Industrial Strategy and heads its National Security and Investment Policy Team. Her background is primarily in policy development in central government, where she has held a number of posts. Her current role focuses on developing policies that maintain the UK's open approach to international investment while ensuring that the right safeguards are in place to protect national security. In particular, this involves work on the UK Government's recent proposals for reforms to its powers to scrutinise investments and other events on national security grounds.



Pascal Dupeyrat is a lobbyist who specializes in intermediation and institutional support for operators and investors in strategic and regulatory sectors. He is a specialist of the French decree regarding FDI screening as well as for the CFIUS process. Founder of *Relians Consulting* in 2002, he works for a number of French and Foreign groups, both in France and internationally. This knowledge of regulated investment led him to publish the '*Guide to Investment in Strategic Sectors*' in 2011 (3rd edition forthcoming in 2019), in which he details the principles and rules relating to the control of cross-border or merger and acquisition operations in strategic sectors. Pascal Dupeyrat holds a degree from the Paris Institute of Political Studies and a postgraduate degree in Public Law from the University of Paris Panthéon-Assas, specializing in public business law.



Carlos Esplugues is Professor of Private International Law and International Trade Law at the University of Valencia and member of the MedArbValencia excellence research group. Carlos was the President of the Spanish Association of International Law during 2013-2017 and he is currently the Spanish Delegate to the UNCITRAL's Working Group II – Dispute Settlement. He has also been a member of several experts groups in the EU and abroad.

Carlos Esplugues has a vast production the field of private international law and international trade law. Today he is paying special interest to international dispute resolution (international jurisdiction, international arbitration and international civil and commercial mediation) and Investment Law.



David Fagan co-chairs Covington's top ranked CFIUS practice. He is rated by *Chambers USA* and *Chambers Global* for his leading expertise in CFIUS matters, and was named as a Dealmaker of the Year by *The American Lawyer* for 2016. Mr. Fagan has represented foreign and domestic clients in various industries in securing the approval of CFIUS, as well as in connection with ongoing compliance matters related to mitigation agreements with CFIUS. For example, he helped secure approval for the \$ 2.7 billion acquisition of Genworth Financial by China Oceanwide, the largest China-related transaction approved in the Trump Administration, and was among the Covington senior lawyers who represented Qualcomm before CFIUS in successfully defending against the \$ 121 billion hostile takeover bid by Broadcom. Mr. Fagan also frequently handles matters related to FOCI mitigation.



Stefan Flückiger heads the Special Foreign Economic Services in the State Secretariat for Economic Affairs in Switzerland. His team negotiates bilateral and multilateral trade and investment agreements for Switzerland. After studies at Zurich and Yale University he entered the Swiss diplomatic service as a career diplomat, posted in Zimbabwe, Berlin and Bern. From 2010 to 2014 he served as Ambassador of the Swiss OECD Delegation in Paris. In between, he worked at the World Bank and in the Swiss think-tank *Avenir Suisse*.

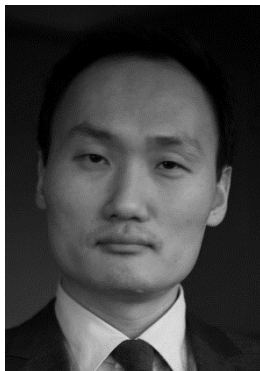


Antonio Gomes, is Deputy Director of the OECD Directorate for Financial and Enterprise Affairs since September 2018 and in this role responsible for the Directorate's Market Cluster including Competition, Investment, Financial Markets, Financial Education and Consumer Protection, Pensions, Insurance and Public Debt Management, supporting the coordination and management of the policy and standard-setting work in these areas.

He previously served as Head of the OECD Competition Division (2016-2018), President of the Portuguese Competition Authority (2013-2016), Senior Competition Expert at the OECD Competition Division (2013) and Director of the Merger Department of the Portuguese Competition Authority (2007-2013). Since 2005, he has been an Assistant Professor at the Universidade de Aveiro, Portugal.



Agatha Kratz is an Associate Director at Rhodium Group. She heads Rhodium Group's European activities, and contributes to research on European Union-China relations, China's outward investment, and the Belt and Road Initiative. She is also a non-resident Adjunct Fellow in the Reconnecting Asia Project at the Center for Strategic and International Studies and Simon Chair in Political Economy. Agatha was previously Associate Policy Fellow at the European Council on Foreign Relations (ECFR), Asia & China Program, Assistant Editor for the *China Economic Quarterly* from 2016 to 2017, and Editor-in-Chief of *China Analysis* until 2015.



Hosuk Lee-Makiyama is the director of European Centre for International Political Economy (ECIPE) and a leading author on trade diplomacy, EU-Far East relations and the digital economy. He is regularly consulted by governments and international organisations on a range of issues, from trade negotiations to economic reforms. He appears regularly in European, Chinese and US media. Prior to joining ECIPE, he was an independent counsel on regulatory affairs, competition and communication, Senior Advisor at the Ministry of Foreign Affairs, representative of Sweden and the EU member states towards the WTO and the UN, including WIPO and UNECE. Lee-Makiyama is also a Fellow at the department International Relations at the London School of Economics, and currently shares his time between LSE and ECIPE.



Maria Martin-Prat is Director in the European Commission Directorate General for Trade – the Directorate General which manages the EU trade and investment relations with non-EU countries – where she is responsible for Services and Digital Trade, Investment, Intellectual Property and Public Procurement. She is also the Commission's Chief Negotiator in the negotiations of a BIT with China.

Previously, Ms. Martin-Prat was Head of the Copyright Unit of the EC's Communications, Networks, Content and Technology Directorate General and, before that, in the Internal Market Directorate General. She was also a member of Commissioner Joaquin Almunia's Cabinet.

Ms. Martin-Prat has also worked as a lawyer in the private sector and in the European Parliament. She is admitted as a solicitor in Spain and has two postgraduate degrees in European Law (European Institute, University of Amsterdam and Institute of European Studies, Free University of Brussels).



Greg Medcraft is Director of the OECD Directorate for Financial and Enterprise Affairs since November 2017 contributing guidance, strategy and support for the Directorate's policy and standard-setting work in fields including blockchain and distributed ledger technology, competition, corporate governance, anti-corruption, responsible business conduct, financial education and consumer protection, capital markets, finance, investment, pensions, insurance, public debt management and financial markets.

Mr. Medcraft has extensive experience on financial markets and services issues from industry and policy perspectives. He spent 30 years of his career in the private sector (KPMG, Société Générale and as CEO of the Australian Securitisation Forum, an industry group). From 2009 to 2017, he was Commissioner and then Chairman of the Australian Securities and Investments Commission. Until May 2016, he was also Chair of the International Organization of Securities Commissions Board and a member of the Financial Stability Board.



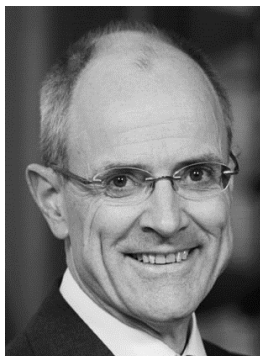
Hidetaka Nishimura is currently in charge of Japan's security trade control policy, including regulations on Foreign Direct Investment to Japan, as the Director for Security Trade Control Policy Division, Trade and Economic Cooperation Bureau, Ministry of Economy, Trade and Industry.

He began his career with the Government of Japan in 1993 and has over 25 years of policy making experience in various fields such as small and medium enterprise policy, industrial policy, industrial technology policy and energy policy. His earlier appointments include Director for Fine Chemicals Office, Economic Counselor of Embassy of Japan in Canada, Executive Advisor to State Minister of Economy, Trade and Industry and Director for Bio-industry Division.



Ana Novik is Head of the OECD Investment Division in the Directorate for Financial and Enterprise Affairs, supports the Director in DAF's contribution to the strategic orientations of the Secretary General, with a focus on improving the international investment climate, promoting good domestic policies to support investment and Responsible Business Conduct.

She establishes strategies for the OECD to secure a leadership role in the international investment debate and to advance a more structured economic analysis of investment flows and impact. She also contributes to OECD-wide initiatives, including horizontal work streams on competitive neutrality, global value chains and OECD contributions to the G20. Prior to joining the OECD, Ms. Novik was the Ambassador Director of Multilateral Economic Affairs in the Economics Directorate of Chile's Ministry of Foreign Affairs and Trade from 2011 to 2014.



Winand L.E. Quaedvlieg, Head of the Brussels Office of VNO-NCW, is responsible for the overall EU lobby of VNO-NCW. He was previously Deputy Director of the International Economic Affairs in VNO-NCW and responsible for international trade and investment policy and international corporate social responsibility. He chairs BIAC's Investment Committee since 2012.

Winand was a member of the Commission on European Integration of the Advisory Council on International Affairs of the Dutch Ministry of Foreign Affairs, Vice Chair of the BusinessEurope International Relations Committee, and lecturer on EU External Economic Policy at Leiden University. He studied law in Nijmegen and Nancy and was nominated Officer in the French Ordre National du Mérite in 2011.

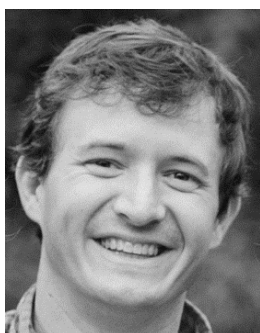


Manfred Schekulin is Director for Trade Policy Analysis and Strategies at the Austrian Federal Ministry for Digital and Economic Affairs. Mr. Schekulin, who is of Austrian nationality, holds a Master of Social and Economic Sciences (Economics) and a Doctor of Law, both from the University of Vienna, and a Master of Business Administration (MBA) from the University of Economics and Business Administration in Vienna, and has also completed postgraduate studies in Political Science at the Institute for Advanced Studies and Applied Research in Vienna. He is teaching trade/investment/globalisation related courses at several Austrian Universities and has been involved in OECD investment work since 1994 including, since 2004, as Chairman of the OECD Investment Committee.



Stephanie Segal is deputy director and senior fellow of the CSIS Simon Chair in Political Economy. Previously, she served as co-director of the East Asia Office at the U.S. Department of the Treasury. Prior to Treasury, she was senior economist at the International Monetary Fund (IMF), where she covered a range of emerging market and advanced country economies.

Earlier in her career, Ms. Segal served as an economist in the Western Hemisphere, Southeast Asia, and International Monetary Policy offices at Treasury; as an adviser to the U.S. director at the IMF; and as an analyst and then associate in Mergers & Acquisitions at J.P. Morgan in New York. She earned her master's degree from Johns Hopkins University's School of Advanced International Studies and her undergraduate degree from the University of North Carolina at Chapel Hill.



Robert D. Williams is a senior research scholar, lecturer, and executive director of the Paul Tsai China Center at Yale Law School. He focuses on U.S.-China relations and Chinese law and policy, with interests at the intersection of technology and national security. He is also a non-resident senior fellow at the Brookings Institution, a lecturer at Yale's Jackson Institute for Global Affairs, and a contributing editor at Lawfare.

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