

Merger Guidelines Review

Topic G – Public Policy, Security, and Labour Market Considerations

I. EXECUTIVE SUMMARY

1. This Response to the European Commission’s Consultation on **Topic G** summarizes our views on the assessment of public policy, security, and labor market considerations in EU merger control.¹
2. The EUMR sets a clear mandate for the Commission to prevent concentrations causing a significant impediment to effective competition (“**SIEC**”). In applying the SIEC test, the Commission has traditionally not considered non-economic factors. This Response supports that approach. It recognizes that merger review should evolve, but believes that this evolution should not expand the remit of the Commission’s core competence and role under the EUMR – preventing a SIEC – into areas that are not competition-related and ought to be reserved for other regulators and/or are adequately addressed in other EU or Member State legislation.
3. Accordingly, this Response submits that the Revised Guidelines should not include non-competition related objectives such as media plurality and labor market considerations. But this should not prevent the Commission from applying an analytical framework that facilitates consolidation (and looks beyond artificially small local markets) in strategic sectors that are critical for the EU’s security and resilience, consistent with the broader policy objectives outlined in the Competitiveness Compass and the Draghi Report.
4. More specifically:
 - **Media Plurality.** The Commission lacks competence and expertise to assess a transaction’s potential impact on media plurality (and, in turn, democracy) under the EUMR, as was acknowledged by former Executive Vice President Margrethe Vestager when she said that “for media plurality, it may be that other processes may have to be put in place.”² Indeed, the European Media Freedom Act (“**EMFA**”) was recently enacted and specifically mandates that Member States provide rules for an *ex ante* review of media concentrations “independently from competition law assessments”³ to “ensure Member States

¹ “Consultation” refers to the public consultation launched by the Commission on May 8, 2025 concerning the review of the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ 2004 C 31/5 (“HMG”), and the Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ 2008 C 265/6 (“NHMG”) (together “the Guidelines”).

² See MLex, “Vivendi-Lagardère tie-up’s impact on media plurality isn’t for EU merger review, Vestager says”, December 1, 2022, available [here](#).

³ See Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive

provide an assessment of the impact of key media market concentrations on media pluralism and editorial independence.”⁴ The EMFA recognizes that “national regulatory authorities or bodies, which have specific expertise in the area of media pluralism” – and not the Commission assessing a transaction under the EUMR – “should be involved in the assessment”.⁵ Accordingly, the EMFA eliminates any need for the Commission to address media plurality or democracy considerations in the Revised Guidelines.

- **Effects on labor conditions and workers.** The Commission has not – since the EUMR came into force in 1990 – considered the effects on labor markets and workers in any merger review. There is no basis or need to do so in the Revised Guidelines:
 - First, labor markets are segmented by occupation, workers’ personal preferences and skills, and geographically narrow commuting zones, which would render traditional market definition extremely complex. Indeed, the relevant market for assessing competitive dynamics is typically defined both at a product and a geographic level. Workers, however, are not “commodities”, “products” or a “business”; instead, they are individual free agents who are free to change employers.
 - Second, the Commission lacks the competence, political mandate, and resources to effectively assess labor market conditions under the EUMR and would need to cooperate extensively with numerous local labor authorities.
 - Third, to conduct a meaningful assessment of a transaction’s impact on labor markets, merging parties (or otherwise the Commission) would need to collect significant amounts of employee data, which would be burdensome and further prolong already lengthy reviews.

While U.S. antitrust authorities have recently introduced the notion that mergers could allow merging parties to “cut or freeze wages, slow wage growth, exercise increased leverage in negotiations with workers, or generally degrade benefits and working conditions”, the EU labor framework is meaningfully different from that of the U.S. The EU has robust employment protections at both the national and EU levels, rendering an expansion of the Revised Guidelines into consideration of labor conditions redundant.⁶

- **Security and Defense.** The European security and defense sector faces structural weaknesses, with a fragmented industrial footprint operating in

2010/13/EU, OJ 2024 L 1083 (“European Media Freedom Act” or “EMFA”), Recital 64. It entered into full force on August 8, 2025.

⁴ See Commission, “European Media Freedom Act” web page, available [here](#).

⁵ See EMFA, Recital 65.

⁶ See, e.g., Charter of Fundamental Rights of the European Union, OJ 2012 C 326/391, pp. 391–407, Article 31 (“Every worker has the right to working conditions which respect his or her health, safety and dignity. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.”)

artificially “small domestic markets.”⁷ European companies are constrained by national procurement policies, persistent political reluctance to pursue cross-border industrial consolidation, and stringent “EU competition enforcement [which] may inhibit consolidation of the defence industry”, in part because they do not look beyond the artificially narrow markets created by national policies (e.g., geo-return rules).⁸

The Revised Guidelines should facilitate consolidation in this critical area for the EU’s security and resilience by placing more weight on broader considerations, including a transaction’s strategic importance to EU interests, post-merger efficiencies, investment plans, and global dynamics. This would grant the Commission flexibility to streamline reviews and avoid a technocratic approach of identifying concerns in unduly or artificially narrow markets, while avoiding unnecessary remedies that prevent European players from achieving the necessary scale and are inconsistent with the goal of making the EU more secure and resilient on a global scale.

Member States may intervene in defense/security mergers under Article 21(4) EUMR if there is “a genuine and sufficiently serious threat to a fundamental interest of society.”⁹ However, recent cases have shown that Member States tend to stretch that notion even in intra-EU deals, which could cause delays and risk deal execution. This Response therefore encourages the Commission to issue standalone guidelines, clarifying the circumstances that may justify Member State intervention under Article 21(4) EUMR, particularly in the area of defense/security.

This Response also encourages the Commission to extend the recommended framework beyond the traditional defense and security sectors to include other strategically important industries, such as semiconductors, that are important to European economic security and stability. Europe is currently lagging behind its geopolitical competitors, accounting for only 10% of the global semiconductor supply across the value chain. Encouraging consolidation within the EU as well as partnerships with global rivals could help EU firms secure the scale and resources needed to support the European Chips Act’s ambition of doubling the EU’s global market share to 20% by 2030.

II. RESPONSE PAPER

5. This Response is structured as follows: **Section A** addresses Media Plurality; **Section B** covers the effects on labour markets and workers (monopsonies); and **Section C** focuses on Security and Defence.

A. MEDIA PLURALITY

6. Neither the EUMR nor the Guidelines empower the Commission to assess the impact of concentrations on media plurality. Nor have the EU Courts issued any judgments to

⁷ Draghi Report, Part B, p. 161.

⁸ Draghi Report, Part B, p. 162.

⁹ *Xella Magyarország* (Case C-106/22) EU:C:2023:568, ¶166.

date suggesting that the competitive assessment of media mergers should be treated differently from other industries. This was also acknowledged by Margrethe Vestager, former Commission Executive Vice President, who recently stated that “for media plurality, it may be that other processes may have to be put in place (such procedures are available in France).”¹⁰

7. The current comprehensive EU legislative media framework eliminates any need for the Commission to address media plurality or democracy considerations in the Revised Guidelines.

1. **MEDIA PLURALITY SHOULD NOT BE A SEPARATE PARAMETER OF COMPETITION ASSESSED UNDER THE EUMR**¹¹

8. Media plurality is recognized as a legitimate interest that Member States may protect under Article 21(4) EUMR, but is otherwise absent from the EUMR.¹² The Commission has acknowledged that assessing media industry concentrations requires going beyond traditional merger control rules as “a media plurality review reflects the crucial role media plays in a democracy, and looks at wider concerns about whether the number, range and variety of persons with control of media enterprises will be sufficient.”¹³ However, the Commission is neither sufficiently equipped nor empowered to address these concerns as part of its substantive appraisal under the EUMR.
9. In contrast, the European Parliament has recently enacted legislation to ensure sufficient safeguards are in place to protect media plurality across the EU, explicitly outside the context of the Commission’s review of concentrations under the EUMR. Three instruments bear emphasis:

¹⁰ See MLex, “Vivendi-Lagardère tie-up’s impact on media plurality isn’t for EU merger review, Vestager says”, December 1, 2022, available [here](#). See also, European Commission, Directorate-General for Communications Networks, Content and Technology, *Study on media plurality and diversity online: final report*, May 2022, p. 218. (“[...], in France, the Senate has recently created a Commission of Inquiry, which is composed by 21 senators, that is tasked with ‘shedding light on the conditions of purchase and consolidation that have led to this highly concentrated press and audiovisual landscape.’ In particular, the Commission is supposed to: gather information on the current audiovisual and press landscape in the country; to assess the conditions under which the recent concentrations in the media have been carried out, to which are added those that are in progress, in order to verify the extent to which these concentrations present dangers to the pluralism and independence of the media, social and economic life in the sector concerned, and, more broadly, to democratic life; and to formulate proposals to remedy any dangers that are identified.”) See also French Senate, *Exposé des motifs*, October 27, 2021, available [here](#).

¹¹ Response to questions G.5 and G.6.

¹² To date, only the UK has intervened on Article 21(4) EUMR “media plurality” grounds: *Newspaper Publishing* (Case IV/M.423), decision of March 14, 1994; *News Corp / BskyB* (Case COMP/M.5932), decision of November 3, 2010; and *Fox/Sky* (Case COMP/M.8354), decision of April 7, 2017.

¹³ *News Corp / BskyB* (Case COMP/M.5932), decision of November 3, 2010, ¶307 (“The purpose and legal frameworks for competition assessments and media plurality assessments are very different. The focus in merger control is whether there is a “significant impediment to effective competition”, including the ability of the merged entity to profitably increase prices on defined antitrust markets post-merger. By contrast, a media plurality review reflects the crucial role media plays in a democracy, and looks at wider concerns about whether the number, range and variety of persons with control of media enterprises will be sufficient”).

- **EMFA.** The recently enacted EMFA establishes a common framework for assessing media market concentrations across the EU. It mandates that Member States “independently from competition law assessments, including those provided under merger control rules” and “without prejudice to Article 21(4) EUMR”¹⁴ adopt rules for an *ex ante* review of concentrations that could impact media pluralism, such as the effects of a concentration “on the formation of public opinion and on the diversity of media services and the media offering on the market”.¹⁵ These rules are included in Article 22 EMFA, which also specifies that the Commission – assisted by the European Board for Media Services¹⁶ – will issue detailed guidelines for national authorities for the assessment of media market concentrations under the EMFA. The assessment by competent national authorities “shall be distinct from Union and national competition law assessments, including those provided for under merger control rules.”¹⁷
- **Digital Services Act (“DSA”).** The DSA requires very large online platforms to mitigate systemic risks and illegal content, which include the spread of disinformation and other negative societal effects, and empowers the Commission and national authorities to enforce these obligations.¹⁸ The DSA refers to the “societal risks that dissemination of disinformation may generate”, and obliges platforms meeting certain requirements to carry out risk assessment as regards categories of “systemic risk”, including the potential impact of their platforms on “democratic processes” and their effects on “freedom and pluralism of the media.”¹⁹
- **EU FDI Regulation.** The EU FDI Regulation “establishes a framework for the screening by Member States of foreign direct investments into the Union on the grounds of security or public order.”²⁰ When determining whether a FDI is likely to affect security or public order, Member States and the Commission must consider its potential effects on “the freedom and pluralism of media.”²¹ The EU FDI Regulation applies “without prejudice to the application of Article 21(4) EUMR”, requires that Article 21(4) EUMR is “applied in a consistent manner”, and that “to the extent that the respective scope of application of those two regulations overlap, the grounds for screening set out in Article 1 of [the EU FDI Regulation] and the notion of legitimate interests within [...] Article 21(4) EUMR[...] should be interpreted in a coherent manner.”²² The latest

¹⁴ EMFA, Article 22(1).

¹⁵ EMFA, Article 22(2)(a).

¹⁶ See EMFA, Recitals 36–37 (“In order to ensure that this Regulation and other Union media law is consistently applied, it is necessary to set up the Board as an independent advisory body at Union level gathering national regulatory authorities or bodies and coordinating their actions”).

¹⁷ See EMFA, Article 22(1).

¹⁸ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC, OJ 2022 L 277 (“Digital Services Act”).

¹⁹ DSA, Preamble 9 (in conjunction with Article 34).

²⁰ EU FDI Regulation, Article 1(1).

²¹ EU FDI Regulation, Article 4(1)(e).

²² EU FDI Regulation, Recital 36.

proposal for a new EU FDI Regulation also highlights that Member States and the Commission should consider “the freedom and pluralism of the media, including online platforms that can be used for large scale disinformation or criminal activities”²³ when determining whether an FDI is likely to affect security or public order.

2. THE COMMISSION LACKS SUFFICIENT EXPERTISE TO ASSESS MEDIA PLURALITY ASPECTS UNDER THE EUMR²⁴

10. The considerations of democracy and media plurality are inherently complex and continue to evolve, requiring specialized expertise and a political mandate that the Commission – in its role as competition authority – lacks. Attempting to incorporate these non-economic factors into the competitive assessment under the EUMR would likely result in flawed and legally uncertain decisions. This further demonstrates the necessity of leaving such matters to the dedicated national authorities.²⁵
11. This is in line with the position of the European Parliament, which has recognized that the Commission lacks expertise under the EUMR noting that “national regulatory authorities or bodies, which have specific expertise in the area of media pluralism, should be involved in the assessment of the impact of media market concentration on media pluralism and editorial independence [...]”.²⁶

²³ See Proposal for a Regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council, Article 13, June 6, 2025.

²⁴ Response to question G.5.

²⁵ National competition authorities have recently dealt with media plurality concerns directly, in the absence of competent national regulatory bodies having been appointed under Article 22 EMFA. For example, the Dutch competition authority has recently imposed commitments in the *DPG/RTL Nederland* merger to ensure preservation of media plurality. The Belgian competition authority has also expressed interest in taking media plurality into account in future cases. See ACM press release, *DPG MEDIA/RTL NEDERLAND* (Case ACM/24/189955), June 27, 2025, available [here](#) (“The media sector is of vital importance for the functioning of Dutch democracy. That is why the Ministry of Education, Culture and Science (OCW) is currently working on a specific assessment for media mergers, which is based on European legislation that has not yet come into effect in the Netherlands. At the moment, ACM is the only regulator that is able to assess media mergers. ACM can block a merger only if it restricts competition, for example by having negative effects on the quality of news selections, which includes media pluralism”); See *DPG MEDIA/RTL NEDERLAND* (Case ACM/24/189955), June 27, 2025; see also Global Competition Review, “Gerard: Dutch remedy decision will impact Belgian media merger review”, July 15, 2025, available [here](#). EMFA has entered into full force only recently on August 8, 2025.

²⁶ See EMFA, Recital 65 (“The involvement of those national regulatory authorities or bodies should be substantive, for instance by ensuring that their views are taken into account in the competition assessment. In order to foster legal certainty and ensure that the national rules and procedures that allow for the assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence genuinely aim to protect media pluralism and editorial independence, it is essential that objective, non-discriminatory and proportionate criteria for notifying and assessing the impact of media market concentrations on media pluralism and editorial independence be set out in advance.”)

B. EFFECTS ON LABOR MARKETS AND WORKERS (MONOPSONIES)

12. Neither the Guidelines nor the EUMR contain any reference to an assessment of a concentration's impact on workers and labor conditions. Since the first Merger Regulation came into force in 1990, the Commission has not considered such elements in any of its published decisions. Nor have the EU Courts issued a judgment endorsing or suggesting the Commission to consider similar non-economic factors in its substantive appraisal of concentrations.
13. There is a good reason for that long-standing policy. Introducing labor-related criteria in merger control would create unnecessary complexity, additional levels of regulation, bureaucracy, prolonged merger review, and substantial legal uncertainty. Such an expansion would also undermine the EU's broader policy objectives outlined in the Competitiveness Compass and Draghi Report, which emphasize reducing the regulatory burden and ensuring clarity for businesses.
14. While the U.S. antitrust authorities recently introduced potential harm to workers in the 2023 DOJ/FTC Merger Guidelines ("2023 U.S. Merger Guidelines"), the EU operates under a fundamentally different legal and regulatory framework. European employment protections at both national and EU level are far more robust than in the United States, making an expansion of EU merger review in labor markets redundant and unwarranted.

1. EU MERGER REVIEW IS ILL-SUITED FOR ASSESSING EFFECTS ON LABOR CONDITIONS AND WORKERS²⁷

15. EU merger control is ill-suited for assessing effects on labor conditions and workers:
 - First, labor markets are inherently fragmented, segmented by occupation, workers' personal preferences and skills, and geographically narrow (commuting zones). Moreover, workers with certain skillsets can work in various sectors and industries. These elements would make market definition practically impossible.
 - Second, the Commission lacks the competence and resources to effectively assess labor conditions. It would need to cooperate extensively with numerous local authorities (*e.g.*, ministry of labor and social affairs, ministry of employment, ministry of economic development), potentially across multiple Member States, thus further prolonging the merger review process.
 - Third, assessing a transaction's effects on labor conditions and workers would be exceedingly burdensome for merging parties (and ultimately the Commission), requiring vast amounts of employees' sensitive personal information, including wages, educational background, race, sex, home addresses, working conditions, and individual employment terms, across multiple Member States. Gathering such data would further prolong the already lengthy review process.

²⁷ Response to questions G.10 and G.11.

- Fourth, the existing framework for assessing potential effects of mergers on buyer power clarifies that – even if the Commission were to consider labor-related issues – the effects on labor markets and workers alone would be an insufficient theory of harm.²⁸ The Commission would need to demonstrate that any “loss of competition” would have a negative effect on “downstream” markets through higher prices and/or lower output.²⁹
- Fifth, market definition is a fundamental tool in the Commission’s enforcement of EU competition law, including the EUMR.³⁰ Consistent with the jurisprudence of the EU Courts and the Commission’s decisional practice, the relevant market for assessing competitive dynamics is typically defined by both a product and a geographic dimension. The relevant product market comprises “all those products that customers regard as interchangeable or substitutable to the product(s) of the undertaking(s) involved, based on the products’ characteristics, their prices and their intended use, taking into consideration the conditions of competition and the structure of supply and demand on the market.”³¹

Workers are not “commodities”, “products” or “business”; instead, they are individual free agents who are free to change employers. The Commission has consistently held that the hiring of employees does not constitute a “concentration” unless it results in a lasting structural change in the market, thereby reinforcing that non-economic factors such as the impact of a concentration on labor fall outside the scope of the EUMR.³² Most recently, the Commission found in *Microsoft/Inflection* that Microsoft’s hiring of all Inflection’s employees constituted a reportable concentration because it involved “all assets necessary to transfer Inflection’s position in the markets for generative AI foundation models and for AI chatbots to Microsoft” and “really

²⁸ See HMG, ¶¶61–63 (“Mergers creating or strengthening buyer power in upstream markets”).

²⁹ See HMG, ¶61. In the upstream markets, competition concerns arise only in the rare cases where merging firms are able to reduce input purchases or input costs by exercising market power over suppliers with one of two consequences: (1) the merging parties are then able to reduce output, thereby harming consumer welfare; and/or (2) the merging parties are able to foreclose rival suppliers downstream. See *Kesko v. Commission* (T-22/97) EU:T:1999:327, ¶157 (“the position of strength enjoyed by products sold under the Kesko and Tuko labels affords those two undertakings advantages in terms of customer loyalty and enables them to price a greater proportion of their sales without having to take the reaction of their competitors into account... enabling it to obtain more favourable terms and, in particular, price reductions, to the detriment of its competitors”). See also *Boeing/McDonnell Douglas* (Case COMP/M.877), decision of December 8, 1997, ¶105 (“it seems likely that the increase in Boeing’s buying power could significantly weaken the competitive position of Airbus and, in turn, strengthen the position of Boeing”).

³⁰ See Commission Notice on the definition of the relevant market for the purposes of Union competition law, OJ 2024 C/2024/1645.

³¹ *Ibid.*, ¶12.

³² See *Santander / Bradford & Bingle Assets* (Case COMP/M.5363), decision of December 17, 2008; *Microsoft / Yahoo! Search Business* (Case COMP/M.5727), decision of February 18, 2010; *Flextronic International / Certain Assets belonging to Motorola Mobility* (Case COMP/M.6853), decision of March 8, 2013.

made a change on the market in terms of moving these market activities from Inflection to Microsoft.”³³

- Sixth, expanding the EUMR to cover labor considerations would conflict with strategic EU policy objectives articulated in the Competitiveness Compass and Draghi Report. These policies emphasize the importance of reducing bureaucratic burdens, clarifying regulatory frameworks, accelerating decision-making processes, and fostering an innovative and competitive economic environment.³⁴

2. THE EU LABOR FRAMEWORK IS FUNDAMENTALLY DIFFERENT FROM THE UNITED STATES

16. Topic Paper G refers to the 2023 U.S. Merger Guidelines and its discussion of “the potential harmful effects that mergers can have on workers through reduced competition in labour markets.”³⁵ However, the EU operates under a fundamentally different legal and regulatory framework.
17. The 2023 U.S. Merger Guidelines (Section 2.10) note that mergers between competing employers may substantially lessen competition for workers, which may result in “lower wages or slow wage growth, worsen benefits or working condition, or result in other degradation of workplace quality.” Section 2.10 was only recently introduced and has not been endorsed by U.S. Courts.³⁶ Prominent U.S. academics have been openly

³³ See Commission Press Release IP/24/4727, “Commission takes note of the withdrawal of referral requests by Member States concerning the acquisition of certain assets of Inflection by Microsoft”, September 18, 2024, available [here](#); see also MLex, “Microsoft-Inflection case shows EU is alert to disguised mergers, official says”, September 26, 2024, available [here](#).

³⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, A Competitiveness Compass for the EU, COM(2025) 30 final, January 29, 2025, pp. 16–17 (“Regulatory burden has become a brake on Europe’s competitiveness [...] All the EU, national, and local institutions must make a major effort to produce simpler rules and to accelerate the speed of administrative procedures.”)

³⁵ U.S. Department of Justice and the Federal Trade Commission, *Merger Guidelines*, December 18, 2023, pp. 26–27, available [here](#). Guideline 2.10 establishes that mergers between competing employers may substantially lessen competition for workers by eliminating competition between merging buyers or increasing coordination among remaining employers, potentially leading to suppressed wages, worsened working conditions, or other workplace quality degradations.

³⁶ The U.S. District of Columbia enjoined the proposed merger of Penguin Random House and Simon & Schuster on October 31, 2022. However, the court applied the standard framework for assessing the potential effects of mergers on buyer power as the case did not involve workers. The court found that the merger would result in a substantial lessening of competition because the merged entity would capture “70 percent of the advances that publishers pay to authors” and “the post-merger concentration of the relevant market would be concerningly high: The merged entity would have a 49-percent market share, more than twice that of its closest competitor. Moreover, the top two competitors would hold 74 percent of the market; and the top four market participants would control 91 percent. The government has buttressed its market-share analysis with strong evidence of likely unilateral effects and coordinated effects that would hurt competition.” See Memorandum Opinion in *United States of America v. Bertelsmann SE & Co* (Civil Action No. 21-2886-FYP), October 31, 2022, p. 79, available [here](#).

critical of incorporating labor market analysis into antitrust enforcement, questioning both its theoretical foundations and practical implementation.³⁷

18. Even if the U.S. authorities pursue labor-related theories of harm, there is no need for the Commission to do the same as EU and national labor law already protects against concerns that could be subject of U.S. theories of harm. Taking each prompt of Section 2.10 of the 2023 U.S. Merger Guidelines in turn:

- **“cut or freeze wages, slow wage growth, or increased leverage in negotiations with workers.”** In the EU, wage protection is primarily governed by national legislation, which typically includes rules on minimum wages. Furthermore, EU secondary legislation mandates that in the event of a business transfer, the acquirer assumes all the obligations and responsibilities of the seller, thereby prohibiting buyers from unilaterally lowering wages unless national employment law requirements are met.³⁸

Collective bargaining laws are also stronger and more comprehensive in the EU, providing robust safeguards against any efforts to suppress wages. The EU Charter of Fundamental Rights guarantees workers’ and employers’ rights to negotiate collective agreements and take collective action, including strike action, to defend their interests.³⁹ These mechanisms, enshrined in EU primary law, ensure that wages are not left solely to employer discretion, providing structural safeguards against wage suppression (that are not available in the U.S.).

- **“worsen benefits or working condition, or result in other degradation of workplace quality.”** EU primary law prescribes that “every worker has the right to working conditions which respect his or her health, safety and dignity. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.⁴⁰” No similar protections exist at the federal or state law level in the U.S..

EU secondary legislation further prescribes that when a company or business changes ownership, employees’ existing rights and obligations are generally transferred to the new employer.⁴¹ In addition, workers are protected against

³⁷ See, most notably, the debate between Eric Posner and Richard Epstein. The latter concludes that “any firm that has high levels of monopsony in labor markets will likely have high levels of monopoly profits in product and service markets. The ability to deal with the product market is far easier, which means that there is no strong case for seeking to include in merger evaluations a detailed examination of the multiple labor markets in which many national and global firms operate”, in “The Application of Antitrust Law to Labor Markets — Then and Now”, NYU Journal of Law & Liberty, Vol. 15, No. 2, p. 772 (available [here](#)).

³⁸ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ 2001 L 82 (“[Transfer of Undertakings Directive](#)”), Article 3 (“The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee”).

³⁹ Charter of Fundamental Rights of the European Union, OJ 2012 C 326/391, pp. 391–407, Article 28.

⁴⁰ *Ibid.*, Article 31.

⁴¹ See [Transfer of Undertakings Directive](#), Article 3.

potential collective layoffs, as employers are obliged to consult with worker representatives – and in some cases public authorities – before making such decisions to find ways to avoid or mitigate the impact of the layoffs.⁴²

C. SECURITY AND DEFENSE

19. The European security and defense industry is characterized by “mainly national players operating in relatively small and often artificial domestic markets” with limited scale and resources to compete globally.⁴³ Today, the EU’s defense depends on those subscale European players who are hampered in their ability to grow by national political decisions and procurement policies – or otherwise on non-EU suppliers. By contrast, those non-EU global rivals are autonomous and have by and large successfully consolidated in the security and defense area.⁴⁴ In line with current geopolitical risks, it is crucial that the EU uses all of its available resources to close the gap with its rivals and strengthen its security and defense industry, thereby ensuring the EU’s safety against external threats.
20. The Commission has recently come under criticism for the way it applies EU competition rules, which “may inhibit consolidation of the defence industry.”⁴⁵ The Revised Guidelines should facilitate consolidation in areas critical for the EU’s security and resilience by placing more weight on broader considerations, such as post-merger efficiencies, investment plans, a deal’s strategic importance to EU interests, and global dynamics – looking beyond artificial limitations on market size created by political or national regimes. This would streamline reviews and avoid a technocratic focus on unduly narrow markets, which risks deal execution and could defeat the goal of making the EU more secure and resilient.
21. The challenges facing Europe’s security and defense industry are not isolated. Europe is also falling behind its global competitors in other strategic sectors, particularly in semiconductors. The continent – currently accounting for only 10% of the global semiconductor supply and lacking capabilities in advanced processors – remains dependent on foreign companies.⁴⁶ This Response therefore strongly encourages the Commission to extend the recommended framework to at least semiconductors and potentially also other strategic sectors.⁴⁷

⁴² U.S. courts have signalled the Sherman Act’s applicability to protecting workers. However, no similar ruling has been issued to date regarding the Clayton Act, the statute governing merger control.

⁴³ Draghi Report, Part B, p. 161.

⁴⁴ Draghi Report, Part B, p. 162 (“Differently from the EU, the US has pursued a consolidation strategy of its defence industry... Since 1990, the US’ industrial base has shrunk from fifty-one to five main players”).

⁴⁵ *Ibid.*

⁴⁶ Draghi Report, Part B, p. 86.

⁴⁷ See Draghi Report (highlighting several strategic sectors where Europe is lagging behind its geopolitical rivals, including in energy sector, critical raw materials, digital technologies, semiconductors, artificial intelligence, clean technologies manufacturing, automotive, space, pharmaceuticals and biotechnology, and energy-intensive industries).

1. FRAGMENTED EUROPEAN DEFENSE AND SECURITY SECTOR LAGS BEHIND GEOPOLITICAL COMPETITORS

22. The European defense and security industry is central to Europe’s strategic autonomy, enabling the EU to respond to increasing external threats while also driving innovation across the wider economy. However, the sector “faces challenges in terms of capacity, know-how and technological edge”, with the result that the EU is “not keeping pace with its global competitors.”⁴⁸
23. One of the key reasons for the weakness of the European defense and security industry is its “fragmentation”, “characterized by mainly national players operating in relatively small domestic markets, producing relatively small volumes.”⁴⁹ This fragmentation hinders European players’ ability to achieve scale and standardization, which results in “weakening Europe’s ability to act as a cohesive power.”⁵⁰ Conversely, Europe’s global rivals have embraced consolidation, which has “delivered the high capacity and scale” that cannot be matched by European companies.⁵¹
24. The current geopolitical uncertainty and increasing external threats represent a critical juncture for Europe to leverage all its available resources to strengthen the security and defense industry and reduce its dependence on non-EU suppliers.

2. ADDITIONAL PARAMETERS RELEVANT WHEN ASSESSING CONCENTRATIONS IN STRATEGIC SECTORS⁵²

25. The Commission has recently been criticized for the fact that the application of general EU competition rules “may inhibit consolidation of the defence industry” as “EU competition enforcement may prevent or discourage businesses from merging and scaling up, particularly those creating market power” (in artificially narrow markets).⁵³
26. While most transactions in the defense and security sector were unconditionally cleared in Phase I, several deals have undergone Phase II reviews.⁵⁴ The Commission has typically narrowly defined markets and historically focused its assessment on the EEA, disregarding global competitive dynamics.⁵⁵ This technocratic approach has, in some

⁴⁸ Draghi Report, Part B, p. 159.

⁴⁹ Draghi Report, Part B, p. 161.

⁵⁰ Draghi Report, Part A, p. 7.

⁵¹ Draghi Report, Part B, p. 162.

⁵² Response to question G.3.

⁵³ Draghi Report, Part B, p. 162.

⁵⁴ See *Viasat (US) / Inmarsat (UK)* (Case COMP/M.10807), decision of May 25, 2023; *Boeing (US) / Embraer (Brazilian)* (Case COMP/M.9097), decision of May 8, 2020; *Thales (French) / Gemalto (Dutch)* (Case COMP/M.8797), decision of December 11, 2018; *IBM (US) / Telelogic (Swedish)* (Case COMP/M.4747), decision of March 5, 2008; *Thales (French) / Finmeccanica (Italian) / Alcatel Alenia Space (French) & Telespazio (Italian)* (Case COMP/M.4403), decision of April 4, 2007; *Boeing (US) / Hughes (US)* (Case COMP/M.1879), decision of October 29, 2000; *MMS (Dutch) / DASA (German) / ASTRIUM (French)* (Case COMP/M.1636), decision of March 21, 2000.

⁵⁵ See *UTC / Raytheon* (Case COMP/M.9434), decision of March 13, 2020, ¶157 and ¶187; *Harris Corporation / L3 Technologies* (Case COMP/M.9234), decision of June 21, 2019, ¶¶121 and 204; *Smiths Group / Morpho Detection* (Case COMP/M.8087), decision of January 18, 2017, ¶111 and ¶181; *Thales / Finmeccanica / Alcatel Alenia Space & Telespazio* (Case COMP/M.4403), decision of April 4, 2007, ¶105.

cases, led to the imposition of divestment remedies on intra-EU transactions, that ultimately strengthened non-EU rivals (*see* table below). We are aware of at least one transaction in the past three years involving the European defense and security sector that our client abandoned in part due to the risk of the Commission’s undue intervention.

Table: Divestitures Involving Intra-EU Defense/Security Deals

Case	Concerns	Divestiture	Approach & Outcome
<i>Safran / Part Of Collins Aerospace’s Actuation And Flight Control Activities</i> M.11253	Horizontal concerns in the markets for the supply of Trimmable Horizontal Stabilizer Actuator systems (“ <u>THSA</u> ”)	Divestment of Safran’s North American THSA business	Decision not yet published Divested business purchased by U.S. company (Woodward)
<i>Thales / Gemalto</i> M.8797	Horizontal concerns in the General Purpose Hardware Security Modules (“ <u>GP HSMs</u> ”) market	Divestiture of Thales’ global GP HSM business	The Commission focused its competitive assessment on the EEA-market, noting that parties’ rivals have a more limited geographic reach Divested business purchased by U.S. company (Entrust Datacard)
<i>Smiths Group / Morpho Detection</i> M.8087	Horizontal concerns in the supply to the (i) regulated sector and (ii) non-regulated sector of explosive trace detection (“ <u>ETD</u> ”) desktop devices, including after-sales and maintenance services	Divestiture of Morpho Detection’s global desktop ETD business based on IMS technology	The Commission defined separate markets for ETDs focusing its competitive assessment on the EEA-wide markets without considering potential efficiency gains despite acknowledging that “through the Transaction, Smiths would achieve efficiency gains, notably by allocating its fixed costs for after-sales services to a broader installed base. It would take advantage of those gains to cross-subsidise product lines or after-sales services and under-price competitors.” ⁵⁶ Divested business purchased by a U.S. company (OSI Systems, Inc)

27. The Revised Guidelines should “place more weight on criteria related to the innovation-enhancing potential, security and resilience, need for coordination and co-

⁵⁶ See *Smiths Group / Morpho Detection* (Case COMP/M.8087), decision of January 18, 2017, ¶48.

deployment”⁵⁷ when assessing concentration in the EU security and defense industry. More specifically:⁵⁸

- **Post-merger efficiencies.** In theory, the Commission can accept efficiency claims under the Guidelines, but merging parties face an exceptionally high burden of proof.⁵⁹ This Response encourages the Commission to significantly reduce this burden for the European security and defense industry – and to consider these pro-competitive effects holistically in assessing the overall competitive impact of the transaction.⁶⁰ Easing these requirements would facilitate consolidation, which is essential to address the existing duplication of industrial capacities. This, in turn, would lead to reduced costs, increased output, and greater economies of scale, ultimately resulting in a more efficient use of Member State defense expenditure.⁶¹
- **Investment plans and a deal’s strategic importance.** The Commission has historically not considered merging parties’ investment plans as part of its substantive assessment of concentrations. However, the unique characteristics of the security and defense industry – which requires substantial research investments and pan-European coordination – calls for a more nuanced approach. No single Member State or company can manage these costs alone.⁶² This Response suggests that the Commission assess whether the merging parties have proven that it is more likely than not that their investment plans would translate into a substantial benefit for the broader European security and defense industry.

The Commission’s assessment should also be more attuned to the sectors the merging companies are active in. The more strategic an industry is for European security and defense, the greater the need for the Commission to

⁵⁷ Draghi Report, Part B, p. 170.

⁵⁸ This Response encourages the Commission to apply the same analytical framework to dual uses products and services. The interconnected nature of civilian and defense technologies means that strengthening European capabilities in dual-use sectors simultaneously supports commercial innovation and reinforces the EU's strategic autonomy. *See* Draghi report, Part B, p. 162 (“In particular, for dual-use products (which can be used both for defence and civilian purposes), EU competition enforcement may prevent or discourage businesses from merging and scaling up, particularly those creating market power”). *See also* European Union, “A Strategic Compass for Security and Defence”, 2022, p. 47, available [here](#) (“The European defence sector can also contribute to growth and the sustainable economic recovery following the pandemic. We have to ensure that it can fully and rapidly benefit from civil innovation cycles and remove existing obstacles. We will also invest in dual-use technologies. This is essential, as our strategic competitors are rapidly investing in critical technologies and challenging our supply chains and access to resources”).

⁵⁹ *See our Response to Topic F.*

⁶⁰ *See our Response to Topic F.*

⁶¹ Draghi Report, Part B, pp. 162 and 170 (emerging technologies, “such as drones, hypersonic missiles, directed-energy weapons, defence artificial intelligence and seabed and space warfare” require pan-European coordination, as no single Member State “can effectively finance, develop, produce and sustain all the necessary capabilities and infrastructure.” Member States generally “lack dedicated research capabilities in defence”, making large-scale R&D investment difficult).

⁶² *See* Commission, “Acting on defence to protect Europeans”, 2025, available [here](#) (The Commission has acknowledged that simply increasing defense spending is not enough to increase the competitiveness of the European defense and security industry. Instead, Member States must “spend better, work together, and prioritize European companies”).

engage proactively with the parties to ensure that proposed investments align with, and advance, the EU’s broader strategic objectives. For example, the White Paper on European Defense has identified seven crucial areas for rebuilding European defense, in particular air and missile defense, artillery systems, drone and counter-drone systems, and military mobility.⁶³ This Response encourages the Revised Guidelines to confirm that potential competition concerns in certain strategic defense areas could be resolved through investment commitments, rather than structural divestments, under the premise that such investments in critical defense areas would likely outweigh any potential competitive harm. The UK’s Competition and Markets Authority (“CMA”) has already recently taken a more favorable stance toward transactions in key sectors by accepting investment commitments.⁶⁴

- **The competitive strength of non-EU players.** Historically, the Commission has taken a narrow, technocratic approach to market definition, focusing its assessments on the EEA and relying on traditional market definition metrics (*e.g.*, customer preferences, historic level of imports, price correlations, import elasticity). However, this traditional approach fails to accurately reflect the unique competitive dynamics of the security and defense industry. This is a critical sector where the absence of strong EU defense players poses a threat to the EU’s security. This Response suggests that the Revised Guidelines endorse a broader geographic market definition in strategic defense areas, reflecting global dynamics, and looking past artificially narrow European or national markets created by national policies (*e.g.*, geo-return rules).
- **Strong countervailing buyer power.** Lastly, the security and defense industry is characterized by large state purchasers that possess strong countervailing buyer power. Governments can counter anticompetitive behavior by reducing public funding or imposing stringent procurement conditions. Such counterweight ensures that European companies offer competitive prices and innovate in line with global competitive trends. While “buyer power” is a concept recognized in the Guidelines, this Response suggests that it be more explicitly endorsed – and actively used – in the review of concentrations in the EU defense area.

⁶³ See Commission, White Paper for European Defence – Readiness 2030, March 19, 2025, available [here](#).

⁶⁴ See UK Competition and Markets Authority, *Vodafone/Three*, available [here](#).

3. THE COMMISSION SHOULD CLARIFY THE SCOPE FOR MEMBER STATE INTERVENTION UNDER ARTICLE 21(4) EUMR⁶⁵

28. Member States may invoke legitimate national security interests to justify intervention in a concentration under Article 21(4) of the EUMR. However, recent cases have shown that the “national security” concept has been stretched, even in intra-EU transactions, creating legal uncertainty and negatively impacting deal execution.⁶⁶
29. There are at least half a dozen cases in which Member States intervened under Article 21(4) EUMR.⁶⁷ While none of these interventions involved the security and defense industry, in at least two instances the parties abandoned the transaction due to Member States’ unjustified interventions which unexpectedly prolonged regulatory reviews.⁶⁸ This risk is particularly acute in strategically sensitive sectors where delays in closing can have substantial negative consequences.
30. This Response encourages Revised Guidelines to set out that Article 21(4) EUMR interventions are justified only under very narrow conditions. This is in line with the Court of Justice judgment in *Xella*, finding that any such intervention must be interpreted strictly, cannot be determined unilaterally by a Member State without the involvement of EU institutions, and “may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society.”⁶⁹ Given the limited jurisprudence and on-point decisional practice, the Commission should consider issuing standalone guidance on the applicability of Article 21(4) EUMR, to strike the right

⁶⁵ Response to question G.2.

⁶⁶ *VIG / AEGON CEE* (Case COMP/M.10494), decision of February 21, 2022 (Hungary issued a veto prohibiting a proposed acquisition of the Hungarian subsidiaries of Dutch insurer AEGON by Vienna Insurance Group); *Xella Magyarország* (Case C-106/22) EU:C:2023:568 (Hungary blocked the proposed transaction of a local concrete-production company by another Hungarian company ultimately owned by an Irish citizen); *Unicredit / Banco BPM (Article 21(4))* (Case COMP/M.12052), decision of July 14, 2025 (Italy used its “Golden Power” to impose conditions on the transaction concerning Italian company UniCredit which launched a voluntary public exchange offer for all shares of another Italian company, Banco BPM S.p.A). See Ministerio de Economía, Comercio y Empresa, “El Gobierno acuerda no autorizar la inversión extranjera en Talgo por Ganz MagVag Europe”, August 27, 2024, available [here](#) (in Spanish).

⁶⁷ See, e.g., *E.ON / Endesa* (Case COMP/M.4197), decision of December 20, 2006 (energy sector); *VIG / AEGON CEE* (Case COMP/M.10494), decision of February 21, 2022 (insurance sector); *Xella Magyarország* (Case C-106/22) EU:C:2023:568 (construction sector); *Portuguese Republic v. Commission* (Case C-42/01) EU:C:2004:379 (cement sector); *Unicredit / Banco BPM (Article 21(4))* (Case COMP/M.12052), decision of July 14, 2025 (banking sector).

⁶⁸ See *Portuguese Republic v. Commission* (Case C-42/01) EU:C:2004:379 (Through ministerial decisions, Portugal was able to block a proposed acquisition of a local cement manufacturer by two European companies); see also *Unicredit / Banco BPM (Article 21(4))* (Case COMP/M.12052), decision of July 14, 2025; Commission Press Release IP/25/1565, “Commission approves UniCredit’s acquisition of Banco BPM, subject to conditions”, June 19, 2025, available [here](#); see also UniCredit Press Release, July 22, 2025, available [here](#) (“this is a “missed opportunity...for Italy’s business, communities and wider economy... [the deal] would benefit both the country and Europe as a whole”).

⁶⁹ *Xella Magyarország* (Case C-106/22) EU:C:2023:568, ¶66.

balance between Member States' safeguards enshrined in Article 346 TFEU⁷⁰ and the Commission's mandate under the EUMR.⁷¹

4. THE UPDATED FRAMEWORK COULD BE EXTENDED TO OTHER STRATEGICALLY IMPORTANT SECTORS⁷²

31. Europe is not only falling behind in the security and defense industry, but it is also increasingly dependent on non-EU suppliers in other strategic sectors.⁷³ This dependency creates vulnerabilities and raises concerns about its long-term strategic autonomy. The semiconductor industry is one of those areas. The European Court of Auditors recently found that one in three low-tech chips comes from China and that Europe is “nowhere close” to meeting its own goal of making up 20% of the global value chain for microchips by 2030.⁷⁴
32. The combined EU share of the global semiconductor supply has fallen from 20% in the 1990s to only 10% today. This decline is largely due to a fragmented European semiconductor industry that lacks the necessary scale to compete with global rivals. This fragmentation not only hinders competitiveness but also undermines the EU's long-term ability to secure its supply chains and safeguard its strategic autonomy.⁷⁵
33. Most transactions involving the semiconductor industry have been cleared in Phase I, with some requiring remedies.⁷⁶ To date, there have been limited concentrations involving European companies, and we are not aware of any remedies imposed on these transactions.⁷⁷ This is not surprising, given that the semiconductor industry is global in scope and European players collectively account for only around 10% of the global semiconductor supply.⁷⁸ Despite this track record, the Commission's rigorous enforcement in other areas may well have a chilling effect on potential collaborations

⁷⁰ Article 346 TFEU states that “no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security” (Article 346(1)(a)) and “any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the internal market regarding products which are not intended for specifically military purposes” (Article 346(1)(b)).

⁷¹ See, e.g., Communication from the Commission, Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases OJ 2021 C 113.

⁷² Response to question G.14.

⁷³ See Draghi Report, which highlights several strategic sectors, in addition to semiconductors, where Europe is lagging behind its geopolitical rivals, including in energy sector, critical raw materials, digital technologies, semiconductors, artificial intelligence, clean technologies manufacturing, automotive, space, pharmaceuticals and biotechnology, and energy-intensive industries.

⁷⁴ Politico, “Europe has risky reliance on China for low-tech chips, auditors warn”, April 28, 2025, available [here](#).

⁷⁵ Draghi Report, Part A, pp. 55 and 58 (“Europe should maximise its joint efforts to strengthen innovation in semiconductors and its presence in the most advanced chips segments”).

⁷⁶ See, e.g., *NXP Semiconductors/ Freescale Semiconductor* (Case COMP/M.7585), decision of September 17, 2015 (structural remedies) and *Synopsys/Ansys* (Case COMP/M.11481), decision of January 10, 2025, not yet published (structural remedies).

⁷⁷ See *AMS/OSRAM* (Case COMP/M.9716), decision of July 6, 2020; *Ericsson / STM / JV* (Case COMP/M.5332), decision of November 25, 2008; and *STMicroelectronics / Alcatel Microelectronics* (Case COMP/M.2820), decision of June 24, 2002.

⁷⁸ Draghi Report, Part A, p. 86.

between European players and considerably stronger overseas actors (e.g., TSMC, Samsung, and Intel) that would benefit EU's broader interests and resilience. Given the stagnating and declining nature of Europe's semiconductor industry, joint ventures in particular could serve as an effective means to revitalize and strengthen the European players.

34. In line with the framework that this Response recommends for the security and defense industry, the Revised Guidelines should endorse a similarly flexible and strategic approach when assessing concentrations in the semiconductor sector. This Response therefore recommends that the Revised Guidelines emphasize that the Commission will – instead of relying solely on traditional market share and concentration metrics – place greater focus on post-merger efficiencies, concrete investment plans that benefit the European semiconductor industry, and the effects of strong countervailing buyer power.⁷⁹

⁷⁹ See, e.g., *Infineon / Cypress* (Case COMP/M.9466), decision of October 16, 2019, ¶67 (“the majority of respondents to the market investigation confirmed that customers would be able to procure automotive semiconductors from the Parties’ competitors and mix-and-match them as an alternative to the merged entity’s bundle... Most of automotive customers would have internal engineering resources to mix-and-match different products from different sources”).

Response	Question in the Topic Paper G
¶¶ 8–9	Response to questions G.5 and G.6
¶¶ 10–11	Response to question G.5
¶¶ 15–18	Response to questions G.10 and G.11
¶¶ 27–29	Response to question G.3
¶¶ 30–32	Response to question G.2
¶¶ 33–36	Response to question G.14