
The securitisation of the economy and geoeconomic risks - new frameworks for businesses

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ABSTRACT

Russia's war of aggression against Ukraine has turned businesses and the economy into not only strategic targets but also instruments of war. The change in the geopolitical landscape has raised the profile of economic factors in international politics. More and more of the goods and services that are critical to the functioning of society are now produced by the private sector and are highly dependent on international supply chains. Businesses find themselves increasingly affected by government interests that can limit their international operations in particular; on the other hand, businesses now also play a role in security, and that role has to be factored into national interests. Preparing for geopolitical changes has become an integral part of businesses' risk management. These developments have also reshaped the economic and political assumptions behind the structure of businesses: the transition towards strategic capitalism is changing what is acceptable in business and what society expects of businesses.

1 The role of corporations in international relations

Russia's war of aggression against Ukraine has turned businesses and the economy into not only strategic targets but also instruments of war. Russia has reduced strategically important energy supplies to Western Europe and strived to destabilise energy markets.¹ Russia has also escalated the weaponisation of the economy by nationalising the Russian operations of several international corporations.² The West, on the other hand, has tried to limit Russia's capacity to wage its war of aggression by means of economic sanctions and export restrictions.³

¹ Jermon Zettelmeyer – Simone Tagliapietra – Georg Zachmann – Conall Heussaff: Beating the European Energy Crisis, International Monetary Fund, 2022, <https://www.imf.org/en/Publications/fandd/issues/2022/12/beating-the-european-energy-crisis-Zettelmeyer> (visited on 31 October 2022). The Economist: 'Russia is using energy as a weapon – how deadly will it be', 26 November 2022.

² Anastasia Stognei – Max Seddon: 'Trapped or nationalised: walls close in on western businesses in Russia', Financial Times, 21 July 2023.

³ Claire Mills: Sanctions Against Russia, House of Commons Library Research Briefing, 20 September 2023, <https://researchbriefings.files.parliament.uk/documents/CBP-9481/CBP-9481.pdf> (visited on 31 October 2023).

The change in the geopolitical landscape has raised the profile of businesses and economic factors in international politics. In addition to the war in Ukraine, recent developments in the competition between great powers – especially China and the United States – have added a new level of economic tension to international relations.⁴ Growing regulation of nationally critical industries and foreign investment have joined traditional economic sanctions as major instruments of international politics with direct implications for businesses.

Geopolitical changes affect not only the way in which business is conducted but also the operating conditions of businesses more generally. Businesses are having to take geopolitics into account in their transactions (by, for example, factoring in the effects of sanctions and protecting their international supply chains in the new political landscape). Economic factors and business also play key roles in the strategies of superpowers and how they use their influence (through, for example, regulating critical industries and competition rules). Industrial and economic structures are often integral to the strategic interests of superpowers – many nations define their national interests in the light of their prevailing industrial and economic structures.

Societal and international dimensions of business

Hundreds of multinational corporations have shut down their Russian operations in the wake of Russia's invasion of Ukraine⁵ – often at a considerable loss⁶. This exodus of global businesses from Russia has been motivated not only by the increasingly hostile operating conditions in Russia but also by pressure from stakeholders and the media or the corporations' own social responsibility policies. There has been extensive reporting on the various ways in which businesses that have operations in Russia have responded to the war in Ukraine.⁷ Studies show that decisions to withdraw or remain in Russia have been influenced by, for example, comparing direct financial risks and reputational risks, which in turn are linked to the nature and scale of each corporation's Russian operation, the level of investment tied up in Russia, the industry and decisions of other peer businesses in a similar situation; many businesses that had initially decided to remain changed their mind after seeing more and more of their competitors withdraw from the Russian market. One extreme example of the business world's involvement in the conflict is the decision by US-based SpaceX to give the Ukrainian forces access to its Starlink satellite system and then set strict conditions for the use of the system.⁸

⁴ Christian Fjäder – Niklas Helwig – Mikael Wigell: Recognizing 'Goeconomic Risk' – Rethinking Corporate Risk Management for the Era of Great-power Competition, FIIA Briefing Paper 314 2021, p. 3.

⁵ Yale School of Management: Over 1,000 Companies Have Curtailed Operations in Russia—But Some Remain, updated on 5 November 2023, <https://som.yale.edu/story/2022/over-1000-companies-have-curtailed-operations-russia-some-remain> (visited on 5 November 2023).

⁶ Peggy Hollinger – Eri Sugiura – Oliver Telling: European companies suffer €100bn hit from Russia operations, 6 August 2023.

⁷ Michael J Mol – Larissa Rabbiosi – Grazia D Santangelo: Should I Stay or Should I Go? How Danish MNEs in Russia Respond to a Geopolitical Shift, AIB Insights, Vol 23, Issue 1, 2023, <https://insights.aib.world/article/68337-should-i-stay-or-should-i-go-how-danish-mnes-in-russia-respond-to-a-geopolitical-shift> (visited on 31 March 2023).

⁸ Chris J Milhaupt: The (Geo)Politics of Controlling Shareholders, ECGI Law Working Paper 696/2023, p. 1. Cade Metz – Adam Satariano – Chang Che: 'How Elon Musk Became a Geopolitical Chaos Agent', New York Times, 26 October 2022.

The way in which global corporations have reacted to the war is an illustration of the social dimension of doing business: corporations are increasingly expected to take a stance on key social and political questions. The social dimension of business can be examined, for example, from the perspective of corporate social responsibility policies, which define the role of corporations in society in the light of interactions with stakeholders and advocacy groups.⁹

Although society also has expectations when it comes to the role of businesses in international crises, the issue at hand is about the fundamentals of the global economy more generally and government interests in the operation of businesses¹⁰. Businesses are major contributors to the basic functions of society and security of supply. More and more of the goods and services that are critical to the functioning of society are now produced by the private sector and are highly dependent on international supply chains.¹¹ Issues with the supply of these goods and services are not only a risk to businesses but also of critical significance to the functioning and security of the entire society.¹² The decisions of individual corporations can have widespread national implications. There are significant security risks involved in using products supplied by a foreign nation in commercial information networks or other privately owned critical infrastructure. Supplying advanced technology or equipment to another country, on the other hand, can give the foreign nation a military or technological advantage that compromises the home nation's strategic interests.¹³ Moreover, defining the strategic significance of individual sectors or businesses has become more difficult in the midst of technological development and unexpected changes in the operating environment (such as the role of vaccine manufacturing and masks from the perspective of security of supply during the COVID-19 pandemic). Governments all over the world are increasingly waking up to the need to protect national security interests in the context of business. Many other stakeholders of businesses – customers, suppliers and sources of funding – may also have expectations relating to security (privacy of personal data, security of supply chains, compliance with regulations).

This article focuses on the role of businesses in international relations and the effect of recent geopolitical shifts on the regulation and administration of businesses and their operating conditions more generally.

2 From geopolitics to geoeconomics

The economy has played a key role in geopolitics in the post-Cold War era, albeit that international trade was thought to promote international political integration and bring the global community closer together. The expectation was that businesses would lead the way to

⁹ Anne Vanhala – Michael Ristaniemi: Yritysvastuu & oikeus [Responsible business & law], Finland Chamber of Commerce, 2022. Klaus Ilmonen: 'Yhtiö muutoksessa – yritysohjauksen politiikkaa' ['Business in flux – politics of business management'], DL 3/2023, pp. 525–526.

¹⁰ Henrique Choer Moraes – Mikael Wigell: The Emergence of Strategic Capitalism, FIIA Working Paper 117/2020, p. 12.

¹¹ Fjäder – Helwig – Wigell, 2021, p. 4.

¹² Ole Spillner – Guntram Wolff: China 'De-Risking', DGAP Policy Brief, 13 June 2023. Mikael Mattlin – Shaun Breslin – Elina Sinkkonen – Liisa Kauppila – Björn Cappelin – Ines Söderström – Matt Ferchen, Enhancing Small State Preparedness – Risks of Foreign Ownership, Supply Disruptions and Technological Dependencies, FIIA Report 74, August 2023, pp. 21–24.

¹³ Choer Moraes – Wigell, 2020, p. 7.

globalisation, and the role of governments in the global economy would lessen and become more about enabling business and intervening in the markets only in the event of unfair competition practices¹⁴. What we are now seeing, however, is increasing social and economic polarisation both nationally and internationally. Economic protectionism is re-emerging, and the role of governments in the economy is growing once again. Economic tensions have increased on an international level – and there are now also examples of difficult political conflicts escalating to war. The economy and politics have become increasingly intertwined in international relations.¹⁵

International relations and the global economy

Russia's war of aggression against Ukraine has increased discourse about the fundamental nature of international relations. The post-Cold War era was characterised by a neo-liberal approach to international relations – including a focus on the global economy.¹⁶ Closer international partnerships and especially economic cooperation were hailed as the solution to international tensions. Governments would make a commitment to promoting international economic interaction, which would boost economic growth. The West believed that democracy would emerge as the best way to reach this end of political history¹⁷. It should be noted in this context that the trend in corporate law at the time was a shareholder-based corporate governance model, which was seen as the ultimate standard of corporate structures in this political framework.¹⁸ The corporate governance models of different countries grew more alike – and were expected to ultimately converge largely based on Anglo-Saxon models.¹⁹

That is not what happened. Realism has regained centre stage among the models that we use to explain the fundamental nature of international relations – not that the realistic school ever lost much ground in the first place.²⁰ The classical view of international relations is that 'the state among states ... conducts its affairs in the brooding shadow of violence'²¹. From this perspective, the international system is fundamentally anarchistic²² and founded on the exercise of economic, political and – as a last resort – military power. The priority for each nation is to ensure its own security in this landscape. The theory of offensive realism further holds that countries do not build their security policies and strategies solely from the perspective

¹⁴ Tuomas Tapio: *Geotalouden paluu – Kiristyvä maailmantalous ja Suomen vaihtoehdot* [The return of geopolitics – Global economic tensions and Finland's options], Teos Publishing, 2018, s. 12.

¹⁵ Tapio, 2018, p. 12.

¹⁶ Anthea Roberts – Henrique Choer Moraes – Victor Ferguson: 'Toward a Geoeconomic Order in International Trade and Investment', *Journal of International Economic Law*, 2019, Vol 22, pp. 655–676, pp. 657–658.

¹⁷ Francis Fukuyama: *The End of History and the Last Man*, The Free Press, 1992.

¹⁸ Reinier Kraakman – Henry Hansmann: *The End of History of Corporate Law*.

¹⁹ See Jeffrey Gordon – Mark Roe (eds): *Convergence and Persistence in Corporate Governance*, Cambridge University Press, 2004.

²⁰ David Martin Jones – M L R Smith: 'Return to Reason: Reviving Political Realism in Western Foreign Policy', *International Affairs*, Vol 91, No 5, 2015, pp. 933–952.

²¹ Kenneth Waltz: *Theory of International Politics*, Addison-Wesley Publishing Company, 1979, p. 103.

²² Kenneth Waltz: 'The Anarchic Structure of World Politics' in Robert J Art – Robert Jervis: *International Politics*, 13th edition, Pearson, 2016, p. 49.

of defence.²³ Instead, they seek to widen their sphere of influence and suppress other nations to promote their own interests.

Geoeconomics

Traditional geopolitical models are based on the premise that the strategies of the great powers are supported by the economy rather than defined by it. The economic resources of the world's leading nations are generally strong enough for economic dependencies to not have a central role in superpower politics. The end of the Cold War, globalisation and the internationalisation of supply chains have changed the situation, however.

With growing globalisation and more and more sophisticated international supply chains, the economies of individual countries are increasingly dependent on each other. The privatisation of key functions of society has given economic factors a much bigger role in international relations. These phenomena were previously believed to ease international tensions; the idea was that economic interdependencies would increase the need and will to build political frameworks to promote international trade. In reality, the consequences have been considerably less straightforward, as governments have begun to use these interdependencies to promote their own national security policy interests or to block the opportunities of others to do the same.²⁴

The economy is more often than earlier examined from the perspective of national political interests²⁵, and it has become an increasingly strategic element of international relations. In the context of geopolitics, the economy has replaced and joined power politics as a key instrument of political power play, which nations control as part of their strategic interests. This is where the concept of 'geoeconomics' comes in.²⁶

Governments are increasingly seeing the economy and the operation of businesses as integral to the security of the entire society.²⁷ The need for this 'securitisation' is all the greater when infrastructure that is critical to the functioning of society relies more and more on the operation of the private sector. This need naturally also extends to supply chains, especially because of their increasingly international nature. International supply chains and the challenges they present are also significant from the perspective of security of supply. In a broader sense, the securitisation of the economy also refers to increasingly active government intervention and participation in the economy, which has the potential to change the assumptions behind the current model of free market economy.

The securitisation of supply chains has resulted in efforts to reduce the associated political risks by, for example, moving production away from countries that are known to pose a geopolitical risk and bringing it back to within national borders ('onshoring') or to friendly

²³ John Mearsheimer: *The Tragedy of Great Power Politics*, W W Norton & Company, 2001.

²⁴ Roberts – Choer Moraes – Ferguson, 2019, pp. 659–660.

²⁵ Tuomas Tapio: *Geotalouden paluu* [The return of geoeconomics], Teos Publishing, 2018, p. 13.

²⁶ Edward Luttwak: 'From Geopolitics to Geo-Economics: Logic of Conflict, Grammar of Commerce', *The National Interest*, No 20, 1990, pp. 17–23. Mikael Wigell – Heiko Borchert – Edward Hunter Christie – Christian Fjäder – Lars-Hendrik Hartwig: *Navigating Geoeconomic Risks – Toward an International Business Risk and Resilience Monitor*, FIIA Report 71, 2022, p. 12.

²⁷ Fjäder – Helwig – Wigell, 2021, p. 4.

countries ('nearshoring').²⁸ Efforts have also been made to reduce international (inter)dependencies between national economies in a more general sense by introducing, for example, new technical standards, export restrictions and international trade tariffs in respect of certain countries. This balkanisation of the global economy is having a negative effect on international trade and globalisation.²⁹ The aforementioned trends are closely related to the weaponisation of the economy.³⁰ Economic interdependencies in particular are increasingly being used to influence international relations through, for example, targeted economic sanctions and export restrictions. The international banking and financial system, too, is being weaponised to isolate certain economies by means of sanctions.³¹

Recent geopolitical shifts and the trends identified above have had a significant impact on the political framework of the Western economic system and the assumptions behind free market economy. The growing tendency of governments to intertwine the economy and business with their strategic interests is restricting free trade between nations and creating new expectations in respect of the role of businesses. There are now areas of global trade where the rules of free market economy no longer apply. The move is away from 'free market capitalism' and towards 'strategic capitalism' – a system driven by strategic and security-related (rather than economic) objectives and increasing government intervention in whichever industries are considered strategically important at the time³². The question now is whether these developments are also reshaping regulation and the fundamentals of corporate governance; is corporate law still converging or have the assumptions behind corporate law and corporate governance models changed in this respect?

3 Government intervention in business

Government intervention in the economy can be motivated by a wide range of foreign and security policy interests. Regulation and economic policy can be used as means to, for example, secure critical production, control foreign investment, target economic sanctions and restrict exports to other countries.

Promoting domestic production

Governments can strive to boost the operating conditions of domestic businesses and set up 'national champions' in strategically important industries. The US has used its national economic policy to promote, for example, domestic semiconductor manufacturing and other

²⁸ Shekhar Aiyar – Jiaqian Chen – Christian Ebeke – Roberto Garcia-Saltos – Tryggvi Gudmundsson – Anna Ilyina – Alvar Kangur – Tansaya Kunaratskul – Sergio Rodriguez – Michele Ruta – Tatjana Schulze – Gabriel Soderberg – Juan Pedro Trevino: *Goeconomic Fragmentation and the Future of Multilateralism*, International Monetary Fund. SDN 01/2023, file:///C:/Users/ilmonen_k/Downloads/SDNEA2023001.pdf (visited on 5 November 2023).

²⁹ Fjäder – Helwig – Wigell, 2021, pp. 5–7.

³⁰ Fjäder – Helwig – Wigell, 2021, pp. 7–8.

³¹ Christian Perez: 'What Does Russia's Removal From SWIFT Mean For the Future of Global Commerce?', Foreign Policy Analytics, 8 March 2022, <https://foreignpolicy.com/2022/03/08/swift-sanctions-ukraine-russia-nato-putin-war-global-finance/> (visited on 5 November 2023).

³² Wigell – Borchert – Hunter Christie – Fjäder – Hartwig, 2022, p. 17.

nationally critical production.³³ The EU has taken similar steps, which are aimed at keeping critical semiconductor manufacturing within the EU in order to reduce dependence on, for example, Chinese production.³⁴ The EU has also emphasised the need to strengthen the Union's internal operating conditions vis-à-vis its strategic objectives more generally.³⁵ China, in turn, incorporated into its planned economy a special programme aimed at increasing manufacturing self-sufficiency in 2015 ('Made in China 2025').³⁶

Strategic use of government ownership

The role of government-controlled market operators – from state-owned industrial operators to sovereign wealth funds – has increased significantly in international trade in the last few decades. Several governments are also looking to increase their shareholdings in private businesses and then use their shareholder rights to promote their political objectives. Government-controlled market operators are not bound by the terms of the market alone and can therefore also become vehicles for promoting national foreign and security policies and strategies. The Finnish government has in the past used its position, for example, to steer the partially state-owned company SSAB to control its emissions in order to achieve national environmental objectives.³⁷ There is no reason why the government could not also use its influence to promote foreign or security policy goals in the same way.

Apart from the high risk of market distortion associated with government involvement in international markets, the actions of government agencies can also have geopolitical consequences. There are, for example, China-led infrastructure projects in Asia and Africa that have reshaped the economic interdependencies between the countries involved and the superpowers. Russia has taken this one step further by formally recognising the coordinated use of all resources that the government controls as a form of warfare: economic operators are seen as instruments available to the government in this respect.³⁸ A notable example is Gazprom's Nord Stream 2 gas pipeline, the strategic importance of which culminated in September 2022, when the pipeline was blown up in connection with the war in Ukraine.³⁹

³³ David Shephardson: 'US finalizes rules to prevent China from benefiting from \$52 billion in chips funding', 22 September 2023, <https://www.reuters.com/technology/us-finalizes-rules-prevent-china-benefiting-52-bln-chips-funding-2023-09-22/> (visited on 5 November 2023).

³⁴ Regulation (EU) 2023/1781 of the European Parliament and of the Council of 13 September 2023 establishing a framework of measures for strengthening Europe's semiconductor ecosystem and amending Regulation (EU) 2021/694 ('Chips Act') (Text with EEA relevance).

³⁵ Tero Poutala – Elina Sinkkonen – Mikael Mattlin: 'EU Strategic Autonomy and the Perceived Challenge of China: Can Critical Hubs Be De-weaponized?', *European Foreign Affairs Review*, Vol 27, 2022, pp. 79–98.

³⁶ James McBride and Andrew Chatzky: Is 'Made in China 2025' a Threat to Global Trade?, 13 May 2019, <https://www.cfr.org/backgrounder/made-china-2025-threat-global-trade> (visited on 5 November 2023).

³⁷ Government Communications Department: 'Finnish Government to transfer SSAB shares from Solidium to direct ownership under the Prime Minister's Office', 14 September 2021.

³⁸ Timothy Thomas: 'Russia's Forms and Methods of Military Operations – the Implementers of Concepts', *Army University Press*, May–June 2018, <https://www.armyupress.army.mil/Journals/Military-Review/English-Edition-Archives/May-June-2018/Russias-Forms-and-Methods-of-Military-Operations/> (visited on 5 November 2023).

³⁹ Ilias Alami – Adam Dixon – Ruben Gonzalez-Vicente – Milan Babic – Seung-Ook Lee – Ingrid Medby – Nana de Graaff: 'Geopolitics and the New State Capitalism', *Geopolitics*, 2021, p. 11.

In an international context, it would be unrealistic to expect businesses that represent different economic systems (free market economy versus centrally planned economy) to play by the same rules. There are a number of international agreements that seek to limit the negative effects of government intervention in free market economies. The EU has introduced state aid rules to curtail the opportunities of national governments to subsidise domestic businesses. On a global scale, regulation in this respect is coordinated by the World Trade Organization (WTO). The fact that the world's superpowers are increasingly trying to dispute the competence of the WTO is telling of the current climate and the gathering momentum of geoeconomic trends.⁴⁰

Screening of foreign investment

Many countries aspire to screen and control business acquisitions and other direct investments by foreign operators. The Finnish Act on the Monitoring of Foreign Corporate Acquisitions⁴¹ applies broadly not only to the defence industry and suppliers of other security authorities but also to other operators that are considered critical in terms of security of supply. The definition given for 'key national interest' in the Act, which was originally limited to securing military national defence and safeguarding public order, has been subsequently expanded to also cover securing functions vital to society, national security and foreign and security policy objectives.⁴² There are a number of challenges involved in the application of the Act, which relate to, for example, the predictability of law, as the definition of what counts as critical business is largely based on what the authorities at any given time consider critical.⁴³ This is a reflection of the increasingly strategic and political nature of business. Several European countries and the US have passed similar laws.⁴⁴ The EU has its own screening mechanism for foreign investment, which deals with situations where a foreign investment in a Member State can be seen to also affect security and public order in another Member State⁴⁵. Under the Regulation in question, factors that can be taken into consideration include the effects of an investment not only on critical infrastructure and the supply of energy or raw materials but also critical technologies, such as artificial intelligence, robotics, semiconductors, aerospace, nanotechnologies and biotechnologies.⁴⁶ The screening mechanism provides

⁴⁰ Tapio, 2018, pp. 142–150.

⁴¹ Finnish Act on the Monitoring of Foreign Corporate Acquisitions (172/2012).

⁴² Finnish Act on the Monitoring of Foreign Corporate Acquisitions (172/2012), section 2, subsection 1, paragraph 1

⁴³ See Toni Malminen – Mikko Rajavuori: 'Yrityssostolain uudistus: Muutoksia ja jatkuvuutta turvallisuusperusteisessa yrityskauppavonnassa' ['The Foreign Acquisitions Screening Act: Changes and Continuity in National Security Merger Control'], DL 2/2021, pp. 258–280.

⁴⁴ UNCTAD: 'The Evolution of FDI Screening Mechanisms', UNCTAD Investment Policy Monitor, Issue 25, February 2023, https://unctad.org/system/files/official-document/diaepcbinf2023d2_en.pdf (visited on 31 August 2023).

⁴⁵ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union ('2019 Framework Regulation').

⁴⁶ 2019 Framework Regulation, Article 4(1)(b).

a framework for information exchange between the Member States, but decisions to intervene in foreign investments are still taken at the national level.

Export and investment restrictions

Certain strategic sectors, such as the defence industry⁴⁷, have long been subject to export restrictions; these restrictions have also applied to what are known as dual-use goods – items that can be used both for civilian and military applications⁴⁸. However, the scope of export restrictions has broadened significantly especially in respect of technological production. In the US, for example, President Biden's cabinet decided in 2023 to restrict American investments in certain Chinese industries in order to curtail China's opportunities to develop strategic technology that could compromise American political interests⁴⁹.

Sanctions

Economic sanctions have traditionally been seen as the primary means of applying economic pressure to settle international disputes, and they are a key consideration for businesses that operate internationally. Sanctions can make it considerably more difficult if not impossible to continue operating in certain countries or in specific sectors of the economy. The EU, the UK and the US, for example, have imposed both country-specific and individual sanctions in response to growing international tensions (in respect of, for example, Iran and North Korea) and in the context of the war in Ukraine. Economic sanctions imposed on Russia and the country's political and military leaders – as well as the counter-sanctions imposed by Russia – have significantly affected businesses' operating conditions in Russia and beyond. The effectiveness of economic sanctions has often been questioned, however, as the governments or individuals that they are designed to inconvenience are often able to find ways around them, and sanctions rarely succeed in changing the targeted behaviour.

Russia passed a new decree in the spring of 2023, which aims to temporarily control the assets of foreign businesses in Russia.⁵⁰ The decree gives the Russian government powers to take temporary control of assets belonging to businesses that are registered in 'unfriendly' countries. While the assets seized under the decree do not formally change hands and cannot, for example, be sold, the entire administration of these companies is placed under Russian control and all rights to the assets are frozen. From the perspective of businesses whose assets have been seized in this manner, the decree nevertheless severely limits their opportunities to exercise their rights as owners of those assets. Companies whose assets in Russia have been seized under the decree so far include, for example, Carlsberg and Danone.⁵¹ The Finnish

⁴⁷ Finnish Act on the Export of Defence Materiel (282/2012).

⁴⁸ Finnish Act on the Control of Exports of Dual-Use Goods (562/1996).

⁴⁹ Executive Order on Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern, 9 August 2023.

⁵⁰ Decree No 302 of the President of the Russian Federation on the temporary management of certain assets, 25 April 2023.

⁵¹ Hanna Ziady – Mariya Knight: 'Russia seizes control of Danone, Carlsberg assets', CNN, 17 July 2023, <https://edition.cnn.com/2023/07/17/business/russia-danone-carlsberg-control/index.html> (visited on 31 August 2023).

Fortum Corporation, which has also been targeted, has announced that it reserves its rights to take legal action against Russia and fight the violations of applicable international (bilateral) investment treaty protection.⁵²

Requirements relating to the national ties of businesses

Governments can impose requirements for businesses that relate to their national ties. Data protection, for example, has been high on the agenda in recent years. The EU's General Data Protection Regulation (GDPR) imposes certain restrictions on the keeping of personal data outside the EU. China, for example, has stipulated that any information relating to business conducted in China be kept in China and that the authorities must be able to use the information for their own purposes. These requirements have forced international corporations to organise their business differently depending on the country or region. Other restrictions that international corporations face include, for example, rules about foreign operators having to partner with local businesses and not being able to move earnings from the host country cross-border for a regulatory period ('trapped cash').

Security of supply

The laws governing security of supply⁵³ attracted much attention in Finland during the COVID-19 pandemic.⁵⁴ Preparedness and the ability (even if imperfect⁵⁵) to coordinate security of supply helped to keep the critical functions of society running through the crisis. The Finnish Emergency Powers Act⁵⁶ allows the government to take control and limit the operation of businesses in the face of, for example, threats to national security. The regulations apply to, for example, the finance sector, the energy industry, transport as well as the information and communications industry. Security of supply systems of this scale are rare, but several other countries also have contingency plans and regulations that help them to prepare for crises and ensure security of supply. Being prepared for the triggering of the security of supply regulations and the Emergency Powers Act is part of running a business in Finland. There are also special laws that govern the private sector and its role in these kinds of circumstances⁵⁷. If the nature of industries that supply the critical functions of society changes, businesses may also

⁵² Fortum online news, 13 July 2023, <https://www.fortum.com/media/2023/07/fortum-has-sent-notice-dispute-russian-federation-due-violations-international-investment-treaty-protection> (visited on 31 August 2023).

⁵³ Finnish Security of Supply Act (1390/1992).

⁵⁴ Vesa Koivunen – Teemu Kalijärvi: Huoltovarmuus ja sen turvaaminen covid-19-pandemian aikana [Security of supply and ensuring security of supply during the COVID-19 pandemic], National Audit Office of Finland's audit report 10/2021 <https://www.vtv.fi/app/uploads/2021/06/VTV-Tarkastus-10-2021-Huoltovarmuus-ja-sen-turvaaminen-covid-19-pandemian-aikana.pdf> (visited on 31 August 2023).

⁵⁵ Koivunen – Kalijärvi, 2021, pp. 22–28.

⁵⁶ Finnish Emergency Powers Act (1552/2011).

⁵⁷ See government proposal regarding the Emergency Powers Act and certain related laws (HE 3/2008), p. 37.

find themselves having to pay closer attention to the laws governing security of supply and emergency powers – including requirements of increased preparedness.

Political influence of the authorities

Some governments also exert political influence on businesses. There are countries where the authorities have taken legal action against businesses or their management in the form of tax or other audits, for example, in order to pressurise them to toe the government line or to make it more difficult for them to operate for political reasons.⁵⁸ The ambiguity and generality of law can also open up avenues to intervene in the normal operation of businesses, if this is deemed politically advantageous.⁵⁹ Governments can even launch illegal cyberattacks against businesses or business-critical infrastructure.⁶⁰ These kinds of attacks often target critical operators and infrastructure, such as the finance sector, the energy industry or logistics.

4 Geoeconomic risk management

The aforementioned factors have considerable implications on the international dimension of business. From the perspective of individual corporations, the key lies in identifying potentially strategic business operations and international supply chains, target markets and client relationships that can be vulnerable to geoeconomic risks. Geopolitical or geoeconomic risks have traditionally only affected certain clearly definable industries, such as the weapons industry and defence technology or oil and other energy supplies. Rare earth metals have also proven to be strategically important raw materials, and issues with their availability are a risk even to global superpowers.

In today's rapidly changing landscape, more and more industries are suddenly finding themselves to be 'strategic' due to the nature of their supply chains. During the COVID-19 pandemic, for example, it was health care supplies (masks), medicines and drug manufacturing that became strategically important for the world's nations. It is no longer as easy as it once was for businesses to determine what national interests could be affected by their operations and supply chains. This is why businesses need to increasingly take into account the effects of international politics on the strategic interests of the countries in which they operate – and control their geoeconomic risks.

⁵⁸ John Reed: 'Crackdowns, lawsuits and intimidation: the threat to freedom of expression in India', *Financial Times*, 10 October 2022, <https://www.ft.com/content/c6d19165-079f-442c-8a2c-47eb91ad9c72> (visited on 24 October 2023).

⁵⁹ The Economist: 'The crackdown on foreign firms will deter global business—and undermine China's own interests', editorial, 15 June 2023, <https://www.economist.com/leaders/2023/06/15/the-crackdown-on-foreign-firms-will-deter-global-business-and-undermine-chinas-own-interests> (visited on 24 October 2023). Chris Sanders: 'US companies in China struggle with raids, slow deal approvals, anti-espionage law', *Reuters*, 30 August 2023, <https://www.reuters.com/business/raids-exit-bans-us-companies-face-growing-hurdles-china-2023-08-29/> (visited on 24 October 2023).

⁶⁰ Cybersecurity and Infrastructure Security Agency (CISA): 'Russian State-Sponsored and Criminal Cyber Threats to Critical Infrastructure', *Cybersecurity Advisory*, 9 May 2022, <https://www.cisa.gov/news-events/cybersecurity-advisories/aa22-110a> (visited on 24 October 2023).

Traditional risk management approaches

The geopolitical risks associated with doing business in Russia were realized for hundreds of corporations with the war in Ukraine. Russia's invasion proved that geopolitical change can happen fast. The sudden difficulties of operating in Russia had a significant impact on the operational and financial performance of many businesses. However, Russia is not a major link in global supply chains; although many businesses had production facilities in Russia, these facilities were mostly supplying the local market. One notable exception from Finland's perspective was Nokian Tyres, which had significant manufacturing operation in Russia.⁶¹

Risk management is one of the most important tasks of a corporation's Board of Directors.⁶² It is the Board's responsibility to ensure that any new business risks arising from geopolitical changes are taken into account. Corporations must be able to identify the political and strategic interests at play in their business and understand the kinds of political responses that these interests can lead to (sanctions, export bans, safeguarding of domestic production, etc.). Understanding the perspectives and approaches of governments and politicians is critical in this respect.⁶³ Both the management and the Board of Directors need to be politically savvy. Businesses in many traditionally strategic industries have incorporated the coordination of political interests into their stakeholder engagement and community relations functions. However, identifying strategic sectors and businesses has become more difficult in the current environment. There is a greater need for situational awareness and have close relationships with politicians and the government. Businesses also need to ensure that they have access to real-time information about geopolitical developments.

Boards of Directors need to be able to analyse the potential effects of risks.⁶⁴ They also need to establish the corporation's risk appetite in respect of geopolitical shifts and ensure that these risks are appropriately managed. It is impossible to eliminate all risks in business – and geoeconomic risks are no exception. However, production facilities or supply chains can be moved to politically more stable countries, for example; Finland's NATO membership could open up new avenues for establishing international supply chains in this respect. The EU is currently working on a new Directive that would obligate businesses to carry out due diligence on their supply and value chains in order to ensure compliance with human rights laws and environmental regulations.⁶⁵ The proposal is contentious, but the due diligence procedures described in it could provide a way to address the political challenges and risks associated with supply chains.

⁶¹ Nokian Tyres Plc: 'Nokian Tyres Plc to sell its operations in Russia', 28 October 2022, <https://www.nokiantyres.com/company/news-article/inside-information-nokian-tyres-plc-to-sell-its-operations-in-russia/> (visited on 31 October 2023).

⁶² Securities Market Association: Finnish Corporate Governance Code – Corporate Governance Reporting – III Descriptions of internal control procedures and the main features of risk management systems, 2020.

⁶³ Wigell et al, 2022, p. 32.

⁶⁴ See, for example, Fortum Corporation: Financial Statements and Board of Directors' Report, 2022, pp. 29–36, file:///C:/Users/ilmonen_k/AppData/Local/Temp/0bf1cfc0-3dee-4849-9675-a29055ad0166_1890256.zip.166/FORTUMOYJ-2022-12-31-fi/reports/FORTUMOYJ-2022-12-31-fi.xhtml (visited on 31 October 2023).

⁶⁵ Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM/2022/71 final.

Moving production facilities or supply chains away from geopolitically high-risk countries is not always practical or even possible. The growing tensions between China and the US, in particular, have created new challenges in this respect. Separating the countries' economies and decoupling their interdependencies does not make sense. European countries are at least as dependent on the Chinese economy as the US is. China's economic growth, in turn, relies heavily on exports to Europe and the US. Competition between the great powers and especially between China and US nevertheless continues to intensify. This puts businesses in a difficult position. If economic dependency on China cannot be eliminated, there are at least ways to control and de-risk it. This requires identifying the geopolitical risks that are specific to China and its relations with the other great powers, and analysing their implications for the corporation's business. Such an analysis has already led many corporations to separate their Chinese operations from their other international business.⁶⁶ Establishing the corporation's risk tolerance and risk appetite is also vital, especially considering the huge economic influence of the Chinese market. There are many industries where minimising the geopolitical risks associated with China is not a practical option and the solution lies instead in preparing for what may happen if the risks materialise. Businesses also have to look at the political landscape of the other countries in which they operate, as it may be that the governments of these countries expect businesses to exercise caution when it comes to economic dependencies and risks relating to China.

Corporate statecraft

Managing geopolitical risks calls for a holistic approach; often it is not just individual risks that need to be tracked and managed but the entire corporation's resilience to geopolitical and other social changes that needs strengthening. Resilience is not just about preparedness for crises either, but about creating conditions that allow the business to be adapted to changing circumstances. It is also not enough for businesses to prepare for the effects of geopolitical shifts from the perspective of risk management – what they need is corporate statecraft⁶⁷.

Ultimately businesses are political entities and platforms for political action. Their stakeholders can seek to influence the political aspects of the business through political lobbying or by exercising their rights as shareholders; corporations are increasingly expected to take a stance on a variety of issues, including international affairs – by, for example, exiting from Russia. Corporations' stakeholders can also have direct security interests of their own, which can relate to, for example, data protection, risks associated with stakeholders' own supply chains (in respect of customers, suppliers and shareholders) as well as their political or regulatory obligations.

Businesses also interact with national governments to promote their own economic interests. They can try to block government initiatives that threaten their international operations (such as the imposition of export bans).⁶⁸ In cases where the actions of foreign nations are

⁶⁶ The Economist: 'The Crackdown on Foreign Firms Will Deter Global Business—and Undermine China's Own Interests', 15 June 2023.

⁶⁷ Choer Moraes – Wigell, 2020, p. 4.

⁶⁸ Andreas Rinke – Victoria Waldersee – Sarah Marsh: 'Insight: German business chiefs clash with Berlin over China policies', Reuters, 14 October 2022, <https://www.reuters.com/business/german-business-chiefs-clash-with-berlin-over-china-policies-2022-10-13/> (visited on 31 October 2023).

jeopardizing businesses, they can appeal to their national government for help (to ensure, for example, access to critical earth minerals). All in all, factoring in geopolitical shifts requires a more holistic approach to community relations – as well as corporate statecraft to complement risk management.

The securitisation of the economy is changing the relationship and the division of labour between governments and the private sector (businesses); many corporations that operate in strategic industries have turned into de facto security operators. The security perspective can be limiting for business, as it can set conditions on how corporations can operate. More and more businesses find themselves constrained by their political operating environment and are being heavily pressurised to pick sides. It is possible that, in the future, businesses will have to increasingly incorporate the security perspective not just into their risk management policies but also into their business plans more generally.

5 Effects of geopolitical shifts on the operating conditions of businesses

The make-up of the business sector is best examined in its social and economic context. The current system of corporate law has long been based on the assumption that creating a stable society in which a free market economy can thrive – also in respect of international trade – is a task for the political machinery, and businesses should focus on generating profits for their shareholders. However, geopolitical developments and the securitisation of the economy have also shifted these parameters. This has created a new urgency to examine how these changes are affecting the regulation and governance of businesses.

Influence of government interests

The securitisation of the economy is driven by nations' strategic interests, and the way in which these are affecting businesses suggests a shift towards state capitalism (or at least strategic capitalism) and related corporate governance models. The term 'state capitalism' is usually taken to refer to a market economy system in which the government oversees and directs the distribution of capital or owns or controls businesses and their assets.⁶⁹ The role of governments in business has grown stronger and more international in the last decade.

Various ways in which governments can seek to influence the economy and the operation of businesses to protect their own strategic interests have been discussed above – from supporting domestic production to international economic sanctions. Below is an analysis of laws and regulations that govern businesses – from security of supply rules to export restrictions and the screening of foreign corporate acquisitions – and affect the way in which corporations need to be managed and organised especially in respect of the international dimension of business.

⁶⁹ Ilias Alami – Adam Dixon – Ruben Gonzalez-Vicente – Milan Babic – Seung-Ook Lee – Ingrid Medby – Nana de Graaff: 'Geopolitics and the New State Capitalism', *Geopolitics*, 2021, p. 1.

Trends in corporate law

International research has followed closely the rise of nationalist attitudes over the last decade that have spilled over to the world of corporate law. Scholars have identified a number of countries where there has been a drive to block or hinder foreign takeovers of nationally critical businesses.⁷⁰ In the world of corporate law, nationalist attitudes can manifest as, for example, attempts to ensure that businesses remain under the direction (or control) of domestic operators. This aim can be pursued in various ways, such as by allowing multiple voting shares or changing tax policies to support large shareholdings⁷¹. Multiple voting shares can help to strengthen a corporation's existing ownership and control structure, for example. Several European countries have also legalised what are known as 'loyalty shares' – shares that bring with them additional voting rights as a reward for shareholders who remain with the company long-term.⁷² The acceptability of this practice has also been examined at EU level⁷³, which is significant considering the one-share-one-vote principle that the EU was advocating in the early 2000s and previous EU-level initiatives to restrict or even ban the use of multiple voting shares⁷⁴. The role of corporate law in promoting mergers and acquisitions and the internationalisation of business has changed dramatically. There are even signs that corporate law could become another instrument that governments use to increase national control over businesses.

The perspective of security of supply

The rules on security of supply are one example of how governments seek to control the management and operation of businesses and protect national interests. In Finland, the security of supply obligations of private operators are mostly based on the Emergency Powers Act, which is only triggered in times of exceptional circumstances. In normal times, it is mostly the public sector that has to be prepared for any potential issues with security of supply. However, the rules also identify certain industries (coal, natural gas and oil⁷⁵, pharmaceuticals⁷⁶ and finance⁷⁷) where private operators, too, have to plan for contingencies. It is possible that

⁷⁰ Mariana Pargendler: 'The Grip of Nationalism on Corporate Law', *Indiana Law Journal*, Vol 95, Issue 2, Article 5, p. 534.

⁷¹ Peter Högföldt: 'The History and Politics of Corporate Ownership in Sweden' in Randall K Morck (ed): *A History of Corporate Governance around the World*, XXX, 2007, p. 522

⁷² Mark Roe – Federico Cenzi Venessa: 'Will Loyalty Shares Do Much Good for Corporate Short-termism?', 76 *Business Lawyer* 467, 2021.

⁷³ Proposal for a Directive of the European Parliament and of the Council on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market, Brussels, 7 December 2022, COM/2022/761 final, 2022/0406 (COD).

⁷⁴ Guido Ferrarini: 'One Share – One Vote: A European Rule?', ECFR 3/2006.

⁷⁵ Finnish Act on the Compulsory Stockpiling of Imported Fuels (1994/1070).

⁷⁶ Finnish Act on the Compulsory Stockpiling of Medicines (979/2008).

⁷⁷ Finnish Act on Credit Institutions (610/2014), chapter 5, sections 16–17.

these kinds of obligations could, in the future, be extended to other sectors in the name of national security.

The government's strategic interests can also influence the political landscape in which businesses operate and stipulate how business can be conducted and what corporations need to do to not jeopardise these interests. In addition to the system of security of supply, the way in which businesses can operate is regulated by, for example, controls on foreign acquisitions; this can involve, for example, putting restrictions on international cooperation and mergers, or not allowing nationals of certain countries or certain kinds of foreign investors to buy shares in businesses in order to protect a key national interest.

Government involvement in the operation of free markets is often deemed fundamentally problematic. State-owned businesses are, for example, often thought to focus less on financial performance. These businesses also tend to be more likely to be motivated by political drivers than the market, which can affect their profits ability.⁷⁸ However, government involvement can also help to boost production in situations where the institutional environment does not incentivise private investment – if, for example, a corporation is developing a novel product that depends on new infrastructure or know-how to succeed, or if there are societal externalities⁷⁹ (such as security) involved in the returns on the investment. In these kinds of situations, government intervention can actually open the door for private operators to get involved if, for example, the cost of innovation is brought down by means of industrial policy, investment in education, regulation or direct state-ownership.⁸⁰ As much as security considerations can be a challenge for corporations, they can also create new business opportunities.

Towards strategic capitalism?

The aforementioned perspective reflects a shift towards strategic capitalism – an economic system in which the authorities seek to control and influence the operation of businesses according to their strategic interests. In other words, businesses need to organise their operations within the parameters set by national security. Strategic capitalism also expects businesses to incorporate these kinds of interests into their own strategies – and ensure that their operations do not jeopardise or damage national interests. While it was deemed appropriate for SpaceX to allow the use of its satellites to support Ukraine, permitting the invading side to use the system would certainly have resulted in serious consequences for the company from both public and private actors.

⁷⁸ Enrico Perotti: 'State Ownership: A Residual Role?' World Bank Policy Research Working Paper 3407, September 2004, available at <https://ssrn.com/abstract=2963394>.

⁷⁹ Aldo Musacchio – Sergio Lazzarini – Ruth Aquilera: 'New Varieties of State Capitalism: Strategic and Governance Implications', *The Academy of Management Perspectives* 2015, Vol 29, 1, pp. 115–131, pp. 119–120.

⁸⁰ Philippe Aghion: 'Some Thoughts on Industrial Policy and Growth' in Oliver Falck – Christian Gollier – Ludger Woessmann (eds): *Industrial Policy for National Champions*, MIT Press, 2011, pp. 13–30.