



EUROPEAN COMMISSION PROPOSES A NEW REGULATION ON THE SCREENING OF FOREIGN INVESTMENTS

On 24 January 2024, the European Commission (the Commission) proposed a new Regulation on the screening of foreign investments in the EU (the Proposed Regulation). The Proposed Regulation is part of a package alongside four other initiatives to strengthen further the EU's economic security at a time of geopolitical and security challenges.

The Proposed Regulation requires all EU Member States to establish a screening mechanism for foreign investments and sets a minimum sectoral scope of investments that all Member States are required to screen. The Proposed Regulation also provides for enhanced cooperation between Member States and the Commission.

The Proposed Regulation should be seen in the context of increased scrutiny of foreign investments in many jurisdictions due to geopolitical tensions. For example, since the UK introduced the National Security and Investment Act 2021, there have been several transactions which have been blocked or on which conditions have been imposed on grounds of national security.¹

European Economic Security Strategy

On 20 June 2023, the Commission and the High Representative for Foreign and Security Policy adopted a **Joint Communication on a European Economic Security Strategy** (the **Strategy**). The Strategy provides “a framework for assessing and addressing – in a proportionate, precise and targeted way – risks to EU economic security, while ensuring that the EU remains one of the most open and attractive destinations for business and investment”.²

The Strategy highlighted that “new economic security risks are emerging as a result of increasing geopolitical tensions, geo-economic fragmentation and profound technological shifts”.³ The Commission cited the Covid-19 pandemic and the Russia-Ukraine war as drivers for “the need to be able to identify risks to, and better protect EU critical assets from, certain investments”.⁴

The Commission and the High Representative identified four categories of risks to economic security: (1) resilience of supply chains;

(2) physical and cyber security of critical infrastructure; (3) technology security and technology leakage; and (4) weaponisation of economic dependencies or economic coercion.

The Strategy is structured around three pillars: (1) promoting the EU’s competitiveness; (2) protecting the EU’s economic security; and (3) partnering with and further strengthening cooperation with countries worldwide.

The Commission’s five new initiatives

On 24 January 2024, the Commission proposed a package of five new initiatives to strengthen further the EU’s economic security:

1. A proposal for a **Regulation on the screening of foreign investments in the EU**.
2. A **White Paper on Export Controls**. The Commission stated that action is required at EU level to improve the coordination of export controls on items with both civil and defence uses in order to ensure that they are not used to undermine security and human rights.⁵ The White Paper aims to foster further discussions within the EU on export controls of dual-use technologies that impact EU security.
3. A **White Paper on Outbound Investments**. The EU recognises that there are “growing concerns regarding outbound investments in a narrow set of advanced technologies that could enhance military and intelligence capacities of actors who may use these capabilities against the EU or to undermine international peace and security”.⁶ The White Paper proposes a step-by-step analysis of outbound investments to understand potential risks linked to them. The initiative aims to consult Member States and stakeholders on potential

risks arising from outbound investments.

4. A **White Paper on options for enhancing support for research and development involving technologies with dual-use potential**. The White Paper aims to promote further discussions within the EU on how better to promote research and development involving technologies with dual-use potential. This contributes towards the ‘promote’ dimension of the EU’s Strategy.
5. A **Proposal for a Council Recommendation on enhancing research security**. The Commission highlighted that results of international research and innovation cooperation may be used for military purposes in third countries, or in violation of fundamental values. The Commission has proposed a Council Recommendation to provide more clarity, guidance and support to Member States and the wider research and innovation sector. This is aimed at strengthening research security at national and sector level. The Commission stated that “EU action is required to ensure consistency across Europe and to avoid a patchwork of measures”.⁷

Proposed Regulation on the screening of foreign investments in the EU

Foreign investments may pose a risk to EU security, for example, when a foreign investor seeks to acquire direct or indirect control of EU businesses that produce critical technologies or infrastructure, or have access to sensitive information.⁸

The Commission’s Proposed Regulation would repeal the existing **Regulation 2019/452** (the **FDI Screening Regulation**) which established a framework for the screening of foreign direct

1 We published a briefing in January 2023 which reviewed the National Security and Investment Act 2021 one year on from its implementation: [004695-HFW-National-Security-and-Investment-Act-2021-One-Year-On.pdf](#)

2 [8b5910fe-10ea-4645-8b14-162ff72ea049_en](#) (europa.eu)

3 [8b5910fe-10ea-4645-8b14-162ff72ea049_en](#) (europa.eu)

4 [Circabc](#) (europa.eu)

5 [New initiatives to strengthen economic security](#) (europa.eu)

6 [New initiatives to strengthen economic security](#) (europa.eu)

7 [New initiatives to strengthen economic security](#) (europa.eu)

8 [Factsheet Screening of foreign investments](#) (europa.eu)

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investments (FDI) into the EU on the grounds of security or public order. The FDI Screening Regulation was adopted in 2019 and has been in force since 11 October 2020. Under the FDI Screening Regulation, the Commission has reviewed over 1,200 FDI transactions notified by Member States over the past three years.⁹ On 14 June 2023, the Commission published a **call for evidence** regarding the evaluation and revision of the FDI Screening Regulation. As of 28 February 2024, 22 of the 27 EU Member States have a national screening mechanism, including Belgium, the Czech Republic, Denmark, Germany, Estonia, Spain, France, Italy, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden.¹⁰

Recital 6 of the Proposed Regulation states that “a new legislative instrument is needed to strengthen the efficiency and effectiveness of Regulation (EU) 2019/452 and ensure a higher degree of harmonisation across the Union”. Recital 8 highlights

the differences between Member States’ foreign investment screening rules in terms of scope, thresholds and criteria used to assess whether an investment is likely negatively to affect security or public order. For example, in Slovenia, a foreign investment can be implemented before it has received clearance with respect to the impact on security and public order. Other Member States, such as France, Germany, the Czech Republic and Spain, require that the investment is only finalised after authorisation under the screening mechanism.¹¹

The Proposed Regulation seeks to harmonise the core elements of national screening mechanisms including the scope of investments to be screened, the screening procedure’s essential features, and the interaction between the national screening mechanism and the EU cooperation mechanism.

Definition of foreign investments

The Proposed Regulation applies to ‘foreign investments’ which means “a foreign direct investment

or an investment within the [EU] with foreign control, which enables effective participation in the management or control of [an EU] target”.¹²

- A ‘foreign direct investment’ is “an investment of any kind by a foreign investor¹³ aiming to establish or to maintain lasting and direct links between the foreign investor and an existing or to be established [EU] target, and to which target the foreign investor makes capital available in order to carry out an economic activity in a Member State”.¹⁴
- An ‘investment within the EU with foreign control’ is “an investment of any kind carried out by a foreign investor through the foreign investor’s subsidiary in the [EU], that aims to establish or to maintain lasting and direct links between the foreign investor and [an EU] target that exists or is to be established, and to which target the foreign investor makes capital available in order to carry out an economic activity in a Member State”.¹⁵

⁹ New initiatives to strengthen economic security (europa.eu)

¹⁰ 7e72cdb4-65d4-4eb1-910b-bed119c45d47.pdf

¹¹ Recital 9

¹² Article 2(1)

¹³ A ‘foreign investor’ includes a natural person of a third country (i.e. a non-EU member state) and undertakings or entities established or otherwise organised under the laws of a third country: Article 2(6)

¹⁴ Article 2(2)

¹⁵ Article 2(3)

In summary, the Proposed Regulation extends the scope of the screening rules to cover investments by investors that are ultimately owned by individuals or entities from a non-EU country, including the UK.

National screening mechanisms

Mandatory screening mechanism

Article 3(1) of the Proposed Regulation mandates the establishment of a foreign investment screening mechanism by Member States. Article 3(3) requires all Member States to establish a screening mechanism within 15 months of the Proposed Regulation entering into force.

Member States must ensure that their screening mechanisms meet certain requirements specified in Article 4(2). For example, confidential information must be protected, an annual report on screening activities must be made public, and foreign investments subject to an authorisation requirement (as described below) must be screened before the investment is completed.

Minimum sectoral scope for screening of foreign investments

The Proposed Regulation requires Member States to screen foreign investments in a minimum scope of sectors.¹⁶ Member States must ensure that their screening mechanisms impose an authorisation requirement for foreign investments in these sectors.¹⁷ The relevant foreign investments are investments in EU companies that are either:

- Part of or participating in projects or programmes of EU interest specified in Annex I to the Proposed Regulation. Projects or programmes of EU interest are projects or programmes covered by EU law that provide for the development, maintenance or acquisition of critical infrastructure, critical technologies

or critical inputs which are essential for security or public order and which are listed in Annex I,¹⁸ for example, the Space Programme, Horizon Europe, the Euratom Research and Training Programme, the Digital Europe Programme and Trans-European Networks for transport, energy and telecommunications; or

- Economically active in one of the areas listed in Annex II to the Proposed Regulation. This includes dual-use items, military equipment, advanced semiconductor technologies, artificial intelligence technologies, quantum technologies, energy technologies¹⁹, and robotics and autonomous systems. It also includes entities and activities which are critical to the EU's financial system, for example, payment systems and payment institutions, electronic money institutions and central securities depositories.

Cooperation mechanism

The Proposed Regulation provides for an enhanced cooperation mechanism that enables Member States and the Commission to exchange information and suggest measures if a foreign investment is likely negatively to affect security or public order in more than one Member State, or through a project or programme of EU interest as specified.

Article 5(1) sets out a minimum sectoral scope for foreign investments that all Member States must notify to the EU cooperation mechanism. This includes:

- Foreign investments in EU targets participating in projects or programmes of EU interest specified in Annex I (as described above).²⁰
- Foreign investments in EU targets that are economically active in

one of the areas listed in Annex II (as described above) and where at least one of the following risk-based conditions is met:²¹

- the foreign investor or the foreign investor's subsidiary in the EU is directly or indirectly controlled by the government (including state bodies, regional or local authorities or armed forces) of a third country, including through ownership structure, significant funding, special rights or state-appointed directors or managers;
- the foreign investor, a natural person or entity controlling the foreign investor, the beneficial owner of the foreign investor, any of the subsidiaries of the foreign investor, or any other party owned or controlled by, or acting on behalf or at the direction of, such a foreign investor is subject to EU restrictive measures pursuant to Article 215 TFEU; or
- the foreign investor or any of its subsidiaries was involved in a foreign investment previously screened by a Member State and was not authorised or only authorised with conditions.

Article 5(3) provides that Member States may notify foreign investments to the cooperation mechanism that they consider to be of interest to other Member States or the Commission from a security or public order perspective.

Notifications under the cooperation mechanism must be sent to the Commission and other Member States via a specified secure and encrypted system within 15 calendar days of receiving the request for authorisation for foreign investments that meet the conditions set out in Articles 5(1) or (3).²²

¹⁶ Article 3(2)

¹⁷ Articles 3(2) and 4(4)

¹⁸ Article 2(18)

¹⁹ including nuclear fusion technologies, reactors and power generation, radiological conversion/enrichment/recycling technologies; hydrogen and new fuels; net-zero technologies, including photovoltaics; smart grid and energy storage, batteries

²⁰ Article 5(1)(a)

²¹ Articles 5(1)(b)(i)-(iii)

²² Article 6(1)



Comments and opinions

Article 7(1) provides that a Member State may provide comments to the Member State where the foreign investment is proposed to take place if it considers that the foreign investment is likely negatively to affect its security or public order, or it has information that is relevant to the screening of that foreign investment.

Pursuant to Article 7(2), the Commission may issue an opinion to the Member State where the foreign investment is proposed to take place if: (i) it considers that such a foreign investment is likely negatively to affect either the security or public order of more than one Member State, or projects or programmes of EU interest on grounds of security or public order²³; or (ii) it has relevant information related to the screening of that foreign investment.²⁴ The Commission may also issue an opinion to all Member States if it considers that several foreign investments, taken together, could affect the security or public order of the EU.²⁵

The Member State where the foreign investment is proposed to take place

must give “utmost consideration” to another Member State’s comment or the Commission’s opinion.²⁶

Own initiative procedure

Pursuant to Article 9, a Member State may open an own initiative procedure for a foreign investment in the territory of another Member State which has not been notified to the cooperation mechanism and which it considers is likely negatively to affect its security or public order. The Member State has at least 15 months after the foreign investment has been completed to open its own initiative procedure.²⁷ The Commission may also commence its own procedure within the same period where it considers that the foreign investment falls under Article 7(2) (as set out above).²⁸

Next steps

The Proposed Regulation will be considered by the European Parliament and the Council under the ordinary legislative procedure. Review by the European Parliament may be delayed due to the European Parliament elections taking place in June 2024. EU businesses and

non-EU investors should follow the progress of the Proposed Regulation as it may trigger new regulatory clearances for a transaction and impact the timescale within which a transaction may be completed.

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²³ Articles 7(2)(a) and (b)

²⁴ Article 7(2)(c)

²⁵ Article 7(3)

²⁶ Article 7(5)

²⁷ Article 9(2)

²⁸ Article 9(3)

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