



*Review of the EU Commission's 2024 Annual Report on the screening of foreign direct investments (FDI) in the European Union and of its plans to revise the EU FDI Screening Regulation*

This article is the fifth in a series of articles on the screening of foreign direct investment (FDI) published since 2021 and the first focusing on the EU's screening regime. It follows the publication by the EU Commission of its latest (4th) annual report[1] on the application of the EU Foreign Direct Investment Screening Regulation[2] on 17 October 2024 and its legislative proposal[3] presented in January 2024 for the revision of the Regulation[4].

The EU FDI Screening Regulation is an important piece of EU legislation; it allows and encourages member states to adopt and implement national screening mechanisms, sets out the minimum requirements of national FDI regimes in terms of security and public order and establishes a cooperation mechanism under which the European Commission and member states screening authorities can exchange information, issue opinions, and address concerns about foreign investments that could pose risks to security or public order to other member states or to EU projects and programmes of common interest.

The FDI Screening Regulation does not impose a common EU-wide system but rather encourages cooperation among member states, with each country responsible for its own screening mechanisms and having ultimate decision-making authority. The Commission can issue opinions or request additional information on specific transactions, in particular where they are likely to impact more than one member state, however the final decision to approve, condition or prohibit an FDI rests with the national authorities.

More than 1,500 transactions have been notified under the EU cooperation mechanism since the Regulation came into force (nearly 500 in 2023) but they are very concentrated on half a dozen EU member states (Germany, France, Spain, Italy, Ireland and the Netherlands) for investments from half a dozen countries (in this order: the US (a third), UK (1 in 10), UAE, China (incl. Hong Kong), Canada and Japan), whilst typically a third of notified transactions involve more than one member state.

In 2023, manufacturing, information and communications technologies (ICT) and energy accounted together for more than half of all investments reviewed by the EU Commission. In manufacturing, the Commission paid particular attention to critical technologies and infrastructures in its assessment of notified investments. The EU Commission cleared over 9 out of 10 investments with 15 days while the remainder required a so-called second phase involving a more detailed security assessment and (in less than 2% of notified transactions) a confidential opinion of the Commission to the relevant national screening authority.

The 4th Annual Report notes that 24 member states now have FDI screening mechanisms in place, compared to 11 in 2017, with the remaining three<sup>[5]</sup> in the process of adopting their own regimes. In 2023, the EU member states handled over 1,800 notifications<sup>[6]</sup> of which only slightly more than half were formally screened: nearly 9 out of 10 investments were unconditionally cleared while the remainder were authorised subject to conditions and just 1% of all investments were ultimately blocked (consistent with prior years but more than under the UK NSIA screening regime). The Report also notes that member states do use their powers to make comments about notified FDI in other member states.

The proposed FDI Screening Regulation seeks to address the central flaw of the current EU FDI regime which is the diversity of screening mechanisms across member states, which can lead to inconsistent investment environments and forum shopping. The proposal would make it mandatory for all EU member states to have a FDI screening mechanism in place (which is in practice soon likely to be the case) and introduce a minimum level of harmonization of national screening processes<sup>[7]</sup> such as common procedures to determine which national screening authorities have jurisdiction over a notified foreign investment, minimum standards of review procedures and procedures to prevent circumvention of screening, powers to call in transactions after completion, powers to mitigate, prohibit or unwind transactions and powers to sanction non-compliance. The proposal would also introduce procedural improvements to the EU cooperation mechanism, permit the Commission to monitor national screening authorities and hold member states accountable for their screening, and would ensure that investors have judicial recourse against screening decisions.

The proposed FDI Screening Regulation would also set out criteria, relating to both the investment and the investor, to be taken into account in the screening assessment as well as a minimum sectoral scope where all member states must screen foreign investments to include companies involved in projects or programs of EU interest or activities of particular importance for the security or public order interests of the EU<sup>[8]</sup> such as military equipment on the Common Military List of the European Union, dual-use items subject to export controls, critical technologies, critical medicines, critical entities and activities in the European Union's financial system.

Last but not least, the proposed FDI Screening Regulation would also seek to address the fact that the current regulation applies (only) to foreign direct investments from non-EU countries<sup>[9]</sup> by extending the EU screening to investments by EU investors that are ultimately controlled by individuals or businesses from non-EU countries.

If you would like to discuss how the EU FDI review policies might apply to your business, please contact Pierre Brochet.

1. [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2024\)464&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2024)464&lang=en).
2. Regulation (EU) 2019/452 of March 2019 establishing a framework for the screening of foreign direct investments into the European Union (EU FDI Screening Regulation) which entered into force in October 2020: <https://eur-lex.europa.eu/eli/reg/2019/452/oj>.
3. Presented for review to the European Parliament and the Council of the European Union, although the timeline to its adoption is not known at present: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52024PC0023>.
4. As part of the Commission's Economic Security Package of January 2024.
5. Croatia, Cyprus and Greece.
6. Which is only double of what the UK alone screens annually; for more comparison with the UK NSIA regime, see <https://www.linkedin.com/pulse/national-security-investment-act-2021-annual-report-2024-brochet-rurqc>.
7. Member states would be permitted to implement more stringent requirements to take account of unique national security considerations.
8. See Annex II of the proposed FDI Screening Regulation.
9. In its Xella ruling (C-106/22 - 13 July 2023), the Court of Justice of the European Union held that the FDI Screening Regulation only allows member states to screen investments by non-EU companies and not by investors incorporated in the European Union.

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