# Frequently asked questions on Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union

*Disclaimer: These Frequently Asked Questions provide information on the FDI Screening Regulation (also referred to in this document as 'the Regulation'), from the perspective of the Commission services. Only the Court of Justice of the EU can give an authoritative interpretation of Union legislation.*

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# I) OBJECTIVE OF THE REGULATION

## 1. Why is it necessary to have an EU framework on FDI screening?

Before the entry into force of the Regulation in 2019, there was no comprehensive framework at Union level for the screening of foreign direct investments (FDI) on the grounds of security or public order, while the major trading partners of the Union had already developed such frameworks. Given the high degree of integration between Member States' markets, interconnected supply chains and common infrastructures between Member States, **a foreign investment could pose a risk for security or public order beyond the Member State where the investment is made**. An input, a service or a technology provided by a company established in one Member State may be critical to the security or public order of another Member State, or to a project of Union interest.

In the past years there have been growing **concerns regarding certain foreign investors** seeking to acquire control of, or influence in, European firms whose activities have repercussions on technologies, infrastructure, inputs or sensitive information critical for more than one Member State, or on a project of Union interest. Such transactions may put our collective security or public order at risk. This is especially the case when foreign investors are State owned or controlled including control through financing or other means of direction. The framework for FDI screening ensures that the EU is equipped to protect its essential interests while remaining open to investment.

## 2. What is the objective of the Regulation?

Today, more than ever, the EU's openness to foreign direct investment (FDI) needs to be balanced by appropriate screening tools to **safeguard our security and public order**.

Without questioning Europe's openness to FDI, the Regulation plays an important role in **exceptional cases** where foreign investors seek to acquire **assets which are critical to our essential interests.**[1] **The Regulation has equipped the EU with a framework and common criteria to identify risks** related to the acquisition or control of strategic assets, which threatens security or public order. In addition, it entails a cooperation framework between Member States and the Commission. This underpins the assessment of FDI in Member States, and facilitates the ultimate decision by the Member State where the FDI is planned or completed.

Even though FDI falls within the exclusive competence of the Union, Member States are allowed by the Regulation to maintain screening mechanisms necessary to identify risks to security or public order arising from particular investment transactions. However, without the EU cooperation framework, potential blind spots could exist in relation

[1] The Commission observes that in the vast majority of cases the cooperation mechanism does not delay approval process at national level (as confirmed by the public consultation undertaken in the summer of 2023 (see Summary results - Targeted consultation on the evaluation and revision of Regulation (EU) 2019/452 (the 'FDI Screening Regulation'), p. 20) . The vast majority of cases are closed within 15 days (Phase 1). For example, in 2023, the Commission closed 92% of the cases in Phase 1 (source: Fourth Annual Report on the screening of foreign direct investments into the Union; for more details on the annual reports, see under question 37).

to “cross-border impacts” as the screening of an investment by a Member State may only take into account risks to the national security or public order of the Member State where the investment is planned or completed. Thanks to the Regulation, Member States and the Commission **have a much better overview of foreign investments in the EU as a whole.**

## 3. What are risks that the EU is trying to identify with this framework?

In the internal market, a critical technology or infrastructure in one country may also be **critical for its neighbours** and sometimes for the whole Union. Investments in strategic sectors may also have impacts on **EU-funded projects**, like the navigation system Galileo, Trans-European Networks in the areas of energy (TEN-E) and transportation (TEN-T), or the EU's research and innovation programme Horizon Europe.

The Regulation includes **an indicative list of factors** that Member States and the Commission may take into account when assessing whether a foreign direct investment (FDI) is likely to affect security or public order. These factors include effects on critical infrastructure, technologies (including dual-use items) and inputs, which are essential for security or public order. Effects of an FDI on access to sensitive information, including personal data, or the ability to control such information, or on the freedom and pluralism of the media may also be taken into account when making such an assessment.

Member States and the Commission also take into account **the context and circumstances** of the FDI, in particular, whether a foreign investor is controlled directly or indirectly (for example through significant funding, including subsidies), by the government of a third country, or is pursuing State-led outward investment projects or programmes.

The assessment is conducted on a **case-by-case** basis.

## 4. Does the Regulation target any specific country?

No specific third country is “blacklisted” or “targeted” and no specific third country is “whitelisted” or “exempted” under the Regulation. Concerns relating to security and public order can potentially arise from an FDI coming from any jurisdiction. **Non-discrimination** among foreign (non-EU) investors is a key principle of the Regulation and the sole grounds for screening a foreign investment are risks to security and public order, assessed case-by-case, regardless of the foreign investor’s origin.

Specifically, the Regulation defines ‘foreign investor’ as “*a natural person of a third country or an undertaking of a third country, intending to make or having made a foreign direct investment*”. An ‘undertaking of a third country’ is defined as an undertaking constituted or otherwise organised under the laws of a third country, i.e. any non-EU country.

## 5. Is the EU less open to foreign investments as a consequence of the EU framework on FDI Screening?

No. The Union and its Member States have an open investment environment, which is enshrined in the Treaty on the Functioning of the European Union (TFEU) and embedded in the international commitments of the Union and its Member States with respect to foreign direct investment (FDI).

The Regulation is about **identifying and addressing potential threats to security or public order**, which may be caused by certain foreign investments without reducing the EU's openness to FDI or restraining the activities of foreign investors in the Union.

It is for Member States and the Commission to assess, on a case-by-case basis, whether a specific investment threatens security or public order and, if so, to suggest **appropriate measures to mitigate those risks**. The prohibition of an FDI should be considered only in cases where the mitigation of identified risks does not seem possible by carefully considered mitigating measures.

## 6. How does the EU framework compare with national screening mechanisms of EU Member States?

The EU framework is **not fully equivalent to a national screening mechanism**. Its aim is to help identifying and addressing security or public order risks that affect at least two Member States, or the Union as a whole. It establishes a cooperation mechanism between the Member States and the European Commission. It provides a formal channel for the exchange of information **to raise awareness** on specific cases where a foreign direct investment (FDI) may affect security or public order in more than one Member State, and to suggest steps to address the specific concerns. This may be, for example, the case if a foreign investor is acquiring a holding company with subsidiaries in several Member States where the acquisition of (indirect) control over those subsidiaries is subject to national screening. Another example is if there is only one target company in a contemplated FDI, but it is selling goods and / or providing services in several Member States whose security and / or public order might be affected by the contemplated FDI.

## 7. How did FDI screening play a role in coping with the COVID-19 pandemic? Could it be used in another public health crisis?

The COVID-19 emergency clarified some of the Union's economic areas of vulnerability, including the resilience of our critical industries and their capacity to respond to the vital needs of citizens.

As part of the overall economic response to the COVID-19 crisis, the Commission adopted in March 2020 **a Commission Communication providing guidance on the Foreign Direct Investment Screening Regulation**.[2] Against the backdrop of the public health crisis and resulting pressures on supply chains and evident economic vulnerability, this guidance encouraged Member States to be vigilant in order to preserve EU companies and critical assets, notably in areas such as health, medical research, biotechnology and infrastructure essential for our security and public order. This should be done, of course, without undermining the EU's general openness to foreign investment, which remained crucial for the economic recovery in the aftermath of that crisis. The principles of the guidance issued in the context of the COVID-19 pandemic could be relevant as general guiding principles to be applied in a future public health crisis, but of course the Commission will revisit this depending on the circumstances if such case arises.

[2] Communication from the Commission - Guidance to the Member States concerning foreign direct investment and free movement of capital from third countries, and the protection of Europe's strategic assets, ahead of the application of Regulation (EU) 2019/452 (FDI Screening Regulation) (2020/C 99 I/01).

## 8. How does FDI screening interact with EU sanctions against Russia and Belarus in response to Russia's war of aggression against Ukraine?

Since March 2014, the EU has adopted a large number of restrictive measures ('sanctions') against Russia. The sanctions are designed to undermine Russia's ability to finance the war, impose clear economic and political costs on those in Russia's political elite responsible for the invasion and diminish its economic base. The EU also adopted further sanctions against Belarus, in light of Belarus' material support to Russia.

In April 2022, in response to Russia's war of aggression against Ukraine and in view of the sanctions imposed on Russia and Belarus, the Commission adopted **a Commission Communication providing guidance on foreign direct investment from Russia and Belarus**.[3]

The aim of this guidance is to encourage Member States to exercise **greater vigilance towards Russian and Belarusian direct investments in the EU**, which, within applicable FDI Screening rules, should be systematically checked and scrutinized very closely. In the current circumstances, there is a significantly heightened risk that foreign direct investment by Russian and Belarusian investors may pose a threat to security and public order. This goes beyond investments by persons or entities that are subject to sanctions. Particular attention must be paid to the threats posed by investments by persons or entities associated with, controlled by, or subject to influence by, the Russian or Belarusian government, as these governments have a strong incentive to interfere with critical activities in the EU and to use their ability to control or direct Russian and Belarusian investors for that purpose.

# II) SCOPE OF THE REGULATION

## 9. What kind of foreign investment is covered by the cooperation mechanism?

The cooperation on FDI screening between Member States and the Commission covers **any foreign direct investment (FDI)**. As defined by the Regulation and confirmed by the European Court of Justice[4], this can be an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the target company, in order to carry out an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity. Foreign investor means a natural person of a third country or an undertaking of a third country, intending to make or having made a foreign direct investment.

[3] Communication from the Commission - Guidance to the Member States concerning foreign direct investment from Russia and Belarus in view of the military aggression against Ukraine and the restrictive measures laid down in recent Council Regulations on sanctions (2022/C 151 I/01).

[4] See notably Judgment of 13 July 2023, Xella Magyarország Építőanyagipari Kft. v. Innovációs és Technológiai Miniszter Joined Case C-106/22, ECLI:EU:C:2023:568.

While **portfolio investments** are not part of the scope of the Regulation, the Regulation does not establish quantitative criteria for the delimitation of portfolio investment[5] and FDI.

FDI can take two different forms: greenfield investments, and mergers and acquisitions (M&As). International **greenfield investments** typically involve the creation of a new company or the establishment of facilities abroad, while an international **merger or acquisition** amounts to transferring the ownership of existing assets relating to an economic activity to an owner abroad. Similarly to M&As, if Member States cover greenfield investments in their national screening legislations, then they must notify to the cooperation mechanism the greenfield investments they are screening.

## 10. Does the cooperation mechanism cover transactions aiming at internal restructuring within corporate groups active in multiple countries?

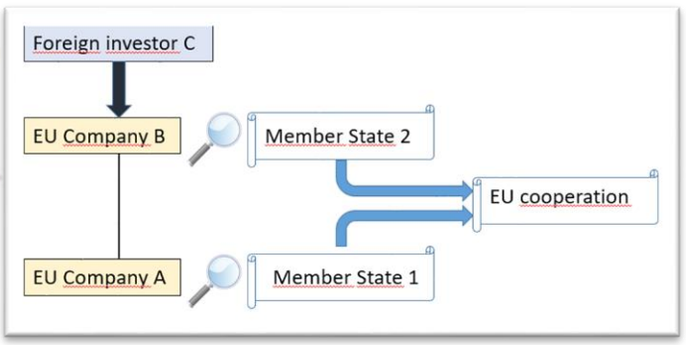
Corporate transactions where the foreign investor and the EU target are owned or controlled by the same foreign company that does not increase its ownership in the EU target **may, in principle, not be considered as falling under the scope of the FDI Screening Regulation and do not need to be notified under the cooperation mechanism**. Such transactions may occur when a company is undergoing internal restructuring; for example, a holding company selling its participation in a target undertaking to one of its subsidiaries, or a holding company separating part of its business and creating a new subsidiary, which would still be within the same group.

## 11. Does the cooperation mechanism cover investments where the change of ownership or control is indirect?

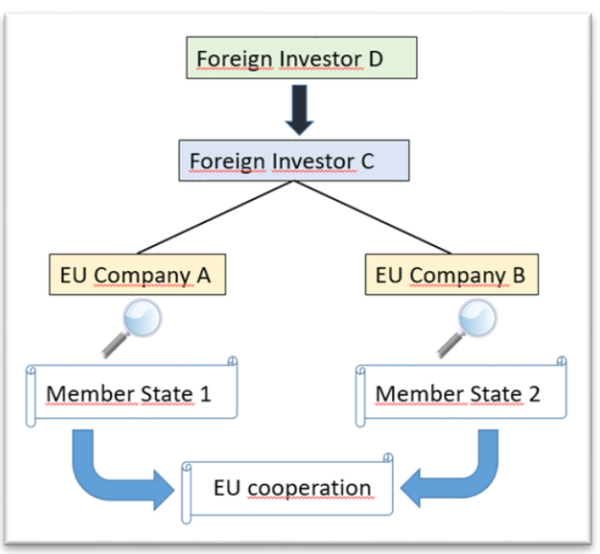
Investments where the ownership or control of the target company changes as a result of a change in ownership, or control of its controlling entity, are covered by the Regulation. For example, the following two hypothetical transactions would be covered under the cooperation mechanism:

1. Company A is established in Member State 1 and controlled by Company B in Member State 2. Investor C (established in a third country 3) is acquiring full (or partial) control over Company B: both Member States 1 and 2 would have to notify this transaction to the cooperation mechanism, assuming it is subject to screening at national level in Member States 1 and 2;

[5] The Court of Justice has described 'portfolio investments' as "the acquisition of shares on the capital market solely with the intention of making a financial investment without any intention to influence the management and control of the undertaking". See Judgment of 28 September 2006, Commission v. Kingdom of the Netherlands, Joined cases C-282/04 and C-283/04, ECLI:EU:C:2006:608, para. 19.




2. Company A is established in Member State 1, and Company B is established in Member State 2 and they are both controlled by Investor C, established in third country 3. Investor D, established in the same third country 3, is acquiring full (or partial) control over Investor C: both Member States 1 and 2 would have to notify this transaction to the cooperation mechanism, assuming it is subject to screening at national level by Member States 1 and 2;




The transaction falls under the scope of the cooperation mechanism if the foreign investor has the power to participate effectively in the management or control of the target undertaking even if the foreign investor (i.e. ultimate controlling entity) does not intend to exercise such power.

When Member State 1 and Member State 2 notify the transaction to the cooperation mechanism, the analysis performed by other Member States focusses on the activities of the EU Companies A and B in their own countries and the impact on security or public order in their territory. In addition, they will also use this opportunity to verify if companies belonging to the same corporate group as EU Company A and EU Company B are present in their territory and whether it requires any action under their screening mechanisms. In case other companies, outside of the EU, are part of the same corporate group as EU Companies A and B and are part of the wider transaction, the Commission's assessment focusses on EU Companies A and B only.

## 12. Does the cooperation mechanism cover transactions concerning the purchase of a current foreign shareholder's shares in an EU company, by another foreign investor?

Cases which concern the transfer of ownership, or control, of an EU company from one foreign investor to another foreign investor are covered by the Regulation.

## 13. What is the basis for considering an investment 'foreign' under EU law?

Cases where the investment in the EU target involves a direct investor or direct investors **established outside the Union** fall within the scope of the Regulation. Conversely, cases only involving investments by entities established in the Union do not fall within the scope of the Regulation.

This does not mean that such transactions could not fall under the scope of the national screening laws of the Member States, within the limits of the provisions of the Treaty on the Functioning of the European Union on the right of establishment and free movement of capital (Article 52 and Article 65(1) point (b)) which allow Member States to maintain certain measures on grounds of public policy or public security.

The status of being established in the EU i.e. an EU company, is based, under Article 54 TFEU, on the location of the corporate seat and the legal order where the company is incorporated and not on the nationality of its shareholders. It does not follow from any provision of EU law that the origin of the shareholders, be they natural or legal persons, of companies resident in the EU affects the right of those companies to rely on the fundamental freedoms provided under EU law.[6]

There is one exception to this rule. Investments by **EU entities** may nevertheless come within the scope of the Regulation when they fall under **the anti-circumvention clause**.

The concept of "circumvention" is not defined by the Regulation; however, its Recital 10 specifies that anti-circumvention measures "should cover investments from within the Union by means of artificial arrangements that do not reflect economic reality and circumvent the screening mechanisms and screening decisions, where the investor is ultimately owned or controlled by a natural person or an undertaking of a third country". Thus, it would be relevant to ascertain whether they are part of a **scheme of circumvention** set up with the objective result of avoiding the application of the Regulation. Some foreign investors, for instance, state that the direct investor is a European holding company that they have set up for the purpose of the proposed transaction. Thus, even if evidence of a subjective intention to circumvent the Regulation is not available, the **lack of economic activity** of the investor company and the **objective capability of the arrangements to avoid the rules** laid down in the Regulation are sufficient to create the presumption that the arrangement is artificial.

The most common example of circumvention in the sense of Recital (10) is the case where a foreign investment into the Union is channelled through an EU-based pure '**shell / letterbox company'**, which has neither directly nor indirectly a genuine economic activity but serves solely the purpose of being the legal vehicle for the investment. The

[6] See Judgment of 1 April 2014, Felixstowe Dock and Railway Company Ltd and Others v The Commissioners for Her Majesty's Revenue & Customs, case C-80/12, ECLI:EU:C:2014:200, para. 40.

absence of economic activity cannot be assumed but should be established in light of a global assessment of all relevant facts, based on as much concrete evidence as possible, regarding factors such as the turnover of the EU company, the number of employees, clients, physical presence / offices and the timing of its creation.

The existence of circumvention must therefore be established on a case-by-case basis, having regard to the specific circumstances of each case and on the basis of relevant evidence.

Finally, in the case of investments by natural persons, cases where the investment is made by one or more **natural persons who are not citizens of the Union** fall within the scope of the Regulation. Thus, the Regulation also covers cases where the investor is a long-term resident in a Member State but not a national of a Member State.

## 14. How does the Regulation define "security" and "public order"?

The terms 'security' and 'public order' are **not defined in the Regulation**. Article 4 of the Regulation, however, specifies the factors for consideration when determining whether an FDI is likely to affect security and public order. These factors include the **potential effects of the FDI** on critical infrastructure, critical technologies, the supply of critical inputs, access to sensitive information and the freedom and pluralism of the media. **Aspects related to the investor** are also relevant for this assessment, such as whether the foreign investor is controlled by a government.

The interpretation of the notions of security and public order should be consistent with the relevant **international obligations** of the EU under the General Agreement on Trade in Services (GATS) and the EU's trade and investment agreements concluded with third countries, as well as with the provisions of the TFEU on capital movements from third countries.

Article XIV bis (1)(b) of the GATS allows WTO members to take any actions which they consider necessary for the **protection of their essential security interests** in one or more of the following three situations: i) where they relate to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment; ii) where they relate to fissionable and fusionable materials or the materials from which they are derived; and iii) where they are taken in time of war or other emergency in international relations.

Article XIV (a) of the GATS allows WTO Members to take **measures necessary to protect public order**. This exception may be invoked only "where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society".

## 15. How would the Commission establish what are critical infrastructure, critical technologies or critical inputs for the purpose of the EU framework for FDI screening?

Article 4 of the Regulation includes an **indicative list of factors** that Member States and the Commission may take into account when assessing whether a foreign direct investment (FDI) is likely to affect security or public order. These factors are, for example, effects on **critical infrastructure, critical technologies and critical inputs**, which are essential for security or the maintenance of public order. Effects of FDI relating to access to **sensitive information**, including personal data, or the ability to control such information, or the freedom and pluralism of the **media** may also be taken into account when assessing whether an FDI is likely to affect security or public order.

With regard to critical infrastructure in particular, under current EU legislation (the Directive on the Resilience of Critical Entities[7]), critical infrastructure is defined as "*an asset, a facility, equipment, a network or a system, or a part of an asset, a facility, equipment, a network or a system, which is necessary for the provision of an essential service*". Under Article 6 of the CER Directive, Member States must identify their critical entities, i.e. critical infrastructure, by 17 July 2026, following a national risk assessment and applying the criteria provided by the CER Directive. To the extent that the scope of application of the Regulation overlaps with the CER Directive, the identification of an EU target as a critical entity should be factored in the assessment.

In the internal market, an infrastructure or technology critical in one Member State may also be critical for its neighbours and sometimes for the whole Union. Investments in strategic sectors may also have impacts on **Union-funded projects**, like the navigation system Galileo, Trans-European Networks or the EU's research and innovation programme Horizon Europe. The list of projects and programmes of Union interest is annexed to the Regulation. When needed, it is updated by the Commission by means of a delegated regulation.

In their assessment of whether an FDI is likely to affect security or public order, it is also possible for Member States and the Commission to take into account **aspects related to the foreign investor,** in particular whether the foreign investor is controlled directly or indirectly, for example, through significant funding, including subsidies, by the government of a third country, or is pursuing State-led outward projects or programmes. Furthermore, Member States may take into account whether the investor has been involved in activities affecting security or public order, or whether there is a serious risk of the investor being engaged in illegal or criminal activities.

The assessment shall be undertaken on a **case-by-case basis**.

## 16. Does the Regulation allow the screening of foreign direct investment on economic grounds?

The EU framework **does not allow** for the screening of foreign direct investment based on other concerns than security and public order.

## 17. What is the sectoral coverage of the Regulation?

The Regulation **applies to foreign direct investments (FDI) in any sector**. It includes an indicative list of factors that Member States and the Commission may take into account when assessing whether an FDI is likely to affect security or public order, e.g. its potential effects on critical infrastructure, technologies and inputs.

The Regulation states that critical infrastructure includes energy, transport, water, health, communications, media, data processing/storage, aerospace, defence, electoral/financial infrastructure.

Critical technologies include artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies, nano- and biotechnologies.

The supply of critical inputs includes energy, raw materials and food.

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[7] Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC ('the CER Directive').

Access to sensitive information, including personal data, or the ability to control such information, and the freedom and pluralism of the media may also be taken into account, regardless of the sectoral activity of the investor or the target undertaking.

## 18. Does the Regulation apply in the context of public procurement or privatisation?

The purpose of the Regulation is to identify and address potential threats to security or public order caused by foreign direct investments (FDI).

Where a transaction establishes lasting and direct links between a foreign investor and an EU undertaking to which capital is made available in order to carry out an economic activity in the EU, the investment falls under the scope of the Regulation. A public tender awarding a concession for the building and operation of critical infrastructure could, for example, involve FDI and thus fall under the scope of the Regulation. Alternatively, the disposal of State assets, for example, through a privatisation, may also constitute FDI when the investment grants the foreign investor the possibility to participate effectively in the management, or control, of the privatised company (or business) carrying out an economic activity. The acquisition of equipment or services from foreign suppliers does not fall under the scope of the Regulation, unless the transaction would provide for the participation in the management, or control, of an EU company.[8]

Whether a specific public contract or concession might fall under the scope of the Regulation should be assessed on a case-by-case basis, prior to the tender procedure. In view of the above, the Commission services consider that competent authorities of the Member State in which the procedure is undertaken should also check whether the contract to be awarded involves an FDI that should be screened on grounds of security and/or public order. The Commission services also recommend that, where appropriate, the tender notice and/or tender documentation should at the outset mention that the procedure, or the award of the contract, is subject to the FDI Screening Regulation or that this Regulation applies to the investment at issue. This applies equally to all Member States, whether they have a screening mechanism or not.

# III) SCREENING MECHANISMS OF MEMBER STATES

## 19. Which Member States have an investment screening mechanism today? Where can I get information about Member States' screening mechanisms?

The **Commission publishes the list of screening mechanisms** notified by the Member States.[9] This list informs about the Member States having an investment screening mechanism in force based on the notifications by the

[8] For example when the foreign supplier must create a legal entity in the Member State concerned that will be involved in the delivery, assembly, production or maintenance of equipment or the provision of services.

[9] Member States shall notify the Commission of any newly adopted screening mechanism or any amendment to an existing screening mechanism within 30 days of its entry into force.

Member States. It also includes links to further information on the national FDI screening authorities and relevant contacts. In addition, the Commission's annual reports on the screening of foreign direct investments into the Union include a chapter on the legislative developments in Member States (for more details on the annual reports, see under question 37).

## 20. Does the Regulation require Member States to set up screening mechanisms at national level?

No. The Regulation confirms that the decision on whether to set up a national screening mechanism and design its scope and process, or, where a national screening mechanism is in place, whether to screen a particular foreign direct investment **remains the exclusive responsibility of the Member State** where the investment is planned or completed.

The adoption of the Regulation triggered a constructive discussion about investment screening in Europe and **several Member States have been reforming their screening mechanisms or adopting new mechanisms**.

In its guidance of March 2020 on the Foreign Direct Investment Screening Regulation (see also under question 7), the Commission called upon those Member States that currently do not have a screening mechanism, or whose screening mechanisms do not cover all relevant transactions, to set up a fully-fledged screening mechanism. Thus, while there is no legal obligation to do so, all Member States are invited to have a fully-fledged screening mechanism. This invitation has been repeated by the Commission in subsequent communications, notably the guidance concerning foreign direct investment from Russia and Belarus (see also under question 8)

## 21. Does the EU mechanism replace the screening mechanisms maintained by EU Member States?

No. The Regulation **complements screening mechanisms of Member States and strengthens their effectiveness**. It is designed to help Member States and the Commission to collectively assess potential cross-border threats to security and public order arising from a foreign direct investment. This is regardless of whether a Member State has a screening mechanism or not. It does not substitute national screening mechanisms, where they exist. In particular, the Member States make the final decision as to whether an investment is authorised (or not) in their territory and under which conditions.

## 22. Does the Regulation apply to all EU Member States or only to those who maintain a screening mechanism at national level?

The Regulation **applies to all EU Member States**, regardless of whether they have a screening mechanism or not.

The cooperation between the Commission and Member States differs slightly depending on whether the foreign direct investment (FDI) is undergoing screening at national level or not. If the **FDI is screened at national level**, the Member State is **obliged to notify** the Commission and the other Member States by providing information on that transaction. Where another Member State considers that this transaction is likely to affect its security or public order,

it may issue a comment. Where the Commission considers that a transaction is likely to affect security or public order in more than one Member State, it may issue an opinion. Comments by Member States and the opinion by the Commission are addressed to the Member State where the investment is planned or completed.

Comments and opinions are not shared with the other Member States except where the opinion concerns an FDI likely to affect projects or programmes of Union interest on grounds of security or public order. All exchanges under the cooperation mechanism are subject to strict rules on confidentiality.

Member States can also issue comments and the Commission can also issue opinions on FDIs **not undergoing screening**. This may be the case for Member States without a screening mechanism, or investments that do not fall under the scope of the host Member State's national mechanism. This can also be the case if a Member State decides not to screen a particular investment. In that case, the host Member State is required - in the case of receiving questions from other Member States or the Commission - to provide a minimum level of information without undue delay through secure channels.

## 23. After the screening process, who makes the final decision whether or not a particular FDI will go ahead?

The final decision on whether a foreign direct investment (FDI) undergoing screening is authorised **remains with the Member State** where the investment takes place. While other Member States or the Commission may raise concerns, they cannot block or unwind the investment in question. When a Member State receives comments from other Member States or an opinion from the Commission, it shall give such comments or opinions due consideration. This can be done through, where appropriate, measures available under its national law, or in its broader policy-making, in line with its duty of sincere cooperation towards the other Member States and the Commission.

## 24. Can the Commission or other Member States prohibit a transaction or unwind an investment already completed in a Member State?

No. The final decision on whether a foreign direct investment is authorised remains with the Member State where the investment takes place. While other Member States or the Commission may raise concerns, they cannot block or unwind the investment in question. It will be a matter for the national screening rules as to whether such action by the host Member State is possible regarding an investment that has already been completed.

## 25. Which are the criteria in the Regulation for screening mechanisms maintained by Member States?

To allow businesses, the Commission and other Member States to understand how FDI is likely to be screened by the Member State where the investment is planned, the Regulation provides a number of elements that Member States' screening mechanisms should include. These mechanisms should at least include timeframes for the screening and the possibility for foreign investors to seek recourse against screening decisions (the Regulation does not specify the type of recourse that has to be made available i.e. judicial or administrative). Rules and procedures relating to

screening mechanisms should be transparent and should not discriminate between third countries. Furthermore, confidential information, including business-sensitive information, shall be protected.

## IV) FUNCTIONING OF THE COOPERATION MECHANISM

### 26. Is it mandatory or voluntary for Member States to take part in the cooperation mechanism?

The cooperation is **mandatory** to the extent that Member States have to **notify** the Commission and other Member States of any foreign direct investment (FDI) in their territory that is **undergoing screening** and have to **share the required information through secure channels**. This covers equally the FDIs undergoing a formal assessment or investigation pursuant to a general screening mechanism or to a sectoral screening mechanism of a Member State. However, Member States do not have to notify the Commission and other Member States of any FDI that is only undergoing an informal assessment or investigation, such as, for example, when a Member State performs a pre-screening assessment of the FDI under its national screening mechanism.

When a Member State or the Commission considers that an FDI **not undergoing screening** in a particular Member State is likely to affect security or public order, or projects or programmes of Union interest, it may request information from the Member State where the investment is planned or completed. This Member State has to ensure that a **minimum level of information is made available** to the Commission and the requesting Member State without undue delay through secure channels.

### 27. On what grounds may the Commission adopt an opinion in respect of an FDI not undergoing screening?

It is possible for the Commission to issue opinions with respect to foreign direct investments not undergoing screening if it considers that **the investment is likely to affect security or public order in more than one Member State or is likely to affect projects or programmes of Union interest**. The Commission may also issue an opinion where it has relevant information in relation to that investment. This may be the case for Member States without a screening mechanism, or investments that do not fall under the scope of the host Member State's national mechanism. This can also be the case if a Member State decides not to screen a particular investment.

When the Commission considers issuing an opinion on an FDI not undergoing screening, it may request certain information from the Member State where the investment is planned or completed. The Member State is required to provide that information without undue delay through secure channels.

### 28. How long does the procedure under the cooperation mechanism last?

The **duration** of the procedure under the cooperation mechanism **depends on whether Member States or the Commission intend to provide comments or an opinion** on the notified investment.

According to Article 6(6) of the FDI Screening Regulation, Member States and the Commission have **15 calendar days** from receipt of the notification **to inform** the screening Member State **of their intention to provide comments or an opinion**. If no such intention is communicated within this period (15 calendar days), the procedure under the cooperation mechanism is considered concluded.

When an intention to provide comments or an opinion is submitted **without any request for additional information**, the actual comments or opinion must be provided no later than **35 calendar days** from receipt of the notification (see Article 7 of the Regulation).

When an intention to provide comments or an opinion is submitted **with a request for additional information**, according to Article 6(6) last sentence, the deadline to provide comments or an opinion is **20 calendar days after receiving the requested information**. As a result, the total duration of the procedure under the cooperation mechanism in that case depends to a large extent on how quickly the additional information is provided by the screening Member State.

While the national screening mechanisms shall allow Member States to take into account the comments of other Member States and the opinions of the Commission (see also under question 30), the Regulation does not foresee a suspension of national deadlines during the procedure under the cooperation mechanism. Therefore, the national procedure of a screening Member State, and the assessment of a specific investment, can continue while the other Member States and the Commission review the notification relating to that investment.

## 29. Does the cooperation mechanism also apply to investments already completed?

Yes. While screening by Member States is usually undertaken before the completion of the FDI transaction, the cooperation mechanism may be initiated **within 15 months** after the investment has been completed when an investment is not subject to screening at national level. This may occur when the Member State does not have a screening mechanism in force or when the Member State maintains a screening mechanism but the specific FDI transaction was not submitted by the parties for *ex-ante* screening.

Furthermore, if a Member State launches the formal screening of an FDI, it is subject to the cooperation mechanism irrespective of its planned or completed status (however, most mechanisms are based on *ex-ante* notification by the investor).

## 30. What are the obligations of a Member State that receives comments from other Member States or an opinion of the Commission?

All Member States are bound by the duty of sincere cooperation. Under the cooperation mechanism, a Member State has to give "**due consideration**" to the comments from other Member States and the opinion of the Commission and consider, where appropriate, measures available under its national law, or in its broader policy-making. This implies that the host Member State needs to assess the comments received and/or the Commission's opinion before it takes a decision on a foreign direct investment (FDI).

In the context of projects or programmes of Union interest affected by FDIs, the Commission's opinions must be taken into "**utmost account**" by the Member State where the FDI is planned or completed. This means that, by default, Member States must follow the opinion or provide reasons for not doing so.

## 31. What are the projects and programmes of Union interest?

The list of projects and programmes of Union interest is published as an annex to the Regulation. It was updated in 2020 prior to the full application of the Regulation, and it was again updated in 2021.

Projects and programmes of Union interest **involve substantial EU funding or are covered by Union legislation regarding critical infrastructure, critical technologies, or security of supply of critical inputs.** They serve the Union as a whole and represent an important contribution to growth, jobs and competitiveness for the Union's economy, such as Galileo, the Trans-European Networks for energy, transport and telecommunication, but also Horizon Europe, and the defence industrial development programme.

The Commission keeps the list up to date by means of Delegated Regulations. In 2025, another Delegated Regulation is likely to be adopted as well to take into account developments since the last update.

## 32. Are the Commission's opinion or other Member States' comments published?

The cooperation mechanism is **subject to strict rules on confidentiality** as it concerns the security or public order of one or more Member States or the functioning of an EU project or programme relevant for the security of the EU as a whole. Screening undertaken by Member States is confidential and the cooperation mechanism respects the same rule. Lack of confidentiality would make it difficult to share sensitive information, which is essential for a meaningful cooperation.

Therefore, the Commission does not disclose any information related to individual FDI transactions, to the screening of any FDI transaction nor to any opinion issued on any given FDI transaction. However, the Commission publishes an annual report about the implementation of the Regulation, which is based on, e.g., annual reports submitted by Member States to the Commission. The annual reports can be found here.

# V) RELATIONS WITH STAKEHOLDERS/BUSINESSES

## 33. How does the Regulation ensure the protection of confidential information?

The Regulation obliges the Member States and the Commission to protect information obtained in the application of the Regulation in accordance with Union and national laws. The Commission and Member States use **secure and encrypted means of communication** to exchange sensitive and classified information on individual FDI transactions, in full compliance with EU and national rules. All exchanges under the cooperation mechanism are subject to strict rules on confidentiality. For example, the fact that a Member State issues comments to another Member State screening a particular FDI transaction falls under this rule of strict confidentiality. The same applies to Commission opinions.

## 34. Does the Regulation require that businesses notify transactions to the Commission?

No. Businesses (investors or target undertakings) **are not required by the Regulation to notify** transactions to the Commission or to other Member States. It is the Member State that undertakes the screening of a transaction that is under an obligation to notify. This is without prejudice to obligations pursuant to other EU or national rules.

## 35. Does the Regulation require the foreign investor or the target undertaking to provide information to the Member State where the investment is planned or completed?

Yes, if so requested by that Member State. The requirements for the submission of transaction-related information by the foreign investor or the target undertaking are determined by the screening mechanism of the Member State, and it is for the Member State undertaking the screening to make requests for (additional) information to the foreign investor or target undertaking on a transaction subject to screening.

However, the Regulation requires Member States to provide certain information about the FDI transactions in their territory undergoing screening as well as, upon request, about other FDI planned or completed in their territory. To facilitate gathering relevant, specific and targeted information to enable a faster assessment by the Commission and Member States under the cooperation mechanism of whether a foreign direct investment undergoing screening is likely to affect security or public order in at least one other Member State, the **Commission has prepared,** in close cooperation with the Member States' FDI Screening experts, **a template** that Member States are encouraged to use when notifying under the cooperation mechanism an FDI undergoing screening.

According to the Article 9(4) of the Regulation, Member States may request certain information included in this template directly from the investor or the target undertaking, who shall provide it without undue delay. The template that **Member States may use to collect information from the investor or the target company is published on the website of the Commission**.

To facilitate the assessment by the Commission and the Member States of FDI transactions, it is in the interest of investors and their advisers **to provide complete and accurate information** to the screening Member State where the target company is established. The information to be provided about the target undertaking (section 3 of the template) should be specifically about the target company/ies established in the screening Member State (and, if applicable, the ultimate controlling entity of the target undertaking, if so clearly identifying which information relates to the target company/ies established in the screening Member State and which information relates to the entire target group).

It is clear that the information provided by the investor and/or the target undertaking in their notification to the competent national screening authority of a Member State is an important contribution to the analysis by the other national authorities and the Commission. Detailed and accurate information may allow the other national authorities and the Commission to make the relevant assessment during the first 15 calendar days following the receipt of notification of the FDI undergoing screening by the Member State where it is planned or has been completed.

Alternatively, if the information provided is insufficient, the other Member States' authorities and the Commission may have to seek further information while reserving the right to express respectively, comments or an opinion. Such

action may have the effect of prolonging the EU cooperation as long as the information requested by other Member States' authorities or the European Commission is not provided.

## 36. Does the Commission contact the investor or the target undertaking directly?

No. The Commission assesses risks to security or public order based on information received from the Member State where the FDI is planned or completed, or from other available sources. While the **Commission does not contact investors or other stakeholders directly**, Member States that are under obligation to provide information to the Commission or other Member States, may request such information directly from the investor or the target undertaking, which shall provide it without delay.

The template that **Member States may use to collect information from the investor or the target company is published on the website of the Commission**.

## 37. How does the Commission report on the cooperation mechanism?

The Commission **reports annually** on the implementation of the Regulation to the European Parliament and to the Council. These reports provide aggregated information about the functioning of the cooperation mechanism while protecting the confidentiality of information submitted by individual Member States on the implementation of their national screening mechanisms. The Commission's annual reports are publicly available on its website[10].

## 38. When has the Commission evaluated the functioning of the EU Framework?

On **24 January 2024,** in the framework of a memo on European Economic Security, the Commission published its evaluation of the functioning and effectiveness of the Regulation, which accompanies a Commission legislative proposal for a new Regulation on the screening of foreign investments (see also under questions 43 and 44).

# VI) INTERNATIONAL COOPERATION

## 39. What is meant by "international cooperation" under the Regulation (Article 13)?

The Regulation encourages Member States and the Commission to cooperate with the **competent authorities of like-minded third countries** on issues relating to the screening of foreign direct investments on grounds of security and public order.

[10] https://circabc.europa.eu/ui/group/be8b568f-73f3-409c-b4a4-30acfcec5283/library/8ee4993a-89c2-4680-a07a-872f24ca8708.

International cooperation may be pursued in **bilateral or plurilateral** formats, such as the G7 or the OECD. This may include sharing experiences, best practices and information regarding investment trends. For example, the Commission participates in the meetings of the Investment Screening Expert Group of the G7.

## VII) GROUP OF EXPERTS

### 40. Who takes part in the Group of Experts on the screening of foreign direct investments into the EU?

The Regulation establishes a Group of Experts to advise the Commission. The Group is chaired by the Commission and is composed of representatives of Member States' authorities. **All Member States take part in the Group**, including those that do not currently have a national screening mechanism.

The mandate of the Group is to discuss issues of common concern related to foreign direct investments and exchange best practices and lessons learned from investment screening at national level. The Group is also empowered to advise the Commission on systemic issues relating to the implementation of the Regulation and it is consulted on draft delegated acts updating the list of projects and programmes of Union interest annexed to the Regulation.

### 41. Does the Group of Experts discuss individual cases?

No. The Group **does not discuss individual FDI transactions**. See answer to question 40.

## VIII) PROTECTION OF PERSONAL DATA

### 42. How does the Regulation ensure protection of personal data?

Under the FDI Screening Regulation, the Commission and the Member States exchange information on foreign direct investments (FDIs). This information might include personal data (e.g. identification and contact data, professional data and data related to FDIs). The processing of such data in the Commission and in the Member States is subject to data protection rules. The Commission and Member States **work closely to ensure compliance with GDPR[11] and Regulation (EU) 2018/1725** while respecting the confidentiality of the cooperation, which is essential for its effectiveness. The Commission and Member States concluded in 2022 a Joint Controllership Arrangement (JCA) in line with data protection rules, notably the GDPR (Article 26), the EDPR (Article 28), the EU FDI Screening Regulation (Article 14) and this Commission Decision. The JCA sets out the allocation of the respective roles, responsibilities and practical

[11] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

arrangements between the Commission and Member States (both being joint controllers of these data). The JCA entered into force on 28 April 2022.

## IX) LEGISLATIVE PROPOSAL FOR A NEW REGULATION

### 43. Why did the Commission propose a revision of the FDI Screening Regulation ?

Building on the Commission's experience and extensive evaluation of the functioning of the current FDI Screening Regulation, the Commission's legislative proposal addresses existing shortcomings and improves the efficiency of the system by: (i) ensuring that all Member States have a screening mechanism in place, with better harmonised national rules; (ii) identifying minimum sectoral scope where all Member States must screen foreign investments; and (iii) extending EU screening to investments by EU investors that are ultimately controlled by individuals or businesses from a non-EU country.

### 44. When will the new Regulation enter into force?

It is difficult to predict when the new Regulation will enter into force, as the legislative process is still ongoing.[12] However, once the new Regulation is formally adopted by the European Parliament and the Council, there will be a certain transition period during which the current Regulation will remain in force. The new Regulation will only apply after a transition period to be determined by the co-legislators.

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Last update: 7 May 2025.

*Note: this update is released in light of the need to revise the 2021 version to take into account developments since then, and of the fact that the current FDI Screening Regulation is likely to remain in force for at least another year.*

[12] As of May 2025.