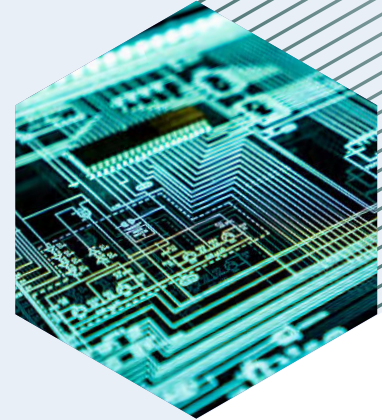


24 January, 2024

EUROPEAN ECONOMIC SECURITY STRATEGY

EU FOREIGN DIRECT INVESTMENT SCREENING 2024 REVISION



WELCOMING FOREIGN INVESTMENT WHILE PROTECTING ESSENTIAL INTERESTS

- ▶ Foreign Investments into the EU are a major source of growth and jobs.
- ▶ The EU has one of the world's most open investment regimes and is one of the most attractive destinations for foreign investment in the world.
- ▶ However, in exceptional cases, foreign investments may represent a risk for security or public order in Member States or in the Union as a whole.
- ▶ This could be the case for example when a foreign investor seeks to acquire direct or indirect control of EU businesses that provide key inputs to critical technologies, infrastructure or have access to sensitive information.
- ▶ In some cases, the risk may be exacerbated by the fact that investors are owned or controlled by a foreign state or persons subject to EU sanctions.



THE EU FDI SCREENING REGULATION

The EU regulation on Foreign Direct Investment Screening (1), which entered into force in October 2020.

- ▶ Created a cooperation mechanism with clear deadlines for Member States and the Commission to exchange information and raise concerns on notified cases from the 14 Member States that at the time had screening mechanisms in place.
- ▶ Allows the Commission to issue opinions when an investment poses a threat to the security or public order of more than one Member State or could undermine a project of interest to the whole EU.
- ▶ Observes strong non-discrimination and confidentiality requirements.

THE FIRST 3 YEARS OF THE FDI SCREENING REGULATION

- ▶ The Commission and Member States have collectively screened over 1200 transactions.
- ▶ The number of Member States with a screening mechanism has grown from 14 to 22.
- ▶ The Commission issued an opinion in less than 3% of the cases.
- ▶ The top sources of FDI notified to the co-operation mechanism were the US, UK, Switzerland, China, Singapore and the United Arab Emirates.
- ▶ Most cases concerned manufacturing including energy, aerospace, defence, semiconductors, health, data processing and storage, communication, transport and cybersecurity.

(1) 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 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0452>



ENHANCING THE PROTECTION OF EU SECURITY AND PUBLIC ORDER – THE REGULATION’S REVISION

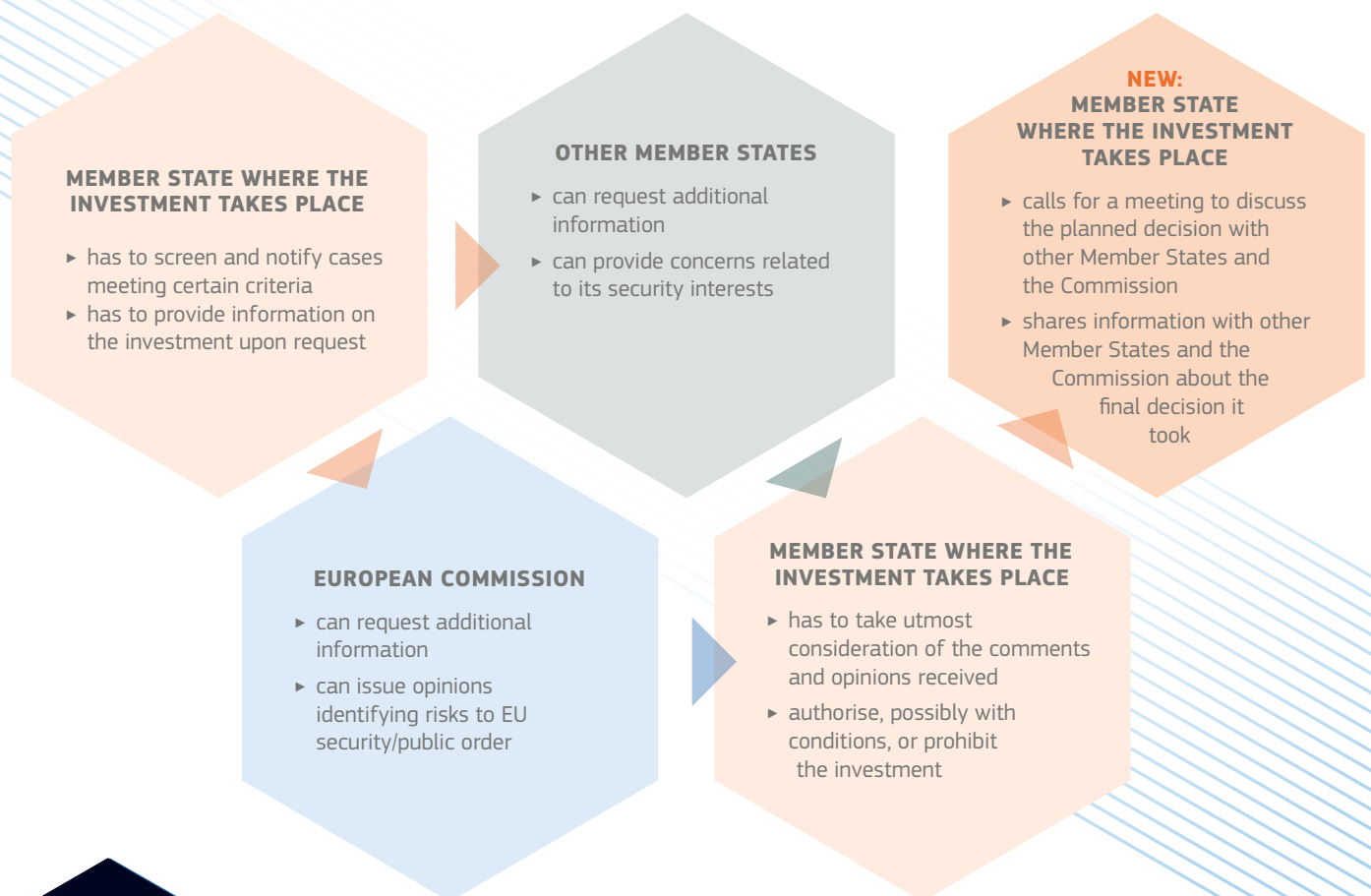
In June 2023 the European Economic Security Strategy announced a legislative proposal to update the FDI Screening Regulation. The proposed changes reflect new geopolitical and security challenges, as well as address the gaps and shortcomings identified during the application of the Regulation.

The revision will improve the way the screening works by:

- ▶ Ensuring that all Member States have a screening mechanism in place
- ▶ Harmonising national rules to make cooperation with other Member States and the Commission more effective and efficient
- ▶ Identifying a minimum sectoral scope that all Member States are required to screen, while leaving Member States free to go beyond the minimum scope, depending on their own national security interests
- ▶ Extending the scope of EU screening to cover transactions within the EU, where the direct investor is ultimately owned by individuals or entities from a non-EU country

COOPERATION BETWEEN MEMBER STATES AND THE COMMISSION

Expected length of procedure: **20-45 days**





CRITICAL AREAS AND PROJECTS OF KEY IMPORTANCE FOR EU SECURITY INTERESTS

- ▶ The revision maintains the list of EU projects and programmes which may be relevant for security and public order, and which warrant particular attention from the Commission, such as Trans-European Networks, the European Defence Fund, the Space Regulation and Horizon Europe.
- ▶ The revision requires all Member States to screen foreign investments in EU companies participating in these EU projects and programmes, and to screen foreign investments in EU companies active in critical areas, such as semiconductors, artificial intelligence, critical medicines and dual-use and military items.



CRITERIA FOR THE ASSESSMENT OF INVESTMENTS

The revision proposes harmonisation of national rules, including mandatory criteria which Member States and the Commission need to use to determine whether an investment is likely to negatively affect security or public order. These criteria include the effects of the investment on:

- ▶ critical infrastructure,
- ▶ critical technologies,
- ▶ the supply of critical inputs,
- ▶ the protection of sensitive information, or
- ▶ the freedom and pluralism of the media.

Member States and the Commission must also consider risks related to the foreign investor.





FRAMEWORK FOR THE SCREENING BY MEMBER STATES

1. Member States must ensure that they have a screening mechanism in place, which allows their effective cooperation with other Member States and the Commission.
2. When screening investments made by foreign-controlled EU companies, Member States must respect the fundamental freedoms under EU law.
3. 22 EU Member States currently have national investment screening mechanisms. Several are in the course of updating them, or adopting new ones.
4. The Regulation establishes key requirements for national screening mechanisms:
 - ▶ Screening potentially critical transactions before they are completed
 - ▶ Transparency of screening rules and procedures
 - ▶ Protection of confidential information
 - ▶ Due process rules and the possibility of recourse against screening decisions
 - ▶ Annual reporting about screening activities.

