



2024/0017(COD)

28.11.2024

DRAFT OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on the International Trade

on the proposal for a regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council (COM(2024)0023 – C9-0011/2024 – 2024/0017(COD))

Rapporteur for opinion: Svenja Hahn

PA_Legam

SHORT JUSTIFICATION

The Rapporteur welcomes the revision of the Foreign Direct Investment Regulation, and finds that the Commission proposal adequately addresses some of the main shortcomings of the current regulation. However, some further clarity and harmonisation is needed in order to streamline some processes across Member States and thereby enhancing the Internal Market perspective, while also ensuring that the revised regulation will not have an unduly negative effect on foreign investment, which is crucial for the competitiveness of the Union.

The proposed amendments improve clarity, consistency, and transparency in the process of screening foreign direct investment. The amendments aim to reduce the legal uncertainty for foreign investors, thereby supporting a competitive internal market, while safeguarding the security and public order interests of the Union. They align with the regulation's goals of creating a predictable investment environment and ensuring harmonized practices across Member States for the screening of incoming foreign investment.

By establishing clearer screening criteria and standardizing timelines, these amendments address areas where ambiguity and discretionary powers could lead to inconsistent applications, potentially deterring desirable foreign investment. This approach also balances Member State sovereignty with EU-wide cohesion, reducing regulatory fragmentation, strengthening investor confidence, and protecting critical sectors and assets integral to the Union's security and public order interests.

Key suggestions:

The amendments introduce several key suggestions:

- Standardized, more detailed procedures and timelines across Member States
- Enhanced transparency requirements for both Commission opinions and Member State decisions
- Mandatory notification of investments and Commission opinion in cases of opaque or unclear ownership structure
- Clear criteria for assessing state influence and control
- Streamlined appeal mechanisms
- Comprehensive information requirements

Impacts on European Commission and Member States

These amendments affect both the European Commission and the Member States. The Commission's role is strengthened regarding investments where the ownership structure is opaque or unclear, and the ultimate beneficial owner is unknown. Member States, meanwhile, will benefit from standardized criteria and timelines, streamlined appeals, and enhanced coordination with the Commission, supporting consistent application of incoming foreign

investment screening practices across the EU while protecting the Union's security and public order interests.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection submits the following to the Committee on International Trade, as the committee responsible:

Amendment 1

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) A significant majority of Member States, but not all, have a legislative instrument in place that provides for a mechanism to screen FDIs. In many Member States, national laws also extend to screening intra-Union investments. Among the Member States, there are substantial differences as to the scope, thresholds and criteria used to assess whether an investment is likely to negatively affect security or public order. There are also differences in the screening processes. In certain Member States, the investment can be implemented before having received clearance with respect to the impact on security and public order. However, others require that the investment is only finalised after authorisation under the screening mechanism. Such divergences create a problem for the smooth functioning of the internal market. For example, they create an uneven playing field and increase compliance costs for investors seeking to notify transactions in more than one Member State. This Regulation helps in reducing divergences on key elements of the mechanisms implemented at national level. This is crucial to ensure predictability for investors on the applicable national regimes and their characteristics, thereby reducing the

Amendment

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associated compliance costs. This is all the more relevant considering the level of integration of internal market, which may result in a single transaction impacting multiple Member States across the Union. It is for example possible that a transaction aimed to the acquisition of a target company in one Member State also affects security and public order in another Member State, due to the supply chain structure or other economic elements connecting the target with other companies based in a different Member States. In order to address these internal market problems and ensure greater consistency and predictability, it is appropriate that the criteria and elements to be used for the assessment of foreign investments are established through Union action.

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Furthermore, it is appropriate that Member States align their screening deadlines at national level with the Union cooperation mechanism timelines to ensure harmonisation across the Union.

Or. en

Amendment 2

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) To ensure a consistent approach to foreign investment screening across the Union, all Member States should be required to screen foreign investments on the grounds of security or public order. Therefore, the core elements of national screening mechanisms should be harmonised. That minimum harmonisation includes the scope of investments to be screened, the screening procedure's essential features, and the interaction between the national mechanism and the Union cooperation mechanism. In addition, Member States should also be able to extend the scope of their national screening mechanism to include other types of

Amendment

(9) To ensure a consistent approach to foreign investment screening across the Union, all Member States should be required to screen foreign investments on the grounds of security or public order. Therefore, the core elements of national screening mechanisms should be harmonised. That minimum harmonisation includes the scope of investments to be screened, the screening procedure's essential features, and the interaction between the national mechanism and the Union cooperation mechanism ***including consistency in the timelines for screenings***. In addition, Member States should also be able to extend the scope of

foreign investments, foreign investments in other sectors, additional Union targets or economic activities that the relevant Member State considers critical for its security or public order. When they do so, such screening should also comply with the provisions of this Regulation.

their national screening mechanism to include other types of foreign investments, foreign investments in other sectors, additional Union targets or economic activities that the relevant Member State considers critical for its security or public order. When they do so, such screening should also comply with the provisions of this Regulation.

Or. en

Amendment 3

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) To ensure consistent and predictable screening processes, it is appropriate to lay down the essential features of the screening mechanisms to be implemented by Member States. Those features should at least include the scope of the transactions to be subject to an authorisation requirement, deadlines for the screening and the possibility for undertakings concerned by the screening decision to seek recourse against such decisions. Rules and procedures relating to screening mechanisms should be transparent and should not discriminate between third countries.

Amendment

(18) To ensure consistent and predictable screening processes, it is appropriate to lay down the essential features of the screening mechanisms to be implemented by Member States. Those features should at least include the scope of the transactions to be subject to an authorisation requirement, deadlines for the screening and the possibility for undertakings concerned by the screening decision to seek recourse against such decisions ***through a standardised appeal mechanism***. Rules and procedures relating to screening mechanisms should be transparent and should not discriminate between third countries.

Or. en

Amendment 4

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) To ensure that the cooperation mechanism focuses only on those foreign investments where the characteristics of the foreign investor or the Union target make an effect on security or public order likely,

Amendment

(21) To ensure that the cooperation mechanism focuses only on those foreign investments where the characteristics of the foreign investor or the Union target make an effect on security or public order likely,

it is appropriate to establish risk-based conditions for the notification of foreign investments undergoing screening in a Member State to the other Member States and the Commission. Where a foreign investment does not meet any of the conditions, the Member State where the foreign investment is undergoing screening may notify the foreign investment to the other Member States and the Commission, including where the Union target has significant operations in other Member States, or belongs to a corporate group that has several companies in different Member States.

it is appropriate to establish risk-based conditions for the notification of foreign investments undergoing screening in a Member State to the other Member States and the Commission. ***Cases of opaque or unclear ownership structures, such as where the ultimate beneficiary is unknown, should be included as such a condition.*** Where a foreign investment does not meet any of the conditions, the Member State where the foreign investment is undergoing screening may notify the foreign investment to the other Member States and the Commission, including where the Union target has significant operations in other Member States, or belongs to a corporate group that has several companies in different Member States.

Or. en

Amendment 5

Proposal for a regulation Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) To ensure transparency and predictability, opinions by the Commission should be based on specific and documented risks and should follow set issuance criteria, including documented security risks or cross-border concerns.

Or. en

Amendment 6

Proposal for a regulation Recital 34

Text proposed by the Commission

Amendment

(34) To ensure the efficiency and effectiveness of the cooperation mechanism, it is necessary to align deadlines and procedures when several

(34) To ensure the efficiency and effectiveness of the cooperation mechanism, it is necessary to align deadlines and procedures when several

foreign investments linked to the same broader transaction are screened in several Member States. In such multi-country transactions, the applicant should file the different requests for authorisation in the Member States concerned simultaneously. In addition, those Member States should notify the requests simultaneously to the cooperation mechanism. To ensure an efficient handling of these multi-country transactions, the Member States concerned should coordinate and agree on whether the foreign investments are notifiable and when they should be notified. Furthermore, the Member States concerned should also coordinate on the final decision. If the Member States concerned intend to authorise the foreign investment with conditions, they should ensure that these conditions are compatible with one another and address cross-border risks adequately. Before prohibiting a foreign investment, the Member States concerned should consider whether a conditional authorisation with coordinated measures and their coordinated enforcement is not sufficient to address the likely effect on security or public order. The Commission should be able to participate in such coordination.

foreign investments linked to the same broader transaction are screened in several Member States. In such multi-country transactions, the applicant should file the different requests for authorisation in the Member States concerned simultaneously. In addition, those Member States should notify the requests simultaneously to the cooperation mechanism. To ensure an efficient handling of these multi-country transactions, the Member States concerned should coordinate and agree on whether the foreign investments are notifiable and when they should be notified. Furthermore, the Member States concerned should also coordinate on the final decision. ***In order to ensure the highest level of harmonisation, screening deadlines at national level should be aligned with the timelines for the cooperation mechanism.*** If the Member States concerned intend to authorise the foreign investment with conditions, they should ensure that these conditions are compatible with one another and address cross-border risks adequately. Before prohibiting a foreign investment, the Member States concerned should consider whether a conditional authorisation with coordinated measures and their coordinated enforcement is not sufficient to address the likely effect on security or public order. The Commission should be able to participate in such coordination.

Or. en

Amendment 7

Proposal for a regulation Recital 35

Text proposed by the Commission

(35) To ensure a consistent approach to the screening of investments across the Union, it is essential that the standards and criteria used to assess likely risks to security and public order are those set at Union level in this Regulation. Those

Amendment

(35) To ensure a consistent approach to the screening of investments across the Union, it is essential that the standards and criteria used to assess likely risks to security and public order are those set at Union level in this Regulation. Those

should include the impact on the security, integrity and functioning of critical infrastructure, the availability of critical technologies (including key enabling technologies) and the continued supply of critical inputs for security or public order, the disruption, failure, loss or destruction of which would have a significant impact on security and public order in one or more Member States or on the Union as a whole. In that regard, Member States and the Commission should also take into account the context and circumstances of the foreign investment. This should include, in particular, whether an investor is controlled directly or indirectly, for example through significant funding, by the government of a third country or is involved in pursuing policy objectives of third countries to facilitate their military capabilities. In this context, if applicable, Member States and the Commission should also consider why the foreign investor, its beneficial owner or any of its subsidiaries or a person acting on behalf or at the direction of such a foreign investor is subject to any type of Union restrictive measures pursuant to Article 215 TFEU.

should include the impact on the security, integrity and functioning of critical infrastructure, the availability of critical technologies (including key enabling technologies) and the continued supply of critical inputs for security or public order, the disruption, failure, loss or destruction of which would have a significant impact on security and public order in one or more Member States or on the Union as a whole. In that regard, Member States and the Commission should also take into account the context and circumstances of the foreign investment. This should include, in particular, whether an investor is controlled directly or indirectly, for example through significant funding, by the government of a third country or is involved in pursuing policy objectives of third countries to facilitate their military capabilities. ***Specific criteria for assessing foreign government influence and control on foreign investors should be set out, in order to ensure consistent evaluation across Member States.*** In this context, if applicable, Member States and the Commission should also consider why the foreign investor, its beneficial owner or any of its subsidiaries or a person acting on behalf or at the direction of such a foreign investor is subject to any type of Union restrictive measures pursuant to Article 215 TFEU.

Or. en

Amendment 8

Proposal for a regulation

Recital 37

Text proposed by the Commission

(37) To support the implementation of the cooperation mechanism and to foster the exchange of good practices among Member States, the expert group on the screening of foreign investments set up pursuant to Regulation (EU) 2019/452

Amendment

(37) To support the implementation of the cooperation mechanism and to foster the exchange of good practices among Member States, the expert group on the screening of foreign investments set up pursuant to Regulation (EU) 2019/452 should be maintained ***and its tasks updated***

should be maintained.

in accordance with this Regulation.

Or. en

Amendment 9

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) Member States should notify their screening mechanisms and any amendment to them to the Commission. They should report to the public on the application of their screening mechanisms annually on relevant legislative developments and the activities of the screening authority, including aggregate data on the transactions screened, the outcome of screening procedures, the nationalities of parties to foreign investments and the economic sectors in which those transactions took place.

Amendment

(38) Member States should notify their screening mechanisms and any amendment to them to the Commission. They should report to the public on the application of their screening mechanisms annually on relevant legislative developments and the activities of the screening authority, including aggregate data on the transactions screened, the outcome of screening procedures, the nationalities of parties to foreign investments and the economic sectors in which those transactions took place. ***The annual report should also include information on emerging trends and risk factors as well as updates to screening criteria or procedures.***

Or. en

Amendment 10

Proposal for a regulation

Recital 38 a (new)

Text proposed by the Commission

Amendment

(38a) In order to enhance the transparency and facilitate the process for investors, Member States should maintain publicly accessible resources including detailed guidance on screening procedures and timelines, sector-specific risk assessment frameworks as well as templates and documentation requirements. The Commission should maintain a central portal providing consolidated guidance on Union-level requirements, links to Member State

screening authorities and anonymised case summaries illustrating key principles.

Or. en

Amendment 11

Proposal for a regulation

Article 2 – paragraph 1 – point 23 a (new)

Text proposed by the Commission

Amendment

(23a) ‘critical infrastructure’ means 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;

Or. en

Amendment 12

Proposal for a regulation

Article 4 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the screening authority shall be empowered to start screening foreign investments by its own initiative **for at least** 15 months **after** the completion of a foreign investment that is not subject to an authorisation requirement where the screening authority has grounds to consider that the foreign investment may affect security or public order;

(c) the screening authority shall be empowered to start screening foreign investments by its own initiative **within** 15 months **of** the completion of a foreign investment that is not subject to an authorisation requirement where the screening authority has grounds to consider that the foreign investment may affect security or public order; **retrospective screening of completed foreign investments shall be limited to cases in which new threats to public security or order emerge post-investment and specific criteria for identifying such qualifying threats shall be defined in the implementing regulations;**

Or. en

Justification

Limiting retrospective reviews to specific, newly identified threats provides legal certainty for investors while reserving flexibility to respond to emerging risks.

Amendment 13

Proposal for a regulation

Article 4 – paragraph 2 – point e

Text proposed by the Commission

(e) foreign investors, foreign investors' subsidiaries in the Union through which the foreign investment is carried out and undertakings concerned by a screening decision shall have the possibility to seek judicial recourse against that screening decision;

Amendment

(e) foreign investors, foreign investors' subsidiaries in the Union through which the foreign investment is carried out and undertakings concerned by a screening decision shall have the possibility to seek judicial recourse against that screening decision; ***Member States shall implement a standardised appeal mechanism accessible to investors, with appeals to be resolved within 60 days in order to ensure procedural fairness and the Commission shall oversee the consistency in the handling of appeals across Member States;***

Or. en

Justification

Establishing a standardized appeal mechanism aligns with procedural fairness goals, helping investors by providing a consistent appeal option across Member States

Amendment 14

Proposal for a regulation

Article 4 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall:
(a) align screening deadlines at national level with the Union cooperation mechanism timelines set out in Article 8, providing for:

- (i) *an initial review period not exceeding 30 days from notification;*
- (ii) *where necessary, an in-depth investigation period not exceeding 60 additional days; and*
- (iii) *clear criteria for exceptional extensions of these deadlines;*
- (b) *implement standardised procedural milestones including:*
 - (i) *formal acknowledgment of complete notification within 5 working days;*
 - (ii) *clear triggers for moving from initial review to in-depth investigation;*
 - (iii) *structured communication points with applicants throughout the process; and*
 - (iv) *annual standardised reporting on average processing times and deviations from standard timelines.*

Or. en

Justification

This amendment adds specific procedural timelines to ensure consistency across all Member States, aiding investor predictability and reducing delays.

Amendment 15

Proposal for a regulation

Article 5 – paragraph 1 – point b – point i

Text proposed by the Commission

(i) the foreign investor or the foreign investor’s subsidiary in the Union 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;

Amendment

(i) the foreign investor or the foreign investor’s subsidiary in the Union 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; ***in cases where the ownership structure is opaque or unclear, the investment shall be notified as a***

precaution;

Or. en

Amendment 16

Proposal for a regulation

Article 7 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The Commission may issue an opinion regardless of whether Member States have issued comments.

Amendment

The Commission may issue an opinion regardless of whether Member States have issued comments. ***In cases where the investment has been notified pursuant to Article 5(2) due to the ownership structure being opaque or unclear, the Commission shall issue an opinion.***

Or. en

Amendment 17

Proposal for a regulation

Article 7 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

In order to ensure transparency and predictability, opinions of the Commission shall be based on specific and documented risks and shall follow set issuance criteria, including documented security risks or cross-border concerns.

Or. en

Justification

This amendment specifies issuance criteria for Commission opinions, ensuring they are based on documented security risks, which adds transparency and predictability to the process.

Amendment 18

Proposal for a regulation

Article 9 – paragraph 2

Text proposed by the Commission

2. Member States shall be granted **at least 15 months, after the foreign investment has been completed**, the right to open the procedure set out in paragraph 1, provided the respective foreign investment has not been notified to the cooperation mechanism in the meantime.

Amendment

2. Member States shall be granted the right to open the procedure set out in paragraph 1 **up to 15 months after the foreign investment has been completed**, provided the respective foreign investment has not been notified to the cooperation mechanism in the meantime.

Or. en

Amendment 19

Proposal for a regulation Article 9 – paragraph 4

Text proposed by the Commission

4. The Commission shall be granted **at least 15 months, after the foreign investment has been completed, to open the procedure set out in paragraph 3**, provided the respective foreign investment has not been notified to the cooperation mechanism in the meantime.

Amendment

4. The Commission shall be granted **the right to open the procedure set out in paragraph 3 up to 15 months** after the foreign investment has been completed, provided the respective foreign investment has not been notified to the cooperation mechanism in the meantime.

Or. en

Amendment 20

Proposal for a regulation Article 10 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) risk assessment documentation relating to the investment, to be used to address potential security and public order implications and to propose risk mitigation measures; the risk assessment shall include:

- (i) supply chain dependencies;**
- (ii) market position analysis; and**
- (iii) third-country dependency evaluation.**

Or. en

Justification

This amendment complements the existing general information requirements with more detailed and correlated information that will be needed during the screening assessment, ensuring comprehensive and standardized data collection across all Member States.

Amendment 21

Proposal for a regulation

Article 10 – paragraph 1 – point c

Text proposed by the Commission

(c) name and address of the Union target, its activities and alternative providers, the ownership structure of the Union target and, where applicable, of the corporate group to which the Union target is a part;

Amendment

(c) name and address of the Union target, its activities and alternative providers ***particularly related to projects and programmes defined in Annex I and areas listed in Annex II***, the ownership structure of the Union target and, where applicable, of the corporate group to which the Union target is a part;

Or. en

Amendment 22

Proposal for a regulation

Article 13 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. When assessing control or influence by a third-country government over an investor, Member States shall consider the following:

(a) direct or indirect ownership thresholds, with heightened scrutiny in cases where:

(i) the third-country government's ownership or control exceeds 25% of shares or voting rights; or

(ii) the third-country government has special veto powers or other governance rights, irrespective of ownership level.

(b) the nature and extent of third-country government funding, including:

- (i) *direct capital contributions;*
- (ii) *preferential financing arrangements; and*
- (iii) *state guarantees or subsidies.*
- (c) *specific governance arrangements provided by the third-country government, such as:*
 - (i) *rights to board representation;*
 - (ii) *special rights to appoint management; and*
 - (iii) *rights to access information.*

Or. en

Justification

This amendment provides specific criteria for assessing foreign government influence and control on foreign investors, ensuring consistent evaluation across Member States.

Amendment 23

Proposal for a regulation

Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16a

Public Transparency Requirements

1. *Member States shall maintain publicly accessible resources including:*
 - a) *detailed guidance on screening procedures and timelines;*
 - b) *sector-specific risk assessment frameworks;*
 - c) *templates and documentation requirements.*
2. *The Commission shall maintain a central portal providing:*
 - a) *consolidated guidance on Union-level requirements;*
 - b) *links to Member State screening authorities;*

c) *anonymized case summaries illustrating key principles.*

3. *Annual public reports shall include, in addition to the requirements set out in Article 16, requirements about foreign investment screening outcomes:*

a) *emerging trends and risk factors;*

b) *updates to screening criteria or procedures.*

Or. en

Justification

Establishing comprehensive transparency requirements to complement existing reporting provisions of Article 16.

Amendment 24

Proposal for a regulation Article 20 – paragraph 2

Text proposed by the Commission

2. The power to adopt delegated acts shall be conferred on the Commission for *an indeterminate* period of *time* from [date of entry into force of the basic legislative act].

Amendment

2. The power to adopt delegated acts *referred to in Article 19* shall be conferred on the Commission for *a* period of **5 years** from [date of entry into force of the basic legislative act]. *The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.*

Or. en

Justification

As the delegated acts in question amend the Annexes which determine the scope of the regulation, it is prudent to limit the period of time the power is delegated at once.

Amendment 25

Proposal for a regulation Article 20 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. The Commission shall report regularly to the European Parliament and the Council on its secondary legislative activity pursuant to Article 19.

Or. en