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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	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)

Delegations will find attached document C(2020) 1981 final.

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COMMUNICATION FROM THE COMMISSION

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The European Union is open to foreign investment, which is essential for our economic growth, competitiveness, employment and innovation. Many European companies are fully integrated in global supply chains, which need to be kept functioning. The EU wants to and will remain an attractive destination for foreign direct investment (FDI).

The COVID-19 related emergency is having pervasive effects on the economy of the European Union. As part of the overall response, the Commission also singled out the issue of foreign direct investment screening.

Among the possible consequences of the current economic shock is an increased potential risk to strategic industries, in particular but by no means limited to healthcare-related industries. The resilience of these industries and their capacity to continue to respond to the needs of EU citizens should be at the forefront of the combined efforts both at European Union and at Member States level.

However, today more than ever, the EU's openness to foreign investment needs to be balanced by appropriate screening tools. In the context of the COVID-19 emergency, there could be an increased risk of attempts to acquire **healthcare capacities (for example for the productions of medical or protective equipment) or related industries such as research establishments** (for instance developing vaccines) via foreign direct investment. Vigilance is required to ensure that any such FDI does not have a harmful impact on the EU's capacity to cover the health needs of its citizens.

The COVID-19 outbreak has highlighted the need to preserve and enhance the sharing of such precious capacities within the single market, as well as with those who need them elsewhere in the world. In this context, acquisitions of healthcare-related assets would have an impact on the European Union as a whole.

In its 13 March 2020 Communication¹, the Commission indicated that the Member States need to be vigilant and use all tools available at Union and national level to avoid that the current crisis leads to a loss of critical assets and technology.

EU rules provide a framework to ensure the protection of legitimate public policy objectives if such objectives are threatened by foreign investments. These rules are recalled in the Annex.

At present, the responsibility for screening FDI rests with Member States. FDI screening should take into account the impact on the European Union as a whole, in particular with a view to ensuring the continued critical capacity of EU industry, going well beyond the healthcare sector. The risks to the EU's broader strategic capacities may be exacerbated by the volatility or undervaluation of European stock markets. Strategic assets are crucial to Europe's security, and are part of the backbone of its economy and, as a result, of its capability for a fast recovery.

To this end, the European Commission calls upon Member States to:

¹ Coordinated economic response to the COVID-19 Outbreak, COM(2020) 112 final

- Make full use already now of its FDI screening mechanisms to take fully into account the risks to critical health infrastructures, supply of critical inputs, and other critical sectors as envisaged in the EU legal framework;
- For 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 full-fledged screening mechanism and in the meantime to use all other available options to address cases where the acquisition or control of a particular business, infrastructure or technology would create a risk to security or public order in the EU, including a risk to critical health infrastructures and supply of critical inputs.

The guidance also examines the type of measures that can be taken to restrict capital movement when justified.