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EXECUTIVE SUMMARY OF THE EVALUATION

of 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

Accompanying the document

**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**

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1. Introduction

The EU framework for foreign direct investment (FDI) screening¹ (the ‘Regulation’) was adopted in 2019 and entered into application in October 2020. It responded to growing concerns about certain foreign investors seeking to acquire control of EU firms that provide critical technologies, infrastructure or inputs, or hold sensitive information, and whose activities are critical for security or public order at EU level, i.e. for more than one Member State. Due to the high degree of integration of the single market, an FDI in an EU company may create a security risk beyond the borders of the Member State hosting the FDI. Therefore, the aim of the Regulation is to help identify and address security risks related to FDIs that affect at least two Member States or the EU as a whole.

To achieve this objective, the Regulation allows Member States to review FDIs in their territory on grounds of security and public order and to take measures to address specific risks. Furthermore, the Regulation has created a cooperation mechanism between the European Commission and Member State screening authorities for individual FDI transactions. This mechanism makes it possible to exchange information, enabling both the Commission and other Member States to point to possible security or public order risks to other Member States or EU-level programmes arising from an FDI transaction, allowing to assess and mitigate these risks. This has strengthened the assessment of FDIs by relevant Member State authorities and has facilitated the ultimate decision by the ‘host’ Member State on whether to authorise or not the transaction, and if the transaction is authorised, whether certain conditions are necessary.

2. Context of the evaluation

This report is prepared in compliance with the Regulation, which requires the Commission to evaluate the functioning and effectiveness of the Regulation by 12 October 2023. The evaluation covers the period from the entry into force of the Regulation² until 30 June 2023. It builds on the findings of a report carried out by the OECD³ and the views of stakeholders provided to the Commission in various consultation activities organised for the evaluation⁴. Where relevant, the evaluation also integrates the findings of the very recent special report of the European Court of Auditors on the screening of foreign direct investments in the EU⁵.

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.

² 11 April 2019.

³ *Framework for Screening Foreign Direct Investment into the EU: Assessing effectiveness and efficiency*. Published in November 2022 on the OECD’s website: <https://www.oecd.org/investment/investment-policy/oecd-eu-fdi-screening-assessment.pdf>.

⁴ These consultations include a targeted public consultation. Its summary report is available on the Commission’s website: https://policy.trade.ec.europa.eu/consultations/screening-foreign-direct-investments-fdi-evaluation-and-possible-revision-current-eu-framework_en#consultation-outcome

⁵ <https://www.eca.europa.eu/en/publications/SR-2023-27>

Since the adoption of the Regulation, the issue of security and public order has only grown in importance. The COVID-19 pandemic, Russia's war of aggression against Ukraine and other geopolitical tensions have underlined the need to better protect EU critical assets from certain investments. This has also played a role in a significant number of Member States deciding to adopt a national screening mechanism, or to expand the number of sectors subject to screening⁶. Nevertheless, a significant share of FDI in the EU still goes to Member States without a national screening mechanism⁷, leaving vulnerabilities in place as potentially critical FDI remain undetected.

The cooperation between all national authorities and the Commission has played a major role in raising awareness, identifying, assessing and addressing risky FDI transactions that would otherwise have been missed⁸. However, its implementation has presented a number of challenges, such as the management of multi-jurisdiction notifications – meaning transactions involving the same business in several Member States. These challenges are explained in the next section.

3. Main findings

Effectiveness. The evaluation found that the Regulation has had a positive impact on protecting security and public order from risky FDI in the EU. It also showed that the Regulation itself has not had chilling effects on the flow of FDI into the EU. That said, several shortcomings were identified that result in blind spots in the system (such as the fact that there are still Member States without a screening mechanism or that foreign-controlled investments within the EU fall outside the cooperation mechanism). Ultimately, this undermines the ability of the Commission and Member States to identify and address a potentially wide scope of risky transactions.

Efficiency. The administrative burden related to the implementation of the Regulation was found reasonable, both by Member State public authorities and parties to screened transactions. However, certain aspects limit the efficiency of the FDI screening mechanism in the EU. These are, for example, the lack of harmonisation of Member States' timelines, scope of the national mechanisms, the lack of predictability of the stage of national screening at which the EU cooperation is initiated, and the lack of an efficient cooperation procedure for transactions screened by multiple Member States.

Policy coherence. The minimum requirements for national screening mechanisms were found insufficient to achieve the necessary level of consistency between the FDI Screening

⁶ When the Commission tabled its legislative proposal for the FDI Screening Regulation in September 2017, only 14 Member States (including the United Kingdom) maintained a screening mechanism. By June 2023, 8 additional Member States had adopted screening mechanisms, and 2 Member States with only sectoral mechanisms had enacted cross-sectoral mechanisms.

⁷ 22.7% of the foreign acquisitions and 20% of the greenfield projects were in Member States without a fully applicable investment screening mechanism. The European Court of Auditors estimates that about 42% of FDI stocks is located in these Member States.

⁸ In the reporting period, the Commission and relevant Member State authorities reviewed more than 1 100 transactions.

Regulation and national screening mechanisms (and between national mechanisms themselves).

Added value. The Regulation has added value by increasing the effective protection of security and public order in the EU beyond what would have been achieved by Member States each operating individually.

Relevance. While the objective to protect security and public order in the EU from risky FDI remains very relevant if not increasing, the relevance of the current system is limited by certain shortcomings identified in the evaluation.

The key **lessons learned** are the following:

1. The EU's ability to identify and address risky transactions is undermined by the lack in some Member States of screening mechanisms that make it possible to scrutinise transactions before they are completed, and the divergence between existing national mechanisms.
2. The current definition of FDI is too limiting, with the effect that the cooperation mechanism does not cover investments within the EU. This means that investments by non-EU investors via an entity set up in the EU are not assessed under the cooperation mechanism, even though the security implications of such transactions can be the same as when the foreign investor directly invests from abroad.
3. The requirement to notify all transactions 'undergoing screening' does not ensure that all risky transactions are considered across the EU, as it may allow some potentially risky transactions to remain undetected if these are not formally undergoing screening in the host Member State.
4. Differences between Member States' national screening mechanisms can seriously undermine the effectiveness and efficiency of the cooperation mechanism and risk creating obstacles in the internal market.
5. The information provided to the cooperation mechanism about individual transactions is not sufficient.
6. The timelines of the cooperation mechanism are too short for the assessment of potentially critical transactions. They also are suboptimal for effective cooperation between the Commission and Member States because due to the identical timeframes, the Commission may not have time to factor in the security concerns of other Member States in its own assessment.
7. Member States do not have sufficient power to address the interests or concerns of other Member States.
8. Member States and the Commission are not formally entitled to receive any information about the outcome of national screening procedures notified to the cooperation mechanism, more specifically about the response to comments or

concerns authorities of other Member States made regarding their own security to the host Member State, or to the opinion the Commission submitted.⁹

On the basis of this evaluation, and recognising that the saying ‘the chain is only as strong as its weakest link’ also applies to protection against risky FDI transactions, the Commission proposes to revise the Regulation. The main objectives of the revision are to ensure that all Member States have a screening mechanism that allows the assessment of transactions before they are completed, and to address key shortcomings of the cooperation mechanism identified in this evaluation.

⁹ Note that there is one exception: Member States have to inform the Commission about their final decision where the EU target participates in a project or programme of Union interest and the screening Member State decides to deviate from the opinion.