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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 13 July 2020

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

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 13.7.2020
amending the Annex to Regulation (EU) No 2019/452 of the European
Parliament and of the Council establishing a framework for the screening of
foreign direct investments into the Union

Delegations will find attached document C(2020) 4721 final.

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Brussels, 13.7.2020
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COMMISSION DELEGATED REGULATION (EU) .../...

of 13.7.2020

amending the Annex to Regulation (EU) No 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The main objective of Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union¹ ('the Regulation') is to create greater awareness of the EU Member States and the Commission for risks from certain foreign direct investments ('FDI') that may, in certain circumstances, affect security or public order in the Union.

Articles 6 to 11 of the Regulation establish a cooperation mechanism under which the Member States and the Commission are to exchange information and comment on FDI, which are likely to affect security or public order in more than one Member State.

The Regulation also aims at increasing the awareness of FDI affecting projects and programmes of Union interest. To this end, Article 8 of the Regulation allows the Commission to issue an opinion when it considers that an FDI is likely to affect projects or programmes of Union interest on grounds of security or public order. An opinion pursuant to Article 8 shall be sent to all Member States. Article 8(2)(c) states that such opinion shall be taken into 'utmost account' by the Member State where the investment is planned or completed and the Member State shall provide an explanation to the Commission in case its opinion is not followed.

Article 8(3) sets out that projects and programmes of Union interest are projects and programmes which involve a substantial amount or a significant share of Union funding, or which are covered by Union law regarding critical infrastructure, critical technologies or critical inputs which are essential for security or public order. The list of projects and programmes is annexed to the Regulation. Pursuant to Article 8(4) the Commission shall adopt delegated acts to amend this list.

When preparing the full application of the Regulation for 11 October 2020, the following projects and programmes of Union interest were identified as fulfilling the criteria of Article 8(3) and are thus proposed to be added to the list annexed to the Regulation.

1. The Permanent Structured Cooperation (PESCO) enables Member States to work more closely together in the area of security and defence. This permanent framework for defence cooperation allows Member States to develop jointly defence capabilities, invest in shared projects, and enhance the operational readiness and contribution of their armed forces. Therefore, Council Decision (CFSP) 2018/340 of 6 March 2018 establishing the list of projects to be developed under PESCO is already part of the Annex in the Regulation. This Decision was updated by Council Decision (CFSP) 2018/1797 of 19 November 2018 and Council Decision (CFSP) 2019/1909 of 12 November 2019. These Decisions should accordingly be included in the Annex.
2. Preparatory Action on Preparing the new EU GOVSATCOM programme: Satellite Communications are critical for defence, security, humanitarian aid, emergency response or diplomatic communications. They are key enablers for civil missions and military missions/operations in particular in remote and austere environments with little or no infrastructure. Governmental Satellite Communications (GOVSATCOM) have been defined as one of the four capability development programmes by the European Council in December 2013, which mandated to prepare the next generation

¹ OJ L 79I, 21.3.2019, p. 1.

of satellite communication. These communication services are intended to serve a wide range of sensitive actors, such as border guards, police, military, civil protection, the maritime and diplomatic communities in Member States and EU Institutions and Agencies. The underlying secure satellite communication capacity and services will be provided by, inter alia, security-accredited commercial private companies. Investors exercising control over the providers of secured SatCom services or over their key suppliers may have the potential to interrupt the communication of certain security actors or to divulge the information communicated via GOVSATCOM. Therefore, it is appropriate to include the Preparatory Action on Preparing the new EU GOVSATCOM programme based on Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, and in particular Article 58(2)(b) thereof in the Annex of the Regulation.

3. The Preparatory Action on Defence Research is aimed at assessing and demonstrating the added-value of EU supported defence research and technology. The relevant results are expected to further deepen European defence cooperation, addressing capability shortfalls, and to strengthen European defence stakeholders. Effective participation in the management or control of a company taking part in this programme may allow the investor to interfere with the availability of critical technologies for the defence and security of the Member States and the Union. Furthermore, the risk of disclosure to third parties of critical technical information regarding existing or future defence capabilities of the EU Member States may also have an effect on security in the EU. Therefore, it is appropriate to include the Preparatory Action on Defence Research based on Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, and in particular Article 58(2)(b) thereof in the Annex of the Regulation.
4. ITER (originally the International Thermonuclear Experimental Reactor) is one of the most ambitious energy projects in the world today. It is an experimental device that aims to prove the feasibility of fusion as an energy source from which the Union could derive significant benefit, in particular in the context of ensuring the security and diversity of its long-term energy supply. ITER pushes forward our knowledge frontiers and it will be the first fusion device to test the integrated technologies, materials, and physics regimes necessary for the commercial production of fusion-based electricity. The uninterrupted supply of components, as well as preserving the results of fusion-related research is of key importance for the perspective of using fusion energy in the EU. Therefore, it is appropriate to include Council Decision (Euratom) 2007/198 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it in the Annex of the Regulation.

When implementing Horizon 2020², the Union may enter into certain legally defined forms of public-private and public-public partnerships. Despite being aligned to the objectives of and arguably covered by Horizon 2020, these partnerships are distinct and sizeable instruments with an individual legal basis in primary law, i.e. Articles 185 and 187 TFEU. For greater certainty, it is appropriate to expressly mention partnerships taking the form of Union participation in programmes undertaken by several Member States, instruments such as Joint Undertakings or bodies such as the European Institute of Innovation and Technology. These partnerships play an important role in EU actions addressing the COVID-19 crisis as they support, among other areas, research and innovation related to public health³, initiatives improving the efficiency, effectiveness and quality of the drug development process⁴ and partnerships between the private sector and academia for improving the sustainability of healthcare systems⁵.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission, appropriate and transparent consultations, including at expert level, have been carried out on this delegated act. The Group of experts on the screening of foreign direct investments into the European Union was consulted in writing on 8 June 2020.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 8(4) of the Regulation empowers the Commission to adopt delegated acts in order to amend the list of projects and programmes of Union interest.

The following projects and programmes should be added to the Annex of the Regulation:

- Council Decision (CFSP) 2018/1797 of 19 November 2018 amending and updating Decision (CFSP) 2018/340 establishing the list of projects to be developed under PESCO⁶;
- Council Decision (CFSP) 2019/1909 of 12 November 2019 amending and updating Decision (CFSP) 2018/340 establishing the list of projects to be developed under PESCO⁷;
- Preparatory Action on Preparing the new EU GOVSATCOM programme based on Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No

² Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

³ The Zoonotic anticipation and preparedness initiative ('ZAPI project')

⁴ Innovative Medicine Initiative ('IMI-2') established by Council Regulation (EC) No 73/2008 of 20 December 2007 setting up the Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines (OJ L 30, 4.2.2008, p. 38).

⁵ EIT Health initiative, being one of the Knowledge and Innovation Communities managed by the European Institute of Innovation and Technology.

⁶ OJ L 294, 21.11.2018, p. 18.

⁷ OJ L 293, 14.11.2019, p. 113.

223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, and in particular Article 58(2)(b) thereof⁸;

- Preparatory Action on Defence Research based on Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, and in particular Article 58(2)(b) thereof⁹;
- Council Decision (Euratom) 2007/198 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it¹⁰.

In addition, it is appropriate to clarify that for the purpose of the Regulation, Horizon 2020 includes research and development programmes pursuant to Article 185 TFEU, and joint undertakings or any other structures set up pursuant to Article 187 TFEU to implement Horizon 2020.

⁸ OJ L 193, 30.7.2018, p. 1.

⁹ OJ L 193, 30.7.2018, p. 1.

¹⁰ OJ L 90, 30.3.2007, p. 58.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 Union¹¹, and in particular Article 8(4) thereof,

Whereas:

- (1) Article 8(3) of Regulation (EU) 2019/452 provides that projects or programmes of Union interest are to include those projects and programmes which involve a substantial amount or a significant share of Union funding, or which are covered by Union law regarding critical infrastructure, critical technologies or critical inputs which are essential for security or public order.
- (2) The list of projects or programmes of Union interest referred to in point (1) is set out in the Annex to Regulation (EU) 2019/452.
- (3) The Commission has found that there are several other projects and programmes which involve a substantial amount or a significant share of Union funding, or which are covered by Union law regarding critical infrastructure, critical technologies or critical inputs which are essential for security or public order, and which should therefore also be included in the aforementioned list.
- (4) It is appropriate to expressly mention partnerships under Horizon 2020 taking the form of Union participation in programmes undertaken by several Member States, instruments such as Joint Undertakings or bodies such as the European Institute of Innovation and Technology. These partnerships play an important role in EU actions addressing healthcare emergencies such as the COVID-19 pandemic as they support, among other areas, research and innovation related to public health, initiatives improving the efficiency, effectiveness and quality of the drug development process and partnerships between the private sector and academia for improving the sustainability of healthcare systems.
- (5) The Annex to Regulation (EU) 2019/452 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EU) 2019/452 is amended as follows:

- (1) Point 3 is replaced by the following:

¹¹ OJ L 79I, 21.3.2019, p. 1.

‘3. Horizon 2020 including research and development programmes pursuant to Article 185 TFEU, and joint undertakings or any other structure set up pursuant to Article 187 TFEU:

Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104), including actions therein relating to Key Enabling Technologies such as artificial intelligence, robotics, semiconductors and cybersecurity.’

(2) Point 8 is replaced by the following:

‘8. Permanent structured cooperation (PESCO):

Council Decision (CFSP) 2018/340 of 6 March 2018 establishing the list of projects to be developed under PESCO (OJ L 65, 8.3.2018, p. 24).

Council Decision (CFSP) 2018/1797 of 19 November 2018 amending and updating Decision (CFSP) 2018/340 establishing the list of projects to be developed under PESCO (OJ L 294, 21.11.2018, p. 18).

Council Decision (CFSP) 2019/1909 of 12 November 2019 amending and updating Decision (CFSP) 2018/340 establishing the list of projects to be developed under PESCO (OJ L 293, 14.11.2019, p. 113).’

(3) The following points 9, 10 and 11 are added:

‘9. Preparatory Action on Preparing the new EU GOVSATCOM programme:

Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, and in particular Article 58(2)(b) thereof (OJ L 193, 30.7.2018, p. 1).

10. Preparatory Action on Defence Research:

Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, and in particular Article 58(2)(b) thereof (OJ L 193, 30.7.2018, p. 1).

11. European Joint Undertaking for ITER:

Council Decision (Euratom) 2007/198 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it (OJ L 90, 30.3.2007, p. 58).’

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be published in the *Official Journal of the European Union* once the period for objection by either the European Parliament or the Council has expired, or the

European Parliament and the Council have both informed the Commission that they will not object, pursuant to Article 16(6) of Regulation (EU) No 2019/452.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13.7.2020

For the Commission
The President
Ursula VON DER LEYEN