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PROPOSAL

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	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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2024/0017 (COD)

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

{SWD(2024) 23 final} - {SWD(2024) 24 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

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 *(FDIs)* into the Union (the Regulation) was adopted in 2019 and entered into application on 11 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. The aim of the Regulation was to help identify and address security or public order risks related to FDIs that affect at least two Member States or the EU as a whole, because the high degree of integration of the internal market means that an FDI in an EU company may create a risk beyond the borders of the Member State hosting the FDI. To achieve this objective, the Regulation allows Member States to review FDIs in their territory on security or public order grounds, and to exchange information with the Commission and the other Member States, and empowers them 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 FDIs. This mechanism has made it possible to exchange information, enabling both the Commission and other Member States to highlight possible security or public order risks to other Member States or critical EU-level programmes arising from an FDI. 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 or not to authorise the transaction and, if the transaction is authorised, whether certain conditions are necessary.

Since the adoption of the Regulation, the issue of security and public order has grown in importance. The COVID-19 pandemic, Russia's war of aggression against Ukraine and other geopolitical tensions have underlined the need to be able to identify risks to, and better protect EU critical assets from, certain investments. This has also contributed to the significant increase in the number of Member States adopting a national screening mechanism, and in the expansion by some Member States in the number of sectors subject to screening [1]. However, a significant share of FDIs in the EU still goes to Member States that do not have a screening mechanism [2] and this leaves vulnerabilities because potentially critical FDIs remain undetected.

Cooperation between all national authorities and the Commission has nevertheless played a major role in raising awareness, and in identifying and addressing risky FDIs that would otherwise have gone unnoticed [3]. However, the management of multi-jurisdiction notifications

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[1] When the Commission submitted its legislative proposal for the 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.

[2] 22.7% of the foreign acquisitions and 20% of the greenfield projects were in Member States that did not have a fully applicable investment screening mechanism. In its Special Report 27/2023 ('Screening foreign direct investments in the EU – First steps taken, but significant limitations remain in addressing security and public-order risks effectively), the European Court of Auditors estimates that about 42% of FDI stocks are located in these Member States (see Figure 4 on p. 27).

[3] The Commission and relevant Member State authorities have reviewed more than 1 100 transactions since the cooperation mechanism was launched.

(i.e. transactions that involve the same business in several Member States) has been challenging and raised efficiency issues (particularly for foreign investors, EU targets and screening authorities).

Article 15(1) of the Regulation requires the Commission to evaluate the functioning and effectiveness of the Regulation and to present a report to the European Parliament and to the Council by 12 October 2023 (i.e. no later than 3 years after its full implementation).

Based on the findings of the evaluation report, which accompanies this legislative proposal, it is appropriate to propose the revision of the Regulation 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 in the effectiveness and efficiency of the cooperation mechanism identified in the evaluation.

1.2. Consistency with existing policy provisions in the policy area

The objective of the proposal is to protect the EU's security and public order in the context of foreign investment. This is in line with the EU's overall policy objectives as laid out in Article 3(5) of the Treaty on European Union, notably to uphold the EU's values and interests in its relations with the wider world and to contribute to the protection of its citizens, peace, security, and free and fair trade.

The proposal is fully in line with the 2023 'Economic Security Communication' [4], which highlighted FDI screening as one of the tools that the EU deploys to protect itself from commonly identified risks that affect its economic security. In that joint communication, the Commission repeated the call to Member States who had not yet implemented national FDI screening mechanisms to do so without further delay. It also announced a legislative proposal to revise the FDI Screening Regulation.

The proposed regulation strikes the appropriate balance between, on the one hand, the objective of addressing legitimate concerns raised with regard to certain foreign investments and, on the other hand, the need to maintain an open and welcoming regime for such investment into the EU, while being fully compatible with EU law and international commitments.

1.3. Consistency with other Union policies

The proposed regulation will complement, is consistent with, and does not affect other EU policies and initiatives. Certain transactions may be subject to other authorisation procedures at EU or national level, but there are no inconsistencies between the proposal and these instruments, whose purpose is distinct from that of the proposal. Rather, there is a certain degree of complementarity between the proposed regulation and the EU instruments applicable to sectors or actions relevant for security or public order.

<u>Free movement of capital and freedom of establishment</u>

The proposed regulation applies to investments which establish or maintain a lasting economic link between a foreign investor and the EU target. This includes, for example, the acquisition of a majority or full shareholding, as well as any acquisition of shares granting rights to the foreign investor to control or influence the operations of the EU target, or the setting-up of facilities in the EU (greenfield investments). Such investments, when they concern movement within the EU, therefore mostly fall within the area of freedom of

[4] Joint Communication to the European Parliament, the European Council and the Council on 'European Economic Security Strategy' (JOIN/2023/20 final).

establishment. The provisions of the Treaty on the Functioning of the European Union (TFEU) on freedom of establishment are contained in Articles 49-55 TFEU. These provisions establish the general principle that restrictions to the freedom of establishment are prohibited unless they are justified on the basis of specific reasons of public order, security or health, as outlined in Article 52(1) TFEU. Member States can rely on grounds of public policy and public security to restrict investments only if there is a genuine and sufficiently serious threat to a fundamental interest of society and if less restrictive measures are insufficient to address such threat. The Court of Justice clarified that the concept of public security covers both the State's internal and external security.

These provisions only apply, however, to natural and legal persons of EU Member States and are therefore not relevant when it comes to FDIs from a non-EU country into the EU. Therefore, the disciplines for the screening of FDI from a non-EU country into the EU as outlined in the proposed regulation do not interact with the provisions on freedom of establishment.

The proposed regulation also extends the scope of the current regulation to capture certain investments within the EU. involving investments controlled by non-EU investors. As explained later, this extension is important for bringing a specific group of such investments into the scope of the Regulation, where they establish or maintain a lasting economic link between the non-EU investor and the EU target. These investments are carried out by an EU entity, but this entity is controlled by the non-EU investor and the decision-making power on the investment remains with the non-EU investor. It is therefore appropriate to ensure that the treatment of these transactions – and specifically the elements which can affect a decision to screen the transaction or to take further measures mitigating impacts on security or public order concerns – is to the extent possible consistent with that of the FDIs, in order to avoid a situation where, for the purposes of the proposed regulation, investments carrying comparable risks for the EU are treated differently.

In this respect, the assessment of the likely risk for security and public order should maintain sufficient flexibility to make it possible to take into consideration the specific character and structure of investments within the EU carried out by EU subsidiaries of foreign investors. The existence of a clear link with a foreign investor, together with the other specific criteria provided by the Regulation with respect to the scope of the covered transactions (including the specific list of areas where the investment is carried out or the particular attention given to public presence in the ownership structure of the foreign investor, as well as the fact that the foreign investor may be screened because it is subject to EU sanctions) all highlight specific characteristics of the investment which may translate into specific concerns for security and public order and which need to be managed at the EU's level. Such concerns are common to FDIs and investments within the EU where the EU entity is controlled by a non-EU investor. However, they are not naturally associated with other investments within the EU where there is no involvement of foreign investors, and it should be possible (where justified and proportionate) to reflect this difference from the perspective of security and public order when assessing the investment.

On this basis, it is possible, to make a distinction between the application of internal market freedoms to investments within the EU where the EU entity is controlled by a non-EU-country investor and pure intra-EU situations. Consequently, under the Treaty, restrictions on transactions involving a non-EU country may be based on different considerations. This is also appropriate considering that these transactions are screened as part of a Union-wide cooperation mechanism.

In order to ensure consistency and predictability of the assessment across the Member States, it is also appropriate for the criteria and elements to be used for the assessment of foreign investments to be established through EU action by means of the current regulation.

Treaty provisions concerning the free circulation of capital are only relevant for a marginal set of transactions, as explained above, also in light of the explicit exclusion of portfolio investments from the scope of the proposed regulation. In any event, the considerations made above apply with respect to the potential basis for limiting free circulation of capital, which are set out in Article 65(1)(b) TFEU and relate to public security, public order or health. Also in this respect, it is important to ensure that the basis for screening transactions which are ultimately aimed at establishing a lasting link with a non-EU investor are treated consistently (from the perspective of protecting security and public order) and that any particular concerns that may arise when the transaction involves a foreign investor (even when carried out through an entity established in the EU but controlled by a foreign investor) are taken into account when assessing the investment.

These considerations are without prejudice to the possibility for Member States to further limit foreign investments, beyond the criteria and scope of the proposed regulation, provided that these further limitations are consistent with Article 65(1)(b) or Article 52(1) TFEU (as applicable).

The EU Merger Regulation

FDIs may take the form of mergers, acquisitions or joint ventures that constitute concentrations falling within the scope of the EU Merger Regulation [5]. In relation to such concentrations, Article 21(4) of the EU Merger Regulation allows Member States to take appropriate measures to protect legitimate interests provided they are compatible with the general principles and other provisions of EU law. To that effect, Article 21(4), second paragraph, explicitly recognises the protection of public security, plurality of the media and prudential rules as legitimate interests. Screening decisions taken under the proposed regulation to protect these interests do not need to be communicated to the Commission under Article 21(4), third paragraph, provided that they are compatible with the general principles and other provisions of EU law. By contrast, when a Member State intends to take a screening decision under the proposed regulation to protect other public interests, it will need to communicate this to the Commission under Article 21(4), third paragraph, if the decision concerns a concentration that falls within the scope of the EU Merger Regulation. The Commission will ensure the consistent application of the proposed regulation and of Article 21(4) [6]. To the extent that the respective scopes of application of the two regulations overlap, the likely impact on security or public order determined on the basis of the considerations set out in Article 13 of the proposed regulation and the notion of legitimate interests within the meaning of Article 21(4), third paragraph, of the EU Merger Regulation should be interpreted consistently and without prejudice to the assessment of the compatibility of the national measures aimed at protecting these interests with the general principles and other provisions of EU law.

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[5] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1, ELI: http://data.europa.eu/eli/reg/2004/139/oj).

[6] In order to ensure the smooth implementation of the cooperation mechanism pursuant to Chapter 3 of the proposed regulation and the procedure pursuant to Article 21(4) of the EU Merger Regulation, it could be useful for Member States to indicate whether a transaction is likely to fall within the scope of the EU Merger Regulation when they notify a transaction pursuant to Article 5 of the proposed regulation.

The Foreign Subsidies Regulation

While the risk assessment under FDI screening may take into account whether the foreign investor is directly or indirectly controlled by the government of a non-EU country (including through ownership structure or significant funding), the purpose of this assessment is to determine whether an FDI is likely to negatively affect the EU's security or public order. However, foreign subsidies appear to have distorted the EU's internal market in recent years and, until the Foreign Subsidies Regulation [7] (FSR), there was no instrument to assess and counter the impact of foreign subsidies on fair competition in the internal market. Subsidies granted by non-EU countries went unchecked, while subsidies granted by Member States have been subject to close scrutiny under EU State aid rules – where prohibition is the rule and authorisation is the exception.

The FSR addresses such distortions and closes a regulatory gap, while keeping the internal market open to trade and investment.

Under the FSR, the Commission has the power to investigate financial contributions granted by non-EU governments to companies active in the EU. If the Commission finds that such financial contributions constitute distortive subsidies, it can impose measures to redress their distortive effects. The FSR introduces three procedures:

- a notification-based procedure to investigate concentrations involving financial contributions granted by non-EU governments – where the acquired company, one of the merging parties or the joint venture generates an EU turnover of at least EUR 500 million and the parties were granted foreign financial contributions of more than EUR 50 million in the last 3 years;
- a notification-based procedure to investigate bids in public procurement procedures involving financial contributions by non-EU governments – where the estimated contract value is at least EUR 250 million and the bid involves a foreign financial contribution of at least EUR 4 million per non-EU country in the last 3 years; and
- an *own initiative* own initiative procedure to investigate all other market situations, where the Commission can start a review on its own initiative.

Where the Commission decides to launch a preliminary review of whether the financial contribution under examination constitutes a foreign subsidy and whether it distorts the internal market, it is to inform the Member States that have notified the Commission about a national procedure pursuant to the Regulation.

To the extent that the respective scopes of application of the two regulations overlap, the grounds for screening set out in Article 1 of the Regulation should be without prejudice to the Commission's assessment pursuant to the FSR whether the financial contribution under examination constitutes a foreign subsidy and whether it distorts the internal market.

Resilience of critical entities

[7] Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market (OJ L 330, 23.12.2022, p. 1–45, ELI: http://data.europa.eu/eli/reg/2022/2560/oj).

Council Directive 2008/114/EC[8] provides for a procedure for designating European critical infrastructure in the energy and transport sectors the disruption or destruction of which would have a significant cross-border impact on at least two Member States but only focuses on the protection of critical infrastructure in these two sectors. Recognising the importance of comprehensively addressing the resilience of critical entities (i.e. entities identified as critical entities by Member States in their territory), the Critical Entities Resilience Directive[9] (CER Directive) has created an overarching framework that addresses the resilience of these entities with respect to all hazards, whether natural or man-made, accidental or intentional. The CER Directive requires Member States to take specific measures to ensure that services essential for the maintenance of vital societal functions or economic activities in 11 sectors are provided in an unobstructed manner in the internal market. The CER Directive entered into force on 16 January 2023 and Member States have until 17 October 2024 to transpose its requirements into national law.

To the extent that the scope of application of the proposed regulation overlaps with the CER Directive, the identification of an EU target as a critical entity should be factored in the assessment of foreign investments for the purpose of the proposed regulation.

Cybersecurity

The EU cybersecurity rules introduced in 2016 [10] were updated by the Directive on measures for a high common level of cybersecurity across the Union (the NIS2 Directive) [11], which modernised the existing legal framework to keep up with increased digitalisation and an evolving cybersecurity threat landscape through a wider scope, clearer rules and stronger supervision tools. The NIS2 Directive expands the scope of the cybersecurity rules to include new sectors and entities and introduces a clear size threshold meaning that, as a rule, all medium and large-sized companies in the selected sectors will be included in the scope. The NIS2 Directive also strengthens and streamlines security and reporting requirements for public and private entities by imposing a risk management approach.

The NIS2 Directive addresses security of supply chains and supplier relationships by requiring entities in its scope to address cybersecurity risks in their supply chains and supplier relationships. At EU level, the Directive strengthens supply chain cybersecurity for key information and communication technologies. The NIS Cooperation Group[12], in cooperation with the Commission and the European Union Agency for Cybersecurity, may carry out Union level coordinated security risk assessments of critical supply chains. The NIS2

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8 Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 345, 23.12.2008, p. 75–82, ELI: http://data.europa.eu/eli/dir/2008/114/oj)

9 Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC (OJ L 333, 27.12.2022, p. 164–198, ELI: http://data.europa.eu/eli/dir/2022/2557/oj).

10 Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1–30, ELI: http://data.europa.eu/eli/dir/2016/1148/oj).

11 Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (OJ L 333, 27.12.2022, p. 80–152, ELI: http://data.europa.eu/eli/dir/2022/2555/oj).

12 Established pursuant to Article 14 of Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1–30, ELI: http://data.europa.eu/eli/dir/2016/1148/oj)

Directive entered into force on 16 January 2023 and Member States have until 17 October 2024 to transpose its requirements into national law.

To the extent that the scope of application of the proposed regulation overlaps with the NIS2 Directive, the assessment of foreign investments for the purpose of the proposed regulation should factor that an EU target also falls in the scope of the NIS2 Directive, as well as the results of EU level coordinated security risk assessments of critical supply chains carried out in accordance with Article 22 of Directive (EU) 2022/2555.

Energy

Over the years, the EU has adopted legislation to improve the security of supply in the field of energy of the EU and its Member States. The Electricity and Gas Directives[13] require the assessment of security of supply implications not only for individual Member States but also for the EU as a whole, if the gas or the electricity transmission system of a Member State is controlled by a non-EU-country operator. Moreover, the Regulation on Gas Supply Security in the EU [14] focuses specifically on security of supply concerns and requires Member States to assess, at national and regional level, all possible risks for the gas system (including risks associated with the control of infrastructure relevant to security of supply by third-country entities) and to prepare comprehensive preventive action plans and emergency plans containing measures to mitigate those risks. The Regulation on Risk-Preparedness in the Electricity Sector [15] contains similar provisions for the electricity sector. Certain entities in the energy sector are also expressly included within the scope of the Critical Entities Resilience Directive.

Where a foreign investment is followed by a request for certification pursuant to Article 10 of the Electricity Directive or the Gas Directive, the application of the proposed regulation should be without prejudice to the application of the relevant directive. To the extent that the respective scopes of application of the two rules overlap, the grounds for screening set out in Article 1 of the proposed regulation and the notion of security of energy supply should be interpreted consistently and without prejudice to the assessment pursuant to the relevant directive of whether the control by a person or persons from a non-EU country or non-EU countries will put at risk the security of energy supply to the EU.

Air transport

Regulation (EC) No 1008/2008 [16] lays down common rules for the operation of air transport services in the EU, including the licensing of EU air carriers and price transparency. It

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13 Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125, ELI: http://data.europa.eu/eli/dir/2019/944/oj) and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94, ELI: http://data.europa.eu/eli/dir/2009/73/oj).

14 Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1–56, ELI: http://data.europa.eu/eli/reg/2017/1938/oj).

15 Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC (OJ L 158, 14.6.2019, p. 1–21, ELI: http://data.europa.eu/eli/reg/2019/941/oj).

16 Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (OJ L 293, 31.10.2008, p. 3–20, http://data.europa.eu/eli/reg/2008/1008/oj).

requires (as one of the conditions for granting an operating licence to an undertaking permitted to carry by air passengers, mail or cargo for remuneration or hire) that Member States or nationals of Member States must own more than 50% of the undertaking and effectively control it, except as 'provided for in an agreement with a non-EU country to which the Community is a party' (Article 4).

The proposed regulation applies to foreign investments that are below the threshold set out by Regulation (EC) No 1008/2008. It therefore allows assessment of whether a foreign investment in an EU undertaking providing air services in the EU is likely to negatively affect security or public order. Where a foreign investment is subject to the proposed regulation, the application of the proposed regulation should be without prejudice to the application of Regulation (EC) No 1008/2008.

Prudential assessment of acquisitions and increases of qualifying holdings in the financial sector

EU legislation in the financial sector empowers competent authorities to carry out a prudential assessment of acquisitions and increases of holdings in financial institutions (i.e. credit institutions, investment firms, and payment institutions). The objective of these provisions is to ensure the sound and prudent management of the financial institutions and the smooth functioning of the financial sector.

Nevertheless, as recognised in the Commission's 2021 Communication '*The European economic and financial system fostering openness, strength and resilience*',[17] the financial sector is also key for the economic security and resilience of the EU economy. Recognising the importance of the financial system for security and public order, the proposed regulation requires all Member States to screen foreign investments into a list of entities set out in Annex II and notify those transactions to the other Member States and the Commission that meet the criteria set out in Article 5(1) and 5(2) of the proposed regulation.

The financial entities listed in Annex II are critical for the smooth clearing and settlement of financial transactions (payments, securities and derivatives) allowing internal and external trade and providing a basis for the international role of the euro. Furthermore, the financial entities listed in Annex II carry out essential functions for the society and usually have a cross-border activity, hence, can pose risks to the security or public order of more than one Member State.

The proposed regulation will not affect EU rules on the prudential review of acquisitions of qualifying holdings in the financial sector, which will remain a distinct procedure serving a different objective than assessing risks to security and public order.

Dual-use export control

Dual-use items are goods, software and technology that can be used for both civilian and military applications. The EU controls the export, transit, brokering and technical assistance of these items so that the EU can contribute to international peace and security and prevent the proliferation of weapons of mass destruction. The Regulation on dual-use export

[17] Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions 'the European economic and financial system: fostering openness, strength and resilience' COM/2021/32 final.

controls [18] was revised in 2021 to better address risks associated with the rapidly evolving security, technology, and trade environment, with a particular focus on the export of sensitive, emerging technologies. Investment screening complements dual-use export control. Both are important tools for strategic trade and investment controls to ensure security in the EU.

The proposed regulation requires Member States to screen and notify to the cooperation mechanism foreign investments, where the EU target has the power to decide to export items from the EU's customs territory.

The proposed regulation will not affect national provisions and decisions affecting exports of dual-use items, which will remain a distinct procedure with specific objectives.

Anti-coercion instrument

The anti-coercion instrument (ACI) [19] is another important building block for the EU's economic security. It allows the EU to respond to economic coercion and therefore to better defend its interests and those of its Member States on the global stage.

The ACI is first and foremost designed to deter any potential economic coercion. If economic coercion nevertheless takes place, the ACI provides a structure to get the non-EU country to cease its coercive measures through dialogue and engagement. However, if engagement fails, it also provides the EU with a wide range of possible countermeasures against a coercing country. These include the imposition of tariffs, restrictions on trade in services and restrictions on access to FDI or public procurement.

If the proposed regulation were to be applied to foreign investors from non-EU countries that are subject to countermeasures pursuant to the ACI, the assessment whether a foreign investment is likely to negatively affect security or public order would have to be carried out without prejudice to the notion of coercion, except where risks to security or public order would arise as a result of coercion. Furthermore, Member States' screening decisions on grounds of security or public order would have to be without prejudice to possible EU measures aiming to counter economic coercion.

EU restrictive measures (sanctions)

The proposed regulation is consistent with EU restrictive measures (sanctions), which, based on Article 215 TFEU, take precedence over other EU regulations and may prohibit or stand in the way of authorising investments by certain non-EU countries or nationals of non-EU countries.

EU restrictive measures apply to a range of entities, including to any person inside or outside the territory of the EU who is a national of a Member State, to any legal person, entity or body, inside or outside the territory of the EU, which is incorporated or constituted under the law of a Member State, and to any legal person, entity or body in respect of any business done in whole or in part within the EU.

EU restrictive measures can take the form of measures specific to companies, groups, organisations, or individuals (e.g. asset freeze and prohibition on making funds or economic resources available) or of sectoral measures.

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[18] Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast) (OJ L 206, 11.6.2021, p. 1–461, ELI: http://data.europa.eu/eli/reg/2021/821/oj).

[19] Regulation (EU) 2023/2675 of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries (OJ L, 2023/2675, 07.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2675/oj).

The Commission takes the view that asset freezes and prohibitions on making funds available extend to the assets of any non-designated entity, which is owned or controlled by a designated person or entity, unless it can be proven that the assets concerned are not in fact owned or controlled by the designated person or entity.

It is important to closely and strictly control any attempts by designated or otherwise sanctioned persons to acquire control over EU firms, either directly or indirectly. It is therefore crucial that this rule should also apply when the investor is not directly subjected to sanctions but is owned or controlled by, or acting on behalf or at the direction of, such a person or entity. The proposed regulation would therefore require Member States to notify other Member States and the Commission of any foreign investment in their territory made by investors that are subject to any type of EU restrictive measures, as well as any other party owned or controlled by, or acting on behalf or at the direction of, such a person or entity.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. Legal basis

FDIs are explicitly included in the scope of the EU common commercial policy, which falls under Article 207 TFEU. Furthermore, it is necessary to use Article 114 TFEU as an additional legal basis, which provides for the adoption of measures to ensure the establishment and functioning of the internal market. This provision enables the adoption of measures for the approximation of the provisions laid down by law, regulation or administrative action in the Member States which have as their object the establishment and functioning of the internal market. It is the appropriate legal basis for an intervention requiring Member States to screen certain investments within the internal market and addressing differences between Member States' screening mechanisms, which may obstruct the fundamental freedoms and have a direct effect on the functioning of the internal market.

Differences in national laws exist and are increasing, given that a number of Member States already maintain screening mechanisms, while of them are in the process of establishing such mechanisms extending to investments within the EU. This situation of regulatory fragmentation insofar as the national screening mechanisms differ as to the specific elements, such as their scope (the types of activities and sectors covered), as well as their deadlines (duration of assessment and decision by the national authority), procedural requirements, and the criteria applied for the likely negative effect for security or public order. This is all the more relevant considering the level of integration of the internal market, which may result in a single transaction affecting multiple Member States across the EU.

Such fragmentation poses obstacles to the freedom of establishment and is likely to increase with the number of Member States maintaining a screening mechanism. The proposed harmonised measures aim at (i) creating a level playing field among Member States, (ii) reducing existing compliance costs for foreign investors as well as (iii) preventing the emergence of additional obstacles in the internal market for investments.

In line with its internal market objective, this proposal provides that certain foreign investments would need to undergo screening, regardless of the Member State(s) where the target is located. In addition, the proposal provides that foreign investments are assessed against harmonised standards and timelines. In view of the above, a higher degree harmonisation at Union level is necessary, therefore Article 114 TFEU is a relevant legal basis for this initiative.

The use of Article 114 TFEU allows to include certain investments within the EU in the scope of the proposed regulation. The aim of doing this is to ensure that risks to security and public

order posed by such transactions are addressed. In particular, the proposed regulation would be limited to those investments within the EU which:

(i) are made by a foreign investor's subsidiary in the Union where the subsidiary is directly or indirectly controlled by a foreign investor. Entities which have no third-country participation, or which only have a non-controlling participation by a foreign investor (portfolio investments) are not covered;

(ii) have the aim of establishing a lasting link between the foreign investor and the EU target.

This extension of scope of the current FDI Regulation, is aimed at capturing a specific set of foreign investments made through EU subsidiaries controlled by non-EU investors. It complements and expands the existing provisions which allow such investments to be covered where the chosen structure is used to circumvent the screening of FDI into the EU. This ensures a consistent approach to risks to security and public order flowing from investments that ultimately lead to control and decision-making power by a third-country investor, whether they are carried out either directly from outside the EU or indirectly through an entity established in the EU but controlled by a foreign investor.

Nonetheless, this extension will lead to the screening of transactions which are carried out through entities legitimately established in the EU. This constitutes an additional step by comparison with the concept of circumvention in the current Regulation, which only applies when the transaction is carried out within the EU by means of artificial arrangements that do not reflect economic reality. This extension requires the use of Article 114 TFEU as a legal basis to reflect the fact that investments within the EU would be covered by the proposed regulation.

The legal basis of the proposed regulation would therefore be Articles 207 and 114 TFEU.

2.2. Subsidiarity (for non-exclusive competence)

According to the principle of subsidiarity (Article 5(3) TEU), action at Union level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States alone and can therefore, by reason of the scale or effects, be better achieved by the Union.

As Member States' screening mechanisms diverge in their scope, content and effect, a fragmented regulatory framework of national rules can be observed and risks to increase, especially when it comes to the screening of foreign investments within the EU. It undermines the internal market by creating an uneven playing field and unnecessary costs for entities that seek to carry out an economic activity in sectors relevant for security or public order.

Only intervention at Union level can solve these problems, as rules at national level already result in the creation of obstacles to investments made within the EU. In contrast, the effects of any action taken under national law would be limited to a single Member State and risk being circumvented or be difficult to oversee in relation to foreign investors. Furthermore, some Member States are currently considering legislative initiatives in the field of investment screening. Only action at Union level can address this consistently across the internal market. Introducing common and proportionate standards for screening investments within the EU with foreign control is essential to ensure that such measures are established consistently across all Member States with respect to all fundamental rights. A common and coordinated EU approach that aligns national screening systems will provide certainty to potential investors as regards critical infrastructure, technology and inputs by letting them know in

advance the common rules that the Commission and Member States use to assess and address risks related to security and public order.

Finally, the screening of foreign investments in the EU is a transnational issue with cross-border implications that need to be addressed at Union level. A foreign investment in one Member State can have an impact beyond that Member State's borders, in another Member State or at the EU level. The absence of EU-level action may result in Member States being less able to protect their security or public order interests related to foreign investments, in particular for cases where the foreign investment likely to negatively affect their security or public order is carried out in the territory of another Member State. Experience gained with the implementation of the Regulation shows that it is unlikely that Member States would converge on aligned standards and procedures on how to screen foreign investments on grounds of security and public order or reinforce the systematic Union-wide cooperation mechanism to exchange information with each other and the Commission.

There is therefore a strong argument for action at EU level to align and harmonise these national frameworks to make investing more predictable in the internal market, especially in multi-jurisdiction transactions, to strengthen the legal certainty of investment screening in the EU, to reduce the administrative burden, to contribute to a level playing field across Member States where investments are made and to allow a more effective and efficient cooperation between Member States and the Commission on cross-border security and public order risks related to foreign investments.

2.3. Proportionality

The proposed regulation aims to protect security and public order in the EU as regards foreign investments.

It does not contain rules that are equivalent to a national screening mechanism, because such a mechanism can impose conditions on a transaction and, as a last resort, prohibit its completion. The proposed regulation would leave the final decision on any investment with the Member State where the transaction is planned or is completed. The objective of the proposed regulation is rather to help identify and address security and public order risks that affect at least two Member States or the EU as a whole through a cooperation mechanism between Member States and the Commission. This cooperation mechanism provides an official channel for exchanging confidential information and raising awareness about specific circumstances where an FDI may affect security or public order. It also makes it possible for the Commission and other Member States to recommend steps to the Member State where the FDI is planned or has already been completed in order to address the specific concerns identified.

The evaluation of the Regulation has shown that the effectiveness of the EU framework for investment screening is considerably reduced by (i) the absence in some Member States of screening mechanisms that make it possible to scrutinise transactions before they are completed; and (ii) the limited coverage of national investment screening mechanisms [20]. This

[20] Member States that exclude important areas from the application of their screening mechanisms – including by narrowly defining their sectoral scope or exempting investors associated with certain non-EU jurisdictions – have limited means to effectively manage risks related to foreign investment in the EU.

may have spill-over effects on security or public order interests in other Member States and on projects or programmes of EU interest.

In the absence of a common scope of transactions subject to screening or other ways to harmonise the conditions that should trigger screening at national level, the number and scope of notifications that the cooperation mechanism receives from the Member States are likely to continue to vary greatly. Furthermore, some foreign investors may continue to take advantage of jurisdictions in the EU that do not have a FDI screening mechanism or whose mechanism does not apply to the sector concerned.

The measures in the proposed regulation to establish a cooperation mechanism and set certain procedural and substantive requirements for national screening mechanisms are proportionate, because they achieve the objective of the proposed regulation while also allowing Member States to take account of national specificities in their screening mechanisms and to take the final decision on any foreign investments.

The proposed regulation requires companies to cooperate with the national screening authorities, but the administrative costs for companies will be reasonable and proportionate, thanks to the standardised form for notifications to the cooperation mechanism.

2.4. Choice of the instrument

This is a proposal to revise an existing regulation, so it seems legitimate to keep the present form of the instrument (i.e. as a regulation).

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

3.1. *Ex post* evaluations/fitness checks of existing legislation

The legislative proposal is accompanied by a Commission staff working document evaluating the Regulation against the five 'better regulation' criteria (effectiveness, efficiency, relevance, coherence, and EU added value).

3.2. Stakeholder consultations

The Commission published a targeted consultation and a call for evidence that ran between 14 June and 21 July 2023. The Commission received 47 replies to the consultation [21] and 10 contributions to the call for evidence [22].

The Commission invited Member States and stakeholders (law firms, business associations and businesses) with proven experience in implementing the EU rules on FDI screening to provide further written input based on a questionnaire. These replies were collected between 3 August and 1 September 2023. A summary of replies is available in Annex V to the evaluation report accompanying the legislative proposal.

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[21] The summary report of the targeted consultation 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.

[22] Contributions to the call for evidence are available on the Commission's website: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13739-Screening-of-foreign-direct-investments-FDI-evaluation-and-revision-of-the-EU-framework/feedback_en?p_id=32186570.

3.3. Collection and use of expertise

The Commission used an external contractor to help carry out the evaluation of the FDI Screening Regulation. The OECD Secretariat (the Investment Division of the Directorate for Financial and Enterprise Affairs) carried out a study on the effectiveness and efficiency of the FDI Screening Regulation and offered conclusions and broad recommendations on how to address the shortcomings identified in the study [23]. This study was co-financed by the Commission and was carried out between October 2021 and June 2022.

3.4. Impact assessment

The legislative proposal is not supported by an impact assessment. This is in line with the better regulation toolbox, which provides that an impact assessment may not be necessary for 'policy initiatives that propose limited changes based on a thorough evaluation, which has clearly identified the necessary amendments to a policy or legislation' [24]. The Commission considers that the proposed regulation and the evaluation report accompanying this legislative proposal fulfil these criteria.

3.5. Regulatory fitness and simplification

This initiative is part of the Commission work programme 2023 [25]. It is not part of Annex II (REFIT initiatives).

The proposed regulation improves the ability of the Commission and the Member States to identify and address foreign investments likely to negatively affect security or public order in the EU. The proposal requires all Member States to screen foreign investments, which may increase the administrative burden on businesses, because foreign investments in the EU will be subject to control in more jurisdictions than the 21 Member States currently maintaining a screening mechanism. However, the proposal is expected to result in potential cost savings due to the simplification and alignment of the current rules and arrangements at EU and national level. The simplification concerns the alignment of national screening deadlines; focusing the EU-level cooperation on FDI screening on the potentially critical transactions (as opposed to all transactions subject to formal screening in a Member State); and increasing the procedural transparency of the EU cooperation mechanism.

3.6. Fundamental rights

The proposal is aligned with the Charter of Fundamental Rights of the European Union and respects the freedom to conduct business. The proposed regulation leaves the screening of investments with the Member States (including the final decision on specific transactions), but the requirements for national screening mechanisms help Member States to ensure full respect for the fundamental rights to fair proceedings and good administration.

4. BUDGETARY IMPLICATIONS

In order to effectively achieve the objectives of this initiative, it is necessary to finance a number of actions at Commission level. The annual human resources expenditure will amount

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[23] The study was published in November 2022: https://www.oecd.org/investment/investment-policy/oecd-eu-fdi-screening-assessment.pdf.

[24] 'Better regulation' toolbox 2023, TOOL #7.

[25] COM(2022) 548 final: https://eur-lex.europa.eu/resource.html?uri=cellar:413d324d-4fc3-11ed-92ed-01aa75ed71a1.0001.02/DOC_1&format=PDF

to approximately EUR 5.162 million per year, which is intended to provide for a total number of 29 officials (in Full Time Equivalent unit) in the Commission. Other administrative expenses are related to the reimbursement of Member States' travel costs to the meetings of the expert group (Article 5) and committee (Article 21). These costs are projected to amount to EUR 0.032 million per year. Operational expenditure, which will be used to finance the necessary IT infrastructure to support the direct cooperation between the Commission and Member States through secure channels of communication will reach approximately EUR 0.25-0.29 million per year. The Commission intends to launch an external study with a budget of EUR 0.25 million to support its assessment of Member States' compliance after the end of the transitional period. The Commission will consider launching a second study to support the 5-year evaluation of the proposed regulation by the Commission.

A detailed overview of the costs involved is provided in the financial statement linked to this initiative.

5. OTHER ELEMENTS

5.1. Implementation plans and monitoring, evaluation and reporting arrangements

Monitoring, reporting and evaluation are an important part of the proposal.

Monitoring will be continuous and based on operational objectives and specific indicators. Regular and continuous monitoring will cover the following main aspects:

(i) the number of transactions notified to the cooperation mechanism; and

(ii) the number of transactions likely to negatively affect security or public order in more than one Member State or through a project or programme of Union interest.

In addition, the Commission may monitor developments relating to the final decisions reported by Member States on a confidential basis to the Commission.

The proposed regulation will continue requiring Member States to report each year to the Commission, on a confidential basis, on the activities under their screening mechanism for the preceding calendar year. Member States will also be required to publish an annual report with information on relevant legislative developments and the activities of the screening authority including aggregate data on the cases screened and the screening decisions taken. The Commission will continue to provide an annual report on the implementation of the proposed regulation to the European Parliament and to the Council. That report will continue to be made public.

The proposed regulation would be assessed in the context of an evaluation exercise 5 years after the date of its entry into full application. If required, a review clause could be activated under which the Commission would be able to take appropriate measures, including legislative proposals.

5.2. Detailed explanation of the specific provisions of the proposed regulation

Chapter 1 sets out general provisions, including the subject matter and scope of the proposed regulation (Article 1). The proposed regulation establishes an EU framework for screening by Member States of investments in their territory, on the grounds of security or public order. It also set out a cooperation mechanism to allow Member States and the Commission to exchange information on investments, assess their potential impact on security and public order, and identify potential concerns that the Member State which is screening the

investment would be required to address. The grounds for investment screening are determined in compliance with the relevant requirements for the imposition of restrictive measures based on grounds of security or public order stipulated in the World Trade Organization Agreement (including, in particular, Articles XIV(a) and XIV bis of the General Agreement on Trade in Services) and in other trade and investment agreements or arrangements to which the EU or its Member States are parties.

Article 2 lays down a number of applicable definitions. In particular, it clarifies that the proposed regulation covers investments that are either foreign direct investments or investments within the EU with foreign participation. For the purpose of this proposed regulation, foreign direct investment covers a broad range of investments which establish or maintain lasting and direct links between investors from non-EU countries and undertakings carrying out an economic activity in a Member State. It includes investments by a foreign investor in an EU target, where the EU target is a subsidiary of a foreign target in which the investment is made. Investment within the EU with foreign participation covers a broad range of investments carried out by a foreign investor through the foreign investor's subsidiary in the EU and with the aim of establishing or maintaining lasting and direct links between the foreign investor and an EU target in order to carry on an economic activity in a Member State. The proposed regulation does not cover portfolio investments.

Chapter 2 contains rules for national screening mechanisms. Article 3 requires all Member States to set up and maintain a screening mechanism that complies with the requirements of the proposed regulation and to notify this mechanism to the Commission. On the basis of these notifications, the Commission is required to publish a list of national screening mechanisms. Article 4 sets out certain requirements for national screening mechanisms. In particular, these mechanisms are required to cover at least (i) investments in EU companies participating in projects or programmes of EU interest set out in Annex I to the proposed regulation; and (ii) investments in EU companies active in areas of particular importance for the security or public order interests of the EU set out in Annex II to the proposed regulation; ('notifiable investments'). Furthermore, it sets out a number of requirements to ensure the effectiveness of screening mechanisms.

Chapter 3 provides for a cooperation mechanism allowing Member States and the Commission to exchange information and suggest measures if a foreign investment is likely to negatively affect security or public order in more than one Member State, or through a project or programme of Union interest. Articles 5 and 6 lay down rules and procedures related to the notification of foreign investments, including a specific procedure for foreign investments screened by multiple Member States simultaneously ('multi-country transactions'). Article 7 describes the conditions applicable to comments issued by Member States and opinions issued by the Commission following the assessment of a notified foreign investment. It allows Member States to provide comments to the Member State where the foreign investment takes place if that foreign investment is likely to negatively affect their security or public order, or they have information relevant to the screening of that foreign investment. The Commission is allowed to issue an opinion to the Member State where the foreign investment takes place if it considers that such a foreign investment is likely to negatively affect the security or public order of more than one Member State, or projects or programmes of Union interest on grounds of security or public order. The Commission may also issue an opinion if it has information relevant to the screening of the foreign investment or if several foreign investments present similar risks to security or public order. Furthermore, Article 7 sets out detailed procedures to provide information about the screening decision taken by the notifying Member State to the relevant Member States and the Commission. Article 8 sets out the

deadlines and procedures for providing comments and opinions, including for cases of multi-country transactions. Article 9 provides a mechanism allowing Member States and the Commission to cooperate on foreign investments not notified by the Member State where the foreign investment is planned to take place. Article 10 sets out requirements for the information that is to be provided and that may be requested in relation to foreign investments subject to the cooperation mechanism. It requires the Commission to adopt an implementing regulation to provide a standardised form for the notification of foreign investments. Article 11 sets out common requirements for national screening mechanisms in order to ensure their effective participation in the cooperation mechanism. Article 12 provides rules to ensure the confidentiality of exchanges between Member States and the Commission.

Chapter 4 provides rules for Member States and the Commission for the determination of a foreign investment's likely impact on security or public order (Article 13) and for Member States' screening decisions (Article 14).

Chapter 5 sets out the final provisions. Article 14 provides a legal basis for cooperation with the responsible authorities of non-EU countries on issues relating to the screening of investments on grounds of security and public order. This cooperation is not intended to allow exchanges of information on transactions that are subject to the cooperation mechanism between the Member States and the Commission. To ensure the transparency of screening mechanisms and the EU cooperation on foreign investment screening, Article 16 requires Member States to report annually to the public about their screening activities and screening decisions by publishing aggregated and anonymised information. The Commission is also required to publish an annual report about the implementation of the regulation. Lastly, Chapter 5 provides rules governing the processing of personal data (Article 17), evaluation (Article 18), delegated acts (Article 19), exercise of the delegation (Article 20) and the committee procedure for implementing acts (Articles 21-22). Article 22 repeals Regulation (EU) 2019/452 and Article 24 provides that the proposed regulation should enter into force after a transitional period of 15 months. In the transitional period, Regulation (EU) 2019/452 remains in force and continues to apply.

Annex I provides a list of projects and programmes of Union interest. These are projects or programmes covered by EU law which provide for the development, maintenance or acquisition of critical infrastructure, critical technologies or critical inputs which are essential for security or public order. Where the EU target is part of or participates in a project or programme of Union interest, Member States are required to screen and notify the foreign investment concerned to the Commission and other Member States.

Annex II lists the technologies, assets, facilities, equipment, networks, systems, services and economic activities of particular importance for the security or public order interests of the Union. Where the EU target is economically active in an area listed in Annex II, Member States are required to screen the foreign investment. The notification of this foreign investment to the cooperation mechanism is required if the foreign investor or the EU target meets one of the risk-based conditions set out in the regulation. This risk-based filter is appropriate to ensure that the EU cooperation mechanism focuses only on foreign investments that are of potential interest from the security perspective and it does not impose unnecessary burden on national administrations and companies.

2024/0017 (COD)

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Having regard to the Opinion of the European Data Protection Supervisor of [date], which was consulted pursuant to Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council[3],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Investments in the Union contribute to its growth by improving its competitiveness, creating jobs and economies of scale, and bringing in capital, technologies, innovation and expertise.

(2) Article 3(5) of the Treaty on European Union (TEU) specifies that the Union, in its relations with the wider world, is to uphold and promote its values and interests and contribute to the protection of its citizens. Moreover, the Union and Member States have an open investment environment, which is enshrined in the Treaty on the Functioning of the European Union (TFEU) and embedded in the Union and its Member States' international commitments.

(3) However, under international commitments made in the World Trade Organization (WTO), the Organisation for Economic Cooperation and Development (OECD), and the trade and investment agreements concluded with third countries, it is possible for the Union and Members States to restrict foreign direct investments (FDIs) on the grounds of security or public order, subject to certain requirements.

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1 OJ C , , p. .

2 OJ C , , p. .

3 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39–98 , ELI: http://data.europa.eu/eli/reg/2018/1725/oj)

(4) In accordance with Regulation (EU) 2019/452 of the European Parliament and of the Council[4] a framework has been set up for screening FDIs into the Union by Member States. In particular, that Regulation has set out a cooperation mechanism enabling Member States and the Commission to exchange information on FDIs and raise concerns about risks to security or public order. That cooperation mechanism required the Member State where the FDI was planned or completed to give due consideration to the comments issued by other Member States and the opinion issued by the Commission in its screening decision.

(5) The framework set up in accordance with Regulation (EU) 2019/452 has delivered on its objective to provide a formal mechanism for Member States and the Commission to exchange information on FDIs and to raise awareness on cross-border risks to security or public order arising from certain FDIs.

(6) However, a new legislative instrument is needed to strengthen the efficiency and effectiveness of Regulation (EU) 2019/452 and ensure a higher degree of harmonisation across the Union.

(7) Certain investments not covered by Regulation (EU) 2019/452 could create risks for the Union's security and public order. In particular, this concerns certain investments carried out in Member States that do not have a screening mechanism; investments carried out in Member States that have a screening mechanism whose scope does not include certain sensitive investments; and investments that are made by foreign investors through a subsidiary established in the Union and that potentially present the same risks to security or public order as direct investments made from third countries.

(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 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

[4] 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 (OJ L 79I, 21.3.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/452/oj).

elements to be used for the assessment of foreign investments are established through Union action.

(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 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.

(10) Regulation (EU) 2019/452 only covers FDIs made from third countries into the Union. However, it is also necessary to extend the scope of the cooperation mechanism to investments made between Member States, where the investor in one Member State is controlled, directly or indirectly, by a foreign entity regardless of whether the ultimate owner is located in the Union or elsewhere. In particular, this extended scope is appropriate to ensure that any investment creating a lasting link between the foreign investor and the Union target, whether it is carried out directly by a foreign investor or through an entity established in the Union and controlled by a foreign investor, is consistently captured and assessed. This should foster the consistency and predictability of screening rules across Member States, which in turn will reduce compliance costs for foreign investors and limit incentives to target an investment in Member States where such transactions are out of scope.

(11) Investments in Union targets carried out by foreign investors, including investments executed through a controlled entity in the Union, may present specific risks to security and public order in the Union and its Member States. Such investor-related risks should not be present and therefore do not need to be addressed in an investment that only involves entities where no ownership, control, connection to or influence from foreign investors is present, including when a foreign investor participates in the Union entity without a controlling stake. Avoiding any divergence in the rules applicable to the treatment of foreign investments, regardless of whether they are made from outside the Union directly or through an entity already established in the Union, is necessary to ensure a coherent investment screening framework and the Union control mechanism. This framework reflects the importance of protecting security and public order and is exclusively targeted at risks that may arise from investments involving foreign entities. Therefore, Member States should ensure at least the screening of those foreign investments, which relate to projects or programmes of Union interest or where the Union target is active in areas, where a foreign investment may affect security or public order in more than one Member State. Member States should also be able to screen other foreign investments. When they do so, such screening should also comply with the provisions of this Regulation. Transactions with no foreign investor involvement or in which the level of involvement does not lead to the direct or indirect control of the Union entity are not covered by this Regulation.

(12) Screening foreign investments should be carried out in accordance with this Regulation, taking into account all factual information available and adhering to the principle of proportionality and other principles enshrined in the Treaties. Moreover,

the screening of foreign investments which are carried out through subsidiaries of the foreign investor established in the Union should in all cases comply with the requirements stemming from Union law, and in particular with the Treaty provisions on freedom of establishment and free movement of capital, as interpreted in the case-law of the Court of Justice of the European Union, consistently with the objective of preserving an open and inclusive internal market. Any restrictions to the freedom of establishment and free movement of capital in the Union, including the screening and measures arising from screening, such as mitigating measures and prohibitions should be based on a genuine and sufficiently serious threat to a fundamental interest of society, and should be appropriate and necessary as set out in the case law of the Court of Justice. At the same time, when assessing the justification and proportionality of a restriction, the specificities of investments within the Union operated through a subsidiary of a foreign investor may be taken into account when assessing any restrictions on freedom of establishment or to the free movement of capital, including where appropriate in any Commission opinion adopted pursuant to this Regulation. This should be done taking into account the integration of Member State schemes into a Union-wide cooperation mechanism.

(13) To enable the cooperation mechanism laid down in this Regulation to function efficiently and effectively, it is necessary to define a minimum common scope for foreign investments that all Member States should notify to the cooperation mechanism. Member States should remain free to notify foreign investments outside the scope of this Regulation.

(14) It is also necessary to make the Member State where the foreign investment is planned or completed more accountable to the Commission and to those Member States that express duly justified concerns for their public order or security or the Union's.

(15) The common framework set out in this Regulation should be without prejudice to the sole responsibility of Member States to safeguard their national security as provided for in Article 4(2) TEU. It should also be without prejudice to the protection of their essential security interests in accordance with Article 346 TFEU.

(16) Foreign investments that create or maintain lasting and direct links between investors from third countries (including state bodies) and Union targets carrying out an economic activity in a Member State should fall within the scope of this Regulation. This should apply where those investments are directly carried out from third countries or by a Union entity with foreign control. However, the framework should not cover the acquisition of company securities intended purely for financial investment without any intention to influence the management and control of the undertaking (portfolio investments). Restructuring operations within a group of companies or a merger of more than one legal entities into a single legal entity do not constitute a foreign investment, provided that there is no increase in the shares held by foreign investors, or the transaction does not result in additional rights that may lead to a change in the effective participation of one or more foreign investors in the management or control of a Union target.

(17) Greenfield foreign investments occur where the foreign investor or a foreign investor's subsidiary in the Union sets up new facilities or a new undertaking in the Union. Greenfield foreign investments should fall within the scope of this Regulation to the extent they are considered relevant by a Member State for the purpose of the screening of foreign investments because they create lasting and direct links between a foreign investor and such facilities or such undertakings. In addition, by setting up new

facilities, a foreign investor can impact on security and public order, including when that risk concerns essential economic inputs. Member States are therefore encouraged to include greenfield foreign investments in the scope of transactions covered by their screening mechanisms, in particular when such investments occur in sectors relevant to their security or public order or when they present characteristics such as size or essential nature to be relevant to their security or public order.

(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.

(19) The cooperation mechanism laid down in Regulation (EU) 2019/452 enables Member States to cooperate and help each other where a foreign direct investment in one Member State could affect the security or public order of other Member States or of projects or programmes of Union interest. This mechanism has proven very useful so far, hence it should be maintained and strengthened under this Regulation.

(20) To ensure that foreign investments likely to negatively affect security or public order in the Union are adequately identified, Member States should screen foreign investments where the Union target is part of or participates in a project or programme of Union interest or where the Union target's economic activity relates to a technology, asset, facility, equipment, network, system or service of particular importance for the security or public order interests of the Union. In addition to these criteria, screening mechanisms may apply to other sectors, Union targets or economic activities that the relevant Member State considers critical for its security or public order.

(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.

(22) To ensure that the likely effect of a foreign investments on the security or public order of one or more Member States is adequately identified, Member States should be able to provide comments to a Member State in which a foreign investment is planned or has been completed even if that Member State is not screening that foreign investment or if the foreign investment is screened but not notified to the cooperation mechanism. Requests for information, replies and comments from Member States should be notified to the Commission simultaneously.

(23) To ensure that the likely effect of a foreign investment on the security or public order of more than one Member States or the Union as a whole is adequately identified, it should be possible for the Commission to issue an opinion within the meaning of Article 288 TFEU to the Member State in which the foreign investment is planned or

has been completed, even if that foreign investment is not undergoing screening in that Member State or if that foreign investment is screened but not notified to the cooperation mechanism.

(24) Furthermore, to allow the protection of security or public order where the likely effect emanates from a foreign investment into a Union target that provides for the development, maintenance or acquisition of infrastructure, technologies or inputs, which are critical for the Union as a whole, the Commission should be allowed to issue an opinion. This would give the Commission a tool to protect projects and programmes which serve the Union as a whole and represent an important contribution to the Union's security or public order. A Commission opinion identifying the likely impact on projects or programmes of Union interest on the grounds of security or public order should be notified to all Member States.

(25) Furthermore, it should be possible for the Commission to adopt an opinion addressed to all Member States if it identifies several foreign investments that, taken together, are likely to impact the security or public order of the Union. This could notably be the case where several foreign investments present comparable characteristics. These include where the foreign investments are made by the same foreign investor, or foreign investors presenting similar risks, or where several foreign investments concern the same target or the same infrastructure, including trans-European infrastructure for transport, energy and communication. Member States and the Commission should discuss the risk analysis and the possible ways to address the risks identified in the opinion.

(26) To protect security or public order while providing greater certainty to investors, Member States should have the possibility to make comments and the Commission should have the possibility to issue an opinion on foreign investments that have been completed but not notified up to 15 months after the completion of the foreign investment.

(27) For greater clarity, the list of projects or programmes of Union interest should be listed in Annex I. These should include any foreign investments undertaken on the trans-European networks for transport, energy and communication, as well as programmes providing funding for research and development for activities relevant for the security or public order of the Union. Due to the importance of these projects and programmes for the security and public order of the Union, Member States should screen foreign investments into Union undertakings that are part of or participating in these projects or programmes, including those that receive funding from the Union.

(28) In order to ensure that the likely effect of a foreign investment on the security or public order of one or more Member States is adequately addressed, Member States receiving duly justified comments from other Member States or an opinion from the Commission should give such comments or opinion utmost consideration, including where it considers that its own security or public order is not affected. The Member State should coordinate with the Commission and the Member States concerned if necessary and provide them with written feedback on the decision taken and how the comments and the opinion have been given utmost consideration. The final decision on foreign investments should remain the sole responsibility of the Member State where the foreign investment is planned or completed.

(29) To ensure the effective functioning of the cooperation mechanism, it is important to require that the Member State notifying the foreign investment to the cooperation mechanism provides a minimum level of information in a standardised format. Where

the cooperation concerns a foreign investment not notified to the cooperation mechanism, the Member State where the foreign investment is planned or has been completed should be able to provide at least the same minimum level of information. The Commission and Member States may seek additional information from the Member State where the foreign investment is planned or completed. Such request for additional information should be duly justified, limited to the information necessary for the Member States to provide comments or for the Commission to issue an opinion, proportionate to the purpose of the request and not unduly burdensome for the notifying Member State.

(30) To ensure that the cooperation is based on complete and accurate information, a foreign investor or an undertaking should provide any relevant information requested by the Member State where they are established or the Member State where the foreign investment is planned or completed. In exceptional circumstances, when, despite its best efforts, a Member State is unable to obtain an information requested by another Member State or the Commission, it should notify them without delay. In such a case, any comment issued by another Member State, or any opinion issued by the Commission as part of the cooperation mechanism should be based on the information available to them.

(31) To ensure that the cooperation mechanism is only used for the purpose of protecting security or public order, Member States should duly justify any request for information about a specific foreign investment in another Member State and any comment they issue to that Member State. The same requirements apply when the Commission requests information about a particular foreign investment or issues an opinion to a Member State.

(32) Member States or the Commission, as appropriate, might consider relevant information received from economic operators, civil society organisations, social partners (such as trade unions) about a foreign investment likely to negatively affect security or public order.

(33) A Member State where a foreign investment is planned or has been completed may inform other Member States or the Commission if it wishes them to further analyse one or more aspects of a foreign investment that the cooperation mechanism is assessing or becomes aware of new circumstances or new information that may impact the assessment of the foreign investment. The other Member States and the Commission may then be granted additional time to complement their assessment of the foreign investment.

(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.

(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.

(36) Where the Member State where the foreign investment is planned or completed considers that a foreign investment is likely to negatively affect security or public order in the Union, it is appropriate to require that Member State to take appropriate measures to mitigate the risks, where such measures are available, and it considers them adequate, taking into utmost consideration the comments issued by other Member States and the opinion issued by the Commission, if applicable. Foreign investments should be prohibited only on an exceptional basis, and where mitigating measures or measures available under Union or national law other than the screening mechanism are not sufficient to mitigate the effect on security or public order.

(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.

(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.

(39) To ensure the efficacy of the coordination mechanism, the contact points put in place by Member States and the Commission should be suitably placed in the respective administrations. The contact points should have the qualified staff and powers needed to carry out their work under the coordination mechanism and ensure a proper handling of confidential information.

(40) Member States and the Commission should be encouraged to cooperate with the responsible authorities of like-minded third countries on issues related to the screening of foreign investments that could affect security or public order. Such administrative cooperation should aim to strengthen the effectiveness of the framework for screening

foreign investments by Member States and the cooperation between Member States and the Commission pursuant to this Regulation. The Commission should be kept informed of such bilateral contacts to the extent that they relate to systemic issues related to investment screening. It should also be possible for the Commission to monitor developments with regard to screening mechanisms in third countries.

(41) Member States and the Commission shall ensure the confidentiality of the information they provide or receive in application of this Regulation, in accordance with national and Union law. Where the unauthorised disclosure of information would cause varying degrees of prejudice to the interests of the European Union, or of one or more of the Member States, the originator of the information should classify the information in accordance with national and Union law. When responding to requests of access to documents handled in application of this Regulation, Member States and the Commission shall coordinate and provide at least the level of protection of the protected interests available under Article 4 of Regulation (EC) 1049/2001[5], with a view to protect the purpose of investigations. The Commission should take all necessary measures to ensure the protection of confidential information in compliance with, in particular, Commission Decision (EU, Euratom) 2015/443[6] and Commission Decision (EU, Euratom) 2015/444[7]. Similarly, Member States and the Commission should take all necessary measures to ensure compliance with the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the Union[8]. This includes, in particular, the obligation not to downgrade or declassify classified information without the prior written consent of the originator. Any non-classified sensitive information or information which is provided on a confidential basis should be handled as such by the authorities.

(42) Any processing of personal data pursuant to this Regulation should comply with the applicable rules on the protection of personal data. Processing of personal data by the contact points and other entities within Member States should be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council[9]. Processing of personal data by the Commission should be carried out in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council[10].

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5 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43–48, ELI: http://data.europa.eu/eli/reg/2001/1049/oj).

6 Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41, ELI: http://data.europa.eu/eli/dec/2015/443/oj).

7 Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53, ELI: http://data.europa.eu/eli/dec/2015/444/oj).

8 Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union (OJ C 202, 8.7.2011, p. 13).

9 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/679/oj).

10 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No

(43) The Commission should draw up an annual report on the implementation of this Regulation and submit it to the European Parliament and to the Council. For greater transparency, the report should be made public. The report should be based on, among other things, reports submitted by all Member States to the Commission on a confidential basis with due respect to the need to ensure the protection of the confidentiality of certain information, in particular where the publication of data could affect the security or public order of the Union or jeopardise commercial confidentiality.

(44) The Commission should evaluate the functioning and effectiveness of this Regulation 5 years after the date of application of this Regulation and every 5 years after that and present a report to the European Parliament and to the Council. That report should include an assessment of whether or not this Regulation should be amended. Where the report proposes amending this Regulation, it may be accompanied by a legislative proposal.

(45) The implementation of this Regulation by the Union and the Member States should comply with the relevant requirements for imposing restrictive measures on the grounds of security and public order laid down in the WTO agreements, including, in particular, Article XIV(a) and Article XIV bis of the General Agreement on Trade in Services[11] (GATS). It should also comply with the Union Treaties and be consistent with commitments made under other trade and investment agreements to which the Union or Member States are parties and trade and investment arrangements to which the Union or Member States are adherents.

(46) When a foreign investment constitutes a concentration falling within the scope of Council Regulation (EC) No 139/2004[12], the application of this Regulation should be without prejudice to the application of Article 21(4) of Regulation (EC) No 139/2004. This Regulation and Article 21(4) of Regulation (EC) No 139/2004 should be applied consistently. To the extent that the respective scope of application of those two Regulations overlap, the grounds for screening set out in Article 12 of this Regulation and the notion of legitimate interests within the meaning of Article 21(4), third subparagraph, of Regulation (EC) No 139/2004 should be interpreted coherently, without prejudice to the assessment of the compatibility of the national measures aimed at protecting those interests with the general principles and other provisions of Union law.

(47) This Regulation should not affect Union rules on the prudential assessment of acquisitions of qualifying holdings in the financial sector, laid down by Directives 2009/138/EC[13], 2013/36/EU[14] and 2014/65/EU[15] of the European Parliament and of the Council, which is a distinct procedure with a specific objective.

45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1725/oj).

[11] Council Decision of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p. 1).

[12] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1, ELI: http://data.europa.eu/eli/reg/2004/139/oj).

[13] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1, ELI: http://data.europa.eu/eli/dir/2009/138/oj).

(48) The application of this Regulation should be consistent with and without prejudice to other notification and authorisation procedures set out in Union law. The Commission should be allowed to use the information notified by the Member States to the cooperation mechanism to exercise its role of overseeing the application of Union law in accordance with Article 17 TEU.

(49) In order to take into account developments relating to projects or programmes of Union interest and to adapt the list of technologies, assets, facilities, equipment, networks, systems, services and economic activities of particular importance for the security or public order interests of the Union, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amendments to the Annexes to this Regulation. The list of projects and programmes of Union interest set out in Annex I should cover projects or programmes covered by EU law which provide for the development, maintenance or acquisition of critical infrastructure, critical technologies or critical inputs which are essential for security or public order. The list of technologies, assets, facilities, equipment, networks, systems, services and economic activities of particular importance for the security or public order interests of the Union set out in Annex II should include areas where a foreign investment may affect security or public order in more than one Member State or in the Union as a whole through an Union target, which does not participate in or receive funds from a project or programme of Union interest. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[16]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(50) In order to ensure uniform conditions for the implementation of this Regulation, in particular as regards the form to be used to provide minimum information about foreign investments, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[17].

(51) Regulation (EU) 2019/452 should be repealed. In order to allow sufficient time for Member States and entities to prepare for the implementation, this Regulation should apply as of [add date: 15 months after entry into force]. In the transitional period between the entry into force and the application of this Regulation, Regulation (EU) 2019/452 should continue to apply,

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14 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338, ELI: http://data.europa.eu/eli/dir/2013/36/oj).

15 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349, ELI: http://data.europa.eu/eli/dir/2014/65/oj).

16 OJ L 123, 12.5.2016, p. 1.

17 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, ELI: http://data.europa.eu/eli/reg/2011/182/oj).

HAVE ADOPTED THIS REGULATION:

CHAPTER 1
GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation establishes a Union framework for the screening, by Member States, of foreign investments in their territory, on the grounds of security or public order.

2. This Regulation establishes a cooperation mechanism to enable Member States and the Commission to exchange information on foreign investments, assess their potential impact on security or public order, and identify potential concerns that shall be addressed by the Member State that is screening the foreign investment.

3. Member States may adopt or maintain in force national provisions in fields not coordinated by this Regulation.

4. This Regulation is without prejudice to each Member State having sole responsibility for its national security, as provided for in Article 4(2) TEU, and to the right of each Member State to protect its essential security interests in accordance with Article 346 TFEU.

5. This Regulation is without prejudice to Member States' obligations under the Treaties, in particular Articles 49 and 63 TFEU. Member States shall ensure that any measure taken in the framework of this Regulation complies with those obligations. This Regulation is without prejudice to the powers of the Commission under Article 258 TFEU to ensure compliance with Union law.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'foreign investment' means a foreign direct investment or an investment within the Union with foreign control, which enables effective participation in the management or control of a Union target;

(2) 'foreign direct investment' means an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and an existing or to be established Union target, and to which target the foreign investor makes capital available in order to carry out an economic activity in a Member State;

(3) 'investment within the Union with foreign control' means an investment of any kind carried out by a foreign investor through the foreign investor's subsidiary in the Union, that aims to establish or to maintain lasting and direct links between the foreign investor and a Union target that exists or is to be established, and to which target the foreign investor makes capital available in order to carry out an economic activity in a Member State;

(4) ‘request for authorisation’ means the filing, under a screening mechanism established pursuant to Article 3, of a request to authorise foreign investment subject to an authorisation requirement;

(5) ‘notifiable investment’ means a foreign investment meeting at least one of the conditions set out in Article 5;

(6) ‘foreign investor’ means:

(a) a natural person of a third country; or

(b) an undertaking or entity established or otherwise organised under the laws of a third country;

(7) ‘foreign investor’s subsidiary in the Union’ means an economically active undertaking established under the laws of a Member State meeting the conditions set out in Article 22(1) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013[18], and directly or indirectly controlled by a foreign investor;

(8) ‘Union target’ means an undertaking established under the laws of a Member State;

(9) ‘Union target economically active in one of the areas listed in Annex II’ means an Union target active or intending to be active in technologies, assets, facilities, equipment, networks, systems, services and economic activities of particular importance for the security or public order interests of the Union, listed in Annex II, including through ownership, use, production or supply thereof;

(10) ‘applicant requesting an authorisation’ means the party or parties to a foreign investment transaction who applies for authorisation with the relevant screening authority;

(11) ‘third country’ means a jurisdiction, which is not a member of the Union;

(12) ‘screening’ means a procedure that allows a Member State to assess, investigate, authorise, authorise subject to mitigating measures, prohibit or unwind foreign investments on the grounds of security or public order;

(13) ‘screening mechanism’ means an instrument of general application, such as a law or regulation, and accompanying administrative requirements, implementing rules or guidelines, that set out the terms, conditions and procedures for the screening of foreign investments on the grounds of security or public order;

(14) ‘screening decision’ means a measure adopted by a screening authority in application of a screening mechanism resulting in the authorisation, authorisation subject to mitigating measures, prohibition or unwind of a foreign investment;

(15) ‘screening authority’ or ‘screening authorities’ means the authority or authorities designated by a Member State to screen foreign investments;

(16) ‘completion’ means the point in time when the last condition precedent has been met in relation to an investment decision by the parties to a foreign investment transaction;

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[18] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (*OJ L 182, 29.6.2013, p. 19–76, ELI:* http://data.europa.eu/eli/dir/2013/34/oj).

(17) ‘cooperation mechanism’ means the cooperation between Member States and the Commission on foreign investments pursuant to this Regulation;

(18) ‘projects or programmes of Union interest’ means projects or programmes covered by Union law that provide for the development, maintenance or acquisition of critical infrastructure, critical technologies or critical inputs which are essential for security or public order and are listed in Annex I;

(19) ‘notifying Member State’ means a Member State that has notified a notifiable investment to the cooperation mechanism pursuant to Article 5;

(20) ‘multi-country transaction’ means a foreign investment subject to screening mechanisms in several Member States;

(21) ‘multi-country notification’ means a notifiable investment that several Member States are required to notify to the cooperation mechanism;

(22) ‘mitigating measure’ means any condition to resolve the likely negative effect to security or public order arising from the foreign investment.

(23) ‘contact point’ means the person or entity designated by a Member State to notify notifiable investments to the cooperation mechanism, and to receive and send all communication related to foreign investments covered by this Regulation to the cooperation mechanism, on behalf of the screening authority.

CHAPTER 2
NATIONAL SCREENING MECHANISMS

Article 3

Establishment of screening mechanisms

1. Member States shall establish a screening mechanism in accordance with this Regulation.

2. Member States shall ensure that the screening mechanism referred to in paragraph 1 applies at least to investments subject to an authorisation requirement pursuant to Article 4(4).

3. Each Member State shall notify to the Commission the measures adopted pursuant to paragraph 1 no later than [date: 15 months after entry into force]. Member States shall thereafter notify the Commission of any amendment to their screening mechanism within 30 days of the adoption of the amendment.

4. The Commission shall make publicly available a list of Member States’ screening mechanisms no later than 3 months after having received all the notifications referred to in paragraph 3 or by [date: 21 months after entry into force], whichever occurs first. The Commission shall keep that list up to date.

Article 4

Minimum requirements

1. Rules and procedures related to screening mechanisms, and measures taken pursuant to such rules and procedures, shall comply with Union law, be transparent and shall not discriminate between third countries or between the Member States in which the foreign investor’s subsidiary in the Union is established.

2. Member States shall ensure that their screening mechanisms comply with the following requirements:

(a) adequate procedures shall be provided for the screening authority to determine whether it has jurisdiction over a foreign investment filed for authorisation and to carry out an initial review followed by, where necessary, an in-depth investigation to determine whether that foreign investment is likely to negatively affect security or public order. The purpose of the in-depth investigation shall be, in particular, to determine whether a screening decision as referred to in Article 14(1) is appropriate and to determine its content.

(b) the screening authority shall monitor and ensure compliance with the screening mechanism and screening decisions. In particular, it shall put in place adequate procedures to identify and prevent circumvention of the screening mechanism and screening decisions;

(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;

(d) confidential information, including commercially sensitive information, made available to the Member State carrying out the screening shall be protected;

(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;

(f) an annual report shall be made public, and shall include information on relevant legislative developments in the Member State and aggregate and anonymised data on the investments screened, including the outcome of screening decisions, nationalities, or country of establishment as the case may be, of parties to the investments notified to the screening authority, and the economic sectors in which those transactions took place;

(g) foreign investments subject to an authorisation requirement as referred to in paragraph 4 shall be filed by the applicant requesting authorisation with the screening authority and shall be screened before the foreign investment is completed;

(h) the screening authority shall be empowered to impose mitigating measures, prohibit, or unwind foreign investments subject to an authorisation requirement as referred to in paragraph 4 that were not filed or that were filed after completion and, where applicable, address effectively the consequences of non-compliance with the mitigating measures;

(i) adequate procedures shall be provided for the notification of notifiable investments to the cooperation mechanism pursuant to Article 5.

3. Before taking a decision to authorise a foreign investment subject to mitigating measures or to prohibit a foreign investment, Member States shall inform the applicant requesting an authorisation and state the reasons on which they intend to take their decision, subject to the protection of information the disclosure of which would be contrary to the security or public order interests of the EU or one or more

of the Member States and without prejudice to Union and national law concerning the protection of confidential information. Member States shall give the foreign investor the opportunity to make their views known before taking such decision.

4. Member States shall ensure that their screening mechanisms impose an authorisation requirement for foreign investments where the Union target established in their territory:

(a) is part of or participates in one of the projects or programmes of Union interest listed in Annex I, including as a recipient of funds as defined in Article 2 paragraph 53 of Regulation 2018/1046 of the European Parliament and of the Council [19], or

(b) is economically active in one of the areas listed in Annex II.

CHAPTER 3
THE UNION COOPERATION MECHANISM ON FOREIGN INVESTMENTS LIKELY TO NEGATIVELY AFFECT SECURITY OR PUBLIC ORDER

Article 5

Notification of foreign investments

1. Member States shall notify the Commission and the other Member States through the cooperation mechanism of any foreign investment in a Union target established in their territory that:

(a) meets the conditions set out in Article 4(4) point (a); or

(b) meets the conditions set out in Article 4(4) point (b) and any of the following conditions:

(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;

(ii) the foreign investor, a natural person or entity controlling the foreign investor, the beneficial owner of the foreign investor, any of the subsidiaries of the foreign investor, or any other party owned or controlled by, or acting on behalf or at the direction of, such a foreign investor is subject to Union restrictive measures pursuant to Article 215 TFEU; or

(iii) the foreign investor or any of its subsidiaries was involved in a foreign investment previously screened by a Member State and was not

[19] 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 (OJ L 193, 30.7.2018, p. 1–222, ELI: http://data.europa.eu/eli/reg/2018/1046/oj).

authorised or only authorised with conditions; to determine this, the notifying Member State shall rely on information available to them, including the information contained in the secure database set up pursuant to Article 7(10) and information provided by the foreign investor on this matter.

2. Member States shall notify the Commission and the other Member States of any foreign investment in a Union target established in their territory where they initiate an in-depth investigation under their screening procedures. Furthermore, Member States shall notify the Commission and the other Member States of any foreign investment in a Union target established in their territory, in exceptional cases, where they intend to impose a mitigating measure or to prohibit the transaction without an in-depth investigation.

3. Member States may notify any foreign investment that do not meet the conditions set out in paragraphs 1 and 2 if the Member State where the Union target is established considers that a foreign investment could be of interest to the other Member States and the Commission from a security or public order perspective, 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 which are economically active in one of the areas listed in Annex II.

Where a Member State intends to notify a foreign investment in its territory that forms part of a multi-country transaction pursuant to Article 6(2), it shall coordinate with the other Member States who received the request for authorisation. The respective Member States shall notify the multi-country transaction and they shall endeavour to send their notifications to the cooperation mechanism on the same day.

Article 6

Content and procedures for notification of foreign investments

1. Member States shall ensure that a notification pursuant to Article 5 contains the information referred to in Article 10(1) and is sent to the Commission and other Member States via the secure and encrypted system referred to in Article 12(4):

   (a) within 15 calendar days of receiving the respective request for authorisation for foreign investments meeting any of the conditions set out in Article 5(1) or (3);

   (b) within 60 calendar days of receiving the request for authorisation for foreign investments meeting the conditions set out in Article 5(2).

2. The following procedures shall apply to multi-country transactions:

   (a) applicants requesting an authorisation shall file their requests for authorisation in all relevant Member States on the same day, and each request for authorisation shall make reference to the other requests;

   (b) where a Member State receives a request for authorisation that meets the conditions set out in point (a), it shall coordinate with the other Member States concerned, inter alia, to determine whether point (c) or (d) of this paragraph is applicable; the Commission may participate in such coordination upon request from one or more Member States;

   (c) if the requests for authorisation concern a foreign investment meeting any of the conditions set out in Article 5(1), the respective Member States shall send

their notifications to the cooperation mechanism on the same day and within the deadline laid down in point (a) of paragraph 1 of this Article;

(d) if the requests for authorisation concern a foreign investment meeting the conditions set out in Article 5(2), the respective Member States shall endeavour to send their notifications to the cooperation mechanism on the same day.

Article 7

Comments by Member States and opinions by the Commission on notified foreign investments

1. Any Member State may issue duly motivated comments to the notifying Member State via the secure and encrypted system referred to in Article 12(4). A Member State may issue such comments if it:

   (a) considers that a foreign investment is likely to negatively affect its security or public order; or

   (b) has information relevant for the screening of that foreign investment.

   The Member State issuing comments shall simultaneously send its comments to the Commission and inform through the cooperation mechanism all other Member States that comments have been provided.

2. The Commission may issue a duly motivated opinion addressed to the notifying Member State via the secure and encrypted system referred to in Article 12(4). The Commission may issue such an opinion if:

   (a) it considers that such a foreign investment is likely to negatively affect the security or public order of more than one Member State;

   (b) it considers that such a foreign investment is likely to negatively affect projects or programmes of Union interest on grounds of security or public order;

or

   (c) it has relevant information related to that foreign investment.

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

3. The Commission may issue a duly motivated opinion addressed to all Member States if it considers that several foreign investments or other similar investments if they were to be made, taken together, and having regard to their characteristics could affect the security or public order of the Union. After a Commission opinion is issued, the Commission may, as appropriate, discuss with Member States how to address the identified risks.

4. The Commission shall:

   (a) send opinions meeting the conditions set out in points (a) and (c) of paragraph 2 to all Member States that provided comments and notify the other Member States that an opinion was issued via the secure and encrypted system referred to in Article 12(4);

   (b) send opinions meeting the conditions set out in point (b) of paragraph 2 and opinions meeting the conditions in paragraph 3 to all Member States via the secure and encrypted system referred to in Article 12(4).

5. Where a Member State where the foreign investment is planned or completed receives a comment from another Member State pursuant to paragraph 1 or an opinion from the Commission pursuant to paragraph 2 or 3, it shall give utmost consideration to such a comment or opinion.

6. Following the receipt of a comment pursuant to paragraph 1, the Member State shall set up a meeting with the Member States who issued comments to discuss how to best address the risks identified. If the Member State where the foreign investment is planned or completed disagrees with the risks identified or, if applicable, the measure proposed with the comment, the Member States shall aim to identify alternative solutions. Where the comment concerns a multi-country transaction, the other Member States who notified the foreign investment shall also be invited to discuss whether the intended outcomes are compatible with one another and, where applicable, the intended conditions are able to address identified cross-border risks adequately. The Commission shall be invited to any such meetings.

7. Following the receipt of an opinion pursuant to paragraph 2 or 3, the procedure set out in paragraph 6 shall apply *mutatis mutandis*.

8. Following the receipt of an opinion pursuant to paragraph 2 or 3, the Member State where the foreign investment is planned or completed shall:

   (a) notify its screening decision to the respective Member States and to the Commission via the secure and encrypted system referred to in Article 12(4) no later than 3 calendar days after it was sent to the respective parties to the foreign investment;

   (b) provide a written explanation to the respective Member States and the Commission via the secure and encrypted system referred to in Article 12(4) no later than 7 calendar days after the screening decision was notified pursuant to paragraph (a) on:

      (i) the extent to which it gave the Member States' comments or the Commission opinion utmost consideration; or

      (ii) the reason for its disagreement with the Member States' comments or the Commission opinion.

9. Where the Member States or the Commission indicate that the screening decision referred to in paragraph 8, subparagraph (a), of this Article does not give utmost consideration to their comments provided pursuant to pursuant to paragraph 1 or the opinion provided pursuant to paragraph 2 or 3, the Member State where the investment is planned or completed shall organise a meeting to explain the obstacles encountered or the reasons for disagreement and shall endeavour to identify solutions, should a similar situation arise in the future. Where the screening decision concerns a multi-country notification, the other Member States who notified the foreign investment to the cooperation mechanism shall also be invited. The Commission shall be invited to any meetings organised pursuant to this paragraph.

10. The Commission shall set up a secure database made available to all Member States with information on the foreign investments assessed by the cooperation mechanism and the outcome of the assessments under the national screening mechanisms, including information about the relevant screening decisions. The Commission shall upload to that database the information it has at its disposal since 12 October 2020. By [date of application of this Regulation] Member States shall upload to that database the information at their disposal about the outcome of the relevant

procedure under their own screening mechanisms. They may also provide additional explanations.

11. When issuing comments or an opinion pursuant to this Article, the Member States, and the Commission, as the case may be, shall consider whether such comments or opinion should be classified information and what level of classification should apply thereto, in accordance with Union and the respective national law on classified information.

Article 8

Deadlines and procedures for providing comments and opinions on notified foreign investments

1. Before a Member State issues a comment or the Commission issues an opinion pursuant to Article 7, the following procedure shall apply:

   (a) Member States shall inform the notifying Member State via the secure and encrypted system referred to in Article 12(4) that they reserve their right to issue comments no later than 15 calendar days following the receipt of the notification pursuant to Article 5;

   (b) the Commission shall inform the notifying Member State via the secure and encrypted system referred to in Article 12(4) that it reserves its right to issue an opinion no later than 20 calendar days following the receipt of the notification pursuant to Article 5.

2. When reserving their right to issue comments or an opinion, Member States and the Commission may request additional information from the notifying Member State. Any request for additional information shall be duly justified, limited to the information necessary for the Member States to provide comments or for the Commission to issue an opinion, proportionate to the purpose of the request and not unduly burdensome for the notifying Member State. Where a Member State requests additional information from the notifying Member State, it shall send such requests to the Commission simultaneously.

3. The following deadlines shall apply to the issuing of comments by Member States and opinions by the Commission referred to in Article 7:

   (a) where a Member State reserves its right to issue comments on a notified foreign investment without requesting additional information from the notifying Member State, the respective comments shall be addressed to the notifying Member State via the secure and encrypted system referred to in Article 12(4) no later than 35 calendar days following receipt of the complete notification of the foreign investment;

   (b) where the Commission reserves its right to issue an opinion on a notified foreign investment without requesting additional information from the notifying Member State, the respective opinion shall be addressed to the notifying Member State via the secure and encrypted system referred to in Article 12(4) no later than 45 calendar days following receipt of the complete notification of the foreign investment;

   (c) where a Member State reserves its right to issue comments on a notified foreign investment and requests additional information from the notifying Member State, the respective comments shall be addressed to the notifying

Member State via the secure and encrypted system referred to in Article 12(4) no later than 20 calendar days following receipt of the complete additional information;

(d) where the Commission reserves its right to issue an opinion and requests additional information from the notifying Member State, the respective opinion shall be issued to the notifying Member State via the secure and encrypted system referred to in Article 12(4) no later than 30 calendar days following receipt of the complete additional information.

The notifying Member State shall take their screening decision only after the deadlines referred to in points (a)-(d) have expired.

4. The notifying Member State shall notify the Commission and the other Member States via the secure and encrypted system referred to in Article 12(4) any substantial new information or circumstances relevant for the assessment of a foreign investment already notified pursuant to Article 5. If this information is made available before the deadlines set out in paragraph 3 expire, the notifying Member State, the Commission and the other Member States shall endeavour to agree on a mutually acceptable extension of the deadline. If the deadlines for the assessment of the initial notification set out in paragraph 3 have passed, they shall resume according to the deadlines set out in point (c) and (d) of paragraph 3.

5. The notifying Member State shall provide the complete additional information requested by the Commission or other Member States pursuant to paragraph 2 without undue delay via the secure and encrypted system referred to in Article 12(4). Where the notifying Member State provides additional information to a Member State, such additional information shall be sent to the Commission simultaneously.

6. Where the notifying Member State receives several requests for additional information about the same notifiable investment, it shall provide all the additional information requested simultaneously.

7. Where several notifying Member States receive requests for additional information about a given multi-country notification, the deadlines set out in paragraph 3 shall commence on the date of receipt of the last complete additional information. The Commission shall communicate this date and the deadline to the respective Member States.

8. Where, due to exceptional circumstances, the notifying Member State considers that its security or public order requires issuing a screening decision before the deadlines referred to in paragraph 3 expire, it shall notify the other Member States and the Commission of its intention and duly justify the need for immediate action. The other Member States and the Commission shall provide comments or issue an opinion expeditiously. This procedure shall not be invoked to serve purely the commercial interests of the applicant requesting the authorisation.

9. All deadlines set out in this Article shall be suspended between 25 December and 1 January and shall resume on 2 January.

Article 9

Own initiative procedure

1. A Member State that considers that a foreign investment in the territory of another Member State which has not been notified to the cooperation mechanism is likely to

negatively affect its security or public order, it may open an own initiative procedure in relation to that foreign investment. Before opening the procedure, the Member State shall check that the Member State where the investment is planned or completed does not intend to notify the foreign investment to the cooperation mechanism.

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.

3. The Commission may open an own initiative procedure when it considers that a foreign investment in the territory of a Member State which has not been notified to the cooperation mechanism falls under Article 7(2). Before opening the procedure, the Commission shall check that the Member State where the investment is planned or completed does not intend to notify the foreign investment to the cooperation mechanism.

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.

5. The Member States or the Commission shall open the own initiative procedure set out in paragraph 1 and 3 respectively by sending a duly motivated request for information via the secure and encrypted system referred to in Article 12(4) to the Member State where the foreign investment is planned or has been completed. Any request for information pursuant to this paragraph shall be duly justified, limited to the information necessary for the Member States to provide comments or for the Commission to issue an opinion, proportionate to the purpose of the request and not unduly burdensome for the notifying Member State. Where the request for information is submitted by a Member State, that Member State shall send the request to the Commission simultaneously.

6. The Member State where the investment is planned or completed shall provide the complete information requested by the other Member States or the Commission pursuant to paragraph 5 without undue delay via the secure and encrypted system referred to in Article 12(4). Where the notifying Member State provides additional information to a Member State, such additional information shall be sent to the Commission simultaneously.

7. Following receipt of information referred to in paragraph 6, Member States may provide comments and the Commission may provide an opinion to the Member State where the foreign investment is planned or has been completed. The rules and procedures laid down in Article 7 and 8 shall apply *mutatis mutandis*, subject to the following modifications:

   (a) the comments by Member States or the opinion by the Commission shall be sent no later than 35 calendar days following receipt of the complete information requested pursuant to paragraph 5.

   (b) for procedures initiated pursuant to paragraph 1, the Commission shall have 15 additional calendar days to issue an opinion after the deadline for the Member State set out in point (a) of this paragraph have expired.

Article 10

Information requirements

1. Member States shall ensure that information provided in the notification referred to in Article 5 and to the request of information referred to in 9(5) include:

   (a) the name of the investor, the global ultimate owner of the investor and the Union target, the ownership structure of the investor and, where applicable, of the corporate group to which the investor is a part;

   (b) a comprehensive description of the investment, its value and information on the ownership of the Union target, before and after the foreign investment, on the funding of the investment and its source, on the basis of the best information available to the Member State;

   (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;

   (d) if applicable, information about the other legal entities of the same corporate group as the Union target that are located in other Member States;

   (e) activities of the foreign investor, its name and address; and

   (f) the date when the foreign investment is planned to be completed or has been completed.

2. The Commission shall set out, by means of implementing acts pursuant to Article 21, to be adopted prior to the date of application of this Regulation referred to in Article 24(2), the form to be used to provide the type of information required under paragraph 1.

3. Where the Commission or Member States request additional information pursuant to Article 8(1) or Article 9(5) from the Member State where the foreign investment is planned or has been completed, that Member State shall endeavour to provide such information, if available, to the requesting Member States and the Commission.

4. Where necessary, the Member State where the foreign investment is planned or has been completed may request the applicant requesting an authorisation or any other relevant undertaking to provide the information referred to in paragraphs 1 and 3. The request for information may concern information necessary for the Member State to determine if any of the conditions set out in Article 5(1) are met. The undertaking concerned shall provide the requested information to the Member State where the foreign investment is planned or has been completed within 15 calendar days of the request.

5. The Member State where the foreign investment is planned or completed and the Commission may request other Member States to seek information from undertakings in their territory, provided this information is relevant and strictly necessary for assessing a foreign investment pursuant to Article 13. The Member State receiving the request to seek information shall, without delay, request the undertaking to provide that information and shall notify it to the Member State where the foreign investment is planned or completed and the Commission, in accordance with the procedure set out in Articles 8(2) and 9(6) as applicable.

6. A Member State shall notify the Commission and the other Member States concerned if, in exceptional circumstances, it is unable, despite its best efforts, to

provide the information referred to in paragraphs 3, 4 or 5. That Member State shall duly explain the reasons for not being able to provide the information.

7. If no or incomplete information is provided, the comment issued by Member States, or the opinion issued by the Commission may be based on the information available to them.

8. Where the information referred to in paragraphs 1 to 6 originates from an undertaking, the Member State receiving the information from the undertaking shall check the completeness of the information and shall take reasonable steps to ensure that the information is accurate before providing it to the Commission and other Member States.

Article 11

Common requirements for screening mechanisms to ensure an effective cooperation mechanism

1. Member States shall provide the necessary resources, legal and administrative means for their efficient and effective participation in the cooperation mechanism.

2. Each Member State and the Commission shall designate a contact point for the purposes of the cooperation mechanism.

3. Member States shall ensure that the deadlines and procedures set out in their screening mechanisms allow them to provide complete answers to requests for additional information by the Commission or other Member States.

4. Member States shall ensure that their screening mechanisms give sufficient time and means to assess and give utmost consideration to other Member States' comments and Commission opinions before a screening decision is taken. This includes having all necessary legal means and powers to consider concerns expressed or likely impacts identified by another Member State or the Commission in its screening decision or in any other relevant instrument at its disposal. Where a foreign investment is notified to the Commission and other Member States pursuant to Article 5, the screening mechanisms shall not allow Member States to take their screening decision until the deadlines for comments by the Member States and Commission opinions set out in Article 8(3) expire.

5. Member States shall ensure that their national laws allow compliance with the obligations set out in paragraphs 5 to 9 of Article 7.

6. The screening authorities shall be empowered to investigate, assess, decide on and monitor foreign investments brought to their attention pursuant to Article 9(7).

7. Where mitigating measures in a screening decision require compliance by undertakings established in other Member States, the Member States that adopted a screening decision shall cooperate with the other Member State or Member States concerned on the monitoring and enforcement of screening decision. Member States shall ensure that they have all necessary legal means and powers to address effectively the consequences of non-compliance with the mitigating measures provided in a screening decision.

Article 12

Confidentiality of information exchanges in the cooperation mechanism

1. Information received in accordance with the procedures set out in Articles 5, 7 and 9 shall be used only for the purpose for which it was requested, unless:

   (a) the originator of the information explicitly agrees to another use; or

   (b) the Court of Justice of the European Union or a court of the Member State where the foreign investment is planned or completed requests such information for the purpose of legal proceedings.

2. Member States and the Commission shall ensure the confidentiality of the information they provide or receive in application of this Regulation, in accordance with national and Union law. When dealing with requests for access to documents provided or received in application of this Regulation, Member States and the Commission shall refrain from disclosing any information that would undermine the purpose of the investigations conducted pursuant to this Regulation.

3. Member States and the Commission shall ensure that classified information provided or exchanged under this Regulation is not downgraded or declassified without the prior written consent of the originator.

4. The Commission shall provide a secure and encrypted system to support the exchange of information between the contact points.

CHAPTER 4
FOREIGN INVESTMENTS LIKELY TO NEGATIVELY AFFECT SECURITY OR PUBLIC ORDER

Article 13

Determination of likely negative impact on security and public order

1. Member States shall determine, for the purposes of taking a screening decision pursuant to Article 14 or issuing a duly motivated comment pursuant to Article 7(1) or Article 9(7), whether a foreign investment is likely to negatively affect security or public order.

2. The Commission shall determine, for the purpose of issuing a duly motivated opinion pursuant to Article 7(2) or (3) or Article 9(7), whether it considers a foreign investment to be likely to negatively affect security or public order.

3. When determining whether an investment is likely to negatively affect security or public order, the Member States or the Commission shall in particular consider whether the investment concerned is likely to negatively affect:

   (a) the security, integrity and functioning of critical infrastructure, whether physical or virtual; in that context, based on the information available, it shall also be assessed whether the foreign investment is likely to negatively affect the resilience of any of the critical entities they have identified under Directive (EU) 2022/2557 of the European Parliament and of the Council[20] as well as entities in scope of Directive (EU) 2022/2555 of the European Parliament and

[20] Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC (OJ L 333, 27.12.2022, p. 164–198, ELI: http://data.europa.eu/eli/dir/2022/2557/oj).

of the Council[21]. The results of the Union level coordinated security risk assessments of critical supply chains carried out in accordance with Article 22(1) of Directive (EU) 2022/2555 shall also be taken into account. ;

(b) the availability of critical technologies;

(c) the continuity of supply of critical inputs;

(d) the protection of sensitive information, including personal data, in particular with regard to the ability of the foreign investor to access, control, and otherwise process such personal data, or

(e) the freedom and pluralism of the media, including online platforms that can be used for large scale disinformation or criminal activities.

4. When determining whether an investment is likely to negatively affect security or public order, the Member States or the Commission shall also take into account information related to the foreign investor, including:

(a) whether the foreign investor, a natural person or entity controlling the foreign investor, the beneficial owner of the foreign investor, any of the subsidiaries of the foreign investor, or any other party owned or controlled by, or acting on behalf or at the direction of the foreign investor was involved in a foreign investment previously screened by a Member State and that was not authorised or was only authorised with conditions; to determine this, Member States and the Commission shall rely on information available to them, including the information contained in the secure database set up pursuant to Article 7(10);

(b) where applicable, the reasons for subjecting the foreign investor, a natural person or entity controlling the foreign investor, the beneficial owner of the foreign investor, any of the subsidiaries of the foreign investor, or any other party owned or controlled by, or acting on behalf or at the direction of the foreign investor to restrictive measures pursuant to Article 215 TFEU;

(c) whether the foreign investor or any of its subsidiaries has already been involved in activities negatively affecting the security or public order in a Member State;

(d) whether the foreign investor or any of its subsidiaries has engaged in illegal or criminal activities, including the circumvention of Union restrictive measures pursuant to Article 215 TFEU;

(e) whether the foreign investor, a natural person or entity controlling the foreign investor, the beneficial owner of the foreign investor, any of the subsidiaries of the foreign investor, or any other party owned or controlled by, or acting on behalf or at the direction of the foreign investor is likely to pursue a third country's policy objectives, or facilitate the development of a third country's military capabilities.

[21] Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (OJ L 333, 27.12.2022, p. 80–152, ELI: http://data.europa.eu/eli/dir/2022/2555/oj).

Article 14

Screening decisions on foreign investments likely to negatively affect security or public order

1. Where, taking into account the criteria laid down in Article 13 and, where applicable, in the light of comments provided by other Member States pursuant to Article 7(1) or Article 9(7), or an opinion provided by the Commission pursuant to Article 7(2) or (3) or Article 9(7), the Member State in which the foreign investment is planned or completed concludes that the foreign investment is likely to negatively affect security or public order in one or more Member States, including where a project or programme of Union interest is concerned, it shall issue a screening decision to:

   (a) authorise the foreign investment subject to mitigating measures, or

   (b) prohibit the foreign investment.

   The screening decision shall comply with the principle of proportionality and take into consideration all circumstances of the foreign investment.

2. Where the Member State where the foreign investment is planned or completed considers that other measures pursuant to Union or national law are available and appropriate to address the foreign investment's effect on security and public order, the foreign investment shall be authorised without conditions.

CHAPTER 5
FINAL PROVISIONS

Article 15

International cooperation

Member States and the Commission may cooperate with the responsible authorities of third countries on issues relating to the screening of investments on grounds of security and public order.

Article 16

Annual reporting at Union level

1. By 31 March of each year beginning in [add date: first year of application], Member States shall report to the Commission, on a confidential basis, on their activities under their screening mechanism and under the cooperation mechanism for the preceding calendar year. This report shall contain information on:

   (a) the number of foreign investments screened after a request for authorisation and after an own initiative procedure;

   (b) the number of foreign investments approved with and without conditions;

   (c) the number of foreign investments prohibited, the number of foreign investments withdrawn;

   (d) the number of foreign investments notified to the cooperation mechanism, and the number of comments issued by the respective Member State;

   (e) information on the origin of the foreign investors and the sector of activity of the targets of the foreign investments screened, authorised or prohibited;

(f) an aggregate presentation of risks and vulnerabilities identified in the foreign investments that led to a screening decision;

2. On the basis of the information received in accordance with paragraph 1, and based on its assessment of trends and developments, the Commission shall provide an annual report on implementation of this Regulation to the European Parliament and to the Council. That report shall be made public.

Article 17

Processing of personal data

1. Any processing of personal data pursuant to this Regulation shall be carried out in accordance with Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 and only when necessary for the screening of foreign investments by Member States and for ensuring the effectiveness of the cooperation provided for in this Regulation.

2. Personal data related to the implementation of this Regulation shall be kept only for the time necessary to achieve the purposes for which they were collected.

Article 18

Evaluation

1. The Commission shall evaluate the functioning and effectiveness of this Regulation 5 years after the date of application of this Regulation and every 5 years thereafter and present a report to the European Parliament and to the Council. Member States shall be involved in this exercise and, if necessary, provide the Commission with additional information for the preparation of that report.

2. Where the report from the Commission recommends amendments to this Regulation, it may be accompanied by a legislative proposal.

Article 19

Delegated acts

1. The Commission is empowered to adopt delegated acts in accordance with Article 20 for the purposes of amending, where necessary, the list of projects or programmes of Union interest set out in Annex I to take account of the adoption and amendment of Union law relating to projects or programmes of Union interest relevant to security or public order.

2. The Commission is empowered to adopt delegated acts in accordance with Article 20 for the purposes of amending, where necessary, the list technologies, assets, facilities, equipment, networks, systems, services and economic activities of particular importance for the security or public order interests of the Union set out in Annex II to take account of changes in the circumstances relevant to the security or public order interests of the Union. In particular, these considerations shall include the following:

(a) the resilience of supply chains of particular importance for the security or public order interests of the Union;

(b) the resilience of infrastructures of particular importance for the security or public order interests of the Union;

(c) the advancement of technologies of particular importance for security or public order of the Union;

(d) the emergence of vulnerabilities in relation to access to or other forms of processing of sensitive information, including personal data to the extent they are likely to negatively affect the security or public order interests of the Union; and

(e) the emergence of a geopolitical situation of particular importance for security or public order of the Union.

Article 20

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

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].

3. The delegation of power may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 19 shall enter into force only if no objection has been expressed by the European Parliament or the Council within 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months on the initiative of the European Parliament or of the Council.

Article 21

Committee procedure for implementing acts

1. The Commission is empowered to adopt implementing acts setting out the forms to be used to provide the information indicated in Article 10(1).

2. Implementing acts referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in Article 22(2).

Article 22

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 23

Repeal

Regulation (EU) 2019/452 is repealed with effect from [date: 15 months after entry into force].

References to the repealed Regulation shall be construed as references to this Regulation.

Article 24

Entry into force and application

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

It shall apply from [date: 15 months after entry into force].

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned

1.3. The proposal/initiative relates to:

1.4. Objective(s)

1.4.1. General objective(s)

1.4.2. Specific objective(s)

1.4.3. Expected result(s) and impact

1.4.4. Indicators of performance

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.

1.5.3. Lessons learned from similar experiences in the past

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

1.5.5. Assessment of the different available financing options, including scope for redeployment

1.6. Duration and financial impact of the proposal/initiative

1.7. Method(s) of budget implementation planned

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

3.2.2. Estimated output funded with operational appropriations

3.2.3. Summary of estimated impact on administrative appropriations

3.2.3.1. Estimated requirements of human resources

3.2.4. Compatibility with the current multiannual financial framework

3.2.5. Third-party contributions

3.3. Estimated impact on revenue

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

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.

1.2. Policy area(s) concerned

Common commercial policy / single market.

1.3. The proposal/initiative relates to:

☐ **a new action**

☐ **a new action following a pilot project/preparatory action**[1]

☒ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

The general objective of the proposed regulation is to enhance the EU's security and public order in the context of foreign direct investments and investments made by foreign investors through an undertaking established in the EU ('foreign investments').

1.4.2. Specific objective(s)

1. To provide legal certainty for national screening mechanisms on grounds of security and public order to the extent they concern foreign investment as defined by the proposed regulation. 2. To increase consistency between national screening mechanisms, allowing a more efficient and effective screening of transactions across the EU and preventing fragmentation of the internal market due to the significant differences between national screening mechanisms. 3. To require all Member States to adopt and maintain a mechanism that enables them to effectively screen foreign investments on grounds of public order or security. 4. To improve the efficiency and effectiveness of the cooperation mechanism between Member States and the Commission on foreign investments covered by the proposed regulation.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The proposed regulation revises and improves the cooperation mechanism between the Member States and the Commission created by Regulation (EU) 2019/452. The new rules aim to improve the EU's ability to detect foreign investments likely to negatively affect security or public order. It is also expected to provide a more

[1] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

efficient and effective procedure for the assessment of transactions that require screening authorisation in more than one Member State.

The proposed regulation will require all Member States to maintain a screening mechanism that enables them to effectively screen foreign investments on grounds of public order or security. These screening mechanisms will have to support Member States' participation in the cooperation mechanism, including the ability of Member States to take into account the security concerns of other Member States and the Commission in their screening decisions.

The proposed regulation should continue facilitating the exchange of good practices between Member States, including at meetings of the Commission expert group on the screening of FDI into the EU. This should result in further alignment of national screening rules and their implementation.

The proposed regulation should continue to support international cooperation with non-EU countries on issues related to FDI screening, with due respect to the confidentiality of transactions and related screening investigations.

Overall, the proposed regulation is expected to increase security and public order without deterring foreign investment into the EU.

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

The number of Member States with a screening mechanism that corresponds to the requirements set out by the proposed regulation.

The number of transactions assessed by the cooperation mechanism per year.

The share of transactions on which Member States issued comments and/or the Commission provided an opinion to the Member State where the investment is planned or completed (the 'host Member State').

The number and type of actions taken by Member States in relation to transactions that are likely to negatively affect the security or public order of the host Member State or other Member States, or projects or programmes of EU interest on grounds of security or public order.

Due to the lack of appropriate methodologies or macroeconomic models, it is not possible to measure the impact of the proposed regulation (or FDI screening in general) on the inflow of investments to the EU.

The proposed regulation provides for an annual report by the Commission to the European Parliament and the Council on the implementation of the Regulation.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term, including a detailed timeline for roll-out of the implementation of the initiative

The proposed regulation will be directly applicable, but it is also expected to require legislative action at national level. By the time the proposed regulation is fully applicable (i.e. 15 months after entry into force), all Member States will have to put in place effective procedures for its implementation, particularly for the screening of foreign investments in their territory and their participation in the cooperation mechanism. Furthermore, all Member States should have a legal basis to take into

account the security concerns of other Member States and the Commission, and, where necessary, take measures that can address these concerns.

The proposed regulation will be evaluated within 5 years after its entry into force. The evaluation will examine in particular whether, and to what extent, the proposed regulation has contributed to the protection of the EU's security and public order.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at EU level (*ex ante*):

The proposed regulation is expected to:

– generate more added value than Member States could individually generate;

– increase the effective protection of security and public order from the risks posed by certain FDIs to a greater extent than Member States could individually increase it;

– require all Member States to set up a screening mechanism and secure the alignment of their national screening mechanisms. This would not occur without an EU-level framework.

Expected generated EU added value (*ex post*):

Promote the adoption and modernisation of national screening mechanisms on grounds of security and public order.

Provide security-relevant information to Member States that they would not have without the cooperation mechanism.

Have an impact on the decision taken by the Member State screening a transaction.

Promote convergence between Member States on what may constitute a risk to security or public order and how risks to security or public order are assessed.

Allow an efficient examination of transactions that are subject to authorisation in more than one Member State. The administrative burden on businesses related to screening authorisation procedures should therefore be lower and the deadlines of relevant national decisions should be better aligned. This should increase predictability and legal certainty for foreign investors and companies receiving a foreign investment.

1.5.3. Lessons learned from similar experiences in the past

The proposed regulation would repeal and replace the current Regulation (EU) 2019/452. It is accompanied by an evaluation report, which summarises the lessons learned from the implementation of the current Regulation.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

The initiative can be fully financed by redeploying funds within the relevant headings of the 2021-2027 multiannual financial framework (MFF). The financial

impact on appropriations will be entirely covered by the allocations foreseen in the 2021-2027 MFF for the implementation of Regulation (EU) 2019/452.

The implementation of the proposed regulation will be consistent with, and without prejudice to, other notification or authorisation procedures set out in EU law. The Regulation is consistent with EU restrictive measures (sanctions) which, on the basis of Article 215 TFEU, take precedence over other EU regulations and may prohibit or stand in the way of authorising FDI by certain third countries or nationals of third countries.

During the assessment of transactions, the Commission will continue to benefit from existing expertise in its services related to the sectors covered by the Regulation.

1.5.5. Assessment of the different available financing options, including scope for redeployment

Not applicable.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

– ☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☒ **unlimited duration**

– Implementation with a start-up period from 2026,

– followed by full-scale operation.

1.7. Method(s) of budget implementation planned

☒ **Direct management** by the Commission

– ☒ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐ the EIB and the European Investment Fund;

– ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

– ☐ bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

The final decision on any foreign investment will remain the responsibility of the Member State where the investment is planned or completed. The Commission will therefore be responsible for ensuring that Member States comply with the proposed regulation, but the Member State where the foreign investment is planned or completed will remain responsible for notifying the transactions to the cooperation mechanism and liaising with the notifying parties involved in the screening procedure (including obtaining the information necessary for the assessment of the transaction by other Member States and the Commission). Furthermore, Member States will remain responsible for the decision on individual foreign investments (authorisation, conditional authorisation or prohibition) and for the monitoring and enforcement of their screening decisions.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The Regulation will require the Commission to report annually to the European Parliament and the Council about the implementation of the Regulation. The Regulation will be evaluated and reviewed 5 years after its entry into force. The evaluation will particularly examine whether and to what extent the specific objectives have contributed to the protection of security and public order in the EU. The Commission will report on the findings to the European Parliament and the Council. If the report recommends amendments to the Regulation, it may be accompanied by an appropriate legislative proposal.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

Not applicable.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

Not applicable.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

Not applicable.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

Not applicable.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[1]	from EFTA countries[2]	from candidate countries and potential candidates[3]	from other third countries	other assigned revenue
6	14.20.04.02	Diff.	NO	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries and potential candidates	from other third countries	other assigned revenue
	Not applicable		YES/NO	YES/NO	YES/NO	YES/NO

[1] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
[2] EFTA: European Free Trade Association.
[3] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	6: Neighbourhood and the World

DG: TRADE			**2026**	**2027**						**TOTAL**
• Operational appropriations										
14.200402 - External trade relations and Aid for Trade	Commitments	(1a)	0.493	0.250						**0.743**
	Payments	(2a)	0.247	0.372						0.619
N/A	Commitments	(1b)								
	Payments	(2b)								
Appropriations of an administrative nature financed from the envelope of specific programmes [1]										
N/A		(3)								
TOTAL appropriations for DG TRADE	Commitments	=1a+1b +3	0.493	0.250						**0.743**
	Payments	=2a+2b +3	0.247	0.372						0.619

[1] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)	0.493	0.250						**0.743**
	Payments	(5)	0.247	0.372						0.619
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADING <TRADE> of the multiannual financial framework	Commitments	=4+ 6	0.493	0.250						**0.743**
	Payments	=5+ 6	0.247	0.372						0.619

<u>If more than one operational heading is affected by the proposal / initiative, repeat the section above:</u>

• TOTAL operational appropriations (all operational headings)	Commitments	(4)	0.493	0.250						**0.743**
	Payments	(5)	0.247	0.372						0.619
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes (all operational headings)		(6)								
TOTAL appropriations under HEADINGS 1 to 6 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6	0.493	0.250						**0.743**
	Payments	=5+ 6	0.247	0.372						0.619

Heading of multiannual financial framework	**7**	'Administrative expenditure'

EUR million (to three decimal places)

		2026	**2027**						**TOTAL**
DG: TRADE HQ									
• Human resources		2.670	2.670						**5.340**

• Other administrative expenditure		0.032	0.032						**0.064**
TOTAL	Appropriations	2.702	2.702						**5.404**

		2026	**2027**						**TOTAL**
DG: TRADE-DEL									
• Human resources		0.356	0.356						**0.712**
• Other administrative expenditure									
TOTAL	Appropriations	0.356	0.356						**0.712**

		2026	**2027**						**TOTAL**
DG: CNECT									
• Human resources		0.356	0.356						**0.712**
• Other administrative expenditure									
TOTAL	Appropriations	0.356	0.356						**0.712**

		2026	**2027**						**TOTAL**
DG: DEFIS									
• Human resources		0.356	0.356						**0.712**
• Other administrative expenditure									

TOTAL	Appropriations	0.356	0.356						**0.712**

		2026	**2027**						**TOTAL**
DG: GROW									
• Human resources		0.356	0.356						**0.712**
• Other administrative expenditure									
TOTAL	Appropriations	0.356	0.356						**0.712**

		2026	**2027**						**TOTAL**
DG: FISMA									
• Human resources		0.178	0.178						**0.356**
• Other administrative expenditure									
TOTAL	Appropriations	0.178	0.178						**0.356**

		2026	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**TOTAL**
DG: RTD									
• Human resources		0.178	0.178						**0.356**
• Other administrative expenditure									
TOTAL	Appropriations	0.178	0.178						**0.356**

		2026	2027						TOTAL
DG: Legal Service									
• Human resources		0.178	0.178						**0.356**
• Other administrative expenditure									
TOTAL	Appropriations	0.178	0.178						**0.356**

		2026	2027						TOTAL
DG: JRC									
• Human resources		0.178	0.178						**0.356**
• Other administrative expenditure									
TOTAL	Appropriations	0.178	0.178						**0.356**

		2026	2027						TOTAL
DG: EEAS									
• Human resources		0.178	0.178						**0.356**
• Other administrative expenditure									
TOTAL	Appropriations	0.178	0.178						**0.356**

		2026	2027						TOTAL
DG: COMP									

• Human resources		0.034	0.034						**0.068**
• Other administrative expenditure									
TOTAL	Appropriations	0.034	0.034						**0.068**

		2026	**2027**						**TOTAL**
DG: AGRI									
• Human resources		0.017	0.017						**0.034**
• Other administrative expenditure									
TOTAL	Appropriations	0.017	0.017						**0.034**

		2026	**2027**						**TOTAL**
DG: ENER									
• Human resources		0.017	0.017						**0.034**
• Other administrative expenditure									
TOTAL	Appropriations	0.017	0.017						**0.034**

		2026	**2027**						**TOTAL**
DG: HERA									
• Human resources		0.017	0.017						**0.034**
• Other administrative expenditure									

TOTAL	Appropriations	0.017	0.017						**0.034**

		2026	**2027**						**TOTAL**
DG: JUST									
• Human resources		0.017	0.017						**0.034**
• Other administrative expenditure									
TOTAL	Appropriations	0.017	0.017						**0.034**

		2026	**2027**						**TOTAL**
DG: SANTE									
• Human resources		0.017	0.017						**0.034**
• Other administrative expenditure									
TOTAL	Appropriations	0.017	0.017						**0.034**

		2026	**2027**						**TOTAL**
DG: HOME									
• Human resources		0.017	0.017						**0.034**
• Other administrative expenditure									
TOTAL	Appropriations	0.017	0.017						**0.034**

		2026	2027						TOTAL
DG: MOVE									
• Human resources		0.017	0.017						**0.034**
• Other administrative expenditure									
TOTAL	Appropriations	0.017	0.017						**0.034**

		2026	2027						TOTAL
DG: SG									
• Human resources		0.017	0.017						**0.034**
• Other administrative expenditure									
TOTAL	Appropriations	0.017	0.017						**0.034**

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	5.194	5.194						**10.388**

EUR million (to three decimal places)

		2026	2027	2028	2029	2030	2031	2032	TOTAL
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial	Commitments	5.687	5.444						11.131
	Payments	5.441	5.566						11.007

framework									

3.2.2. *Estimated output funded with operational appropriations*

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year **N**		Year **N+1**		Year **N+2**		Year **N+3**		Enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
	OUTPUTS																	
	Type[2]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[3]…																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTALS																		

[2] Outputs are products and services to be supplied (e.g. number of student exchanges financed, number of km of roads built, etc.).

[3] As described in point 1.4.2. 'Specific objective(s)…'

3.2.3. *Summary of estimated impact on administrative appropriations*

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2026	**2027**						**TOTAL**
HEADING 7 of the multiannual financial framework								
Human resources	5.162	5.162						**10.324**
Other administrative expenditure	0.032	0.032						**0.064**
Subtotal HEADING 7 of the multiannual financial framework	5.194	5.194						**10.388**
Outside HEADING 7[1] of the multiannual financial framework								
Human resources	N/A							
Other expenditure of an administrative nature	N/A							
Subtotal outside HEADING 7 of the multiannual financial framework	N/A							
TOTAL	5.194	5.194						**10.388**

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

[1] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.1. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

– ☒ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

		2026	2027					
• Establishment plan posts (officials and temporary staff)								
20 01 02 01 (Headquarters and Commission's Representation Offices)		27	27					
20 01 02 03 (Delegations)		2	2					
01 01 01 01 (Indirect research)								
01 01 01 11 (Direct research)								
Other budget lines (specify)								
• External staff (in Full Time Equivalent unit: FTE)[1]								
20 02 01 (AC, END, INT from the 'global envelope')								
20 02 03 (AC, AL, END, INT and JPD in the delegations)								
XX 01 xx **yy zz** [2]	- at Headquarters							
	- in Delegations							
01 01 01 02 (AC, END, INT - Indirect research)								
01 01 01 12 (AC, END, INT - Direct research)								
Other budget lines (specify)								
TOTAL		**29**	**29**					

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Officials and temporary staff will act as contact points and analyse, on a case-by-case basis, whether the investment transactions notified by the Member States are likely to negatively affect security or public order in more than one Member State or in the context of a sensitive EU asset. They will have to monitor mergers and acquisitions and greenfield investments in the economic sector that fall under the responsibility of their DGs and will have to inform DG TRADE when they consider that a transaction is likely to negatively affect security or public order in more than one Member State or in the context of a sensitive EU asset. DG TRADE officials and temporary staff will be in charge of managing the Commission expert group on the screening of FDI in the EU and the committee set up by the Regulation; monitoring and reporting on the implementation of the Regulation (including the processing of Member States' annual reports and preparing the Commission's annual report); cooperating with non-EU countries on horizontal matters related to investment screening; and monitoring national policy and legislative

[1] AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

[2] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

	developments.
External staff	Not relevant.

3.2.4. Compatibility with the current multiannual financial framework

The proposal/initiative:

– ☒ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

– ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

– ☐ requires a revision of the MFF.

3.2.5. Third-party contributions

The proposal/initiative:

– ☒ does not provide for co-financing by third parties

– ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year **N**[1]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

[1] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.3. Estimated impact on revenue

– ☒ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

  – ☐ on own resources

  – ☐ on other revenue

  – please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[2]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[2] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.