



# FOREIGN DIRECT INVESTMENT SCREENING MECHANISM

## AN OUTLOOK FOR BOSNIA AND HERZEGOVINA



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## Executive Summary

The key objective of this study is to assess the current regulatory framework and national legislations of European Union (EU) member states and certain European countries that are not part of the EU with respect to the screening of foreign direct investment (FDI). By identifying deficiencies in existing laws and defining areas of possible improvement, with an emphasis on Bosnia and Herzegovina, this report represents a starting point for ensuring the proper alignment of Bosnian regulations with the EU's *acquis*.<sup>1</sup> More broadly, it seeks to ensure the basis for legislative improvements in all Balkan countries.

Understanding and exploring the existing EU regulatory system of mechanisms to protect critical assets and comparing them with those of European states that are not members of the EU can help identify potential threats associated with FDI. Through adequate measures, involving improvements to existing legislation and enactment of new laws that emphasize an alignment of national laws with the EU's *acquis*, the adverse effects of FDI that threaten to endanger national or EU public order and security can be reduced.

This study finds that the legislations of EU member states and some European non-EU countries have served well to protect those countries' national interests, but also points to deficiencies in application due to procedural inconsistencies in each country.

An openness to FDI in EU and non-EU member states has led to an increase in the presence of foreign capital in Europe. However, a growing dependence on foreign capital threatens to endanger public order and security. Faced with the challenge posed by large foreign investments and the participation of countries outside the European internal market in tendering processes that involve large infrastructure projects in energy, telecommunication, and roads, combined with the merger and acquisition of European companies, EU policymakers decided to take a common approach to the problem. EU member states devised and adopted "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" (the EU's FDI Screening Regulation) with the goal of reducing the adverse effects of FDI, especially from countries outside the European internal market. Through a multistep approach that includes national legislation of EU member states and various documents, reports, and strategies, the EU has been successful at protecting crucial European assets and infrastructure until now. As a result, the European internal market has demonstrated the resiliency needed to maintain public order and security.

1. The EU's "*acquis*" refers to "the body of common rights and obligations that are binding on all EU countries, as EU Members." See, *EUR-Lex. "Acquis."* <https://eur-lex.europa.eu/summary/glossary/acquis.html>.

On the other hand, Balkan and other non-EU member states, regardless of nonbinding legislation, have, to some extent, had control over FDI years before the EU's FDI Screening Regulation was adopted. Through laws governing FDI, depending upon the area of investment, these countries have managed to establish basic standards for inspection of certain investments. However, the fast pace of change in the market requires a more sophisticated approach to foreign investments that could endanger public security and order within the Balkan market.

The author of this study has tried to identify basic laws in Bosnia and Herzegovina and neighboring countries and offer recommendations regarding screening of FDI. This report is intended to serve as a starting point in the process of shaping more advanced and sophisticated legislation that can ensure transparency and better functioning of the Balkan and EU markets.

Following the principles of free trade, through a change of regulatory framework and national legislation, Bosnia and Herzegovina and other European non-EU countries can relieve the market of political influence and the influence of corrosive capital, thereby ensuring prosperity of the European market and national markets within the EU. However, combating the influence of countries outside the European internal market requires a joint effort and a common approach. Irregularities related to foreign investments can be reduced through an alignment of national laws among EU member states and better cooperation through the EU's FDI Screening Mechanism (FDISM), the EU's FDI Screening Regulation. This will lead to a more regulated market.

# 1. Introduction

This report describes the process of enacting “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” (the EU’s FDI Screening Regulation). It considers all the important aspects of EU member states’ national investment screening mechanisms that could serve as guidance to improve non-EU member states’ jurisdiction. By identifying deficiencies in the existing laws and defining areas of possible improvement, with an emphasis on Bosnia and Herzegovina, the report represents a starting point for ensuring proper alignment of Bosnian regulations with the EU’s *acquis*. This report, which contains data derived from the EU’s database<sup>2</sup> and various laws, provides an overview of legislation related to investment screening in the EU and offers recommendations for Bosnia and Herzegovina while taking into account existing laws.

An analysis of documents provided by EU bodies indicates that the EU’s multi-jurisdictional approach to FDI has been gradual and has led to enactment of the EU’s FDI Screening Regulation. Moreover, the goal of collecting documents related to investment screening was to ensure the basis for legislative improvements for all Balkan countries. This analysis provides a guideline for “candidate countries” and “potential candidates” to follow the path set by the EU as they modify their regulatory environment, thereby facilitating the process of their accession to the EU.<sup>3</sup>

Over the years, EU member states’ market openness has led to an increase in FDI in Europe. With its liberal approach, the EU has become the leading recipient of FDI, especially from China and other non- EU countries. According to the European Commission<sup>4</sup> and the Organisation for Economic Co-operation and Development (OECD), in 2015, the EU was the leading destination of FDI in the world with €5.7 trillion in inward investments;<sup>5</sup> the United States placed second with €5.1 trillion.

2. Eurostat (database), <https://ec.europa.eu/eurostat/data/database>.

3. Albania, the Republic of North Macedonia, Montenegro, Serbia, and Turkey are candidate countries. Potential candidate countries are Bosnia and Herzegovina and Kosovo. These are countries which have a clear prospect of joining the EU in the future but have not yet been granted candidate country status. See, European Commission. “Candidate Countries and Potential Candidates.” <https://ec.europa.eu/environment/enlarg/candidates.htm>.

4. European Commission. “Foreign Direct Investment EU Screening Framework.” [https://trade.ec.europa.eu/doclib/docs/2019/february/tradoc\\_157683.pdf](https://trade.ec.europa.eu/doclib/docs/2019/february/tradoc_157683.pdf).

5. Inward investment involves an “external or foreign entity either investing in or purchasing the goods of a local economy. It is foreign money that comes into the domestic economy.” See, Chen, James. 2021. “Inward Investment.” Investopedia. November 17, 2021. <https://www.investopedia.com/terms/i/inwardinvestment.asp#:~:text=An%20inward%20investment%20involves%20an,comes%20into%20the%20domestic%20economy.>



The OECD's FDI Regulatory Restrictiveness Index of 27 EU member states provides further evidence of the EU's openness to FDI.<sup>6</sup> In comparison to non-EU states, including China, Russia, and Canada, the EU's average FDI Regulatory Restrictiveness Index is a sign of the highly deregulated markets in terms of attracting FDI from outside the bloc. In response to the growing investments in the EU, especially FDI associated with "corrosive capital"<sup>7</sup> that poses a threat to the EU's strategic assets, the European Commission produced the "Commission Staff Working Document on Foreign Direct Investment in the EU: Following up on the Commission Communication Welcoming Foreign Direct Investment while Protecting Essential Interests."<sup>8</sup>

Reports generated from the European Commission-Joint Research Centre (EC-JRC) Foreign Ownership Database, derived from the abovementioned working document, indicate that 2.8 percent of unlisted companies in the sample were owned by non-EU investors and 9.3 percent of listed companies on the stock exchange have a foreign owner.<sup>9</sup>

In the context of EU market openness, the European Commission, in its trade and investment strategy, Trade for All: Towards a More Responsible Trade and Investment Policy,<sup>10</sup> ensures trade policy has a positive impact on a value chain-based economy, including services, digital trade, and movement of capital, thereby driving innovation and growth in the European internal market. An emphasis on the importance of more transparent trade and investment policies by urging member states and the European Parliament to cooperate more closely facilitated the process of open policymaking.

The continuous increase in FDI has raised concerns about the protection of critical European assets. Foreign control of EU member states' industries that are vital for their strategic assets may endanger national security and public order due to the loss of those countries' control over domestic inputs (critical goods and infrastructure) and services and technology (protection of classified and personal data).<sup>11</sup>

6. OECD (Organisation for Economic Co-operation and Development). "OECD FDI Regulatory Restrictiveness Index." <https://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#>. The FDI Regulatory Restrictiveness Index (FDI Index) defined by the OECD "measures statutory restrictions on foreign direct investment across 22 economic sectors. It measures the restrictiveness of a country's FDI rules by looking at the four main types of restrictions on FDI: 1) Foreign equity limitations; 2) Discriminatory screening or approval mechanisms; 3) Restrictions on the employment of foreigners as key personnel and 4) Other operational restrictions, e.g. restrictions on branching and on capital repatriation or on land ownership by foreign-owned enterprises. Restrictions are evaluated on a 0 (open) to 1 (closed) scale. The overall restrictiveness index is the average of sectoral scores."

7. The Center for International Private Enterprise (CIPE) defines corrosive capital as "financing, whether state or private, that lacks transparency, accountability, and market orientation." See, CIPE (Center for International Private Enterprise). "Corrosive & Constructive Capital Initiative." <https://corrosiveconstructivecapital.cipe.org/>.

8. European Commission. 2019. "Commission Staff Working Document on Foreign Direct Investment in the EU: Following up on the Commission Communication 'Welcoming Foreign Direct Investment while Protecting Essential Interests' of 13 September 2017." Brussels, SWD(2019) 108 final. March 13, 2019. [https://trade.ec.europa.eu/doclib/docs/2019/march/tradoc\\_157724.pdf](https://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157724.pdf).

9. Ibid.

10. European Commission. 2015. Trade for All: Towards a More Responsible Trade and Investment Policy. Brussels: European Union. [https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf).

11. Bian, Cheng. 2021. "Foreign Direct Investment Screening and National Security: Reducing Regulatory Hurdles to Investors Through Induced Reciprocity." *Journal of World Investment & Trade*, August 16, 2021. [https://brill.com/view/journals/jwit/22/4/article-p561\\_3.xml](https://brill.com/view/journals/jwit/22/4/article-p561_3.xml).

Under “Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation),”<sup>12</sup> the European Commission should notify member states about concentrations of undertakings that significantly threaten to affect competition within that state. This regulation refers to concentrations that have community dimensions that relate to thresholds where combined aggregate worldwide turnover of undertakings concerned is more than €5 billion and the aggregate community-wide turnover of each of at least two undertakings concerned is more than €250 million. Despite the restrictions imposed by this regulation on the control of concentrations between undertakings, and articles referring to relations with third countries, it does not effectively address the issue of security and public order.

When considering the investment screening mechanism, the European Commission took into account all existing international agreements, including the World Trade Organization’s (WTO’s) General Agreement on Trade in Services (GATS). Article XIV of the GATS lays down the general exceptions allowing WTO members to take actions to protect and maintain public order, securing compliance with laws and regulations related to the prevention of deceptive and fraudulent practices and protection of the privacy and security of individuals’ data.<sup>13</sup> Furthermore, Article XIV bis of the GATS allows WTO members to take any action they consider necessary for the protection of their essential security interests.<sup>14</sup>

All of the abovementioned documents indicate that security and public order concerns have been present for years. Growing FDI from countries outside the European internal market prompted EU member states to enact the EU’s FDI Screening Regulation with the goal of identifying potential risks associated with these investments.<sup>15</sup>

The importance of the EU’s FDI Screening Regulation and its information exchange (better cooperation between member states) has been tested during the COVID-19 pandemic. Provisions set out in the EU’s FDI Screening Regulation play an important role in maintaining security and public order in the EU’s member states.<sup>16</sup>

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12. EUR-Lex. “Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (Text with EEA relevance).” Document 32004R0139. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32004R0139>.

13. “Article XIV: General Exceptions.” In *General Agreement on Trade in Services*, pp: 294–295. [https://www.wto.org/english/docs\\_e/legal\\_e/26-gats.pdf](https://www.wto.org/english/docs_e/legal_e/26-gats.pdf).

14. “Article XIV bis: Security Exceptions.” In *General Agreement on Trade in Services*, pp: 295–296, [https://www.wto.org/english/docs\\_e/legal\\_e/26-gats.pdf](https://www.wto.org/english/docs_e/legal_e/26-gats.pdf).

15. EUR-Lex. “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.” Document 32019R0452. <https://eur-lex.europa.eu/eli/reg/2019/452/oj>.

16. Bruneau, Melanie, Antoine de Rohan Chabot, and Antonia Rountou. 2021. “Foreign Direct Investment: What Is the Impact of the New EU FDI Screening Regulation on Investments in Europe?” *Financier Worldwide*, May 2021. <https://www.financierworldwide.com/foreign-direct-investment-what-is-the-impact-of-the-new-eu-fdi-screening-regulation-on-investments-in-europe#.YeqnINXMKM8>.



Article 4 of the EU's FDI Screening Regulation, which lays out the factors that may be taken into consideration by a member state or the European Commission,<sup>17</sup> says when determining whether FDI is likely to affect security or public order, member states and the European Commission may consider its potential effects on critical infrastructure (physical or virtual), critical technologies, supply of critical inputs, access to sensitive information, and the freedom and pluralism of the media.

The EU and its member states should also utilize national screening mechanisms to identify whether a foreign investor is directly or indirectly controlled by the government of a third country and determine its ownership structure and funding; whether the investor is involved in activities that affect security and public order of a member state; and whether the investor has been engaged in illegal or criminal activities.

An effort to protect crucial EU assets, the EU's FDI Screening Regulation allows member states to act both *ex ante* and *ex post* in case certain investments need to be controlled, constrained, or prohibited because they violate EU and national jurisdictions of individual member states. Fostering cooperation among the member states is crucial for ongoing and transparent screening of FDI. This will help mitigate potential negative impacts FDI might have on growth, job creation, and innovation in the EU.

In the preamble of the EU's FDI Screening Regulation, in recitals 7–13, the European Commission emphasizes the importance of compliance of national screening mechanisms with EU law; it also allows member states and the commission to consider all relevant factors (critical infrastructure, technologies, and inputs) to maintain security and public order within the EU.<sup>18</sup> However, the EU's FDI Screening Regulation has only been partially adopted by some member states. In order to eliminate possible threats, although not mandatory for national screening regulations that differ from state to state,<sup>19</sup> the EU's FDI Screening Regulation provides a framework for some states to update their regulations, while others are aligning their jurisdiction to meet the expectations of the EU.

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17. EUR-Lex. "Article 4: Factors that may be taken into consideration by Member States or the Commission." In "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." Document 32019R0452. <https://eur-lex.europa.eu/eli/reg/2019/452/oj>.

18. EUR-Lex. Recitals 7–13. In "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." Document 32019R0452. <https://eur-lex.europa.eu/eli/reg/2019/452/oj>.

19. EUR-Lex. "Article 3: Screening mechanisms of Member States." In "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." Document 32019R0452. <https://eur-lex.europa.eu/eli/reg/2019/452/oj>.

The possible adverse impacts of FDI can be illustrated with an example from the pandemic. A lack of inputs for the health sector—insufficient reserves of masks and medical equipment—resulted in the need for somewhat rigorous intervention in the EU. In order to preserve its public order, the European Commission issued guidance to member states concerning FDI and the free movement of capital from third countries, and the protection of the EU’s strategic assets.<sup>20</sup> In this guidance, the EU refers to the provisions in the Treaty on the Functioning of the European Union (TFEU),<sup>21</sup> especially Article 66, which allows the European Council, in the case of movements of capital to or from third countries, to take safeguard measures regarding third countries up to six months. Furthermore, to tackle the potential security and public order threats from third countries, the European Commission, in its “Proposal for a Regulation of the European Parliament and of the Council on Foreign Subsidies Distorting the Internal Market,”<sup>22</sup> has defined the distortive effects of foreign subsidies on the EU’s internal market. The EU will seek to protect its internal market from abusive and unfair practices in challenging times, particularly when the bloc strives for market openness in relation to FDI.

In order to strengthen its strategy and resilience on protecting critical infrastructure, technologies, and inputs, the EU needs to establish regulations that are coordinated among all member states and create a more integrated internal market that is based on transparency and fairness.<sup>23</sup>

20. European Commission. 2020. “Communication from the Commission: Guidance to the Member States concerning foreign direct investment and free movement of capital from third countries, and the protection of Europe’s strategic assets, ahead of the application of Regulation (EU) 2019/452 (FDI Screening Regulation).” March 25, 2020. <https://enterprise.gov.ie/en/Publications/Publication-files/European-Commission-guidance-FDI.pdf>.

21. EUR-Lex. 2012. “Article 66.” In “Consolidated Version of the Treaty of the Functioning of the European Union.” Official Journal of the European Union. October 26, 2012. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>.

22. European Commission. 2021. “Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market.” Brussels, COM(2021) 223 final. May 5, 2021. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0223&from=EN>.

23. European Commission. 2021. “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.” Brussels, COM(2021) 32 final. January 19, 2021. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0032&from=EN>.

## 2. Glossary

**Constructive capital**, as defined by the Center for International Private Enterprise (CIPE), refers to “financial flows that are well-governed at the funding source and destination and respond to market voids.”<sup>24</sup>

**Corrosive capital**, as defined by CIPE, refers to “financing, whether state or private, that lacks transparency, accountability, and market orientation.”<sup>25</sup>

**Critical infrastructure**, pursuant to Article 4 of the EU’s FDI Screening Regulation, refers to “physical or virtual [assets], including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure.”<sup>26</sup>

EU’s “**acquis**” refers to “the body of common rights and obligations that are binding on all EU countries, as EU Members.”<sup>27</sup>

**Foreign direct investment (FDI)**, as defined by Article 2 of the “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” (the EU’s FDI Screening Regulation), refers to “an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity.”

**FDI Restrictiveness Index (FDI Index)**, as defined by the OECD, “measures statutory restrictions on foreign direct investment in 22 economic sectors across 69 countries, including OECD and G20 countries.”<sup>28</sup>

24. CIPE (Center for International Private Enterprise). “Corrosive & Constructive Capital Initiative.” <https://corrosiveconstructivecapital.cipe.org/>.

25. *Ibid.*

26. EUR-Lex. “Article 4: Factors that may be taken into consideration by Member States or the Commission.” In “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.” Document 32019R0452. <https://eur-lex.europa.eu/eli/reg/2019/452/oj>.

27. EUR-Lex. “Acquis.” <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:acquis>.

28. OECD (Organisation for Economic Co-operation and Development). “FDI Regulatory Restrictiveness Index.” <https://www.oecd.org/investment/fdiindex.htm>.

**Free trade agreement**, as defined by Investopedia, refers to “a pact between two or more nations to reduce barriers to imports and exports among them. Under a free trade policy, goods and services can be bought and sold across international borders with little or no government tariffs, quotas, subsidies, or prohibitions to inhibit their exchange.”<sup>29</sup>

**Internal market of the European Union (EU)** “is a single market in which the free movement of goods, services, capital and persons is assured, and in which citizens are free to live, work, study and do business.”<sup>30</sup>

**Screening mechanism**, as defined by Article 2 of the EU’s FDI Screening Regulation, means “an instrument of general application, such as a law or regulation, and accompanying administrative requirements, implementing rules or guidelines, setting out the terms, conditions and procedures to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments on grounds of security or public order.”

**TEU**, Treaty on European Union

**TFEU**, Treaty of the Functioning of the European Union

**Undertaking of a third country**, as defined by Article 2 of the EU’s FDI Screening Regulation, means “an undertaking constituted or organized under the laws of third country.”<sup>31</sup>

29. Barone, Adam. 2020. “Free Trade Agreement (FTA).” Investopedia, January 29, 2020. <https://www.investopedia.com/terms/f/free-trade.asp>.

30. EUR-Lex. “Internal Market.” [https://eur-lex.europa.eu/summary/chapter/internal\\_market.html?root\\_default=SUM\\_1\\_CODED%3D24](https://eur-lex.europa.eu/summary/chapter/internal_market.html?root_default=SUM_1_CODED%3D24).

31. EUR-Lex. “Article 2: Definitions.” In “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.” Document 32019R0452. <https://eur-lex.europa.eu/eli/reg/2019/452/oj>.

### 3. Research Methodology

For the purpose of this research, we utilized secondary sources of data, especially in our systematic review of all available regulations, research papers, documents, white papers, and reports. Data were gathered primarily from the various EU databases of laws and regulations, including reports, strategies, policy proposals, and working documents of the European Commission. In an effort to broaden our research, we also used a wide range of documents, guidelines, and articles produced by individuals as well as institutions, such as the OECD, CIPE, EU, and WTO. In conducting the research, we used a descriptive method along with a comparative one, which in combination provides a clear overview of the jurisdictions in force in EU member states and non-EU countries.

Mapping of the literature on FDI and a review of the abovementioned documents showed that when it comes to the EU's FDI Screening Regulation, we need to consider a broader set of documents, especially those available in the EU database and national databases of each country, to make a determination about the effectiveness of the screening mechanism. This analysis per se shows that with a multi-jurisdictional approach, areas of interest expand to a wide range of regulatory research documents. Based on our research, the EU's FDI Screening Regulation supports, in many aspects, the law enforcement of national investment screening mechanisms.

The information presented in this analysis is mostly drawn from national regulations and seeks to describe existing FDI mechanisms in the European Economic Area (EEA)<sup>32</sup> [involving EU member states, as well as non-EU member countries; European Free Trade Association (EFTA) with an emphasis on the Balkans, particularly Bosnia and Herzegovina]. There are limitations to the research into the foreign direct investment screening mechanism (FDISM) as a result of the constantly evolving regulatory environment and the limited access to sources of information related to FDISM. As a consequence, this analysis serves only as a guideline for policymakers from which the reader can derive their own conclusions.

A lack of prior research on the topic, encompassing both EU and non-EU member states, as well as data available to the author suggest that some data regarding FDI screening may have been omitted. The limited access to data associated with FDI in EU member states and non-EU member countries presents an opportunity for further research.

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32. The European Economic Area (EEA) consists of the member states of the European Union (EU) and three of the four members of the European Free Trade Association (EFTA)—Iceland, Liechtenstein, and Norway.



## 4. An Overview of Investment Screening Mechanisms

According to the European Commission, the EU needs to redefine its various strategies and revamp and reshape its regulations in order to address the challenges posed by the COVID-19 pandemic.<sup>33</sup> Strengthening the EU single market through transparency and competitiveness has resulted in a fast-paced recovery from the pandemic for some EU member states. The establishment of a new recovery instrument, Next Generation EU, as a long-term plan has played an important role in defining EU market positioning. To tackle the pandemic and its negative economic impacts on the EU single market, apart from €750 billion recovery instruments, Next Generation EU added around €1.1 trillion for 2021–27. By reshaping the EU’s digital strategy, health sector, and economic position in general, NextGenerationEU aims to address the potential threats related to critical EU assets. The EU also aims to protect its strategically important assets through programs<sup>34</sup> defined in Next Generation EU, as well as its pharmaceutical strategy, Action Plan on Critical Raw Materials, Circular Economy Action Plan, and the EU’s FDI Screening Regulation.

Beyond this, the EU is looking to ensure that the FDISM ensures competitive sustainability of the EU market through growth and job creation, reducing the dependence of non-EU member states. In an effort to achieve a single digital market, the EU is looking to ensure that gaps in policies and tools for dealing with countries outside the European internal market are somewhat reduced through four approaches: investment in more and better connectivity, stronger industrial and technological presence, real data economy, and fairer and more welcoming business environment.<sup>35</sup>

Europe is reducing its dependence on critical raw material imports, particularly from China, in an attempt to diversify its supply chains and secure a more sustainable European market. Utilizing the benefits of a circular economy by constantly investing, the EU will gradually reduce its dependence on China.

33. EUR.Lex. “Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: Europe’s Moment: Repair and Prepare for the Next Generation.” Document 52020DC0456. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:456:FIN>.

34. “Programs” refer to “The money raised from Next Generation EU that will be invested across three pillars, through €500 billion in grants and €250 billion in loans to Member States.” See Section 3 in “Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: Europe’s Moment: Repair and Prepare for the Next Generation.”

35. EUR.Lex. “Section 4.2: A Deeper and More Digital Single Market.” In “Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: Europe’s Moment: Repair and Prepare for the Next Generation.” Document 52020DC0456. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:456:FIN>.

With this in mind, the European Commission has created the European Raw Materials Alliance to use scarce resources more efficiently and reduce the share of raw material imported from third countries. In its communication to the European Parliament, the European Council, the European Economic and Social Committee, and the Committee of the Regions, “Tackling the Challenges in Commodity Markets and on Raw Materials,”<sup>36</sup> the European Commission seeks to identify critical raw materials with the goal of reducing its dependence on such materials originating outside the European internal market. The list of critical raw materials is updated every three years. In this manner, the EU has achieved better efficiency in utilizing inputs for manufacturing. The abovementioned action plans, directives, and regulations are an extension of the circular economy action plan, which was adopted in 2015, that, apart from security and public order, guarantees sustainability of the EU’s economic growth.<sup>37</sup>

The adoption of the European Council’s directive on the “Identification and Designation of the European Critical Infrastructure and Assessment of the Need to Improve Their Protection”<sup>38</sup> was crucial in stabilizing the energy sector. Article 1 of the directive “establishes a procedure for the identification and designation of European critical infrastructures (‘ECIs’), and a common approach to the assessment of the need to improve the protection of such infrastructures in order to contribute to the protection of people.”<sup>39</sup> In response to the challenges faced by the EU on the security of network and information systems, the European Parliament and European Council enacted Directive 2016/1148<sup>40</sup> to enhance security measures across the EU. Along with the FDISM, this set of directives will provide resiliency needed to maintain security and public order in the EU single market.

Over the last few years, robust EU legislation, backed by various policies and reports,<sup>41</sup> has been a major determinant of stability of the bloc. A 2018 report from the European Parliament’s Committee on Foreign Affairs on cyber defense reflects the level of concern among EU member states regarding “threat in the form of politically motivated, state-sponsored cyber attacks as well as cyber crime and terrorism.”<sup>42</sup>

36. European Commission. 2011. “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Tackling the Challenges in Commodity Markets and on Raw Materials.” Brussels, COM(2011) 25 final. February 2, 2011. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0025:FIN:en:PDF>.

37. European Commission. 2015. “First Circular Economy Action Plan.” [https://ec.europa.eu/environment/topics/circular-economy/first-circular-economy-action-plan\\_en](https://ec.europa.eu/environment/topics/circular-economy/first-circular-economy-action-plan_en).

38. Official Journal of the European Union. 2008. “Council Directive 2008/11/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (Text with EEA relevance).” December 23, 2008. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0114&from=EN>.

39. Ibid.

40. Official Journal of the European Union. 2016. “Directives: 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.” July 19, 2016. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1148&from=en>.

41. European Parliament. 2018. Report on Cyber Defence. Committee on Foreign Affairs. May 25, 2018. [https://www.europarl.europa.eu/doceo/document/A-8-2018-0189\\_EN.pdf?redirect](https://www.europarl.europa.eu/doceo/document/A-8-2018-0189_EN.pdf?redirect).

42. Ibid.

Aware of the importance of constantly adapting to market conditions, the EU is trying to identify and scrutinize threats from countries outside the European internal market. Nevertheless, the EU will continue to foster market openness with an emphasis on securing a level playing field for all participants.

With the supervision of the EU and its member states' national screening mechanisms, the EU is protecting the European area from unfair, lackluster investments. An effective multi-jurisdictional approach has been a cornerstone of EU stability, especially during the pandemic. Devising protection mechanisms and recognition of the importance of preserving public security and order has resulted in a sound strategic response to growing threats associated with FDI from countries outside the European internal market. Improvements in national legislation and the EU's FDI Screening Regulation are the first line of defense for the internal market, but these legislations need to be constantly updated to keep up with the rapidly evolving challenge.

## 4.1 Investment Screening Mechanisms in EU Member States

Regardless of the EU's FDI Screening Regulation, some EU member states still do not have mechanisms for screening FDI because member states make determinations about setting up a screening mechanism on the grounds of security and public order, based on their national interests. The EY Global Foreign Direct Investment Screening Guide, created by Ernst and Young in April 2021, outlined the existing regulation in place across the 27 selected jurisdictions worldwide, providing insight into the FDISM of selected countries.<sup>43</sup> In the guide, the following sectors are subject to FDI screening: critical infrastructure, critical technologies, critical resources, access to sensitive data, defense and/or national security, media, finance/banking/insurance, real estate/land, and others.

Diverse thresholds, procedures, and differences in application of jurisdictions among the member states represent a major challenge to EU regulation of FDI. In case of scrutiny of certain investments/transactions, the European Commission and member states are allowed to provide opinions on the investment that is being scrutinized. When a member state notifies the European Commission about a transaction, the commission has a minimum of 15 calendar days, and up to a maximum of 40 calendar days, to provide its opinion.

43. EY. 2021. *EY Global Foreign Direct Investment Screening Guide: Multi-Jurisdiction Summary*. April 12, 2021. [https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_gl/topics/tax/tax-pdfs/ey-global-foreign-direct-investment-screening-guide-april.pdf?download](https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/tax/tax-pdfs/ey-global-foreign-direct-investment-screening-guide-april.pdf?download).

The commission and member states are allowed to provide opinions 15 months after the FDI has been completed, in states where such investment is not subject to the national screening laws.<sup>44</sup> Pursuant to Articles 3.7 and 3.8 of Regulation (EU) 2019/452,<sup>45</sup> the commission has publicly made available a list of member states' screening mechanisms with up-to-date information regarding member states' national laws, addressing the issue of FDI screening.<sup>46</sup> The list of screening mechanisms notified by member states, updated on July 14, 2021, includes 18 member states with the information presented in Table 4.1.

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44. EUR-Lex. "Annex." In "Communication from the Commission Guidance to the Member States Concerning Foreign Direct Investment and Free Movement of Capital from Third Countries, and the Protection of Europe's Strategic Assets, Ahead of the Application of Regulation (EU) 2019/452 (FDI Screening Regulation) 2020/C 99 I/01." Document 52020XC0326(03). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52020XC0326%2803%29>.

45. Official Journal of the European Union. 2019. "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." March 21, 2019. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019R0452&from=EN>. See Articles 3.7 and 3.8. Article 3.7 states: "Member States shall notify the Commission of their existing screening mechanisms by 10 May 2019. Member States shall notify the Commission of any newly adopted screening mechanism or any amendment to an existing screening mechanism within 30 days of the entry into force of the newly adopted screening mechanism or of any amendment to an existing screening mechanism." Article 3.8 states: "No later than three months after having received the notifications referred to in paragraph 7, the Commission shall make publicly available a list of Member States' screening mechanisms. The Commission shall keep that list up to date."

46. European Commission. "List of Screening Mechanisms Notified by Member States." Updated July 14, 2021. [https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc\\_157946.pdf](https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157946.pdf).



Table 4.1 List of Screening Mechanisms Notified by Member States(as of July 14, 2021)

Number and Title of the Law	Additional Information
<b>Czech Republic</b>	
Act No. 34/2021 Coll. on the screening of foreign direct investments—oversight over foreign investments in key sectors (such as critical infrastructure) <sup>47</sup>	<p>FDI are screened if a foreign investor makes an investment of any form in the country, acquiring an effective level of control,<sup>48</sup> or if the investment is in an industry that is critical to the security of the Czech Republic or its internal or public order.</p> <p>The act defines critical sectors involving: production, research, development, innovation of military material and ensuring the lifecycle of such material; elements of critical infrastructure such as energy, gas, heat and water management, food and agriculture, healthcare, transportation, communication and IT systems, financial markets, emergency services and public administration; administration of essential information or communication systems; development and production of dual-use products; media sector—mandatory consultation if the target undertaking holds a license for nationwide radio or television broadcasting or if the target undertaking is a publisher of periodicals with a minimum daily average of 100,000 printed copies in the last calendar year.<sup>49</sup></p>
<b>Denmark</b>	
Act on screening certain FDI in Denmark (the Investment Screening Act) <sup>50</sup>	The purpose of the Investment Screening Act is to “prevent foreign direct investments and special economic agreements from posing a threat to national security or public order in Denmark, through

47. Jichová, Eva, and Marie Talašová. 2021. “New Regulation of Cross-border Transactions – Act on Screening of Foreign Investments in the Czech Republic.” White & Case. February 15, 2021. <https://www.whitecase.com/publications/alert/new-regulation-cross-border-transactions-act-screening-foreign-investments>.

48. See Bock, Claudia. “New FDI rules come into force in the Czech Republic on 1 May 2021.” Schönherr. February 4, 2021. <https://www.schoenherr.eu/content/new-fdi-rules-come-into-force-in-the-czech-republic-on-1-may-2021>. Bock writes, “Effective level of control means: direct or indirect control over a stake equal to or greater than 10 % of the shares or voting rights in the target (the 10 % also includes shares or voting rights of entities belonging to the same group of companies as the foreign investor); membership of the foreign investor (or its related party) in the corporate bodies of the target; ownership of an asset through which the economic activity is performed; or another type of control resulting in the foreign investor gaining access to information, systems or technology which are important in connection with the protection of the security of the Czech Republic or its internal or public order.”

49. Skoumal, Tomáš, Michal Simčina, and Michal Malkovsky. 2021. “Czech Republic Introduces New Foreign Investment Screening Regime.” Baker McKenzie. March 3, 2021. <https://foreigninvestment.bakermckenzie.com/2021/03/03/czech-republic-introduces-new-foreign-investment-screening-regime/>.

50. Kaas, Filip Patrzalek, and Morten Rosenmejer. 2021. “A New Danish Act Imposes a Screening Requirement on Certain Foreign Direct Investments in Denmark.” Bird & Bird. May 18, 2021. <https://www.twobirds.com/en/news/articles/2021/denmark/a-new-danish-act-imposes-a-screening-requirement-on-certain-foreign-direct-investments-in-denmark>.



	screening and possible interventions with such investments and agreements.” <sup>51</sup>
Act on War Material (the Danish Consolidated Act No. 1004 of October 22, 2012)	
Act on the continental shelf and certain pipeline installations on territorial waters (the Danish Consolidated Act No. 1189 of September 21, 2018)	
<p>Apart from the abovementioned documents, there is also a Danish Competition Act (Consolidated Competition Act No. 155 of March 1, 2018) based on EU competition law. The Danish Competition Council, which is part of the Danish Competition and Consumer Authority (DCCA), is comprised of seven members appointed by the minister for business and growth. According to an analysis of the law by the Danish law firm Kromann Reumert, “The merger control provisions apply to concentrations where either: the combined aggregate turnover in Denmark of all the undertakings concerned is at least 900 million Danish kroner and the aggregate turnover in Denmark of each of at least two of the undertakings concerned is at least 100 million kroner; or the aggregate turnover in Denmark of at least one of the undertakings concerned is at least 3.8 billion kroner and the aggregate worldwide turnover of at least one of the other undertakings concerned is at least 3.8 billion kroner.”<sup>52</sup></p>	
<b>Germany</b>	
Foreign Trade and Payments Act of June 6, 2013 (Federal Law Gazette I p. 1482), as last amended by Article 4 of the Act of 20 July 2017 (Federal Law Gazette I p. 2789)	Section 4 of the Foreign Trade and Payments Act prescribes the restrictions and obligations to act to protect public security and external interests. <sup>53</sup>
Foreign Trade and Payments Ordinance of August 2, 2013 [Federal Law Gazette (BGBl) Part I p. 2865], as last amended by Article 1 of the Ordinance of December 19, 2018 (BAntz AT. 28.12.2018 V1) Sections 55 to 62	Sections 55 to 62 of the Foreign Trade and Payments Ordinance define scope of application of the cross-sectoral assessment, likely effect on public order and security, voting rights, certificate of non-objection, clearance of any acquisition, prohibitions or instructions, exemptions from enforcement restrictions, scope of application of the sector-specific assessment, etc. <sup>54</sup>
<b>Spain</b>	
Royal Decree 137/1993, which approves the regulation on weapons	
Royal Decree 664/99 on foreign investment	Royal Decree 664/99 requires prior authorization for FDI related directly to national defense.
Law 19/2003 on the legal system of transfer of capital and foreign economic transactions, and specific measures for the prevention of money laundering	

51. Denmark's Ministry of Industry, Business and Financial Affairs. "ACT no. 842 of 10/05/2021 (In force): Act on Screening of Certain Foreign Direct Investments, etc. in Denmark (the Investment Screening Act)." May 21, 2021. [https://trade.ec.europa.eu/doclib/docs/2021/july/tradoc\\_159712.6.pdf](https://trade.ec.europa.eu/doclib/docs/2021/july/tradoc_159712.6.pdf).

52. Creve, Bart, et al. 2020. "In Brief: The Key Features of Merger Control Legislation in Denmark." Kromann Reumert. July 31, 2020. <https://www.lexology.com/library/detail.aspx?g=5511400e-c51d-4d03-9577-4d81e722b777>.

53. Germany's Federal Ministry of Justice. 2013. "Foreign Trade and Payments Act." [https://www.gesetze-im-internet.de/englisch\\_awg/englisch\\_awg.html](https://www.gesetze-im-internet.de/englisch_awg/englisch_awg.html).

54. Germany's Federal Office of Justice. 2013. "Foreign Trade and Payments Ordinance." [https://www.gesetze-im-internet.de/englisch\\_awv/englisch\\_awv.html](https://www.gesetze-im-internet.de/englisch_awv/englisch_awv.html).

Spain	
Royal Decree-Law 8/2020 on urgent extraordinary measures to address the economic and social impact of COVID-19, fourth final provision	Royal Decree-Law 8/2020, as amended by Royal Decree-Laws 11/2020 and 34/2020, included in Article 7 bis of Law 19/2003 a set of measures to control foreign investments in Spain. Article 7 bis prescribes which investments are being classified as FDI in Spain - “all those investments as a result of which the investor holds a stake equal to or greater than 10% of the share capital of the Spanish company, or when as a result of the corporate transaction, legal act or business, the control of said company is acquired in accordance with Article 7.2 of Law 15/2007, of 3 July, on Defense of Competition.” <sup>55</sup>
Royal Decree-Law 11/2020 of March 31, 2020, adopting urgent additional measures in the social and economic sphere to confront COVID-19, second transitional provision, third final provision	
Law 7/2010, general law on audiovisual communication	
Royal Decree - Law 34/2020 of November 17, 2020, adopting urgent measures to support business solvency and the energy sector, and in the field of taxation. It relates to a temporary regime for the suspension of the liberalization of certain FDI made by residents of EU and EFTA countries. <sup>56</sup>	
Fourth Final Provision, modifies Article 7 bis of the Law 19/2003 of July 4, 2003, on legal regime of movements of capital and economic transactions abroad and on certain measures for prevention of money laundering.	
Law 3/2013, creating the National Commission on Markets and Competition (Additional Provision nine)	National Competition Commission is allowed to certify law concerning limitations on the acquisition of shares of operators—business entities operating in the audiovisual sector—and the Ministry of Industry screens the merger controls in the energy sector <sup>57</sup>
Law 9/2014 on Telecommunications	

55. Freshfields. 2020. “Suspension of the Liberalization Regime of Certain Foreign Investments in Spain.” November 18, 2020. <https://www.freshfields.us/insights/knowledge/briefing/2020/11/suspension-of-the-liberalization-regime-of-certain-foreign-investments-in-spain—4114/>.

56. Clifford Chance. 2020. “Royal Decree-Law 34/2020, of 17 November: Another Turn of the Screw for the Regime on Foreign Investment Post COVID-19.” November 2020. <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/11/Royal-Decree-Law-34-2020-Regime-on-Foreign-investment-post-Covid-19.pdf>.

57. Xifré, Ramon. 2014. “Competition and Regulation Reforms in Spain in 2013: The CNMC – An International Perspective.” Working Paper, WP-1108-E, March 2014, IESE Business School, University of Navarra, Spain. <https://media.iese.edu/research/pdfs/WP-1108-E.pdf>.

France	
Financial and monetary code Infra-legal section Book I, Title V: Financial dealings with foreign countries, Chapter I: Investments subject to authorization	Financial and monetary code lays down investments subject to authorization, Articles R.151-1 to R.151-17. Foreign investment needs prior authorization or inspection by the government in case activities are likely to jeopardize public order, public safety, or national defense interests. The minister in charge of the economy can take any protective measures to suspend voting rights; prohibit or limit distribution of dividends; and temporarily suspend, restrict, or prohibit free disposal of assets related to FDI. The minister may also order a foreign investor to require authorization prior to making investments or after an investment has been made. <sup>58</sup>
Order of December 31, 2019, relating to foreign investments in France	Order of December 31, 2019, relating to foreign investments in France prescribes documents and information that applicants must include in their application for authorization. It also defines critical technologies in Article 6: cybersecurity, artificial intelligence, robotics, additive manufacturing, semiconductors, quantum technologies, and energy storage.
French Commercial Code Article L.233-3, Article L.430-1	Article L.233-3, in force since December 5, 2015, states that “any person, natural or legal, is considered as controlling another: when it holds, directly or indirectly, a fraction of the capital conferring on it the majority of voting rights in the general meetings of this company; when it alone has the majority of voting rights in this company by virtue of an agreement concluded with other partners or shareholders and which is not contrary to the interests of the company; when partner or shareholder of this company has the power to appoint or dismiss the majority of the members of the administrative, management, or supervisory bodies of this company; when investor has, directly or indirectly, a fraction of the voting rights greater than 40% and no other partner or shareholder, directly or indirectly, holds a fraction greater than its own.” <sup>59</sup>
Italy	
Article 4 of Decree-Law of 30 April 2021, nr. 56	Article 4 of Decree - Law of 30 April 2021, nr. 56 relates to COVID-19 measures and prevention of the spread of the coronavirus.
Decree-Law 15 March 2012, nr. 21 <sup>60</sup>	Decree - Law nr. 21 “relates to Rules on special powers on corporate assets in the defense and national security sectors, as well as for activities of

58. French Treasury. “Monetary and Financial Code: Legislative Section.” FDI Screening Unit. [https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc\\_158692.pdf](https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc_158692.pdf).

59. Légifrance. “Code de Commerce, Article L.233-3, Article L.430-1.” [French Commercial Code, Article L.233-3, Article L.430-1.] [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000031564650/](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000031564650/).

60. Normattiva, Il Portale Della Legge Vigete. “Decree-Law 15 March 2012, n. 21.” <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2012-03-15;21!vig=>.

	<p>strategic importance in the energy, transport and communications sectors.”<sup>61</sup></p> <p>Amendments to the regulation on special powers in sectors of strategic importance set forth in Articles 3 and 4-bis of Decree-Law nr. 105 of 21 September 2019, converted with amendments by law 18 November 2019, nr. 133<sup>62</sup> and Decree-Law of 8 April 2020, nr. 23.<sup>63</sup> Articles 15 and 16 of the Decree Law of 8 April 2020 refer to urgent measures regarding access to credit and tax obligations for businesses, special powers in strategic sectors, as well as interventions in the field of health and labor, extension of administrative and procedural terms.</p>
Decree of the President of the Republic 19 February 2014, n. 35: “Regulation for the identification of procedures for the activation of special powers in the fields of defense and national security, pursuant to article 1, paragraph 8, of the decree-law 15 March 2012, nr. 21” <sup>64</sup>	Law pertains to the identification of procedures for the activation of special powers in the energy, transport and communications sectors, pursuant to article 2, paragraph 9, of the decree-law 15 March 2012, nr. 21
Decree of the President of the Republic 25 March 2014, n. 86	Decree of the President of the Republic 25 March 2014, nr. 86 pertains to the “identification of strategically important assets in the energy, transport and communications sectors, pursuant to article 2, paragraph 1, of Decree-Law 15 March 2012, nr. 21” <sup>65</sup>
Decree of the President of the Republic 25 March 2014, n. 85 <sup>66</sup>	Relates to the “Regulation for the identification of assets of strategic importance in the energy, transport and communications sectors, pursuant to Article 2, paragraph 1, of Decree-Law no. 21 of 15 March 2012”
Decree of the President of the Council of Ministers	Decree of the President of the Council of Ministers 6

61. Clifford Chance. “Golden Share: New Special Powers of the Italian Government in Relation to Defence, Energy, Transport and Communication Sectors.” Briefing note. March 2012. <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2012/03/golden-share-new-special-powers-of-the-italian-government.pdf>.

62. Gazzetta Ufficiale della Repubblica Italiana, LEGGE 18 novembre 2019, n. 133 [Decree of the President of the Republic 18 November 2019, n. 133]. <https://www.gazzettaufficiale.it/eli/gu/2019/11/20/272/sg/pdf>.

63. Gazzetta Ufficiale della Repubblica Italiana, LEGGE 8 aprile 2020, n. 23 [Decree of the President of the Republic Decree-Law of 8 April 2020, nr. 23]. <https://www.gazzettaufficiale.it/eli/gu/2020/04/08/94/sg/pdf>.

64. Normattiva, Il Portale Della Legge Vigente. “Decreto del Presidente della Repubblica 19 febbraio 2014, n. 35.” [Decree of the President of the Republic 19 February 2014, n. 35].

<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:2014-02-19;35!vig=>.

65. Normattiva, Il Portale Della Legge Vigente. “Decreto del Presidente della Repubblica 25 marzo 2014, n. 86.” [Decree of the President of the Republic 25 March 2014, n. 86].

<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:2014-03-25;86!vig=>.

66. Normattiva, Il Portale Della Legge Vigente. “Decreto del Presidente della Repubblica 25 marzo 2014, n. 85.” [Decree of the President of the Republic 25 March 2014, n. 85].

<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:2014-03-25;85!vig=>.



6 June 2014, n. 108	June 2014, n. 108 relates to: "Regulation for the identification of activities of strategic importance for the national defense and security system, pursuant to article 1, paragraph 1, of the decree-law 15 March 2012, nr. 21" <sup>67</sup>
Decree of the President of the Council of Ministers 6 August 2014	The decree relates to the "Identification of the organizational and procedural methods for carrying out the activities preparatory to the exercise of special powers" <sup>68</sup>
Article 10 of Law 176 of 18 December 2020 that converted into Decree-Law 28 October 2020, nr. 137 of Decree of the President of the Council of Ministers of 18 December 2020, nr. 179, Decree of the President of the Council of Ministers 23 December 2020, nr. 180 <sup>69</sup>	
<b>Latvia</b>	
National Security Law, "Chapter VI – Restrictions on Commercial Companies of Significance to National Security" <sup>70</sup>	According to National Security Law – Scope: The mandatory review mechanism and permission requirement under the <i>National Security Law</i> is applied to investments in three types of assets: <ul style="list-style-type: none"> <li>enterprises and facilities with significance to national security,</li> <li>national level critical infrastructure, and</li> <li>European critical infrastructure.<sup>71</sup></li> </ul>
Regulation No. 606 adopted on October 3, 2017	Relates to information to be submitted to the authority determined in the National Security Law and the handling of information on FDI (October 6, 2020)
Regulations of the Cabinet of Ministers of October	Regulation specifies information to be submitted to the institution specified in the National Security Law and activities with information regarding FDI. <sup>72</sup>

67. Normattiva, Il Portale Della Legge Vigente. "Decreto del Presidente della Repubblica 6 giugno 2014, n. 108." [Decree of the President of the Council of Minister 6 June 2014, n. 108].

<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.del.consiglio.dei.ministri:2014-06-06;108!vig=>.

68. Government of Italy. "Il Presidente del Consiglio dei Ministri." [The President of the Council of Ministers.] [https://www.governo.it/sites/governo.it/files/Dpcm\\_20140806\\_GP.pdf](https://www.governo.it/sites/governo.it/files/Dpcm_20140806_GP.pdf).

69. Herbert Smith Freehills. 2021. "New Italian Rules on the Review of Foreign Investments in Italy: Dawn of an Era of Greater Certainty for Foreign Investors? A Focus on the Energy Sector." January 13, 2021. <https://www.herbertsmithfreehills.com/latest-thinking/new-italian-rules-on-the-review-of-foreign-investments-in-italy-dawn-of-an-era-of>.

70. OECD (Organisation for Economic Co-operation and Development). 2018. "Investment Policy Related to National Security: Notification by Latvia." Freedom of Investment Roundtable 29, March 13, 2018. [https://one.oecd.org/document/DAF/INV/RD\(2018\)1/en/pdf](https://one.oecd.org/document/DAF/INV/RD(2018)1/en/pdf).

71. UNCTAD (United Nations Conference on Trade and Development) Investment Policy Hub. 2000. "Latvia: National Security Law." December 29, 2000. <https://investmentpolicy.unctad.org/investment-laws/laws/237/latvia-national-security-law,Investment>.

72. LIKUMI, Legal Acts of Republic of Latvia, Regulations Regarding the Information to be Submitted to the Authority Determined in the National Security Law and the Handling of Information on Foreign Direct Investments. Cabinet Regulation No. 606. Adopted 3 October 2017. <https://likumi.lv/ta/en/en/id/294210-regulations-regarding-the-information-to-be-submitted-to-the-authority-determined-in-the-national-security-law-and-the-handling-of-information-on-foreign-direct-investments>.



3, 2017, No. 606	
<b>Lithuania</b>	
Amendments to the Law on the Protection of Objects of Importance to Ensuring National Security, No. IX-1132	The law was enacted on October 10, 2002, and amended on January 12, 2018. According to the law: "It ensures objects of importance to ensuring the national security of the State enterprises, facilities, securities and economic sectors and property and territory within protection zones that pose threat to national security. Article 6 of the Law prescribes the economic sectors of strategic importance ensuring national security: energy, transport, ICT, finance and credit and military equipment." <sup>73</sup>
The Law on Protection of Objects of Importance to Ensuring National Security, No. IX-1132 (new edition No. XIII-992 dated January 12, 2018) <sup>74</sup>	According to the law firm Van Bael & Bellis, the Lithuanian Commission is "a coordinating body composed of representatives from Lithuanian government's ministries and security services. The Lithuanian Act is enforced by the Commission for Coordination of Protection of Objects of Importance to Ensuring National Security (the Lithuanian Commission)." <sup>75</sup> The commission scrutinizes whether the investor is violating Lithuania's national security interests. The commission can impose an investment ban, compulsory requirements, or conditions in order to prevent the investment from posing a threat to Lithuania's national security interest.
Resolution on the Rules of Procedure of the Commission approved by the Government, No. 1540 (new edition No. 266 dated March 21, 2018)	
Resolution on the Determination of the Protection Zones of Importance to National Security approved by the Government, No. 1252 (new edition No. 746 dated July 25, 2018)	
The Law on the Protection of Objects of Importance to Ensuring National Security, No. XIII-3257	
Resolution of the Government No. 1072 concerning the appointment of the Ministry of Foreign Affairs of the Republic of Lithuania to perform functions	

73. Lietuvos Respublikos Seimas. "Lietuvos Respublikos nacionaliniams saugumui užtikrinti svarbių objektų apsaugos įstatymas" [Republic of Lithuania, Protection of Objects Important for National Security Law of 10 October 2002 No IX-1132]. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.189498/asr>.

74. UNCTAD (United Nations Conference on Trade and Development) Investment Policy Hub. 2002. "Lithuania: Law on the Protection of Objects of Importance to Ensuring National Security." October 10, 2002. <https://investmentpolicy.unctad.org/investment-laws/laws/246/lithuania-law-on-the-protection-of-objects-of-importance-to-ensuring-national-security->.

75. Van Bael & Bellis. 2020. "Foreign Direct Investment: Lithuania." October 15, 2020. <https://www.vbb.com/insights/FDI/Lithuania>.

Resolution on the Rules of Procedure of the Commission for Coordination of Protection of Objects of Importance to Ensuring National Security approved by the Government, No. 1540 (new edition No. 1213, valid from November 4, 2020)	
<b>Hungary</b>	
Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests <sup>76</sup>	
Government Decree 246/2018 (XII. 17.) on the Implementation of Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests <sup>77</sup>	
Act No. LVIII of 2020 on the Transitional Rules related to the End of the State of Danger and Pandemic Preparedness (section 85, paragraphs 276–292)	
Government Decree 289/2020 (VI. 17.) defining the measures required for the economic protection of companies having their seats in Hungary <sup>78</sup>	The act prescribes rules applicable to foreign investments in accordance with the rules established by government decree. The act defines strategic sectors and scope of transactions covered. No later than 8 days after notification, the minister makes a decision as to whether the investment is violating or endangering the state interest, public order, or public security in case of acquisition. <sup>79</sup>
<b>Malta</b>	
Act No. LX of 2020 of December 18, 2020 <sup>80</sup>	Malta's National Foreign Direct Investment Screening Office Act <sup>81</sup> (the "NFDISOACT") came into force on October 11, 2020, and implements Regulation (EU) 2019/452. It established the National Foreign Direct

76. OECD (Organisation for Economic Co-operation and Development). "Annex A: Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests." In "Investment Policy Related to National Security: Notification by Hungary." Directorate for Financial and Enterprise Affairs Investment Committee. April 10, 2019. [https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc\\_157938.pdf](https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157938.pdf).

77. European Commission. "Government Decree 246/2018 (XII. 17.) on the Implementation of Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests." [https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc\\_158835.pdf](https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc_158835.pdf).

78. European Commission. 2020. "Government Decree 289/2020 (17 June) defining the activities required for the economic protection of companies having their seat in Hungary." Hungarian Official Gazette, 145 (2020). [https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc\\_158834.pdf](https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc_158834.pdf).

79. Berethalmi, Peter, and Zora Lehoczki. 2020. "Summary of Rules Governing Foreign Acquisitions in Strategic Companies." Nagy és Trócsányi, CEE Legal Matters. November 6, 2020. <https://ceelegalmatters.com/hungary/15041-summary-of-rules-governing-foreign-acquisitions-in-strategic-companies>.

80. Hyzler, Kurt, and Luca Vella. 2021. "Malta's NFDI Screening Office Act Is Out." Mondaq. January 14, 2021. <https://www.mondaq.com/inward-foreign-investment/1025506/malta39s-nfdi-screening-office-act-is-out>.

81. NFDIS(National Foreign Direct Investment Screening Office) Malta. 2020. "Act No. LX of 2020." December 18, 2020. <https://www.nfdismalta.com/wp-content/uploads/2020/12/NFDIS-Act-Publication.pdf>.

	Investment Screening Office to screen foreign investments in Malta on the grounds of security and public order.
<b>The Netherlands</b>	
Electricity Act 1998 (Article 86f) <sup>82</sup>	Ministerial regulation regarding the notification of change of control in terms of ability to exercise a decisive influence on the activities of an undertaking on the basis of factual or legal circumstances
Gas Act (Article 66e) <sup>83</sup>	Ministerial regulation regarding the notification of change of control, as referred to in Article 26 of the Competition Act
Telecommunications Act (Chapter 14a) <sup>84</sup>	Ministerial decree regarding unwanted control of telecommunication. The act for undesired control in the telecom sector to ensure protection of public interest.
<b>Austria</b>	
Foreign Commerce Act of 2011 (Section 25a) <sup>85</sup>	Sections 7–10 of the act relate to maintaining peace, security, and regional stability; effects on the security interest and foreign relations of Austria and on the security interests of other EU member states; effects concerning terrorist activities and international crime, etc.
Austrian Investment Control Act (ICA), <sup>86</sup> in force since July 25, 2020, except for those provisions destined to enter into force by October 11, 2020	The act specifies authorization obligation, threat to security or public order, authorization procedures for FDI in Austria undergoing screening and clearance procedures without screening, as well as cooperation in the EU.
<b>Poland</b>	
Act of July 24, 2015, on the Control of Certain Investments ( <i>Journal of Laws</i> 2020, item 2145) <sup>87</sup>	According to the act, the investor should receive approval from the authority prior to making the investment. In case of indirect acquisitions, the investor should notify the minister or president of the Office of Competition and Consumer Protection of the planned acquisition within 7 to 30 days. <sup>88</sup> According to the UNCTAD Investment Policy Hub, “A foreign acquisition from non-EEA countries requires

82. Wettenbank. “Elektriciteitswet 1998.” [Electricity Act 1998]. <https://wetten.overheid.nl/BWBR0009755/2019-01-01>.

83. Wettenbank. “Gaswet.” [Gas Act]. <https://wetten.overheid.nl/BWBR0011440/2019-01-01>.

84. De Groot, Cees, and Jelle Nijland. 2018. “Reporting Obligation for Acquisitions in the Dutch Telecom Sector.” *Leiden Law Blog*, Leiden Law School, Leiden University, The Netherlands, April 26, 2018. <https://www.leidenlawblog.nl/articles/reporting-obligation-for-acquisitions-in-the-dutch-telecom-sector>.

85. Government of Austria. “Federal Act enacting the Foreign Commerce Act of 2011 (Außenwirtschaftsgesetz 2011 – AußWG 2011); Version of 8 March 2013.” [https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc\\_157940.pdf](https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157940.pdf).

86. Federal Law Gazette for the Republic of Austria. 2020. “87th Federal Act, enacting an Investment Control Act and amending the Foreign Trade Act 2011.” July 24, 2020. [https://trade.ec.europa.eu/doclib/docs/2020/september/tradoc\\_158955.pdf](https://trade.ec.europa.eu/doclib/docs/2020/september/tradoc_158955.pdf).

87. Pietrasik, Jakub, and Jacek Michalski. 2021. *Foreign Direct Investment Regimes Poland 2022*. Wolf Thiess. <https://iclg.com/practice-areas/foreign-direct-investment-regimes-laws-and-regulations/poland>.

88. UNCTAD (United Nations Conference on Trade and Development) Investment Policy Hub. 2020. “Poland Temporarily Extends Its FDI Screening Regime Due to the Pandemic.” June 24, 2020. <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3529/temporarily-extends-its-fdi-screening-regime-due-to-the-pandemic>.

	prior clearance from the President of the Polish Competition Authority, if it targets a company generating turnover exceeding EUR 10 million that either: 1) is a publicly listed company, 2) controls assets classified as critical infrastructure, 3) develops or maintains software crucial for vital processes (e.g. utilities systems, financial transactions, food distribution, transport and logistics, health care systems); 4) conducts business in one of 21 specific industries, including energy, gas and oil production, storage, distribution and transportation; manufacture of chemicals, pharmaceuticals and medical instruments, telecommunication and food processing.” <sup>89</sup>
Act of June 19, 2020, on Subsidies on Interest on Bank Loans Granted to Entrepreneurs Affected by COVID-19 and on the Simplified Procedure for the Approval of Arrangements in Connection with COVID-19 ( <i>Journal of Laws</i> 2020, item 1086, with changes) introduced among others changes to: Act of July 24, 2015, on the Control of Certain Investments ( <i>Journal of Laws</i> 2020, item 2145)	
Regulation of the Council of Ministers of February 25, 2016, on documents attached to notices of intention to acquire or achieve significant participation or acquisition of domination in entity to be protected ( <i>Journal of Laws</i> 2016, item 324)	
Regulation of the Council of Ministers of December 11, 2020, on the list of subject entities’ security and their competent control authorities ( <i>Journal of Laws</i> 2020, item 2349)	
Regulation of the Minister of Development, Labor and Technology of October 8, 2020, on point of contact for implementation and application	
Regulation establishing a monitoring framework for FDI in the union ( <i>Journal of Laws</i> 2020, item 1762)	
<b>Portugal</b>	
Decree-Law no. 138/2014 of September 15, 2014, published in the DR n <sup>o</sup> 177, series I <sup>90</sup>	Authorization required for sensitive investments: defense and other regulated areas, such as banking, media, and financial services <sup>91</sup>
<b>Romania</b>	
Law of competition 21 of April 10, 1996,	Defines conditions for undertakings and agreements

89. *Ibid.*

90. UNCTAD (United Nations Conference on Trade and Development) Investment Policy Hub. 2014. “Portugal: Decree-Law no. 138/2014.” September 15, 2014. <https://investmentpolicy.unctad.org/investment-laws/laws/264/portugal-decree-law-no-138-2014>.

91. Duarte, Joaquim Caimoto, et al. 2017. “Chapter 14: Portugal.” In *The Foreign Investment Regulation Review*, 5th ed., edited by Calvin S. Goldman. London, United Kingdom: Law Business Research Ltd. [https://www.uria.com/documentos/colaboraciones/2093/documento/Portugal\\_tfirr.pdf?id=7098](https://www.uria.com/documentos/colaboraciones/2093/documento/Portugal_tfirr.pdf?id=7098).

republished and amended Art. 47 (9)-(12) <sup>92</sup>	and their limitations. The Competition Council can allow, suspend, or prohibit specific undertakings.
<b>Slovenia</b>	
Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic (ZIUOOPE) <sup>93</sup>	Articles 69–81 of the act specify screening of FDI. A foreign investor is deemed any citizen, legal entity, or third country, including a member state of the EU, a member state of EEA, and Swiss Confederation. The act prescribes investments that are considered FDI, the notification procedure for FDI, screening process of the ministry, committee responsibilities regarding screening, decisions on screening, and applicability.
<b>Slovak Republic</b>	
Act No. 45/2011 Coll. on Critical Infrastructure as amended <sup>94</sup>	The act defines competences of government authorities regarding area of critical infrastructure. It prescribes duties of operator and sectors falling under the screening process. <sup>95</sup>
Slovak Cyber Security Act (Act No. 69/2018 Coll., the “Act”)	The act defines the minimum requirements to ensure cybersecurity in Slovakia. It applies to operators of crucial entities in banking, electronic communication, energy, and healthcare. <sup>96</sup>
<b>Finland</b>	
Act on the Screening of Foreign Corporate Acquisitions (172/2012) <sup>97</sup>	The Act on the Screening of Foreign Corporate Acquisitions (172/2012) and amendments 2.10.2020 682/2020 define objective of the act to screen foreign nationals, organizations, and companies to protect key national interests [vital to society, national security, and security policy objectives; safeguarding public order; and security in accordance with the Treaty on the Functioning of the European Union (Articles 52–65)]. <sup>98</sup>
Act on transfers of real estate property requiring special permission (470/2019)	
Act on the Screening of Foreign Corporate Acquisitions (172/2020, amendments 2.10.2020/682)	

92. “Law of Competition 21 of April 10th 1996 – Republished.” Unofficial translation. [http://www.consiliulconcurentei.ro/uploads/docs/concurrenta/LEGEA\\_CONCURENTEI\\_Nr\\_21\\_eng\\_rev\\_1.pdf](http://www.consiliulconcurentei.ro/uploads/docs/concurrenta/LEGEA_CONCURENTEI_Nr_21_eng_rev_1.pdf).

93. European Commission. 2020. “Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic (ZIUOOPE).” [https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc\\_158966.6.2020.pdf](https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158966.6.2020.pdf).

94. European Central Bank. 2018. “Opinion of the European Central Bank of 31 August 2018 on Critical Infrastructures, Cybersecurity and Covered Bonds (CON/2018/39).” <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018AB0039&rid=1>.

95. Collection of Laws of the Slovak Republic. 2011. “Act 45 of 8 February 2011 on Critical Infrastructure.” [https://trade.ec.europa.eu/doclib/docs/2021/march/tradoc\\_159517.pdf](https://trade.ec.europa.eu/doclib/docs/2021/march/tradoc_159517.pdf).

96. Kováč, Peter, and Lukáš Mrázik. 2019. “New Obligations Under the Slovak Cyber Security Act.” Kinstellar. November. <https://www.kinstellar.com/insights/detail/973/new-obligations-under-the-slovak-cyber-security-act>.

97. Finland’s Ministry of Economic Affairs and Employment. 2012. “Act on the Screening of Foreign Corporate Acquisitions (172/2020; amendments up to 682/2020).” [https://trade.ec.europa.eu/doclib/docs/2020/november/tradoc\\_159098.pdf](https://trade.ec.europa.eu/doclib/docs/2020/november/tradoc_159098.pdf).

98. Ibid.



Source: Table 1 - EU Member States FDISM1, List of Screening Mechanisms Notified by Member States, updated July 14, 2021.

Note: The list is non-exhaustive due to the constant changes in laws, regulations, policies, and measures.

EU member states that have established screening mechanisms at the national level are obliged to notify the European Commission and other member states about their screening mechanisms. However, of the EU's 27 member states only 18 have notified the European Commission of their national screening mechanisms. While we found some screening mechanisms in other member states, they do not uniformly adhere to the EU's FDI Screening Regulation.

Among the EU member states, eight countries should consider introducing investment screening mechanisms at the national level: Bulgaria, Croatia, Cyprus, Estonia, Greece, Ireland, Luxembourg, and Sweden. Table 4.2 presents the countries that still do not report in accordance with Articles 3.7 and 3.8 of Regulation (EU) 2019/452.

Table 4.2. EU Countries Not on List of Foreign Investment Screening Mechanisms Notified by Member States (as of July 14, 2021)

EU countries not on list of foreign investment screening mechanisms notified by member states (updated July 14, 2021) and title of the law, including non-EU or EEA countries and EFTA members	Additional Information
<b>Belgium</b>	
The act on safeguard mechanism, entered into force on January 2019 <sup>101</sup> at the regional level, applies to all investments by both EU and non-EU investors.	<p>Article III.59 and Article III.60 of the Flemish Administrative Decree of December 7, 2019. The government is allowed to screen/control investments, but no detailed screening procedure has been implemented thus far.<sup>102</sup></p> <p>The government announced on April 30, 2021, that foreign investors need to inform the new screening committee if they plan to acquire more than 25% of voting rights in a Belgian company. The scrutiny will be carried out by seven government departments and regional authorities and also take into consideration security issues.<sup>103</sup></p>

99. "List of Screening Mechanisms Notified by Member States." Updated July 14, 2021. [https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc\\_157946.pdf](https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157946.pdf).

100. Stec, Grzegorz. 2021. "Commission Proposes Defensive Economic Measures + CAI + Belgium's Investment Screening Mechanism." MERICS Briefs, MERICS. May 5, 2021. <https://merics.org/en/merics-briefs/commission-proposes-defensive-economic-measures-cai-belgiums-investment-screening>.

101. Fornoville, Claire. 2019. "The Flemish Administration Decree: New Rules Also for State-Owned Enterprises." Eubelius. March 15, 2019. <https://www.eubelius.com/en/news/the-flemish-administration-decree-new-rules-also-for-state-owned-enterprises>.

102. AT+ICA (European Association of Trade + Investment Controls and Compliance Attorneys). "Belgium — FDI Screening Practical Q&A Overview." <https://www.at-ica.com/belgium-fdi-screening-overview/>.

103. Stec, Grzegorz. 2021. "Commission Proposes Defensive Economic Measures + CAI + Belgium's Investment Screening Mechanism." MERICS Briefs, MERICS. May 5, 2021. <https://merics.org/en/merics-briefs/commission-proposes-defensive-economic-measures-cai-belgiums-investment-screening>.

Bulgaria	
<b>In terms of FDI, Bulgaria still has not established a law or FDISM, but there are activities that are banned. There are restrictions on investments by offshore companies and entities under their control, restrictions on foreign investments in the gambling industry, and restrictions on foreign investments in farmland.<sup>104</sup></b>	
Offshore Companies Act <sup>105</sup>	The act lists 27 activities not allowed for companies registered in tax havens and entities under their control.
Gambling Act <sup>106</sup>	The act places restrictions on foreign investments outside Bulgaria and EEA member states.
Agricultural Land Ownership and Use Act <sup>107</sup>	The act places restrictions regarding acquisition of farmland.
Croatia	
Croatia does not have an FDISM but the government determined that the Ministry of Economy and Sustainable Development's Internationalization Directorate will be the "national contact point" for screening FDI and responding to requests for information from EU member states or the European Commission regarding European Union Directive 2019/452. <sup>108</sup>	Croatia has a highly open economy in terms of FDI. It has a low FDI Restrictiveness Index in comparison with the OECD average. <sup>109</sup> In general, foreign investors are subject to the same laws regarding investments as domestic investors. There are only a few exceptions related to legal services, freshwater fisheries, and air transport, and these are usually based on reciprocity principles with other countries. <sup>110</sup>
Cyprus	
Cyprus does not have an FDISM, but there are various licenses that need to be approved depending upon the sector.	As regards the business sectors that require approval, few licenses are required. Non-EU entities, including physical and business entities, may purchase only two real estate properties for private use. In the energy sector, the Council of Ministers may refuse to approve a license for investment by a third country if there is no reciprocity with that country. In the media sector, there are limitations on ownership rights for non-EU investors; ownership is limited to 25%. In construction, only citizens of EU member states may have a majority stake in ownership. Non-EU investors cannot invest in private tertiary education. <sup>111</sup> Cyprus residents as well as

104. Targov, Trayan, and Atanas Grigorov. 2021. "The Foreign Investment Regulation Review: Bulgaria." *Law Reviews*. October 17, 2021. <https://thelawreviews.co.uk/title/the-foreign-investment-regulation-review/bulgaria>. See section on "Foreign investment regime."

105. Pechilkova, Donka. 2014. "Bulgaria Passes the First Offshore Companies Act." *ITR*. January 28, 2014. <https://www.internationaltaxreview.com/article/b1f9k23qljgs90/bulgaria-bulgaria-passes-the-first-offshore-companies-act>.

106. Chatalbashev, Alexander. Bulgaria. Boyanov & Co., European Lawyer Reference Series. [https://www.boyanov.com/BNV\\_resources/uploads/2012/12/Gaming-Law\\_article.pdf](https://www.boyanov.com/BNV_resources/uploads/2012/12/Gaming-Law_article.pdf).

107. Targov and Grigorov. 2021. "The Foreign Investment Regulation Review: Bulgaria, Ninth edition" <https://boyanov.com/wp-content/uploads/2021/10/Bulgaria.pdf>.

108. U.S. Department of State. 2021. "2021 Investment Climate Statements: Croatia." <https://www.state.gov/reports/2021-investment-climate-statements/croatia/>.

109. OECD (Organisation for Economic Co-operation and Development). 2019. *OECD Investment Policy Review of Croatia: An Overview Assessment*. Paris, France: OECD. <https://www.oecd.org/investment/OECD-Investment-Policy-Review-of-Croatia-Overview-Assessment.pdf>.

110. Marjančić, Ana, and Srdjana Petronijević. 2020. "Has Croatia Implemented FDI Screening Mechanism?" *Schoenherr*. November 4, 2020. <https://www.schoenherr.eu/content/has-croatia-implemented-fdi-screening-mechanism/>.

111. See, "What Is Tertiary Education?" *Learn.org*. [https://learn.org/articles/What\\_is\\_Tertiary\\_Education.html#:~:text=Tertiary%20education%20refers%20to%20any%20type%20of%20education,refers%20to%20academic%20pursuit%20undertaken%20after%20high%20school](https://learn.org/articles/What_is_Tertiary_Education.html#:~:text=Tertiary%20education%20refers%20to%20any%20type%20of%20education,refers%20to%20academic%20pursuit%20undertaken%20after%20high%20school) "Tertiary education refers to any type of education pursued beyond the high school level. This includes diplomas, undergraduate and graduate certificates, and associate's, bachelor's, master's and doctoral degrees."

	foreign residents (individuals or entities) need a permit to acquire more than 9.99% of ownership of a financial institution. <sup>112</sup>
<b>Estonia</b>	
Estonia does not have an FDISM, but there are various sector-specific regulations that need to be complied with, depending upon the sector.	Sector-specific regulations are applied to certain FDI (for example, acquisition of natural gas transmission systems or agricultural and forest land). These regulations pertain to EU and non-EU foreign investors. <sup>113</sup> There are no limits placed on foreign control and ownership, but licenses are required according to information derived from the 2021 Investment Climate Statement of Estonia for “mining, energy, gas and water supply, railroad and transport, waterways, ports, dams and other water-related structures and telecommunications and communication networks. The Estonian Financial Supervision Authority issues licenses for foreign interests seeking to invest in or establish a bank. Additionally, the Estonian Competition Authority reviews transactions for anti-competition concerns.” <sup>114</sup>
<b>Greece</b>	
Greece does not have an FDISM.	Limitations set on foreign equity ownership are higher than those imposed on average in the other 17 high-income OECD economies. In terms of equity, limits are imposed on foreign ownership of airport operations, electricity, and media. In the energy sector, foreign equity ownership is allowed. In case of land purchases in border regions and on certain islands, there are some restrictions because of national security considerations. Foreign investors are allowed to participate on the Athens Stock Exchange under the same conditions as domestic investors. <sup>115</sup>
<b>Ireland</b>	
Ireland does not have an FDISM.	In order to comply with the EU’s FDI Screening Regulation, the government of Ireland plans to adopt an investment screening bill with the power to stop or set conditions for relevant transactions from countries outside the European internal market. An Investment Screening Unit has been established within the Department of Enterprise, Trade and Employment to deal with this regulation. Currently, Ireland has in place the Competition and Consumer Protection Commission, which deals with the screening process related to merger control. <sup>116</sup>
<b>Luxembourg</b>	
Luxembourg does not have an FDISM. It is in the early stages of adoption of a bill.	On May 20, 2020, Luxembourg’s parliament submitted a bill introducing a screening mechanism for foreign investments that have potentially negative effects on security and public order or essential national or European interests. It relates to any person

112. U.S. Department of State. “Custom Report Excerpts: Cyprus.” *Investment Climate Statements*. Bureau of Economic and Business Affairs. <https://www.state.gov/report/custom/fe8ca909/>.

113. LexisNexis. “Estonia FDI Control.” <https://www.lexisnexis.co.uk/legal/guidance/estonia-fdi-control>.

114. U.S. Department of State. 2021. “2021 Investment Climate Statements: Estonia.” <https://www.state.gov/reports/2021-investment-climate-statements/estonia/>.

115. U.S. Department of State. 2021. “2021 Investment Climate Statements: Greece.” <https://www.state.gov/reports/2021-investment-climate-statements/greece/>.

116. Ó Cuilleánáin, Eoin. 2021. “FDI Screening: A Further Regulatory Road-Block Ahead for Investors in Ireland?” *Fieldfisher*. July 7, 2021. [https://www.fieldfisher.com/en-ie/locations/ireland/ireland-blog/fdi\\_screening](https://www.fieldfisher.com/en-ie/locations/ireland/ireland-blog/fdi_screening).

	who is a national of a country that is not a member of the EU or EEA. <sup>117</sup>
<b>Sweden</b>	
Sweden does not have an FDISM.	<p>In Sweden, there is some control in certain sectors (for example, the Military Equipment Act of 1992), but this is limited in scope. The updated Protective Security Act of 2018 pertains to preventive measures taken to protect the security-sensitive activities of public agencies and companies against espionage, sabotage, terrorist attacks, and other crimes that might threaten their operations.<sup>118</sup>“In August 2019, the Swedish government formed a special commission—the Direct Investment Investigation—to explore proposals on a Swedish system for reviewing FDI in protected areas. Among other things, the government entrusted the commission with the following responsibilities:</p> <ul style="list-style-type: none"> <li>• Analyzing criteria for placing FDI under review</li> <li>• Proposing conditions under which foreign investment should be prevented or allowed</li> <li>• Proposing an existing authority to be responsible for reviewing FDI</li> <li>• Proposing necessary adjustments and supplementary provisions to apply the EU framework regulation to Sweden</li> <li>• Submitting necessary constitutional proposals.”<sup>119</sup></li> </ul>
<b>Norway</b>	
Although not a member of the EU because of its inclusion in the EEA and access to the EU single market, Norway is looking to align its standards and regulations with those of the EU.	The security act adopted by the Norwegian government, the Act of 1 June 2018 No. 24 Regarding National Security, lays down measures for the ownership control mechanism, and it allows authorities to screen investments and block them in case they pose a threat to national security. The act applies to defense, telecommunication, transport, energy, food and water supply, and health services. Various ministries, rather than a central body, carry out screening. The threshold set to review a certain investment/transaction is considered only if the transaction involves a qualified stake or takes into account one-third or more of the share of capital, assets, or voting rights. <sup>120</sup>
<b>Switzerland</b>	
Switzerland does not have an FDISM.	Even though there is no investment control in Switzerland, there are mechanisms to protect national security and some regulations regarding specific sectors. Critical infrastructure relates to public institutions, energy, finance, health, information and communication, food, public safety, and transportation. Under the

117. Trevisan, Fabio. 2020. “Newsflash | Proposal of a Bill 7578 Relating to Foreign Investments in Luxembourg.” BSP. May 29, 2020. <https://www.bsp.lu/publications/newsletters-legal-alerts/newsflash-proposal-bill-7578-relating-foreign-investments>.

118. Björklund, Tobias, and Joacim Johannesson, “ProTective Security (Sw. Säkerhetsskydd) – who does it concern?” Setterwalls. June , 14 2021. <https://setterwalls.se/en/article/protective-security-sw-sakerhetsskydd-who-does-it-concern/>.

119. Ma, Logan. 2020. “Recent Developments in Nordic Investment Screening.” Strategic Technologies Blog. Center for Strategic & International Studies. April 7, 2020. <https://www.csis.org/blogs/technology-policy-blog/recent-developments-nordic-investment-screening>.

120. Lovdata. 2018. “Act Relating to National Security (Security Act).” Norway’s Ministry of Justice and Public Security. [https://lovdata.no/dokument/NLE/lov/2018-06-01-24#KAPITTEL\\_1](https://lovdata.no/dokument/NLE/lov/2018-06-01-24#KAPITTEL_1).



	Telecommunications Act (TCA), a telecommunication service provider must register with the Swiss Federal Office of Communications to get permission to provide telecommunication services. <sup>121</sup>
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Source: Table created by author, based on publicly available data.

## 4.2 Investment Screening Mechanisms in Some Western Balkan Countries

### Serbia

According to the U.S. Department of State's 2021 Investment Climate Statements, Serbia does not have in place investment screening or approval mechanisms for foreign investments. There are certain business activities that require licenses, but these activities are also regulated for both domestic and foreign investors. There are some limitations on investments in connection with finance, energy, mining, pharmaceuticals, medical devices, arms and military equipment, land development, electronic communications, auditing, waste management and production, and trade of hazardous chemicals.<sup>122</sup>

In the agricultural sector, foreign citizens and companies are not allowed to own agricultural land unless the company is registered in Serbia. Under the law, citizens of EU member states can own up to two hectares of land, but they need to meet special conditions (residency in municipality up to 10 years, farming practice up to three years, and own equipment related to farming). The Law on Investment in Serbia, adopted in 2015 and amended in 2018, deregulated FDI in Serbia. Article 11 of the law deals with the notion of investments of special importance and defines those investments that significantly influence improvement of competitiveness of a branch or sector in Serbia or its balanced regional development. Depending upon the level of investment in fixed assets and the number of jobs created, the government determines whether an investment can be classified as one of special importance. In accordance with the law, the section on Types of State Aid in Article 13 prescribes forms of state aid.<sup>123</sup>

The Law on Investment establishes a Council for Economic Development allowing it to adopt rules and procedures and monitor investment and economic development with the support of various ministries and the Development Agency of Serbia.<sup>124</sup> The law somewhat deregulated the defense industry, allowing foreigners as well as domestic investors to invest in production and trade of arms and military equipment. As regards real estate ownership, the investor is obliged to have a temporary residence permit; an investor can obtain permanent residence after five years of residence in Serbia.<sup>125</sup>

121. Dietrich, Marcel, and Allegra Arnold. 2020. "Investment Control in Switzerland." *Homburger*. October 6, 2020. <https://www.homburger.ch/en/insights/investment-control-in-switzerland>.

122. U.S. Department of State. 2021. "2021 Investment Climate Statements: Serbia." <https://www.state.gov/reports/2021-investment-climate-statements/serbia>.

123. ParagrafLex d.o.o. "Law on Investments." *Off. Herald of RS*, Nos. 89/2015 and 95/2018. <https://www.paragraf.rs/propisi/law-on-investments-republic-serbia.html>.

124. Bojović & Partners. 2015. "Serbia: Law on Investments." <https://www.bd2p.com/wp-content/uploads/2015/11/serbia-law-on-investments.pdf>.

125. Hudson's Global Residence Index. "Serbia Residence by Investment." <https://globalresidenceindex.com/news-serbia-residence-investment/>.



## North Macedonia

North Macedonia does not have investment screening mechanisms in place. The government of North Macedonia, in its Plan for Economic Growth,<sup>126</sup> through the Law on Financial Support of Investments,<sup>127</sup> prescribed the conditions for financial support of investments in accordance with the regulation on control of state aid. The law aims to enhance economic growth and development in North Macedonia by supporting investments that stimulate the competitiveness of the economy and employment. In accordance with the law, the potential beneficiary of the financial support or state aid can be any company registered in North Macedonia. The amount of support is large, but limited to 50 percent of the investment. Limitations that apply to other sectors do not take into account financial support granted for the purpose of establishing organizations in technological development and research projects. As defined in Article 7 on the obligation for reporting large projects, the law obliges the provider of state aid to notify the Commission for Protection of Competition about any large investment. In addition to this law, it is worth mentioning that North Macedonia is one of the first European countries where China started to implement its cooperation model. Any project that was financed by Chinese funds or China's state-owned banks automatically involved direct selection of Chinese companies, usually state-owned enterprises (SOEs), in realization of the same project.<sup>128</sup> Regardless, the law on procurement is mostly in the line with the EU's acquis. A majority of contracts involving investments that originate from countries outside the European internal market lacked transparency, efficiency, and fairness.

On the other hand, where projects were financed by EU funding or domestic budget, Chinese companies were also usually awarded contracts in the Western Balkans because of support from their government in the form of subsidies.<sup>129</sup> This unfair approach to the somewhat deregulated the defense industry, allowing foreigners as well as domestic investors to invest in production and trade of arms and military equipment. As regards real estate ownership, tendering process endangers the European market because of various types of incentives and subsidies that are not in the line with the laws of the EU, its member states, or non-EU member states.

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126. Government of the Republic of North Macedonia. "Plan for Economic Growth." <http://vlada.mk/node/18909?ln=en-gb>.

127. Government of the Republic of North Macedonia. "Law on the Financial Support of Investments." <https://vlada.mk/sites/default/files/dokumenti/law-on-the-financial-support-of-investments.pdf>.

128. Krstinovska, Ana. 2020. *The Place of North Macedonia in China's Strategy for the Western Balkans*. Konrad Adenauer Stiftung, January 2020. <https://www.kas.de/documents/281657/281706/The+place+of+North+Macedonia+in+China%27s+strategy+for+the+Western+Balkans.pdf/ead21e16-32aa-8c14-07df-3c40696ac851?version=1.0&t=1579528320386>.

129. For example, the successful bid for the Pelješac Bridge in Croatia, which is being built by the Chinese SOE China Road and Bridge Corporation with EU structural funds. See, Silk Road Briefing. 2018. "Chinese Contractors Winning Bid for EU Funded Peljesac Bridge in Croatia Raises Eyebrows." May 11, 2018. <https://www.silkroadbriefing.com/news/2018/05/10/chinese-contractors-winning-bid-eu-funded-peljesac-bridge-croatia-raises-eyebrows/>.

In terms of limitations regarding FDI, investments in the production of weapons and narcotics require government approval, while in other sectors, depending upon the area, investors need to get a license from authorized government bodies. This rule also applies to domestic investors.<sup>130</sup>

Invest North Macedonia, an official government investment and export promotion agency, carries out some screening or due diligence of investors to ensure economic benefits and protect national security.<sup>131</sup>

The recently adopted Law for Strategic Investment is in compliance with EU directives and aims to encourage economic growth using new technologies and innovations.<sup>132</sup>

The law lays down conditions for large-scale investments, encompassing investments of at least €100 million in two or more municipalities, €50 million in the municipalities of the City of Skopje, or at least €30 million in municipalities in a village. As defined by the law, all projects realized between countries or financed by the EU are considered strategic investment projects. Strategic investment projects include those in energy and infrastructure, transport and communications, tourism, manufacturing, agriculture, healthcare, wastewater and waste management, IT zones, sports, science, and education and any investment above €150 million. The Commission for Strategic Investment Projects makes decisions regarding the applications of projects.<sup>133</sup>

## Montenegro

The economic growth rate in connection with the tourism sector, road infrastructure and capital projects tied to the tourism sector, represents a significant portion of foreign investments in Montenegro. In the last decade, steps have been taken to deregulate the market, allowing foreign investments to flow into the country. Regardless of the low restrictions, privatization, and high level of exports, growing corruption and conflict of interest cases, with inefficient legal institutions, impacts the level of investment that are based on free trade and constructive capital. As far as investment screening is concerned, there is no screening mechanism in place. Montenegro's Foreign Investment Law treats a foreign investor the same as a domestic investor. In accordance with the law, a foreign investor may establish a company and acquire interest and shares in a legal entity or purchase an enterprise with limitations imposed on investments regarding manufacturing and trade of armament and military equipment.

130. U.S. Department of State. 2020. "2020 Investment Climate Statements: North Macedonia." <https://www.state.gov/reports/2020-investment-climate-statements/north-macedonia/>.

131. Invest North Macedonia. <https://investnorthmacedonia.gov.mk/about/>.

132. UNCTAD (United Nations Conference on Trade and Development) Investment Policy Hub. 2020. "North Macedonia: Regulations on Strategic Investments Adopted." January 20, 2020. <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3475/north-macedonia-regulations-on-strategic-investments-adopted>.

133. Karanovic Partners. 2020. "Law on Strategic Investments Adopted in North Macedonia." January 2020. <https://www.karanovicpartners.com/news/law-on-strategic-investments-adopted-in-north-macedonia/>.

Montenegro's Foreign Investment Law limits ownership to 49 percent of a share in capital or ownership voting rights, and approval is required from the state authority in charge of the defense sector.<sup>134</sup>

## 4.3 Reflection on Bosnia and Herzegovina: Context for Development of Polices Aligned to the EU

Bosnia and Herzegovina is not obliged to enact regulation similar to the EU's FDI Screening Regulation. However, a well-devised regulatory environment aligned with the EU's FDI Screening Regulation facilitates the process of the country's EU integration. Bosnia and Herzegovina is facing two challenges: attracting more investments, including FDI from countries outside the European internal market, and simultaneously meeting the expectations of EU member states to implement the EU's *acquis*.

Despite significant progress on the alignment of the laws of Bosnia and Herzegovina with the EU's *acquis*, the country still needs to take some crucial steps on regulatory reforms.<sup>135</sup> Regardless of the numerous laws and steps taken for the purpose of establishing the rule of law, a more transparent process needs to be established, in particular in the public procurement area, where investments in the telecommunication and energy sectors are vague in nature and usually involve countries outside the European internal market, which poses security risks.<sup>136</sup>

Multilevel government regulations and a complex regulatory environment in Bosnia and Herzegovina slow down the process of law enforcement. A burdensome administrative system<sup>137</sup> that is inefficient<sup>138</sup> and lacks appropriate laws to prevent corruption is the main reason why Bosnia and Herzegovina needs to improve its existing laws and through new ones protect its crucial infrastructure, thereby securing its independence. By restricting the participation of countries outside the European internal market in public procurements, especially the ones that damage the development and competitiveness of the private sector, Bosnia and Herzegovina will achieve fairness and transparency

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134. UNCTAD (United Nations Conference on Trade and Development) Investment Policy Hub. "Montenegro: Foreign Investment Law." <https://investmentpolicy.unctad.org/investment-laws/laws/121/montenegro-foreign-investment-law>.

135. Deloitte Legal. 2021. Foreign Direct Investment in CE. [https://www2.deloitte.com/content/dam/Deloitte/cz/Documents/legal/CE\\_FDI.pdf](https://www2.deloitte.com/content/dam/Deloitte/cz/Documents/legal/CE_FDI.pdf).

136. Golubović, Slobodan. 2021. "Investment in Critical Infrastructure: State Loses Control over Telecommunications and Internet." *Zurnal*. March 15, 2021. <https://zurnal.info/clanak/state-loses-control-over-telecommunications-and-internet/23842>.

137. OECDiLibrary. "Bosnia and Herzegovina: Small Business Act Profile." In *SME Policy Index: Western Balkans and Turkey 2019*. OECD, European Training Foundation, European Union, and European Bank for Reconstruction and Development. <https://www.oecd-ilibrary.org/docserver/a09405ef-en.pdf?expires=1651727716&id=id&accname=guest&checksum=DACCBE00D6C2EC9AD8B587020E8E20B4>. According to the document, public administration is the third-largest economic sector in Bosnia and Herzegovina, constituting over one-fifth of the economy.

138. World Bank. 2016. *Bosnia and Herzegovina: Two Decades of Peace and Transition*. September 20, 2016. Washington, DC: World Bank. <https://documents1.worldbank.org/curated/en/686081474374448860/pdf/108374-REVISED-WP-PUBLIC.pdf>.

in procurement processes thereby expanding the toolbox for the protection of its crucial assets in energy, pharmaceutical, and food industries. Balkan countries see the influx of capital that has been accelerating over the last 10 years, targeting infrastructure (road) and energy projects (both thermal and renewable energy projects), as an opportunity for economic development that will drive investments.<sup>139</sup>

The pace of cooperation between China and Western Balkan countries has been gradual, ranging from cooperation between ministries, state agencies, and companies closely related to infrastructure, energy, and finance. As a result of these continuous activities and its diversified approach to various governments, China's presence in the Western Balkans is evident more than ever. Precisely for this reason, Western Balkan countries need to reevaluate their relationship with China and reorient themselves toward EU member states. A similar trend, where China promotes its values, is present in the media in the Western Balkans. Cooperation between the national academies of sciences of China and Serbia is proof of China's multi-step involvement in the Balkans.<sup>140</sup> Collaboration among Chinese and Serbian academies expands to Bosnia and Herzegovina as well where certain universities are looking to develop research and teaching programs. These activities have strengthened China's presence in the region. China also has infrastructure projects in railway, road, and highway construction across the Balkans. A memorandum of understanding signed between the Council of Ministers of Bosnia and Herzegovina and the Chinese government on cooperation within the framework of the Silk Road Economic Belt and the 21 st Century Maritime Silk Road Initiative defines areas of cooperation focusing on transport, logistics and infrastructure, trade and investment promotion, energy, and cultural people-to-people exchange.<sup>141</sup>

China's multi-level strategy to expand its network in Western Balkan countries requires measures by Western Balkan governments to protect their crucial infrastructure. Since Bosnia and Herzegovina does not have an FDISM in place, it needs to adapt its existing regulations and find solutions that would address this challenge. Merely introducing the FDISM is not enough because this matter needs a more sophisticated approach with multi-jurisdictional improvements, as in the case of the EU and its member states. It also needs a coordinated set of regulations as an adequate response to threats associated with FDI. The engagement of various ministries by focusing on the wide range of investments and mitigation of public procurement issues represents a crucial determinant for adequate positioning of Bosnia and Herzegovina.

139. CorD Magazine. 2019. "Chinese Academy of Sciences Visited the Serbian Academy of Sciences and Arts." March 27, 2019. <https://cordmagazine.com/news/chinese-academy-of-sciences-visited-the-serbian-academy-of-sciences-and-arts/>.

140. Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina. "Memorandum of Understanding between the Council of Ministers of Bosnia and Herzegovina and the Government of the People's Republic of China on Cooperation Within the Framework of the Silk Road Economic Belt and the 21st Century Maritime Silk Road Initiative." May 14, 2017. [http://www.mvteo.gov.ba/attachments/en\\_bh---pr-china-mou-silk-road-economic-belpdf.pdf](http://www.mvteo.gov.ba/attachments/en_bh---pr-china-mou-silk-road-economic-belpdf.pdf).



## 5. Recommendations for Bosnia and Herzegovina

An assessment of Bosnia and Herzegovina's existing regulatory and policy toolbox suggests that the country needs to adopt new policy proposals and define critical infrastructure in order to better protect its position in terms of realization of any FDI, especially from countries outside the European internal market. During the late 1990s, most business entities were privatized and as a result many ended up bankrupt.<sup>142</sup> In recent years, through participation in international procurement processes in Bosnia and Herzegovina, foreign investors have targeted critical assets of SOEs that are a major source of income for various levels of government in Bosnia and Herzegovina. The privatization process turned from an opportunity into a threat as foreign investments resulted in suspicious and clientelist businesses that in most cases benefited international companies, without specific positive effects for the Bosnian economy.<sup>143</sup> Usually tied to public procurements, these investments led to rapid failure partially due to the inefficient judicial system<sup>144</sup> and the fact that the regulatory body was unable to properly oversee these investments. Bosnia and Herzegovina needs to address this problem with a more sophisticated approach in terms of overseeing investments in the energy<sup>145</sup> and telecommunication<sup>146</sup> sectors. It also needs to strengthen and improve its regulations, aligning them with the principles of the EU's FDI Screening Regulation. Following the example of EU member states, Bosnia and Herzegovina should strengthen its policies in response to the increasing threat posed by investments from countries outside the European internal market.

Policy recommendations for Bosnia and Herzegovina include:

- Rectify the existing Law on the Policy of Foreign Direct Investment by adding provisions that define critical infrastructure/assets of the country. Article 4(a) of the existing law states equity ownership of a business entity involved in the production and sale of arms, ammunition, explosives for military use; military equipment; and media shall not exceed 49 percent. For these sectors, a foreign investor needs approval from a competent body.

142. U.S. Department of State. 2021. "2021 Investment Climate Statements: Bosnia and Herzegovina." <https://www.state.gov/reports/2021-investment-climate-statements/bosnia-and-herzegovina/>.

143. Santrucek, Stepan. 2019. "Failed Privatisation Is to Blame for Bosnians' Exodus." *Balkan Insight*. May 16, 2019. <https://balkaninsight.com/2019/05/16/failed-privatization-is-to-blame-for-bosnians-exodus/>.

144. "Judicial efficiency in Bosnia and Herzegovina." March 2007. High Judicial and Prosecutorial Council of Bosnia and Herzegovina. <http://www.csnmeridian.ro/files/docs/Romania%20March%202007Bosnia%20Herzegovina.pdf>.

See section on length of proceedings and case flow.

145. USAID (United States Agency for International Development). "Fact Sheet: Energy Policy Activity in Bosnia and Herzegovina." <https://www.usaid.gov/bosnia/news-information/fact-sheets/fact-sheet-energy-policy-activity-bosnia-and-herzegovina>. According to the factsheet, "the energy sector has the potential to be a major engine for economic growth in BiH."

146. Vladislavljev, Stefan. 2021. "Surveying China's Digital Silk Road in the Western Balkans." *War on the Rocks*. August 3, 2021. <https://warontherocks.com/2021/08/surveying-chinas-digital-silk-road-in-the-western-balkans>. According to Vladislavljev, "If China gains ground in the current and future development of digital infrastructure in the [Western Balkans], it could represent a security challenge not only for the region, but for the United States as well."

147. Foreign Investment Promotion Agency of Bosnia and Herzegovina. "Article 4." In "Cleansed Text of the Law on the Policy of Foreign Direct Investment in Bosnia and Herzegovina." [http://www.fipa.gov.ba/publikacije\\_materijali/zakoni/05.08.2016.Cleansed%20text%20of%20the%20LAW%20ON%20THE%20POLICY%20OF%20FOREIGN%20DIRECT%20INVESTMENT%20IN%20BiH.pdf](http://www.fipa.gov.ba/publikacije_materijali/zakoni/05.08.2016.Cleansed%20text%20of%20the%20LAW%20ON%20THE%20POLICY%20OF%20FOREIGN%20DIRECT%20INVESTMENT%20IN%20BiH.pdf).



Bosnia and Herzegovina's entity level law on foreign investments allows the government of the Federation of Bosnia and Herzegovina to decide on proposals from a specific ministry for some companies to be exempt from the restrictions in the law, but remain under the specific law that regulates restricted sectors, such as the production and sale of arms, ammunition, and explosives for military use, and the media. In terms of approval and registration of foreign investments, sectors that are restricted shall be approved by the government of Federation of Bosnia and Herzegovina on the recommendation of the federal Ministry of Energy, Mining and Industry and the federal Ministry of Transport and Communications. For other sectors, foreign entities are required to request approval from the government of Federation of Bosnia and Herzegovina through the relevant ministry. These requests are resolved within 30 days and in some cases resolution can take up to 60 days.<sup>148</sup> By adding the provisions of critical infrastructure through a central contact point, mentioned below, threats associated with the public order and public security could be mitigated. Although there is a Law on Protection of Personal Data in Bosnia and Herzegovina<sup>149</sup> and Rulebook on the implementation of the law on personal data protection in the Agency for Personal Data Protection in Bosnia and Herzegovina, with better coordination, utilizing the resources of government bodies, security issues and threats that might arise as a result of FDI in at least critical infrastructure (energy, telecommunication, and health) could be mitigated.

- Establish “central contact point,” as some EU member states have done, comprised of members of various sectors to coordinate communication with EU and non-EU member states, maintaining a close relationship with the Foreign Investment Promotion Agency of Bosnia and Herzegovina in an effort to protect critical infrastructure of Bosnia and Herzegovina. Apart from that, in order to properly identify a foreign investor and source of capital, Bosnia and Herzegovina should, in cooperation with its neighbors, define the conditions under which it can require some information on potential FDI, allowing the government<sup>150</sup> to propose to various ministries and levels of government the need to require additional information prior to and after an investment has been made.

148. “Law on Foreign Investments of the Federation of Bosnia and Herzegovina.” Cleansed text of the Law on Foreign Investments of FBiH, (Official Gazette of FBiH No. 61/01, 50/03 and 77/15).

149. Personal Data Protection Agency in Bosnia and Herzegovina. “Regulations.” <http://www.azlp.ba/propisi/Default.aspx?id=5&pageIndex=1&langTag=en-US,Personal>.

150. This refers to the municipal, cantonal, or federal levels of government.

151. Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Bosnia and Herzegovina. 2012. “Public Procurement Law of BiH.” <http://www.apik.ba/zakoni-i-drugi-akti/Zakoni/drugi-vazniji-zakoni/default.aspx?id=230&langTag=en-US>.

- **Harmonize the existing Public Procurement Law of Bosnia and Herzegovina**<sup>151</sup> with the EU directives,<sup>152</sup> especially focusing on the treatment of foreign companies that participate in tendering processes or enacting separate decrees or policies that regulate this area. This pertains to investments in infrastructure projects in railway and road, energy, telecommunication, media, health care, and food projects to ensure that all participants (bidders) have equal access to finances, avoiding an influx of corrosive capital that lacks transparency and is backed by strong incentives, subsidies, and state aid that threaten to damage free trade principles. Conditions for bidders when defining the scope of work, services, and goods to be procured should have limiting factors regarding financial and technical specifications for qualification criteria in terms of subsidy because the effects of corrosive capital can drastically influence the process of selection of the bidder. In comparison to EU openness to FDI, the restrictions imposed by countries outside the European internal market and non-EU member states are having adverse effects on European sectors and companies, resulting in an unfair public procurement market for EU companies.<sup>153</sup> The European Parliament's in-depth analysis, *Foreign Subsidies and Public Procurement*, emphasizes the importance of the subsidies and their role in damaging EU companies domestically and within the foreign markets. Following EU regulations and principles of free market, Bosnia and Herzegovina is constantly trying to align its legislation to the EU acquis. While the EU is open, foreign procurement outside the bloc has faced too many barriers, not to mention barriers for the Western Balkans in general, and Bosnia and Herzegovina in particular. There has been negligible participation by Bosnian companies in international tenders.<sup>154</sup> The only way to attract new investments in Bosnia and Herzegovina is by equalizing legal regulations at least on Bosnian soil. Bosnian negotiating power is pretty low unless it is supported by EU member states.
- Improve Competition Act, especially regulating the dominant position of an economic entity and, when the dominant position is abused in certain areas, adding provisions related to critical infrastructure. In order to ensure the viability of its supply chains and protect its markets, Bosnia and Herzegovina needs to diversify its sources of inputs.

151. Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Bosnia and Herzegovina. 2012. "Public Procurement Law of BiH." <http://www.apik.ba/zakoni-i-drugi-akti/Zakoni/drugi-vaznji-zakoni/default.aspx?id=230&langTag=en-US>.

152. Official Journal of the European Union. 2014. "Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (Text with EEA relevance)." <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&from=EN>; and Official Journal of the European Union. 2014. "Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (Text with EEA relevance)." <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0025&from=EN>.

153. Böheim, Michael, et al. 2021. *Foreign Subsidies and Public Procurement. In-depth analysis requested by the INTA committee. European Parliament*. October 2021. [https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/653648/EXPO\\_IDA\(2021\)653648\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/653648/EXPO_IDA(2021)653648_EN.pdf).

154. European Commission. "International Procurement Instrument." [https://trade.ec.europa.eu/doclib/docs/2019/march/tradoc\\_157728.pdf](https://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157728.pdf).

During the pandemic, lockdowns in China<sup>155</sup> led to a shutting down of production sectors (automotive, electrical, equipment, machinery, chemicals, and metals), which set off a chain reaction that negatively affected these industries. Although the Competition Act applies equally to domestic and foreign investors, it needs to address security issues associated with the ownership of certain company because by understanding the structure of sectors of the economy and diversifying sources of inputs geographically, Bosnia and Herzegovina can achieve better stability of its crucial sectors. This can be achieved through the adoption of various strategies in crucial sectors. Article 11 of the Competition Act outlines “Decision on Abuse of a Dominant Position” while Article 13 prohibits “concentrations of economic entities, which as a result have a significant distortion of the efficient market competition in entire market, in the entire market of Bosnia and Herzegovina or its significant part, especially those which create new or strengthen an existing dominant position.”<sup>156</sup>

- **Align State Aid Law<sup>157</sup> of Bosnia and Herzegovina with EU legislation<sup>158</sup>** thereby securing the independence of the National Competition Authority and reducing the influence of the government as specified in Chapter 8 of the Stabilization and Association Agreement.<sup>159</sup>
- **Focus efforts on more efficient application of the Law on Foreign Exchange Operations of Federation of Bosnia and Herzegovina**, especially for the provisions related to capital transactions from foreign countries. Article 2 of the law defines direct investments and regulates investments in “a new or an existing company, provided that the investor thereby acquires a total of 10% or more stake in the registered capital of a company, or more than 10% voting rights,” and it encompasses loans “with a maturity of five years or more, granted for the purpose of establishing permanent economic relationship.”<sup>160</sup> By screening foreign transactions in accordance with the Law on Prevention of Money Laundering and Financing of Terrorist Activities and the Public Procurement Law, Bosnia and Herzegovina could protect its critical infrastructure and at the same time ensure that the free trade principles are applied thereby protecting its economy, including both SOEs and privately owned business entities.

155. OECD (Organisation for Economic Co-operation and Development). 2020. *The COVID-19 Crisis in the Western Balkans: Economic Impact, Policy Responses, and Short-Term Sustainable Solutions*. <https://www.oecd.org/south-east-europe/COVID-19-Crisis-Response-Western-Balkans.pdf>.

156. Advokat Prnjavorac. “Competition Act (Official Gazette of BIH, no. 48/05, 76/07 and 80/09).” <https://advokat-prnjavorac.com/legislation/Law-on-Competition-of-Bosnia-and-Herzegovina.pdf>.

157. Jukic, Elvira M. “State Aid Law Passed in Bosnian Parliament.” *BalkanInsight*, February 3, 2012. <https://balkaninsight.com/2012/02/03/the-state-aid-law-passed-bosnia-parliament/>.

158. European Commission. “Bilateral Relations with Bosnia and Herzegovina.” *Competition Policy*. [https://ec.europa.eu/competition-policy/international/bilateral-relations/bosnia-and-herzegovina\\_hr](https://ec.europa.eu/competition-policy/international/bilateral-relations/bosnia-and-herzegovina_hr).

159. Official Journal of the European Union. 2015. “Stabilisation and Association Agreement between the European Communities and their Member States, of the One Part, and Bosnia and Herzegovina, of the Other Part.” [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22015A0630\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22015A0630(01)&from=EN).

160. Advokat Prnjavorac. “Law on Foreign Exchange Operations of Federation of Bosnia and Herzegovina (‘Official Gazette of Federation Bosnia and Herzegovina’ no. 47/10).” <https://advokat-prnjavorac.com/legislation/Law-on-foreign-exchange-operations-of-Federation-of-Bosnia-and-Herzegovina.pdf>.

- **Strengthen the application of the Law on Prevention of Money Laundering and Financing of Terrorist Activities.** Provisions of this law have a positive effect on transparency and the source of capital, which reduces the possibility of corrosive capital. A wide range of legal entities are involved in the implementation of measures related to the identification of clients and prevention of money laundering activities. Article 4 of the law includes financial institutions, authorized trading agents, companies engaged in electronic funds transfer, investment and pension companies, public notaries, accountants, lawyers, auditors, real estate agents, etc. Articles 6 and 7 of the law clearly lay down how “liable persons” should identify and track clients and prescribes the elements of identification and tracking of clients. In case a “liable person” is unable to implement measures prescribed in Article 7, Article 8 states that person “shall not establish a business relationship or make transaction, or shall discontinue a business relationship already established.”<sup>161</sup>
- **Enhance the integrity of SOEs by improving the functioning of the Bosnian court system.** The absence of responsible management and supervisory boards diminished the integrity of SOEs over the years. A faster resolution of cases will improve judicial efficiency and court management, which will result in better management of SOEs. The implementation of corporate governance principles and reduction in corruption would create a more transparent public procurement process, diminishing conflicts of interest and political influence, and indirectly stimulating the development of private enterprises that rely heavily on constructive capital.
- **Intensify efforts to implement all the EU’s acquis that will reinforce the regulatory framework needed to combat the influence of corrosive capital.** Gradually, this approach will better protect the national interest and, combined with a strong and fair regulatory framework, preserve long-term stability of the Bosnian market.

161. Development Bank of the Federation of Bosnia and Herzegovina. “Law on Prevention of Money Laundering and Financing of Terrorist Activities.”  
[https://rbfbih.ba/wp-content/uploads/2020/06/Law-on-Prevention-of-Money-Laundering-and-Financing-of-Terrorist-Activities-Official-Gazette-of-Bosnia-and-Herzegovina-No\\_-47-14.pdf](https://rbfbih.ba/wp-content/uploads/2020/06/Law-on-Prevention-of-Money-Laundering-and-Financing-of-Terrorist-Activities-Official-Gazette-of-Bosnia-and-Herzegovina-No_-47-14.pdf).



## 6. Conclusion

A narrow and disintegrated approach to addressing issues associated with FDI screening, although similar in nature, lacks appropriate engagement of all members of the European internal market. Data collected through this analysis indicate that a majority of EU member states are following a similar pattern in terms of FDI screening regulations. EU member states with an existing regulatory framework have managed to demonstrate resiliency, but the ability of foreign investors to circumvent existing laws, especially those from non-EU countries, calls for a more sophisticated approach to FDI screening.

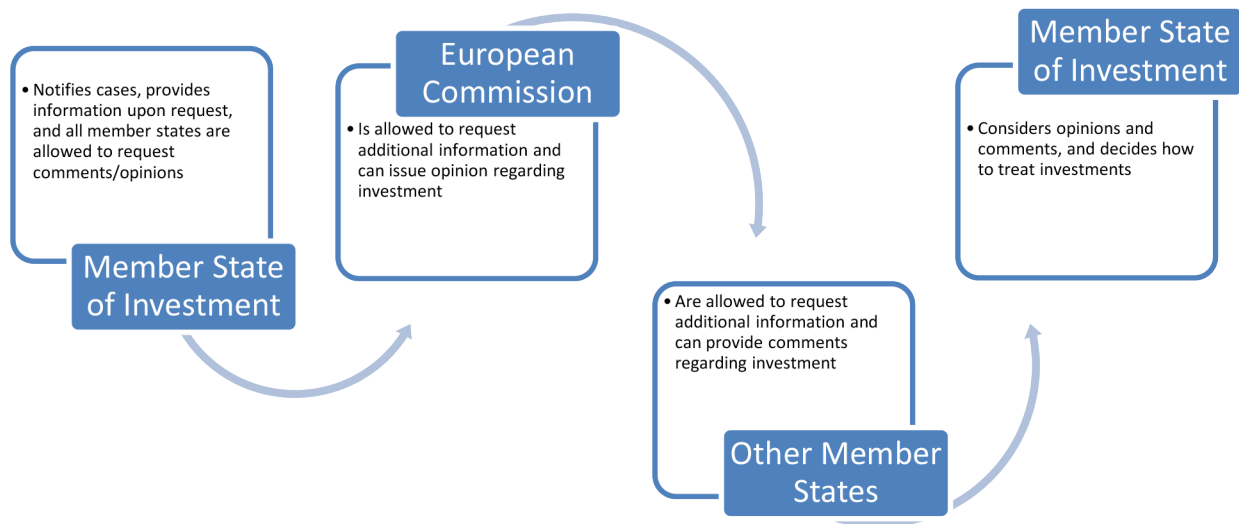
The asymmetry of documents required to carry out FDI screening represents one of the major challenges for European countries. More engagement is required by each EU member state in order to achieve better cooperation within Europe. The transfer of competencies to the national level and the aspiration to maximize each country's own interests have had a negative effect on cooperation among countries. The growth of their economies and their relatively small and disintegrated markets in comparison to the EU represents a major threat to the Balkan countries. The capacity of Balkan countries to protect their critical infrastructure and resist large capital investments viewed as attractive FDI is very low. This reality threatens to endanger not just individual countries, but the Balkan region as a whole.

Exposure to the risk related to FDI in the Balkans is a lot higher than in the EU mostly because of a lack of cooperation in the Balkans. An understanding of the bigger picture can be achieved only through market integration and an alignment of Balkan countries' strategies with the EU's *acquis*. With this approach, Balkan countries will have better protection and their perception of FDI will not just be limited to its economic benefits but will also take into account its long-term impact. Prioritizing the protection of critical infrastructure, with a focus on small and medium enterprises, could potentially widen the perception of the benefits of FDI. This will have a positive impact on the preservation of public order and public security within the Balkans.



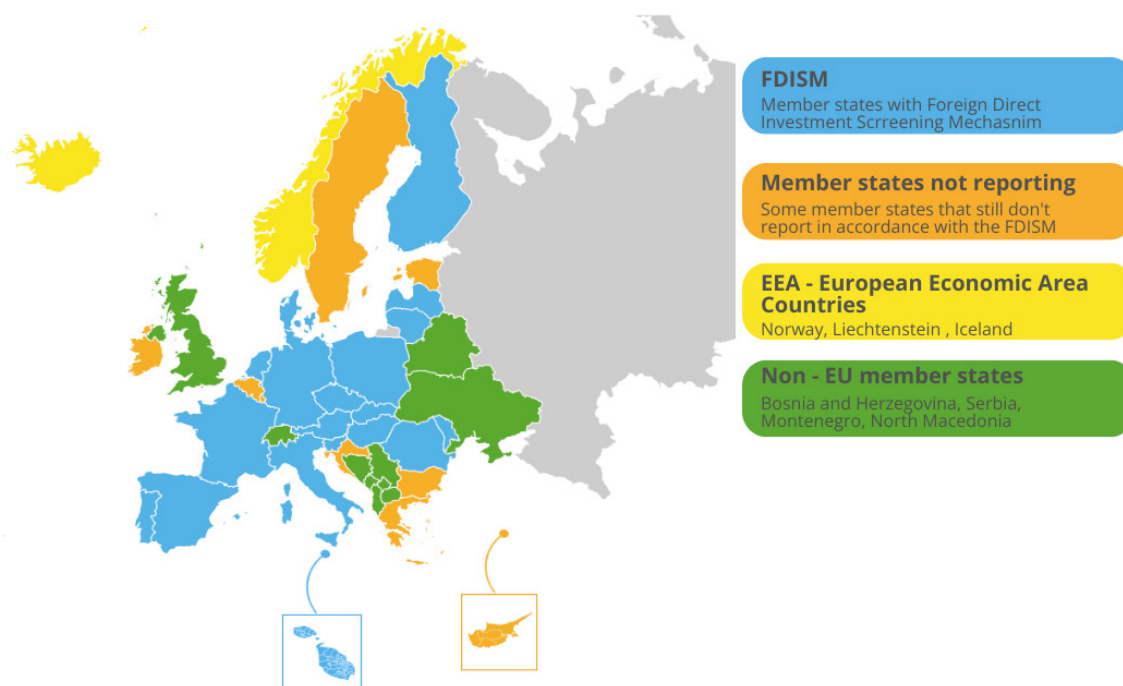
## 7. Appendix

Figure A.1. Foreign Direct Investment Screening Mechanism—EU Cooperation Process



Source:Percy, Joseph. 2019. "Investment Screening in the EU: Impact on Chinese FDI." *China Briefing*, May 2, 2019.<https://www.china-briefing.com/news/investment-screening-eu-impact-chinese-fdi/>.

Image A.1. Map of Foreign Direct Investment Screening Mechanisms in Europe



Source:Original image produced for this publication.

Table A.1. Review of Legal Regulations in the EU, EEA, and Non-EU Member States Regarding the Foreign Direct Investment Screening Mechanism

Country	EU Member State	EEA and EFTA, including Switzerland (not taking into account EU members)	Non-EU Member State	Investment Screening Mechanism in Place	Law Similar to Investment Screening
Czech Republic	✓			✓	
Denmark	✓			✓	
Germany	✓			✓	
Spain	✓			✓	
France	✓			✓	
Italy	✓			✓	
Latvia	✓			✓	
Lithuania	✓			✓	
Hungary	✓			✓	
Malta	✓			✓	
The Netherlands	✓			✓	
Austria	✓			✓	
Poland	✓			✓	
Portugal	✓			✓	
Romania	✓			✓	
Slovenia	✓			✓	
Slovak Republic	✓			✓	
Finland	✓			✓	
Belgium	✓				✓
Croatia	✓				✓
Bulgaria	✓				✓
Cyprus	✓				✓

Country	EU Member State	EEA and EFTA, including Switzerland (not taking into account EU members)	Non-EU Member State	Investment Screening Mechanism in Place	Law Similar to Investment Screening
Estonia	✓				✓
Greece	✓				✓
Ireland	✓				✓
Luxembourg	✓				✓
Sweden	✓				✓
Norway		✓			✓
Switzerland		✓			✓
Serbia			✓		✓
North Macedonia			✓		✓
Montenegro			✓		✓
Bosnia and Herzegovina			✓		✓

Source: Original table produced for this publication.

Note: Review of legal regulations as of November 22, 2021.

# Impressum

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