Contribution ID: 591cdbb1-7342-4bda-a28b-72fa9a45af0e
Date: 19/07/2023 14:32:26

# Targeted consultation on the evaluation and review of the EU's FDI Screening Regulation (Reg. (EU) 2019/452)

Fields marked with * are mandatory.

## A Introduction

The purpose of this targeted consultation is to provide evidence for the evaluation and possible revision of the FDI Screening Regulation, in order to ensure that it remains a tool fit for the purpose of identifying and addressing risks related to certain foreign direct investments while keeping its exclusive focus on security and public order.

For further information about this consultation, please consult the explanatory document which is available in PDF format under "Background Documents" on the right hand side of your screen. A brief guide on the terminology used in this questionnaire is also provided.

The questionnaire will be open until **21 July 2023** (at midnight).

You can save your survey response even if you have not yet completed the survey — and finish your response on a later occasion. However, you need to submit your contribution before the end of the consultation period.

## B About you

### * B.1 Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- (•) Dutch
- English
- Estonian
- Finnish
- French

- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* B.2 I am giving my contribution as

(If you are a law firm or consultant assisting companies involved in transactions undergoing screening, please select the response option: **company**/**business**)

- Academic/research institution
- Business association
- Company/business
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **Fo r the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its**

**transparency register number, are always published. Your e-mail address will never be published.**
Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* B.4 **Contribution publication privacy settings**

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- (●) **Anonymous**
  Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.
- ( ) **Public**
  Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

☑ I agree with the personal data protection provisions

* B.5 First name (anonymity requested)

* B.7 Surname (anonymity requested)

* B.9 Email (this won't be published)

* B.10 Scope

- (●) International
- ( ) Local
- ( ) National
- ( ) Regional

* B.13 Organisation name

*255 character(s) maximum*

Government of The Netherlands

* B.14 Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

B.15 Transparency register number

*255 character(s) maximum*

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

* B.16 Country of origin

Please add your country of origin, or that of your organisation.

*This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.*

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone

- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo

- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d’Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Türkiye
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia

| | | | |
|---|---|---|---|
| Democratic Republic of the Congo | Lesotho | Saint Kitts and Nevis | Zimbabwe |
| Denmark | Liberia | Saint Lucia | |

## C About your knowledge and experience of FDI screening

C.2 .

| | Not at all familiar | Slightly familiar | Moderately familiar | Very familiar |
|---|---|---|---|---|
| How familiar are you with the screening mechanism of the Member State(s) where you or your organisation is established or active? | ○ | ○ | ○ | ◉ |
| How familiar are you with the EU framework for investment screening? | ○ | ○ | ○ | ◉ |

C.3 .

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| Do you or your organisation have direct experience with the implementation of national screening mechanisms? | ◉ | ○ | ○ | ○ |

C.4 If your answer is "yes", please explain in what capacity.

C.5 .

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| Do you or your organisation have direct experience with the implementation of the EU framework for investment screening? | ◉ | ○ | ○ | ○ |

C.6 If your answer is "yes", please explain in what capacity you gained this experience.

## D About the relevance of the EU's framework for FDI screening

D.1 .

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| In your view, is the objective of protecting security and public order from the risks posed by certain FDIs still relevant? | ◉ | ○ | ○ | ○ |

D.2 If your answer is either "yes" or "no", please explain.

## E About the added value of the EU's framework for FDI screening

E.1 .

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| In your view, has the EU's FDI Screening Regulation increased the effective protection of security and public order from the risks posed by certain FDIs beyond what would have been achieved by Member States each operating individually? | ◉ | ○ | ○ | ○ |

E.2 If your answer is either "yes" or "no", please explain.

E.3 To what extent do you agree with the following statements about the impact of the adoption and implementation of the EU's FDI Screening Regulation on national screening mechanisms?

| | Strongly disagree | Disagree | Neither agree nor disagree | Agree | Strongly agree | Don't know |
|---|---|---|---|---|---|---|
| The cooperation mechanism **provides security-relevant information** to Member States that they would not otherwise have access to (in the absence of the cooperation mechanism). | ○ | ○ | ○ | ◉ | ○ | ○ |
| The cooperation mechanism (comments by other Member States, opinions by the Commission) has an **impact on the decision taken** by the respective Member State screening the transaction. | ○ | ○ | ○ | ◉ | ○ | ○ |
| The cooperation mechanism has increased convergence among Member States on the issue of **what may constitute a risk to security or public order**. | ○ | ○ | ○ | ◉ | ○ | ○ |
| The cooperation mechanism has increased convergence among Member States on the issue of **how risks to security or public order should be assessed**. | ○ | ○ | ◉ | ○ | ○ | ○ |
| The cooperation mechanism has **promoted adoption or modernisation of national screening frameworks**. | ○ | ○ | ○ | ◉ | ○ | ○ |

| | | | | | | |
|---|---|---|---|---|---|---|
| The cooperation mechanism has increased convergence among Member States on the **procedural aspects** of national screening mechanisms (in particular: deadlines, information requirements, user-friendliness). | ○ | ○ | ◉ | ○ | ○ | ○ |

## F **About the effectiveness of the EU's framework for FDI screening:** *GENERAL*

F.1 .

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| In your view, has the EU's framework for FDI screening generally been effective in **assessing the likely impact of specific FDIs** on security or public order within the EU? | ◉ | ○ | ○ | ○ |

F.2 If your answer is either "yes" or "no", please explain.

F.3 .

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| In your view, has the EU's framework for FDI screening generally been effective (ie, met its objectives) in **identifying and sharing information** about FDIs in the EU both between the Member States themselves, and between the Member States and the Commission? | ◉ | ○ | ○ | ○ |

F.4 If your answer is either "yes" or "no", please explain.

F.5 .

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| Do you consider that the FDI Screening Regulation has allowed Member States and the Commission to correctly identify the FDI transactions that are likely to have an adverse impact on EU critical assets in cases where security or public order is affected? | ◉ | ○ | ○ | ○ |

F.6 If your answer is either "yes" or "no", please explain.

F.7 .

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| Do you consider that the current EU framework – which leaves Member States free to decide on most of the parameters of their national screening mechanisms – has been effective in identifying risks to security and/or public order for EU critical assets? | ◉ | ○ | ○ | ○ |

F.8 If your answer is either "yes" or "no", please explain.

F.9 .

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| Do you consider that the current EU framework – which leaves Member States free to decide on most of the parameters of their national screening mechanisms – has been effective in identifying risks to security and/or public order for Member States other than the Member State where the FDI takes place? | ◉ | ○ | ○ | ○ |

F.10 If your answer is either "yes" or "no", please explain.

F.11 .

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| Do you consider that the provisions of the FDI Screening Regulation are adequate to effectively protect sensitive and/or confidential information about FDI transactions submitted by the notifying party/parties to Member States' screening authorities? | ○ | ◉ | ○ | ○ |

F.12 If your answer is either "yes" or "no", please explain.

F.13 .

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| Do you consider that the indicative list of factors which may be taken into consideration when assessing an FDI transaction on grounds of security or public order is adequate? (The indicative list is provided in Art. 4 of the regulation) | ◉ | ○ | ○ | ○ |

F.14 If your answer is either "yes" or "no", please explain.

F.15 .

| | Never | Rarely | Sometimes | Often | Always | Don't know | Don't wish to reply |
|---|---|---|---|---|---|---|---|
| In your view, does the existence of a national screening mechanism and its specificities influence business decisions on investments? | ○ | ○ | ○ | ◉ | ○ | ○ | ○ |

F.16 Please give reasons for your answer.

## G About the effectiveness of the EU's framework for FDI screening: *EU COOPERATION MECHANISM*

G.1 In particular, has the cooperation mechanism set up under the FDI Screening Regulation been effective in identifying and sharing information about...

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| ... FDIs notified to the cooperation mechanism by the Member State screening the transaction at a national level? | ◉ | ○ | ○ | ○ |
| ... FDIs in undertakings located in different Member States, which are part of the same company/corporate group? | ◉ | ○ | ○ | ○ |

| | | | | |
|---|---|---|---|---|
| **...** FDIs that are not subject to screening at a national level? | ○ | ◉ | ○ | ○ |
| **...** FDIs in an existing undertaking? | ◉ | ○ | ○ | ○ |
| **...** FDIs where a foreign investor establishes new operations in a Member State (also referred to as a "greenfield" investment)? | ○ | ◉ | ○ | ○ |

G.2 If you think that the cooperation mechanism set up under the FDI Screening Regulation has been effective in some other way not mentioned above, please explain.

G.3 .

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| Do you consider that the FDI Screening Regulation has significantly contributed to the efforts of Member States and the Commission to correctly identify the FDI transactions that are relevant for the EU's security or public order? | ◉ | ○ | ○ | ○ |

G.4 If your answer is either "yes" or "no", please explain.

G.5 The following set of questions concerns the investigation and authorisation of FDI. For the time being, both of these tasks are performed by the Member State where the transaction is planned or completed. For each of the five questions, it is possible to select more than one response option.

**Reminder**: for the purpose of this questionnaire, the term *investigate* refers to the carrying out of a systematic or formal inquiry to discover and examine the facts of an FDI transaction, including the hearing of interested parties, in order to establish whether the transaction is likely to affect security or public order.

| | The Member State where the transaction is planned or completed | The Member State where the transaction is planned or completed, in close cooperation with other Member States and with the Commission. | The Member State where the transaction is planned or completed, in close cooperation with other Member States (in cases where their security or public order might be affected) and with the Commission | The European Commission | Don't know | Don't wish to reply |
|---|---|---|---|---|---|---|
| In your view, who is/are best placed to **investigate** FDI likely to affect security or public order in more than one Member State? | ☐ | ☐ | ☑ | ☐ | ☐ | ☐ |
| In your view, who is/are best placed to **investigate** FDI likely to affect security or public order in cases where EU critical assets are involved? | ☐ | ☐ | ☑ | ☐ | ☐ | ☐ |
| In your view, who is best placed to **authorise, condition (and monitor), prohibit or unwind** FDI likely to affect security or public order in more than one Member State? | ☑ | ☐ | ☐ | ☐ | ☐ | ☐ |

| | | | | | | |
|---|---|---|---|---|---|---|
| In your view, who is best placed to **authorise, condition (and monitor), prohibit or unwind** FDI likely to affect security or public order in cases where EU critical assets are involved? | ☑ | ☐ | ☐ | ☐ | ☐ | ☐ |
| In your view, who is best placed to **identify** FDI likely to affect security or public order in one or more Member States – in cases where the FDI is not subject to screening by the Member State where the transaction is planned or completed? | ☐ | ☐ | ☑ | ☐ | ☐ | ☐ |

G.6 .

| | Never | Rarely | Sometimes | Often | Always | Don't know | Don't wish to reply |
|---|---|---|---|---|---|---|---|
| In your view, does the existence of the EU cooperation mechanism influence business decisions on investments? | ○ | ○ | ◉ | ○ | ○ | ○ | ○ |

G.7 Please give reasons for your answer.

## H About the effectiveness of the EU's framework for FDI screening: *LIMITATIONS*

H.1 To what extent do the following elements of the cooperation mechanism impact limit its effectiveness in identifying and addressing adverse impacts on the EU's security or public order?

| | Not a problem | Minor problem | Moderate problem | Major problem | Don't know | Don't wish to reply |
|---|---|---|---|---|---|---|
| The fact that the Member State screening the transaction does not have to report to other Member States and to the Commission about the outcome of its assessment of security or public order risks. | ○ | ○ | ◉ | ○ | ○ | ○ |

| | | | | | | |
|---|---|---|---|---|---|---|
| The fact that the Member State screening the transaction does not have to explain to other Member States and/or to the Commission whether and to what extent it took into account other Member States' comments or the Commission opinion in its final decision. | ○ | ◉ | ○ | ○ | ○ | ○ |
| The fact that the comments of other Member States are not legally binding on the Member State where the transaction is planned or completed. | ◉ | ○ | ○ | ○ | ○ | ○ |
| The fact that the Commission's opinion concerning security or public order in more than one Member State is not legally binding on the Member State where the transaction is planned or completed. | ◉ | ○ | ○ | ○ | ○ | ○ |
| The fact that the Commission's opinion concerning critical EU assets is not legally binding on the Member State where the transaction is planned or completed | ◉ | ○ | ○ | ○ | ○ | ○ |
| The fact that unless EU critical assets are concerned, the Commission's opinion identifying a likely impact on the EU's security or public order is shared only with the Member State screening the transaction, and not with the other Member States. | ○ | ○ | ◉ | ○ | ○ | ○ |

| | | | | | | |
|---|---|---|---|---|---|---|
| The fact that Member States' comments identifying a likely impact on their security or public order are shared only with the Member State screening the transaction and the Commission, but not with the other Member States. | ◉ | ○ | ○ | ○ | ○ | ○ |
| The fact that Member States may choose not to have a mechanism that allows them to screen FDI transactions on the grounds of their potential impact on security or public order. | ○ | ○ | ○ | ◉ | ○ | ○ |
| The fact that Member States may implement a screening mechanism which allows screening only ***after*** the FDI has been completed | ○ | ○ | ○ | ◉ | ○ | ○ |
| The fact that Member States are free to decide at a national level which sectors, assets (for example infrastructure, technologies, inputs) and economic activities they screen on the grounds of their potential impact on security or public order | ◉ | ○ | ○ | ○ | ○ | ○ |
| The fact that the FDI Screening Regulation does not provide criteria against which to monitor and assess cumulative effects of FDI on security and/or public order | ◉ | ○ | ○ | ○ | ○ | ○ |

## I About the effectiveness of the EU's framework for FDI screening: *FORWARD LOOKING*

I.1 In your view, which transactions should be examined by the cooperation mechanism based on the origin or the country of establishment/incorporation of the investor? (Additional info available)

The FDI Screening Regulation covers foreign direct investments, i.e. those investments made by a person or entity established outside the EU. The regulation provides for a limited exception to the above rule in cases of **ci rcumvention**. In particular, recital 10 of the regulation states that:

- *Member States that have a screening mechanism in place should provide for the necessary measures, in compliance with Union law, to prevent circumvention of their screening mechanisms and screening decisions. This should cover investments from within the Union by means of artificial arrangements that do not reflect economic reality and circumvent the screening mechanisms and screening decisions, where the investor is ultimately owned or controlled by a natural person or an undertaking of a third country. This is without prejudice to the freedom of establishment and the free movement of capital enshrined in the TFEU.*

The following question explores whether this scope covers all types of transactions that could pose a risk to security or public order – or whether other types of transactions should be included as well. If you tick only the first response option, you imply that the scope of the EU's FDI Screening Regulation should remain unchanged in this respect.

- [x] Where the direct investor is **either a natural person or an undertaking from a third country**
- [x] Where the direct investor is **established in the EU – but is ultimately owned by a natural person or an undertaking from a third country** that can effectively participate in the management or control of the target company

I.2 If you think that any other types of transaction should also be examined by the cooperation mechanism, please explain.

I.3 .

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| Do you consider that the effectiveness of the current EU framework would be increased if the regulation listed a minimum set of sectors for which all Member States **must screen** proposed transactions whenever the target (of the FDI) is active in one of the listed sectors? | ○ | ◉ | ○ | ○ |

I.4 If your answer is either "yes" or "no", please explain.

I.5 Do you consider that the effectiveness of the current EU framework would be increased if all Member States were **required to notify to the cooperation mechanism** proposed transactions whenever the target (of the FDI) is active in certain particularly sensitive sectors of infrastructure, technologies and economic activities which would be listed in the FDI Screening Regulation?

- (●) Yes – in those cases where the FDI transaction is undergoing screening
- ( ) Yes – regardless of whether or not the transaction is undergoing screening
- ( ) No
- ( ) Don't know
- ( ) Don't wish to reply

I.6 If your answer is "yes" or "no", please explain.

I.7 In order to address cases where an adverse impact on the EU's security or public order is likely, would it be more effective **...**

- (●) ... to require national screening authorities to notify to the cooperation mechanism **all** the FDIs they receive from the notifying parties?
- ( ) ... to require national screening authorities to notify to the cooperation mechanism **only** those FDIs which they have initially identified as potentially posing a risk to security or public order?
- ( ) ... to require national screening authorities to notify only those FDIs that meet certain criteria (eg: specific sensitive sectors, critical technologies, a likely impact of the FDI on more than one Member State – for example due to significant cross-border sales or the existence of a "sister company" of the target in one or more other Member States)
- ( ) Don't know
- ( ) Don't wish to reply

I.8 When assessing whether FDIs pose a risk to security or public order, what criteria should be used by the national authorities?

- (●) National authorities should apply their own **national criteria**
- ( ) National authorities should apply an agreed set of **European criteria**
- ( ) National authorities should apply their own national criteria **combined** with an agreed set of European criteria
- ( ) Other (please explain below)
- ( ) Don't know

- [ ] Don't wish to reply

## J About the effectiveness of the EU's framework for FDI screening: *INTERNATIONAL COOPERATION*

J.1 Article 13 of the regulation allows **international cooperation** with the responsible authorities of third countries on matters relating to FDI screening.

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| Do you consider that this cooperation has helped the Commission and Member States to identify and address security risks posed by certain FDIs? | ◉ | ○ | ○ | ○ |

J.2 If your answer is either "yes" or "no", please explain.

J.3 In your view, what should be the Commission's objective(s) when representing the EU for international cooperation on FDI screening?

- [x] Exchange of information on FDI trends
- [x] Exchange of good practices related to the implementation of screening mechanisms
- [x] Promotion of investment screening on grounds of risks to security and public order in other countries
- [x] Exchange of information about certain non-EU investors of concern – in order to be able to better assess and address transactions where the investor is involved (without revealing whether any **specific** transactions are undergoing screening)
- [ ] Exchange of information on individual FDI transactions undergoing screening (including the name of the investor and the target), on a case-by-case basis, with a view to taking an informed decision on the transaction
- [ ] Other (please explain below)
- [ ] Don't know
- [ ] Don't wish to reply

J.5 In your view, who should implement international cooperation on specific FDI cases?

- [ ] The Commission should be in the lead and the competent authority of the Member State where the transaction is planned or completed should always be involved

- [ ] The competent authority of the Member State where the transaction is planned or completed should be in the lead, and the European Commission should always be involved
- [ ] The cooperation should be led either by the Member State(s) screening the transaction or by the Commission, depending on the case or the issue that needs to be addressed
- [x] The cooperation should only be done by the Member State(s) screening the transaction
- [ ] The cooperation should only be done by the Commission
- [ ] Other (please explain below)
- [ ] Don't know
- [ ] Don't wish to reply

## K About the efficiency of the EU's framework for FDI screening

K.1 To what extent do you agree with the following statements about different aspects of the cooperation mechanism?

| | Strongly disagree | Disagree | Neither agree nor disagree | Agree | Strongly agree | Don't know |
|---|---|---|---|---|---|---|
| The cooperation mechanism **does not unduly delay the decision** by the respective Member State screening the transaction. | ○ | ○ | ◉ | ○ | ○ | ○ |
| The cooperation mechanism **allows other Member States to become aware of transactions** that are likely to impact their security or public order. | ○ | ○ | ○ | ○ | ◉ | ○ |
| The cooperation mechanism **allows the Member State undertaking the screening** to obtain relevant information on individual transactions that it would not have obtained if the cooperation mechanism did not exist. | ○ | ○ | ○ | ◉ | ○ | ○ |

| | | | | | | |
|---|---|---|---|---|---|---|
| The **administrative burden on the parties to the transaction** arising because of the cooperation mechanism is reasonable. | ○ | ○ | ○ | ◉ | ○ | ○ |
| The **administrative burden on the Member States** arising because of the cooperation mechanism is reasonable for all transactions. | ○ | ○ | ○ | ◉ | ○ | ○ |
| The **administrative burden on the Member States** arising because of the cooperation mechanism is reasonable – at least for transactions posing a serious risk to security or public order (ie even if disproportionately high for others). | ○ | ○ | ○ | ○ | ◉ | ○ |
| The **Commission's annual reports** provide adequate information about the implementation of the cooperation mechanism. | ○ | ○ | ○ | ○ | ◉ | ○ |
| **Member States should be required to publish annual reports** on the implementation of their screening mechanisms. | ○ | ○ | ◉ | ○ | ○ | ○ |
| The EU framework should provide **common minimum requirements** for the content and methodology of annual reports by Member States and the Commission. | ○ | ◉ | ○ | ○ | ○ | ○ |

K.2 To what extent do you agree with the following statements about the scope of the information to be notified as part of the cooperation mechanism?

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | | | | |

| | Strongly disagree | Disagree | Neither agree nor disagree | Agree | Strongly agree | Don't know |
|---|---|---|---|---|---|---|
| The scope of the information that must be notified as part of the cooperation mechanism is **sufficient**. | ○ | ○ | ○ | ◉ | ○ | ○ |
| The scope of information that must be notified as part of the cooperation mechanism **should be broadened** in order to reduce the need (for either the Commission or the Member State where the transaction is planned or completed) to ask for additional information after their first assessment of the case. | ○ | ◉ | ○ | ○ | ○ | ○ |
| The scope of information that must be notified as part of the cooperation mechanism **should be narrowed** so as to alleviate the administrative burden (even if this increases the need to provide additional information at a second stage). | ○ | ◉ | ○ | ○ | ○ | ○ |
| There is **sufficient transparency about the scope of information** that must be provided as part of the notification. | ○ | ○ | ○ | ○ | ◉ | ○ |
| The information that must be provided as part of the notification **should be more standardised**. | ○ | ○ | ◉ | ○ | ○ | ○ |
| The **administrative burden on the Member States** arising because of the cooperation mechanism is reasonable | | | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| – at least for transactions posing a serious risk to security or public order (ie even if disproportionately high for others). | ○ | ○ | ○ | ◉ | ○ | ○ |
| The scope of **additional information** to be provided at the request of the Commission or other Member States is sufficient. | ○ | ○ | ◉ | ○ | ○ | ○ |
| There is **sufficient transparency about the scope of additional information** that may be requested. | ○ | ○ | ◉ | ○ | ○ | ○ |
| The scope of additional information to be provided at the request of the Commission or other Member States **should be more standardised**. | ○ | ○ | ○ | ◉ | ○ | ○ |

K.3 In order for the Member States and the Commission to perform and provide their own security assessments in a timely manner to the Member State which is undertaking the screening, would it be more **effici ent ...**

- ◉ ... to require national screening authorities to notify to the cooperation mechanism **all** the FDIs they receive?
- ○ ... to require national screening authorities to notify to the cooperation mechanism **only** those FDIs which they have initially identified as potentially posing a risk to security or public order?
- ○ ... to require national screening authorities to notify only those FDIs that meet certain criteria (eg: specific sensitive sectors, critical technologies, a likely impact of the FDI on more than one Member State – for example due to significant cross-border sales or the existence of a "sister company" of the target in one or more other Member States)
- ○ Don't know
- ○ Don't wish to reply

K.4 To what extent do the following procedural aspects of the cooperation mechanism limit its efficiency?

| | Not a problem | Minor problem | Moderate problem | Major problem | Don't know | Don't wish to reply |
|---|---|---|---|---|---|---|
| | | | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| The fact that the parties to the FDI transaction are free to determine the date when they request authorisation from the national authority before the transaction is completed. | ◉ | ○ | ○ | ○ | ○ | ○ |
| The fact that Member States' timelines for screening FDI transactions are not harmonised across the Member States. | ◉ | ○ | ○ | ○ | ○ | ○ |
| The fact that the moment when FDI transactions are notified to the cooperation mechanism is only determined by the start of formal screening by the Member State. | ◉ | ○ | ○ | ○ | ○ | ○ |

K.5 In your view, would any of the following proposed solutions increase the efficiency of the cooperation mechanism in identifying and assessing threats to the EU's security or public order?

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| A single, secure IT platform for the relevant authorities of the 27 Member States and the Commission – where **the notifying parties** are required to provide information linked to individual FDI transactions to be assessed by the cooperation mechanism. | ○ | ◉ | ○ | ○ |
| A single, secure IT platform for the relevant authorities of the 27 Member States and the Commission – for **the Member States** to exchange information relating to individual FDI transactions. | ◉ | ○ | ○ | ○ |
| **Harmonised timelines at national level for screening FDI transactions** subject to the EU cooperation mechanism (eg, an identical point in time by which the Member States must notify the transaction to the cooperation mechanism; identical timeframes for the conduct of the assessment; suspension of national procedures until the cooperation with the | ○ | ◉ | ○ | ○ |

| | | | | |
|---|---|---|---|---|
| Commission and other Member States has concluded; etc.). | | | | |
| **Harmonised timelines for the request of additional information** from the parties and for the submission of such information. | ○ | ◉ | ○ | ○ |
| **Minimum common criteria** in order to assess which transactions, among those screened by the Member States, pose a risk to public order and security | ○ | ◉ | ○ | ○ |

## L **About the coherence of the EU's framework for FDI screening with other EU legislation and other EU policies**

L.1 Transactions subject to the EU cooperation mechanism for FDI screening may also require authorisation at national and/or at EU level under other regulations. (Additional info available)

Examples include:

- merger control (Art. 21(4) of Reg. (EC) 139/2004);
- rules for the prudential assessment of acquisitions of qualifying holdings in financial sector entities (Directive 2016/36/EU);
- the certification of transmission system operators of networks for electricity and natural gas in the EU (Art. 10 of Directive 2009/72/EC, and Art. 10 of Directive 2009/73/EC).

| | Yes | No | Don't know | Don't wish to reply |
|---|---|---|---|---|
| Do you consider that the processes required by the FDI Screening Regulation are coherent overall with these other scrutiny and authorisation procedures? | ◉ | ○ | ○ | ○ |

L.2 If your answer is either "yes" or "no", please explain.

## M **Other contributions**

M.1 If there is any other comment about the application of the FDI Screening Regulation that you wish to bring to the Commission's attention and which has not been addressed in your replies to the previous questions, please do so here:

M.2 If you wish to share any documents (eg. data, research paper, position paper, etc.) that may be relevant for the evaluation of the FDI Screening Regulation, please upload them here.

Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

## Background Documents

Background Document for the Questionnaire

Brief Guide on Terminology

## Contact

TRADE-PUBLIC-FDI-SCREENING@ec.europa.eu