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INVESTMENT SCREENING FOR ENHANCED ECONOMIC SECURITY

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KEY POINTS

- Within the EU, the concept of **economic security** has rapidly evolved after Russia's full-scale invasion of Ukraine and the weaponization of its oil and gas supply to Europe. The European Commission started from developing a common set of coordination instruments, such as investment screening, sanctions, and anti-money laundering to setting out a **common framework for economic security** aimed at **decoupling and de-risking** (identifying, assessing and mitigating potential risks for security or public order linked to economic engagement with authoritarian competitors or adversarial powers).
- Persistent rule of law deficits, low policy and administrative capacity, capital scarcity, and low investment attractiveness compounded by a tradition of unchecked investments from authoritarian regimes and offshore havens have made **Bulgaria one of Europe's most vulnerable economies** to malign foreign influence and corrosive capital inflows.
- The Government of Bulgaria has recently taken steps to implement the EU's *FDI Screening Regulation*. Though legislative changes for introducing such a **national screening mechanism** have been submitted to parliament, the country still remains one of the two EU Member States without a mechanism and institutional practice in place.
- The government urgently needs to adopt a **national economic security strategy**, either as a stand-alone document or as part of the national security strategy, describing concrete measures to identify and mitigate the risks to the country's economic security, defining the responsibilities of the authorities involved, and setting up a focal point to coordinate their activities.

The concept of economic security has rapidly grown in popularity in recent years, with the rise of global geopolitical competition, and in particular with Russia's weaponization of its oil and gas supplies to Europe to aid its war of aggression against Ukraine. As a result, an increased number of countries have implemented FDI screening mechanisms or have updated existing ones. Economic security, however, goes beyond FDI screening and represents a more comprehensive understanding of the importance of economic considerations for a state's national security or **economic statecraft**.

Based on these concerns, the EU became the first major economy to set out a **strategy on economic security**. Based on **three main policy strands** – promoting competitiveness, protecting ourselves and partnering with others – the EU's strategy is a useful illustration of a comprehensive approach to economic security. It describes the necessity of a strong economy as a prerequisite for national security, assisted by regulations aimed at promoting it, diverse supply chains that ensure a state is not over-reliant on a potential adversary for critical materials, complemented by measures aimed at protecting itself from economic bullying or coercive capital, such as through FDI screening and other mechanisms.

The EU has taken inspiration from its Member States' domestic focus on economic security. **Germany** has recently updated its FDI screening mechanisms, significantly broadening and toughening their FDI screening regime.[1] These updates have been incorporated into their wider national security strategy, with improving the resilience of its economy as the principal intention of one of the three pillars to their security strategy. **The Netherlands** has also recognized the importance of economic security as a key component to national security. Despite being one

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of the most FDI friendly states in Europe, economic security is one of the six key security interests in the **Dutch national security strategy** – now understood as just as critical to national security as traditional territorial and physical security concerns. By 2023, all but two EU Member States had implemented, or were in the process of implementing, FDI screening mechanisms as a means towards achieving economic security.

Beyond the EU, states like Japan, China, the US and the UK have all recently taken significant steps towards improving their economic security institutions. All have recently made efforts to **secure supply chains** and **promote domestic critical industries** while preventing critical technology leakage at the same time. Japan has even announced a dedicated Economic Security Minister, and the UK's Ministry of Defence has pledged to invest over £85 billion on their defence and security industry sectors over four years to promote its economy.

In Central and Eastern Europe, the Czech Republic has led the way in developing robust economic security and investment screening mechanisms, as it is one of the best integrated economies in the EU industrial heartland. On the other hand, Bulgaria and Croatia have trailed behind in developing their economic security institutions, raising alarm bells among partners, given Southeast Europe's **vulnerability to**, among others, **Russian[2] and Chinese[3] economic coercion and strategic corruption**. In addition, Bulgaria risks to fall further out of EU integration initiatives, after failing to make Schengen and the Euro zone on time. Such a scenario could significantly curb the much needed continued flow of constructive private capital to the country.[4]

Investment Screening in the EU

In 2017, the EU recognized the need to protect its citizens and its industry against foreign countries or companies engaging in unfair practices or raising concerns for security and public order. The European Commission's initiative to harness globalization and specifically to analyze investments from third countries in strategic sectors, welcomed by both the European Council and the European Parliament, led to the adoption, two years later, of the EU's *FDI Screening Regulation*.

The handling of cases through this cooperation mechanism has functioned well: out of the 414 cases reported in 2021, a significant majority (86%) were promptly resolved during the preliminary review (phase 1),[5] while only 11% of the notified cases (as opposed to the 14% in the timeframe considered in the previous report) underwent a "formal" review process (phase 2), with less than 3% of cases leading to a Commission opinion.[6] There is also a positive trend toward more **diversification of screening among Member States**: in 2022, the top four Member States accounted for 66% of all authorization requests, down from 70% in 2021 and almost 87% in the first report. Notably, a mere 1% of the transactions were blocked, affirming that the EU remains open to FDI, and Member States only reject cases that pose severe risks to security and public order.

The EU recognizes the need to further improve the screening framework. The planned improvements have stemmed from practice and from the evaluation of the EU's *FDI Screening Regulation,* carried out by the Commission in late 2023. A report summarizing the findings is expected to be presented to the European Parliament and the Council in the beginning of 2024, which would inform the work of the next college of commissioners.

However, the EU's *FDI Screening Regulation* does not oblige **Member States to apply national investment screening mechanisms.** As a result, the introduction of such a mechanism across Member States has proved to be an uneven process and, in some countries, has not even been completed yet.[7] The absence of screening mechanisms in certain Member States, including Bulgaria, seriously **undermines the potency of the EU screening framework**.[8] These countries have few or no means to manage vulnerabilities related to FDI, lack institutional capacity, and lose the opportunity for beneficial information exchanges within the Union. Exploiting these vulnerable blind spots, potentially problematic foreign investors targeting sensitive assets might opt for non-screening Member States as a gateway to access the internal market, taking advantage of these **weak links** in the system.

The **definition of FDI** as outlined in the EU's *FDI Screening Regulation* is **narrow**, being applicable solely to investments by legal or natural persons from non-EU countries.[9] Investments by EU companies ultimately owned or controlled by non-EU persons are excluded, except for investments from within the Union by means of artificial arrangements that do not reflect economic reality and circumvent the screening mechanisms and screening decisions.[10]

The EU provides its Member States with considerable discretion to define the limits of screening mechanisms within their jurisdictions. As a result, the **sectoral coverage of screening mechanisms is limited and uneven**, providing untethered access into the single market. Furthermore, as it stands few EU countries can screen transactions in any sector of their economy. Though the scope of investment screening is gradually expanding in several Member States, the majority still **screen a limited set of transactions**.

Box 1: Expanding the Scope of FDI Screening across EU Member States

Over the last few years, several countries have taken steps towards expanding the scope of their national FDI screening mechanisms. For instance, by enacting the *Investment Screening Act* on 1 July 2021, **Denmark** significantly broadened the sectoral scope of transactions that can undergo screening. On 1 June 2023, the Dutch FDI screening regime, complementing existing sector-specific FDI regulations in electricity, gas, and telecommunications, entered into force, introducing a mandatory and suspensory screening mechanism for direct and indirect investments in companies in the **Netherlands** by European (including Dutch) and non-European investors. The recently enacted *Foreign Direct Investment Act* in **Slovakia** (1 March 2023) has also expanded the range of foreign investments subject to mandatory screening and introduced new screening procedures.

Source: *UNCTAD.*[11]

Even though the EU's *FDI Screening Regulation* mandates that national screening frameworks must not discriminate between third countries, the mechanisms in many Member States **exempt from screening**, in whole or in part, acquisitions that involve parties residing in or being nationals of **specific non-EU countries** (e.g., EEA, EFTA, NATO or OECD member countries).

Many Members States have also restricted the application of their screening mechanisms through narrow sectoral scope or **extensive white-listing** of certain investor categories. This not only limits their means to effectively mitigate economic security risks, but could also potentially cause **spill-over effects for security or public order concerns** in other Member States and the Union as a whole. For instance, **greenfield investments**, which could pose a similar risk to security and public order as the acquisition of existing companies and which fall within the scope of the EU's *FDI Screening Regulation*, are not subject to screening in many countries (e.g., Austria, France, Germany, Latvia, Lithuania (in certain sectors), Portugal, and Slovakia).[12]

Another notable exemption to screening that is seen in many countries are **joint ventures**. Foreign entities might exploit joint ventures to gain access to sensitive assets, technologies, or to circumvent investment screening, possibly in collusion with partners contributing assets or technology to the venture. Joint ventures can thus serve as a strategy to manipulate economic outcomes that would otherwise involve direct investment and consequently be employed to evade screening.[13]

Certain transactions that are screened in some EU Member States are **not covered** by the reach of the EU's *FDI Screening Regulation*. Domestic rules in individual Member States subject investments to screening if the ultimate beneficial owner is resident or citizen of a third country. In these cases, the absence of support by the cooperation mechanism leads to screening decisions being made with **potentially incomplete information**, even though more comprehensive information is accessible within the Union. The fact that the EC does not get involved in intra-EU transactions leaves a security gap because investments within the EU controlled by third-country investors can pose similar risks as FDI under the EU's *FDI Screening Regulation*. Evidence of this complexity can be found in a recent judgement of the European Court of Justice, which expressed a clear message that FDI screening mechanisms should not be used as a tool to violate the freedom of establishment.[14]

On another note, the **reporting** of significant outcomes of investment screening procedures to other Member States and the Commission is **inconsistent and fragmented**. The FDI-hosting country may be seen as lacking accountability, as it is not required to inform the Member States that have provided comments or indeed any Member State about its course of action.

The procedural aspects of national investment screening mechanisms lack uniformity and homogeneity, including varying investigation and approval timelines. This aspect is especially pronounced when the same transaction is notified to different Member States. Some countries' domestic frameworks establish ambitious timeframes that might expire before input by the cooperation mechanism is received, es-

pecially if additional procedures within these mechanisms lead to delays under the EU's *FDI Screening Regulation*. Moreover, the **screening of multi-country FDI transactions** is often time-consuming, and could prove inefficient and unpredictable for the investors, the target company, the screening authorities, and the European Commission. Currently, multi-jurisdiction FDI transactions result in **repetitive and asynchronous activation of the information exchange mechanism**, even when complete information is submitted simultaneously to all relevant Member States. The arrival of new information can extend timelines and affect the process, potentially incoming too late for meaningful contributions to comments, opinions, or screening decisions, particularly if submissions are delayed in some Member States.

Investment Environment in Bulgaria

The introduction of a national investment screening mechanism should take into account the overall investment climate in Bulgaria. Its status has been impacted by a number of factors in recent years. Bulgaria registers a declining gross capital formation in comparison to other nations (Figure 1), underlining the urgent need for the country to **reassess its FDI strategy**. While FDI has remained at approximately 20% of GDP for the past decade, just below the EU average, Bulgaria **lags behind its EU peers**, such as Romania, Hungary, and the Czech Republic.

Box 2: Promising Practice: Introducing FDI Screening in the Czech Republic

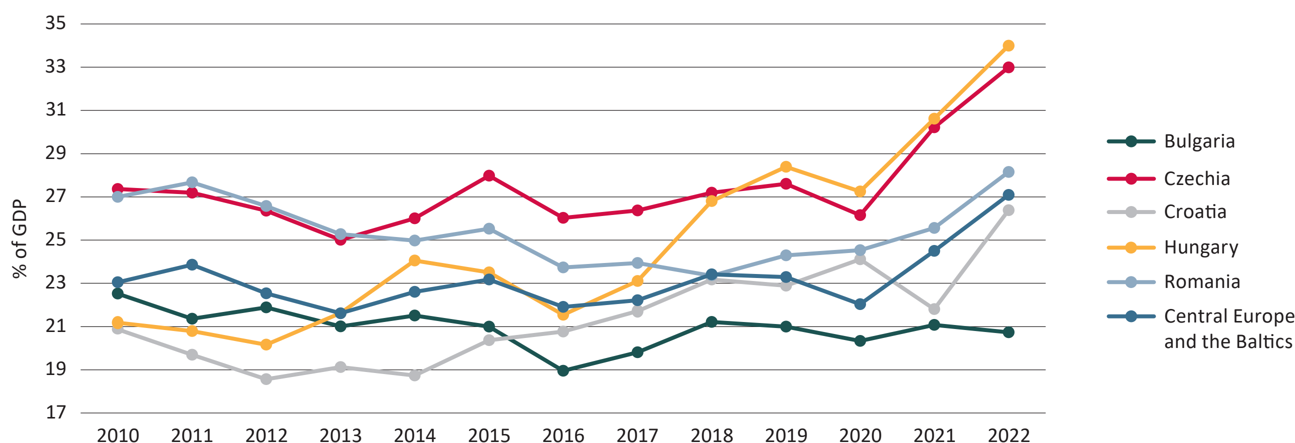
The Czech Republic is considered one of the most successful Central and Eastern European (CEE) countries in terms of attracting FDI. The country ranks as the fourth most open country to FDI on a global scale[15] with a cumulative FDI inflow exceeding EUR 115 billion since 1993.[16] This substantial influx of FDI has played a pivotal role in the country's development, with the ratio of FDI stock to GDP expanding six-fold since 1993. This surge can be attributed to a record-high profitability climate, which has enticed numerous foreign investors to establish and expand their operations within the Czech Republic, especially in Prague.

A key element of an attractive investment environment is the effective implementation of **robust defensive measures against potentially malign investors** that could jeopardize economic security. In the Czech Republic, such a tool became operational in February 2021, following the entry into force of the *Foreign Investments Screening Act*. This ambitious and comprehensive investment screening mechanism is entrusted to the Ministry of Industry and Trade (MoIT) and **involves many other relevant authorities**, including the government as the final decision-making body. The Czech FDI screening mechanism combines a sectoral and a cross-sectoral regimes with the sectoral regime covering the most sensitive sectors and requiring ex ante notification. Additionally, an extensive array of mitigation and sanctioning options are made available to the authorities. The mechanism applies to **investors from third countries** (i.e., outside the EU), but also allows for **screening investments by European entities controlled by non-European owners**. The screening procedure is triggered by a threshold, which means that, as a result of the investment, the investor must acquire at least 10% of the voting rights or other forms of significant control over the target company. This approach enables the screening to cover a wide range of practices investors can use to achieve their goals.

For the purpose of screening, foreign investment is defined as any asset value invested in any form by a non-EU investor with the aim of carrying out economic activity in the country that enables the investor to effectively control that economic activity. This **broad definition** encompasses indirect acquisitions, both share and asset deals, expansions, and possibly even intra-group restructuring. To sustain the **transparency and legal certainty of the investment environment**, the Czech law has introduced a voluntary consultation procedure. Through this procedure, which should not take more than 45 days to complete, foreign investors can consult the MoIT and check in advance whether their transaction might be subject to screening. Between 1 May 2021 – 30 April 2022, the Czech authorities investigated 12 domestic cases: no transactions were prohibited, but in two cases the investors withdrew their applications.[17]

Source: *CSD, based on information collected during a study visit to the Czech Republic in September 2023.*

Figure 1. Gross Capital Formation in Selected CEE Countries



Source: *The World Bank. Gross Capital Formation (% of GDP).*

Box 3: Bulgaria's Reliance on Russian Oil

Bulgaria's **historical susceptibility** to Russia's economic leverage has been significantly exacerbated by Lukoil's critical role and monopoly power in the Bulgarian economy. This influence has materialized in pivotal policy decisions, encompassing the prohibition of shale gas exploration, the promotion of the Belene nuclear power plant and the South Stream gas project, and backing of pro-Russian political entities and media outlets.

Notably, and crucially, the Neftohim Burgas refinery, though ultimately under the control of Russia's Lukoil, does possess the ability to operate efficiently without processing Russian oil. This is largely due to the abundance of alternative crude oil sources within the Black Sea region, as well as from the Middle East and West Africa.

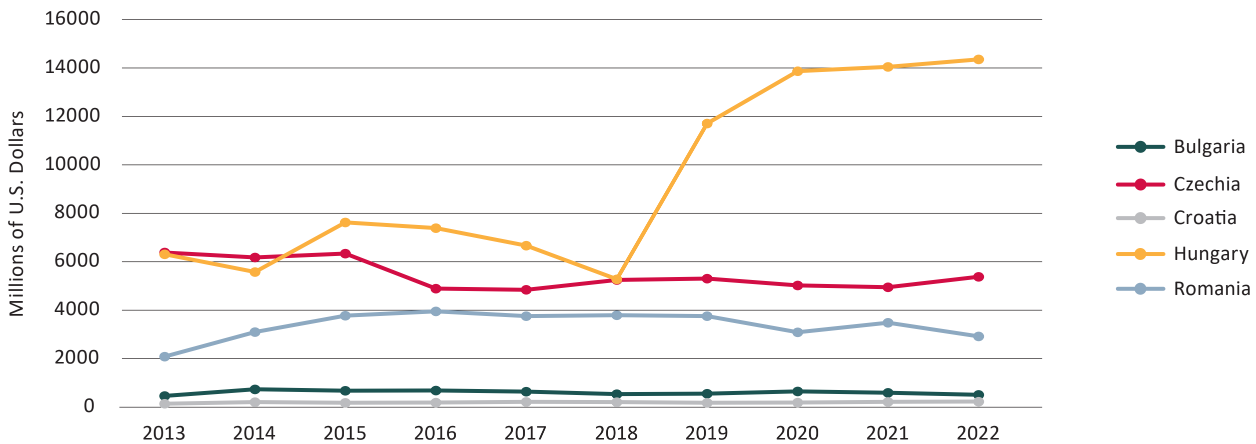
Despite this, successive Bulgarian governments have been claiming that without the **carving out of the two-year derogation** from the EU mandated sanctions introduced in 2022 the refinery would fail to operate and the country would be without adequate supplies of refined products. The same mantra has been deployed by Kremlin's propagandists and local enablers during the privatization of the refinery more than 20 years ago to ensure vital assets ended up in Russian hands at a lower cost. The financial and political interests served by this derogation are not those of Bulgarian consumers and/or taxpayers, but rather those of the Russian owners and the Kremlin. For each barrel processed at Neftohim, Lukoil doubles its wellhead netback margin compared to the simple export of Urals, which translates into substantial direct financial assistance to the Russian government.

The derogation has made Bulgaria a typical case-study for the ineffectiveness of current EU sanctions against Russia. The **derogation to the EU embargo has provided Lukoil with an enormous surplus profit**, estimated at around $3 billion since the start of the Russian invasion in February 2022, on the back of the steep discount the company gets on Russian crude imports (around $20 per barrel). According to a Politico – Brussels publication, the derogation 'loophole' has allowed Russia to rake in an **extra €1B for its war chest**. Lukoil's business operations in Bulgaria have made up around 4% of the total Russian oil budget revenues in 2023.

In the context of enhancing Bulgaria's economic security, it is imperative for the Bulgarian government **to reconsider the derogation** outlined in EU Regulation (EU) No 833/2014, permitting continued Russian crude oil imports until the end of 2024. Sustaining Russian monopoly in the Bulgarian fuels market represents a paramount threat to the nation's economic stability and sovereignty.

Source: *CSD,[18] Politico.[19]*

Figure 2. U.S. Direct Investment Position with Selected CEE Economies 2013-2022



Source: *Bureau of Economic Analysis, U.S. Department of Commerce.*

Bulgaria's FDI fortunes took an upward turn after 1996, driven by privatization efforts and targeted investment incentives. Annual FDI inflows peaked in 2007 upon the country's EU accession reaching EUR 10.15 billion.[20] Subsequently, however, they have significantly declined – dropping to EUR 2.25 billion in 2022. Bulgaria's continued failure to introduce and implement a coherent investment policy have created space for inflow of **corrosive capital** from Russia, China, and offshore tax havens into the Bulgarian economy. Within the energy sector in particular, the influence is starkly evident, driving the Bulgarian economy's reliance on Russian oil and gas resources.

When it comes to U.S. investments, the international partner with the most developed economic security regulations, Bulgaria lags behind its CEE peers (with the exception of Croatia). In 2022, the U.S. direct investment position in Bulgaria was USD 514.0 million, a decrease of 13.8% from 2021. In comparison, in 2022, the U.S. investments in Hungary were USD 14.4 billion (Figure 2).

Investment Screening in Bulgaria: First Steps

Until late 2023, the Bulgarian legislation did not refer to a national FDI screening mechanism. While certain legal procedures scattered across different laws do involve review of investments, none of them approach a national screening mechanism within the meaning of EU law.[21]

At the beginning of 2022, more than a year after the EU's *FDI Screening Regulation* had started to be applied, Bulgaria took the first steps towards implementing it. These steps were relatively modest and limited to fulfilling the obligation to set up a dedicated contact point (at the Ministry of Innovation and Growth) to be responsible for international cooperation.

In the summer of 2023, the Ministry of Innovation and Growth announced that it had set up a working group tasked with the development of a draft law for introducing a national investment screening mechanism and that its work was close to completion. Neither the composition of the working group, nor the results of its work, were made public. At the same time, on 22 June 2023, a **group of MPs** from the Movement for Rights and Freedoms (MRF) **submitted to parliament a draft** of amendments to the Investment Promotion Act, providing for the creation of a national investment screening mechanism. Surprisingly, the Ministry of Innovation and Growth limited itself to sending a statement to parliament expressing general support for the submitted draft, noted the progress of the working group and committed to submitting concrete proposals between the first and second readings (a commitment, which implementation could not be independently verified).[22]

The draft law was adopted at first reading on 20 September 2023. On 19 October 2023 the leading parliamentary committee (the Committee on Economic Policy and Innovation) published the version of the draft to be submitted for second reading. During this process, the parliament received a number of submissions on the draft from government institutions, business associations and non-governmental organizations, as well as specific proposals from MPs.[23]

Box 4: The Draft Law on Investment Screening at a Glance

The legal framework of the future national FDI screening mechanism will be introduced by an amendment to the existing *Investment Promotion Act* (the title of which is also likely to be changed to *Investment Promotion and Screening Act*). In their most recent version (the version to be submitted for second reading),[24] the draft amendments envisage a national FDI screening mechanism with the following main features.

- **Competent authority.** The screening will be carried out by an interagency board called Interagency Council for Screening Foreign Direct Investment Related to Security and Public Order (also referred to as the Interagency Screening Council). The council will be subordinated to the government, but will also report to parliament. It will be chaired by a Deputy Prime Minister and composed of representatives of different public authorities. The council will have its own secretariat, but will also be technically and logistically supported by the Invest Bulgaria Agency.
- **Scope.** Foreign direct investments that meet certain conditions will be subject to mandatory screening. These are mainly conditions related to the value of the investment (with proposals for minimum threshold ranging from €1 million to €2 million) and/or the area/sector in which the investment is carried out (most likely the same as the areas listed in the EU's *FDI Screening Regulation*).
- **Discretion.** Under certain conditions, investments that do not qualify for mandatory screening may also be subject to screening (with various proposals as to who would be authorized to initiate the procedure in such cases).
- **Procedure.** The screening procedure is relatively straightforward, with the investor submitting an application with the necessary supporting documents to the Invest Bulgaria Agency, which reviews it and forwards it with a reasoned opinion to the Interagency Screening Council, which in turn issues a final decision. The whole procedure should take a maximum of about two months. There is also a possibility for ex-officio screening of investments that qualify for mandatory screening but for which the investor has not submitted an application.
- **Sanctions.** Penalties are envisaged for providing false information, making an investment without a permit, violating the conditions of a permit, etc. The amount of the penalties will most likely be a percentage of the value of the investment (probably 5%), but not less than BGN 50,000.
- **Remedies.** No specific rules for judicial review of the screening procedure are foreseen beyond the right of investors to appeal the decisions of the Interagency Screening Council under the general rules of administrative law.

Source: *CSD, based on the Draft Law on Amending the Investment Promotion Act submitted for second reading.*

Although Bulgaria is significantly late in introducing a national FDI screening mechanism and the steps in this direction need to be urgently accelerated, the necessary legislative changes were submitted to parliament without prior public consultation. The sending of statements on an already submitted draft and its revision in response to proposals received from MPs between the first and second readings cannot fully compensate for the **lack of extensive public consultation** (with specific arguments from the authors of the draft as to why each proposal is accepted or rejected) or for the **absence of a preliminary impact assessment**, both of which would have been mandatory had the draft been introduced by the government. Experience from other countries shows that involving all stakeholders early in the process helps to generate broad support, which contributes to the effective operation of the mechanism later on.

In its current version, the draft reveals some weaknesses which could **hamper the effective implementation of the screening mechanism**:

- Assignment of the conflicting responsibilities of investment promotion and screening to the same administration, which creates conditions for conflicts of interest;

- Large number of members of the decision-making body, all of whom hold permanent positions in other administrations;

- Lack of clear criteria for screening investments that do not meet the conditions for mandatory screening, which creates the risk of arbitrary decisions;

- Lack of clarity on the consequences of non-compliance with the deadlines for issuing the permits, which may leave investors in a situation of uncertainty for an indefinite period of time;

- Frequent references to the EU *FDI Screening Regulation*, which the European Commission has made clear will be revised soon.

From Investment Screening to Economic Security

In the European Union, its Member States and other democratic countries around the world, there is a tendency to integrate investment screening into broader and overarching policies to protect economic security.

In June 2023, the European Commission published a *Joint Communication on a European Economic Security Strategy,* which focuses on **minimizing risks** arising from certain economic flows in the context of increased geopolitical tensions and accelerated technological shifts, while **preserving maximum levels of economic openness and dynamism**. The proposed strategy sets out a common framework for achieving economic security by promoting the EU's economic base and competitiveness; protecting against risks; and partnering with the broadest possible range of countries to address shared concerns and interests.

The strategy proposes **economic security risk assessment** to be carried out in four areas:

- **Resilience of supply chains**, including energy security;

- Physical and cyber security of **critical infrastructure**;

- **Technology security** and technology leakage; and

- Weaponization of economic dependencies or **economic coercion**.

The Strategy also outlines how to mitigate identified risks **through a three-pronged approach**, namely by promoting the EU's competitiveness, protecting the EU's economic security, and partnering with the broadest possible range of partners.

The communication lays out a number of new actions including, among others, developing a framework for assessing risks affecting the EU's economic security; engaging in a **structured dialogue with the private sector** to develop a collective understanding of economic security, supporting EU technological sovereignty and resilience of EU value chains, exploring options to ensure adequate targeted support for research and development of dual-use technologies, fully implementing the EU's export control regulation on dual use items, examining what security risks can result from outbound investments, proposing measures to improve research security, and last but not least reviewing the Foreign Direct Investment Screening Regulation.

The European Economic Security Strategy can serve as a reference point for Bulgaria, which also needs to review its policies in the field of economic security.

The Updated National Security Strategy of Bulgaria defines economic and financial security as one of the **sectoral security policies** alongside transport, communications, social security, energy, environmental security, justice and home affairs, foreign affairs, defense, cybersecurity, and crisis management. The economic security measures defined in this strategy partly overlap with those of the respective European strategy. For example, the Bulgarian national security strategy focuses on fairly generic measures, such as monitoring the existing risks and taking actions to minimize the likelihood of their realization, developing economic potential by increasing labor productivity, reducing energy and material consumption, overcoming technological backwardness, increasing the competitiveness of enterprises, etc. There are, however, significant discrepancies, including in the area of investment, where the Bulgarian strategy points to the **attraction of investments** as a measure to protect economic security without even mentioning **the need to verify their origin**.

In terms of institutional infrastructure, the body entrusted with the protection of economic security in the country is the State Agency for National Security (SANS).[25] However, **economic security is completely absent** from the legislation governing the management and operation of the **national security protection system**.[26]

What's Next

Although long overdue, the adoption of legislation regulating an FDI screening mechanism is a necessary step towards better protection of Bulgaria's national interests against the inflow of corrosive capital. However, this is not enough to ensure reliable protection of the country's economic security. Further steps are needed both to provide the necessary conditions for this mechanism to operate effectively and to integrate it into a comprehensive policy to protect economic security.

A national economic security policy should suggest specific priorities, objectives and measures to achieve them, and should also lay the foundations for the establishment of an **institutional infrastructure** with a clear definition of the state bodies involved in economic security protection, description of their functions and the relationships between them, and designation of a focal point responsible for their coordination (one option being the government's security council). Such a policy should preferably be introduced as a **separate strategic document suggested by the government and endorsed by the parliament**, but could also be integrated into existing documents such as the Updated National Security Strategy.

In terms of investment screening, it is crucial that the adoption of the law is accompanied by activities to **strengthen the capacity** of the **future Interagency Screening Council,** its **secretariat** and the Invest Bulgaria Agency, all of whom will be responsible for the enforcement of the law. If they do not have the necessary resources in terms of expertise and funding, there is a danger that this mechanism will be ineffective from the outset, developing into an administrative burden.

It is equally important that the introduction of an FDI screening mechanism is accompanied by **effective safeguards against possible abuses**, such as unjustified protectionism, arbitrary decision-making, political interference, discrimination against specific countries or investors, etc. **Bulgaria does not have a good record** introducing powerful mechanisms to counter certain negative phenomena, with the specialized criminal justice system and the national anti-corruption commission being the most prominent examples. Despite good intentions, these eventually turned into **instruments for pressure**, and the negative effect of their functioning led to a series of measures to reform or even abolish them.

The need to compensate for the delay in the introduction of an FDI screening mechanism made it necessary for the law to be adopted relatively quickly and without the expected extensive expert and public consultations, including with the participation of business, which would be most affected by its implementation. This increases the risk that gaps and shortcomings will be identified in the implementation of the law. To this end, it is necessary, to **assess the practice of the law's application** and to make appropriate amendments after a certain period of time after its entry into force (one year, for example), in order to increase the effectiveness of investment screening and fill these gaps.

The introduction of an FDI screening mechanism should be used also for the development of a **comprehensive national policy to protect economic security**. Such a policy can step upon the EU's economic security strategy and the non-exhaustive categories of risks listed therein, while taking into account Bulgaria's specific geopolitical, economic and socio-demographic characteristics.

Though Bulgaria has made progress in introducing investment screening and debating the challenges of economic security, it represents merely the first steps in a long process. By initiating the introduction of a national FDI screening mechanism, Bulgaria has begun to catch up to its EU counterparts. However, Bulgaria must secure its supply chains, promote its industry and cutting-edge research and development, and partner with allies and like-minded states wherever they are in the world creating symbiotic relationships. Only through taking measures such as these towards achieving economic security, true national security may be attained.

Endnotes

[1] Vladimirov, M., Stefanov, R. and Köppen, M., *Strategic Decoupling: Phasing Out Russian Economic Influence in Germany*, Friedrich Naumann Stiftung, Berlin, 28 August 2023.

[2] Shentov, O., Stefanov, R., and Vladimirov, M. (eds.), *The Kremlin Playbook in Europe*, Sofia: Center for the Study of Democracy, 2020.

[3] Vladimirov, M., and Gerganov, A., *Chinese Economic Influence in Europe: The Governance and Climate Conundrum*, Sofia: Center for the Study of Democracy, 2021.

[4] Center for the Study of Democracy, *Promoting Constructive Capital in Bulgaria: Unlocking Bulgarian Regions' Potential for Private Sector Innovation and Development*, Sofia: CSD and ARC Fund, 2021.

[5] In many countries the screening takes place in two phases. During phase 1 an initial assessment is done of whether the transaction falls under the scope of the respective country's screening mechanism and whether it is likely to affect their own or other countries' security or public order or projects and programs of Union interest. Only if both conditions are met, a thorough "formal" screening in a phase 2 is carried out.

[6] European Commission, Report from the Commission to the European Parliament and the Council. Third Annual Report on the Screening of Foreign Direct Investments into the Union, Brussels, 19 October 2023.

[7] At present, 25 EU Member States either have a national FDI screening mechanism in place, have adopted a new one, or have amended an existing one. Bulgaria and Cyprus stand as the sole Member States without established formal screening mechanisms. However, Cyprus has taken a progressive stride by initiating a public consultation and subjecting a draft bill to parliamentary scrutiny in 2022. Bulgaria is the last one to join the FDI screening ranks, having implemented the bare minimum of the EU regulations.

[8] European Commission, Call for Evidence. Screening of Foreign Direct Investments (FDI) – Evaluation and Revision of the EU Framework, 21 July 2023.

[9] European Parliament, Report of the European Parliament on the proposal for a regulation of the European Parliament and of the Council establishing a framework for screening of foreign direct investments into the European Union, 4 June 2018.

[10] During the preparation of the EU's FDI Screening Regulation, the European Parliament suggested an amendment to extend the definition of the term "foreign investors" to include nationals from third countries and take into account ultimate investors. However, the proposal was not adopted.

[11] United Nations Conference on Trade and Development, Investment Policy Monitor, Issue 25, February 2023.

[12] Organization for Economic Co-operation and Development, Framework for Screening Foreign Direct Investment into the EU. Assessing Effectiveness and Efficiency, 31 March 2022.

[13] Furthermore, investment screening cannot prevent the creation of a joint venture outside of the Union, potentially rendering it ineffective to prevent or oversee the transfer of technology or sensitive assets.

[14] Court of Justice of the European Union, Case C–106/22 Xella Magyarország Építőanyagipari Kft. v Innovációs és Technológiai Miniszter, 13 July 2023.

[15] Organization for Economic Co-operation and Development, 2022, OECD FDI regulatory restrictiveness index, 2022.

[16] Svoboda, O., CELIS Country Note on Czech Republic, CELIS Institute, 31 July 2023.

[17] Ministry of Industry and Trade of Czech Republic, *First Annual Report: Foreign Investments Screening in the Czech Republic, 1 May 2021 – 30 April 2022*, 1 August 2022.

[18] Center for the Study of Democracy, *Bulgaria's Reliance on Russian Oil: The Derogation and Beyond*, Policy Brief No. 137, August 2023, and Center for the Study of Democracy, *Sanctions Evasion and Derogation on Russian Oil*, Policy Brief No 140, November 2023.

[19] Jack, V., "Putin rakes in extra €1B for his war chest via Bulgaria sanctions loophole", *Politico*, 9 November 2023.

[20] The World Bank, Foreign direct investment, net inflows – Bulgaria, 2023.

[21] Center for the Study of Democracy, *Investment Screening in Bulgaria*, Policy Brief No. 123, December 2022.

[22] Bulgaria, Ministry of Innovation and Growth, Statement of the Ministry of Innovation and Growth on the Draft Law on amending the Investment Promotion Act [Становище на Министерството на иновациите и растежа по Законопроекта за изменение и допълнение на Закона за насърчаване на инвестициите], 5 July 2023.

[23] For more information on the legislative procedure, including all submissions received, see the electronic dossier of the draft on the website of the parliament.

[24] The draft law to be submitted for a second reading is the original draft with the proposals made by the MPs between the first and second reading integrated into it.

[25] Bulgaria, State Agency for National Security Act [Закон за Държавна агенция „Национална сигурност“], 20 December 2007, last amended 6 October 2023.

[26] Bulgaria, Management and Functioning of the National Security Protection System Act [Закон за управление и функциониране на системата за защита на националната сигурност], 11 August 2015, last amended 22 February 2022.

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