CENTER FOR
THE STUDY OF
DEMOCRACY

Open Gates, Guarded Walls

The Balancing Act between Openness and Security in European Investment Policies

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The EU is in the process of delineating a European economic security framework, seeking consensus among member states while striving to strike the delicate balance between economic openness and integration, and the safeguarding of its values and core strategic interests. There has been a notable shift recently in the EU perspective regarding foreign direct investment from countries, which have openly opposed the EU's rule of law based democratic political system and the existing international economic consensus, or which have weaponized and used for economic coercion their trade and investment weight.

The evolution of FDI screening in the EU has mirrored the changing landscape of global power dynamics, economic shifts, and technological advancements. It is only a matter of time before all 27 member states adopt such mechanisms, thereby directly contributing to the common security objective, and raising the need for better coordination of information sharing and enforcement. The present report illuminates the path of adopting and implementing the screening framework in the EU, detailing what has been achieved to date, highlighting exemplary practices, identifying deficiencies, and outlining the way forward. It can aid policy makers and practitioners in their work of establishing and enforcing a working investment screening mechanism as part of a favorable investment promotion framework.

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CONTENT

INTRODUCTION 6

WHY INVESTMENT SCREENING? 9

THE EU FRAMEWORK FOR INVESTMENT SCREENING 13

Types and Approaches 16
Sector Coverage 17
Review Thresholds 18
Governance 18
Duration and Transparency 20

RECENT TRENDS IN EU AND MEMBER STATES' INVESTMENT SCREENING 22

Germany 27
France 32

IMPROVING THE EU INVESTMENT SCREENING REGULATION 35

LIST OF FIGURES

Figure 1. Number of Countries Introducing or Expanding Security-Related Investment Screening (1995- 2022) 8

Figure 2. The EU Investment Screening Framework..................... 15

Figure 3. Number of Sectors Screened, EU Countries with Sectoral ISMs.. 17

Figure 4. Notified Decisions on FDI Screening Cases in the EU, 2022.. 23

Figure 5. Origin of Investors in Cases, 2021-2022 26

Figure 6. Sectors of German Target Companies in Cases Filed in 2023 30

Figure 7. Origin of Investors in Cases Filed in 2023 31

Figure 8. Top Countries of Origin for Investors According to Year of Filing.. 32

LIST OF TABLES

Table 1. History of Investment Screening Mechanisms in Selected Countries 12

Table 2. Blocking Concepts and Lead Authorities of ISMs in Selected EU Member States 19

Table 3. EU Member States' Screening 22

Table 4. Notifications by Member States vs. Average FDI Stock 24

Table 5. German Legislative Framework for Foreign Investment Screening 27

Table 6. French Legislative Framework for Foreign Investment Screening 33

LIST OF BOXES

Box 1. Drivers of Investment Screening 10

Box 2. Foreign Direct Investment Screening:
Key EU Definitions... 13

LIST OF ABBREVIATIONS

CFIUS	Committee on Foreign Investment in the United States
CJEU	Court of Justice of the European Union
EEA	European Economic Area
EFTA	European Free Trade Association
EC	European Commission
EU	European Union .
FDI	Foreign Direct Investment
FIRRMA	Foreign Investment Risk Review Modernization Act
G7	The Group of Seven
ISM	Investment Screening Mechanism
OECD	Organisation for Economic Co-operation and Development
NATO	The North Atlantic Treaty Organization

INTRODUCTION

In the turbulent geopolitical context, following Russia's assault on the established European peace, and the dismembering of Ukraine in 2014 and 2022, insecurity has grown and technological competition has increased. As a result, G7 and EU countries have started reassessing their security doctrines, **prioritizing economic security and the reduction of strategic dependencies**.[1] The European Union (EU) has begun defining a European economic security framework by building a consensus between member states and looking for the right balance between economic openness and integration and protection of its values and core strategic interests. Faced with increased **economic assertiveness and even coercion**[2,3] from China and the resurgence of geopolitical complexities and "creeping imperialism"[4] and the **weaponization of energy flows** on its periphery, in June 2023, the EU released a Strategy for Economic Security.[5] Furthermore, the Union recognized the importance of combining economic security as a component of broader "integrated" national security. This move is a manifestation of a wider, overarching concern regarding the threats posed by **corrosive capital**.[6] In January 2024, the European Commission (EC) introduced five new initiatives aimed at enhancing EU's economic security.

Economic security is not an entirely new phenomenon, and measures such as foreign direct investment (FDI) screening have long been considered important in protecting domestic industries.[7] In 2019 the EU adopted its first ever **framework for investment screening**, which became effective on 11 October 2020.[8] It addressed mounting concerns regarding foreign investors from competing, authoritarian countries seeking to seize control of EU firms possessing **critical technologies, infrastructure**, or **sensitive information**, activities deemed crucial for the security or public order at the EU level.

The purpose of the foreign investment screening framework is to **identify and mitigate security or public order risks** associated with FDIs that impact at least two member states or the EU. This is because the high level of

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1 CSD. (2023). Investment Screening for Enhanced Economic Security.

2 CSD. (2023). Breaking the Code: Russian and Chinese Disinformation and Illicit Financial Flows in Southeast Europe.

3 CSD. (2021). Chinese Economic Influence in Europe.

4 Landsbergis, G. (2021). Europe Must Confront Russia's Imperialist Creep, Washington DC: Centre for European Policy Analysis

5 European Commission. (2023). Joint Communication to the European Parliament, the European Council and the Council on "European Economic Security Strategy."

6 Corrosive capital refers to opaque investment flows lacking market orientation with motives to exploit governance gaps to influence recipient countries' economic, political, and social developments. The Center for International Private Enterprise (CIPE), Washington D.C. has been working for decades to strengthen democracy around the globe through private enterprise and market-oriented reforms. The CIPE has developed the concept of constructive and corrosive capital.

7 Bauerle Danzman, Sarah and Sophie Meunier. Forthcoming. "Mapping the Characteristics of Foreign Investment Screening Mechanisms: The New PRISM Dataset", International Studies Quarterly.

8 Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019, establishing a framework for the screening of foreign direct investments (FDIs) into the Union.

integration within the internal market means that an FDI in an EU company may pose risks beyond the borders of the host member state. To achieve this goal, the framework empowers member states to assess FDIs in their territory for security or public order concerns. It also facilitates information exchange between member states and the EC, enabling them to address specific risks effectively.

Since the enactment of the framework in 2019, **the significance of security and public order concerns has heightened**. The COVID-19 pandemic, Russia's aggression against Ukraine, and other geopolitical tensions have underscored the importance of identifying risks to and enhancing the protection of critical EU assets from external government control. Consequently, there has been **a notable increase in the number of member states implementing national screening mechanisms**, with some expanding the scope to include additional sectors. Germany, France, Italy, Spain, Austria, and Denmark have the most advanced FDI screening mechanisms. They require **prior authorization** for foreign investments and apply **a shared set of criteria** for screening investments and sectors, complemented by unique country-specific considerations based on domestic economic factors.

As of the beginning of 2024, 22 member states had already put FDI screening mechanisms in place. However, a **considerable portion of FDIs in the EU continues to flow into member states lacking screening mechanisms**, leaving vulnerabilities as potentially critical investments may go undetected. Approximately 42% of the average FDI stock can be accounted for by non-screening member states.[9] Furthermore, **most acquisitions by Russian investors went to non-screening member states**, showing a pattern of intentional avoidance of scrutiny as the EU has tried to increase sanctions against Russian businesses supporting Kremlin's war in Ukraine. Between 2019 and the first half of 2023, foreign entities utilized their **EU subsidiaries** in approximately 31% of acquisitions and 28% of greenfield investments, on average.[10] This highlights the extent of transactions currently falling outside the scope of the EU's screening cooperation mechanism.

Bulgaria, one of the EU member states, which as of March 2024 had just adopted a national framework legal for screening FDIs, is also considered one of the countries with the **highest risks** of, in particular, **Russian state-controlled investments** compared to the relatively small size of its economy.[11,12] In addition, it is also among the EU countries with weaker rule of law institutions, and at the same time **high FDI needs** for its economy to continue catching up with the EU.[13] The current report provides examples of screening practices, which can help EU countries adopt such mechanisms, enhancing their integration into the G-7 technological „safe space," while helping them fend off increasingly shadowy investments from unsafe countries and entities.

[9] European Commission. 2024. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council.

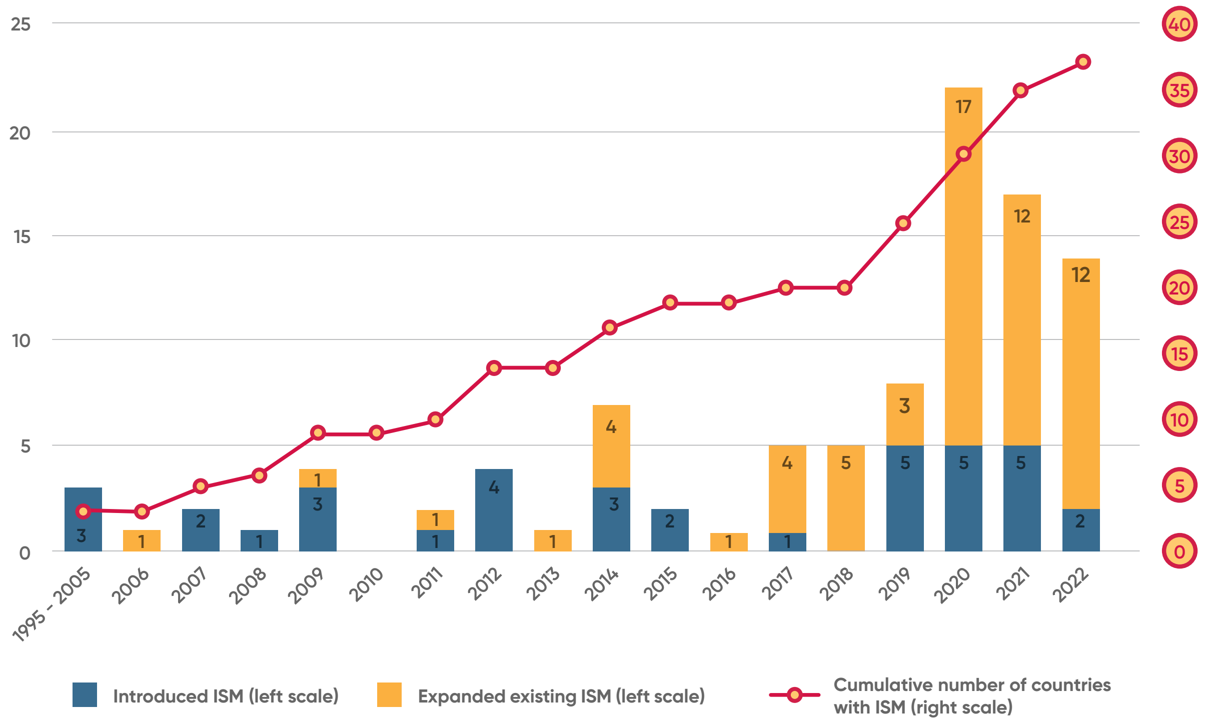
[10] Ibid.

[11] CSD. (2023). Investment Screening for Enhanced Economic Security.

[12] CSD. (2022). Investment Screening in Bulgaria.

[13] CSD. (2022). Promoting Constructive Capital in Bulgaria and North Macedonia.

Figure 1: Number of Countries Introducing or Expanding Security-Related Investment Screening (1995- 2022)



Source: UNCTAD's Investment Policy Monitor.

WHY INVESTMENT SCREENING?

Investment screening is the governmental practice of reviewing inward FDI transactions. It involves the **evaluation and**, if necessary, **the denial of entry or requirement for divestment** of investments deemed unacceptable, typically based on national security considerations. Investment screening mechanisms (ISMs) are formalized legal procedures, operating on predetermined criteria. In essence, ISMs are the codified rules that governments adhere to when evaluating and screening investments.[14] Throughout most of the 20th century, numerous governments implemented screening procedures for inward FDI. These review mechanisms typically gauged the potential of an investment project to **positively contribute to domestic economic growth**. As an illustration, in 1916, Sweden introduced a piece of legislation restricting the right of foreigners to invest in the country. During the 1970s and early 1980s, the legislation was further tightened, making it difficult for foreigners to acquire businesses without government scrutiny.[15] In 1973, the Swedish government implemented **comprehensive government reviews for all foreign acquisitions**. Additionally, foreign investors were mandated to procure a minimum of 50% of their capital from overseas sources.[16] France had comparable investment screening provisions, which were only eased for non-EU-originating FDI in 1992. Over time, most countries moved away from screening regimes centered on economic benefit as such measures were widely perceived as excessively restrictive, imposing significant costs and uncertainty on firms seeking to make investments.[17] In the EU context, investment screening centered around economic benefits was deemed incompatible with the principles of the internal market. After the end of the Cold War governments widely embraced FDI for their related economic benefits such as jobs and spillovers in know-how and technological innovation. They actively worked to minimize regulatory procedures essential for facilitating and establishing investments.[18]

The recent expansion of ISMs is qualitatively different from first generation economic benefits screens. The newly established or reinforced regimes primarily focus on scrutinizing transactions for **national security considerations**. These security-based screening mechanisms operate alongside initiatives to enhance investment appeal through promotion, incentives, and the creation of a hospitable environment for Sovereign Wealth Funds. The Committee on Foreign Investment in the United States (CFIUS), created in 1975 to oversee the national security implications of FDI, has become **the gold**

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[14] Sarah Danzman and Sophie Meunier. (2023). Naïve no more: Foreign direct investment screening in the European Union. Global Policy. 14

[15] Pouya Ghotbi and Wistrand Advokatbyrå. (2023). Marking a New Investment Era in Sweden: Enter the Swedish FDI Regime. CELIS.

[16] Sarah Danzman and Sophie Meunier. (2023). Naïve no more: Foreign direct investment screening in the European Union. Global Policy. 14.

[17] Blanka Kalinova, Angel Palerm, and Stephen Thomsen. (2010). OECD's FDI Restrictiveness Index: 2010 Update. OECD Working Papers on International Investment.

[18] Sonal S. Pandya (2014). Democratization and Foreign Direct Investment Liberalization, 1970–2000. International Studies Quarterly 58(3)475–488.

standard of ISMs.[19] Its authority to assess FDI has been significantly enhanced by the Foreign Investment Risk Review Modernization Act (FIRRMA) of 2018. In Europe, alongside the development of ISMs in Germany (since 2004) and France (since 2006), the EU implemented its inaugural investment screening framework only in 2019.[20]

Box 1: Drivers of Investment Screening

The Emergence of New Foreign Investors

One of the primary factors behind the recent proliferation of screening mechanisms across OECD countries has been the emergence of new foreign investors, notably China. A significant portion of these regulations has been developed or reinforced in direct response to **China's swift ascent as a foreign direct investor**, particularly from the late 2000s to 2016. The evolution of investment screening in the U.S. underscores a pattern where each new institutional advancement in the CFIUS process corresponds to the emergence of a new foreign investor. This trend spans various periods, including the influx of OPEC countries in the 1970s, Japan's rise in the 1980s, the emergence of sovereign wealth funds from oil-rich Arab states post-9/11, and the prominence of China from the early 2000s onward. Certainly, the surge of Chinese foreign investment, paralleling China's broader geopolitical ascendance, and the Chinese Community Party's **unique grip on the country's private sector**, making it difficult to differentiate between state-owned and private businesses, as well as intrusive laws and regulations mandating the provision of intelligence information and data from private entities to the government, have precipitated the global proliferation and strengthening of ISMs in recent years. However, it's worth noting that while many of these screening frameworks have intensified, only a few explicitly target any specific country.

Europe, and nations bordering Russia have become significantly reliant on Russian investors, especially in sectors like energy and critical infrastructure. For these countries, ISMs serve as crucial tools to **navigate and mitigate deep-rooted dependencies on Russia**, which pose considerable risks to public order and national security. These concerns have intensified following Russia's unlawful annexation of Crimea in 2014 and its weaponization of energy dominance in Europe as a means of exerting leverage in the run up to Russia's full-scale invasion in Ukraine in 2022. EU countries sharing a border with Russia are statistically significantly more likely to have established an ISM earlier compared to member states that do not border Russia.[21]

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[19] M.J. Baltz. (2017). Institutionalizing neoliberalism: CFIUS and the governance of inward foreign direct Investment in the United States since 1975. Review of International Political Economy, 24(5), 859–880.

[20] Chan, Z.T. and Meunier, S. (2022). Behind the screen: understanding National Support of a foreign investment screening mechanism in the European Union. Review of International Organizations, 17, 513–541.

[21] Sarah Danzman and Sophie Meunier. (2023). Naïve no more: Foreign direct investment screening in the European Union. Global Policy. 14.

Technological Change

The second factor contributing to the global rise in the number investment screening mechanisms has been the **overlap between defense-oriented and commercial technologies**, as well as the proliferation of technological espionage, thefts, and cyber security risks. Technological advancements have significantly transformed the landscape of national security challenges. The widespread digitization of economic activities and human interactions, facilitated by interconnected systems and extensive data collection, has rendered every sector of the economy susceptible to potential threats to national security. For instance, **digitally controlled assets** like ports or power plants, managed remotely by external entities, now pose obvious security risks. However, even seemingly innocuous entities like a car's digital dashboard or a dating application could potentially pose security threats. Moreover, the race for dominance in emerging technologies such as artificial intelligence and quantum computing holds profound implications for military superiority.

Regulatory Diffusion

As more countries around the world expanded or established their own investment screening measures, it became increasingly challenging for the EU and European countries to refrain from implementing similar measures. This diffusion has occurred both indirectly and directly. Many EU technological leaders have become targets of acquisition bids from foreign rivals, which have set off alarm bells in national capitals, regarding Europe's erosion of industrial competitive advantages.

From 1995 to 2022, at least 37 countries (including 22 developed economies from Europe) implemented new regulatory frameworks for screening investments with national security considerations.[22] Furthermore, additional eight countries were in the process of consulting or legislating, anticipating the adoption of new mechanisms in response to perceived threats to national security posed by certain investments. **The number of EU member states with investment screening procedures has significantly grown** over the past decade. In 2007, on the brink of the global financial crisis, merely eight EU countries had some kind of investment review regime: Denmark, Finland, France, Germany, the Netherlands, Poland, Spain and the United Kingdom. Except for Finland, which established a cross-sectoral mechanism in 1993 that also considered broader economic purposes, the majority of these mechanisms were limited to narrow applications. For example, the Netherlands' screening regime concentrated on energy infrastructure, Denmark's investment review was limited to defense production, and Poland restricted screening to real estate and airport transactions. Among the five largest economies in the EU, Italy was the only one without a screening mechanism in 2007.[23] By 2020, as much as **60% of global FDI flows were potentially subject to national**

[22] UNCTAD. (2023). Investment Policy Monitor. The Evolution of FDI Screening Mechanisms: Key trends and features.

[23] Sarah Danzman and Sophie Meunier. (2023). Naïve no more: Foreign direct investment screening in the European Union. Global Policy. 14.

security or related reviews. In 2021, two thirds of all EU member states had an FDI screening legislation in place. Moreover, over 80% of the 61 economies participating in the Freedom of Investment Roundtables have implemented some instruments to address the security implications of foreign investments.[24]

Table 1: History of Investment Screening Mechanisms in Selected Countries

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
EU Member States																	
Austria					■	■	■	■	■	■	■	■	■	■	■	■	■
Belgium																■	■
Bulgaria																	
Croatia																	
Czech R.															■	■	■
Cyprus																	
Denmark	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Estonia						■	■	■	■	■	■	■	■	■	■	■	■
Finland	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
France	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Germany	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Greece																	
Hungary													■	■	■	■	■
Ireland																	■
Italy						■	■	■	■	■	■	■	■	■	■	■	■
Latvia	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Lithuania	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Luxemburg																	■
Malta														■	■	■	■
Netherlands	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Norway													■	■	■	■	■
Poland	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Portugal								■	■	■	■	■	■	■	■	■	■
Slovak R.															■	■	■
Slovenia														■	■	■	■
Spain	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Sweden																	■
Non-EU Countries																	
Australia	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Canada	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Israel														■	■	■	■
Japan	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
South Korea	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
UK	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
USA	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■

Source: PRISM Dataset.

[24] OECD. (2023). Investment policy developments in 61 economies between 16 October 2021 and 15 March 2023.

THE EU FRAMEWORK FOR INVESTMENT SCREENING

The genesis of the EU screening framework can be traced back to 2017 when the European Commission initiated the development of a proposal for investment screening at the EU level. This progress was facilitated by several key events. *First*, following nearly a decade of controversy, the Court of Justice of the European Union (CJEU) definitively affirmed the **competence of the EU over FDI policy**.[25] Second, in February 2017, prompted by a series of Chinese investments creating political and security challenges in their respective countries, the governments of France, Germany, and Italy formally requested the European Commission to formulate legislation on investment screening at the EU-level.[26] Third, by 2017, the Commission had adopted a less "naïve" stance towards its trade partners. This shift led the traditionally pro-free-trade Directorate-General for Trade to develop instruments aimed at ensuring the EU's strategic autonomy. On September 13, 2017, the Commission released a proposal for a regulation that established a legal framework for screening of FDI inflows into the EU. In 2019, the European Parliament adopted the proposal, and the Council formally endorsed it in March 2019. Thus, it came into effect on October 11, 2020.[27]

Box 2: Foreign Direct Investment Screening: Key EU Definitions

The Emergence of New Foreign Investors

Foreign direct investment (FDI) is 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.[28]

A **foreign investor** is a natural person, or an undertaking privately or publicly owned, of a third country (i.e. outside the EU).[29]

"Screening" is a procedure allowing to assess, investigate, authorize, condition, prohibit or unwind FDI.[30]

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[25] Meunier, S. (2017). Integration by stealth: how the European Union gained competence over foreign direct investment policy. Journal of Common Market Studies, 55(3), 593–610.

[26] Sarah Danzman and Sophie Meunier. (2023). Naïve no more: Foreign direct investment screening in the European Union. Global Policy. 14.

[27] 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

[28] Article 2(1) of Regulation (EU) 2019/452.

[29] Article 2(2) of Regulation (EU) 2019/452.

[30] Article 2(3) of Regulation (EU) 2019/452

A **"screening mechanism"** is an instrument of general application, such as a law or a regulation, and accompanying administrative requirements, implementing rules or guidelines, setting out the terms, conditions, and procedures to **assess, investigate, authorize, condition, prohibit or unwind** FDIs on grounds of security or public order.[31]

In the EU, the authority to screen FDI with potential implications for national security or public order lies within the competence of the member states.[32]

Nevertheless, within an integrated market like the EU, the adverse consequences of unscreened or unapproved FDI in one country could cause ripple effects on others. This is particularly evident when examining transnational networks like railway lines, pipelines, and power grids. For instance, over 15% of Europe's electricity is traded between countries through interconnectors, establishing it as the **world's most interdependent region** in terms of electricity.[33] Similarly, **European value chains exhibit greater regional integration** compared to those in Asia or the Americas.[34] Therefore, following its swift approval, a regulation instituting a framework for the control of FDI in the EU became fully applicable in October 2020. Before the adoption of the FDI Screening Regulation, there existed no formal EU-wide cooperation among member states and the European Commission (EC) on FDI likely to impact the collective security of the Union. The European Commission lacked involvement in FDI screening within the EU, and there was no mechanism to discern security or public order risks stemming from foreign investments in EU companies involved in flagship Union projects.

The EU framework differs from national ISMs as it serves as **a supplementary layer of review and** a mechanism for national **cooperation**. The EU regulation does not replace national FDI screening mechanisms but establishes a mechanism for cooperation between the European Commission and the member states. Under the regulation, **the EC assumes a coordination role** but lacks the authority to block non-EU FDI. In this procedure, the member state conducting the FDI screening must inform other member states and the Commission. The cooperation mechanism may also extend to a finalized investment undergoing examination under a member state's **post-closing regime**. It's noteworthy, however, that **most member states have opted for pre-closing FDI regimes**, or an investment that has not been scrutinized within 15 months after the investment has been completed. The ultimate decision to approve or prohibit the FDI always rests with the targeted member state. This is due to the layered distribution of competences within the EU, where supranational policy-making authority in trade and investment coexists with **retained national sovereignty** in certain economic policy areas, as well as in security and defense policies. Consequently, the EU mechanism does not function as a binding supranational mechanism and, therefore, **does not**

[31] Article 2(3) of Regulation (EU) 2019/452.

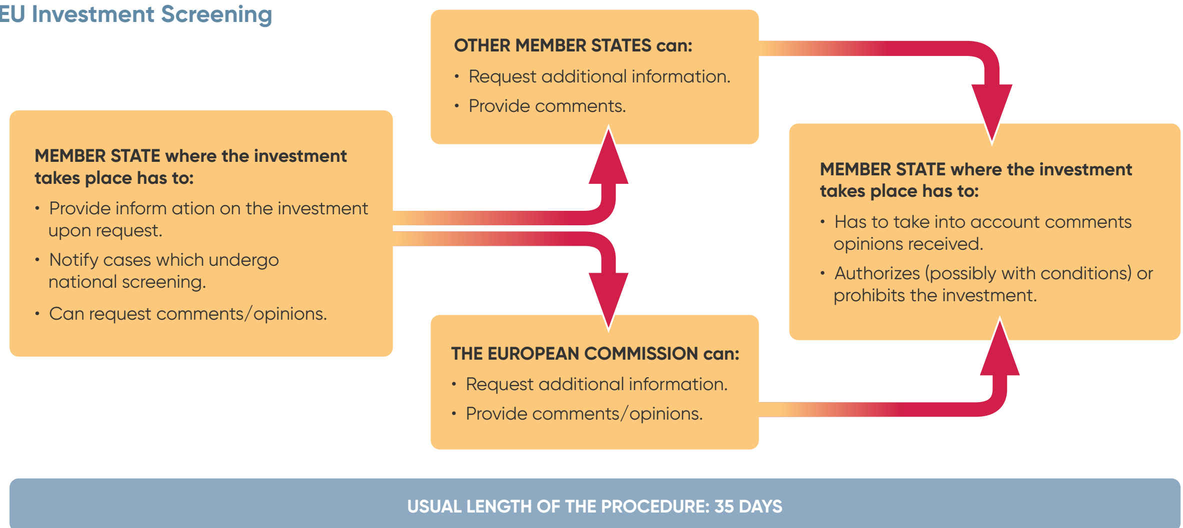
[32] See art. 4(2) of the Treaty on European Union; arts. 52(1) and 65(1b) of the Treaty on the Functioning of the European Union.

[33] Hook L., Thomas N. (2022). Can Europe keep the lights on? Financial Times, 29 November.

[34] Huidrom R., Jovanovic N., Mulas-Granados C., Papi L., Raei F., Stavrev E., Wingender P. (2019). Trade tensions, global value chains, and spillovers, insights for Europe. IMF European Department, no. 19/10. Washington, DC.

resemble a European equivalent of CFIUS. While the Screening Regulation does not impose an obligation on Member States to implement a national FDI review process, the EC anticipates that all 27 Member States will establish a robust national ISM. This is deemed essential to safeguard the Union against potentially risky investments from third countries. Additionally, the Commission strongly advocates for the **alignment of national screening mechanisms**.

Figure 2: The EU Investment Screening Framework



Source: CSD.

Despite the large increase in ISM adoption, the ongoing cooperation and notable similarities between national screening mechanisms, **member states continue to show significant degrees of variation** in terms of what constitutes a formal screening of FDI, applicable timelines, sectoral coverage, notification requirements and other related elements. Yet, most importantly, almost all EU member states now have ISMs.

As an illustration, on January 25, 2023, the Estonian Parliament adopted the Foreign Investment Reliability Assessment Act that introduced an FDI screening regime.[35] Effective from July 1, 2023, Belgium enacted a screening mechanism for FDI that could potentially impact national security, public order, or strategic interests.[36] On September 1, 2023, a law to establish a national screening process for FDI that could impact security or public order entered into force in Luxembourg.[37] On December 1, 2023, Sweden's long-awaited FDI screening regime enter into force.[38] In June 2023, the Danish Parliament passed a law broadening the scope of the Investment Screening Act and modifying the application process.[39] Additionally, member states with longer histories of investment screening have, with some exceptions, strengthened their screening authorities in recent years. For instance, France, where the investment screening process was initiated over 50 years ago, has

[35] UNCTAD. Investment Policy Monitor. Estonia introduces an FDI screening regime. January 25, 2023.

[36] Jdsupra. Belgian FDI regime enters into force on 1 July 2023. June 29, 2023.

[37] Jdsupra. Luxembourg Adopts New Foreign Direct Investment Screening Regime. August 22, 2023.

[38] Pouya Ghotbi and Wistrand Advokatbyrå. (2023). Marking a New Investment Era in Sweden: Enter the Swedish FDI Regime. CELIS.

[39] Ernst & Young Global Limited. (2023). The Danish FDI regulation has been amended with effect as of 1 July 2023, broadening the scope and changing the application process.

been enhancing its enforcement powers and introducing new strategic sectors since 2019. Germany, known for its less interventionist approach toward foreign investment, began tightening its screening in strategic sectors starting from 2017. In 2022, Romania published a proposal to expand the scope of application of its regime. In Italy, where the foreign investment regime was initiated in 2012, new permanent amendments took effect on January 1, 2023, replacing temporary ones enacted during COVID-19. The scope of the regime has significantly expanded in recent years to encompass transactions conducted by European investors, and notably, as of January 2023, also by Italian investors, especially in strategic sectors.

Types and Approaches

Although the EU's FDI screening regulation mandates member states with ISMs to adhere to a basic set of standards, **there is no harmonized EU ISM template**, and EU member states have yet to align on a unified approach to screening across various key design aspects. Firstly, there is variation in the scope of review, and screening procedures for identifying national security risks can be categorized into three main **types**: sectoral, cross-sectoral, and mixed. Countries with **sectoral screening** only grant government authority to review transactions in prescribed industrial sectors. Twelve EU members have sectoral review mechanisms. **Cross-sectoral screening** procedures encompass transactions of a certain nature (e.g., critical infrastructure, and dual-use products and technologies) rather than specific sectors.[40] The Czech Republic, Finland, Norway, Portugal, and Slovakia have cross-sectoral screens, allowing government authorities to review any transaction irrespective of the business activity of the acquisition target. Germany, Denmark, and Poland operate under mixed systems, employing a broad sectoral voluntary review process alongside a stricter, mandatory review process for select highly sensitive sectors. There is no evidence indicating that newer ISMs are converging on a particular scoping approach; these mechanisms are equally likely to adopt sectoral and cross-sectoral approaches.

Two primary approaches in national legislation determine the main subject of the ISMs. The first, determines screening based on the economic grouping/s of origin of the investor. At least 12 countries define foreign investors subject to screening, wholly or partially, as entities or citizens not belonging to the EU. Non-membership in the European Economic Area is used as a factor by at least four countries, while four countries apply it to the European Free Trade Association (EFTA), and one country to the Organisation for Economic Co-operation and Development (OECD). Second, national legislators differentiate based on the **public or private nature of the foreign entity** subject to screening. In this respect, at least 11 countries have enacted special screening provisions specifically targeting acquisitions of national entities by foreign state-owned entities.

Countries exhibit significant variation in the **risk concepts** that warrant blocking a transaction. Among the diverse criteria presented, "public order" serves as the primary screening criterion for one-third of the member states, while "national security" and "national interest" are cited as the key rationale in six and five countries, respectively. Five countries incorporate multiple

[40] These countries are: Austria, Belgium, Estonia, France, Hungary, Italy, Latvia, Lithuania, Malta, the Netherlands, Slovenia, and Spain (mostly sectoral).

criteria. While Portugal and Slovenia mandate "actual and sufficiently serious threats" to public order and security to prohibit a transaction, other countries permit blocks based on the "likelihood" of an effect or the "potential" endangerment of national security.[41] These seemingly minor differences in language impact the **standards of evidence** necessary to justify the prohibition of a transaction.

Sector Coverage

The scope of sectoral coverage of ISMs has expanded over time. More countries have adopted **cross-sectoral instruments**, which grant governments broad review authority over FDI irrespective of the sector. While initial national security-related concerns regarding FDI were narrowly focused on foreign influence in defense contracts, governments have **broadened** their **national security concerns**. Many member states also review **critical technology sectors**, often defined as technologies subject to dual-use export controls, and many countries assess acquisitions of **media** companies. The range of sectors reviewed by ISMs has substantially expanded over time. For example, in 2007, Germany had a total of four sectors subject to review, whereas by 2022, this number had surged to 28. In 2021, 16 activities were added, mostly **high technologies**, including: high-quality earth remote sensing systems; artificial intelligence; specially designed robots; semiconductors; IT products or components for cybersecurity; space industry; nuclear technology; quantum technology; additive manufacturing; manufacturing of products essential for wireless and wired data network; critical raw materials; secret patents. Also subject to review are projects involving **agricultural area** of more than 10,000 hectares. Over 20 sectors are under review in numerous EU countries: Italy leads with 23 sectors under review, followed closely by Austria and Denmark with 22, and France and Spain with 21 sectors each.

Figure 3: Number of Sectors Screened, EU Countries with Sectoral ISMs

Source: PRISM Dataset.

[41] UNCTAD. Investment Policy Monitor. (2023). The Evolution of FDI Screening Mechanisms: Key trends and features.

Review Thresholds

There has been a gradual **reduction in equity thresholds** required to initiate review, measured both in absolute valuation and as a percentage of deal size. Many governments set screening **thresholds based on a specific percentage of economic interest** in an asset and may also apply an additional coverage test related to the size of the investment. Acquisitions ranging between 10% and 20% are increasingly becoming the norm, whereas in previous decades, the range of 25–50% was more prevalent. At the end of 2018, the German government revised the Foreign Trade and Payments Ordinance to expand the scope of its FDI screening mechanism.[42] The amendment reduced the foreign ownership threshold from 25% to 10% in sectors including military equipment, crypto-technology, IT security, critical infrastructure, and software operating the latter. In 2021, another amendment altered the threshold triggering screening, now requiring foreign acquisitions of 10% of voting rights in companies involved in defense, encryption, and critical infrastructure to be reviewed.[43] In December 2022, the Government of Hungary issued a government decree, lowering the threshold triggering the screening procedure from 10% to 5% (3% for public stock companies) and mandating notification for acquisitions of 10%, 20%, or 50% business shares.[44]

Governance

There is considerable diversity among countries regarding the entities responsible for investment screening and their composition. In more than half of the countries, screening is carried out at the **ministerial level** by authorities handling investment matters, such as the Ministries of Investment, Industry, Economy, Energy, or Trade. However, in several instances, a separate **ad hoc body** has been established or is under consideration to handle screening and all associated procedures. Some member states delegate screening responsibilities to a **national regulatory authority**.

Additionally, in most countries, the screening authority **seeks advice from other government agencies** or relevant bodies regarding proposed investments, particularly when their expertise is deemed necessary for decision-making. Variations in review authority can significantly impact how ISMs weigh investment risks, balance these risks against economic growth objectives, and whether the review process may be politicized by assertive elected officials or influenced by business elites. Hence, as screening mechanisms evolve and accumulate more years of transaction review data, researchers should investigate how these variations in design influence investment flow patterns.

[42] Freshfields Bruckhaus Deringer LLP. (2018). Minority acquisitions targeted by new German foreign investment rules.

[43] Hogan Lovells. (2021). New Rules: German government passes far-reaching expansion of foreign investment control.

[44] Kinstellar Law Firm. (2023). Amended FDI Rules in Hungary.

Table 2: Blocking Concepts and Lead Authorities of ISMs in Selected EU Member States

Country	Blocking Concept	ISM Lead Authority
Austria	Threat to security of public order	Federal Minister for Digital and Economic Affairs
Czech R.	Security or public order and safety	Ministry of Industry and Trade
Denmark	National security or public order	Danish Business Authority
Finland	Threat to very important national interests	Ministry of Economic Affairs and Employment
France	Preservation of national interests	DG Treasury – Ministry for Economy and Finances
Germany	Likely to affect public order or security	Federal Ministry for Economic Affairs and Climate Action
Hungary	Threatens security interests	Ministry of Interior/Ministry of National Economy
Italy	Threat of serious harm to essential interests of defense and national security	Council of Ministers
Latvia	Influence endangering or potentially endangering national security	Ministry of Economics
Lithuania	Conformity with national security interests	Commission for Coordination of Protection of Objects of Importance to Ensuring National Security
Malta	Affects security or public order	National Foreign Direct Investment Screening Office
Netherlands	Risk to national security	Ministry of Economic Affairs and Climate Policy
Poland	Protecting public order, security and health. Preventing hostile takeovers	Office of Competition and Consumer Protection
Portugal	Actual and sufficiently serious threat to national defense and security or to security of supply of services fundamental to the national interest	Council of Ministers
Slovak R.	Compromises the public order or security or Slovak Republic or EU	Ministry of Economy
Slovenia	Actual and sufficiently serious threat to the interests of public order and security	Ministry of Economic Development and Technology
Spain	Genuine effect on public order, public security and public health	Council of Ministers

Source: CSD based on a review of national legal frameworks.

Investors undergoing screening can be subject to diverse **administrative obligations**. Most member states have implemented **mandatory filing systems**, with some adopting multiple schemes tailored to various investor categories or industry sectors. Alongside mandatory filings or as a distinct process, many countries have instituted **notification procedures**. Moreover, some countries employ a **pre-authorization** (preliminary screening) process. This mechanism assists investors when there's uncertainty about whether the transaction falls under the official screening regulation. In certain instances, this pre-authorization procedure is obligatory for specific sectors, such as nationwide radio or television broadcasting, or publishing of periodicals.

Under the **mandatory filing systems**, investors are required to submit specific categories of transaction types for review, which may vary significantly across countries. Transactions subject to review may include those surpassing certain value thresholds, exceeding specified foreign ownership percentages, occurring within designated sectors, or a combination thereof. Additionally, some countries have implemented a "control test" to evaluate particular transactions. These encompass those that could result in the acquisition of voting rights enabling an investor to influence or obstruct resolutions governing the entity, access critical national security information, systems, or technologies, or gain significant influence over the company's management through other means.

Filing requirements can range from "light", where investors are asked to provide basic details regarding the acquiring entity's ownership and an outline of the proposed investment project, to more extensive, where investors must not only disclose ownership information but also submit a draft of the potential merger or acquisition, along with a comprehensive business plan of the acquiring entity. These provisions do not limit the authority's ability to request further information or to independently investigate the origin of the proposed investment.

On the other hand, the **notification regime** is characterized primarily by its voluntary nature and by a simplified procedure, allowing investors the option to inform the screening authority of their future investment intentions, await a "no objection order", or notify the investment retrospectively.

In Germany, the ISM operates through both regimes: (a) Mandatory filing is required for proposed acquisitions in German businesses that surpass established thresholds or involve sectors deemed sensitive or strategic by the German Government. The authority evaluates the acquisition and grants authorization if it does not raise concerns regarding public order or national security. (b) Voluntary notification is an option for acquisitions of German businesses where the transaction results in ownership exceeding 25%, regardless of the sector. Foreign investors have the option to request a clearance certificate ("certificate of non-objection") to ascertain whether the acquisition is subject to review or potential prohibition. In addition, authorities may initiate a review ex *officio* when they become aware of an acquisition up to five years after it occurred.[45]

Duration and Transparency

Different **notification dates and timelines** are being applied across member states. While the timeframe for investment screening review is explicitly outlined in the legal frameworks of all countries, only half of the reviewed regimes afford investors the **right to judicial appeal** against decisions that block proposed investments. Furthermore, only a subset of member states incorporates a **provision for tacit approval** of investment projects upon the expiration of a predetermined period (i.e. Austria, Finland, Italy, Latvia, Lithuania, the Netherlands, and Portugal).[46]

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[45] ICLG. 2023. Foreign Direct Investment Regimes Germany 2024.

[46] UNCTAD. Investment Policy Monitor. The Evolution of FDI Screening Mechanisms: Key trends and features. February, 2023.

After the completion of the review process, the decision may result in various outcomes:

- Authorization of the investment project, with specific conditions attached;
- Imposition of divestment measures; or
- Prohibition of investments deemed a threat to national security.

Screening regulations encompass a wide array of **sanctions for non-compliance** with the relevant procedures. Injunctions may be issued to alter the investment to mitigate potential risks to national security, to revert to the status quo ante of the investment, or a combination of the above.

Non-compliance with mandatory filing requirements or other obligations stipulated by the screening regime may lead to administrative fines or even criminal charges. Moreover, various sanctions are outlined to prevent investors from jeopardizing the protected interests of the country, particularly in cases where the implementation of injunctions may be delayed. These sanctions include conservatory measures such as restricting the disclosure of company-related information to the acquirer, appointing a trustee or external manager, or imposing restrictions on voting rights. As a legal conservatory measure, in certain jurisdictions, unauthorized investment transactions are deemed void or nullified from the date on which they took place.

It is worth noting that **ISMs tend to operate with limited transparency and outside public scrutiny**.[47] While only one-third of member states are legally required to publish decisions on investment screening, there are no explicit provisions for notifying stakeholders in advance about planned changes in screening regulations. Although a few countries have begun reporting official data on FDI screening (i.e. France, Germany, and Italy), the types of information, reporting periods, and metrics used vary from country to country.[48] At the EU level, efforts are underway to introduce reporting obligations regarding the application of screening mechanisms annually, covering decisions to allow, prohibit, or subject FDI to conditions or mitigating measures.

[47] OECD (2021). Transparency, Predictability and Accountability for investment screening mechanisms. Research note by the OECD Secretariat. Paris: OECD.

[48] UNCTAD (2021). World Investment Report 2021: Investing in sustainable recovery. New York and Geneva: United Nations. United Nations publication.

RECENT TRENDS IN EU AND MEMBER STATES' INVESTMENT SCREENING

In 2022, a total of **1,444 requests for authorization** of acquisitions made by foreign investors and ex officio cases were processed in the EU.[49] It is worth noting that some member states did not report any cases under their screening legislation. Additionally, some member states reported "consultations" on the eligibility of cases, which are included in the total number. It's important to recognize that not all authorization requests resulted in a screening decision, as this largely depends on the national legislation and how a country classifies and handles such requests. For instance, some member states deemed cases ineligible before initiating a formal screening procedure, while others conducted formal screenings first and then declared them ineligible.

Table 3: Composition of EU Member States' Screening Cases

	2020	2021	2022
Total number of requests for authorizations received	1 793	1 563	1 444
Share of top four member states in the total number of authorization requests	87%	70%	66%
Share of cases formally screened	20%	29%	55%
Share of formally screened cases authorized without conditions or mitigating measures	79%	73%	86%
Share of formally screened cases authorized with conditions or mitigating measures	12%	23%	9%
Share of formally screened cases blocked by the national authority	2%	1%	1%
Share of formally screened cases withdrawn before a decision was taken	7%	3%	4%

Source: Member states' annual reports submitted to the European Commission pursuant to Article 5(1) of the Regulation.

There is a noticeable trend towards formal screening of more cases. In contrast to 2021, in 2022 member states have regarded a higher number of authorization requests as sensitive, as evidenced by the increase in the proportion of formally screened cases. Specifically, in 2022, approximately 55% of all authorization requests and ex officio cases underwent formal screening. In the second annual report for the entirety of 2021, this figure stood at 29%, while it was 20% in the initial yearly report for 2020. Approximately 45% of the applications in 2022 were either ineligible or did not necessitate formal screening, a substantial decrease from 71% in 2021.[50] In 2022, the overwhelming majority (86%) of the formally screened cases, and for which

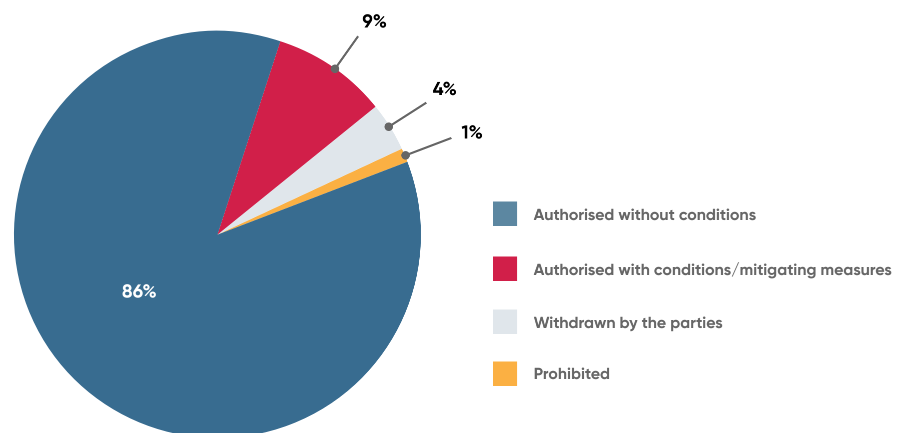
[49] European Commission. 2023. Report from the Commission to the European Parliament and the Council Third Annual Report on the screening of foreign direct investments into the Union.

[50] European Commission. 2023. Report from the Commission to the European Parliament and the Council Third Annual Report on the screening of foreign direct investments into the Union.

member states reported a decision, were authorized without conditions. This marks a notable increase compared to the previous year when 73% of transactions were authorized without conditions.

Only 1% of the transactions with requests for authorization **were blocked** by member states in 2022, consistent with the previous year. This reaffirms that **the EU remains open to FDI**, with member states reserving denials for transactions presenting exceptional threats to security and public order. Research has demonstrated that FDI screening for national security coexists with otherwise open investment regimes.[51] Additionally, surveys of investors indicate that the recent reinforcement of ISMs has not altered their perceptions regarding the most appealing investment destinations.[52,53]

Figure 4: Notified Decisions on FDI Screening Cases in the EU, 2022



Source: European Commission.

The distribution of authorization requests varies considerably among EU member states. Nonetheless, there is a trend toward diversification of screening activities across the EU, as evidenced by the top four member states representing 66% of all authorization requests in 2022, a decrease from 70% in 2021 and nearly 87% in the initial report. This is due to the rise in the number of member states implementing a screening mechanism and an expanding group of member states actively utilizing their ISMs.

The differences in national screening mechanisms in the EU also contribute to an **uneven distribution of notifications among member states, thereby limiting the effectiveness of the framework**. In 2022, 17 member states submitted a total of 423 notifications, pursuant to Article 6 of the FDI Screening Regulation. Some member states' authorities, such as Austria and Italy, include all transactions notified to them under their screening legislation in the information exchange mechanism without any prior assessment of whether the concrete case could potentially have security or public order implications for their own jurisdiction, for other Member States, or for projects

[51] Lorenzo Bencivelli, Violaine Faubert, Florian Le Gallo, and Pauline Négrin. 2023. Who's Afraid of Foreign Investment Screening? Banque de France Working Paper.

[52] EY. 2023. How can Europe attract next-generation inward investment? EY Attractiveness Survey Europe. June, 2023.

[53] Kearney. Global Business Policy Council. 2023. Cautious Optimism The 2023 FDI Confidence Index.

or programs of Union interest. While this approach offers comprehensive information on investment trends and transactions to all EU countries, it also results in many recorded transactions, some of which may not be particularly relevant to other member states.

Table 4: Notifications by Member States vs. Average FDI Stock

Member States	Notifications, number	Notifications, % of Total number	Average inward investment stock (2019-2021), % of EU Total
France	193	21.8	5.8
Italy	169	19.1	2.9
Spain	164	18.5	5.1
Austria	156	17.6	1.3
Denmark	73	8.2	0.9
Germany	63	7.1	6.6
Lithuania	24	2.7	0.2
Finland	13	1.5	0.5
Malta	9	1.0	1.4
Netherlands	7	0.8	28
Czech R.	6	0.7	1.2
Poland	3	0.3	1.6
Hungary	3	0.3	2
Romania	2	0.2	0.7
Latvia	1	0.1	0.1
Luxembourg	0	0	21.9
Ireland	0	0	8.2
Belgium	0	0	3.9
Cyprus	0	0	2.9
Sweden	0	0	2.5
Portugal	0	0	1.1
Slovakia	0	0	0.3
Bulgaria	0	0	0.4
Greece	0	0	0.2
Estonia	0	0	0.2
Croatia	0	0	0.2
Slovenia	0	0	0.1
Total	886	100%	100%

Source: European Court of Auditors, based on cases reported to the cooperation mechanism - Commission Annual Reports; Average inward investment stock - Eurostat - EU direct investment positions by country, ultimate and immediate counterpart, and economic activity (BPM6), Inward FDI 2019-2021.

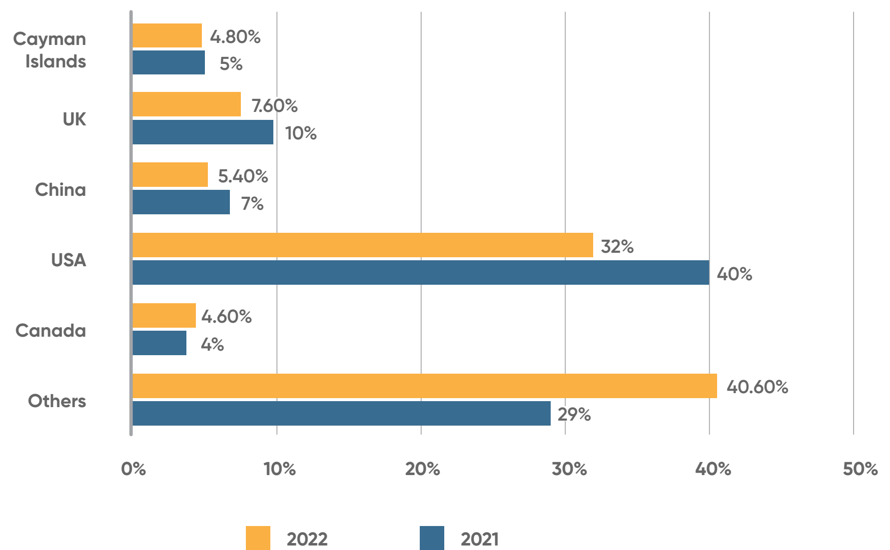
An expected correlation between the size of economies, the level of inward FDI, and the number of notifications is not evident. Examining the notified cases reveals a **high concentration in just a few member states**: six countries, namely Austria, Denmark, France, Germany, Italy and Spain, account for 92% of the notifications between 2020-2022 (90% of notifications in the period 11 October 2020 - 30 June 2023). A second group of nine countries submitted the remaining 8% of cases. **A third group comprising 12 member states did not conduct screening or provide notification of any cases** during the same period (2020-2022). **Yet, these member states collectively account for approximately 42% of the EU's average FDI stock**. This affects the effectiveness of the framework and constrains the comprehensive view that the European Commission and other EU countries could obtain.[54] A particularly striking example of this mismatch is the Netherlands, which attracted an average inward FDI of 28% of EU's total, yet accounted for only 0.8% of notifications. Similarly, Luxembourg, despite attracting nearly 22% of the EU's inward FDI, had zero notifications between 2020 and 2022.

The notified transactions exhibited significant variation in terms of the sectors of the target company, transaction value, and the origin of the ultimate investors, among other parameters. The **top five sectors** with the highest number of transactions in 2022 were ICT, Manufacturing, Financial activities, Wholesale and Retail, and Construction. In the manufacturing sector, **defense and aerospace** alone make up nearly half of the notifications (45%). When examining the value of the transactions, nearly half of them (49%) had a value of less than EUR 500 million, compared to 62% in the previous year. Meanwhile, 42% of the transactions involved a value of EUR 100 million or more, down from 55% in the previous period. The notified transactions exhibit a **wide range in terms of value**, from as low as EUR 1 to approximately EUR 29-31 billion at the highest.

In certain instances, an acquisition of a group with subsidiaries across the EU may trigger notifications from multiple member states. Differing filing dates by investors, or variations in national procedures, pose additional challenges for screening **cases involving multiple jurisdictions**. Out of all the cases notified in 2022, 20% constituted multi-jurisdictional FDI transactions, compared to 28% and 29% in the previous two years.

[54] European Court of Auditors. (2023). Special report 27/2023: Screening foreign direct investments in the EU – First steps taken, but significant limitations remain in addressing security and public-order risks effectively.

Figure 5: Origin of Ultimate Investors in Cases filed in 2021 - 2022



Source: European Commission.

Six member states—Germany, France, Italy, Spain, Austria, and Denmark—have some of the **most advanced FDI screening mechanisms in the EU**. These nations mandate **prior authorization** for foreign investments and apply a **shared set of criteria** for screening investments and sectors, complemented by unique country-specific considerations based on domestic economic factors. Investments subject to screening typically involve acquisitions of control, business lines, and minority stakes.

The six countries have progressively incorporated objectives outlined in the Regulation to **safeguard public health, energy security, and the integrity of telecommunications or transport infrastructure** into their screening mechanisms. Except for Austria, all these countries can also **screen investors from the EU across various sectors**, as seen in Italy or temporarily in Spain, or on a more limited basis, such as the focus on the defense sector in Germany. In terms of the procedures, the examination of transactions is usually conducted in two distinct phases, reflecting the sensitivity of these cases. The second phase is reserved for the most complex and sensitive transactions, and the mechanisms of the six member states incorporate a system of conditions tied to authorizations to manage identified risks associated with foreign investments.

In addition to the common features, each mechanism exhibits specific characteristics reflecting the individual assessment of national security and public order by each member state. Variations are evident in sensitive sectors and technologies. For instance, both Austria and Italy highlight the expansion of 5G as a sensitive issue. Some mechanisms, like Denmark's, extend beyond ownership transactions or asset acquisitions to encompass long-term financial agreements. These agreements, which include R&D joint ventures, financial arrangements tied to public procurement, and supply agreements for goods or services, are subject to screening if they grant a foreign investor significant influence over sensitive Danish companies.

Regarding **regulatory examination timelines**, France, with an average of 3.5 months, falls in line with Italy (2.5 months), Denmark, and Austria (3 months). This timeframe is considerably shorter than that of Germany and Spain, where examinations may exceed 6 months.[55]

Germany

Germany has one of the most advanced systems for safeguarding its national economy within the EU, and its proactive stance has **spurred the entire EU to prioritize economic security** to a greater extent. German policy on foreign investments is relatively liberal.[56] However, in recent years, certain areas have seen a shift towards more restrictive policies. This change is a response to amplified geoeconomic competition and efforts by both the EU and Germany to **reclaim technological sovereignty**. Despite the resulting changes, interventions against foreign investments by the German Federal Ministry for Economic Affairs and Climate Action (Ministry) are still rare. Nonetheless, in recent years, the Ministry has steadily intensified its scrutiny of FDI. The Ministry has also significantly bolstered its FDI resources. In 2022, it has grown from one unit to two units, with more than 20 government officials working on FDI cases.[57]

Table 5: German Legislative Framework for Foreign Investment Screening

Title of the Law	Title of the Law in English	Further information
Außenwirtschaftsgesetz [vom 6. Juni 2013 (BGBl. I S. 1482), das zuletzt durch Artikel 4 des Gesetzes vom 20. Juli 2017 (BGBl. IS. 2789) geändert worden ist] §§ 4, 5, 13 und 15	Foreign Trade and Payments Act [of 6 June 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)] Article 4, 5, 13 and 15	Ministry for Economic Affairs and Energy In English In German
Außenwirtschaftsverordnung [vom 2. August 2013 (BGBl. I S. 2865), die zuletzt durch Artikel 1 der Verordnung vom 27. Februar 2019 (BAnz AT 06.03.2019 V1) geändert worden ist] §§ 55 bis 62	Foreign Trade and Payments Ordinance [of 2 August 2013 (Federal Law Gazette [BGBl.] Part I p. 2865), as last amended by Article 1 of the Ordinance of 19 December 2018 (BAnz AT 28.12.2018 V1)] Article 55 to 62	

[55] DG Treasury – Ministry for Economy and Finances. 2023. Foreign Investment Screening in France Annual Report 2022.

[56] ICLG. 2023. Foreign Direct Investment Regimes Germany 2024.

[57] Tilman Kuhn and Thilo-Maximilian Wienke. 2023. Foreign direct investment reviews 2023: Germany. White & Case. March 20, 2023.

In 2003, Germany initiated restrictions on foreign acquisitions of German companies, **initially targeting the military sector** to curb US takeovers in defense manufacturing. The following year marked the establishment of its contemporary FDI screening mechanism, building upon the existing Foreign Trade and Payments Act, dating back to 1961. Currently, Germany's screening mechanisms are anchored in the Foreign Trade and Payments Act and the Foreign Trade and Payments Ordinance. In May 20, 2020, the German government enacted a revision of the Foreign Trade and Payments Ordinance, altering both procedural and substantive aspects of Germany's investment screening process to **protect essential security interests**. These modifications **broadened the scope of a 10% trigger threshold** for acquisitions by non-EU investors and introduced a notification requirement for sectors related to **health**. Additionally, certain procedural rules have been adjusted to address identified deficiencies in the mechanism's operation. On July 17, 2020, the initial amendment to the Foreign Trade and Payments Act came into effect, with the objective of integrating the European foreign investment screening framework into German legislation. Moreover, it broadens the foreign acquisition review to encompass a "probable impairment" of public order or security, whereas previously only an actual risk could prompt government intervention. This new criterion extends beyond the public order and security of Germany to include those of any other EU member state, as well as **projects or programs** of EU significance.[58] In May 2021, the 17th amendment to the Foreign Trade and Payments Ordinance entered into force. The new ordinance reorganized the list of sectors and activities covered by the FDI screening mechanism, enumerating 27 sectors; 16 activities were newly added, mostly high technologies.[59] In addition, the amendment changed the thresholds triggering investment screening for different types of acquisitions, depending on their sectors.

The German ISM is aimed at protecting: (i) Germany's essential security interests, (ii) German and European public order and security, and (iii) public order and security with regard to certain projects and programs of EU interest. In the context of a sector-specific review, the Ministry **may only prohibit transactions in order to ensure essential security interests of the country**.[60] The general investment review only applies to non-EU/EFTA investors. There are no specific rules for certain foreign investors or state-owned investors. In the context of a general investment review, the Ministry may only prohibit transactions to ensure public order or security (i) of the Federal Republic of Germany, (ii) of any other EU member state, or (iii) with regard to certain projects and programs of EU interest.[61] On the contrary, the Ministry may not prohibit FDI solely based on economic, industrial policy, or similar grounds. The Ministry bears the responsibility of substantiating that the relevant criteria are fulfilled. Nonetheless, the involved parties are obligated to provide the Ministry with thorough information to facilitate an evaluation. The terms—'public order and security' and 'essential security

[58] Bundesministerium für Wirtschaft und Energie, Änderungen im Außenwirtschaftsrecht, 17 July 2020.

[59] Hogan Lovells. New Rules: German government passes far-reaching expansion of foreign investment control. April 29, 2021.

[60] In the context of a sector-specific investment review, the test is met if the transaction is "likely to affect the essential security interests of the Federal Republic of Germany."

[61] In the context of a general investment review, the test only requires that the transaction is "likely to affect the public order or security (i) of the Federal Republic of Germany or (ii) of any other European member state, or (iii) with regard to certain projects and programs of European Union interest."

interests'—are general concepts of EU law and subject to each member state's interpretation. However, specific legislation or guidance within the context of German Foreign Trade Law is lacking. Furthermore, the Ministry has not issued any guidelines detailing the specific criteria for its substantive assessment. The German FDI review operates as **a non-public procedure**. The Ministry neither publishes any filings or decisions, nor maintains a public list of procedures. There are no other administrative reviews in Germany specifically aimed at foreign investments. Transactions may be reportable to the Federal Cartel Office for merger control review.

In essence, based on **the legal framework for cross-sector investment review**, any acquisition of a company by investors situated outside the EU or the EFTA region, where the investors gain ownership of at least 25% of the voting rights of a company based in Germany, may undergo review. However, if the domestic company operates **critical infrastructure** as defined by the Act on the Federal Office for Information Security, or provides other services deemed crucial to security, the threshold for review is reduced to at least 10%.[62,63] Additionally, if the direct buyer is resident within the EU, such a review may be conducted if there are indications of abusive practices or circumvention transactions.[64] Acquisitions in which the investor obtains at least 10% of the voting rights in a company which operates a specifically defined critical infrastructure or provides certain services of particular relevance to security, in particular in conjunction with the operation of such infrastructure, must be reported to the Ministry. Additionally, there is no requirement for investors to report or seek approval. However, the Ministry may **initiate a review ex *officio*** within two months of becoming aware of the conclusion of the acquisition agreement. An investor has the option to request **a binding certificate of non-objection** from the Ministry of Economic Affairs before the intended acquisition, aiming to secure legal certainty early in the process. This certificate confirms that the acquisition does not raise any concerns regarding public order or security.[65] If the Ministry of Economic Affairs does not initiate a review within two months of receiving the buyer's written application for a certificate of non-objection, the certificate will be deemed issued.[66] If a review procedure is initiated, the buyer is required to supply the Ministry with all relevant documents for the review. Additionally, the Ministry may request further documents if necessary. Any restrictions or prohibitions on the acquisition must be imposed within four months of the submission of the complete set of documents. The Ministry of Economic Affairs oversees the implementation of the review process, engaging other relevant federal ministries within their respective areas of expertise. Any orders or prohibitions must be **endorsed by the entire Federal Government**, underscoring the exceptional nature of restrictions or prohibitions of FDI.

According to the legal framework governing **sector-specific investment reviews**, special regulations apply to the acquisition of companies operating in sensitive security areas. These sectors encompass manufacturers and developers of weaponry, including **vital military technologies**, as well as

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[62] BSI Act of 14 August 2009 (Federal Law Gazette I p. 2821). Act on the Federal Office for Information Security.

[63] Foreign Trade and Payments Ordinance, Section 55, subsection 1, sentence 2, numbers 1 to 6.

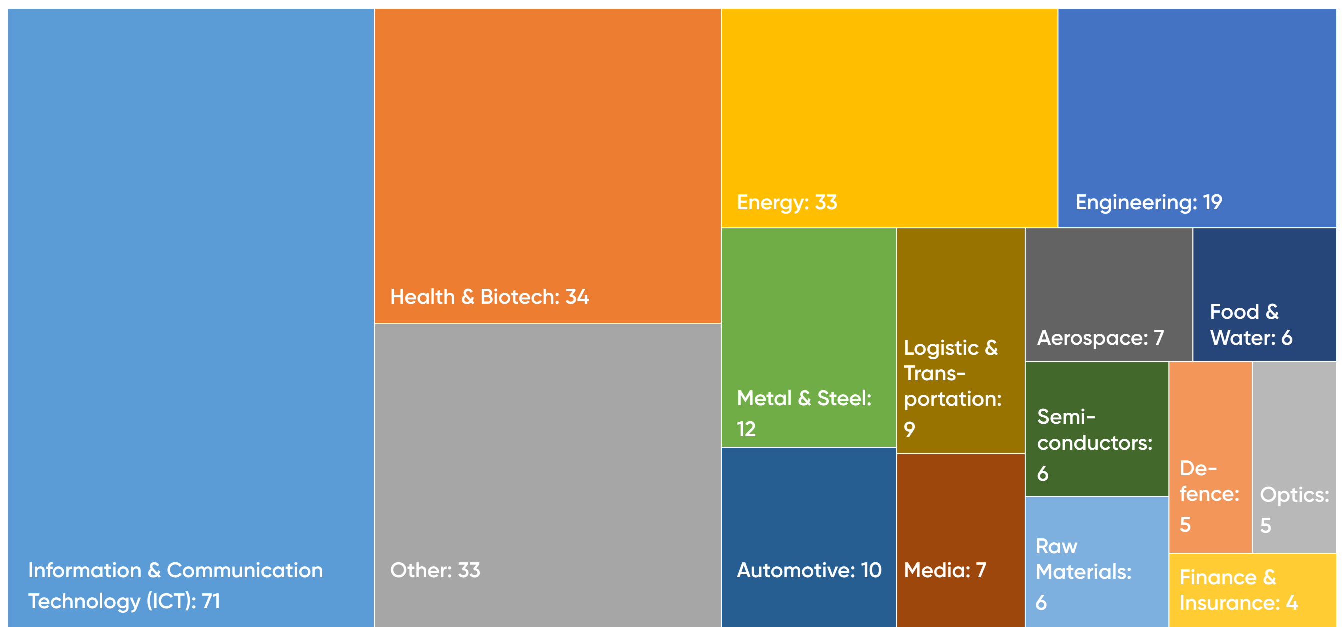
[64] Foreign Trade and Payments Ordinance, Section 55, Subsection 2.

[65] Foreign Trade and Payments Ordinance, Section 58.

[66] Foreign Trade and Payments Ordinance, Section 58, Subsection 2.

entities producing specialized engines and gearboxes for military vehicles. Additionally, companies offering products featuring IT security capabilities for handling classified government data are subject to these rules. Similar provisions extend to the acquisition of companies operating high-grade earth remote sensing systems.[67] Any acquisition of a company by foreign investors, wherein they acquire ownership of at least 10% of the voting rights of a company resident in Germany, can be subject to such a review.

Figure 6: Sectors of German Target Companies in Cases Filed in 2023



Source: Federal Ministry for Economic Affairs and Climate Action.

Acquisitions falling under the sector-specific investment review must be formally notified.[68] The **written notification** should include essential details regarding the intended acquisition, the buyer, the domestic target company, and their respective fields of operation. If the Ministry fails to commence a formal review procedure within two months of receiving the buyer's written notification, the acquisition will be considered approved.[69] The acquisition may be restricted or prohibited only within four months after the full set of documents has been submitted.[70] The Economic Affairs Ministry oversees the implementation of the review process, collaborating with other relevant federal ministries within their areas of expertise. Orders or prohibitions are issued through consensus among the Federal Foreign Office, the Federal Ministry of Defense, and—in matters related to IT—the Federal Ministry of the Interior, Building, and Community.

It's essential to emphasize that **all review procedures apply exclusively to**

[67] Satellite Data Security Act of 23 November 2007 (BGBl. 2590), as last amended by Article 4 (59) of the Law of 7 August 2013 (BGBl). I p. 3154).

[68] Foreign Trade and Payments Ordinance, Section 60, Subsection 2.

[69] Foreign Trade and Payments Ordinance, Section 61.

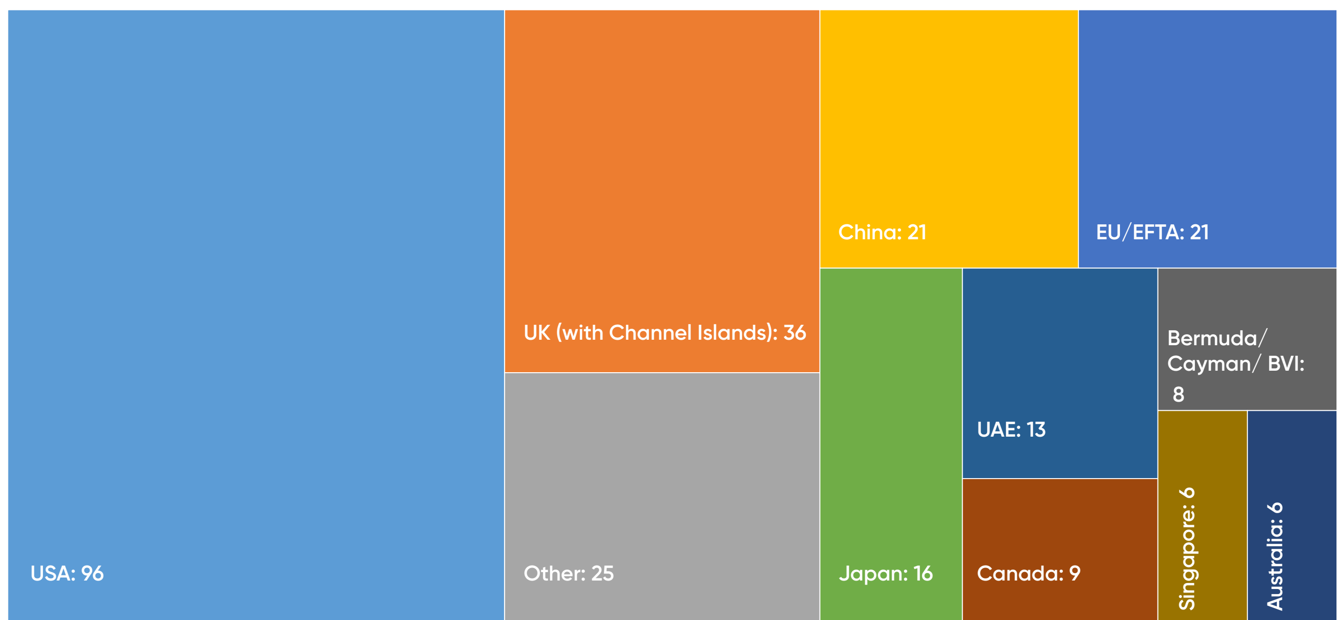
[70] Foreign Trade and Payments Ordinance, Section 62.

acquisitions of existing German companies. Conversely, **establishing a new business or facility in Germany is not subject to any of the above-mentioned investment reviews**. Intra-group transfers are also subject to the German ISM if a foreign investor thereby obtains a direct or indirect interest in a German company. However, if the parent company remains unchanged, the contractual parties are from the same non-EU/EFTA state, and only the ownership structure within the domestic company is altered without the addition of any new external shareholder (directly or indirectly), the reorganization may be exempted.

Over the past few years, the Ministry has significantly **ramped up its scrutiny of foreign investments**. Previously, obtaining clearance from the German government was a relatively swift process, devoid of political entanglements.[71] Nowadays, investment review proceedings may demand considerably more time. In complex cases, such proceedings can extend up to a year or longer, primarily due to the involvement of multiple ministries, including the Ministry of Defense, and the nuanced **geoeconomic and geopolitical factors** under discussion. FDI reviews involving critical companies are becoming **increasingly politicized**. Decisions regarding these transactions are now frequently made with the participation of the entire cabinet or the Federal Chancellery.[72]

In 2023, the majority of filed cases were cross-sectoral, accounting for 86% (220 out of 257), while only 14% were sector-specific.[73]

Figure 7: Origin of Investors in Cases Filed in 2023



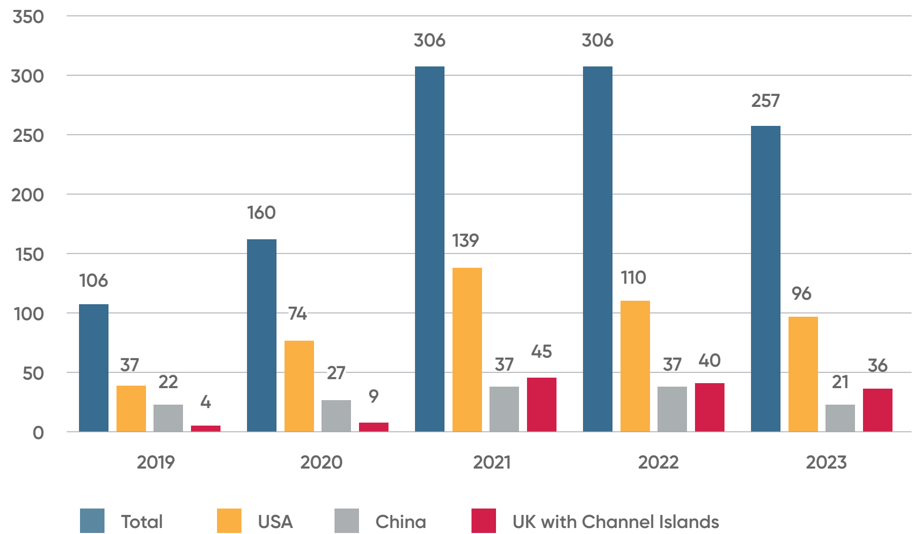
Source: German Federal Ministry for Economic Affairs and Climate Action.

[71] ICLG. 2023. Foreign Direct Investment Regimes Germany 2024.

[72] Tilman Kuhn and Thilo-Maximilian Wienke. 2023. Foreign direct investment reviews 2023: Germany. White & Case. March 20, 2023.

[73] Federal Ministry for Economic Affairs and Climate Action. 2024. Facts and Figures for FDI Screening in Germany.

Figure 8: Top Countries of Origin for Investors According to Year of Filing



Source: Federal Ministry for Economic Affairs and Climate Action. Before the end of the Brexit transition period (31.12.2020) Germany only screened acquisitions by UK investors in the sector-specific screening procedure.

France

The transactions captured by the French FDI screening mechanism are:

- **Acquisitions by a foreign investor** (i.e., non-French investor or French investor not domiciled in France) of (i) a direct or indirect controlling interest in a French entity and/or (ii) whole or part of a branch of activity of a French entity.
- **Acquisitions by a non-EU/EEA investor** (acting alone or in concert with others) of more than 25% of voting rights of a local entity, whether made directly or indirectly.[74]

FDI review is triggered only when the target company engages in sensitive activities as listed in the French Financial and Monetary Code. These sectors include, among others, defense and security, public health, major utilities, and critical infrastructures such as energy, telecommunications, transportation, and water supply. Additionally, R&D in critical technologies and activities related to food security are also considered sensitive and subject to review.

[74] Decree No. 2020-892 of 22 July 2020 lowered this threshold to 10% for investments in French listed companies. The measure was temporary and had been extended to December 31, 2023.

Table 6: French Legislative Framework for Foreign Investment Screening

Title of the Law	Title of the Law in English	Further information
Code monétaire et financier Partie législative Livre Ier Titre V : les relations financières avec l'étranger Articles L151-1 à L151-7	Financial and monetary code Legal section Book I Title V: Financial dealings with foreign countries Articles L.151-1 to L.151-7	DG Treasury – Ministry for Economy and Finances

Foreign investments subject to screening can be **categorized into three groups** based on the nature of the activities of the target company. *Firstly*, there are investments in inherently **sensitive activities**, primarily within the defense and security sectors.[75] These activities include such related to weapons, munitions, explosive materials for military use, war materials, dual-use items and technologies, cryptology services, and R&D activities in these sectors related to critical technologies and dual-use items.[76] The second category comprises investments in activities essential for safeguarding the integrity, security, and continuity of **critical infrastructure, goods, and services**.[77] These include energy and water supplies, transportation networks and services, public health, and food safety. Additionally, R&D activities in these sectors related to critical technologies and dual-use items and technologies are also included in this group.[78] Lastly, a *third* category comprises FDI that fall under both aforementioned groups. An example of this is French businesses engaged in the manufacturing of aircraft parts for both civil and military aviation, classified as **"mixed" investments**.

The French Treasury reviewed 325 files in 2022, compared to 328 in 2021.[79] These **filings include two types**: applications for investment authorization by foreign investors, and requests for opinions on whether a French company's business activity requires screening, filed either by the foreign investor or the targeted domestic company. At the end of the review period, applications for investment authorization, if not withdrawn, may be considered as falling outside the scope for screening or, if subject to screening requirements, may entail a decision such as simple authorization, authorization with conditions, or rejection.

[75] Paragraph I. of Article R. 151-3 of the Monetary and Financial Code.

[76] Paragraph III. of Article R. 151-3 of the Monetary and Financial Code.

[77] Paragraph III. of Article R. 151-3 of the Monetary and Financial Code.

[78] Paragraph III. of Article R. 151-3 of the Monetary and Financial Code.

[79] DG Treasury – Ministry for Economy and Finances. 2023. Foreign Investment Screening in France Annual Report 2022.

In 2022, 131 investments were authorized under the foreign investment screening system, targeting business activities in France that, even occasionally, contribute to the exercise of public authority or are liable to jeopardize public order, public security, or national defense interests. The Minister for the Economy and Finance imposed conditions on 53% of these investment authorizations to safeguard such interests when necessary. This percentage remained virtually unchanged, as 54% of investment authorizations were made with conditions in 2021. In addition, 42 requests for opinion were processed by the French Treasury in 2022.[80]

In 2022, **81% of the request for opinion reviews** concluded that the business activities under consideration **did not require screening**. Consequently, a foreign investment in a French company engaged in these activities does not require prior authorization from the Minister for the Economy and Finance. **This procedure offers stakeholders additional certainty**, allowing them to anticipate whether Ministerial authorization will be required through the screening process before finalizing the transaction.

In 2022, **23.7% of authorized investments fell into the category of investments in inherently sensitive activities**, nearly double the proportion recorded in 2021 (13.7%). In 2022, **51.9% of authorized investments fell into the category of activities related to essential infrastructure**, goods, and services. This category's share in the total number of authorized FDI experienced a slight decline compared to 2021 when it was 56.9%. In 2022, "mixed" investments accounted for 24.4% of screened FDI, down from 29.4% in 2021.

The origin of the ultimate investors whose transactions were screened has remained relatively stable from year to year, both in terms of their geographic area (EU/EEA or a non-EU country) and their country of origin. In 2022, the majority of screened investments—65.8%—were made by non-European ultimate controlling investors. The **primary countries of origin** for these ultimate investors were, as in 2021, the **United Kingdom, the United States, and Canada**. Within the EU and the EEA, investments were predominantly made by ultimate investors located in Germany, Luxembourg, and Italy.

[80] Ibid.

IMPROVING THE EU INVESTMENT SCREENING REGULATION

Despite the differences in screening mechanisms, the handling of cases through the cooperation mechanism has been **deemed effective**, at least as a first step towards better protecting EU's economic security.[81] The EC's evaluation of the Screening Regulation highlighted that it had a positive impact on protecting security and public order from risky FDI in the EU.[82] It also revealed that **the ISM has not hindered the flow of FDI into the EU**.[83] The total number of authorization requests has decreased, while the proportion of formally screened cases has steadily increased over time.

In June 2023 the European Economic Security Strategy announced a legislative proposal to update the FDI Screening Regulation. In October 2023 the European Commission evaluated the EU Regulation on investment screening, with a subsequent report to be presented to the European Parliament and the Council.[84] It identified a number of **areas, which need improvement** to ensure effective and efficient economic security in Europe, while preserving EU's competitiveness and attractiveness for investment.

The absence of screening mechanisms in certain member states seriously undermines the potency of the EU screening framework.[85] These countries lack the necessary tools to address vulnerabilities associated with FDI, suffer from institutional capacity deficits, and miss out on opportunities for valuable information exchange within the Union. Exploiting these vulnerable blind spots, potentially problematic foreign investors targeting sensitive assets may choose non-screening member states as a gateway to the internal market. As of 2023 twenty-two member states already had FDI screening mechanisms in place. Bulgaria, Croatia, Cyprus, Greece, and Ireland still lacked comprehensive screening regimes, making **Southeast Europe**, a place open to large Russian and Chinese investments in the past decades, **vulnerable to corrosive capital**. However, progress is underway in several of these countries, with legislative work initiated, indicating that implementation is likely imminent. For instance, Ireland anticipates the enactment of its FDI screening regime in the second quarter of 2024. Cyprus has initiated a public consultation and subjecting a draft bill to parliamentary scrutiny in 2022. Bulgaria has also adopted in the beginning of 2024 legislation for FDI

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[81] OECD. 2022. Framework for Screening Foreign Direct Investment into the EU. Assessing Effectiveness and Efficiency.

[82] European Commission. 2024. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council.

[83] Ibid.

[84] European Commission. (2024). Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council.

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

screening, yet has provided its institutions up to 9 more months for setting up the mechanism in practice.[86] It should therefore be only a matter of time before all 27 member states establish such a mechanism, thereby directly contributing to the **common security objective**.[87]

The **definition of FDI** as outlined in the existing EU Regulation is **narrow**, being applicable solely to investments by legal or natural persons from non-EU countries.[88] 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.[89] The texts treating whether indirect investments fall within the scope of the Regulation remain unclear. For instance, while the EC and most member states apply the cooperation mechanism for cases involving investors, sellers, and direct targets outside the EU, but with an EU-based subsidiary of the direct recipient, the Regulation's definition of "foreign direct investment" lacks clarity in this context. This ambiguity allows for varying interpretations and screening practices, leading to a lack of uniformity across the EU. Additionally, investments made by EU citizens who obtained citizenship through "golden passport" schemes are considered beyond the Regulation's scope, despite the potential vulnerabilities.

The sectoral coverage of screening mechanisms across the EU remains limited and uneven, allowing for potential loopholes in accessing the single market. There is considerable variation in the sectoral scope among EU countries: while some have broad authority to screen transactions across all sectors of their economy, others operate with more restricted criteria. Despite efforts to broaden the scope of screening mechanisms and accommodate differing national perspectives on vulnerability and security risks associated with various investment sectors, the EU Regulation affords member states significant flexibility in defining the parameters of their screening mechanisms. Although the EU Regulation stipulates that national screening frameworks should not discriminate against third countries,[90] many member states exempt certain acquisitions involving individuals or entities from specific countries outside the Union—such as EFTA, non-EU EEA members, NATO, or OECD members—from at least some aspects of their ISMs.

Certain transactions screened by individual EU member states fall outside the reach of the EU Regulation. National regulations in individual member states subject investments to screening if the ultimate beneficial owner is a resident or citizen of a third country. In such cases, the absence of support from the cooperation mechanism can result in screening decisions being made with potentially incomplete information, despite the availability of more comprehensive data within the Union. The **lack of involvement by the**

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[86] CSD. (2022). Investment Screening in Bulgaria.

[87] CSD. (2023). Investment Screening for Enhanced Economic Security.

[88] European Parliament. (2018). Report of the 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.

[89] During the preparation of the EU 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.

[90] Article 3(2) of Regulation (EU) 2019/452.

EC in intra-EU transactions creates a security gap, as investments within the EU controlled by third-country investors can pose similar risks as FDI covered by the EU Regulation. This complexity was underscored in the ruling of the CJEU in the Xella Magyarország case, where the Court emphasized that ISMs should not be used to infringe upon the freedom of establishment.[91]

The **reporting** of significant outcomes of investment screening procedures to other member states and the Commission is **inconsistent/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 EU member country about its course of action. Since the Regulation does not mandate member states to report the outcomes of cases undergoing their national screening procedures to the Commission, the Commission is deprived of the essential authority to acquire information necessary for fulfilling its obligation to assess the performance and efficacy of the Regulation and disseminate this information to the European Parliament and the Council. As the guardian of the Treaties, the Commission must also **ensure that investors are not subject to discrimination**, and that the free movement of capital is not unfairly impeded due to member states' FDI screening.[92]

The procedural aspects of national ISMs lack uniformity, including varying investigation and approval timelines. This disparity becomes particularly evident when the same transaction is notified to different member states. In some countries, domestic frameworks set ambitious timeframes that may expire before input by the cooperation mechanism is received, especially if additional procedures within these mechanisms lead to delays under the EU Regulation. Furthermore, screening multi-country FDI transactions often proves time-consuming and may be inefficient and unpredictable for investors, target companies, screening authorities, and the EU Commission. Currently, multi-jurisdiction FDI transactions trigger 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 prolong timelines and impact the process, potentially arriving too late for meaningful contributions to comments, opinions, or screening decisions, particularly if submissions are delayed in certain member states.

Member states do not uniformly treat **portfolio investments**. Although such investments are generally regarded as falling outside the scope of the Regulation, there is **no clear definition** of what constitutes a portfolio investment. The CJEU has characterized "portfolio investments" as "the acquisition of shares on the capital market solely with the intention of making a financial investment without any intention to influence the management and control of the undertaking."[93] However, there are instances where portfolio investments underwent screening.[94]

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

[92] European Court of Auditors. (2023). Special report 27/2023: Screening foreign direct investments in the EU – First steps taken, but significant limitations remain in addressing security and public-order risks effectively.

[93] See Judgment of 28 September 2006, Commission v. Kingdom of the Netherlands Joined cases C-282/04 and C-283/04, ECLI:EU: C:2006:608, paragraph 19.

[94] European Court of Auditors. Special report 27/2023: Screening foreign direct investments in the EU – First steps taken, but significant limitations remain in addressing security and public-order risks effectively. EU, 2023.

On 24 January 2024, the EU Commission unveiled **five initiatives to advance its European Economic Security Strategy**.[95] As one of the five proposals comprising the EESP, the EC aims to enhance the effectiveness and efficiency of the FDI Screening Regulation. The proposal for a new FDI Screening Regulation is based on the insights gained from the initial three years of operation, during which over **1,200 transactions were screened**. Additionally, it draws upon an OECD study[96] and the outcomes of a targeted consultation. While the published document represents an initial proposal, it will need to navigate through the Parliament and the Council and is likely to undergo amendments before adoption. However, the new FDI Screening Regulation is anticipated to introduce several **significant advancements to FDI screening** across all member states, including:

- Ensuring that all member states have a screening mechanism in place,
- **Harmonizing national rules** across the EU to make cooperation more effective and efficient,
- **Improving the cooperation mechanism** between member states and the Commission,
- Special rules for **multi-country transactions**,
- Establishing a **minimum sectoral scope** where all member states are required to screen transactions.

The existing FDI Screening Regulation grants member states the autonomy to "maintain, amend or adopt mechanisms to screen foreign direct investment in their territory." The proposed new Regulation **mandates that all member states** establish, no later than 15 months after its entry into force, a mechanism enabling them to screen FDI on security or public order grounds. This does not alter the fact that there will be **no supranational FDI screening mechanism at the EU level**, as is the case with merger control. Member states will continue to bear sole responsibility for deciding whether to clear, restrict, or potentially prohibit transactions. The proposed regulation will undergo **evaluation five years after its entry into force**. This assessment will focus on determining the extent to which the regulation has effectively safeguarded the security and public order of the EU.

Variations in national FDI screening laws persist and are widening due to the swift legislative developments in this domain. The Commission seeks to **mitigate disparities** concerning crucial aspects of national FDI screening mechanisms, including the scope of transactions subject to scrutiny, fundamental procedural aspects, and the criteria employed to evaluate potential adverse effects on security or public order.

Presently, member states are obligated to **formally inform the European Commission and other EU members** about any transaction within their territory subject to FDI screening. However, it's evident that **each member state interprets and applies this requirement differently**; for instance, Austria notifies every screened transaction, while Germany does so only

[95] European Commission, Commission Proposes New Initiatives to Strengthen Economic Security, press release, January 24, 2024.

[96] OECD. 2022. Framework for Screening Foreign Direct Investment into the EU. Assessing Effectiveness and Efficiency.

when an in-depth review (phase II) is initiated. The EC aims to streamline the cooperation mechanism between member states and itself, focusing on cases posing the highest risks to public order and national security. Moving forward, there will be a standardized minimum scope of transactions that member states must notify to the cooperation mechanism.

The EC acknowledges the need for a **more efficient procedure for evaluating multi-country transactions** that require FDI clearance across multiple member states. Parties will have to file their notifications in all member states concerned on the same day. This is delicate because different timelines and risk profiles in individual jurisdictions often lead parties to transactions to take a staggered approach to filings. To ensure efficient management of multi-jurisdictional transactions, the member states concerned should notify the transaction to the cooperation mechanism on the same day. In addition, the Commission pushes for **a more stringent and synchronized system for the exchange of information** obtained during an FDI screening, e.g. through requests for information. Moreover, member states will have to coordinate on the final decision and the proposal increases the hurdles for member states to disregard comments or concerns from other EU countries or the Commission, even if the final decision still rests with the national screening authorities.

The Commission aims to **broaden the scope** of the FDI Screening Regulation to **encompass indirect investments** in the EU originating from foreign investors. These investments involve an EU entity ultimately controlled by a non-EU investor. While many member states already scrutinize such intra-EU investments, the existing EU cooperation mechanism does not cover these transactions unless they are suspected of being part of a scheme to bypass FDI screening, which can be difficult to prove. Another proposed extension of the scope of the Regulation concerns greenfield foreign investments.