



CENTER FOR
THE STUDY OF
DEMOCRACY

Geoeconomic Crossroads

Bulgaria's FDI Screening Mechanism and the Balance
between Competitiveness, Security, and
Technological Sovereignty

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Sovereignty**

Europe's evolving geoeconomic landscape necessitates stronger safeguards against economic security threats, including foreign investment screening. The EU adopted its investment screening framework concerned with China's growing capabilities and use of economic coercion globally. The COVID-19 pandemic and Russia's invasion of Ukraine reinforced the need for further policy action in this domain, exposing vulnerabilities in supply chains and economic dependencies. This report examines the EU framework's development, its adoption in Bulgaria, and the shift from a voluntary approach to a more stringent regulation under Europe's Economic Security Strategy. As a late adopter, Bulgaria has implemented the EU framework with additional conditions, such as investment size, capital share acquired, and investor origin, yet its screening mechanism remains unused. The report explores its potential impact and future application.

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CONTENT

EXECUTIVE SUMMARY	4
INTRODUCTION	8
Mitigating Security and Public Order Risks Associated with Foreign Investment	9
Investment Screening in The Context of Economic Security	10
THE EU INVESTMENT SCREENING FRAMEWORK	12
Historical Background and Context	12
Regulation (EU) 2019/452	13
Requirements for MS under Regulation (EU) 2019/452	14
Proposal for a New EU Regulation on Investment Screening of 2024	15
Requirements for MS under the Proposal for a New Regulation of 2024	17
BULGARIA'S INVESTMENT SCREENING MECHANISM	19
Overview of Laws, Policies, and Procedures on Foreign Investment	19
Foreign Investments Subject to Authorization	19
National Investment Screening Mechanism for Adopting Regulation (EU) 2019/452	20
National Screening Authority	22
Areas of Conformity with the Requirements under Regulation (EU) 2019/452	24
Areas outside of the Scope of the Requirements under Regulation (EU) 2019/452	27
Comparing Bulgaria's National Screening Mechanism to MS Best Practice	28
Recommendations for Legislative and Policy Adjustments	29
Proposed Amendments to Primary and Secondary Legislation for Conformity with the Requirements of Regulation (EU) 2019/452	33
<i>Scope of Screening</i>	33
<i>Measures to Prevent Circumvention of the National Screening Mechanism</i>	33
<i>Participation in the Cooperation Mechanism</i>	34
Proposed Amendments to Primary and Secondary Legislation for Full Alignment with the Proposal for a New Regulation of 2024	34
WHAT'S NEXT	37
Aligning Bulgaria's Investment Screening Framework to Emerging Economic Security Threats	38

LIST OF BOXES

- Box 1.** The Xella Hungary Case 11
- Box 2.** Screening Guidance under Article 4 of Regulation (EU) 2019/452 15
- Box 3.** Screening Requirements under the Proposed New Regulation on Investment Screening of 2024 18
- Box 4.** Economic Security and Investment Screening: The Case of Lukoil-Neftohim Burgas Refinery 29
- Box 5.** Placing Russian-owned Refineries under Special Supervision in Germany and Italy 31
- Box 6.** Bulgaria: Rebuilding Trust as a Reliable Partner in Advanced AI Chips 32
- Box 7.** Critical Technologies for EU’s Economic Security 35

LIST OF FIGURES

- Figure 1.** The Screening Process under Bulgarian Law 24
- Figure 2.** Conformity of Bulgaria’s National Screening Mechanism with Regulation (EU) 2019/452 28

LIST OF ABBREVIATIONS

BGN	Bulgarian Lev
EC	European Commission
EES	European Economic Security Strategy
EU	European Union
EUR	Euro
FDI	Foreign Direct Investment
IBA	Invest Bulgaria Agency
IPA	Investment Promotion Act
IRIPA	Implementing Regulation to the Investment Promotion Act
KSA	Kingdom of Saudi Arabia
MS	Member State
UAE	United Arab Emirates
UK	United Kingdom
US	United States

EXECUTIVE SUMMARY

Investment screening allows governments to better assess the risks to security and public order associated with foreign direct investments (FDI). It is intended to foster sustainable growth and investment opportunities by adding an additional layer of investor security, level the playing field in times of intensifying geopolitical competition, protect strategic sectors from foreign influence, and enhance the collective economic security of alliances, such as the European Union (EU). The rationale for the screening of foreign investments in the EU evolved with the changing geopolitical landscape. Initially FDI screening was intended as a *reciprocal measure* to offset the discrepancy between the EU's openness, and the lack of similar treatment of EU investors abroad and strategic acquisitions of cutting edge EU technologies disguised as investments from China. Then, the COVID pandemic exposed the flaws of Europe's supply chains, and Russia's invasion of Ukraine laid bare the weaponization of economic dependencies and the flow of corrosive capital within European economies. The heightened sensitivity of individual member states (MS) and the European Commission (EC) to these threats led to the adoption of the European Economic Security Strategy, the first coordinated response towards safeguarding Europe's supply chains and critical infrastructure, including through the screening of FDI. A legislative proposal for a regulation to upgrade the FDI screening framework is available and awaiting adoption in 2025.

The EU Investment Screening Framework

EU's current investment screening regulation ((EU) 2019/452) does not position the instrument within the bigger portfolio of Europe's economic security. It merely underscores the legality and transparency of investment screening procedures already adopted by some MS, and provides guidance to the MS that are in the process of developing their own FDI screening procedures. The regulation *only recommends* that the MS adopt national FDI screening mechanisms and provides guidance as to non-EU investments that the MS should screen upon their discretion. These include the investments of non-EU investors planned in local critical infrastructure and in critical technology areas; in the supply of critical inputs, energy or raw materials; in EU firms that have access to sensitive information, and in firms that have the ability to control information flows; and investments impacting the freedom of speech and pluralism of the media.

The 2019 regulation allows the European Commission to address potential security or public order risks associated with FDI beyond the borders of the individual MS hosting the investment. It establishes a cooperation mechanism, through which individual MS and the EC can exchange information on foreign investments that could potentially impact Europe's security and public order, or EU projects and programs, and allows the EC to flag foreign investments that pose a threat to the security or public order of more than one MS. The regulation also lends the necessary legal authority to individual MS to block planned FDI by non-EU investors that are directly

or indirectly controlled by third country governments, that are involved in activities affecting security or public order, or if there is a risk that these non-EU investors may engage in illegal or criminal activities.

The proposal for a new regulation of 2024 mandates that all MS must introduce a national FDI screening mechanism in order to protect their supply chains and critical infrastructure, eliminate technology leakages, secure their research, and build their capacities to counteract the weaponization of economic dependencies. Correspondingly, screening is proposed for all FDI planned by non-EU investors in EU firms that develop, produce or supply critical components of electronic devices used in the civilian communication, advanced technologies in computing, energy, health and transportation that can be used also for military purposes; technologies for the processing of large amounts of data and for making data-driven analysis predictions; technologies based on quantum mechanics; transformative technologies used in agriculture, environment, healthcare, life science, food chains or biomanufacturing, medicines for human use, biotechnologies with security and military application; technologies for secure digital communications and connectivity, radio access, cyber security, intrusion systems, Internet of Things, distributed ledger and digital identity technologies; navigation, avionics and marine positioning; sensing technologies; space technologies; robotics; advanced materials and critical financial systems.

The EU framework does not foresee a uniform procedure for investment screening. The lack of uniform procedures is a key shortcoming noted in the course of implementing Regulation (EU) 2019/452, yet it remains unaddressed in the proposed regulation of 2024. Instead, MS are called upon to harmonize the more substantive procedures and timelines of their national FDI screening mechanisms. There is also **no uniform enforcement system.** The courts of the individual MS have full authority to decide on the legality of their national FDI screening authorities' decisions. The EC and other MS can provide opinions and comments on each FDI transaction through the cooperation mechanism, but these are not binding on the MS hosting the investment, unless the opinion or comment concerns FDI associated with EU programs or FDI with cross-border impact.

Bulgaria's Investment Screening Mechanism

Bulgaria is one of the late adopters of the EU framework on investment screening. The national mechanism was introduced through amendments to the Investment Promotion Act (IPA) in early March 2024, while the secondary implementing regulations faced delays, with the organizational rules of the Screening Council adopted only in late January 2025, while amendments to the Implementing Rules to the Investment Promotion Act (IRIPA) remain pending government approval.

The amendments to the IPA conform with the foundational requirements of the EU framework but impose conditions that may limit the applicability of the screening instrument. For illustration, to be subject to screening in Bulgaria, a foreign investment must meet the requirements spelled out in Article 4 of the EU regulation (directly citing the provision in the legal text) as well as one of the following conditions: (i) it leads to the acquisition of more than 10% of a Bulgarian firm by a foreign investor (regardless whether it is a new or existing business), or the value of the planned investment exceeds EUR 2 million; or (ii) it leads to the acquisition of more than 10% of

a Bulgarian technology firm by a foreign investor (regardless of the value of the planned investment); or (iii) it is a foreign investment in a new business, i.e., “greenfield investment” with a value exceeding EUR 2 million. Subject to screening are also investments of any value where the foreign investor is owned by or receives significant funding from a state authority of a non-EU country, including investor firms with state participation that are publicly traded on a regulated market, provided that the state participation exceeds 5% of the capital of the entity contemplating the investment. A peculiarity of the Bulgarian mechanism is that subject to mandatory screening are all non-EU investments in the production of oil and petroleum products using critical infrastructure installations and facilities. Unlike the EU screening framework, the Bulgarian mechanism treats investors differently based on their country of origin. For example, subject to mandatory screening are all investments originating from Russia and Belarus, while investments originating from “low risk” countries, defined by the lawmakers as the USA, the UK, Canada, Australia, New Zealand, Japan, South Korea, UAE and Saudi Arabia, are exempted from screening.

Foreign investors must obtain authorization from the Interagency Council for the Screening of Foreign Investments prior to proceeding with the planned investment transaction. The Screening Council adopts a decision to authorize or prohibit a planned investment within 45 days and the absence of a decision within the prescribed timeline is considered as tacit consent to the transaction. The Council can also issue a conditional authorization of the FDI transaction, provided that the foreign investor implements corrective measures, as requested by the Council, such as limiting the investors’ shareholding to no more than 20% in the capital of the target firm, or limiting the investor’s share to no more than 10% in the capital, if the target firm operates in a technology field. Ex officio screening is also allowed, provided that the Council becomes aware of new information related to an FDI transaction, and in case the EC or another MS requests the screening of an FDI transaction. Sanctions, in case of noncompliance with the national screening procedures, come in the form of a monetary fine (for individuals) or property sanction (for legal entities) equal to 5% of the value of the planned investment, but not less than BGN 50,000 (approximately EUR 25,600). In addition to the fine or the property sanction, the Council can also impose restrictive conditions, such as limiting the control of the investor in the management of the Bulgarian firm, or requesting that the target firm changes its area of business. The Council may request the suspension of all activities of the target firm and terminate the FDI transaction, i.e., unwind it.

Bulgaria adopted its national FDI screening mechanism amidst serious internal political instability and fragmentation that emerged in the cycle of seven parliamentary elections between 2021 - 2024. This shows that the country’s commitment to EU’s economic security has been achieved through a certain political balance, while also offering some explanation as to the peculiarities of Bulgaria’s FDI screening mechanism, such as the setting of a monetary limit on FDI subject to screening and exempting from screening FDI originating from certain foreign countries. In addition, the adoption of the EU regulation on investment screening is significant deviation from the established national FDI policy, which has been focused on removing any barriers to investment in the country. For the past 35 years Bulgaria has maintained a very liberal regime on inbound investments: prior to adopting the FDI screening mechanism, foreign and domestic investors were treated

equally with no restrictions on the economic area of the planned FDI, the origin of the investor, the size of the foreign participation, the mode of market entry, or the repatriation of profits by the foreign investor.

In the new geopolitical realities, FDI screening is essential for economic security. An EU wide screening framework, designed with collaborative enforcement in mind, depends on the efforts of all MS. To put it bluntly, to safeguard Europe's economic security **the framework is as strong as its weakest link.** Bulgaria's FDI screening mechanism is new and untested. The country's legislation is largely aligned with the EU requirements and provides some detail as to how it will be implemented, i.e., the members of the Screening Council, the stages of the screening procedure, and the interactions between different government authorities involved in the screening process. Still, the Secretariat of the Screening Council, which is tasked with performing the required analytical work that underpins the process of adopting FDI screening decisions, is not yet established as of the beginning of 2025, and Bulgaria cannot take full advantage of the capacity building opportunities presented through peer learning within the cooperation mechanism established under the EU framework.

The delay in the adoption of the national legislation and the development of administrative capacity for implementation is a critical vulnerability, given that Bulgaria has been one of the EU countries with the highest share of **Russian ownership and Chinese interest in strategic acquisitions in the economy.** This has been particularly true of the energy sector, in which Russian investors retain strategic positions, controlling also sizable cash streams and technological influence. For example, the Bulgarian government has not yet been able to leverage the national FDI screening mechanism with respect to the change of ownership of the largest remaining Russian asset in the EU - the Lukoil-Neftohim Burgas oil refinery. Moreover so that similar assets in much larger economies such as Germany and Italy have been disposed of already in 2022, several months into Kremlin's designation of the EU as "unfriendly" countries. In addition, Bulgaria's continuing transit of Russian pipeline gas has blocked potential beneficial imports, and related investments, of US liquified natural gas through Turkey.

INTRODUCTION

Many MS did not favor the adoption of a framework for the screening of foreign direct investment (FDI) even though its purpose is to address the realities of a new geopolitical environment. **The resistance of the MS at the outset¹ subsided because of repeated cases of technology acquisitions, part of foreign government's industrial strategies, disguised as investments,** as the hostile takeover of German industrial robot manufacturer Kuka by China's Midea in 2016.² Also, the lack of reciprocal openness to FDI by many of the countries with whom the MS do business,³ as well as the proliferation of national FDI screening regimes among most advanced economies with whom the EU partners internationally⁴ forced the need for EU wide, collective action.

Prior to adopting the EU screening framework in 2019, many MS introduced some form of investment screening to limit the economic vulnerabilities stemming from EU's economic dependencies created over time. The **risks associated with foreign investment have become more apparent in the new geopolitical reality,** specifically concerning the acquisition of nuclear plants or ports, and EU firms operating in sensitive sectors, i.e., involving critical defense inputs such as semi-conductors or microchips of a dual-use nature, or transferring sensitive technologies to non-EU countries whose strategic goals are not aligned with EU interests.

The EU investment screening framework introduced with Regulation (EU) 2019/452 defines requirements for those MS that intend to screen foreign investments at the national level. Also, it creates a cooperation mechanism, through which individual MS and the European Commission (EC) can exchange information concerning specific foreign investments affecting the security and public order in the EU, or EU projects and programs. Additionally, it authorizes the EC to flag investments that pose a threat to the security or public order of more than one MS. A new regulation on investment screening was proposed in 2024 to overcome the noted weaknesses of the EU framework and to transform investment screening into an effective instrument for protecting Europe's economic security.

¹ "Until about 2016, investment screening enjoyed rather unfavorable press in many Member States and within European institutions. An air of "protectionism" was associated with some of the few cases that came to public attention. Investment screening was considered a barrier to international capital flows and an obstacle to economic opportunities, and the benefits or necessity of screening, as a last resort to identify and mitigate risk for security or public order were not widely recognised." For more information, see Organisation for Economic Co-operation and Development, *Framework for Screening Foreign Direct Investment into the EU: Assessing effectiveness and efficiency*, 1 January 2022.

² Wrage, C. and Kulik, J., *After Kuka – Germany's Lessons Learned from Chinese Takeovers*, China Observers in Central and Eastern Europe (CHOICE), 21 July 2022.

³ In China, foreign investments in certain sectors are prohibited by law and FDI conditions are less favorable than the EU. Chinese acquisitions in the EU are twice as large as EU acquisitions in China, mainly due to the promotion of FDI in the EU and the implication that Chinese investments in the EU are guided under the industrial strategies of the Chinese government. This pattern raises concern about the control over strategic technologies. Also, EU firms cannot carry out traditional mergers and acquisitions in China, instead EU investors are required to engage in joint ventures with Chinese firms, transferring their technologies and intellectual property to the Chinese partner. For more information, see European Commission, *China's restrictions on FDI are much stronger than in the EU and US*, 2019.

⁴ European Court of Auditors, *Screening foreign direct investments in the EU: First steps taken, but significant limitations remain in addressing security and public-order risks effectively*, 6 December 2023.

Mitigating Security and Public Order Risks Associated with Foreign Investment

A cornerstone of EU's investment screening framework is that it calls for **collective actions to protect Europe's economic security**. This has not been the case so far, as individual MS have the authority to set national rules addressing security and public order issues, while the EC has authority to set rules on commercial matters, including FDI. In this context, the EU framework does not define the terms 'security' or 'public order' but lists the factors where an FDI is likely to affect security and public order based on the critical nature of the investment target (i.e., owns critical infrastructure, firms that develop critical technologies and dual-use items, supply critical inputs or have access to sensitive information and data) as well as the critical nature of the foreign investor (controlled by the government, prior involvement in activities affecting security or public order in a MS; or engaged in illegal or criminal activities).

Investment screening is also an instrument that MS can use to **identify foreign economic actors that leverage their investments in the EU to advance their governments' geopolitical agendas**. The EU screening framework was adopted to *"block FDI, that might be detrimental or contrary to EU projects and programmes or other EU interests"*.⁵ Inbound investments are to be screened by MS to assess whether there are risks, associated with the planned FDI to the security and public order of the MS and the EU as a whole and the legal actions that the MS could take to respond to such risks, i.e., authorize, condition, prohibit, or unwind the foreign investment.⁶

The focus on economic security aligns investment screening with the EU's stringent rules on safeguarding open markets.⁷ The mechanism addresses *"growing concerns about certain foreign investors seeking to acquire control of EU firms that provide critical technologies, infrastructure or inputs, or hold sensitive information, and whose activities are critical for security or public order at EU level"*.⁸ Correspondingly, the EU-wide screening framework defines the foreign investments that should be considered a security risk, and requires that such investments can proceed only after a corresponding authorization by the MS hosting the investment.

In the past, a number of MS had in place procedures for reviewing foreign investments in terms of their potential to bring economic benefits to the hosting country: growth, employment, knowledge extension, technological innovation, etc. This screening of foreign investments, centered around the potential economic benefits that the investment would bring to the

⁵ European Parliamentary Research Service, *EU Legislation in progress: Screening of foreign investments in the Union*, 2 September 2024.

⁶ *Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 May 2019 establishing a framework for the screening of foreign direct investments into the Union*. The regulation defines screening as a *"procedure allowing to access, investigate, authorize, condition, prohibit or unwind"* FDI. The proposed regulation of 2024 adds to this definition *"on the grounds of security and public order"* clarifying that investment screening is done in the context of economic security.

⁷ According to the OECD FDI Regulatory Restrictiveness Index, the EU has one of the world's most open investment regimes, and FDI from countries outside the EU has been a driver of economic growth and jobs.

⁸ European Commission, *Explanatory memorandum to the 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*, 24 January 2024. According to the explanatory memorandum, *"restrictions to the freedom of establishment are prohibited unless they are justified on the basis of specific reasons of public order, security or health, as outlined in Article 52(1) TFEU"*.

hosting MS, goes against the principles of the internal market, specifically market openness and equal treatment of domestic and foreign investors.⁹ Correspondingly, the authority granted to MS to authorize or prohibit foreign investments under Regulation (EU) 2019/452, in essence to interfere in market activity, is narrowly defined: “to restrict investments only if there is a genuine and sufficiently serious threat to a fundamental interest of society and if less restrictive measures are insufficient to address such threat”.¹⁰

Investment Screening in the Context of Economic Security

The proposed new regulation aims to align the screening mechanism under Regulation (EU) 2019/452 with the comprehensive approach to safeguarding the EU’s economic security that is laid out in the European Economic Security Strategy (EESS) of June 2023. The EESS spearheads several initiatives aimed at mitigating economic security risks stemming from inbound foreign investments, outbound investments, dual-use goods and research, which are grouped under distinct pillars of measures.¹¹ Investment screening, falling under the “protection” pillar, calls upon MS to protect their supply chains and critical infrastructure, eliminate technology leakage, secure their research, and build capacities to counteract the weaponization of economic dependencies and economic coercion tactics.

Its goal is to “strengthen the EU’s economic security at a time of growing tensions and profound technological shifts”¹² that include (in addition to FDI screening), coordination on export controls, improving R&D support for technologies with dual-use potential, enhancing research security and identifying potential risks stemming from outbound investments.

The proposed new EU screening framework, evaluated in the context of the EESS, will require all MS to screen foreign investments in carefully listed EU projects and programs and a significantly expanded list of critical sectors. It will also align the screening framework with established EU rules on green

⁹ Bencivelli, L. Faubert, V, Le Gallo, F and Negrin, P., *The rise in FDI screening in the EU and major advanced economies*. Paris: Banque de France, 16 November 2023.

¹⁰ European Commission, *Explanatory memorandum to the 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*, 24 January 2024. According to the explanatory memorandum, “restrictions to the freedom of establishment are prohibited unless they are justified on the basis of specific reasons of public order, security or health, as outlined in Article 52(1) TFEU”.

¹¹ The three pillars spelled out in the EESS are: (1) promoting the EU’s competitiveness and growth (strengthening the single market and the EU’s scientific, technological and industrial bases); (2) protecting the EU’s economic security (investment screening); and (3) partnering with countries with common economic security interests.

¹² For more information, see European Commission, *Commission proposes new initiatives to strengthen economic security*, 24 January 2024.

field investments,¹³ mergers and acquisitions,¹⁴ foreign subsidies,¹⁵ resilience of critical entities,¹⁶ and cybersecurity.¹⁷ The heightened sensitivity to potential economic security threats, reflected in the 2024 proposal, allows the screening of investments by EU firms that are controlled by non-EU investors, overcoming a shortcoming on the applicability of Regulation (EU) 2019/452 that emerged in the course of its implementation, presented in the decision of the European Court of Justice (ECJ) in the Xella Magyarország case.

Box 1: The Xella Hungary Case¹⁸

In the Xella¹⁹ case, the ECJ ruled on Hungary's FDI screening mechanism in light of EU law, including the free movement of capital, freedom of establishment, and the FDI Screening Regulation. The Hungarian Minister for Innovation and Technology blocked Xella's acquisition of Janes és Társa Kft, citing national interest and security of raw material supply.

The ECJ held that the transaction fell outside Regulation 2019/452, as it involved an EU-based acquirer, despite its non-EU ownership. It ruled that the case concerned freedom of establishment which Xella could invoke regardless of its shareholders' origin. It also held that neither the FDI Screening Regulation nor the free movement of capital are applicable law in that specific case. The Court found Hungary's restriction severe and unjustified, concluding that the alleged risk to raw material supply did not pose a genuine or serious threat to a fundamental societal interest.

Opinion

The Xella judgment reaffirms that the EU's fundamental freedoms offer firms a path to challenge investment restrictions through national courts, with ECJ guidance if necessary. It also clarifies that firms can expect a broad interpretation of cross-border links, strengthening their position in similar disputes.

¹³ European Commission, *Explanatory memorandum to the 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*, 24 January 2024. According to the explanatory memorandum, the screening of foreign investments does not limit the freedom of movement of capital and freedom of establishment in the EU, because investments create a "lasting economic link" between the investor and the target company and give the foreign investor control over the operations of the EU target company.

¹⁴ Investment screening allows MS to block transactions in order to protect public security, media plurality under the rules of the EU Merger Regulation.

¹⁵ Screening shows whether the investor is owned/controlled by a foreign government (shareholding, funding) which helps assess whether the planned investment could negatively affect MS/EU's security or public order.

¹⁶ Investment screening does not limit MS in ensuring the "unobstructed" provision of "services essential for the maintenance of vital societal functions or economic activities in 11 sectors" under the rules of the CER Directive.

¹⁷ Screening does not limit the assessment of cybersecurity risks in supply chains and supplier relationships required under the NIS2 Directive.

¹⁸ European Court of Justice, *Judgement in Case C-106/22 Xella Magyarország*, 13 July 2023.

¹⁹ For more information, Reyntjens, T. and Jorna, A., "Reading the ECJ's Xella judgment in its constitutional and institutional context", *Oxford Business Law Blog*, 9 October 2023.

THE EU INVESTMENT SCREENING FRAMEWORK

Historical Background and Context

The EC adopted a regulation on investment screening following the example of many advanced economies, including MS,²⁰ that introduced measures to block foreign investors operating under state-funded outward investment programs and advancing their government's strategic industrial goals at the expense of the economy hosting the investment. The bulk of the discussions on this subject occurred in 2015-2016 and focused on the **competing interests of retaining the EU's openness to foreign investments** (deemed as a source of growth, innovation, etc.), **and the need to address the security or public order impacts** related to the acquisition of EU firms that develop cutting-edge or dual-use technologies and EU's strategic infrastructure assets by foreign investors, including Chinese state-owned enterprises and Russian corporate groups under state control or influence. The EU framework was developed "to strike a balance between maintaining the EU's general openness to FDI and ensuring that the EU's essential interests are not undermined by precisely this openness".²¹

Several MS adopted a national-level foreign investment screening prior or concurrently with the adoption of Regulation (EU) 2019/452,²² which resulted in a maze of screening regimes with different requirements and timelines. The drive to align the timelines and screening criteria established under the national screening mechanisms of the MS emerged in the course of implementing Regulation (EU) 2019/452, and the revealed shortcomings of the current framework are addressed in the proposed new regulation of 2024.

Under Regulation (EU) 2019/452, an **enabling legal framework**, rather than a framework aimed at harmonizing investment screening across the EU, the MS are **advised** to set up national FDI screening mechanisms, but they alone decide on the scope, coverage and procedural requirements. The objective of Regulation (EU) 2019/452 is "neither to harmonise the formal FDI screening mechanisms then used by almost half of the Member States, nor to replace them with a single EU mechanism. Instead, it aimed to enhance cooperation and information-sharing on FDI screening between the Commission and Member States, and to increase legal certainty and transparency".²³ The proposal for a new regulation of 2024, crafted in the context of safeguarding economic security, **mandates** that MS must introduce investment screening and collaborate with other MS and the EC under the cooperation mechanism. Despite the fragmentation

²⁰ In the period 2012-2018 many advanced economies adopted or revised existing regimes for the screening of foreign investments for their impact on national security: Australia, Canada, China, New Zealand, Japan, South Korea, Russia, and the United States; and in the EU: Austria, Finland, Lithuania, Malta, Portugal, Denmark, France, Germany, Hungary, Italy, Latvia, Netherlands, Poland, Slovenia, and Spain.

²¹ European Parliamentary Research Service, *EU Legislation in progress: EU framework for FDI screening*, February 2019.

²² Austria, Czechia, Finland, Lithuania, Malta, Portugal, Denmark, France, Germany, Hungary, Italy, Latvia, Netherlands, Poland, Slovenia, and Spain.

²³ For detailed discussion on the geopolitical and economic context for adopting FDI screening in the EU see: *EU Legislation in Progress: EU framework for FDI screening*, 1 February 2019.

of national mechanisms (a noted shortcoming in the implementation of the current regulation), the proposed new regulation does not call upon MS to follow a uniform procedure for investment screening. Instead, **MS are required to harmonize the more substantive or procedural aspects and timelines of their national screening mechanisms** in order to make the screening an effective EU-wide instrument.²⁴

Regulation (EU) 2019/452

The EU investment screening framework was adopted at a time where many economies, traditionally open to foreign investment, were adopting screening mechanisms driven by national security concerns,²⁵ and against the backdrop of ongoing debates within the EU how to balance the risks to security or public order associated with foreign investments and EU's openness to foreign investments, deemed "*vital for its innovation, competitiveness and economic prosperity*".²⁶

The initial debates within the EU centered around the **distribution of competences** – the authority of the EC to adopt rules on trade and investment in the EU, and the authority of MS to adopt measures for protecting their national security²⁷ – and focused on setting up procedures that would have as little as possible negative impact on open markets and the EU business enabling environment.²⁸ For this reason, Regulation (EU) 2019/452 does not mandate investment screening and only encourages the MS to screen investments against a set of criteria and standards, protect confidential information, have transparent rules and procedures, provide for judicial recourse on screening decisions, and notify the EC on screened FDI transactions.

This is understandable as the current FDI screening framework was adopted before the COVID pandemic,²⁹ the Russian invasion of Ukraine³⁰ and the EESS. The focus of the framework is on **security risks associated with**

²⁴ European Commission, *Explanatory memorandum to the 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*, 24 January 2024.

²⁵ The mechanisms for the screening of foreign investments for potential impact on national security that were adopted by advanced economies outside of the EU are very similar to the mechanism outlined under the proposed regulation, i.e., authorize or prohibit investments likely to threaten national security and in strategic sectors (critical infrastructure or technologies, energy, health, media); or investments where the foreign investor is controlled by a third country government. For more information on investment screening outside of the EU see Bencivelli, L. Faubert, V, Le Gallo, F and Negrin, P., *The rise in FDI screening in the EU and major advanced economies*, Paris: Banque de France, 16 November 2023.

²⁶ European Parliamentary Research Service, *EU Legislation in progress: Screening of foreign investments in the Union*, 2 September 2024.

²⁷ MS competence on matters of national security is defined in Article 4(2) of the TFEU, and MS competence in protecting essential security interests is defined in Article 346 of the TFEU.

²⁸ European Court of Auditors, *Screening foreign direct investments in the EU: First steps taken, but significant limitations remain in addressing security and public-order risks effectively*, 6 December 2023.

²⁹ While the EU screening framework was adopted in 2019, the COVID pandemic and Russia's invasion of Ukraine contributed to the adoption or strengthening of investment screening in Central Europe. For more information, see Bencivelli, L. Faubert, V, Le Gallo, F and Negrin, P., *The rise in FDI screening in the EU and major advanced economies*, Paris: Banque de France, 16 November 2023.

³⁰ Security concerns prompted the significant expansion of the list of foreign investments affecting EU projects and programs, referred to in Article 8(3) of Regulation (EU) 2019/452, provided as an Annex to the Regulation as amended in December 2021.

foreign investments that affect more than one MS, as an investment in one MS could have a negative impact in another MS because of the high-level of integration of European economies. MS are required to notify the other MS and the EC of any FDI transactions undergoing national screening and give information on the transaction value, funding source and the business operations of the foreign investor and the EU target firm. The EC and other MS can provide opinions and comments on each transaction through the cooperation mechanism. However, these are not binding on the MS hosting the investment, unless the opinion or comment concerns FDI associated with EU programs (i.e., EU networks for energy, telecommunications, transport or research funded by Horizon programs) or foreign investments with cross-border impact. The EC can issue opinions on foreign investments that pose a risk to the security or public order of more than one MS, as well as on foreign investments that undermine a strategic EU projector program.³¹ Ultimately the MS hosting the investment makes the final screening decision and neither the EC nor another MS can block a transaction that has been approved by the hosting MS.

Requirements for MS under Regulation (EU) 2019/452

The current regulation provides **guidance** to MS as to what “*factors to take into consideration*” when deciding what investment transactions to screen in order to protect security and public order, i.e., critical infrastructure and technologies, etc., as well as whether the foreign investor is controlled by other governments, was involved in activities affecting security or public order in another MS, or engages in illegal or criminal activities.³²

MS are required to **notify the EC of all foreign investments that have been screened** under their national mechanisms, which must adhere to **minimum standards** – transparency, non-discrimination, judicial recourse against screening decisions, confidentiality, and measures to prevent circumvention of the FDI screening mechanism.³³

Potentially critical FDI transactions are to be screened before they are completed, such as FDI planned in local critical infrastructure and in critical technology areas (semiconductors, artificial intelligence, cloud computing, quantum computing, biotechnologies, the Internet of Things, virtual reality), the supply of critical inputs, energy or raw materials, in firms that have access to sensitive information (such as personal data), in firms that have the ability to control information flow, and investments impacting the freedom and pluralism of the media. Also, when determining if a foreign investment is likely to affect security or public order, MS (and the EC) may take into account if the investors are directly or indirectly controlled by third country governments, are involved in activities affecting security or public order, or there is a risk that the investors may engage in illegal or criminal activities.

³¹ For more information on the competencies of MS and the EC under the framework, see European Court of Auditors, *Screening foreign direct investments in the EU: First steps taken, but significant limitations remain in addressing security and public-order risks effectively*, 6 December 2023.

³² Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 May 2019 establishing a framework for the screening of foreign direct investments into the Union, Article 4.

³³ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 May 2019 establishing a framework for the screening of foreign direct investments into the Union, Article 3.

Box 2: Screening Guidance under Article 4 of Regulation (EU) 2019/452

Introducing screening of foreign investments is not mandatory. It is an action that MS and the EC may take on the grounds of security and public order, specifically by screening foreign investments in:

- Critical infrastructure: energy, transport, water, health, communications, media, data processing or storage, aerospace, defense, electoral or financial infrastructure, sensitive facilities, land and real estate crucial for the use of such infrastructure;
- Critical technologies and dual-use items: artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies;
- Supply of critical inputs: energy or raw materials, as well as food security;
- Access to sensitive information, including personal data, or the ability to control such information;
- Freedom and pluralism of the media.

And whether the foreign investor is:

- controlled by third country governments (through ownership structure or significant funding);
- was involved in activities affecting the MS security or public order;
- engages in illegal or criminal activities.

Proposal for a New EU Regulation on Investment Screening of 2024

The focus on foreign investments that may have a negative impact on Europe's security and public order has intensified since the debates on introducing EU-wide investment screening in 2016-2018 and the adoption of the corresponding EU regulation in 2019. The COVID-19 pandemic, Russia's war of aggression against Ukraine and other geopolitical tensions further **elevated the importance of identifying economic security risks associated with foreign investments** and the need to **protect critical assets in the EU from potentially malicious foreign influence**. This sensitivity to economic security threats contributed to the dramatical increase in the adoption of national screening mechanisms among the more hesitant MS and led to an expansion of the list of economic sectors subject to screening among the early adopters of the screening mechanism.

Due to the need for collective action of all MS to safeguard Europe's economic security, the screening framework proposed in the draft regulation of 2024, mandates that all MS must *"have a screening system in place so as to avoid*

loopholes in the screening of risky transactions".³⁴ This revision was prompted by the need to make EU-wide screening more effective³⁵ and ensure that **investment transactions cannot be channeled through a MS without a screening mechanism**, since: *"a significant share of FDI in the EU still goes to Member States that do not have a screening mechanism and this leaves vulnerabilities because potentially critical FDI remain undetected"*.³⁶ In this context, the proposed new regulation calls for a collective, distributed enforcement of the screening framework, i.e., all MS must screen certain FDI and notify the EC, and fellow MS, on FDI transactions screened under their respective national mechanisms.

Another proposed addition to the framework currently in place is mandating that the MS screen inbound foreign investments in EU companies that are active in specific areas of particular importance for the security and public order.³⁷ In this context, MS are also required to investigate whether the foreign investors are controlled or funded by foreign governments or involved in facilitating the development of a third country's military capabilities.³⁸ Proposed changes also envisage improvements to address implementation issues that emerged since the adoption of the framework in 2019, specifically with respect to the sharing of information on investments screened by individual MS under the cooperation mechanism. While **MS are not required to follow a uniform model**,³⁹ they **must make their national screening procedures coherent enough** to enable better cooperation and "decentralized implementation" of the EU investment screening regulation across all MS. The MS hosting the investment has full authority to investigate and decide whether to approve the investment transaction or not – the EC and other MS can only flag their concerns and comment through the cooperation mechanism.

³⁴ European Commission, *Communication from the Commission to the European Parliament and the Council: Advancing European economic security: an introduction to five new initiatives*, 24 January 2024.

³⁵ OECD raw data, retrieved from a commercial dataset that concluded that nearly 23% of foreign acquisitions was attributable to non-screening MS. For more information, see Organisation for Economic Co-operation and Development, *Framework for Screening Foreign Direct Investment into the EU: Assessing effectiveness and efficiency*, 1 January 2022.

³⁶ European Commission, *Explanatory memorandum to the 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*, 24 January 2024.

³⁷ The legal authority is defined in Article 4, while the list of EU projects and programs and the strategic sectors that must be screened by MS are provided in Annex I and Annex II to the European Commission's *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*.

³⁸ European Commission, *Explanatory memorandum to the 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*, 24 January 2024.

³⁹ The EC does not have the competences needed to "centralize" FDI screening, especially in the new context of economic security. Commercial policies, including these applicable to FDI, fall within the competencies of the EU (see Article 207 of the TFEU), but MS have full authority on national security (see Article 4(2) of the TFEU).

Requirements for MS under the Proposal for a New Regulation of 2024

The proposed new regulation, developed in the context of the EESS, calls for collective, concerted action of all MS. If the proposal is adopted, MS would need to comply with a number of new requirements aimed at making the EU-wide screening more effective. **The proposal does not shift the scope of the screening but expands it.** MS that are already screening foreign investments in critical infrastructure and technologies, supply chains, etc., and investments impacting EU projects and programs⁴⁰ would continue to do so, but would need to adjust their procedures to screen foreign investments in local firms active in sectors⁴¹ and technology areas *“presenting the most sensitive and immediate risks related to technology security and technology leakage”*. These are defined as inbound investments in firms that develop, produce or supply critical components of electronic devices used in the civilian communication, technologies in information and communication, energy, health and transportation that are used also for military purposes and in defense and space systems (advanced semiconductor technologies), technologies that are crucial for the processing of large amounts of data and making data-driven analysis predictions (artificial intelligence), new technologies and systems based on quantum mechanics, transformative technologies used in agriculture, environment, healthcare, life science, food chains or biomanufacturing and biotechnologies with security and military application,⁴² technologies for secure digital communications and connectivity, radio access networks, cyber security, intrusion systems, Internet of Things, distributed ledger and digital identity technologies, navigation, avionics and marine positioning, sensing technologies, space technologies, energy technologies, robotics, advanced materials and manufacturing technologies.⁴³ MS are also mandated to screen FDI in firms dealing with medicines for human use *“that are essential for the proper functioning of the EU healthcare system”* and foreign investments in critical financial systems.⁴⁴

A related initiative, in the context of strengthening EU economic security, is the **screening of outbound investments originating in the EU** of *“advanced technologies that could enhance military and intelligence capacities of actors who may use these capabilities against the EU or to undermine international peace and security”*, and adopting uniform export control rules for dual-use goods and military technology and equipment.⁴⁵

⁴⁰ Requirements under Article 4 and Article 8 of Regulation (EU) 2019/542. The list of EU project and programs is provided in Annex to Regulation (EU) 2019/452, as amended in December 2021. A new list of EU projects and programs is provided in Annex II to the European Commission’s 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.

⁴¹ Provided in Annex II to the European Commission’s 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. There are reports that the critical technologies listed in Annex II may be revised. For more information, see Gijs, C., *“EU capitals try to gut investment screening rules aimed at keeping China out”*, Politico, 26 November 2024.

⁴² Biotechnologies for military use such as genetic engineering applied to pathogens, harmful compounds produced by genetic modification of microorganisms, etc.

⁴³ European Commission, *Explanatory memorandum to the 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*, 24 January 2024.

⁴⁴ Critical financial systems include payment systems and institutions, electronic money institutions, market operators and investment firms that operate trading facilities, central securities depositories, significant issuers of asset-referenced tokens or e-money tokens and crypto asset service providers operating trading platforms for crypto-assets, large financial institutions, global providers of specialized financial messaging services and designated critical ICT third-party service providers.

⁴⁵ European Commission, *Communication from the Commission to the European Parliament and the Council: Advancing European economic security: an introduction to five new initiatives*, 24 January 2024.

Box 3: Screening Requirements under the Proposed New Regulation on Investment Screening of 2024

The proposed new regulation of 2024 prescribes that all MS must have a strict authorization regime for foreign investments in EU firms participating in EU projects and benefitting from EU programs, and in EU firms active in strategic sectors specified in Article 4(4):

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

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

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

The notification of all foreign investments listed in these categories is mandatory to *“ensure that the EU cooperation mechanism focuses only on foreign investments that are of potential interest from the security perspective and it does not impose unnecessary burden on national administrations and companies”*.⁴⁶

The list of EU projects and programs and the list of strategic sectors are provided in annexes to the proposed regulation. Annex I details a list of *“projects and programmes of Union interest”*, which *“provide for the development, maintenance or acquisition of critical infrastructure, critical technologies or critical inputs which are essential for security or public order”*.⁴⁷ Annex II defines the *“technologies, assets, facilities, equipment, networks, systems, services and economic activities of particular importance for the security or public order interests”*.⁴⁸

⁴⁶ European Commission, *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*, 24 January 2024.

⁴⁷ For the full list of projects and programs, see Annex I to the European Commission’s *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*.

⁴⁸ For the full list of sectors, see Annex II to the European Commission’s *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*. There are reports that the critical technologies listed in Annex II may be revised. For more information, see Gijs, C., *“EU capitals try to gut investment screening rules aimed at keeping China out”*, *Politico*, 26 November 2024.

BULGARIA'S INVESTMENT SCREENING MECHANISM

Overview of Laws, Policies, and Procedures on Foreign Investment

Introducing an authorization regime for foreign investments is a shift in Bulgaria's approach to economic governance. Any restrictions on inbound investment would run contrary to Bulgaria's economic policies implemented since the fall of the communist regime. After 1990, Bulgaria adopted a very liberal regime on inbound investments: foreign and domestic investors were to be treated equally with no restrictions on the economic area of the foreign investment,⁴⁹ the origin of the investor, the size of foreign participation, the mode of market entry, or the repatriation of profits by the foreign investor.

Improving the business enabling environment and attracting foreign investment have been at the center of Bulgaria's economic policies: the track record of attracted foreign investments was perceived as an indication of achievement for all Bulgarian governments in the past 35 years. Government policies were focused on achieving quantitative targets for inbound investments, rather than on attracting investments that would support national development.⁵⁰ **Reviewing foreign investments in terms of their potential adverse effects on Bulgaria's economy or society was not part of the agenda.**

Following Bulgaria's accession to the EU in 2007, inbound foreign investments were profiled for their potential benefits: job creation, technology transfer, addressing regional economic disparities, etc. Foreign investments are viewed in terms of their potential to bring positive change in all Bulgarian policy documents, even these concerning national security.⁵¹

Foreign Investments Subject to Authorization

Until the adoption of Regulation (EU) 2019/452, Bulgarian law did not provide for a cross-sectoral screening mechanism in light of the potential risks that foreign investments may pose to the security and public order in the country. The ministries in charge of particular economic sectors were solely responsible for the screening of investments in critical infrastructure overseen by the respective ministry; however, they neither followed a uniform procedure nor adhered to uniform criteria for screening, and the screening of investments

⁴⁹ Except for a prohibition on the acquisition of agricultural land by individuals originating outside of the EU.

⁵⁰ For a detailed review of Bulgaria's foreign investment regime after 1991, see Petrova, V. and Stefanov, R., *Open Gates, Guarded Walls: The Balancing Act between Openness and Security in European Investment Policies*, Sofia: Center for the Study of Democracy, 2024.

⁵¹ This includes financial and economic security policies, sectoral policies in energy, transport, information security, etc. *The National Security Strategy*, last updated in 2018, highlights that attracting foreign investment leads to economic development and in this manner supports national security.

through the national security lens was rather the exception.⁵² **The Security Council of the Council of Ministers was the only public body authorized to investigate whether foreign investments pose a potential threat to national and economic security.** There were rules that required some form of government authorization for inbound investments, for example regulated industries, utilities, etc.⁵³

Even **investment promotion policies incorporate elements of investment screening.** For illustration, in order to take advantage of the legal incentives provided to foreign investors in Bulgaria, investors are required to undergo an investment certification procedure, which includes screening the foreign investor and the planned investment against a set of legally defined criteria. While this form of formal screening is associated with attracting foreign investment, rather than reviewing the investment in terms of its potential impacts on security and public order, it includes a verification of the investor, the planned investment and the funding source. Similarly, foreigners who make certain types of investments in Bulgaria are eligible for a permanent residence permit,⁵⁴ and the procedures for issuing such a permit require verifying the identity of the investor and the origin of the investment funds.⁵⁵

National Investment Screening Mechanism for Adopting Regulation (EU) 2019/452

Bulgaria is one of the late adopters of the EU framework on investment screening. The national mechanism was introduced through amendments to the Investment Promotion Act (IPA),⁵⁶ and the primary legislation on this subject, albeit some peculiarities and missing procedural rules, largely conforms to the foundational requirements of the EU-wide screening framework.⁵⁷

The delay in the adoption of the national legislation and the development of administrative capacity for implementation is a critical vulnerability, given that Bulgaria has been one of the EU countries with the highest share

⁵² There are investment screening procedures based on potential risks defined in the anti-terrorism and anti-money laundering legislation. For more information, see Bulgaria, Measures against Money Laundering Act [Закон за мерките срещу изпирането на пари], 27 March 2018, last amended 20 August 2024, and Bulgaria, Measures against the Financing of Terrorism Act [Закон за мерките срещу финансирането на тероризма], 18 February 2003, last amended 6 October 2023.

⁵³ Implementing policies and legislation on promoting and attracting foreign investment was entrusted to the Ministry of Economy through 2021. Currently, this portfolio falls within the competencies of the Ministry of Innovation and Growth.

⁵⁴ Boycheva, I. and Terziev, P., *Investment Screening in Bulgaria: Policy Options, Institutional and Legal Framework*, Sofia: Center for the Study of Democracy, 2022.

⁵⁵ Related verifications and checks are made by the Invest Bulgaria Agency under the Minister of Innovation and Growth, which issues investment certificates under the Investment Promotion Act.

⁵⁶ Bulgaria, Law on Amending and Supplementing the Investment Promotion Act [Закон за изменение и допълнение на Закона за насърчаване на инвестициите], 8 March 2024.

⁵⁷ Bulgaria's screening mechanism conforms to the definition of "screening mechanism" as provided for in Article 2 of *Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 May 2019 establishing a framework for the screening of foreign direct investments into the Union: "an instrument of general application, such as a law or regulation, and accompanying administrative requirements, implementing rules or guidelines, that set out the terms, conditions and procedures for the screening of foreign investments on the grounds of security or public order"*.

of **Russian ownership and Chinese interest in strategic acquisitions in the economy**. This has been particularly true of the energy sector, in which Russian investors retain strategic positions, controlling also sizable cash streams and technological influence. For example, the Bulgarian government has not yet been able to leverage the national FDI screening mechanism with respect to the change of ownership of the largest remaining Russian asset in the EU - the Lukoil-Neftohim Burgas oil refinery. Moreover so that similar assets in much larger economies such as Germany and Italy have been disposed of already in 2022, several months into Kremlin's designation of the EU as "unfriendly" countries. In addition, Bulgaria's continuing transit of Russian pipeline gas has blocked potential beneficial imports, and related investments, of US liquefied natural gas through Turkey.

The amendments to the IPA fully incorporate the requirements spelled out in Article 3 of Regulation (EU) 2019/452, i.e., that foreign investments are to be screened for their potential impact on security and public order, that foreign investments must be authorized by a special screening authority in order to proceed,⁵⁸ that investment screening follows clear procedures and timelines,⁵⁹ that all information obtained in the course of the screening is to be kept confidential,⁶⁰ and that there is judicial recourse of screening decisions.⁶¹

The amended IPA makes a **direct reference to Article 4(1) of Regulation (EU) 2019/452**, which spells out the FDI "*likely to affect security or public order*", i.e., investments in critical infrastructure, critical technologies and dual-use items, the supply of critical inputs, raw materials, energy, food security, access to sensitive information and data, and freedom and pluralism of the media. However, Bulgarian law sets for **additional conditions on the application of the screening mechanism** associated with the **size of the planned investment** and the **percentage of the capital** that will be acquired by the foreign investor. For illustration, to be subject to screening in Bulgaria, a foreign investment must meet the requirements of Article 4 of Regulation 2019/452 as well as one of the following conditions: (i) it leads to the acquisition of more than 10% of a Bulgarian firm by a foreign investor (regardless whether it is a new or existing business), or the value of the planned investment exceeds EUR 2 million; or (ii) it leads to the acquisition of more than 10% of a Bulgarian technology firm by a foreign investor (regardless of the value of the planned investment); or (iii) it is a foreign investment in a new business, i.e., "greenfield investment" with a value exceeding EUR 2 million.⁶²

Screened are also investments of any value where the investor is owned by or receives significant funding from a state authority of a non-EU country, as defined under Article 8 and the Annex to Regulation (EU) 2019/452.⁶³ This procedure applies also to firms with state participation that are publicly

⁵⁸ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27(1).

⁵⁹ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Articles 27a, 27f(2) and 27f(9).

⁶⁰ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27g.

⁶¹ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27f(8).

⁶² Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27(1), items 1-3.

⁶³ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27f(3).

traded on a regulated market, provided that the state participation is over 5% of the capital. A peculiarity of the Bulgarian mechanism is that **subject to mandatory screening and authorization are all foreign investments in critical infrastructure, installations and facilities used in the production of oil and petroleum products,**⁶⁴ as well as **any investment originating from Russia and Belarus.**⁶⁵ Another peculiarity is that certain non-EU investors are exempt from screening and treated by law as investors originating from a MS.⁶⁶ Additionally, different state authorities can request the screening of foreign investments, regardless of the monetary thresholds or whether the investor has applied for authorization, and any of the members of the Screening Council can request the screening of investments in the sector that they oversee.⁶⁷ For example, the State Agency for National Security and the State Intelligence Agency can request the screening of any foreign investment in Bulgaria based on potential of the FDI to negatively impact security or public order.

National Screening Authority

The amendments to the IPA require that **foreign investments are to be screened by a Screening Council** that has the authority to **prohibit, condition or unwind foreign investments** in alignment with the provision of Regulation (EU) 2019/452.⁶⁸ The Council has 45 days from the receipt of the application submitted by the foreign investor to complete the screening procedure.⁶⁹ The absence of a decision within this timeline is considered by law as tacit consent, i.e., approval of the foreign investment. In exceptional cases, the Screening Council can initiate a screening procedure ex officio. This applies when the Council becomes aware of new information or circumstances related to the

⁶⁴ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27(3). The law makes a direct reference to the amended Article 2(1), item 8, of the Administrative Regulation of Economic Activities Related to Oil and Products of Petroleum Origin Act [Закон за административното регулиране на икономическите дейности, свързани с нефт и продукти от нефтен произход], 27 July 2018, last amended 20 August 2024.

⁶⁵ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27(4).

⁶⁶ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Articles 27(8) and 27(9). The law explicitly grants investments from the US, the UK, Canada, Australia, New Zealand, Japan, South Korea, the UAE and Saudi Arabia the same treatment as those originating from a MS. Additionally, it authorizes the parliament, upon proposal by the government, to designate a list of other non-EU countries considered "low risk" for the purpose of investment screening. Investments from those "low risk" countries are also to be treated similarly to investments originating from a MS.

⁶⁷ Members of the Screening Council are a Deputy Prime Minister, the Minister of Innovation and Growth, representatives (designated by their minister) of the ministries of defense, interior, finance, healthcare, foreign affairs, economy and industry, transport and communications, e-governance, and energy, and representative of the agencies on national security and intelligence. Members of the Screening Council with no voting rights are representatives of the competition and financial supervision commissions, and representatives of the telecommunications and energy and water regulators.

⁶⁸ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27c.

⁶⁹ The same 45-day timeline applies when reviewing corrected applications, i.e., when the foreign investor was required to correct inconsistencies in their original application and resubmit it.

investment,⁷⁰ or when the screening is requested by the EC or another MS.⁷¹

With a conditional authorization of the foreign investment, the Council may require the foreign investor to implement **corrective measures** prescribed in the IPA,⁷² such as limiting the shareholding of the foreign investor to no more than 20% of the capital of the Bulgarian firm, respectively limiting the foreign share in the capital of a Bulgarian technology firm to no more than 10%. The Council can also impose **sanctions on foreign investors in cases of noncompliance** with the national screening procedures. These come in the form of a monetary fine (for individuals) or property sanction (for legal entities) equal to 5% of the value of the planned investment, but not less than BGN 50,000 (approximately EUR25,600). In addition to the fine or the property sanction, the Screening Council may also impose **restrictive conditions** on the foreign investment, such as limiting the control of the foreign investor in the management of the target firm, changing its area of business activity, or suspending all activities of the target firm,⁷³ as well as terminating the foreign investment, i.e., unwinding it.

The secondary implementing legislation on investment screening should have been adopted within six months of the entry into force of the amendments to the IPA, i.e., by September 2024.⁷⁴ However, these regulations were delayed, with the organizational rules of the Screening Council adopted only in late January 2025,⁷⁵ while amendments to the Implementing Rules to the Investment Promotion Act (IRIPA) remain pending government approval, following the completion of the public consultation process in January 2025.⁷⁶

⁷⁰ Bulgaria, Investment Promotion Act [[Закон за насърчаване на инвестициите](#)], 24 October 1997, last amended 17 September 2024, Article 27d(3). Ex officio screening can be conducted up to three months after the Screening Council becomes aware of the new information on circumstances affecting the investment.

⁷¹ Bulgaria, Investment Promotion Act [[Закон за насърчаване на инвестициите](#)], 24 October 1997, last amended 17 September 2024, Articles 27d(2) and 27d(4). Screening requested by the EC or another MS can be conducted up to two years after the investment has been initiated.

⁷² Bulgaria, Investment Promotion Act [[Закон за насърчаване на инвестициите](#)], 24 October 1997, last amended 17 September 2024, Article 27f(2).

⁷³ Bulgaria, Investment Promotion Act [[Закон за насърчаване на инвестициите](#)], 24 October 1997, last amended 17 September 2024, Article 34b.

⁷⁴ Bulgaria, Law on Amending and Supplementing the Investment Promotion Act [[Закон за изменение и допълнение на Закона за насърчаване на инвестициите](#)], 8 March 2024, § 11 and § 12 of the Transitional and Final Provisions.

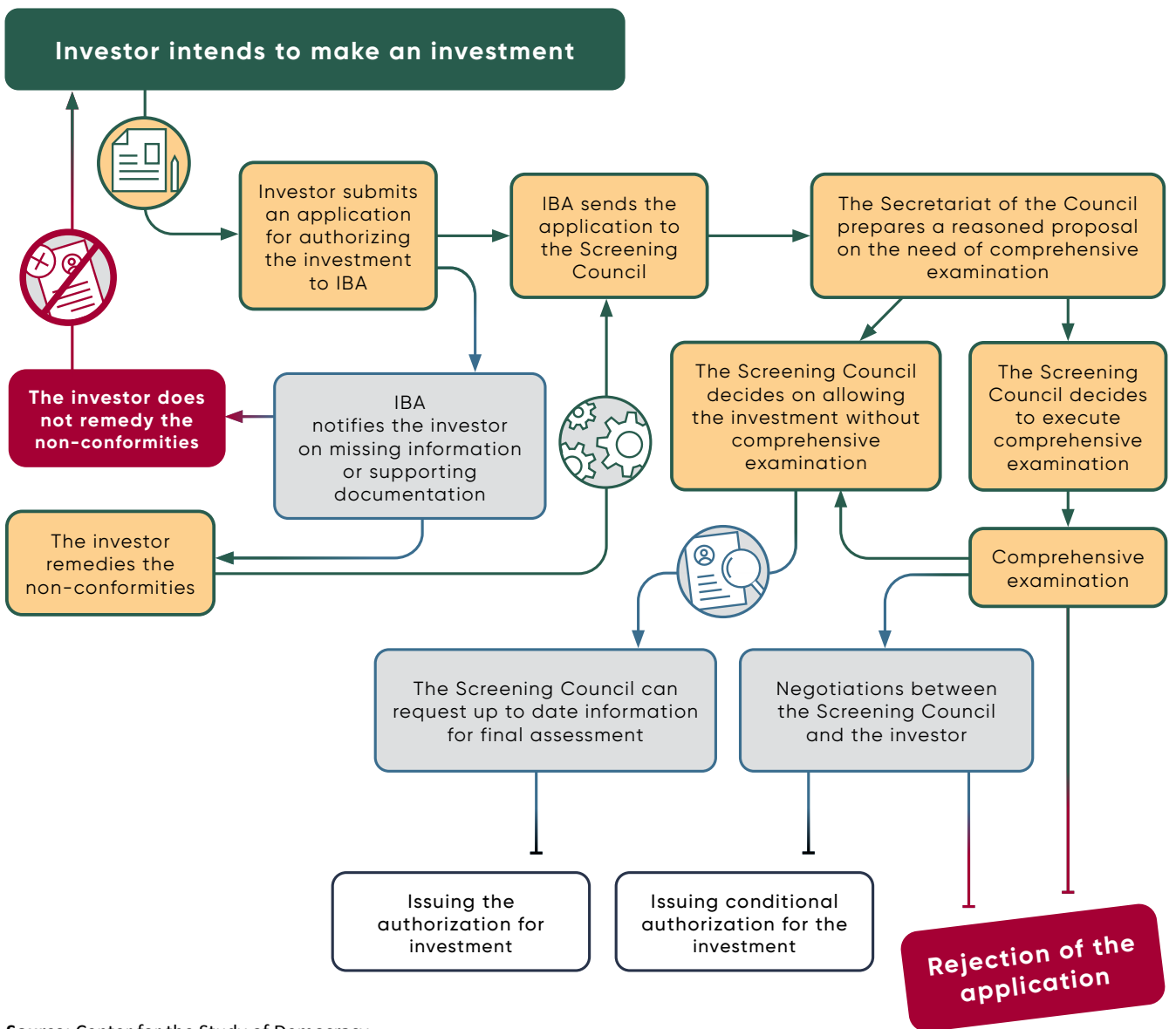
⁷⁵ Bulgaria, Regulations on the organization and activities of the Interministerial Council for screening of foreign direct investments [[Правилник за организацията и дейността на Междуведомствения съвет за скрининг на преките чуждестранни инвестиции](#)], 29 January 2025.

⁷⁶ Bulgaria, Draft Decree of the Council of Ministers amending and supplementing the Implementation Rules of the Investment Promotion Act [[Проект на Постановление на Министерския съвет за изменение и допълнение на Правилника за прилагане на Закона за насърчаване на инвестициите](#)], 13 December 2024.

Areas of Conformity with the Requirements under Regulation (EU) 2019/452

Bulgaria’s screening mechanism conforms to the spirit of Regulation (EU) 2019/542. As codified in primary legislation, **the screening procedures conform to the requirements of the EU framework** regarding setting clear **procedures and timelines**,⁷⁷ ensuring that **confidential information** obtained in the course of the screening processes is protected,⁷⁸ and that the foreign investors have a judicial recourse with respect to the decisions of the Screening Council.⁷⁹

Figure 1: The Screening Process under Bulgarian Law



Source: Center for the Study of Democracy.

⁷⁷ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Articles 27a, 27f(2) and 27f(9).

⁷⁸ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27g.

⁷⁹ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27f(8).

As noted earlier in the text, the amended IPA complies with the provisions of Article 3 of Regulation (EU) 2019/452 and mandates that FDI are subject to authorization by a national screening authority, based on their potential impact on security and public order, prior to completing the transaction,⁸⁰ that investments are to be screened even if the investor has not applied for authorization (provided that the screening of specific foreign investments in Bulgaria is requested by the EC or other MS based on reasoned opinion),⁸¹ that all foreign investments of any size or in any sector are screened, provided that the investor is an entity that receives significant funding from a non-EU government, including publicly traded companies where the state participation exceeds 5% of the capital.⁸² Bulgaria's screening procedures allow the screening of any foreign investments flagged by the national security and intelligence agencies, regardless of the size of the investment.⁸³

The adopted primary legislation conforms to the EU requirements on the foreign investments subject to screening. The law makes a direct reference to Article 4 of Regulation (EU) 2019/452, which spell out "*the factors likely to affect security or public order*", i.e., foreign investments in critical infrastructure, critical technologies, supply of critical inputs, etc., and investments affecting EU projects and programs as required under Article 8 of the Regulation (EU) 2019/452.⁸⁴ In their application for authorization to the Screening Council, foreign investors must provide information in the scope and detail corresponding to the information requirements spelled out in Article 9 of the Regulation.⁸⁵

The Screening Council⁸⁶ is designated as the contact point for implementing the EU screening framework in Bulgaria following the requirements of Article 11 of the Regulation (EU) 2019/452. It is also the designated authority responsible for information exchanges with the EC and other MS on screened investments, i.e., it is Bulgaria's counterpart within the EU-wide "*cooperation*

⁸⁰ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27.

⁸¹ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27d(2).

⁸² Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27(7). Exempt are investors from "low risk countries" defined in Articles 27(8) and 27(9).

⁸³ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Articles 27(2) and 27(5).

⁸⁴ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Articles 27(1) and 27f(3). Although direct referencing EU law in national legislation is often criticized for potentially creating legal gaps if the referenced EU law is repealed or replaced, it currently serves to ensure that national law remains aligned with the EU framework.

⁸⁵ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Articles 27a and 27b. Screening applications that do not comply with the requirements of Regulation (EU) 2019/452 must be resubmitted after making the necessary corrections.

⁸⁶ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Articles 27c(1) and 27c(2). The functional composition of the Council is defined by law. It is chaired by a Deputy Prime Minister and is composed of the Minister of Innovation and Growth, designated representatives of the ministries of defense, interior, finance, healthcare, foreign affairs, economy and industry, transport and communications, electronic governance, and energy, and representatives of the agencies for national security and intelligence. Additionally, member of the Council with no voting rights are a representative of the energy and water regulator, the telecommunications regulator, the antitrust authority, and the financial supervision authority.

mechanism in relation to foreign direct investments undergoing screening” in the context of Article 6 and Article 7 of Regulation (EU) 2019/452.⁸⁷

The secondary legislation under the IPA, i.e., codified in the organizational rules of the Screening Council⁸⁸ and the draft amendments to the Implementing Rules to the Investment Promotion Act,⁸⁹ detail the rules and procedures for implementing the national investment screening mechanism, and albeit incomplete and not final, conform to the requirements of Regulation (EU) 2019/452. The draft amendments to the Implementing Rules to the Investment Promotion Act (IRIPA) spell out the procedures for appointing the members of the Screening Council,⁹⁰ the stages of the screening procedure, and the interactions of different government authorities involved in the screening process.

The draft amendments to the IRIPA spell out the timelines of the screening procedure and the information that should accompany the application of the foreign investor for authorization of the planned investment, required for the notification of the screened investments to the EC as per the requirements of Article 9 of Regulation (EU) 2019/452, i.e., information on the final investor and its participation in the capital of the investor contemplating the investment in Bulgaria, including the amount and type of shareholding, the approximate value of the investment and the date on which the investment is planned to be made, information on the funding source, description of the management and organizational structure of the investor, the distribution of responsibilities between the executive directors and other administrators, the management of the information system of the foreign investor and the target firm, including information security procedures. Under the draft rules, if the foreign investor contemplating the investment is part of a corporate group, the information provided to the Council must include a description of the organizational structure of the group, the parent enterprises and its financial holdings.⁹¹

⁸⁷ Bulgaria, Investment Promotion Act [[Закон за насърчаване на инвестициите](#)], 24 October 1997, last amended 17 September 2024, Articles 27e(1) and 27e(2).

⁸⁸ Bulgaria, Regulations on the organization and activities of the Interministerial Council for screening of foreign direct investments [[Правилник за организацията и дейността на Междуведомствения съвет за скрининг на преките чуждестранни инвестиции](#)], 29 January 2025.

⁸⁹ Bulgaria, Draft Decree of the Council of Ministers amending and supplementing the Implementation Rules of the Investment Promotion Act [[Проект на Постановление на Министерския съвет за изменение и допълнение на Правилника за прилагане на Закона за насърчаване на инвестициите](#)], 13 December 2024.

⁹⁰ Bulgaria, Investment Promotion Act [[Закон за насърчаване на инвестициите](#)], 24 October 1997, last amended 17 September 2024, Articles 27c(2) and 27c(3). The members of the Screening Council are appointed by the government based on nominations from the heads of ministries and agencies participating in the Council.

⁹¹ Bulgaria, Draft Decree of the Council of Ministers amending and supplementing the Implementation Rules of the Investment Promotion Act [[Проект на Постановление на Министерския съвет за изменение и допълнение на Правилника за прилагане на Закона за насърчаване на инвестициите](#)], 13 December 2024, Article 70(3).

Areas outside of the Scope of the Requirements under Regulation (EU) 2019/452

As noted earlier, Bulgaria's mechanism calls for the **screening of investments under the requirements spelled out in Article 4 of Regulation (EU) 2019/452**, but makes the initiation of the screening procedure dependent upon meeting **additional conditions related to the size of the planned investment and the percentage of the capital** that will be acquired by the foreign investor, i.e., 10% of the capital of a Bulgarian technology firm, or 10% of any Bulgarian firm provided that the investment is valued over EUR 2 million. Specific for the Bulgarian rules is that **subject to mandatory screening, regardless of the investment amount, are all investments in the production of oil and petroleum products**,⁹² which is not a requirement of the EU framework. Outside the scope of the requirements under Regulation (EU) 2019/452 is **treating investors from certain non-EU countries as investors originating from within the EU**.⁹³ The amendments to the IPA also prescribe that **all investments from Russia and Belarus are subject to mandatory screening**,⁹⁴ regardless of the economic sector or the size of the planned investment.

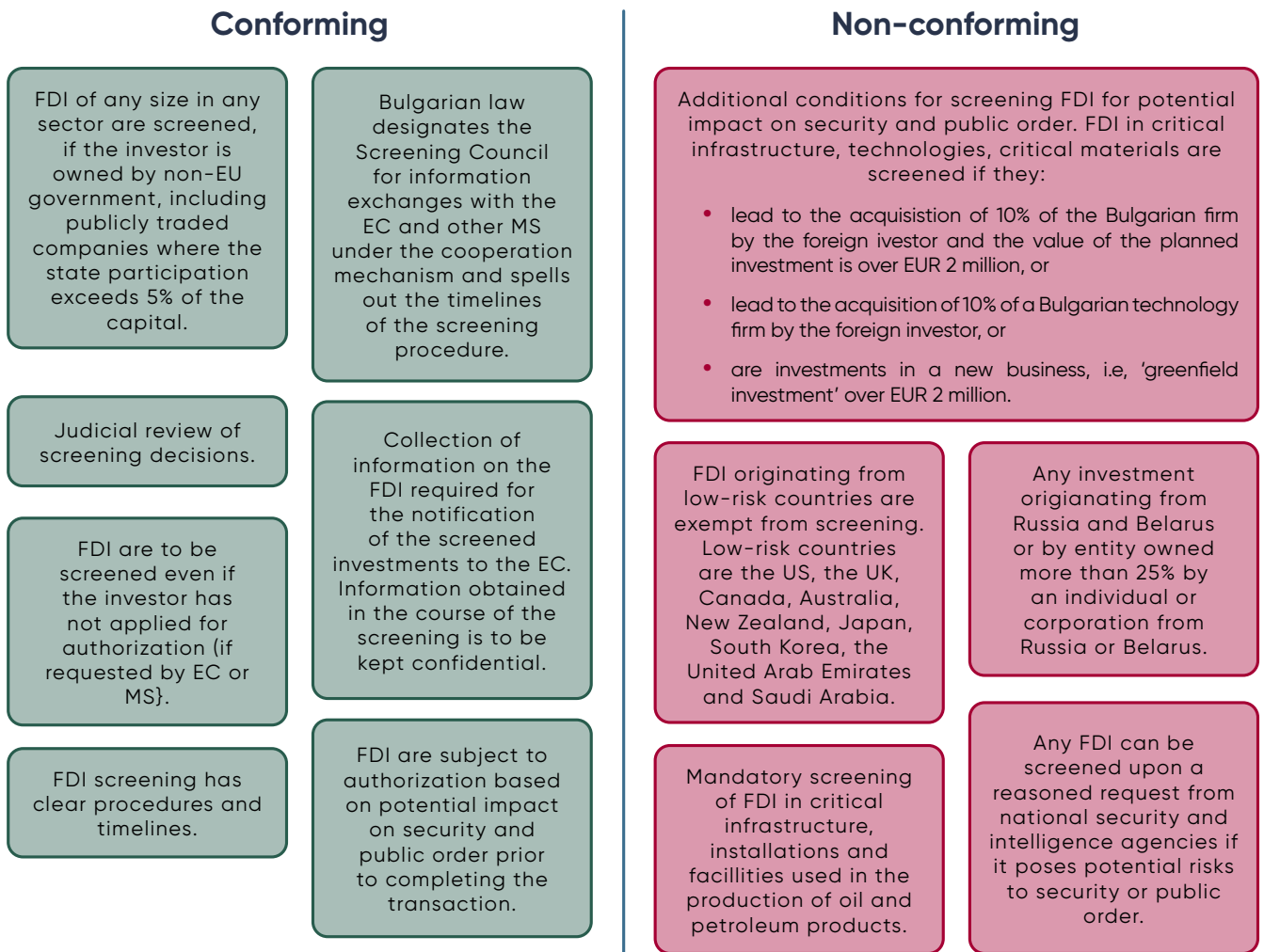
A **notable omission** is that the screening procedures spelled out in the draft amendments to the IRIPA are **silent on the subject of responsibilities or commitments associated with the notification of screened investment to the EC and the interactions of the Bulgarian authorities within the EU cooperation mechanism**.

⁹² Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27(3).

⁹³ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Articles 29(8) and 29(9). A list of countries considered to be "low risk", and correspondingly exempt from screening, is to be adopted by parliament. However, some "low risk" countries are directly named in the legal provisions as well: the US, the UK, Canada, Australia, New Zealand, Japan, South Korea, the UAE and Saudi Arabia.

⁹⁴ Bulgaria, Investment Promotion Act [Закон за насърчаване на инвестициите], 24 October 1997, last amended 17 September 2024, Article 27(4). Investors from Russia and Belarus are closely defined to include natural persons and corporations of these countries, as well as corporations registered in other countries, including the EU, if 25% of the capital is owned by Russian or Belarussian citizens or legal entities established under the Russian or Belarussian law.

Figure 2: Conformity of Bulgaria’s National Screening Mechanism with Regulation (EU) 2019/452



Source: Center for the Study of Democracy.

Comparing Bulgaria’s National Screening Mechanism to MS Best Practice

There is no uniform model for investment screening that could serve as EU best practice template, apart from the notion that the mechanism is an integral instrument of the EU-wide approach to safeguarding economic security. Bulgaria adopted a **two-stage approach in its investment screening procedures**, following the example of MS with more mature mechanisms, i.e., France and Germany, similar to the other MS, which introduced investment screening after 2019, like Croatia and the Czech Republic.⁹⁵ Under this approach, in the first phase the national screening authority only assesses whether the foreign investment falls within the scope of the national screening mechanism and whether it will affect their own or other MS security or public order, or if it affects EU projects and programs. If this is the case, then in the second phase, the screening authority initiates a thorough screening of the investment (i.e., the “comprehensive examination” as referred to in the draft amendments to the IRIPA), and notifies such investment to the EC through the cooperation mechanism.

⁹⁵ Organisation for Economic Co-operation and Development, *Framework for Screening Foreign Direct Investment into the EU: Assessing effectiveness and efficiency*, 1 January 2022.

Recommendations for Legislative and Policy Adjustments

The introduction of a mechanism for the screening of foreign investments is a notable step taken by the Bulgarian government towards safeguarding economic security within the country and the EU as a whole. However, it is worth mentioning that the **screening mechanism is only formally adopted** and that **foreign investments are not currently screened** under the EU framework in Bulgaria. The screening mechanism will not be operational until adopting the remaining secondary legislation detailing the screening procedure.

Bulgaria's investment screening mechanism is intended to foster sustainable growth and investment opportunities by adding an additional layer of investor security, level the playing field in times of intensifying geopolitical competition, protect strategic sectors from foreign influence, and enhance the country's role in the EU's collective economic security framework. Yet the national screening mechanism is new and untested.

Box 4: Economic Security and Investment Screening: The Case of Lukoil-Neftohim Burgas Refinery

The sale of the Lukoil-Neftohim Burgas refinery could be the most critical test for Bulgaria's FDI screening mechanism introduced with the amendments to the IPA of 2024. The Lukoil-Neftohim Burgas refinery is part of Bulgaria's critical infrastructure.⁹⁶ It is one of the largest companies in the country, and one of the largest employers in the Burgas region. It controls the petroleum wholesale market and yields considerable power in Bulgaria's retail market with its 220 gas stations.

Lukoil-Neftohim is a private company, nominally owned by the Swiss-registered Litasco, which in its turn is effectively controlled by Russia's Lukoil and managed by individuals repeatedly sanctioned by the US Office of Foreign Assets Control. Russia's oil sector has been heavily sanctioned by the US, the EU, and G7, which reflects its critical role in funding the Russian aggression in Ukraine. Bulgaria, however, has consistently broken ranks with its EU and NATO allies, allowing Lukoil to continue to operate and even exempting it from some sanctions, thus undermining the European and its own economic security.⁹⁷

The Bulgarian government requested a derogation of Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine in late 2022 to allow Bulgaria to continue to import Russian crude oil until the end of 2024, based on the argument that Lukoil-Neftohim cannot

⁹⁶ The Lukoil-Neftohim Burgas refinery meets the criteria for critical infrastructure defined under the Ordinance on the procedure, manner and competent authorities for the identification of critical infrastructures and their sites and risk assessment for them [Наредба за реда, начина и компетентните органи за установяване на критичните инфраструктури и обектите им и оценка на риска за тях], 23 October 2021, last amended 5 April 2016.

⁹⁷ Even though Lukoil-Neftohim held monopolistic position for nearly three decades it was first scrutinized in the wake of Russia's invasion of Ukraine. In early 2023, Bulgaria's Commission on the Protection of Competition imposed two fines totaling BGN 262 million (approximately EUR 134 million) on Lukoil's subsidiary in Bulgaria and the Lukoil-Neftohim Burgas Refinery for abusing its dominant market position (CPC Decision No. 184 of 16 February 2023) and misuse of accounting practices related to the processing and trading in petroleum products resulting in the loss of millions in tax revenue (CPC Decision No. 332 of 4 April 2023).

operate efficiently without processing Russian oil.⁹⁸ Following heavy international and domestic pressure, the derogation was withdrawn a year earlier at the beginning of 2024, cutting off at least a billion US dollars of revenues for the Kremlin, without leading to any negative consequences for Bulgarian consumers.⁹⁹

Since the end of the derogation, plans have been underway for the sale of the Lukoil-Neftohim Burgas refinery. Yet the Bulgarian government has stayed away from the sales negotiations, despite the serious economic security implications and the fact that it owns a golden share in the company, denoting the asset's strategic importance to the country. As confirmed by the Bulgarian Prime Minister at a press conference on 30 January 2025, seven companies have been selected by Litasco, as potential buyers of the refinery, its petrochemical storage facilities, other assets and gas stations in Bulgaria. The Prime Minister announced in parliament that the process had been initiated in June 2024 with an assessment of Lukoil's assets in the country, offers had been submitted in September 2024, due-diligence visits by potential buyers were expected in February 2025. The Prime Minister stressed that the FDI screening mechanism introduced with the amendments to the IPA will apply with respect to the sale of Lukoil Neftohim. However, it remains unclear how the mechanism would be applied considering that some of the secondary implementing legislation has not been adopted yet, and the Screening Council, the main decision-making body under the legislation, is yet to be appointed and provided with resources, including the setting up of the Secretariat needed to perform the requisite analysis of the planned investment.

Absent a fully functioning investment screening mechanism in Bulgaria, and staff under the Screening Council with ample capacity to screen investments in the context of the EU framework, or established information exchanges with EU peers under the cooperation mechanism, Bulgaria's government may consider leveraging the expertise of the Directorate General for Competition of the European Commission with respect to immediate actions that need to be taken in the screening of the planned investment in Lukoil-Neftohim. Concurrently, the government may consider the experience of other MS, namely Germany and Italy, when confronted with similar challenges.

As Bulgaria is preparing to launch its national investment screening mechanism, its **effectiveness will be particularly relevant in cases involving strategic assets with significant foreign influence**, such as the Lukoil-Neftohim refinery. Bulgaria currently has not demonstrated that it has meaningful oversight over the operations of Lukoil-Neftohim, but for a golden share in the capital of the company, affording the government a seat on its supervisory board and a rather opaque authority in its decision-making

⁹⁸ For more information, see Center for the Study of Democracy, *Bulgaria's Reliance on Russian Oil: The Derogation and Beyond*, Policy Brief No. 137, August 2023.

⁹⁹ For more information, see Center for the Study of Democracy, *Sanctions Evasion and Derogation on Russian Oil*, Policy Brief No. 140, November 2023.

process. Leveraging its golden share and authority to screen investments granted under the amendments to the IPA, the Bulgarian government may consider placing Lukoil-Neftohim under special supervision, following the example of Germany and Italy; and concurrently initiate an EU-wide procurement for a special trustee to oversee the operations of Lukoil-Neftohim, while the sale-negotiations between Litasco and the potential buyers are taking place. The divestiture of the Russian owned assets in Bulgaria also presents an opportunity to decouple refining from the wholesale and retail of oil in alignment with Bulgaria's anti-monopoly legislation.

Box 5: Placing Russian-owned Refineries under Special Supervision In Germany and Italy¹⁰⁰

Since Russia's invasion of Ukraine, European response has allowed MS to take operational control of strategic assets owned by Russian companies to prevent further economic coercion from the Kremlin, like the gas energy crisis from 2021, and to make good for the damages inflicted by the Russian government from the breaking of multiple bilateral and international legal obligations in energy and beyond.

The German government took control of Rosneft's refineries in Germany, while seeking buyers of these strategic assets. In late 2022, the German government placed Rosneft's oil refineries in Germany under the temporary trusteeship of the Federal Network Agency (the German electricity and gas regulator). This special trustee administration was established to secure energy supplies in Germany and was based on the precedent that Germany's energy regulator was already appointed as the trustee of the assets of the Russian state-owned Gazprom subsidiary in Germany in April 2022, following the imposition of EU sanctions after Russia invaded Ukraine.

Following Germany's example, in December 2022, the Italian government placed under special supervision the ISAB refinery, owned by Lukoil in Sicily, to ensure that the refinery can continue operations despite the embargo on Russian oil. The special supervision came in the form of a temporary trusteeship by an Italian state-controlled energy company, which appointed a special commissioner to oversee the operations of the refinery, while negotiations for the sale of the Russian assets in Sicily were underway. This path was selected by the Italians, as opposed to a full-on costly nationalization, to ensure the transparency of the sale of the Italian strategic assets owned by Russia in Sicily and enforce certain conditions of the Italian government, namely guarantee employment protection, maintain production levels, install a purifier for the refinery and a process for the traceability of the oil supply. Foreign equity firms provided the necessary funding, adhering to the conditions of the Italian government, which approved the sale of the refinery. Lukoil sold its assets in Sicily in January 2023 to a partnership between a foreign private equity firm and an Italian commodity trading company.

¹⁰⁰ For more information, see Center for the Study of Democracy, *Sanctions Evasion and Derogation on Russian Oil*, Policy Brief No. 140, November 2023.

Bulgarian politicians may wish to **start discussions on adjusting the adopted screening mechanism to the requirements of the proposal for a new regulation on investment screening of 2024** to immediately address the shortcomings of the current framework and most importantly, to limit technology leakage and restrict the participation of non-EU investors in research and innovation and digital capacities deployment projects in Bulgaria. A wake up call in this respect is that Bulgaria, which hosts two advanced research institutions devoted to developing artificial intelligence applications with EU financial support, has been recently cut off from the supply of technologies for AI applications and shipments of advanced AI chips by the United States¹⁰¹ as the country is perceived to be incapable of stopping technology leakages from its research institutions.

Box 6: Bulgaria: Rebuilding Trust as a Reliable Partner in Advanced AI Chips

Resilient FDI policies and supply chains are essential in an era of rapid AI advancement, with FDI remaining a key driver of economic growth. However, without a secure and welcoming business environment, economies risk stagnation or vulnerability to external pressures.

Central and Eastern Europe, including Bulgaria, has recently faced restrictions on advanced AI chip shipments from the US due to concerns over technology leaks. Meanwhile a Chinese AI tool has significantly impacted Western AI companies, forcing cost-sensitive businesses into rapid adjustments and also raising concerns about potential violation of US export restrictions allowing the tool's developers to obtain unauthorized access to advanced AI chips through third country intermediaries.¹⁰² As a gateway to the EU and home to one of Central and Eastern Europe's most advanced AI institutes, Bulgaria is particularly affected by these export restrictions, which pose significant challenges to accessing necessary AI hardware and can potentially impact the country's technological progress and integration within the broader EU AI strategy.

Effective FDI screening is critical as strategic sectors – including AI, deep tech, semiconductors, and digital infrastructure – are increasingly targeted by potential hostile takeovers and foreign influence operations. Bulgaria currently lacks a fully operational FDI screening framework, leaving its AI and technology ecosystem more vulnerable to external pressures. As AI innovation relies on secure access to advanced computing resources, Bulgaria must strengthen its position by implementing resilient FDI screening to protect valuable technologies, intellectual property, emerging AI startups, and other strategic resources.

Bulgaria stands to benefit from EU-led resilience initiatives that support technological independence and innovation, such as the European Chips

¹⁰¹ For more information, see Haack, P., "US limits on AI chips split EU: Export restrictions on cutting-edge microchips will affect some EU countries, including Poland", *Politico*, 16 January 2025, and Powers, C., "Biden divides EU with new AI chip export controls", *Euractiv*, 17 January 2025.

¹⁰² Freifeld, K., "US looking into whether DeepSeek used restricted AI chips, source says", *Reuters*, 1 February 2025.

Act, which aims to develop a competitive semiconductor ecosystem, and AI-focused investment programs that promote digital sovereignty. By refining its FDI screening mechanism and aligning with EU economic security initiatives, Bulgaria can position itself as a trusted hub for investment and innovation.

Proposed Amendments to Primary and Secondary Legislation for Conformity with the Requirements of Regulation (EU) 2019/452

Scope of Screening

Bulgarian law requires the screening of any investment associated with facilities or equipment for the manufacturing of petroleum products, which are part of the critical infrastructure for this sector. Adding such a requirement is more a reflection on Bulgaria's dependency on Russian energy sources and is associated with the diversification of energy supplies, but nonetheless it is aligned with the spirit of the EU screening framework. It enables the screening of investments in a sector long associated with its captivity to Russian interests. **A test for the mechanism will be the screening of FDI related to the acquisition of Russian energy assets in Bulgaria**, such as the Lukoil-Neftohim Burgas refinery, nominally owned by a Swiss company, but controlled by the Russian parent company.

Stating in primary legislation that any investment originating from Russia and Belarus must be authorized in order to proceed, while exempting investments originating from "low risk" countries is likely a political statement related to the changing geopolitical environment in the aftermath of Russia's invasion of Ukraine. A recommendation in this context is to follow good legislative practices, i.e., **identify country of origin based on transparent criteria through executive action, rather than enshrining specific countries in primary legislation text**. The changing geopolitical landscape may require adjustments to the list, but the process of amending primary legislation is cumbersome and slow.

Measures to Prevent Circumvention of the National Screening Mechanism

Neither primary nor secondary legislation refers to rules or procedures preventing foreign investors from circumventing the screening mechanism altogether, apart from the possibility of imposing a fine equal to 5% of the investment value (but no less than BGN 50,000 or approximately EUR 25,600), and linking the authorization of the investment under the screening mechanism to the processes of issuing necessary permits and licenses or registrations. While this is a good practice it would likely present an inadequate incentive to ensure compliance with the national screening rules.

A good approach would be to **strengthen collaboration among government agencies, institutionalize information exchanges and link the databases of different public bodies** tasked with the monitoring of markets or providing services to businesses under licensing or permitting regimes, to better identify

risks associated with foreign investments and enforce the rules based on risk patterns. One option would be to codify such procedures, with carefully delineated authorities and reporting chains, to minimize opportunities for circumventing the screening mechanism.

Participation in the Cooperation Mechanism

While the amendments to the IPA make a direct reference to the cooperation mechanism defined in Regulation (EU) 2019/452 and clearly state that the Screening Council is the designated Bulgarian authority participating in this mechanism, the implementing secondary legislation is not sufficiently detailed on the respective procedures.¹⁰³ This is an omission considering that one of the core drivers of the EU screening framework is establishing meaningful collaboration with the EC and learning from the screening authorities of other MS under the cooperation mechanism. Adopting transparent procedures establishing clear responsibilities is important.

A good practice would be to **spell out the responsibilities of the Secretariat of the Screening Council, and set clear timelines related to the information exchanges with the screening authorities of other MS and the EC** under the cooperation mechanism.

A related action on this issue is detailing **relevant procedures for the notification of screened investments to the EC and other MS through the cooperation mechanism** in the organizational charter of the Secretariat of the Council. Also, taking advantage of knowledge exchanges through peer learning within the cooperation mechanism will allow the Screening Council to leverage the knowledge and experience of their counterparts in other MS and align the Bulgarian procedures and relevant timelines with those of the screening authorities of other MS. This would enable what the EC describes as “decentralized implementation” of the EU investment screening regulation.

Proposed Amendments to Primary and Secondary Legislation for Full Alignment with the Proposal for a New Regulation of 2024

The most impactful change for Bulgaria’s FDI screening procedures under the proposed regulation of 2024 is the urgent need to adjust the scope of screening to non-EU investments in technology areas “*presenting the most sensitive and immediate risks related to technology security and technology leakage*”, i.e., strategic sectors and technologies. This is imperative to **preserve the eroding trust in Bulgaria’s research institutions and enable the meaningful collaborative research and development in the areas of advanced computing and artificial intelligence applications**. Another urgent action is to build the capacity needed to screen investments made by EU firms owned or controlled by non-EU investors by **updating the register of ultimate beneficial owners** in Bulgarian corporations and establishing reliable and secure information and data exchanges with the authorities that maintain such registers within other MS.

¹⁰³ Bulgaria, Regulations on the organization and activities of the Interministerial Council for screening of foreign direct investments [Правилник за организацията и дейността на Междуведомствения съвет за скрининг на преките чуждестранни инвестиции], 29 January 2025.

A good practice for building the capacity of the Bulgarian authorities to screen investments in critical technology areas would be to **compile and maintain an inventory of Bulgarian firms operating in strategic sectors or developing critical technologies**, and monitor their interactions with partners outside of the EU.

Box 7: Critical Technologies for EU's Economic Security

Advanced semiconductors technologies: microelectronics, including processors, photonics, including high energy laser technologies, high frequency chips, semiconductor manufacturing equipment at very advanced node sizes.

Artificial intelligence technologies: high performance computing, cloud and edge computing data analytics technologies, computer vision, language processing, object recognition.

Quantum technologies: quantum computing, quantum cryptography, quantum communications, quantum sensing and radar.

Biotechnologies: techniques of genetic modification, new genomic techniques, gene-drive, synthetic biology.

Advanced connectivity, navigation and digital technologies: secure digital communications and connectivity, Radio Access Network and 6G, cyber security, cyber-surveillance, security and intrusion systems, digital forensics, Internet of Things and Virtual Reality.

Distributed ledger and digital identity technologies.

Guidance, navigation and control technologies, including avionics and marine positioning.

Advanced sensing technologies: electro-optical, radar, chemical, biological, radiation and distributed sensing, magnetometers, magnetic gradiometers, underwater electric field sensors, gravity meters and gradiometers.

Space and propulsion technologies: dedicated space-focused technologies, ranging from component to system level, space surveillance and Earth observation technologies, space positioning, navigation and timing (PNT), secure communications including Low Earth Orbit (LEO) connectivity, propulsion technologies, including hypersonic and components for military use.

Energy technologies: nuclear fusion technologies, reactors and power generation, radiological conversion/enrichment/recycling technologies, hydrogen and new fuels, net-zero technologies, including photovoltaics, smart grids and energy storage, batteries.

Robotics and autonomous systems: drones and vehicles (air, land, surface and underwater), robots and robot-controlled precision systems, exoskeletons, AI-enabled systems.

Advanced materials, manufacturing and recycling technologies: technologies for nanomaterials, smart materials, advanced ceramic materials, stealth materials, safe and sustainable by design materials, additive manufacturing, including in the field, digital controlled micro-precision manufacturing and small-scale laser machining/welding, technologies for extraction, processing and recycling of critical raw materials (including hydrometallurgical extraction, bioleaching, nanotechnology-based filtration, electrochemical processing and black mass).¹⁰⁴

¹⁰⁴ Provided in Annex II to the European Commission's 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.

WHAT'S NEXT

While an important step forward towards the development of an EU-wide economic security capacity, the current EU investment screening framework still has a lot of shortcomings:

- **Regulation (EU) 2019/452 is outdated:** It was adopted before the COVID-19 pandemic and the geopolitical shifts following Russia's invasion of Ukraine. These events have exposed vulnerabilities in Europe's supply chains and economic security.
- **Limited approach:** The 2019 regulation does not mandate Member States to screen foreign investments but merely provides guidelines, leaving gaps that can be exploited by authoritarian regimes.

Some of these shortcomings have been addressed in the European Commission's updated regulation proposed under the European Economic Security Strategy in 2024. It mandates all MS to:

- Screen foreign investments, including EU firms controlled by non-EU investors.
- Apply broader screening criteria across clearly defined economic sectors.
- Close loopholes by aligning investment screening with existing rules on mergers, acquisitions, greenfield investments, foreign subsidies, and cybersecurity.

Bulgaria's investment screening mechanism has been a major departure from the established policy stance towards indiscriminate investment promotion, which still faces **major challenges**:

- **Limited applicability:** Bulgaria has incorporated EU screening requirements but imposed additional conditions based on: (i) investment size; (ii) percentage of capital acquired; (iii) country of origin of the investor.
- **Lack of enforcement:** The mechanism has not yet been applied. A key test will be the screening of Lukoil's divestiture of the Neftohim refinery.
- **Need for securing advanced research:** Shoring Bulgaria's innovation ecosystem from foreign exploitation remains a critical challenge.

Aligning Bulgaria's Investment Screening Framework to Emerging Economic Security Threats

Bulgaria's investment screening framework must evolve to meet today's geopolitical challenges. Strengthening enforcement, expanding risk assessments, and improving transparency will be key to safeguarding national and European economic security. The country's ability to adapt swiftly will determine its resilience against foreign economic coercion and illicit investments. As a matter of priority Bulgaria should:

1. Strengthen Enforcement Mechanisms

- Proactively enforce screening procedures by engaging multiple public bodies.
- Counteract **vested interests** and **coordination inefficiencies**.
- Recognize that investment screening is **essential for economic security** in today's geopolitical landscape.

2. Increase Flexibility in Country Listings

- **Avoid rigid legislative listings:** Defining high-risk countries in primary legislation limits adaptability.
- **Allow executive branch updates:** The government should have the flexibility to modify the list without parliamentary approval.
- **Ensure consistency:** If Russia and Belarus are listed, why not also include China, Iran, and North Korea—countries frequently competing or aligned against the EU?

3. Build Enforcement Capacity

- **Align with the proposed 2024 regulation:** Bulgaria should prepare for compliance, though full implementation will not be required until 15 months after adoption.¹⁰⁵
- **Urgent need for skilled personnel and data access:**
 - **Highly trained investigative teams** are needed to handle screening cases.
 - **Access to financial and corporate databases** is crucial.
 - **Interconnectivity with EU and global intelligence on investments** must be enhanced.

4. Improve Corporate Data Transparency

- **Develop databases and enhance collaboration** with EU and global authorities.
- **Update the Bulgarian register of ultimate beneficial owners:**
 - Ensure transparency on corporate share control.
 - Uncover ownership chains involving foreign passthrough vehicles.
 - **Use investment screening to block corrosive capital** from states that undermine EU security.
 - **Prevent economic coercion** by strengthening financial oversight.

¹⁰⁵ European Commission, *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*, 24 January 2024, Article 24.

