CENTER FOR THE STUDY OF DEMOCRACY

INVESTMENT SCREENING IN BULGARIA: ZERO TO ONE

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For decades, the European Union operated under the assumption that foreign direct investment (FDI) was universally beneficial and risk free. However, as global geopolitics evolved, so did investment risks. While FDI screening had long been practiced at the national level within Europe, the approaches were fragmented, inconsistent, and largely absent from EU law. The turning point came with a surge in Chinese investments, especially in high-tech and critical sectors, reaching record levels in 2016. European policy makers started fearing that key strategic technologies were being systematically acquired by foreign entities pursuing state-driven economic strategies. In response, France, Germany, and Italy led calls for EU-level coordination, warning that the **EU's economic openness left it vulnerable to state-backed industrial policies, unfair competition, and potential security threats**.[1]

In reaction to these concerns, the European Commission proposed the EU FDI Screening Regulation, which was adopted in March 2019. However, the final framework was a compromise, reflecting **divisions among Member States on how much control the EU should exert over foreign investments**. Rather than establishing a fully centralized and harmonized EU-wide screening system, the Regulation introduced two key components to foster a more unified approach:

- **A compulsory cooperation mechanism**: an information-sharing system, requiring Member States to notify both the Commission and each other of FDI transactions that could impact security or public order. While mandatory, enforcement remains under national jurisdiction, meaning implementation varies significantly across the EU.

[1] Markov, D., and McLaren, R., *Forging the Shield: National Economic Security Policies in an Era of Global Uncertainty*, Sofia: Center for the Study of Democracy, 2024.

KEY POINTS

- Bulgaria's FDI screening framework remains **incomplete and ineffective**, with delays in implementation hindering the administration's ability to adequately assess strategic investments. Ensuring its full operationalization is critical to strengthen national and EU economic security and integrate Bulgaria into the Single Market and the US technological space.
- The introduction of **"white" and "black" lists** lacks clear, evidence-based justification, creating **legal uncertainty and potential discrimination risks**. Instead of listing specific countries, objective, security-based assessments, such as aligning with EU sanctions and risk indicators should be used.
- To mitigate the risks of political interference and misuse, it is essential to strengthen **interagency coordination, independent oversight**, and resource allocation. These steps are critical to ensuring the mechanism is credible and effective.
- There must be active **engagement with the evolving EU investment screening framework**, ensuring the national system adapts swiftly to regulatory updates and follows best practices in risk assessment, enforcement, and cross-border cooperation.
- The FDI screening system needs to be integrated into a broader **national economic security strategy**, addressing other potential threats, such as supply chain vulnerabilities, technological dependencies, cyber risks, illicit financial flows, and foreign influence over critical infrastructure.

- **An attempt at harmonization of FDI screening**: For the first time, the EU formally defined "security and public order" as legitimate grounds for screening foreign investments, enabling greater alignment across national mechanisms. Although Member States retain full authority over their screening rules, they are now expected to consider broader European interests when evaluating transactions.

Following Russia's invasion of Ukraine in 2022, many EU Member States that previously lacked FDI screening mechanisms moved quickly to close this gap in economic security. These new measures were driven by two major concerns: the significant economic security **threats posed by Kremlin-dependent networks**, including the risk of presence in strategic industries such as energy, defense, and digital infrastructure, and the **growing risks associated with illicit financial flows**.[2]

The countries that adopted their FDI screening mechanisms after the adoption of the EU FDI Screening Regulation followed closely its provisions, justifying the new measures by the need to address Russian economic threats. Unlike countries such as Poland and the Baltic states, which swiftly adopted robust screening frameworks, **Bulgaria was slow to act, largely due to political instability, weak institutional capacity, and governance challenges**.[3] Despite its strategic position as a Russia-dependent energy transit hub and a gateway for non-EU investments into Southeast Europe, Bulgaria lacked a formal FDI screening mechanism before 2023. This regulatory vacuum left critical industries – such as energy, digital infrastructure, and AI – particularly exposed to undue foreign influence.

Meanwhile, the EU's approach to FDI screening continues to evolve. The 2019 Regulation was not designed to address the full spectrum of geopolitical risks, particularly those that emerged post-Ukraine invasion. The regulation fell short of serving as a comprehensive economic shield against geopolitical threats. In response, the European Commission proposed a new FDI Screening Regulation in 2024, aimed at strengthening enforcement of screening mechanisms across all Member States, expanding the definition of critical sectors, and enhancing coordination to prevent strategic loopholes in investment oversight. Bulgaria's **slow pace of implementing** its screening mechanism risks widening the gap between its national framework and the evolving EU regulations on economic security.

FDI Screening in Europe

The ability to restrict investments within the Single Market is neither new nor controversial, as EU law has always **balanced economic openness with security considerations**. Against this backdrop, the current FDI Screening Regulation was designed as a complementary tool to address emerging security risks. By introducing FDI screening based on security or public order, the EU broadened investment oversight while ensuring **controls remain transparent, proportionate, and aligned with Single Market principles**.

Box 1. Defining Security and Public Order: A Policy and Practical Challenge

While there is a clear policy interest in protecting security and public order, this does not justify screening every foreign investment linked to these concerns.[4] Instead, an investment must present **a credible and tangible threat** to warrant scrutiny. However, the Regulation provides limited clarity on what constitutes such a threat, stating only that an investment must be likely to affect security or public order. This vague language leaves room for interpretation, granting Member States **significant discretion** in deciding which investments require screening. The lack of precise guidelines for assessing security and public order threats has led to **inconsistent application across the EU**. While the security or public order grounds for screening offer a broader legal basis than the more narrowly defined public policy or public security exceptions under the Treaty on the Functioning of the European Union, this broader scope has created interpretation and implementation challenges, leaving Member States struggling to establish uniform criteria.[5]

The European Court of Justice (ECJ) also played a role in shaping the current legal landscape of investment screening. The court has consistently ruled that **restrictions on fundamental freedoms, particularly the free movement of capital, must always be justified by legitimate public interest objectives, proportionate, and not serve protectionist purposes**. This suggests that Member States' FDI screening decisions would

[2] 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.

[3] Boycheva, I., and Terziev, P., *Investment Screening in Bulgaria: Policy Options, Institutional and Legal Framework*, Sofia: Center for the Study of Democracy, 2022; Center for the Study of Democracy, *Investment Screening in Bulgaria*, Policy Brief No. 123, December 2022; Center for the Study of Democracy, *Investment Screening for Enhanced Economic Security*, Policy Brief No. 142, December 2023.

[4] Velten, J., *Screening Foreign Direct Investment in the EU: Political Rationale, Legal Limitations, Legislative Options*, Cham: Springer International Publishing, 2024, pp. 57-122.

[5] European Court of Auditors, *Screening Foreign Direct Investments in the EU. First steps taken, but significant limitations remain in addressing security and public order effectively*, Special Report 27, 2023.

be subject to strict judicial review, particularly in cases where the broad discretion allowed by the current FDI Screening Regulation leads to inconsistent or overly expansive interpretations, as seen in the Xella case.[6]

The existing fragmentation of FDI screening in the EU weakens its collective power in FDI negotiations and complicates the formulation of a unified investment policy.[7] The European Economic Security Strategy (EESS), published in June 2023, marked a significant shift toward a risk-based approach in economic governance, and paved the way for the **evolution of FDI screening from a stand-alone regulatory tool into a core pillar of both EU and Member States strategies to strengthen economic security and resilience**. Recognizing economic security as both a national and collective priority and admitting that the **weaponization of economic dependencies** has exposed Europe's vulnerabilities in critical sectors, the EESS highlights FDI screening as essential for protecting strategic high-tech industries like semiconductors, AI, quantum computing, and biotechnology. However, the EU acknowledges that investment restrictions alone are not enough and that the focus must extend to outbound investments as well, ensuring that European capital and expertise are not used for enhancing the military and industrial capacities of strategic rivals.

FDI Screening Implementation

Bulgaria's FDI screening framework remains unfinished and ineffective. While the EU's economic security agenda gains momentum, with many Member States strengthening policies to address rising geopolitical risks, **Bulgaria remains sluggish in closing critical gaps in its economic security framework**.[8] The challenge is no longer about whether investment screening is necessary, but whether it will be implemented meaningfully or the country would continue to lag behind, leaving its strategic interests vulnerable.

For years, **Bulgaria was one of the last EU Member States without an FDI screening mechanism**, despite concerns over foreign control of sensitive sectors. In 2024, the country amended the Investment Promotion Act (IPA) to introduce a legal basis for investment screening.[9] Originally designed to attract foreign investment, the IPA now paradoxically regulates security risks while promoting FDI, creating an inherent conflict of interest. The **same authority responsible for incentivizing investment is now tasked with supporting the screening process**, raising doubts about impartiality. Furthermore, the screening scope extends beyond the EU's FDI Screening Regulation, introducing legal uncertainty and concerns over regulatory overreach.

The rushed nature of Bulgaria's FDI screening implementation has further undermined its effective introduction. The 2024 amendments were formally submitted to parliament by Members of Parliament, **bypassing the standard procedures for public consultation and impact assessment** required for government-proposed legislation. Moreover, key implementing regulations – which were due by September 2024 – were delayed, leaving the framework dormant. The government has failed to establish a clear roadmap for the full operationalization of the law. In December 2024, the government published draft amendments to the implementing regulation of the Investment Promotion Act, intended to govern the investment screening process.[10] Yet, as of February 2025, they remain unadopted. Meanwhile, internal rules for the screening authority have been approved,[11] creating a **bureaucratic paradox – while the institutional framework is in place, the absence of procedural rules has stalled enforcement**.

The delayed launch of the FDI screening mechanism comes at a time when **Bulgaria is among the EU countries most exposed to foreign influence in strategic industries**, particularly from Russia and China. In the energy sector, Russian investors continue to hold key positions, controlling cash flows, infrastructure, and technology. A stark example is the Lukoil-Neftohim Burgas oil refinery, the largest remaining Russian asset in the EU. Unlike Germany and Italy, which moved swiftly to place Russian-controlled assets under state supervision in 2022, Bulgaria has failed to leverage its FDI screening mechanism to manage the refinery's ownership transition. Similarly, it continued to transit Russian pipeline gas deterring investment in alternative energy imports, such as U.S. liquefied natural gas through Turkey.[12]

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

7 Draghi, M., *The future of European competitiveness: A competitive strategy for Europe (Part A)*, Brussels: European Commission, 2024.

8 Markov and McLaren, *Forging the Shield*, Sofia: CSD, 2024.

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

10 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.

11 Bulgaria, Rules 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.

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

Legal Uncertainty

Bulgaria's FDI screening legislation **significantly extends the mechanism's scope beyond the EU's FDI Screening Regulation**, raising concerns about legal consistency and operational efficiency.

Table 1. BG vs. EU's Investment Screening Regulation

	EU FDI Screening Regulation	Bulgarian FDI screening mechanism
WHO	Foreign investors from non-EU countries (including companies, state-owned entities, and individuals).	Non-EU individuals and entities making or intending to make a direct investment in Bulgaria + EU-based entities controlled (directly or indirectly) by non-EU individuals, non-EU entities, or other non-EU legal structures + EU-based entities where non-EU persons have "hidden" control through contracts, internal rules, or multilateral agreements related to the investment. **Exceptions:** • White list (third countries exempted from screening): United States, United Kingdom, Canada, Australia, New Zealand, Japan, South Korea, United Arab Emirates and Saudi Arabia; • Black list (countries subject to screening irrespective of the type of investment): Russia and Belarus.
WHEN	Discretion granted to Member States.	Before carrying out the investment.
WHAT	Investments in **strategic sectors**, such as critical infrastructure (e.g., energy, transport, and healthcare), critical technologies (e.g., AI and semiconductors), supply of critical inputs (e.g., raw materials and food security), and sectors affecting public order and security.	Investments in **strategic sectors** (as defined in the EU Regulation) + meeting one of three additional conditions: (1) acquisition of at least 10% ownership in a Bulgarian company or investment value exceeding EUR 2 million, or (2) acquisition of at least 10% ownership in a Bulgarian high-tech company (regardless of the investment value), or (3) new investment exceeding EUR 2 million. **Plus:** • **Investments below the statutory thresholds** – if deemed necessary by the screening authority in coordination with national security agencies; • All foreign direct investments in entities producing **petroleum energy products and petroleum products** at facilities that are part of or adjacent to **critical infrastructure**; • Any **foreign direct investment posing potential risk to security or public order** (upon reasoned request from the State Agency for National Security or the State Intelligence Agency);

		• Investments in strategic sectors (as defined in the Regulation) regardless of the statutory thresholds when the investor is an entity with **direct or indirect state participation of a non-EU country**, including **significant public funding** (for publicly traded companies, this rule applies if the **non-EU state holds more than 5%** of the capital).
WHY	To assess, examine, authorize, condition, prohibit or unwind foreign direct investments.	To assess, examine, authorize, condition, prohibit or unwind foreign direct investments.
HOW	Discretion granted to Member States provided that certain basic principles are observed. No central authority at EU level. Coordination through a cooperation mechanism for exchanging information and opinions between Member States and the European Commission.	Relatively straightforward investment procedure including: 1) **submission of application** and supporting documents to the Invest Bulgaria Agency, 2) **review of submitted documents** and forwarding the case with a reasoned opinion to the screening authority, and 3) **issuance of decision** by the screening authority. When all statutory deadlines are combined, the maximum duration of the FDI screening procedure is less than two months. **Plus:** **Ex-officio screening procedure:** screening of investments that qualify for mandatory screening but the investor has not submitted an application.

One of the most **controversial aspects** of Bulgaria's FDI screening framework is the introduction of both a **white list** of exempted countries and a **black list** of countries whose investors are subject to mandatory screening, regardless of other criteria. The white list currently includes the United States, United Kingdom, Canada, Australia, New Zealand, Japan, South Korea, the United Arab Emirates, and Saudi Arabia, with parliament authorized to expand it by decision. The absence of a clear, evidence-based justification for selecting these countries raises concerns about politically motivated decisions, undermining the transparency and fairness of the screening process. Similarly, the black list, which currently includes Russia and Belarus, lacks a structured and objective basis for designation. A more transparent approach would be to define restricted countries based on clear criteria, such as EU sanctions or documented security risks, rather than explicitly naming specific nations.[13]

The **lack of convincing evidence justifying exemptions for specific countries has already raised concerns over potential violations of EU law in other countries**. Reports on cooperation mechanisms indicate that several "white list" countries have been subject to scrutiny in other Member States, which have chosen to enforce the FDI screening cooperation mechanism, highlighting inconsistencies in this approach.[14]

While FDI screening is intended to protect national security and economic stability, in a system susceptible to **corruption or political interference**, it could be exploited for political or economic protectionism, weaponized for political retaliation, or used for soliciting bribes or other illicit favors in exchange for investment approvals. Unless these risks are effectively and continuously mitigated, they could lead to an unfavorable and unpredictable investment climate, ultimately undermining the very purpose of the screening mechanism to enhance economic security.

[13] Filipov, C., Boycheva, I., and Markov, D., *Geoeconomic Crossroads: Bulgaria's FDI Screening Mechanism and the Balance between Competitiveness, Security, and Technological Sovereignty*, Sofia: Center for the Study of Democracy, 2025.

[14] European Commission, *Fourth Annual Report on the screening of foreign direct investments into the Union*, COM(2024) 464 final, Brussels, 2024.

To ensure that FDI screening remains a legitimate tool for economic security rather than a political or economic weapon, transparency must be ensured by **mandating public reporting on screening decisions** and the rationale behind approvals or rejections, **strengthen oversight to prevent arbitrary or politically motivated decisions**, and align with the EU principles of non-discrimination, fair competition and respect for fundamental rights.

Last but not least, **Bulgaria's participation in the cooperation mechanism under the FDI Screening Regulation must align with the principle of loyal cooperation**, ensuring full engagement in the exchange of information between Member States and the European Commission. However, the country has made limited efforts to strengthen its role in this process, opting for a minimal legislative approach rather than actively enhancing cross-border collaboration. Given concerns about Bulgaria's rule of law and governance quality, there is a **risk that the country could effectively be left out of the Single Market**, for example in **accessing cutting edge technologies**, while being punished with less investment because of bureaucratic hurdles.

Towards an Economic Security Framework

The adoption of an FDI screening mechanism is an important step in protecting national interests from harmful foreign investments, but it falls short of ensuring broader economic security. To fully protect its economic sovereignty, **Bulgaria must integrate its FDI screening system into a comprehensive national economic security policy** that defines clear priorities, sets measurable objectives, and establishes a well-coordinated institutional infrastructure with clear division of competences and responsibilities.

Equally important is ensuring that the FDI screening mechanism becomes fully operational as soon as possible. This requires adopting quickly implementing regulations and **building administrative capacity** to continue welcoming growing foreign investment flows, while ensuring protection against illicit finance and economic coercion. Adequate resources, training, and procedural clarity are essential for the screening system to function efficiently and deliver on its intended security objectives. Accelerating the process will also enable the mechanism to be applied to key upcoming investment transactions, ensuring that strategic sectors are adequately protected from potential risks.

Additionally, a **systematic evaluation of the screening mechanism** should be planned after an initial implementation period to assess its effectiveness and impact. **Regular reviews** and adjustments based on practical experience, stakeholder feedback, and evolving geopolitical risks will be crucial to ensuring that the mechanism remains effective, transparent, and aligned with EU best practices.

Furthermore, developments at the EU level must be closely followed, particularly as discussions on a new FDI screening framework continue. Given the rapidly evolving geopolitical environment, the country needs to be **prepared to adapt its national framework as soon as EU regulations are updated**. Proactively aligning with future EU policy changes will not only enhance Bulgaria's credibility within the EU but also ensure consistency, legal certainty, and better coordination in managing foreign investments.

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In the face of rising geopolitical tensions, Bulgaria must **take a proactive role** within the EU's broader economic security framework:

- Beyond ensuring the effective functioning of its FDI screening system, the country must focus on securing critical supply chains, **fostering technological innovation**, and **building strategic partnerships** with like-minded nations.
- To achieve this, key institutions, such as the Interagency Screening Council and Invest Bulgaria Agency, must be **adequately resourced and supported** to guarantee the effectiveness and integrity of the screening process.
- Additionally, strong safeguards must be implemented to **prevent abuses of the system**, including political interference or discriminatory practices, which could compromise the legitimacy of the mechanism and deter foreign investment.
- By embedding its FDI screening mechanism within a **comprehensive national economic security policy**, Bulgaria can contribute meaningfully to the EU's overarching security agenda, reinforcing a more stable and resilient economic environment.
- A well-structured, transparent, and strategically aligned screening process will not only **enhance the country's competitiveness** but also strengthen its role as a key partner in the EU's global economic framework.