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From: General Secretariat of the Council
To: Delegations

Subject: Proposal for a Regulation of the European Parliament and the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and the Council
- Opinion of the European Economic and Social Committee (EESC)

Delegations will find in the Annex to this note the Opinion of the European Economic and Social Committee on 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.



OPINION

European Economic and Social Committee

Screening of foreign investments in the Union

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
(COM(2024)23 final – 2024/0017 (COD))

REX/579

Rapporteur: **Javier DOZ ORRIT (ES-II)**

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Advisor	Olivier VAUZELLE
Legislative procedure	EU Law Tracker
Referral	20/3/2024
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
European Commission documents	COM(2024) 23 final Summary of COM(...) ...
Relevant Sustainable Development Goals (SDGs)	SDG X – 1, 4, 8, 9, 10, 12, 16 & 17
Section responsible	External Relations
Adopted in section	24/6/2024
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Plenary session No	589
Outcome of vote (for/against/abstentions)	177/0/2

0 INTRODUCTION

The proposed Regulation takes into account part of the recommendations of the evaluation that the Commission entrusted to the OECD,¹ and those of the Report of the European Court of Auditors (ECA),² which analyse the experience since the entry into force of the current Regulation, in October 2020. The new project obliges all Member States to equip themselves with screening mechanisms for foreign direct investments (FDI), promotes a certain harmonisation of their concepts and procedures and establishes more precise procedures and deadlines for the operation of the EU Cooperation Mechanism. In its annexes there is a list of the sectors considered critical for the maintenance of security and public order and of the programmes of interest to the EU, which are those in which FDI must be subject to public control. The final decision on authorisation, full or conditional, or denying FDI remains with the Member States.

In the EESC's opinion, the proposed changes go in the right direction, seeking a balance between maintaining a legislative framework that encourages FDI and the need to confront growing geopolitical risks by promoting open strategic autonomy of commercial, industrial, economic, and security and defence policies. It must be pointed out that the level of harmonisation of national procedures and screening mechanisms is insufficient, that the EU still does not have the capacity to ban or apply conditions to certain investments in cases where they directly affect its programmes or projects, and that once again, the participation of the social partners and organised civil society is not well reflected in the proposal.

The EESC believes that the terms and actions of this Regulation need to be very clearly motivated and justified. The new Regulation must avoid creating a perception of unjustified protectionism that could provide ammunition to those who seek to discredit the EU's commitment to an open economy. Transparency and predictability must be non-negotiable.

Taking into account the current geopolitical context in Europe and the world, the contents of the EU Economic Security Strategy,³ the EESC opinions on the Strategy,⁴ and on the 2019 Regulation,⁵ the implications of the concepts of open strategic autonomy applied to the fields of security and defence, industrial policies and trade, the contents of the aforementioned OECD and ECA evaluations, and the need for European economies to have a favourable framework for foreign investment, the EESC makes the following recommendations on the proposed Regulation:

¹ https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/01/framework-for-screening-foreign-direct-investment-into-the-eu_d966075e/f75ec890-en.pdf.

² <https://www.eca.europa.eu/en/publications/SR-2023-27>.

³ Joint Communication to the European Parliament, the European Council and the Council on 'European Economic Security Strategy' JOIN/2023/20 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023JC0020>.

⁴ OJ C, C/2024/2489, 23.4.2024, ELI <http://data.europa.eu/eli/C/2024/2489/oj>

⁵ [OJ C 262, 25.7.2018, p. 94](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018G0094).

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1. RECOMMENDATIONS

The European Economic and Social Committee's (EESC):

- 1.1 **Promote** greater harmonisation of the national legal norms that regulate FDI and the screening mechanisms of the Member States, in particular in the following aspects: establish the percentages of takeover by the foreign investor that imply the obligation to control or, where appropriate, prohibit or mitigate; define equal deadlines, as short as possible, for replying to requests for information and issuing opinions and resolutions; establish coherent definitions on risks to security and public order, streamline the practices of national screening mechanisms, in particular making it standard practice that control takes place before the investment is made, or promoting the so-called 'golden share' as an instrument of public control, in certain permitted investments.
- 1.2 **Determine** the exceptional cases in which the EU institutions may prohibit, mitigate or apply conditions to FDI, in one or more Member States, for seriously jeopardising a programme or project of interest to the Union or public security and order in more than one Member State.
- 1.3 **Establish** the procedures through which the European Commission, after consultation with the affected Member States and with all of them, through the Union Cooperation Mechanism on foreign investments, could prohibit any of the investments defined in section previous or establish conditioning or mitigation measures thereof.
- 1.4 **Develop**, in the Regulation, the circumstances and characteristics in which a foreign investment poses a risk to a programme or project of interest to the EU.
- 1.5 **Include** the definitions of 'Indirect foreign investment' and 'Portfolio investment', as well as the financial contribution of the Third Country investor in the global investment, and determine under what circumstances these types of investments can be subject to control by national screening mechanisms and the EU Cooperation Mechanism, guaranteeing similar treatment of them in all Member States.
- 1.6 **Look into extending** foreign investment screening to other critical infrastructure and essential services, including those of a social nature, which are essential for the smooth running of the state and people's well-being, some of which proved to be very important during the COVID-19 pandemic.
- 1.7 **Review the various European regulations** that refer to investment screening, whether the Regulation on foreign subsidies⁶, the Community Merger Regulation⁷, the Regulation on dual-use exports⁸, antitrust and anti-competition legislation⁹ and on distorting state subsidies

⁶ Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, OJ L 330, 23.12.2022 - <http://data.europa.eu/eli/reg/2022/2560/oj>.

⁷ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (Text with EEA relevance), OJ L 24, 29.1.2004 - <http://data.europa.eu/eli/reg/2004/139/oj>.

⁸ Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast), OJ L 206, 11.6.2021 <http://data.europa.eu/eli/reg/2021/821/oj>.

competition¹⁰, as well as sectoral regulations (Energy¹¹, Air Transport¹², etc.), so that they are consistent with the new Regulation that we are analysing.

- 1.8 **Propose** firmly that counterparts in the negotiation of trade, investment or association agreements apply the principle of reciprocity with respect to investments and their screening. In any case, propose that Member States' investment screening mechanisms monitor investments from third countries in sectors where these countries prohibit or limit investment from EU countries, even if these investments do not fall under the Regulation's general screening areas.
- 1.9 **Subject** investments from tax havens to special surveillance, requiring full knowledge of the real owners of the investing companies and examining the legality of the funds deployed. Call on Member States to consider the possibility of abolishing so-called 'golden visas' for obtaining residence or nationality in an EU country. Study the relationship between changes in FDI flows and the acceptance, or not, of investments of 'problematic' origin.
- 1.10 **Establish** mechanisms for the participation of social partners and civil society organisations in foreign investment policy and its control at both EU and national level. The EESC should be involved in evaluating the Regulation.
- 1.11 **Strengthen** Member States' material, personnel and training capacities for effective implementation of the Regulation's FDI screening tasks. Assist Member States that may lack sufficient means to effectively monitor foreign investments and to collect information requested by other Member States in the operation of the Cooperation Mechanism, to remedy the deficiencies.
- 1.12 **Provide** the Commission with a larger budget, more professional staff and periodically updated technological means, to be able to cope with the growing number of controls and the greater need for coordination as well as the strengthening of the EU Cooperation Mechanism provided for in the Regulation.
- 1.13 **Analyse** in depth ways of and instruments for promoting FDI within the conceptual and regulatory framework of the policies on strategic autonomy and the Economic Security Strategy and in the pursuit of the objectives defining sustainable competitiveness. Promote balanced progress in investment in all Member States, including compensation for national deficits that could eventually result from the application of FDI control mechanisms. Define the role that the EU Cooperation Mechanism can play in achieving these objectives and in cooperating to articulate trade and investment, industrial, sustainable development and defence and security policies. Establish specific FDI facilitation frameworks with countries with similar democratic values.

⁹ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), OJ L 1, 4.1.2003 <http://data.europa.eu/eli/reg/2003/1/oj>.

¹⁰ [Legislation - European Commission \(europa.eu\)](http://data.europa.eu/eli/reg/2003/1/oj).

¹¹ [Markets and consumers \(europa.eu\)](http://data.europa.eu/eli/reg/2003/1/oj).

¹² Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (Text with EEA relevance), OJ L 293, 31.10.2008, <http://data.europa.eu/eli/reg/2008/1008/oj>.

2. EXPLANATORY NOTES

Arguments in support of recommendation 1.1

- 2.1 Foreign investment, particularly new investment that brings technological innovation, is a factor in the growth of the economy and productivity and in improving competitiveness. European legislation must favour it. However, a series of events and factors have reinforced in recent years the conviction that there are investments that bring more risks than benefits: the COVID-19 pandemic and Russia's war of aggression against Ukraine and its impact on supply chains; the increase in geopolitical conflict in the world coinciding with an increase in nationalism and populism; competition for control of essential raw materials and for production capacities and application of the most innovative technologies, the increase in protectionism and the emergence of aggressive economic activities, including those that occur in cyberspace; etc. Countering the economic influence of authoritarian actors is of the utmost importance and urgency for Europe's security and values.
- 2.2 The adoption of the concept of open strategic autonomy – applied to fields such as security and defence and industrial, commercial and investment policies – calls for the improvement of the rules and procedures for screening foreign investments in the EU to be addressed. The European Economic Security Strategy already provided for the review of the current Regulation. The evaluation of the application of this Regulation, carried out by the OECD less than two years after its entry into force, in October 2020, and the ECA Report (2023) agree on the shortcomings and weaknesses of the current Regulation and propose changes which, to a large extent, have been included in the Commission proposal and which refer to: the obligation for all Member States to have FDI screening mechanisms; clarification of the fundamental concepts of the framework; the harmonisation of criteria, deadlines and processes in all screening mechanisms of the Member States; the inclusion in investment screening procedures of companies from an EU country controlled by capital from a third country; and the improvement of the Cooperation Mechanism, Commission evaluations and notification processes.
- 2.3 However, the harmonisation promoted by the proposed Regulation should be completed, among others in the aspects mentioned in 1.1 – definition of risks, prior screening, practices of national screening mechanisms, 'golden action', etc. If the objective of regulatory reform must be to maintain a balance between the facilitation of foreign investment and the necessary control of the risks it implies, it must be taken into account that the harmonisation of national legislation is a factor that facilitates investment from third countries.

Arguments in support of recommendation 1.2

- 2.4 The proposal for a new Regulation maintains that the final decision to prohibit, mitigate or condition FDI always corresponds to the Member State in which the investment is made. This raises the problem that once the EU Cooperation Mechanism is activated and the Commission has issued an unfavourable opinion on an investment because it could seriously jeopardise a project or programme of interest to the EU or, in the case of an investment that is made in more than one country, because the majority of the Member States concerned consider that it puts

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national security or public order at risk, a Member State nevertheless decides to allow such an investment to be made.

- 2.5 Taking the above into account, the EESC proposes that, maintaining the general criterion that the final decision on an FDI subject to the control procedure corresponds to each Member State where it is carried out, the new Regulation includes the cases in which the Commission, in accordance with the majority decision of the States in the EU Cooperation Mechanism, may adopt a different decision than the one initially taken by the Member State in the cases contemplated in point 2.4.

Arguments in support of recommendation 1.3

- 2.6 For cases in which this difference of opinion occurs between a Member State and the Commission and the Cooperation Mechanism, an arbitration procedure should be established, the final decision of which could lie with the European Council, regardless of the appeals that may always be presented before the European Court of Justice. Arbitration should last for a maximum of one year.

Arguments in support of recommendation 1.4

- 2.7 The competence that we advocate in recommendations 1.2 and 1.3 of this Opinion, which would give the Commission, in well-defined or specified cases, the power to prohibit, mitigate or apply conditions to a foreign investment against the opinion of the Member State where it is made, requires that the Regulation include the characteristics and circumstances in which FDI may pose a serious risk to a programme or project of interest to the Union.

Arguments in support of recommendation 1.5

- 2.8 The ECA¹³ considers that the lack of a definition in the 2019 Regulation of the concepts of ‘indirect foreign investment’ and ‘portfolio investment’ has resulted in different criteria being applied by Member States on the screening of this type of investments. The proposed new Regulation also does not include definitions of the same in Article 2.
- 2.9 There are circumstances in which some of the risks that the Regulation seeks to avoid or mitigate may arise from both types of investments. Without advocating a general screening of indirect and portfolio investments, it seems advisable that there be common criteria for their treatment by all Member States and that the characteristics and circumstances in which they should be subject to supervision by national screening bodies and the EU Cooperation Mechanism should be specified in the Regulation.

Arguments in support of recommendation 1.6

- 2.10 Sectors that guarantee the provision of essential services for the maintenance of vital social functions or economic activities, as defined by the Directive on the Resilience of critical

¹³ ECA, Special Report 27 (2023) Control of Foreign Direct Investments in the EU, Observation 29, d) and e).

activities.¹⁴, should be considered as ‘of particular importance for the interests of security or public order of the Union’, and as such be included in Annex II of the Regulation.

- 2.11 It would also be advisable to study the possibility of supervising, in light of the objectives of the Regulation, not only the sectors referred to in recommendation 1.6 but also those with a strong impact on the preservation of the values, principles and interests of the Union, such as education, the media or social networks. It should be noted that we are talking about actions aimed at preserving freedom of the press and the other fundamental freedoms defined in the Charter of Fundamental Rights of the EU from the takeover by investors from countries where such rights are not respected. At the same time, it must be done while maintaining Europe’s openness to diverse perspectives. Measures to counter potentially malicious foreign influences and to counter disinformation mechanisms, by way of FDI screening, must never lead to a closed Europe and restrictions on fundamental freedoms.

Arguments in support of recommendation 1.7

- 2.12 In addition to examining the aforementioned standards to proceed with their revision to adapt them to the requirements and guidelines of this Regulation, a mechanism for the exchange of information and permanent sharing of the application of all regulations that refer to screening of foreign investments should be established, to maintain coherence in their work and obtain the benefits of efficient synergies between them.
- 2.13 The coordination of the different requirements that may arise from various regulations on the same investment process could minimise possible excessive bureaucracy that would represent an obstacle for investors.

Arguments in support of recommendation 1.8

- 2.14 There are third countries that prohibit, limit or apply conditions to investments from EU countries that go beyond the limitations and screening set out in this Regulation. This is not a desirable situation and produces both diplomatic weakness for the EU and a comparative disadvantage for EU investors.
- 2.15 We do not propose generally applying the prohibitions or limitations that these third countries apply to investments from the EU to investments from these countries in the EU. It may be appropriate for certain investments, which do not fall under the Regulation’s limiting assumptions leading to prohibition or limitation, to be accepted even if there is no reciprocity; for example, if they are investments for the creation of new companies or activities that provide cutting-edge technologies. What is requested is that the investments that these third countries make in EU countries, in sectors where EU countries are subject to prohibitions and additional limitations, be examined to analyse the special interest or convenience that would allow non-reciprocity to be set aside. At the same time, efforts should be made to establish the principle of reciprocity in trade and investment agreements or in revisions of such agreements.

¹⁴ Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC (OJL 333 of 27.12.2022, p. 164, ELI: <http://data.europa.eu/eli/dir/2022/2557/oj>).

Arguments in support of recommendation 1.9

- 2.16 All EU anti-money laundering and anti-terrorist financing legislation¹⁵ has highlighted the need to know the beneficial owners of companies, whatever their legal form. This is especially important when the investments come from a tax haven, because, in many cases, the real owner is masked through a chain of shell (or cover) companies, many of which are based in EU Member States. In order to know the real owners and the legality of the origin of the invested funds, the screening of investments should be extended to all those made from companies located in tax havens.
- 2.17 The practice of so called ‘golden visas’ allows citizens of a third country to obtain a residence permit in, or citizenship of, a Member State if they make an investment of a certain amount in that country. Investments are made, in most cases, in the real estate sector, contributing to the increase in housing prices in countries where the lack of housing and property prices have become one of the main national problems. At the same time, these investments are not subject to control, which is why in many cases they conceal money laundering operations. These financial flows can serve as a gateway for malign actors in the European economy. The EU should propose that Member States reconsider allowing such practices on their territory.

Arguments in support of recommendation 1.10

- 2.18 Recital (32) of the proposed Regulation says that ‘Member States or the Commission, as appropriate, could take into account relevant information transmitted by economic operators, civil society organisations or social partners about a foreign investment that is likely to adversely affect security or public order.’ However, in the articles there is no reference to the procedure that should be established to comply with said orientation. This is what needs to be fixed.
- 2.19 The proposed Regulation states that the Commission must prepare and present an annual implementation report to Parliament and the Council, and carry out an evaluation every five years. The social partners and civil society organisations should participate in the preparation of these annual application reports and the evaluation report, through regulated procedures. One of the channels of participation in the preparation of the evaluation report should be the EESC.

Arguments in support of recommendation 1.11

- 2.20 The aforementioned evaluations by the OECD and the ECA on the application of the regulation have shown significant differences between the different Member States in terms of their capacity to exercise the screening, information and notification functions. This may undermine their ability to monitor and participate in cooperation between Member States and thereby affect control at EU level. The success of the coordination of work, participation in the exchange of information and the speed of responses depends on the means allocated to the implementation

¹⁵ Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849, [COM\(2021\) 423 final](#).

of the Regulation. For this reason, the objective must be set for all States to allocate sufficient human and material resources to these processes and to help those who need it.

- 2.21 The tools available, the flexibility of the processes and the technical support of the Commission would allow a lower consumption of resources in each Member State, especially in those with fewer resources.

Arguments in support of recommendation 1.12

- 2.22 The increasing trend in the number of foreign transactions indicated in the Commission's latest annual report, as well as the increase in geopolitical risks affecting FDI screening, will necessarily imply an increase in control needs at the national level and these should be examined within the scope of the EU Cooperation Mechanism. This therefore implies a larger volume of work for the teams in charge of this work in the European Commission.
- 2.23 Anticipating new technological risks is essential to carry out effective control. Research work to update the list of sensitive technologies should be strengthened.

Arguments in support of recommendation 1.13

- 2.24 There is a striking contradiction between the ambition of the objectives, policies and plans and the budgetary resources and investment made available by the EU and its Member States to achieve them. The investment deficits of most Member States and the decline in FDI in the EU in recent years should make overcoming them a priority objective of the EU, and all EU policies, particularly those relating to foreign investment, should address how to overcome them.
- 2.25 Although the FDI screening regulation cannot be the regulatory framework within which all the objectives and policies mentioned in 1.13 are addressed, it is appropriate that they be mentioned here so as to ensure that they are promoted by the EU and that the regulation does not interfere with their achievement. What should be included in the Regulation is a strengthened role for the Cooperation Mechanism as a provider of information and analysis on FDI and its relationship to the EU's priority objectives and programmes.

Brussels, 11 July 2024.

The President of the European Economic and Social Committee
Oliver RÖPKE

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