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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Fourth Annual Report on the screening of foreign direct investments into the Union

{SWD(2024) 234 final}

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INTRODUCTION

This Report is the fourth Annual Report by the European Commission on the application of the EU Foreign Direct Investment (FDI) Screening Regulation (the "FDI Screening Regulation", or the "Regulation").

The Report covers the year 2023 and provides transparency around the operation of FDI screening in the EU, and developments in national screening mechanisms. It contributes to the accountability of the Union in an area where, given the security interests at stake, transparency regarding individual transactions is neither possible nor appropriate.

It is based on reports by the 27 Member States and other sources and consists of four chapters:

- Chapter 1 on trends and figures for FDI into the EU;
- Chapter 2 on legislative developments in Member States;
- Chapter 3 on FDI screening activities by Member States;
- Chapter 4 on the EU cooperation mechanism on FDI screening.

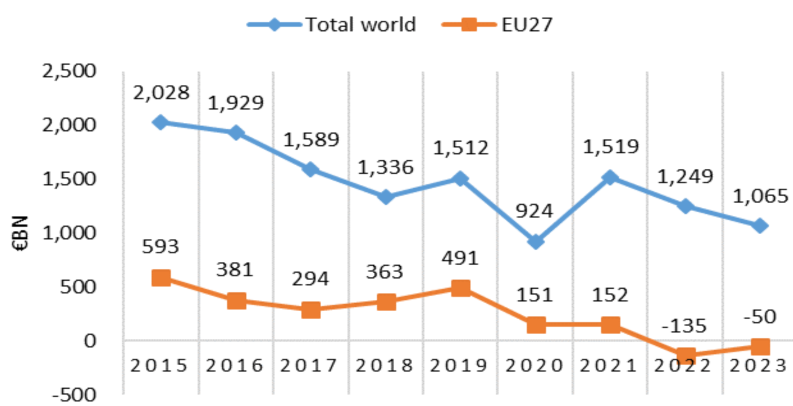
This Annual Report is an important tool for strategic trade and investment controls to ensure security in the European Union.

CHAPTER 1 – FOREIGN DIRECT INVESTMENT INTO THE EUROPEAN UNION

1. Overall evolution

In 2023, net global FDI flows[1] declined for second consecutive year, falling below 2021 levels. Global inflows totalled just over EUR 1 trillion, down from EUR 1.2 trillion in 2022 (Figure 1), implying a year-on-year decrease of -15% in 2023. Declines in net FDI inflows in 2023 (compared to 2022) were observed for other important FDI recipients, such as the US (-6.2%) and China (-8%). In contrast with the global decreasing trend in 2023, the EU27 experienced an increase of net FDI inflows in 2023 compared to values observed in the previous year, reversing the decreasing trend. Nonetheless, net inflows remained negative: EUR -50 billion, compared to EUR -135 billion in 2022[2].

Figure 1: World and EU inward net FDI flows[3]



Source: OECD data, extracted on 07/05/2024. Data refers to net inward FDI flows.

The stock of foreign transactions[4] into the EU27 displays an upward trend between 2015 and 2023 (Figure 2, columns). Even though the economy faced numerous significant challenges, the EU27 received an average of 4,761 Foreign Direct Investments (FDIs) annually over the past

[1] Alternative indicators of FDI activity which are not based on flows, which can present a lot of fluctuations, are provided in the Staff Working Document accompanying this Annual Report.

[2] The 2023 EU27 result was primarily driven by decreases of inward FDI in the Netherlands and again in Luxembourg, see OECD, FDI IN FIGURES, April 2024 –available at: https://www.oecd.org/investment/investment-policy/FDI-in-Figures-April-2024.pdf. Negative values of FDI inflows are largely explained by significant disinvestments (due to negative equity and debt components involving holding companies) that took place in these two countries in 2023. The Netherlands (recording EUR -135 billion FDI inflows in 2023) contributed to this EU27 negative net inflow in particular, since some multinationals relocated their conduit activities to other countries in Q4 of 2023.

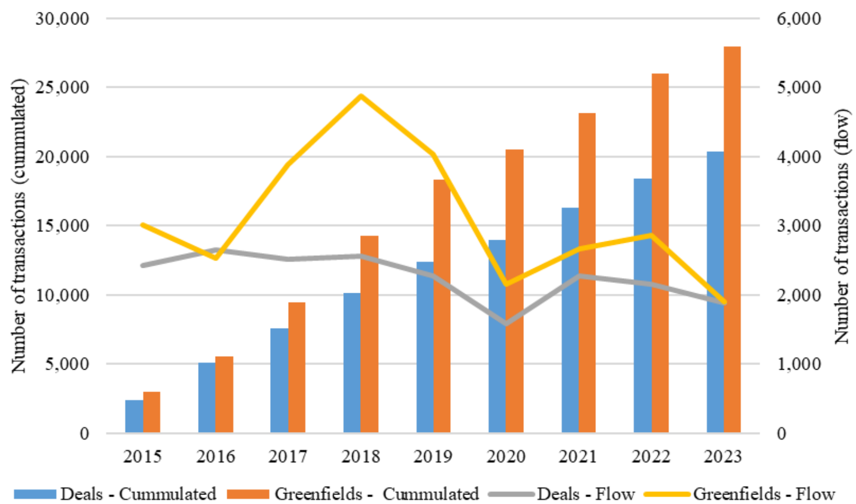
[3] Note that compared to last year the data was slightly revised by the OECD.

[4] Foreign direct investment can take two different forms: greenfield, and mergers and acquisitions (M&As). International greenfield investments typically involve the creation of a new company or establishment of facilities abroad, while an international merger or acquisition amounts to transferring the ownership of existing assets relating to an economic activity to an owner abroad.

five years. The positive cumulative trend confirms the openness of EU countries to foreign investments.

The cumulative number of FDI transactions increased from an initial figure of 5,430 in 2015 to 48,231 in 2023. [5] The sharpest year-on-year increases were observed in the years 2017 and 2018 (with 60% and 44% yearly increases, respectively), followed by a more moderate yearly increase of 26% in 2019, before the pandemic induced slowdown in 2020. Looking at the two types of FDIs separately, foreign M&A deals rose from 2,423 in 2015 to 20,317 in 2023. Similarly, foreign greenfields experienced a cumulative increase from 3,007 projects in 2015 to 27,914 in 2023.

Figure 2: 2015-2023 yearly cumulative number of transactions and flow trends into the EU27



Source: JRC elaboration based on Bureau van Dijk data, extracted on 11/03/2024 from Orbis M&A and Orbis Crossborder Investment. Data for 2015 corresponds to the flows of FDI in 2015, while data for the bars in subsequent years correspond to the cumulated sum of yearly flows. The data in the initial year (2015) used in the calculation of the cumulative number of transactions corresponds to the flow of transactions observed in that year.

However, the global downward trend in FDI inward flows presented in Figure 1 is also observed in the flows based on transaction level data (Figure 2, lines). After a robust post-Covid recovery in 2021, with transaction numbers reaching those of 2019 in this year, foreign acquisitions slowed down annually in 2022 compared to 2021 (-5.4%) and again in 2023 (-13%) compared to 2022. For the case of greenfield investments, an equivalent post-Covid uptake in number of projects compared to 2019 numbers was not observed, and while a 7.1% annual increase was recorded in 2022 compared to 2021, the flow of projects into the EU declined significantly in 2023 compared to 2022 (-33%). In 2023, the EU27 received 1 885 foreign deals (down from 2 156 in 2022), and 1 902 foreign greenfield projects (down from 2 858 in 2022). The downward

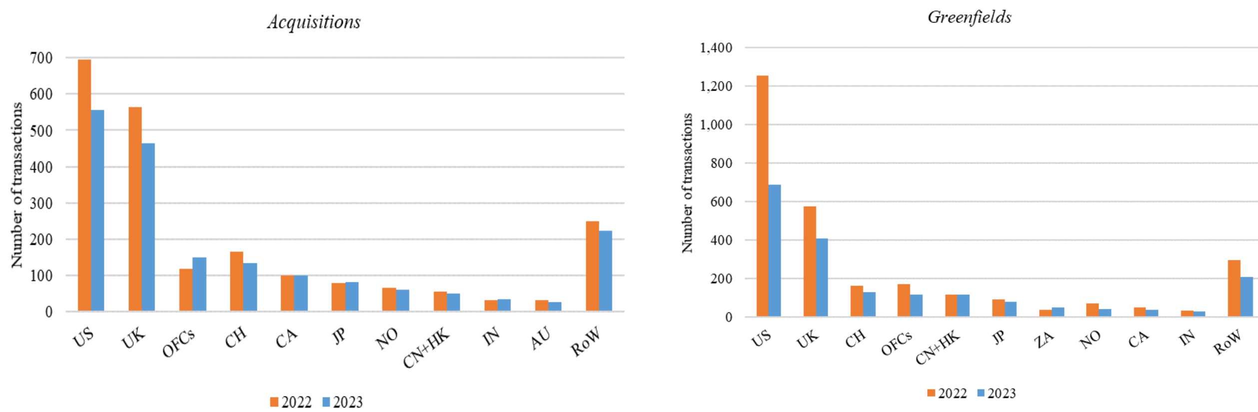
[5] Approximated as the cumulated number of foreign transactions, starting from 2015 i.e. the 2015 data is a flow.

year-on-year trend observed in 2023 is the result of persisting and cumulating uncertainties[6] affecting the EU economy and a tightening of monetary policy starting from the second half of 2022.

2. Top Origin Countries of Foreign Investors

A comparison between 2022 and 2023 foreign investments transactions by jurisdiction of origin shows that, despite an overall decrease by 24% in 2023 compared to 2022, M&As from some jurisdictions such as Offshore Financial Centers (OFCs) increased by 26% (Figure 3).

Figure 3: Number of acquisitions of equity stakes (left) and greenfield investments (right) in 2023 and 2022 into the EU – Detail by foreign jurisdiction (top ten investors)*



Source: JRC elaboration based on Bureau van Dijk data, extracted on 11/03/2024 from Orbis M&A and Orbis Crossborder Investment. OFCs: Offshore Financial Centres[7]. RoW: Rest of the World. (*) Acquisitions of equity stakes above 10% of the capital of the EU27 business.

The US continued to be the main foreign investor into the EU27 in 2023, accounting for 30% of all acquisitions (557 deals), and 36% of greenfield investments (687 projects). The US retained the first place despite a sharp year-on-year decline in 2023 in both the number of acquisitions (-20%) and particularly of greenfield projects (-45%). Investors from the UK accounted for 25% (465 deals) of all acquisitions in 2023, and 21% (407) of greenfield projects into the EU27, placing second in the ranking of foreign jurisdictions. In this case, acquisitions and greenfield projects also declined in 2023 compared to 2022 figures, dropping by -17% and -29% annually, respectively for each type of FDI.

With a share of 7.9% of equity stakes acquisitions, deal making from OFCs increased more than 26% in 2023 compared to 2022. Foreign deals originating from Japan (+5.1%) and India (+6.1%)

[6] Russia's war of aggression against Ukraine entered its third year in February 2024. Geopolitical tensions and the broadening of the Middle East conflict are additional sources of risk.

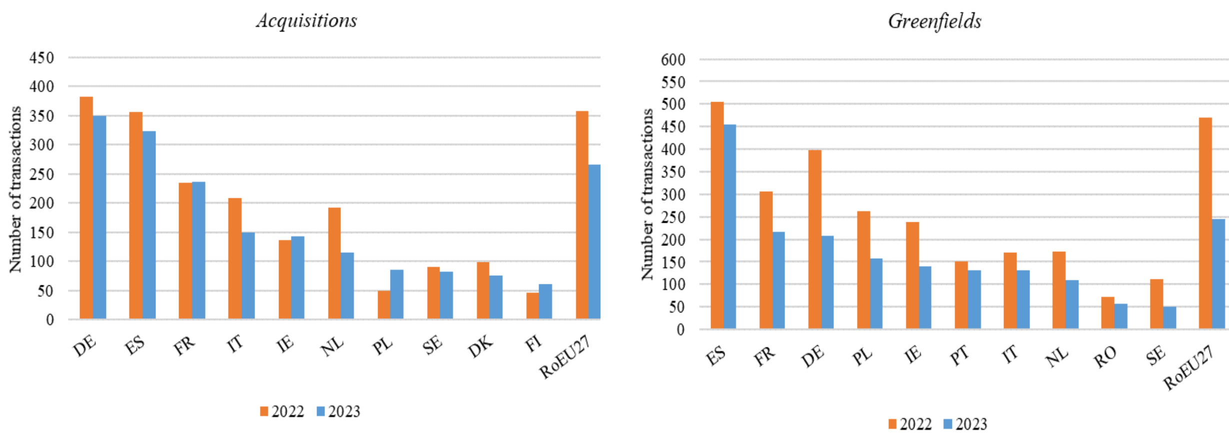
[7] The main offshores by number of transactions in 2023 are (in alphabetical order): Bermuda, British Virgins Islands, Cayman Islands, Liechtenstein and Monaco. For the full list of Offshore Financial Centres, see e.g., Commission Staff Working Document - Following up on the Commission Communication "Welcoming Foreign Direct Investment while Protecting Essential Interests" – SWD(2019) 108 final – 13 March 2019.

also grew in 2023. A negative year-on-year trend for M&A activity was observed for Switzerland (-19%), Norway (-6.1%) and China (-9.1%), while foreign transactions from Canada remained stable. For the case of greenfield investments, all origin jurisdictions in the top ten (with the only exception of South Africa) experienced generalised year-on-year decreases in terms of number of projects in 2023, with annual declines ranging from -0.9% for China to -39% for Norway and -31% for OFCs.

3. Top Destinations of Foreign Acquisitions

The number of foreign transactions into the EU showed generally a decline for most Member States in 2023 compared to 2022 (Figure 4), with few exceptions in the case of acquisitions of equity stakes such as Poland, Finland and Ireland.

Figure 4: Number of acquisitions of equity stakes (left) and greenfield investments (right) in 2023 and 2022 – Detail by destination Member State (top ten EU27 recipients)*



Source: JRC elaboration based on Bureau van Dijk data, extracted on 11/03/2024 from Orbis M&A and Orbis Crossborder Investment. RoEU27 stands for Rest of EU27. (*) Acquisitions of equity stakes above 10% of the capital of the EU27 business.

Germany and Spain were the main destinations for foreign acquisitions, grouping 19% (349 deals) and 17% (323 deals) of the total amount of deals in 2023, respectively. The two Member States experienced a similar year-on-year decline in the number of foreign acquisitions hosted (roughly -9%) in 2023. Other relevant EU destinations, by share of M&A, were France (13%), Italy (7.9%) and Ireland (7.6%). Most Member States experienced a decline in the number of deals in 2023, with the largest taking place in Italy (-29%) and the Netherlands (-40%). A stronger M&A activity was observed in Ireland (+4.4%), Poland (+70%) and Finland (+33%). Foreign acquisitions of French companies increased marginally in 2023, compared to 2022.

Foreign greenfield investments in 2023 were mainly destined to Spain and France, which received 24% (455 projects) and 11% (217 projects) of all projects, closely followed by Germany (with a 11% share). The year-on-year decline in project numbers was particularly noticeable for Germany (-48%), although projects destined to Spain and France also fell (by -9.9% and -29%, respectively).

4. Sector Specific Information

The top five sectoral categories[8] experienced year-on-year declines in foreign investments in 2023 compared to 2022, with the exception of acquisitions in professional, scientific and technical (PST) activities (Figure 5).

Figure 5: Number of equity stakes (left) and greenfield investments (right) in 2023 and 2022 – Detail by NACE Rev. 2 sectors (top five categories)*

Source: JRC elaboration based on Bureau van Dijk data, extracted on 11/03/2024 from Orbis M&A and Orbis Crossborder Investment. PST stands for professional, scientific and technical activities (NACE Rev. 2, section M), it contains among other things R&D facilities. ICT stands for Information and Communication (NACE Rev. 2, section J). (*) Acquisitions of equity stakes above 10% of the capital of the EU27 business.

In 2023, manufacturing, with a 26% share of foreign acquisitions (496 transactions), surpassed ICT (with a 23% share, or 428 deals) as the main sector of dealmaking activity. This is due to a continuous drop in foreign acquisitions in the ICT sector (-25%) in 2023, compared to 2022, while the decrease in manufacturing was milder (-6.8%) in the same time period. PST activities ranked third, with a 12% share of foreign deals, followed by finance (8.5%) and retail (7.7%). PST activities was the only sectoral category, which experienced a year-on-year increase (+12%) in the number of deals in 2023.

In terms of greenfields, retail related activities accounted for nearly one third (33%) of foreign projects in 2023 (618 projects). Manufacturing became the second most important sector for greenfield investments in 2023, replacing the ICT sector, with a similar share of about 12% of projects. Greenfield investments in the ICT sector also experienced the largest year-on-year decline in number of projects (-59%) compared to 2022, while manufacturing experienced the smallest decline in number of projects (-10%) in the same period.

Further details

More details on the above figures are provided in the accompanying Commission Staff Working Document, Section 1. There, additional evidence is presented on FDI trends per Member State and sector, on the origin of foreign investors in the EU27, and on semiconductors.

[8] The categories used refer to the NACE Rev. 2 Broad Structure, see: https://ec.europa.eu/eurostat/web/nace

CHAPTER 2 – LEGISLATIVE DEVELOPMENTS IN MEMBER STATES IN 2023

The EU FDI Screening Regulation and EU Member States' FDI screening mechanisms

To protect the Union against potentially risky foreign investments from third countries, effective national screening mechanism in all Member States is imperative. Throughout 2023, the European Commission continued to encourage all Member States to adopt and implement national FDI screening mechanisms to ensure that the Commission and all Member States have appropriate tools to identify and address risky transactions, thus contributing to protecting the collective security of the Union. This has become particularly relevant in recent years. For example, in their Joint Communication on a 'European Economic Security Strategy', which aims at minimising risks arising from certain economic flows in the context of increased geopolitical tensions and accelerated technological shifts, the Commission and the High Representative called on all Member States who have not yet implemented national FDI screening mechanisms to do so without further delay.[9]

Furthermore, the European Commission also continued to encourage the alignment of national screening mechanisms and screening practices. It assisted Member States with technical and policy guidance, meetings and information exchange notably on best practices. Yet, noticeable divergences between national screening mechanisms remained, notably regarding what constitutes a formal screening of an FDI (thus triggering the notification of an FDI to the EU cooperation mechanism), the timelines under the national screening procedures, the sectoral coverage of national screening mechanisms and notification requirements by the transaction parties to the national authorities. Addressing these divergences is one of the rationales for the recent legislative proposal of the European Commission further described in Chapter 4.

Overview of Member States FDI screening activities

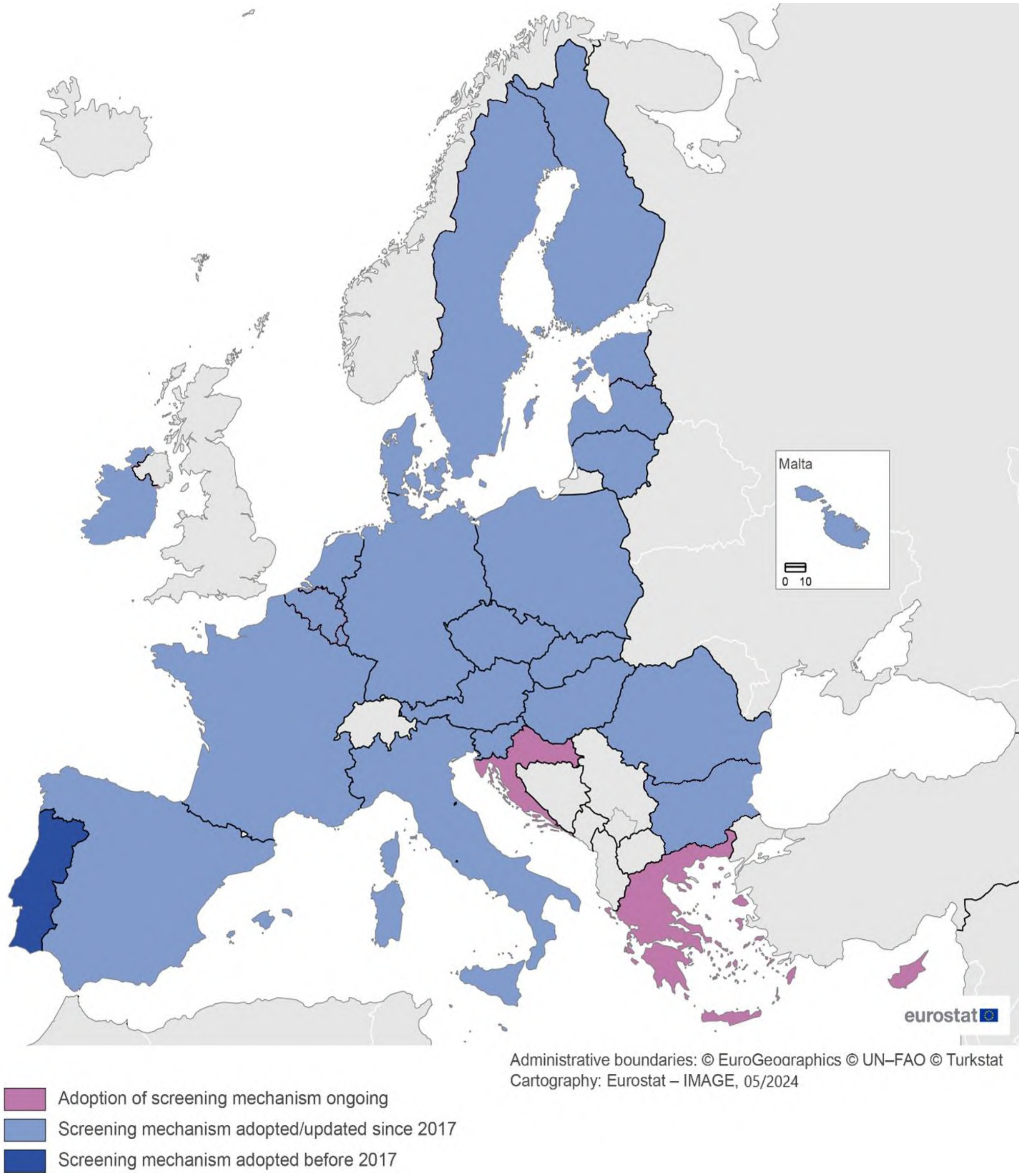
Russia's war of aggression against Ukraine, challenging geopolitical context with ensuing new and emerging risks to security have brought critical (advanced) technologies/sectors and infrastructure even more into focus. Consequently, many Member States have either adopted new national screening mechanisms (7 Member States) or updated and expanded existing ones (10 Member States) in reaction to the evolving circumstances.

In the course of 2023, four Member States without a screening mechanism initiated consultative or legislative processes to establish a national screening mechanism and one Member State published the evaluation of its existing mechanism. By the end of 2023, 23 EU Member States have adopted an FDI screening legislation compared to 14 Member States in 2021 at the time of the entry into force of the EU cooperation mechanism. Furthermore, as indicated below since the

[9] European Commission (2023), Joint communication to the European Parliament, the European Council and the council on "European economic security strategy", JOIN(2023) 20 final.

end of year cut-off date, Bulgaria too, has joined the countries with a system in place (see also map below).

Geographical overview of the legislative situation of EU Member States



Developments in EU Member States in 2023 – FDI screening mechanisms

So far, all 27 EU Member States either:

- had a national FDI screening mechanism in place; or
- adopted a new national FDI screening mechanism; or
- amended an existing mechanism; or
- initiated a consultative or legislative process expected to result in the adoption of a new mechanism or amendments to an existing one.

The following table gives an overview of all 27 Member States' legislative situation and developments by 31 March 2024[10].

National FDI screening mechanism in place (no legislative changes)	Austria, Czechia, Finland, Lithuania, Malta, and Portugal
Amended an existing mechanism	Denmark, France, Germany, Hungary, Italy, Latvia, Netherlands, Poland, Slovenia, and Spain
Adopted a new national FDI screening mechanism	Belgium, Bulgaria, Estonia, Ireland, Luxembourg, Romania, Slovakia, and Sweden
Had a consultative or legislative process expected to result in the adoption of a new mechanism	Croatia, Cyprus, and Greece

Most national legislative developments revolved around four main topics: adopting acts to implement a recent legislation establishing a national FDI screening mechanism, improving screening procedures, expanding covered sectors, and prolonging the validity of temporary national mechanisms.

Adoption process of new FDI screening mechanisms

In Belgium, the FDI screening mechanism adopted in November 2022 became operational in July 2023. In Bulgaria, a screening mechanism was proposed for consideration in the Parliament on 22 June 2023, with a bill amending and supplementing the Investment Promotion Act. The proposal was adopted on 22 February 2024 and the new legislation was promulgated on 6 March 2024. Estonia adopted the Foreign Investment Reliability Assessment Act in January 2023, with an entry into force in September 2023. In Ireland, the Screening of Third Country Transactions Act was enacted in October 2023 and is expected to become operational during the third quarter of 2024. Luxembourg adopted a national screening mechanism in July 2023, which entered into

[10] For more details, please see the accompanying Commission Staff Working Document.

force in September 2023. Slovakia has adopted a new comprehensive screening mechanism on 29 November 2022, which came into force in March 2023. In Sweden, the new FDI screening mechanism entered into force in December 2023.

In 2023, Cyprus finalised the draft legislation establishing an FDI screening mechanism, and the revised draft law is currently under review by the House of Representatives. In Greece, the draft proposal on FDI screening has been amended to include different thresholds triggering a screening procedure and notification requirements. In October 2023, Croatia has formed a working party charged with drafting a legislative proposal to establish an FDI screening mechanism.

Updates of existing FDI screening mechanisms

In Denmark, amendments to the FDI screening mechanism introduced a new case handling process with two distinct phases and expanded the scope of the legislation to tenders that specifically relate to an "Energy Island" project in the Baltic Sea. France prolonged for the second time the obligation for foreign investors to notify investments when acquiring at least 10% of the voting rights of listed companies. Based on the duration and degree of difficulty of each case, Germany introduced fees for screening FDI transactions, and progressively imposed obligatory online submission (since January 2024) of screening applications.

In Hungary, a new Government Decree established the conditions in which the national screening mechanism applies to the sale of assets for the purpose of continuity of Debtor's business operations in a state of emergency. Italy introduced 'urgent provisions to protect users, regarding economic and financial activities and strategic investments' and modified the screening procedure concerning critical technologies. Latvia set an institution responsible for the screening of FDI and further developed screening procedures. The Netherlands adopted the implementing rules of its cross-sectoral screening mechanism (which was adopted in 2022 with an entry into force in June 2023) and initiated a sector-specific screening mechanism for offshore wind farms. Poland added two entries to its national list of entities where foreign investments are subject to mandatory screening. Romania introduced a filing fee for all investors (EU and non-EU) and extended its screening mechanisms to intra-EU investments. Slovenia replaced the temporary screening mechanism set up in 2020 by a new permanent one. Spain adopted a Royal Decree establishing a specific procedure, shortening deadlines and clarifying the scope of the screening mechanism on public security, public order and public health, and amended the screening procedures related to national defence activities and weapons and related materials.

Further details on the legislative developments related to Member States' national screening mechanisms can be found in the accompanying Commission Staff Working Document. A list of notified national screening mechanisms is available on the European Commission's website[11].

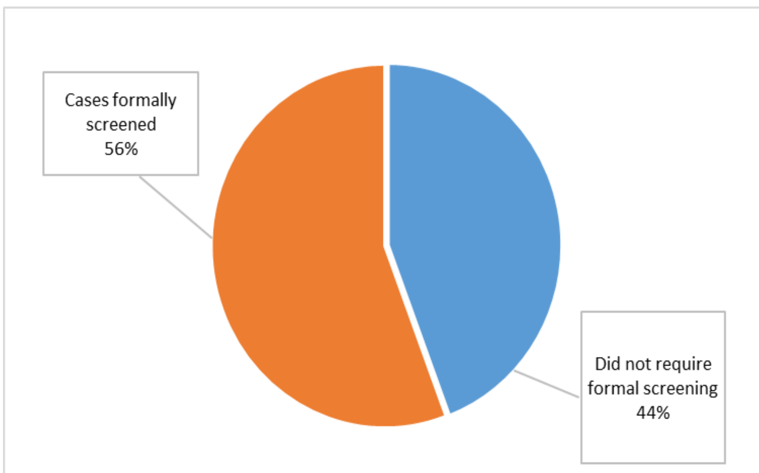
[11] The list of screening mechanisms notified by Member States (dated 28 February 2024) is available under: https://circabc.europa.eu/rest/download/7e72cdb4-65d4-4eb1-910b-bed119c45d47.

CHAPTER 3 - MEMBER STATES' FDI SCREENING ACTIVITIES

The FDI Screening Regulation allows Member States to review FDIs in their territory on grounds of security and public order and to take measures to address specific risks. It has also created a cooperation mechanism between the Commission and screening authorities of Member States for individual FDI transactions. This mechanism makes it possible to exchange information, enabling both the Commission and other Member States to point to possible security or public order risks to other Member States or EU-level programmes arising from an FDI transaction, allowing to assess and mitigate these risks. Yet, the Member State where the investment takes place decides which investments to screen, approve, condition, or block.

This chapter provides aggregated information on national screening activities in 2023 based on Member States' annual reports to the Commission pursuant to Article 5 of the Regulation. All in all, Member States handled a total of 1808 requests for authorisation and ex-officio cases[12]. 56% of these were formally screened while about 44% were deemed ineligible or did not require formal screening.

Figure 6 - Member States' FDI Screening Activity



Source: Member States' reporting.

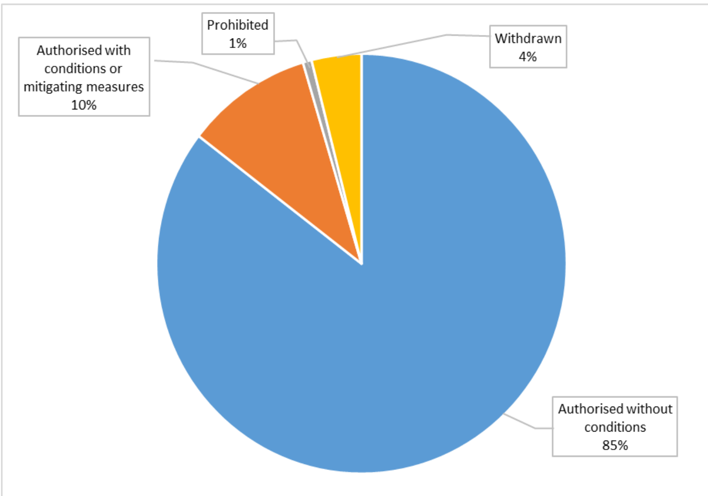
A comparison with last year, shows similar picture, with 55% of the cases formally screened and 45% not requiring formal screening. Out of the cases formally screened in 2023, and for which Member States have reported a decision, the overwhelming majority (85%) was authorised without conditions. This means that the transaction was approved without any action required from the investor. Compared to the previous year, Member States authorised a slightly higher share of formally screened transactions without conditions (this figure was 86% in 2022).

[12] Member States have different screening procedures. So, the cases reported depend on the domestic procedures (scope, eligibility check upfront or later, etc.). For instance, some Member States declared cases ineligible before a formal screening procedure is carried out, while others first formally screened cases and then declared them ineligible. The graphs and numbers reported in this chapter aim at depicting the average behaviour of Member States' screening activities and it is based on the reporting of Member States data.

In parallel, 10% of the decisions involved an approval with conditions or mitigating measures. This proportion is a bit higher compared to 2022, where 9% of cases involved authorisation with conditions or mitigating measures. In these cases, national screening authorities have required certain actions, assurances, and commitments from the investors before approving the planned foreign direct investment.

Finally, national authorities ultimately blocked transactions in 1% of all decided cases (the same as last year). In addition, 4% of the filings was withdrawn by the parties before a formal decision was taken.

Figure 7 – Notified decisions on FDI cases



Source: Member States' reporting.

In summary, the above findings give rise to the following remarks:

- The proportion of formally screened cases stood at 56% of all authorisation requests submitted by the transaction parties to the national authorities and examined by the national authorities at their own initiative. This is a slight increase compared to the previous year (55%).
- Most transactions where a decision was reported were authorised without any conditions (85%), which is a bit lower than in 2022 (86%). This shows that the increase in the number of formally screened transactions has not resulted in a more restrictive investment climate, but it provides a greater awareness for Member States and the Commission of potentially risky FDI.
- As regards authorisations with conditions, the share of cases where mitigating measures were imposed (10%) is slightly higher than in 2022 (9%).
- The share of transactions blocked by Member States remained around 1%, which corresponds to the average in recent years.
- These numbers show, overall, an interesting stability, which confirms that the EU has remained open to FDIs and Member States block only those cases that pose very serious threats to security and public order.

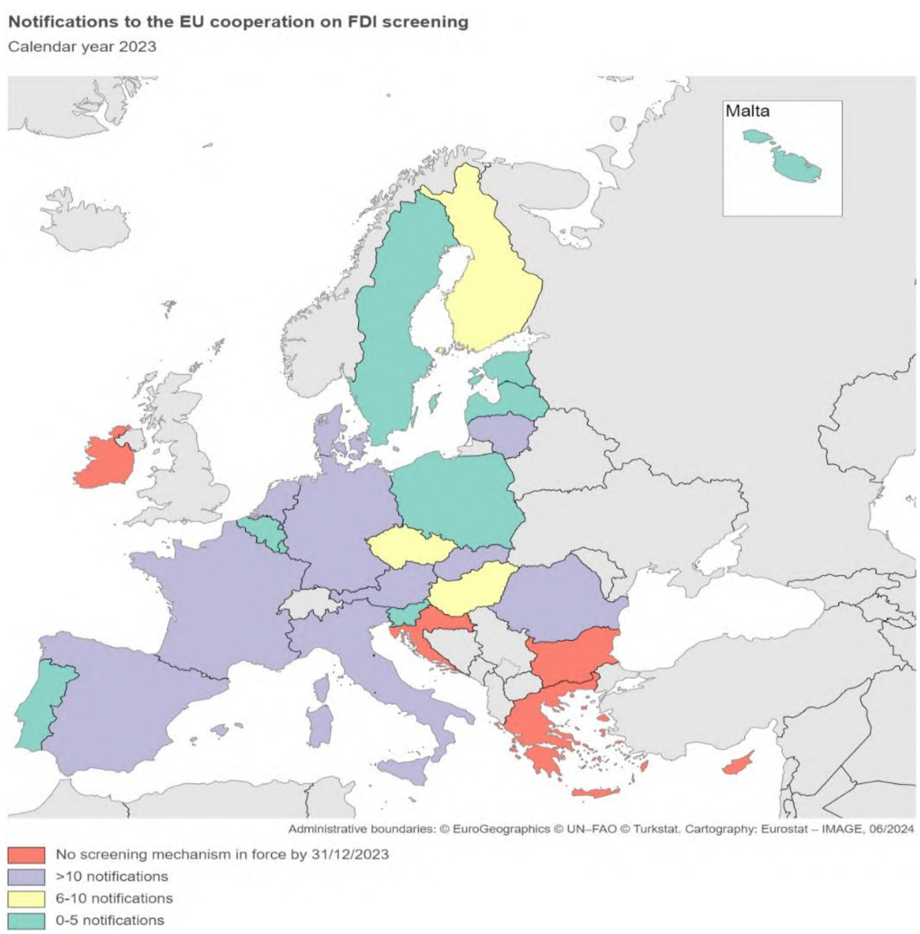
CHAPTER 4 – EU COOPERATION MECHANISM ON FDI SCREENING

1. Notifications and other actions taken under the FDI Screening Regulation

<u>a) Overview of activity in 2023</u>

In 2023, 18 Member States submitted a total of 488 notifications[13], pursuant to Article 6 of the FDI Screening Regulation, compared to 421 notifications submitted by 17 Member States in 2022[14]. Seven Member States, namely Austria, Denmark, France, Germany, Italy, Romania and Spain, were responsible for 85% of those notifications and four Member States accounted for 69% of the notifications.[15] The notified transactions varied greatly in terms of sectors of the target company, value of the transaction and origin of the ultimate investors, among other parameters.

The map below shows the origin of the notifications to the EU cooperation mechanism in 2023.



Source: Member States' reporting.

[13] In the same period, the Commission also made use of the cooperation mechanism on FDI not undergoing screening (Article 7), which is not reflected in the statistics below.

[14] See https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2023)590&lang=en.

[15] In 2022 this share stood at 66%, in 2021 at 70% and in 2020 at 86%.

The map above indicates the number of FDIs notified by Member States to other Member States and the Commission in the framework of the EU cooperation mechanism on FDI Screening. In 2023, out of the 18 Member States with a national screening mechanism in place, 10 Member States submitted more than 10 notifications, two submitted 6-10 notifications and five submitted less than 5 notifications.

Looking at past developments, there has been a continuous increase in the number of notifications per year. In 2021, there have been 414; in 2022 421, and in 2023 488 notifications. This represents an increase of 18% in the 2021-2023 period. Furthermore, this increase is not only because the number of Member States notifying to the cooperation mechanism has increased from 14 in 2021 to 18 in 2023. Keeping notifying countries constant, i.e. counting only countries where data is available for all three years, the increase in notifications amounts to 8%, probably reflecting also the increase in scope of the national screening mechanisms (see Chapter 2 and the Staff Working Document for a description of relevant legislative developments in Member States).

b) Main sectors[16] of FDI notified to the cooperation mechanism

The five sectors with the highest number of transactions in 2023 were Manufacturing[17], ICT[18], Wholesale and retail[19], Financial activities[20] and Professional activities[21], accounting for 23%, 21%, 14%, 11% and 11% of the transactions respectively. This is very similar to last year, when the same sectors (Manufacturing, ICT and Whoesale and Retail) occupied the first three places in the same order.[22] Notifications relating to financial activities on the other hand gained in importance. Finally, notifications in respect to the energy sector accounted for 6% of total notifications and other sectors[23] accounted for 14% in 2023.

[16] According to mainstream approach, the primary sector of activity was selected as the leading indicator. This is also aligned with the information contained in all sectoral charts in the SWD accompanying this annual report.

[17] Manufacturing encompasses activities by companies which are involved in the transformation of materials into new products. For example, this encompasses the manufacturing of: electrical equipment and motors, industrial machinery and equipment, weapons and ammunitions, and pharmaceuticals, etc.

[18] ICT stands for Information and Communication Technologies. It encompasses activities by companies providing essential infrastructures and tools for knowledge creation, sharing and diffusion. For example, this encompasses computer programming, software publishing, data processing and hosting, wireless telecommunication activities, etc.

[19] Wholesale and Retail includes wholesale and retail activities relating to pharmaceutical goods, chemical products, electronic and telecom equipment and supplies, computers, computer peripheral equipment and software, metals and metal ores, etc.

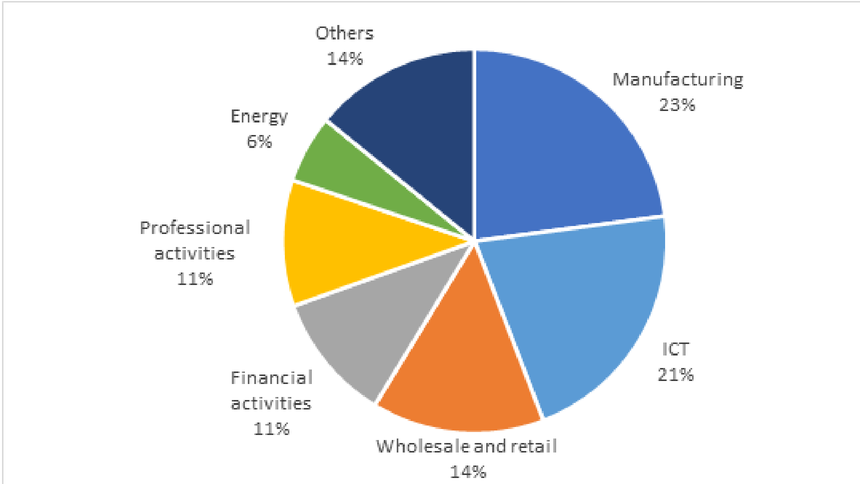
[20] Financial activities encompass activities by holdings, funds or similar actors in the financial sector which aim at acquiring a specific (equity) stake or control in a target company. For example, this encompasses fund management activities, activities of holding companies, financial services, insurance activities, etc.

[21] Professional activities include activities by law and accounting firms, as well as consultancy and engineering activities. For example, this encompasses activities of head offices, market research and public opinion polling, consultancy, research & experimental development on biotechnology, etc.

[22] Note that results are not directly comparable as last year all sectors were counted with equal importance which led to higher number of sectors than transactions.

[23] The category ‘other’ encompasses all other sectors below 5%, notably: transport, administrative activities, health, real estate etc.

Figure 8 - Sectoral breakdown of all notifications in 2023

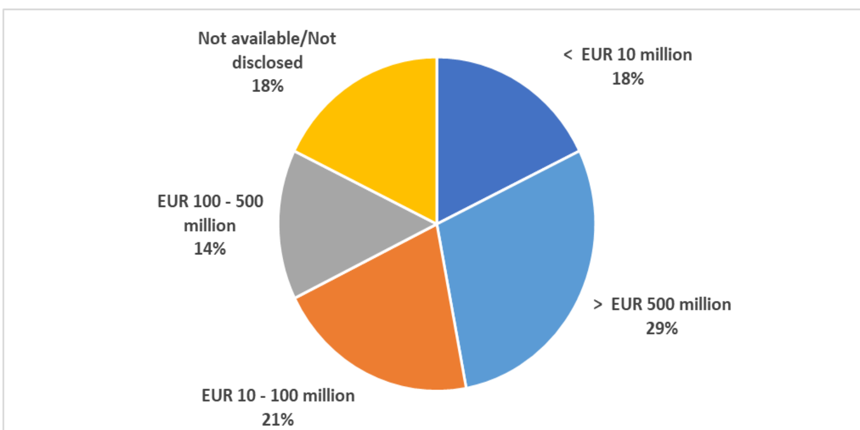


Source: Member States' notifications.

c) Value of FDI notified to the cooperation mechanism

Looking at the transactions' value, the majority (53%) of notified FDIs had a value[24] of less than EUR 500 million (49% in 2022). 29% of the transactions involved a value of EUR 500 million and more (28% in 2022).

Figure 9 – Respective value per notified FDI transaction in 2023[25]



Source: Member States' notifications.

d) Procedure and swiftness in closing FDI cases

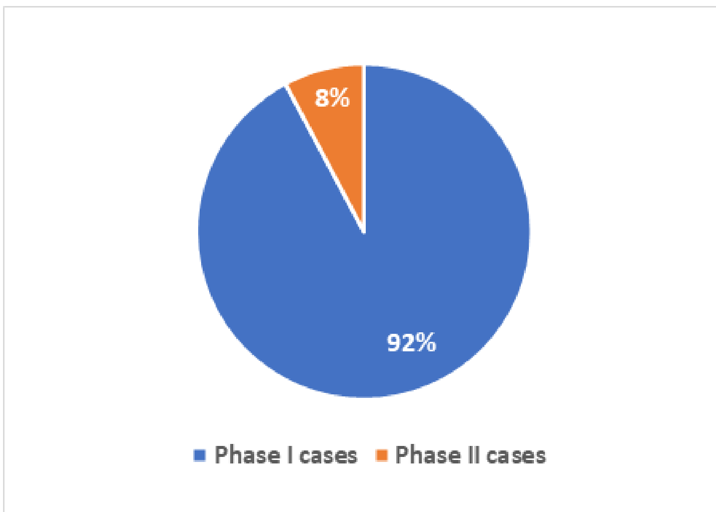
In line with the FDI Screening Regulation, FDI transactions notified by the Member States are assessed by the Commission in two possible phases. All notified transactions undergo a preliminary assessment ("Phase 1"), with only a limited number proceeding to Phase 2, which

[24] The value, where available, relates to the total value of the transaction of which the notified transaction was part.
[25] N/A includes blanks, not available/not disclosed and not applicable.

implies a more detailed assessment of cases that could possibly affect security or public order in more than one Member State, or create risks to projects or programmes of Union interest. Cases in Phase 2 can be concluded with an opinion of the Commission as foreseen in the FDI Screening Regulation. However, such opinions remain confidential pursuant to Article 10 of the Regulation. The opinion may communicate that the Commission considers that the FDI is likely to negatively affect security or public order in more than one Member State or a project or programme of Union interest, and recommend appropriate measures for consideration, or can share relevant information in relation to the FDI undergoing screening to inform the assessment and final decision of the notifying Member State.

In 2023, the Commission closed 92% of the 488 cases in Phase 1 (87% in 2022), the remaining 8% of transactions proceeded to Phase 2 with additional information being requested from the notifying Member State. The Commission issued an opinion in less than 2% of the notified transactions.

Figure 10 – Cases closed in Phases 1 and 2



Source: Member States' notifications.

When opening Phase 2, the Commission requests additional information from the notifying Member State which varies, depending on the transaction and details of the information submitted with the notification[26]. This information is requested to better assess the criticality of the target company and/or the potential threats posed by the foreign investor.

In 2023, Member States participated in the cooperation mechanism inter alia by issuing comments to FDI transactions occurring in another Member State. The share of cases upon

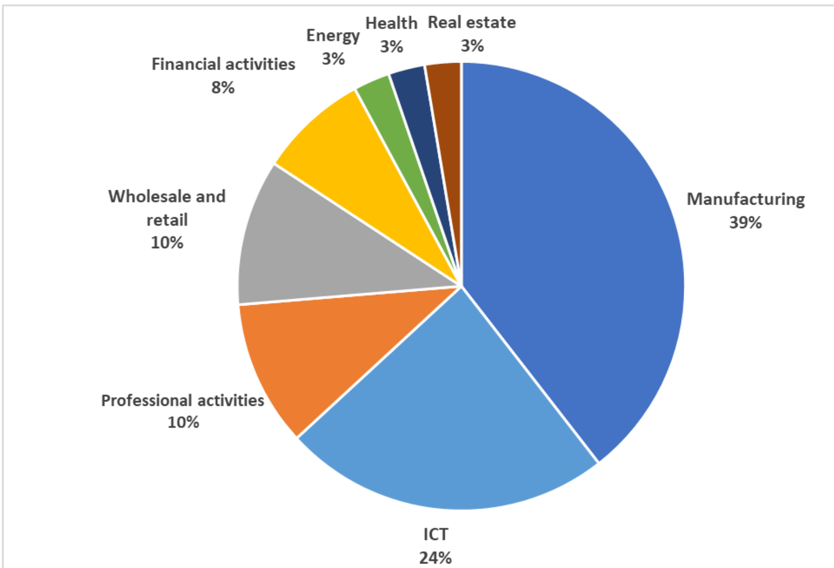
[26] The notification form: request for information from an investor for the purposes of notifications pursuant to Article 6 of the Regulation serves to ensure some degree of uniformity and a minimum level of information about the transaction, the investor and the target company provided in the notification under the Regulation. The form is available at https://policy.trade.ec.europa.eu/enforcement-and-protection/investment-screening_en.

which Member States issued comments amounts to about 6% slighly below the 2022 share of 7%.[27] The share of Member States issuing comments to other Member States remained unchanged at about one third.

e) Main sectors of FDI notified to the cooperation mechanism subject to the Commission's detailed security risk assessment ('Phase 2')

The main sector for Phase 2 was Manufacturing accounting for 39% of all transactions. The second most important sector was ICT grouping almost a quater of all Phase 2 cases (Figure 11). Furthermore, Phase 2 cases regarding Professional activities, Wholesale and retail as well as Financial activities were also important, accounting for 10%, 10% and 8% of the phase 2 cases respectively.

Figure 11 – Phase 2 main targeted sectors in 2023 cases



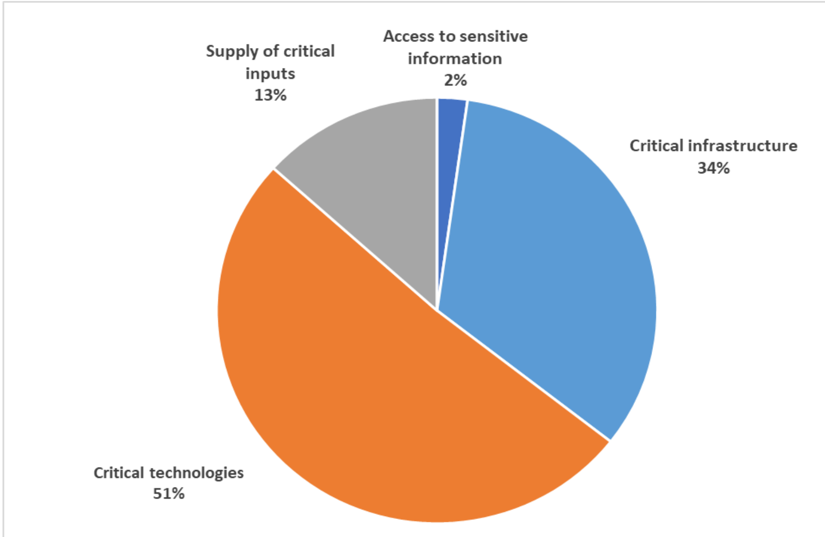
Source: Member States' notifications.

Given the importance of the manufactoring sector, Figure 12 provides an overview of the factors[28] that were used to assess the criticality of the manufacturing sector transactions in respect to security and public order. The factor used most often is when the transaction involved investment in critical techologies accounting for 51% of the total. The second most important factor was when the transaction involved investment in critical infrastructure with 34% followed by supply of critical inputs with 13%. Finally, access to sensitive information (including personal data) accounted for only 2% of the total.

[27] Please note that several countries can issue a comment about the same transaction; this was the case for several transactions.

[28] These factors are provided in Article 4 of the FDI Screening Regulation. Note that for one transaction there can be several factors used to assess the criticality of a given FDI for security and public order.

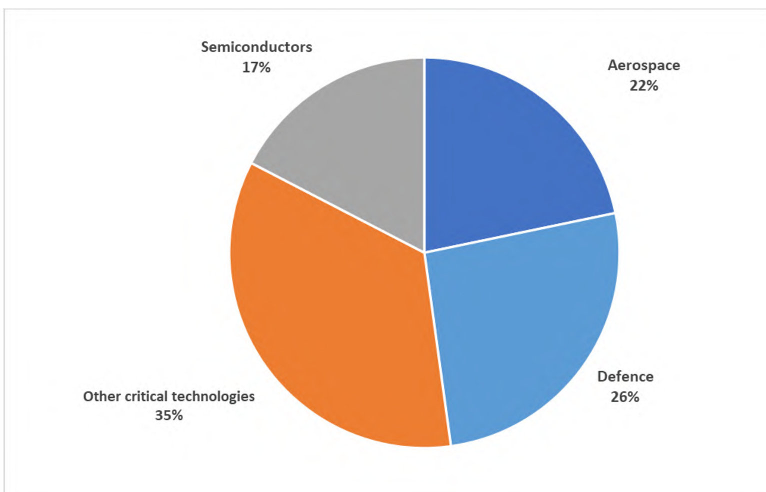
Figure 12 – Factors leading to Phase 2 cases in manufacturing



Source: Member States' notifications

Looking into the notifications related to critical technologies subject to Phase 2 in more detail (as depicted by Figure 13), Defence related activities accounted for 26% of these cases, followed by Aerospace with 22% and Semiconductors with 17%. The remaining other critical technologies accounted for 35% of the total. These included cybersecurity, artificial intelligence, nuclear technologies, bio- and nanotechnologies.

Figure 13 – Types of critical technologies in Phase 2 cases



Source: Member States' notifications

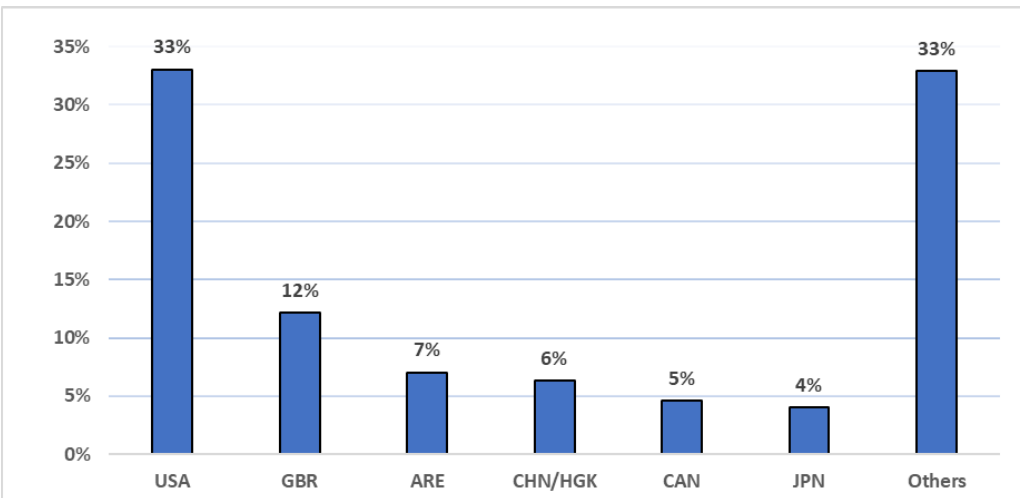
In 2023, five Member States accounted for over 60% of the Phase 2 cases, which represents a decrease in the concentration compared to 2022, when the top five Member States notifying cases leading to Phase 2 for the Commission accounted for 91% of the Phase 2 cases.

f) Origin of ultimate investors in FDI notified to the cooperation mechanism

Of the 488 cases notified in 2023, the six main jurisdictions of origin were the USA, the UK, United Arab Emirates, China (including Hong Kong), Canada and Japan. Compared to 2022, the share of the US as an investor slightly increased from 32% in 2022 to 33% of all transactions in 2023. Similarly, in terms of notified transactions, UK firms accounted in 2023 for a larger share of 11% compared to 8% in 2022. Noteworthy is the rise of transactions from the United Arab Emirates, whose share more than doubled in total transactions from 3% in 2022 to 7% in 2023. FDIs from China (including Hong Kong) ranked 4th in 2023 in terms of total number of transactions with a share of 6% (up slightly from 5,4% in 2022).[29] Lastly, investors from Canada and Japan had a share of 5% and 4% in total transactions respectively.

33%[30] of notified cases originated from jurisdictions other than the top six compared to 2022 where this share was 41%. This marks a clear increase in the concentration of origin of the top six ultimate investors. This is also reflected in the fact that in 2023 the ultimate investors originated from 43 different jurisdictions, while in 2022 we observed ultimate investors from 52 countries.

Figure 14 – Origin of Ultimate Investors in 2023 cases



Source: Member States' notifications.

g) Multi-jurisdiction notifications to the cooperation mechanism and their main sector

Of all cases notified in 2023, 36% of the notifications concerned transactions undergoing screening in several Member States (compared to 29%, 28% and 20% in the first, second and

[29] Note: when looking into transactions involving investors from China (without Hong Kong), their share remained unchanged compared to 2022 with 5% of total transactions.

[30] Countries with non-negligible share among others consist of Cayman Islands, Singapore and Switzerland with a share of 2% each. FDI from Russia and Belarus notified to the cooperation mechanism accounted for 1.6% of the total remaining at previous year's levels.

third annual report)[31]. The main sectors subject to such notifications were: ICT with a share of 23%, Manufacturing with a share of 21%, Wholesale and retail with a share of 19%, Professional activities with a share of 13%, and Energy with a share of 5%. Other sectors among which Administrative activities, the Financial, Health and Transport sector accounted for 20% of the multi-jurisdiction transactions.

Table – Multi-jurisdiction FDI transactions and main sectors

ICT 23%
Manufacturing 21%
Wholesale and retail 19%
Professional activities 13%
Energy 5%
Others 20%

Source: Member States' notifications

h) Cooperation on FDIs not undergoing screening

The FDI Screening Regulation allows Member States and the Commission to exchange information on FDIs not notified to the cooperation mechanism and in case security or public order risks are identified by the other Member States or the Commission, comments or an opinion may be provided. In 2023, the Commission made use, although in a very limited manner, of this procedure to enquire about transactions not undergoing screening.

Conclusions in respect to the EU cooperation mechanism on FDI screening

First and foremost, FDI screening continued to be an indispensible tool in contributing to protecting the collective security of the EU against potentially risky transactions from third countries.

Second, the relevance of the EU cooperation on FDI screening continues to increase, especially in the tense geopolitical context. This is also underpinnned by a growing number of cases notified to the cooperation mechanism with 67 more transactions notified by EU Member States in 2023 compared to 2022. Furthermore, there is an increase of 18% in notified cases in the 2021-2023 period. At the same time, the concentration of the origin of notifications remained rather high with 85% of all notifications originating from seven Member States. It is also noteworthy that not all Member States with a screening mechanism notified at least one transaction to the cooperation mechanism in 2023.

Third, against the backdrop of the Union's strong commitment to an open global investment environment, the Commission continued using the cooperation mechanism as a limited and targeted tool for exceptional cases where an FDI is likely to negatively affect security or public order. Of the 488 cases notified in 2023, the vast majority (92%) were closed in Phase 1, i.e.

[31] "Multi-jurisdiction FDI transactions" refers in this context to FDI transactions where the target company is a corporate group with a presence in more than one Member States (and possibly also third countries), e.g., by way of subsidiaries in more than one Member State. Such deals may be notified by more than one Member State if the transaction falls under the scope of their screening mechanism and they initiate its formal screening.

within 15 days following the notification by the screening Member States, with only 8% of the notified cases undergoing a detailed security risk assessment by the Commission. This shows an increase in the number and share of notified cases that the Commission found non-critical compared to last year (87% of the notifications). In 2023, Commission's opinions were issued in less than 2% of the cases.

Fourth, Manufacturing continues to be the most important sector for Phase 2 cases accounting for nearly 40% of the notified transactions in 2023. Looking at the determining factors behind the need for the in-depth Phase 2 security risk assessments, we conclude that the relevance of the target for 'critical technologies' was the factor triggering further assessment in most of the cases (51%). Looking into the notifications related to critical technologies subject to Phase 2 in more details, reveals that defence related activities accounted for 26% of these cases, followed by aerospace with 22% and semiconductors with 17%.

Fifth, most investors continued to be from the same top two jurisdictions - the US and the UK - whose share in total increased from 32% and 8% in 2022 to 33% and 12% in 2023 respectivelly. At the same time there has been more than doubling of the share of investors originating from the United Arab Emirates from 3% in 2022 to 7% in 2023. Lastly, the share of ultimate investors originating in China remained constant.

Finally, we observe a growing number of multi-jurisdiction deals, accounting for more than one third of all notifications in 2023. The Commission's proposal for the revision of the FDI Screening Regulation described in the next section offers, among others, a structural solution to the efficient assessment of multi-jurisdiction transactions, compared to the current ad hoc informal arrangements.

2. Recent steps in FDI screening and looking ahead: proposed revision of the FDI Screening Regulation

Following up on the European Economic Security Strategy from June 2023, on 24 January 2024, the Commission adopted five initiatives[32] to strengthen the EU's economic security at a time of growing geopolitical tensions. One of these initiatives is a legislative proposal to revise the current FDI Screening Regulation.

This legislative proposal builds on the experience gained by the Commission and Member States with reviewing over 1 200 FDI transactions notified by Member States over the previous three years under the existing FDI Screening Regulation. It also builds on the results of the commissioned OECD study[33], an extensive evaluation[34] of the functioning of the current regulation and a special report of the European Court of Auditors[35].

[32] https://ec.europa.eu/commission/presscorner/detail/en/ip_24_363
[33] https://www.oecd.org/en/publications/framework-for-screening-foreign-direct-investment-into-the-eu_f75ec890-en.html
[34] https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2024)23&lang=en
[35] https://policy.trade.ec.europa.eu/enforcement-and-protection/investment-screening_en

The Commission's evaluation found that the Regulation has had a positive impact on protecting security and public order from risky FDI in the EU. Importantly, it also showed that the Regulation has not had chilling effects on the flow of FDI into the EU. That said, several shortcomings were identified that result in blind spots in the system (such as the fact that there are still Member States without a screening mechanism or that investments by foreign-controlled subsidiaries or businesses within the EU fall outside the cooperation mechanism). Furthermore, while the cooperation between all national authorities and the Commission has played a major role in raising awareness, identifying, assessing and addressing risky FDI transactions that would otherwise have been missed, its implementation has presented a number of challenges, such as the management of transactions involving the same business in several Member States ('multi-jurisdiction notifications'). Screening of these transactions which already make up more than one third of notifications (2023) created an increased regulatory complexity for the transactions' parties which called for more synchronised and coordinated handling of these cases by the national screening authorities. Finally, existing differences in national laws result in regulatory fragmentation as national screening mechanisms differ in respect to their scope (the types of activities and sectors covered), their procedural deadlines (duration of assessment and decision by the national authority), procedural requirements, and the criteria applied for assessing security and public order risks. Such fragmentation, which is likely to increase with the growing number of Member States maintaining a screening mechanism, can seriously undermine the effectiveness and efficiency of the cooperation mechanism, can create obstacles in the internal market and reduce the attractiveness of the EU to foreign investments.

Ultimately, these shortcomings undermine the ability of the Commission and Member States to identify and address a potentially wide scope of risky transactions. The legislative proposal for the revision of the Regulation[36] aims to address these shortcomings and improve the efficiency of the system by:

- Ensuring that all Member States have a screening mechanism in place, with better harmonised national rules while leaving room for Member States to take account of their unique national security considerations in the design of their screening mechanisms.
- Identifying a minimum sectoral scope where all Member States must screen foreign investments. This includes EU strategic assets, which are listed in Annex I to the proposed regulation as 'projects and programmes of Union interest', and certain critical goods, technologies and entities where a foreign investment may harm our security or public order, which are listed in Annex II to the proposal.
- Extending EU screening to investments by EU investors that are ultimately controlled by individuals or businesses from a non-EU country.
- Procedural improvements to the cooperation mechanism, as well as increasing the accountability of the screening Member State vis-à-vis the Commission and other Member States.

[36] https://policy.trade.ec.europa.eu/enforcement-and-protection/investment-screening_en

Furthermore, the proposal takes into account geopolitical developments that have happened since the current Regulation entered into force. For example, following Russia's military aggression against Ukraine and ensuing comprehensive set of sanctions against Russia aiming to weaken its economic base and deprive of critical technologies, the effectiveness of the sanctions is measured only by their successful implementation and non-circumvention. Therefore, to close any potential loopholes in the implementation of sanctions also in the context of the FDI screening and for greater vigilance towards potentially risky investments from sanctioned persons or entities into and within the Single Market, all Member States would be required to assess whether the foreign investor is owned or controlled by, or acting on behalf of, a sanctioned person or entity, or whether the foreign investor is likely to facilitate the development of a third country's military capabilities.

While these changes would significantly improve the screening of foreign investments in the EU, including the transparency and predictability of screening mechanisms and procedures for businesses, the key principles of investment screening in the EU would remain unchanged. Firstly, the grounds for screening will remain risks to security and public order, thus investment screening will remain a limited and targeted tool for exceptional cases where a foreign investment poses risks to our security or public order. It does not change nor undermine the EU's openness to foreign investments. Secondly, the proposal does not change the current division of responsibilities whereby the Member State where the transaction takes place investigates and decides on the transaction, and the Commission and the other Member States can flag concerns. Thirdly, the main purposes of the cooperation mechanism between Member States and the Commission will remain the protection of EU strategic assets and the identification of security or public order risks likely to negatively affect more than one Member State.

The Council started technical discussions on the proposal in January 2024 and significant work has been done under the Belgian Presidency to clarify its key aspects. Following the elections in June 2024, the incoming European Parliament will now start its deliberations on the proposal. The European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) were consulted on the proposal. EESC adopted its opinion on 10th July 2024[37], while the CoR is expected to adopt its opinion in Q4 2024.

[37] https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/screening-foreign-investments-union