

# Foreign Investment Screening:

## European Union

The European Union (EU) framework for foreign direct investment (FDI) screening is set out in Regulation 2019/452 (as amended, the [FDI Regulation](#)). The FDI Regulation does not create an EU-level FDI screening mechanism but sets out minimum requirements for Member States' FDI screening mechanisms and creates a framework for the European Commission (EC) and national authorities to share information and views

Although the host country has the final say, the EC and other interested Member States may issue comments and opinions on transactions involving FDI in another Member State's territory, and the host Member State must give those comments and opinions "due consideration." In the case of investments deemed to be of "Union interest," the EC will have greater authority, as host Member States will have to take "utmost account" of EC opinions and explain any non-compliance.

The FDI Regulation covers investments by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the target company, including investments that enable effective participation in the management or control of the target, but excluding "portfolio investments." Foreign investor means a natural person or business ("undertaking") of a non-EU country.

Under the FDI Regulation, Member States are not required to maintain FDI screening mechanisms, but those that do must ensure that any such regimes comply with FDI Regulation requirements. The FDI Regulation requires that national FDI screening mechanisms be transparent and not discriminate between third countries, and Member States will have to set out the circumstances triggering the screening, the grounds for screening and detailed procedural rules. Member States must

establish timeframes for issuing screening decisions that allow them to take into account the comments and opinions of Member States and the EC. Confidential information must be protected, and foreign investors and other parties concerned must have the possibility to seek judicial redress against screening decisions of the national authorities.

The FDI Regulation also sets out a uniform set of areas for screening by Member State authorities, including:

- critical infrastructure (including energy, transport, water, health, communications, media, data processing or storage, aerospace, defense, electoral or financial infrastructure, as well as sensitive facilities and investments in land and real estate crucial for the use of such infrastructure);
- critical technologies and dual use items (including artificial intelligence, robotics, semiconductors, cybersecurity, quantum, aerospace, defense, energy storage, and nuclear technologies, nanotechnologies and biotechnologies);
- supply of critical inputs (including energy or raw materials, as well as food security);

- access to or the ability to control sensitive information (including personal data); and
- freedom and pluralism of the media.

The EC has published a number of documents providing further insight into the application of the FDI Regulation, including [frequently asked questions](#), a [notification form](#), and two sets of guidelines on the application of the FDI Regulation, one in response to the [COVID-19](#) crisis and another relating to sanctions imposed on [Russia and Belarus](#) following Russia's invasion of Ukraine.

The Commission has also published two annual reports, the second in [September 2022](#) and the first in [November 2021](#). According to the 2022 annual report, 13 Member States submitted a total of 414

notifications pursuant to the FDI Regulation's cooperation mechanism in 2021. The Commission closed 86 per cent in Phase 1, with 11 per cent proceeding to Phase 2 (3 per cent were still ongoing). Manufacturing (especially defense and aerospace) and information, communications and technology accounted for a significant majority of Phase 2 cases (44 per cent and 32 per cent, respectively). Where a decision was reported, 73 per cent were approved without conditions. 23 per cent of decided cases entailed mitigating measures (a significant increase compared to 12 per cent in the first report). 1 per cent of decided transactions were blocked

## Contacts



### Jay Modrall

Senior Counsel

+32 2 237 61 47

Jay.Modrall@nortonrosefulbright.com



Law around the world

[nortonrosefulbright.com](https://www.nortonrosefulbright.com)