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Updates on Foreign Direct Investments: The European Commission Publishes its Fourth Annual Report on the Screening of Foreign Direct Investments in the European Union and Plans to Revise the EU FDI Screening Regulation

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On 17 October 2024, the European Commission (EC) published its Fourth Annual Report on the screening of foreign direct investments (FDI) into the Union (Fourth Annual Report), which is an annual update of the FDI reviews undertaken at the EU level under the EU cooperation mechanism on FDI screening (EU FDI mechanism).

Despite the decline in the number of foreign transactions into the European Union for most EU Member States in 2023 compared to 2022, the United States remains the primary foreign investor into the European Union in 2023, followed by the United Kingdom.

It is noteworthy that as of 2024, 24 EU Member States have FDI screening mechanisms in place, up from only 11 in 2017. The only three EU jurisdictions that do not yet have FDI screening mechanisms (i.e., Croatia, Cyprus, and Greece) have taken concrete steps to this effect. Indeed, in recent years, and particularly after the adoption of the EU FDI mechanism, many EU Member States have either adopted new national FDI screening mechanisms or updated and expanded existing ones in reaction to evolving geopolitical circumstances.

Background on the EU FDI Screening Regulation

The EU FDI mechanism was originally established in October 2020 through the EU Regulation 2019/452 establishing a framework for the screening of foreign direct investments into the European Union (EU FDI Screening Regulation) amid heightened concerns that the Covid-19 crisis would lead to predatory acquisitions of undervalued EU companies during the pandemic. Contrary to what its name could suggest, the EU FDI Screening Regulation is not a centralized system of FDI review at the EU level and FDI reviews remain national within the European Union. However, the EC, through the EU FDI Screening Regulation, has sought to accomplish the following: (1) encourage EU Member States to adopt their own FDI regimes; (2) set up a cooperation framework between the EC and EU Member States for FDI reviews; and (3) set out the minimum requirements that national FDI regimes must meet in terms of security and public order.

Key Takeaways from the Fourth Annual Report

In 2023, the EU Member States handled a total of 1,808 requests for authorization and ex-officio cases, out of which 56% were formally screened, while approximately 44% were deemed ineligible or did not require formal screening. Out of the cases formally screened in 2023, the overwhelming majority (85%) were unconditionally cleared, while 10% of the cases required conditions or mitigating measures, consisting notably of certain commitments imposed by the national FDI authorities as a condition for clearing the investment. National FDI authorities ultimately blocked transactions in 1% of all decided cases and the remaining 4% of the filings were withdrawn by the parties before a formal decision was taken.

The number of foreign transactions into the European Union showed generally a decline for most EU Member States in 2023 compared to 2022, with the exception of Ireland (+4.4%), Poland (+70%), and Finland (+33%).

The vast majority of notifications submitted to the EC under the EU FDI mechanism remains concentrated in a sub-set of Member States. In 2023, the main destinations for FDI notifications in the European Union were Germany (19%), Spain (17%), France (13%), Italy (7.9%), and Ireland (7.6%).

The foreign investments notified by EU Member States to the EC through the EU FDI mechanism mainly originated from six countries: the United States (33%), the United Kingdom (12%), the United Arab Emirates (7%), China (including Hong-Kong) (6%), Canada (5%), and Japan (4%).

The most targeted sectors in terms of FDI were manufacturing (26%); information and communications technologies (23%); professional, scientific, and technical activities (12%); finance (8.5%); and retail (7.7%).

Looking Forward: The Revision of the EU FDI Screening Regulation

Although the large majority of EU Member States have adopted national FDI screening mechanisms, the EU FDI regime is still far from harmonized. The same type of asset or business may warrant different treatment across the reviewing FDI authorities in the European Union, both in terms of the substantive review and the review period.

In January 2024, the EC presented a legislative proposal for the revision of the EU FDI Screening Regulation to address some of the shortcomings identified in the current regime, namely by:

1. Ensuring that all 27 EU Member States have a national screening mechanism in place, with better harmonized national rules, while leaving room for EU Member States to take account of their unique national security considerations in the design of their screening mechanisms;
2. Identifying a minimum sectoral scope where all EU Member States must screen foreign investments, including strategic assets, technologies, and entities where a foreign investment threatens harm to the European Union’s security or public order; and

3. Implementing procedural changes to improve the EU FDI mechanism and increasing the accountability of the EU Member State in charge of the screening to the EC and the other EU Member States.

The proposal plans to make it mandatory for all EU Member States to have a national FDI screening mechanism in place and to introduce a minimum level of harmonization of national screening laws across the European Union while adopting procedural improvements to the EU FDI mechanism.

The proposal is currently following the EU legislative process, during which it will be reviewed and possibly revised by the European Parliament and the Council of the European Union. In this vein, French S&D (socialist) MEP Raphaël Glucksmann was recently confirmed to act as the European Parliament's lead lawmaker (rapporteur) for the review of the EU FDI Screening Regulation. A precise timeline for the legislation's adoption is not yet available.

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