European
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Reports from the Commission to the European Parliament and the Council

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

and

Report on the implementation of Regulation (EU) 2021/821 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items

Trade

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Foreword by Executive Vice President Valdis Dombrovskis

Export Controls and Foreign Direct Investment (FDI) Screening are essential tools in the EU trade toolbox.

Indeed, the necessity of sharpening these tools increased in recent years, to help us address a highly volatile global environment and escalating security challenges.

The need for a more coordinated approach to EU-level FDI screening arose in response to the changing nature and profile of foreign investors in the EU single market.

Specifically, two blind spots existed under the previous system, whereby FDI screening was exclusively carried out by EU Member States, without any centralised coordination at EU level.

This approach was disregarding the fact that a particular FDI may have implications in more than one EU Member State – both given the highly integrated nature of the Internal Market, as well as the possible presence of a target company in more than one EU Member State. Moreover, there was no assessment undertaken of the risk from certain types of FDI for projects or programmes of particular interest to the EU.

In relation to export controls, the factors motivating our reflection were: a rapidly changing security environment, the emergence of unprecedented new technologies, and the increasing complexity of global value chains.

Accordingly, we have upgraded our Export Controls Regulation and created a new FDI Screening Framework. The goal here is clear: to provide adequate tools supporting strategic trade and investment controls for security in the EU.

We wish to ensure that investments into - and exports of - critical EU assets, including certain technology, goods and infrastructure, are carefully monitored for potential risks or misuse.

While EU-level FDI screening is a novel development, the new Export Control Regulation marks a further important shift, allowing the EU to become a real player in this policy area.

The two Annual Reports reflect the EU's new level of action and determination. Importantly, both reports clearly indicate that the new tools do not change the EU’s widely recognised openness to FDI and trade. The EU welcomes FDI and will continue to promote dual-use exports.

Our intentions are transparent: trade and investment must be consistent with the EU's values and supportive of human rights and international security. Therefore, the two Regulations give us a platform to act decisively when we are faced with risks to security, public order and human rights.

Close cooperation with Member States is vital for the effective implementation and enforcement of both tools. Spurred on by cooperation at EU level, the vast majority of Member States have now either adopted or updated a national FDI screening mechanism.

Looking at the global picture, our commitment to working with our partners around the world means that we will seek cooperation with like-minded countries on both export controls and FDI screening, where relevant.

And we will be agile: given current volatility at global level, we stand ready to adjust our tools, when and if needed, to allow us to react swiftly and decisively when our security and public order may be at risk.

In summary, an assertive EU is one that stands up for its rights, without ever losing sight of its values, and these reports explain this approach.

Valdis DOMBROVSKIS
Executive Vice President of the European Commission
for an Economy that works for people
23 November 2021

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FIRST ANNUAL REPORT ON THE SCREENING OF FOREIGN DIRECT INVESTMENTS INTO THE UNION

Introduction

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

Prior to the entry into force of the FDI Screening Regulation on 11 October 2020, there was no EU-wide formalised cooperation among Member States and the European Commission on these matters. The European Commission had no role in the screening of FDI into the EU.

The past years have seen a clear change in investor profiles and investment patterns, i.e. increasingly non-OECD investors, occasionally with government backing or direction, whose motivation for a particular investment might not always be exclusively commercial ([1]). The FDI Screening Regulation - and individual EU Member State screening legislation and mechanisms - reflect a strong focus on protecting security or public order, and, a strong awareness of the criticality of certain investment targets, e.g. critical infrastructure and inputs, including certain technologies, certain sectors such as the health sector, and the risks that investments by certain investors may pose.

This Report 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.

This first Annual Report, based on the reports by the 27 Member States and other sources, confirms the clear value-added of the Regulation and the cooperation mechanism.

The Report consists of four Chapters:

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

This Annual Report is adopted simultaneously with the Annual Report on Dual Use Export Controls. Both FDI Screening and Export Controls are important tools for strategic trade and investment controls in order to ensure security in the European Union.

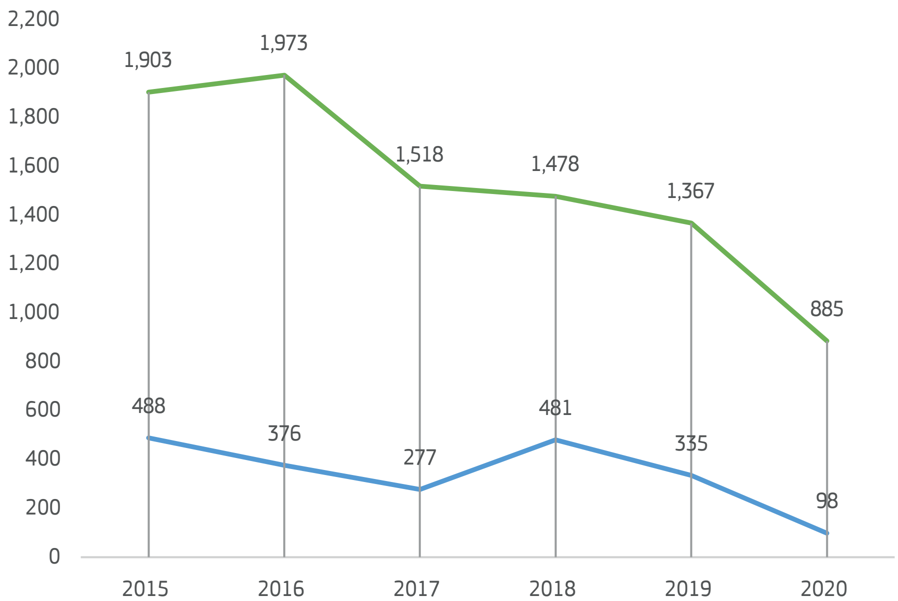
([1]) For this, see e.g. Welcoming Foreign Direct Investment while Protecting Essential Interests, COM(2017) 494 final – 13 September 2017.

CHAPTER 1
Foreign direct investment into the European Union – Trends and figures (2)

The particular characteristics of 2020, and their impact on FDI, including for the European Union, are best understood when placed within a broader time-frame (3). This allows a contrast against both the pre-COVID-19 pandemic environment and developments, as well as the indications, of some rebound in economic activity globally for the first quarter of 2021, including FDI transactions.

In 2020, as shown in *Figure 1* below, global FDI flows fell sharply to €885bn, meaning 35% less than in 2019, which was already significantly lower than the 2018 levels (4). In the EU, the COVID-19 pandemic produced even harsher effects when compared to the world average, with inward FDI falling by 71% to €98bn in 2020, down from €335bn in 2019. In 2020 inward FDI accounted for a mere 0.7% of EU27 GDP, sharply down from 3.6% in 2018 (5).

Figure 1: World and EU FDI flow



Source: OECD data, extracted on 20 May 2021.

The word “uneven” captures developments well. The negative impact on FDI activity has been uneven depending on the origin of the foreign investor, the host EU Member State, and the sectors at issue (see *Figures 2* and *3* and *Table 1* below, which zoom in on mergers and acquisitions deals in the EU (6)). In

(2) This Chapter covers the period from 1 January 2019 through 31 March 2021

(3) For FDI flows from National Account figures (*Figure 1*) the time window 2015-2020 allows to see the effect of COVID-19 within an already decreasing trend in flows. The rest of the Chapter, based on the number of deals, covers the time-period of January 2019 through first quarter of 2021.

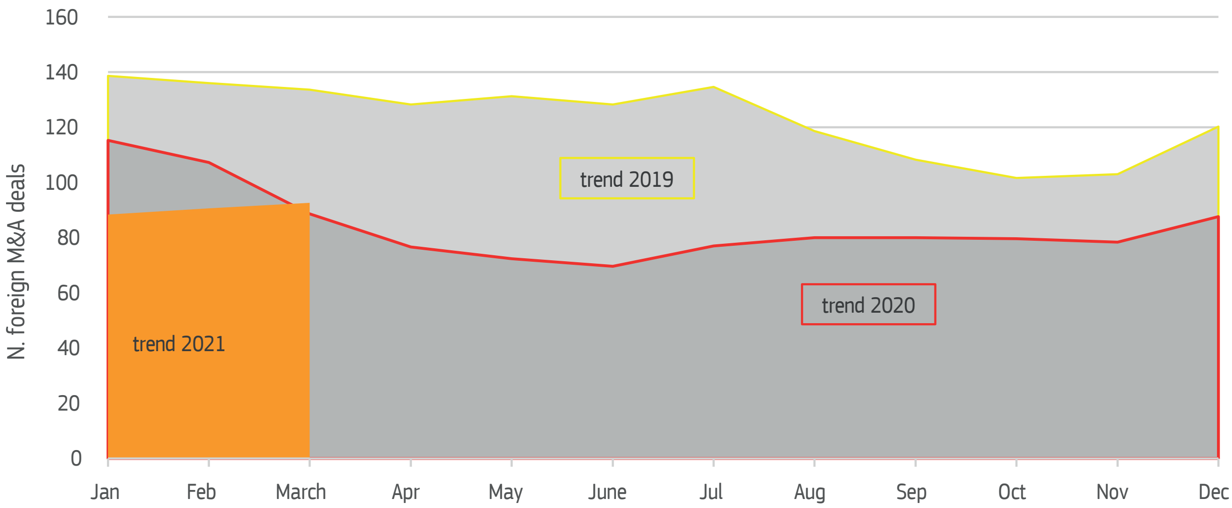
(4) Global FDI flows corresponds to the inflows FDI value reported by the OECD.

(5) Source: OECD, data extracted in May 2021.

(6) The terms *deals* and *transaction* are used interchangeably when referring to mergers and acquisitions (henceforth M&A).

2020, 34% fewer foreign (7) M&A deals were announced as compared to 2019. Dealmaking recovered slowly by end-2020 and in the first quarter of 2021 (+4.5% with respect to the first quarter of 2020), but remained 30% below the 2019 level (*Figure 2*).

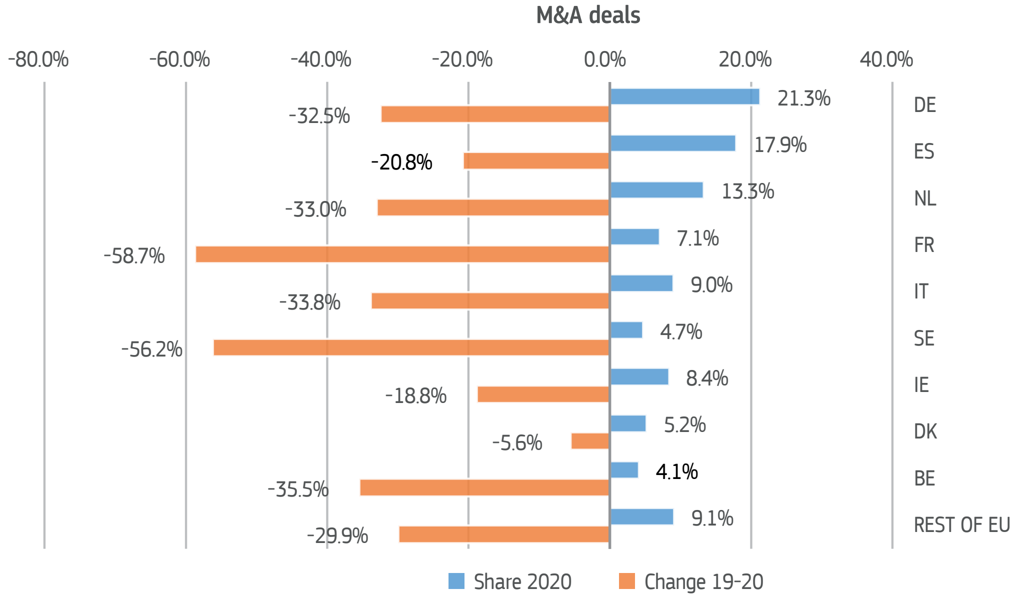
Figure 2: General trends of foreign M&A deals into the EU from January 2019 to March 2021



Source: JRC calculations on Bureau van Dijk data extracted on 6 May 2021. Trend refers to 3-months rolling average. Foreign M&A deals indicate deals where the investor is ultimately owned by a non-EU entity.

All EU Member States saw a drop in the number of M&A transactions (*Figure 3*), with France and Sweden particularly affected. Germany, with a more contained drop in the number of M&A transactions, witnessed reduced Chinese and US investments, while in Spain and the Netherlands deals from EFTA countries and from Korea and Japan lost ground in 2020 as compared to 2019.

Figure 3: Number of foreign M&A deals by target EU country: share over the total in 2020 and percentage change with respect to 2019.



Source: JRC calculations on Bureau van Dijk data extracted on 6 May 2021.

(7) The term *foreign*, when associated to M&A deals or to greenfield projects, refers to transactions made by non-EU investors in Europe. An Investor is classified as non-EU when it is majority owned by a non-EU entity (person or company). In the absence of a majority ownership, the location of headquarters will define the nationality of the investor.

A large share of foreign investments in Europe in 2020 originated in the United States (US) and Canada, with nearly 35% of M&A transactions in the EU, followed by the United Kingdom (UK) with 30.5% ([8]). EFTA countries follow next with 12.1% (with 7.5% from Switzerland). China, with 2.5% (down from 4% in 2019), was the fourth foreign investor in the EU in 2020 (Table 1) ([9]).

Table 1. Foreign M&A transactions in 2020 by nationality of the investor's ultimate owner. Percentage change in 2020 as compared to 2019, and share over total in 2020.

	Percentage change 2020 over 2019	Share over total (in %), 2020
USA and CAN	-35	34.9
UK	-21	30.5
EFTA	-25	12.1
Offshores	-34	6.9
Developed Asia	-47	5.6
China	-63	2.5
Central & S. America	-37	1.7
India	-44	1.4
AUS and NZ	-50	1.2
Gulf Coop Countries	0	1.2
Turkey and other ME	-50	0.9
Other Asia	-73	0.4
Russian Federation	-83	0.1
Rest of the World	-54	0.6

Source: JRC calculations on Bureau van Dijk data extracted on 6 May 2021 ([10])

While accounting for a relatively small share of deals, Chinese outward investments into Europe have shown the sharpest reduction starting from November 2019, i.e. two months prior to the lock-down in Wuhan (China) at end-January 2020, and this regardless of the early re-opening of the Chinese economy in mid-2020.

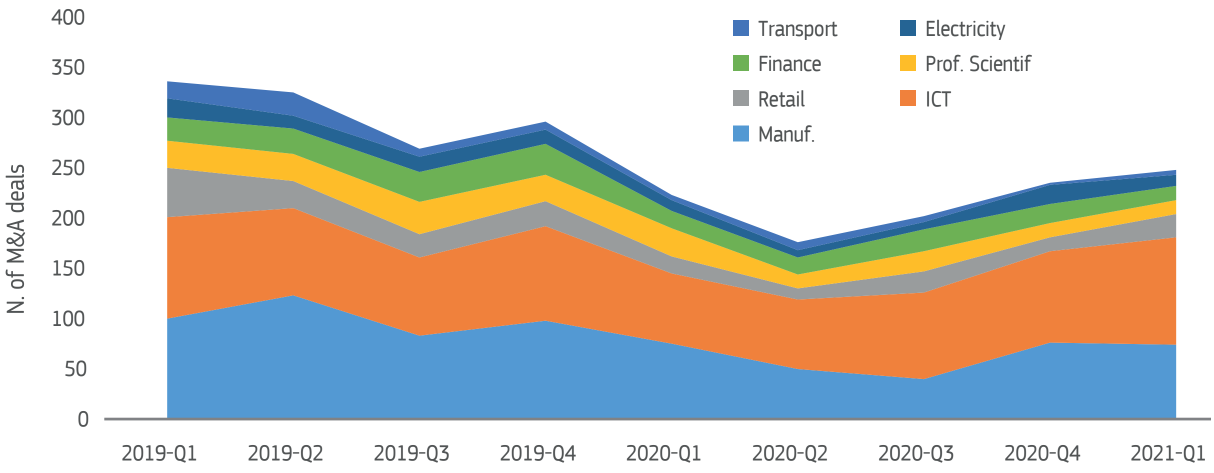
It is noticeable that economic sectors in Europe were not equally impacted by COVID-19 (*Figure 4*). Some sectors such as medical supplies, pharma manufacturing, and e-commerce saw unprecedented surges in deal-making, while others such as tourism, leisure, aviation and marine transportation were adversely affected. The hardest-hit sector was accommodation with a drop of more than 70% in the number of foreign deals.

([8]) The figure for US and Canada follows the country grouping used in the analysis accompanying the FDI screening Regulation (see the SWD(2019) 108 final). For 2020 the US and the UK were the largest investors with 30.5% each of all non-EU investments in the EU (for the US down from 31% in 2019). In 2021 Q1, the US share reaches 37.1%.

([9]) Chinese figures include Hong Kong and Macao.

([10]) Acronyms: CAN (Canada), EFTA (Switzerland, Norway, Iceland, Liechtenstein), AUS (Australia), NZ (New Zealand), ME (Middle East). The main Offshores by number of deals or greenfields are (in alphabetical order) Bermuda, British Virgins Islands, Cayman Islands, Mauritius and the United Kingdom Channel Islands. For a 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. Developed Asia includes: Japan, Korea, Singapore and Taiwan; Gulf Cooperation Countries include: United Arab Emirates, Qatar, Saudi Arabia, Kuwait, Oman, and Bahrain. Other ME includes Israel and Lebanon.

Figure 4: Foreign M&A deals by target EU sector, 2019-Q1 – 2021-Q1



Source: JRC calculations on Bureau van Dijk data extracted on 6 May 2021

Representing a quarter of all foreign M&A transactions, manufacturing suffered a 40% drop in 2020 deal numbers as compared to 2019, and continued to show a cloudy outlook in the first quarter of 2021 with a year-on-year performance rounding -1.3%.

Information and Communication Technologies (ICT) is the sector least affected by the pandemic and other challenges, with a modest drop of 12% in 2020 as compared to 2019. In 2020 ICT totalled 35% of all M&A deals into the EU, surpassing manufacturing for the first time ever. ICT also drives the recovery in the first quarter of 2021, with a year-on-year 53% increase in M&A transactions, which brings the number of deals in this sector to its pre-COVID level.

Further details

Further details on the above numbers, impact and recovery per Member State and sector, greenfield investment, origin of foreign investors in the EU, and, foreign state participation in foreign investors in the EU are provided in the accompanying Commission Staff Working Document, Section 2.

CHAPTER 2
Legislative developments in member states since 2019 ([11])

The journey so far

The adoption of the EU FDI Screening Regulation on 19 March 2019 and its full implementation from 11 October 2020 opened a new era.

When tabling the European Commission proposal in 2017, the number of Member States with a national FDI screening mechanism, whether sector-specific or of broader scope, stood at 11. ([12]) As of 1 July 2021, the figure stands at 18 (see Map hereunder). In addition to the increase in Member States with a screening mechanism, there has also been an adjustment and broadening of the scope of existing mechanisms with Member State screening mechanisms increasingly reflecting, sometimes verbatim, key elements of the Regulation. ([13])

The EU FDI Screening Regulation and EU Member State FDI screening mechanisms

While the Regulation deliberately does not set out, in every detail, what should be the form and content of EU Member State FDI screening mechanisms, it does set out certain key elements to be reflected in any national FDI screening mechanism.

In particular, Article 3 of the FDI Screening Regulation sets out an obligation for any EU Member State with an FDI screening mechanism to ensure that such mechanisms have defined timeframes; are transparent and non-discriminatory; allow for taking into consideration any comments by other Member States and the opinion of the European Commission; allow relevant parties to seek recourse against an adverse decision by an FDI screening authority; and maintain measures to prevent circumvention of FDI screening mechanisms and related decisions.

The European Commission has called on all Member States to have a national screening mechanism in place, most recently in its Communication on the Trade Policy Review ([14]):

"In the security field, under the FDI Screening Regulation, the Commission restates its call to all Member States to set up and enforce a fully fledged FDI screening mechanism to address cases where the acquisition or control of a particular business, infrastructure or technology would create a risk to security or public order in the EU. The Commission will continue implementing the cooperation mechanism with Member States' authorities to protect security and public order from risky foreign direct investments and consider enhancing the cooperation mechanism established by the FDI Screening Regulation".

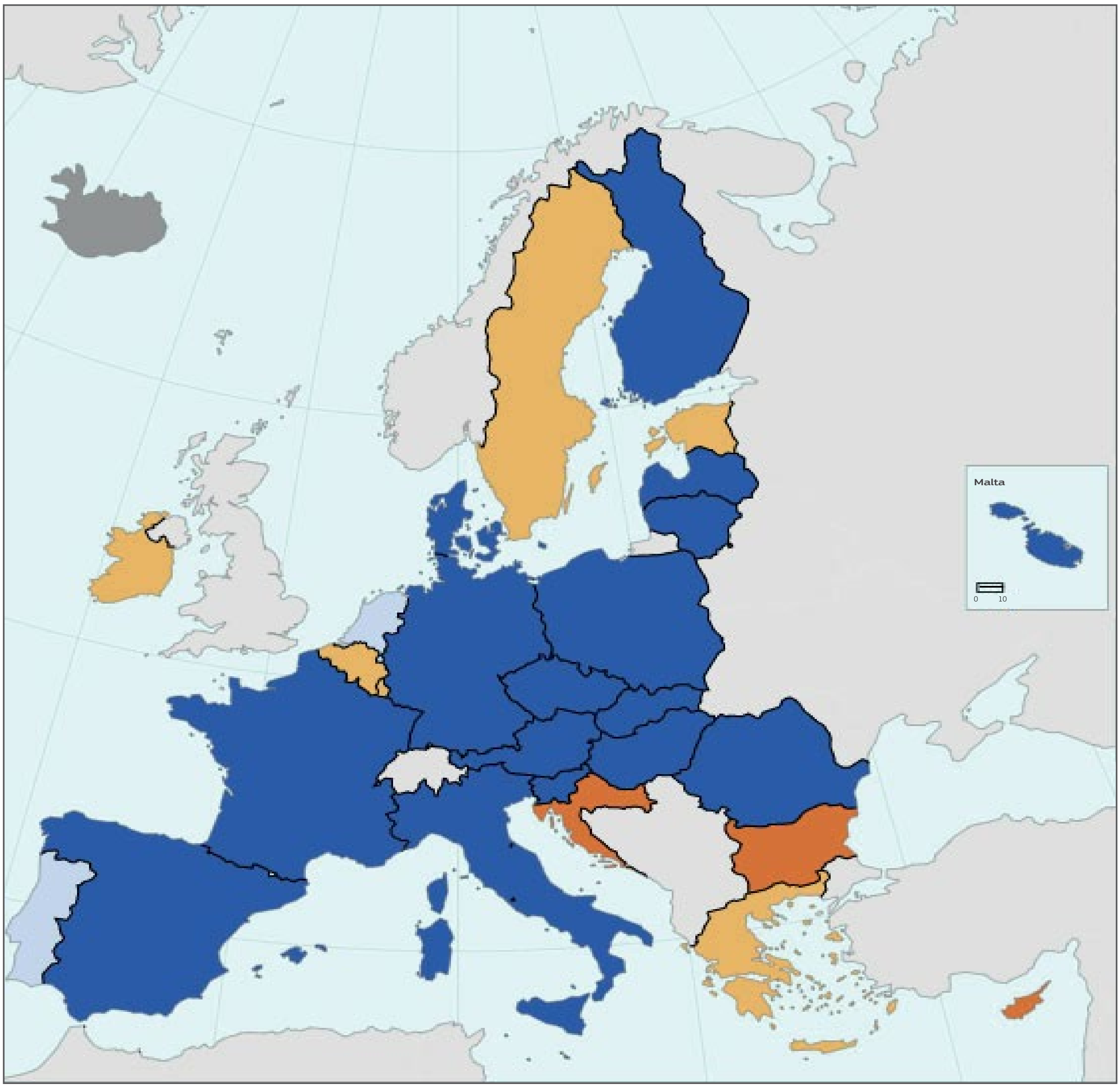
([11]) This Chapter covers the time-period from 1 January 2019 through 31 July 2021.

([12]) Austria, Denmark, Finland, France, Germany, Italy, Latvia, Lithuania, Poland, Portugal, Spain, not including the United Kingdom.

([13]) For three illustrative examples, see the recently adopted Danish screening law and related mechanism Act on screening of certain foreign direct investments, etc. in Denmark (The Investment Screening Act), the Italian law and related mechanism, e.g. Italian Governmental Decrees No. 179 and No. 180, and, the Lithuanian law and related mechanism: The Law On The Protection Of Objects Of Importance To Ensuring National Security, No. IX-1132.

([14]) Trade Policy Review - An Open, Sustainable and Assertive Trade Policy, COM(2021) 66 final –18 February 2021.

MS with screening mechanism/legislative activities
As of 1 August 2021



Administrative boundaries: ©EuroGeographics ©UN-FAO ©Turkstat
Cartography: Eurostat - IMAGE, 09/2021

0 200 400 600 800 km

- EU MS with a screening mechanism
- EU MS with a screening mechanism in the process of updating the existing mechanism
- EU MS without a screening mechanism considering, planning or in the process of adopting a mechanism
- EU MS without a screening mechanism, and without any legislative developments aiming at setting up a mechanism

Member States' notification to DG TRADE

It remains the European Commission's strong expectation that all 27 EU Member States will put national FDI screening mechanisms in place. A national screening mechanism in all 27 Member States serves to safeguard all individual Member States against potentially risky foreign investments from third countries. It will also provide the necessary links for the cooperation mechanism under the FDI Screening Regulation, ensuring that all 27 Member States and the Commission screen relevant FDI, keeping in mind the collective security of the Member States and Union as well as the security of single market and the very high level of economic integration which it allows.

In addition to their respective national screening mechanisms of a more general nature, five Member States also adopted temporary measures on FDI linked to COVID-19 vulnerabilities and depressed EU asset prices, i.e. France, Italy, Hungary, Poland, and Slovenia ([15]).

Developments in EU Member States – FDI screening mechanisms

During the reporting period 24 out of 27 EU Member States either:

- adopted a new national FDI screening mechanism;
- 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.

Member States having adopted a new national FDI screening mechanism	Czechia, Denmark, Malta, Slovenia, the Slovak Republic
Member States having adopted amendments to an existing mechanism	Austria, France, Finland, Germany, Hungary, Italy, Latvia, Lithuania, Poland, Romania, Spain
Member States having initiated a consultative or legislative process expected to result in the amendments to an existing one	the Netherlands, Portugal
Member States having initiated a consultative or legislative process expected to result in the adoption of a new mechanism	Belgium, Estonia, Greece, Ireland, Luxemburg, Sweden
Member States with no publicly reported initiative underway	Bulgaria, Croatia, Cyprus

Article 3.7 of the FDI Screening Regulation sets out an obligation for Member States to notify to the European Commission their screening mechanisms and any amendments to same. Article 3.8 sets out an obligation for the European Commission to make a list of Member States' screening mechanisms publicly available and to update the list, as necessary ([16]). Despite a number of important similarities between national screening mechanisms, they also show significant degrees of variation in terms of what constitutes formal screening of investment, applicable timelines, coverage, notification requirements and other elements. As explained in further detail below (Chapter 4.3), the Commission is launching a study to examine such variations between relevant Member State legislation and their policy consequences on the effectiveness and efficiency of the EU cooperative mechanism. The Staff Working Document accompanying this report provides a succinct description of any legislative developments in Member States regarding the applicable national legislations.

([15]) On 25 March 2020, as part of measures taken in connection with the Covid-19 emergency, the European Commission provided guidance to Member States on how to use FDI screening in times of public health crisis and economic vulnerability in the EU. The Commission Communication is available here: https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc_158676.pdf

([16]) The updated list of Member States' screening mechanisms is available on the Commission's website, here: https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157946.pdf

CHAPTER 3
Member state screening activities in 2020 [17]

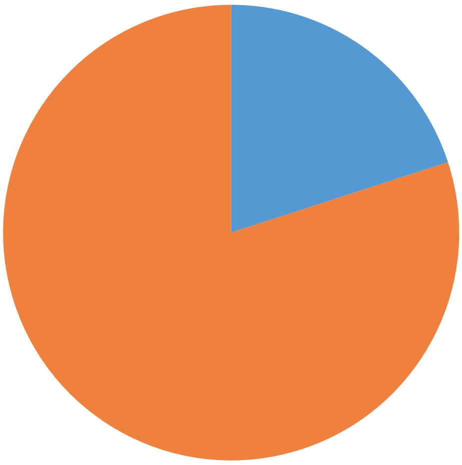
While the FDI Screening Regulation establishes a cooperation mechanism for FDI screening between the Commission and EU Member States, the decision on which investments to screen, approve, condition or block is taken by the screening Member States under their respective rules and screening mechanism. This Chapter thus relies on, and aggregates, data provided by Member States on cases screened under their own legislation and screening mechanisms during the whole year of 2020. [18] For 2020, in reporting to the Commission pursuant to Article 5 of the Regulation, Member States have reported to have reviewed 1.793 investment dossiers upon request for approval. These dossiers relate to FDI into seven of the reporting Member States.

Figure 5

FDI cases submitted for approval

Required formal screening: 20%

Did not require formal screening (evident lack of impact on security/public order or ineligible): 80%



Source: Member State reporting

Of these investment dossiers, about 80% were not formally screened, either because of an evident lack of impact on security or public order, or because they fell outside the scope of the national screening mechanism (i.e. ineligible) (see *Figure 5*).

The remainder of the cases (20%) underwent formal screening in the reporting Member States. *Figure 6* offers a breakdown of the outcome of the assessment of those cases formally screened. [19]

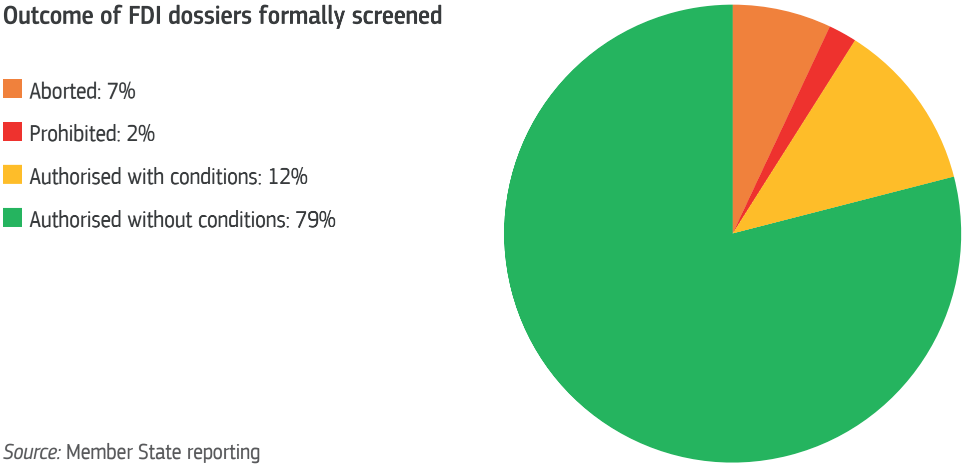
[17] This Chapter covers the time-period from 1 January through 31 December 2020.

[18] Four Member States did not report any cases under their screening legislation and one Member State reported one general figure of cases formally screened but no disaggregated data due to national legal constraints.

[19] Note: from the total reported number of cases formally screened (362 = 20% of 1.793), a number of cases were subtracted to produce the data shown in Figure 6. Indeed, those (subtracted) cases were reported by one Member State, which did not indicate, due to national legal constraints, what the outcome was of these cases.

Figure 6

Outcome of FDI dossiers formally screened



Source: Member State reporting

Figure 6 shows that 91% of the dossiers formally screened were approved, the large majority without conditions (79%), some with conditions (12%). A very small portion (2%) were prohibited, and 7% were aborted by the parties for unknown reasons, hence not requiring any decision by the national authorities.

Overall, these numbers clearly illustrate that, for 2020:

- Member States applied their respective national FDI screening laws, meant to address potential risks to security and public order;
- a very high share of dossiers were speedily approved (80%);
- of the remaining 20% of cases, which were formally screened, again a very high share were approved without conditions (79%) and a small share (12%) were approved with conditions;
- prohibitions remained a small exception (2%) among formally screened dossiers;
- Member States screening foreign investments, and the European Union at large, remain very open to FDI, intervening only in a very small proportion of cases to address deals likely to affect security or public order.

CHAPTER 4
EU cooperation on FDI screening [20]

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

From 11 October 2020 through 30 June 2021 a total of 265 notifications were submitted by 11 Member States pursuant to Article 6 of the FDI Screening Regulation. More than 90% of these cases were notified by five Member States, namely Austria, France, Germany, Italy and Spain. As will appear from the detail set out below, the transactions notified vary greatly in terms of sector of the investment target, the origin of the ultimate investor, and the value of the transaction.

The Regulation foresees that assessment of FDI transactions is undertaken under two possible phases. All notified transactions are assessed under Phase 1, with only a limited number of transactions proceeding to Phase 2. [21] Phase 2 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.

The three sectors with the highest number of transactions were Manufacturing, ICT, and, Wholesale and Retail. [22]

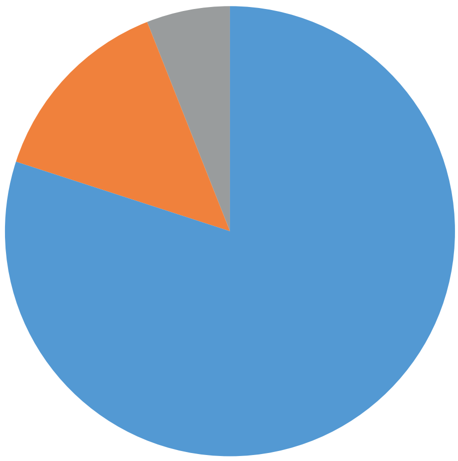
Looking at the transactions' value, the majority of the transactions had a value within the range of €10-100ml, with transactions in the ICT sector representing the highest deal value, and transactions in the sector of "Other service activities" representing the lowest value range. [23]

The transactions notified show a broad range in terms of value, with the lowest deal-value indicated at €1.200, and the highest approximately €34bn.

Figure 7

Cases closed in Phase 1 and Phase 2

Closed in P1: 80%
Closed in P2: 14%
Cases still on-going: 6%



Source: Member State notifications

[20] Note: from the total reported number of cases formally screened (362 = 20% of 1.793), a number of cases were subtracted to produce the data shown in Figure 6. Indeed, those (subtracted) cases were reported by one Member State, which did not indicate, due to national legal constraints, what the outcome was of these cases.

[21] For an overview and explanation of the two Phases and applicable timelines, please refer to Section 1 of the accompanying Staff Working Document.

[22] Categorised under the NACE codes C, J and G respectively.

[23] The value, where available, relates to the target company which may be an EU-based subsidiary of a larger corporate target.

Of the 265 cases notified, 80% of the cases (212) were closed by the Commission in Phase 1, with the remaining 14% cases (36) proceeding to Phase 2 with additional information being requested from the notifying Member State. 6% of the cases were still ongoing on the cut-off date. (24)

Additional information requested by the Commission when opening Phase 2 varies significantly, depending on the specific transaction and the detail and quality of the information supporting the notification (25).

The information requested typically includes one or more of the following subjects: data on products and/or services of the target company; possible dual-use classification of any products involved; customers, competitors and market shares; the IP portfolio and R&D activities of the target company; and additional defining characteristics of the investor. This information is requested in order to better assess the criticality of the target or the potential threats posed by the investor.

The main sectors at issue in Phase 2 cases were Manufacturing, ICT, and, Financial service activities. Manufacturing and ICT accounted for 67 % of all Phase 2 cases.

Figure 8

Phase 2 main targeted sectors

- Manufacturing: 50%
- ICT: 17%
- Financial: 8%
- Other: 25%

Source: Member State notifications

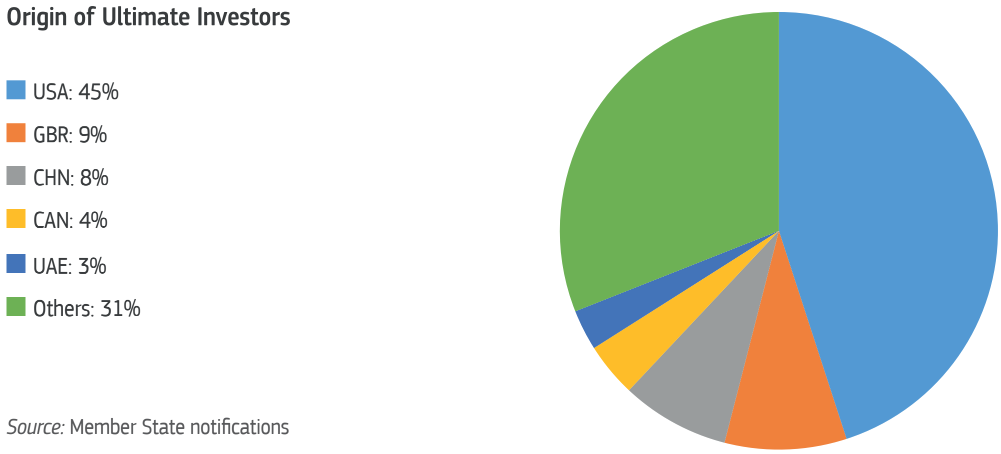
Six Member States accounted for the 36 Phase 2 cases. For all Phase 2 cases, the average duration from the date the Commission reserved the right to issue an opinion to the date it received the additional information requested from a notifying Member State has been 31 calendar days, with a range from 2 to 101 calendar days.

As for the origin of the ultimate investor, in the 265 cases notified, the five main countries of origin were the US, the UK, China, Canada and the United Arab Emirates.

(24) As of 1 July 2021, of the 265 cases notified, 17 were still ongoing.

(25) The notification form for information from an investor for purposes of a notification pursuant to Article 6 of the Regulation, and the updated Frequently Asked Questions document, serve to ensure some degree of uniformity and minimum level of information about the investor and the investment target provided in notifications under the Regulation. Both documents are available at http://trade.ec.europa.eu/doclib/press/index.cfm?id=2006

Figure 9



Source: Member State notifications

Of the 265 cases notified, 29% constituted multi-jurisdiction FDI transactions because they concerned several Member States ([26]). The main sectors that were the subject of such notifications were Manufacturing, ICT, and, Wholesale and Retail.

In addition to the 265 cases notified pursuant to Article 6 of the Regulation, the Commission has also made use of Article 7 of the Regulation.

As for the issuance of Commission opinions pursuant to either Article 6, 7 or 8 of the Regulation, such opinions remain confidential pursuant to Article 10 of the Regulation.

Opinions have been issued in less than 3 % of all cases notified and are issued only when and if required by the circumstances of a case, more specifically the risk profile presented by the investor and the criticality of an investment target. When issued, any recommended mitigating measures are proportionate and specific to the risks and criticality identified.

Commission opinions may also consist of sharing relevant information with a screening Member State, and may also suggest potential mitigating measures to address identified risks.

It will ultimately be for the screening Member State to decide on the transaction being screened, including in the light of any Commission opinion.

The data above allows for a number of preliminary conclusions to be drawn.

First and foremost, the cooperation mechanism is functioning well with Member States submitting notifications pursuant to the Regulation. Of the 265 notifications received, the vast majority (80%) were closed in Phase 1, i.e. very quickly, with only 14% of the cases proceeding to Phase 2, and a much lower number of cases resulting in a Commission opinion.

Second, while most cases are assessed rapidly in Phase 1, within the prescribed 15 calendar days, the duration of cases entering Phase 2 shows significant variation given the time needed by Member States to provide answers to a Commission request for additional information, often depending on the investor for the requested information.

Third, the main sectors (manufacturing, ICT, and wholesale and retail) at issue and origin of the ultimate investor (the US, UK, China, Canada and United Arab Emirates) involved in cases notified under the Regulation, largely reflects the findings in Chapter 1 and Section 2 of the accompanying Staff Working Document regarding main sectors and origin of the ultimate investor.

([26]) "Multi-jurisdiction FDI transactions" refers in this context to FDI transactions where the investment target is a corporate group with a presence in more than one Member States (and possibly also third countries), either by way of subsidiaries in more than one Member State, or by the target company providing goods or services in more than one Member State. Depending on the circumstances, and also the particularities of the screening mechanism of the relevant Member States such deals are notified by more than one Member State, albeit rarely in a coordinated and synchronised manner.

Fourth, a significant number of cases notified by Member States involved one or more of the factors for consideration listed in Article 4 of the Regulation, including but not only critical infrastructure, technology and dual use items, and access to sensitive information, as well as possible government ownership or control of, or influence over, the foreign investor. The cases notified have also included a number of health-related investments. i.e. investments into a sector warranting careful scrutiny in light of the current pandemic.

2. Observations by EU Member States on the value and functioning of the FDI Screening Regulation

For this first Annual Report, Member States were invited to offer their views on three subjects: a) the value-added of the FDI Screening Regulation and the cooperation mechanism, b) any significant procedural issues encountered, and, c) possible ways of addressing any such issues. The quotes set out below are quotes from a range of Member States, some with – and some without – a national screening mechanism.

Value of the FDI Screening Regulation and the cooperation mechanism

All Member States uniformly pointed to the Regulation and the cooperation mechanism as a very valuable tool for gaining a comprehensive overview of FDI into the EU, including particular investment targets and investor profiles.

"The cooperation mechanism is a very useful instrument as it challenges Member States (MS) to consider the implications for itself of investment operations in other MS, which has the effect of increasing the awareness of the implications for the other MS of the FDI operations happening on its own backyard. As such the added value should not be, in our view, measured quantitatively in the short term, but qualitatively in the long run through better considered and prepared policy and decision-making".

More specifically, several Member States have pointed to the option of asking questions and offering comments to a screening Member State as a positive feature of the Regulation. Several Member States also highlighted the benefits of the formal and informal cooperation, including the Expert Group composed of relevant Member States and Commission officials and established under the Regulation, which allows for an exchange of views and best practices among Member States.

As noted by several Member States, the Regulation and the cooperation mechanism is providing a valuable learning experience, including as regards the approaches and tools deployed by other Member States for especially critical sectors. This has been directly applicable and of significant importance for several Member States when devising or updating their own screening legislation, including any sectoral focus of that legislation.

"[...] as multinational companies grow and spread, FDI screening mechanisms are becoming more dependent on the reporting from other States with a similar regulation. The coordination mechanism has become an efficient procedure to react to FDI concerns and to issue opinions in this regard".

One Member State emphasised that notifications under the FDI Screening Regulation can provide "awareness" of transactions that may not have been notified under a given national mechanism, but rightly should have been, or, which may prompt "*ex officio*" action on the part of a screening authority. Another Member State noted that the exchange of information allows Member States to detect potential risks from an FDI transaction at an earlier stage, while another Member State noted that for larger or wider transactions with implications in several Member States, the cooperation mechanism "supported the final decision-making process and a better common and coordinated response".

"The information about FDIs undergoing screening in other Member States have contributed significantly to the design of our own analytical capabilities and deepened and broadened our situational awareness with the very beneficial international context".

"The cooperation mechanism facilitates discussions and exchange among Member States on horizontal topics of FDI screenings, such as semiconductors".

Significant procedural issues encountered

One, more general, issue raised by a number of Member States is the impact of the renewed attention to FDI screening on staff levels. Several pointed to resource constraints, especially for smaller Member States and screening authorities, also given the complex multi-jurisdiction transactions notified under the FDI Screening Regulation, as well as the very tight deadlines set therein. Other Member States pointed to a perceived inconsistency of what is notified under the FDI Screening Regulation, suggesting that too many FDI transactions are notified, including FDI transactions with no relevance for, or impact on, other EU Member States, thereby tying up resources.

"To limit the number of notifications within the cooperation mechanism that have no cross-border impact, it may be reasonable to discuss a common set of criteria – which lead if met – to the decision to not notify that specific FDI screening case. This would not only reduce the overall number of notifications but free up additional resources to focus on critical FDI's".

Another issue raised by several Member States is timelines. Several have noted that the timelines established under the FDI Screening Regulation are too short, including to assess complex FDI transactions properly and ask questions or make comments. One Member State noted that the different timelines between Member States' national mechanisms and the FDI Screening Regulation create additional complications.

While the possibility for Member States to provide comments is seen as positive, some Member States noted that they are simply informed that comments have been provided and that there is no information provided about the content of such comments, and no obligation for the notifying Member State receiving the comments to explain how comments received have been taken into account in their final decision.

One Member State noted that some requests for additional information are "overly burdensome", and that Member States and the European Commission should remember that such requests should be duly justified, limited and proportionate to the purpose of the request, and, not unduly burdensome for the Member State from whom the information is requested.

Possible ways of addressing significant procedural issues

As for suggestions for addressing significant procedural issues encountered, on the issue of staff levels/human resources, suggestions included discussion – and possible guidelines – on what requires notification under the FDI Screening Regulation to sharpen the focus and avoid "overloading" the system. One, more concrete, suggestion is a practice whereby the more important FDI transactions among those notified would somehow be flagged for the attention of other Member States. Suggestions also included clarification of time-lines and monthly statistical overviews produced by the European Commission, including comments provided by Member States under the Regulation.

"There is a risk that the requirement to notify the Commission and the other Member States of any foreign direct investment that is undergoing formal screening may dilute the cooperation mechanism and affect its effectiveness" [...] "propose that the Commission initiates a discussion among Member States on the potential for developing guidelines on which cases shall be notified and if Member States can avoid notifying some cases e.g. if the cases clearly do not have any cross border effects".

One Member State suggested additional clarification or articulation of some key aspects of the FDI Screening Regulation, i.e. the trigger date for notifications, the definition of foreign investor and foreign direct investment, and, the scope of Opinions or comments. The same Member State encouraged the European Commission to look at the "broader picture" (i.e. the European impact of a transaction), regardless of any confirmed interest of more than one Member State in the transaction, and also noted that the FDI Screening Regulation would have an increased added-value if synergies could be created between the FDI Screening Regulation and other relevant current or future tools.

Finally, one Member State suggested joint notifications where an FDI transaction has been submitted for authorisation in more than one Member State.

European Commission reactions to Member States' views

The European Commission shares the views of Member States that the FDI Screening Regulation and the cooperation mechanism provides a unique tool for monitoring and assessing FDI into the European Union for the possible risk that such FDI may pose to the security or public order of more than one Member State, or to projects or programmes of Union interest.

As for the specific challenges raised – and suggestions made – by Member States, the European Commission notes that:

- In terms of resource constraints, the Commission is conscious of these constraints which it shares. It has already taken a number of concrete steps to facilitate work, including appropriate electronic means. Discussions in the Expert Group also serve to address issues raised by Member States in seeking a common understanding on certain issues within the limits of what is possible without changing the Regulation, including eligibility of transactions and the calculation of time-lines under the Regulation. The Commission has already allocated additional resources to its services for the purpose of conducting FDI screening, and Member States are strongly encouraged to do likewise. This is all the more important as new or amended national screening mechanisms are expected to enter into force over the coming months.
- As for agreeing possible limitations, or filtering criteria, on which transactions are notified under the Regulation, what may not seem to be a sensitive transaction to one Member State could well be sensitive to another, just as some Member States are legally obliged under their respective national legislation to notify all screened transactions. The Commission recalls that Article 6.1 of the Regulation obliges Member States to notify "any foreign direct investment in their territory that is undergoing screening".
- On further clarification of concepts such as foreign direct investment and foreign investor, the Commission has provided an updated Frequently Asked Questions document which provides further detail on the concepts under the Regulation. The Commission stands ready to update this document as necessary.
- As regards differing timelines – between Member States' legislation and between the Regulation and Member States' legislation – the Commission notes that the Regulation did not harmonise timelines and that Member States' national screening mechanisms contain significant variations. The cooperation mechanism, and both formal and informal contacts, can help minimise the unintentional consequences of these differences, but adjusting the formal timelines under the Regulation that may be considered excessively tight would require a change to the Regulation.
- On the further clarification of the interplay between various instruments, e.g. the more exact interplay between the Regulation and other policy instruments and regulators, e.g. merger control and prudential controls, for example, in relation to financial services, the Commission agrees that this is an issue that could be discussed further, inter alia, within the Expert Group.
- Finally, on the issue of multi-jurisdiction FDI transactions, i.e. where the investment target has a presence in several EU Member States (either as a result of subsidiaries in more than one EU Member State, or because it provides goods or services in more than one Member State), these transactions are likely to give rise to multiple screenings by different Member States and an exchange of questions/comments between them. Such cases raise a number

of challenges, including differing timelines under different national legislation which may prevent synchronisation of notifications and assessment under the Regulation. The Regulation, at present, does not explicitly address the issue. However, experience has already shown scope for closer informal coordination between relevant Member States and the Commission, as already done for a number of notified FDI transactions. However, given the significant share (29%) of such multi-jurisdictional FDI transactions and related challenges, the Commission believes that it warrants careful consideration in the future.

3. Steps taken after 11 October 2020, and looking further ahead

Despite the FDI Screening Regulation only having been fully applied since 11 October 2020, some preliminary conclusions can be drawn based on the experience so far, just as certain steps have already been taken to support the effectiveness of the Regulation and cooperation mechanism.

Specifically, in order to facilitate the effective implementation of the Regulation and ensure a higher degree of conformity and completeness of notifications submitted by Member States pursuant to Article 6 of the Regulation, the Commission has provided updated versions of the notification form for investors and the Frequently Asked Questions document. The notification form, which has also been published by several Member State screening authorities on their websites, serves to provide more detailed information by an investor about a notified transaction, including the elements required by Article 9(2) of the Regulation. This serves a dual purpose of allowing a more detailed assessment of notified transactions in Phase 1, as well as limiting the need for requests for additional information and Phase 2 assessments for some transactions.

More generally, and as confirmed by Member States, the Regulation and the cooperation mechanism have already proven a valuable and efficient tool. They have been reliable, with no reported leaks regarding notifications, opinions or other action under the Regulation. Appropriate handling and protection of any information submitted for purposes of Article 6, 7 and 8 of the Regulation is vital to ensure the necessary trust and confidence between all parties involved, i.e. the parties to an investment transaction, the notifying Member State, the 26 other Member States and the Commission. The Regulation and the cooperation mechanism have also proven useful and effective for the overriding policy objective, namely safeguarding our collective security and public order, as well as projects and programmes of Union interest.

However, the experience so far also shows that there is scope for further improvement, including in areas identified by Member States.

As indicated above, the Commission has launched a comprehensive study. The overall objective of the study is to ensure that the Member State FDI screening mechanisms, as well as the EU cooperation mechanism, are effective and efficient, including their interaction ([27]).

In due course, the Commission will give serious consideration to the possible issuance of guidelines for the benefit of Member State screening authorities and investors. The concept of guidelines has proven valuable in other areas of regulation and enforcement, including competition policy. The Commission would envisage consultation of the broader public with respect to any proposed guidelines for the area of FDI screening.

The steady increase in Member States with a national FDI screening mechanism along with an expected increase in FDI into the EU will inevitably result in an increase in notifications under the Regulation. The Commission will carefully consider ways to streamline procedures to utilise Commission and Member State resources in the most optimal manner, including a clear focus on those FDI

([27]) The specific objectives of the study are (i) to present an overview of the existing legislation of the Member States which currently have a screening mechanism; (ii) review how the national legislations and the FDI Screening Regulation regulate the interaction between national authorities and with the European Commission within the cooperation mechanism set up by the FDI Screening Regulation; (iii) identify any significant problems in the current system of national laws and the FDI Screening Regulation which may lead to less effective and/or less efficient outcomes in light of the policy goals of the FDI Screening Regulation, and, (iv) the need to keep administrative burden for investors and other stakeholders proportionate to the policy goals and relevant security or public order concerns.

transactions that are more likely to pose a risk to the security or public order of more than one Member State, or to projects and programmes of Union interest. This will include consideration of how, given the current Regulation, multi-jurisdiction FDI transactions are best handled, including possible alignment of notifications by two or more Member States.

As for any future amendments to the Regulation itself, this is still early days. However, Article 15 of the Regulation provides an obligation for the Commission to *"evaluate the functioning and effectiveness of this Regulation and present a report to the European Parliament and to the Council"* by 12 October 2023, and for the Commission to recommend amendments to this Regulation, where required. In light of further experience gained in the application of the Regulation, the Commission will be ready to make proposals for amendments if and when required, as also made clear in the recent Trade Policy Communication (February 2021): "*The Commission will continue implementing the cooperation mechanism with Member States' authorities to protect security and public order from risky foreign direct investments and consider enhancing the cooperation mechanism established by the FDI Screening Regulation."*

This not only makes clear the intention of the Commission to continue implementing the FDI Screening Regulation with Member States and to consider enhancing the cooperation mechanism. The Communication also stresses the fundamental policy objective of the FDI Screening Regulation, i.e. to contribute to safeguarding the collective security and public order of all 27 Member States and the EU. The FDI Screening Regulation and the cooperation mechanism are important tools to increase the EU's resilience. While the EU remains open to FDI, as also clearly evidenced by the data in Chapter 3, it is vital that all Member States actively and directly contribute to the attainment of this shared security objective. The Commission firmly expects that by the next Annual Report additional Member States will have adopted and strengthened national FDI screening legislation and related mechanisms for potentially risky foreign investments from non-EU countries and that it is merely a question of time before all 27 Member States have such legislation and mechanisms in place.

REPORT ON THE IMPLEMENTATION OF REGULATION (EU) 2021/821 SETTING UP A UNION REGIME FOR THE CONTROL OF EXPORTS, BROKERING, TECHNICAL ASSISTANCE, TRANSIT AND TRANSFER OF DUAL-USE ITEMS

1. Introduction

In 2013 the Commission started publishing annual export control reports as provided for by Regulation (EC) No 428/2009 ("the Regulation"). The Regulation was repealed by Regulation (EU) 2021/821 ([1]) ("the new Regulation") on 9 September 2021.

This report, prepared by the Commission with input from Member States ([2]) in the Dual Use Coordination Group, provides information on the implementation of EU law concerning export control of dual-use items in 2020, and includes aggregated export control data for 2019. ([3])

In order to contribute to a more thorough implementation of EU trade law, including EU law concerning export control of dual-use items, the Commissiom created a new post of Chief Trade Enforcement Officer (CTEO) in 2019. In order to support the CTEO in carrying out its enforcement tasks, the Commission has restructured the organization of DG TRADE. Among other changes, export control and foreign direct investment (FDI) screening have been merged under one unit in DG TRADE under the supervision of the CTEO. As a consequence and because export control and FDI screening are both tools for strategic trade and investment controls to ensure security in the European Union, this report is adopted simultaneously with the first annual report on FDI Screening.

([1]) 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, p. 1) - https://eur-lex.europa.eu/eli/reg/2021/821/oj.

([2]) Some Member States' competent authorities also publicly report on trade in dual-use items.

([3]) While the present report is published under the new Regulation, given it is covering 2020 the information collected refers to the situation under the previous Regulation.

2. Evolution of the policy & regulatory framework

2.1. Export control policy review

2.1.1. Legislative modernisation

2020 was a crucial year for the modernisation of EU export controls, with the Council and the European Parliament reaching political agreement on a new export control Regulation in November 2020. They agreed on a comprehensive "system upgrade", that will make the EU export control system more effective by:

- introducing a novel 'human security' dimension so the EU can respond to the challenges posed by emerging dual-use technologies – especially cyber-surveillance technologies – that pose a risk to national and international security, including human rights;
- updating key notions and definitions in the Regulation (e.g. definition of "exporter" covering natural persons and researchers involved in dual-use technology transfers);
- simplifying and harmonising licensing procedures and allowing the Commission to amend – by a 'simplified' procedure, using delegated acts – the list of items or destinations subject to specific forms of control, thereby making the export control system more agile and able to evolve and adjust to circumstances;
- enhancing information-exchange between licensing authorities and the Commission with a view to increasing transparency of licensing decisions;
- coordinating and supporting robust enforcement of controls, including enhancing secure electronic information-exchange between licensing and enforcement agencies;
- developing an EU capacity-building and training programme for Member States' licensing and enforcement authorities;
- strengthening outreach to industry and transparency with stakeholders, developing a structured relationship with the private sector through specific consultations of stakeholders by the relevant Commission group of Member States experts;
- setting up dialogues with third countries so as to enhance global security and promoting a level playing field at global level.

The new regulation has been published on 11 June 2021 and entered into force on 9 September 2021.

2.1.2 Consultations and outreach

As part of a continuous outreach effort, the Commission conducted a series of targeted consultations to key industry and civil society stakeholders in the course of 2020. ([4]) In particular, an Export Control Forum was organised in a virtual format on 11 December 2020 as described further below.

2.2. Amendments to Regulation (EC) No 428/2009

2.2.1. Update to the EU control list

The EU Control List in Annex I to the Regulation provides a list of dual-use items, including software and technology, which can be used for both civil and military purposes, and it also includes all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive device. It was amended once in 2020 ([5]). This amendment incor-

([4]) This is also part of our "partnership with the private sector", which will be a key element of the modernisation of EU export controls.

([5]) Commission Delegated Regulation (EU) 2020/1749 of 7 October 2020 (OJ L 421, 14.12.2020, p. 1).

porated the decisions agreed in 2019 and until the end of February 2020 in the context of the multilateral export control regimes (in particular at the Wassenaar Agreement and the Australia Group). Annexes II and IV of the Regulation were also updated in line with the amendments to Annex I.

Amendments to the EU control list in 2020

The amendments introduced certain cyber-surveillance technologies, e.g. law enforcement monitoring "software" (5D001.e.1 and 2.) and "digital forensics" systems, equipment and components (5A004.b.1 and 2.) in the list of items subject to export control.

The 2020 EU control list also introduces controls on "sub-orbital craft" (9A004.h.), as well as new decontrol notes for certain carbon "fibrous or filamentary materials" (1A002 – Note 5) and "technology" for information security system (5E002.a.–Note).

Furthermore, it incorporates changes to the controls on:

- planar absorbers made of sintered ferrite (1C001.a – Note 1.d.2.),
- metal alloys (1C002 – Technical Note 3),
- fluids and lubricating materials (1C006.d.),
- anti-friction bearings and bearing systems (2A001),
- simulation software (3D003),
- information security system to refer to secure "cryptographic activation" (5A002.a.),
- space qualified components for optical system (6A004.c.4),
- some lasers (6A005.a.6.a.1. - .2.a.) and
- 'fan blades'.

As a result from decisions at the Australia Group, new controls on Middle East Respiratory Syndrome-related coronavirus (MERS-related coronavirus – 1C351.a.59), on 24 chemicals, including Novichok nerve agent precursors (1C350.66. to 1C350.89) as well as changes to the control on valves and components (2B350.g.1.a. - .2.a.) were introduced.

The updated and consolidated EU Control List entered into force on 15 December 2020, thereby allowing the EU to comply with its international commitments. It also supports EU exporters through timely adjustments of control parameters to technological developments. A "Comprehensive Change Note" was published as guidance providing an overview of all changes to the 2020 EU Dual-Use Control List (6).

2.2.2. Brexit

In the course of 2020, the Commission took a series of actions in view of the end of the transition period on 1st January 2021, when exports of dual-use items from the EU to the UK become subject to control under the Regulation, like exports to any other third country.

In September 2020, the Commission published a Notice to Stakeholders (7) to inform exporters of applicable rules in view of the end of the transition period and of the withdrawal of the United Kingdom from the EU.

In order to ensure the uniform application of controls throughout the Union, and to avoid undue administrative burden while protecting the Union and international security, the EU adopted Regulation (EU) 2020/2171 of 16 December 2020 amending Annex IIa to the Regulation. By adding the UK to the list of destinations covered by the Union General Export Authorisation No EU001 (8) Regulation (EU) 2020/2171 provides for a simplification of controls on exports of most dual-items to the United Kingdom.

(6) The Summary Note is available at: https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158973.pdf.
(7) https://ec.europa.eu/info/sites/default/files/file_import/dual-use-export-controls_en_0.pdf
(8) https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc_159247.pdf

Specific arrangements apply under the Northern Ireland (NI) Protocol [9], which provides that the Regulation applies to, and in the United Kingdom in respect of Northern Ireland [10], with the UK acting as a competent authority under the Regulation. The Commission developed a dedicated secure electronic tool to support the exchange of information with the UK competent authority in charge of applying the Regulation in and from Northern Ireland. This enables the UK competent authority to access information which supports the effective implementation and enforcement of controls on exports of dual-use items from Northern Ireland in line with the provisions of the Regulation. Therefore UK competent authorities are able to enter information on relevant denials into the Dual-use e-System (DUeS) [11], to consult, manage and browse UK denials already stored in DUeS as well as to receive the denial information that is relevant to a specific application for export of dual-use items from Northern Ireland.

2.3. National implementation and enforcement measures

2.3.1. Implementation measures

The Regulation is binding in its entirety and directly applicable in all Member States. However, it provides that Member States take certain measures for the implementation of specific provisions, and that information on those national measures should be published in the Official Journal of the European Union. Accordingly, the Commission published an Information Note on 17 January 2020 [12] which provides an updated overview of measures taken by Member States including, inter alia, the extension of brokering and transit controls, the extension of controls to non-listed items for reasons of public security and human rights considerations, the introduction of national general export authorisations, the application of intra-EU transfer controls for non-listed items, as well as information relating to competent authorities. This ensures that exporters have access to comprehensive information on the applicable legal provisions, and supports the consistent and effective implementation of controls throughout the EU.

2.3.2. Enforcement measures

According to information made available to the Commission, there have been no new developments in 2020. The list of national enforcement measures published together with the 2019 annual export control report [13] therefore remains valid.

3. Activities of the Dual-Use Coordination Group

The Dual-Use Coordination Group (DUCG) brings together experts from the Commission and Member States to examine any issue concerning the application of export controls with a view to practically improving their consistency and effectiveness throughout the EU. The Regulation requires the Commission to submit an annual report to the European Parliament on the activities, examinations and consultations of the DUCG.

The DUCG held seven – mostly virtual - meetings in 2020, confirming its function as a forum for consultations on a number of topical issues described here.

(9) OJ L 29, 31.1.2020, p. 7 ("Withdrawal Agreement").

(10) Article 5(4) of the NI Protocol and section 47 of annex 2 to that Protocol.

(11) DUeS is a secure and encrypted electronic system hosted by the Commission, to support the enhanced exchange of information between competent authorities and the Commission as provided for by Article 19 of the Regulation.

(12) https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158576.pdf

(13) https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158962.pdf

3.1. Consultations on implementation issues – general information exchange

The DUCG conducted ***general information exchanges on export control issues***, including in support of the legislative modernisation of EU export controls explained above.

The DUCG exchanged information regarding ***national implementing measures*** and prepared the update of the official information notice on national measures. ([14])

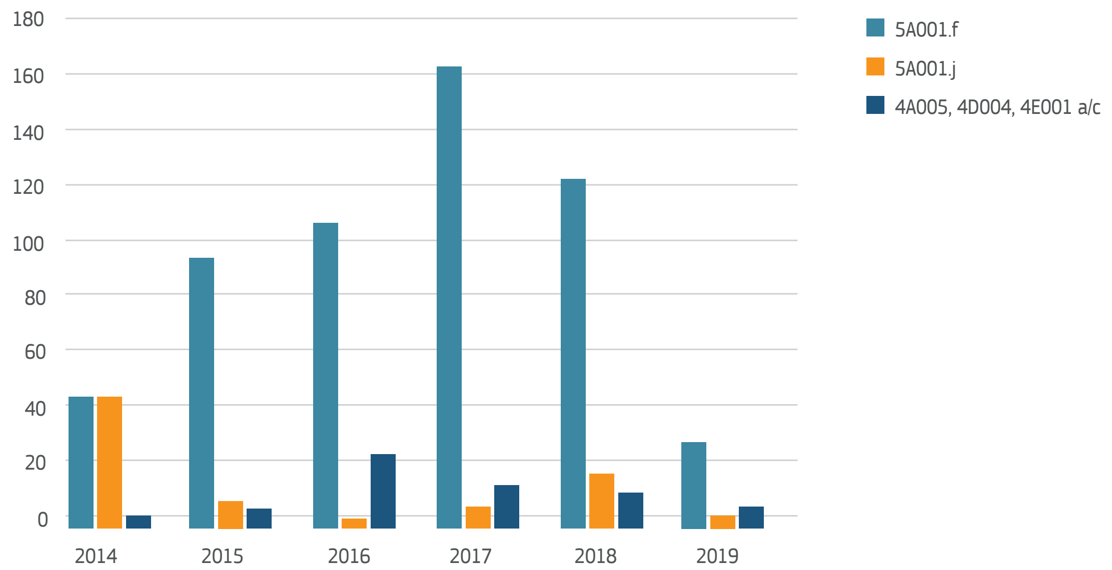
With regard to ***Brexit*** the DUCG not only contributed to the development of the IT tool supporting information-exchange for the application of controls under the Northern-Ireland Protocol but also reviewed changes to licensing requirements and contributed to the preparation of an updated ***"readiness notice"*** ([15]) on dual use for the attention of exporters.

The DUCG conducted a ***licensing data collection exercise*** on 2019 data in order to enhance information exchange between Member States – especially regarding the collection of data under global and general export authoritisations – and to increase public transparency on EU dual-use export controls (EU 2019 aggregated data was used in the preparation of this annual report).

The DUCG conducted a ***technical exchange of information on the application of controls on cyber-surveillance technologies*** in 2019.

The data collected from Member States shows a decrease in the number of licences (see Table 1), with a total of 44 licenses for listed cyber-surveillance items ([16]) issued in 2019. In the same period, 81 denials were issued for cyber-surveillance items.

Table 1: Number of individual licences for listed cyber-surveillance items.



The DUCG decided to continue efforts to monitor the implementation of controls, and initiated the exchange of information on the application of controls in 2019. The "Surveillance Technology Expert Group" (STEG) continued to exchange *ad hoc* information.

([14]) The updated information notice was published on 17 January 2020, OJ Notice 2020/C16/4.

([15]) https://ec.europa.eu/info/publications/dual-use-export-control

([16]) Mobile telecommunications equipment, internet surveillance systems, intrusion software.

3.2. Technical exchange of information – implementation issues

The DUCG provided support to the preparation of updates to the EU control list and engaged in discussions on a number of specific implementation issues such as to enhance information exchange under EU General Export Authorisations (EUGEAs), information exchange under global licences or the development of a consultation mechanism between competent authorities concerning information on exporters using global licences.

3.3. EU Guidelines on Dual-Use Export Controls

The DUCG worked on the preparation of a revised version of the 2016 "EU Guidelines on dual-use export controls" which reflects improvements to the DUeS, in particular insofar as it supports information exchange and consultations between competent authorities.

The Technical Expert Group on the development of guidelines for dual use research (TEG-DUR) held six meetings in 2020 and prepared a draft guidance on research involving dual-use items. A public consultation ([17]) was held in October-November 2020, attracting 54 responses. The TEG DUR submitted the draft final guidance to the DUCG for consideration early 2021. The guidance was adopted as a Commission Recommendation in September 2021 ([18]).

3.4. Electronic exchange of information between competent authorities

The Commission, supported by the DUCG, continued to develop the Dual-use e-System. In the course of 2020, the DUCG agreed on specific improvements to the DUeS:

- functionalities supporting denials notifications under Article 13(5) of the Regulation;
- functionalities supporting bilateral consultations between competent authorities under Article 11 and Article 13(5) of the Regulation;
- preparations for a new functionality to support information-exchange on denials concerning intra-EU transfers;
- preparations for a functionality to support consultations under global licences;
- the list of items in the DUeS was updated to reflect the 2020 update of the EU control list;
- a new functionality to support information exchange with the UK competent authority under the Northern Ireland Protocol at the end of the transition period.

The DUCG continued to support, through a dedicated Technical Expert Group, the development of an "electronic licensing platform", which can be used by competent authorities. The TEG on e-licensing continuously liaised with experts from the Member States and supported the "eLicensing pilot project", which plans to deploy the eLicensing tool in Latvia, Romania, Italy, Greece and the Wallonia Region of Belgium in the course of 2021. The deployment of this electronic system will allow national competent authorities to manage the whole authorisation process in a completely paperless format and with the effectiveness and efficiency which is typical of modern eletronic systems. This will also allow economic operators and competent authorities to minimise the administrative burden related to the authorisation of dual-use items.

([17]) https://trade.ec.europa.eu/consultations/index.cfm?consul_id=292

([18]) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2021:338:FULL&from=EN

The DUCG also initiated discussions regarding the integration of dual-use eLicensing systems with the Commission's customs' Single Window initiative under the "CERTEX" project. This integration will allow an automated check of the authorisation for the export of dual-use items once an exporter indicates that the dual-use goods being exported are covered by an export authorisation issued by an EU competent authority.

3.5. EU Dual-use Pool of Experts

In 2020, the EU Dual-use Pool of Experts operated by Commission's Joint Research Centre (JRC) and experts made available by Member States continued to provide support to competent authorities requesting technical advice to support the assessment of specific licensing cases. In total, technical advice on commodity classification was provided on nine occasions to six competent authorities over the reporting period.

3.6. Implementation and enforcement

The DUCG exchanged information on the implementation and enforcement of controls. According to available data, the EU export control network – comprising staff in Member States' licensing competent authorities and the Commission – consisted of over 360 staff. With respect to enforcement, 144 breaches of export control regulations were recorded in 2019 while eight administrative penalties and 16 criminal penalties were applied by national law enforcement authorities.

3.7. Capacity building

In 2020, the DUCG supported the organisation by the Commission's JRC in collaboration with the US Department of Energy of the 13th JRC-National Nuclear Security Agency (NNSA) virtual technical seminar on 15 September and 5 October 2020.

3.8. Transparency and dialogue with industry and academia

With support of the DUCG an Export Control Forum was organised in a virtual format on 11 December 2020, jointly with the German Presidency of the Council of the EU. This provided an opportunity to exchange views on the implementation of EU export controls and the legislative process for a modernisation of EU export controls with more than 800 industry and civil society stakeholders ([19]) from industry associations, dual-use companies, academia and civil society organisations in light of the co-legislator's agreement on a new regulation. The virtual format allowed a far wider participation than has been possible in the past in a physical setting.

Apart from the support of outreach activities of the Commission, the DUCG also prepared documentation to support exporters' implementation of the regulations. In particular, a "Comprehensive Change Note Summary 2020" ([20]) summarises the amendments to Annex I of the Regulation to implement the changes in the control lists of the various international fora on non-proliferation regimes.

([19]) https://trade.ec.europa.eu/doclib/docs/2020/december/tradoc_159148.pdf

([20]) https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158972.pdf

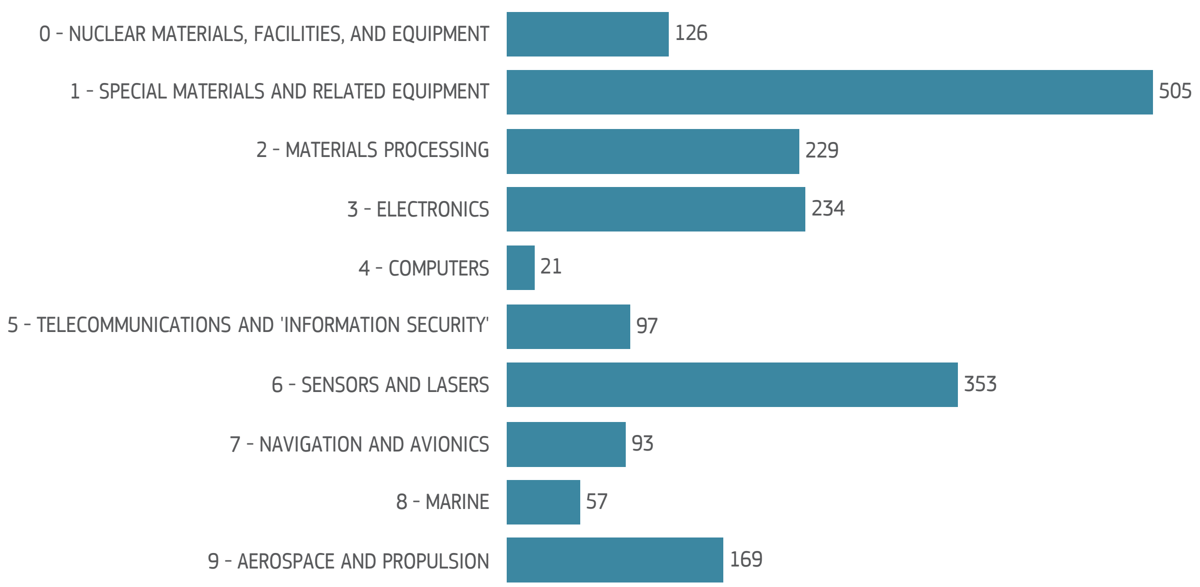
4. EU export controls – Key Data

It is difficult to obtain reliable information on overall dual-use exports (including non-listed dual-use items) as there is no corresponding defined economic sector. However, the Commission and Member States collect data that allow for approximate estimates of exports of dual-use goods based, on the one hand, on specific licensing data collected by competent authorities and, on the other hand, on statistics for customs commodities which include dual-use goods. 2019 export data estimates are presented below. It should be noted that the estimates presented do not include services nor intangible technology transfers associated with the trade in dual-use goods.

4.1. EU dual-use trade: items and destinations

In 2020, the Regulation primarily applied to the export of about 1884 dual-use items listed in Annex I (the "EU Control List") and classified in 10 categories (Figure 1). These dual-use items relate to circa 1000 customs commodities, including chemicals, metals and non-metallic mineral products, computers, electronic and optical products, electrical equipment, machinery, vehicles and transport equipment, etc. and typically fall at the high–tech end of this large, mixed commodity area.

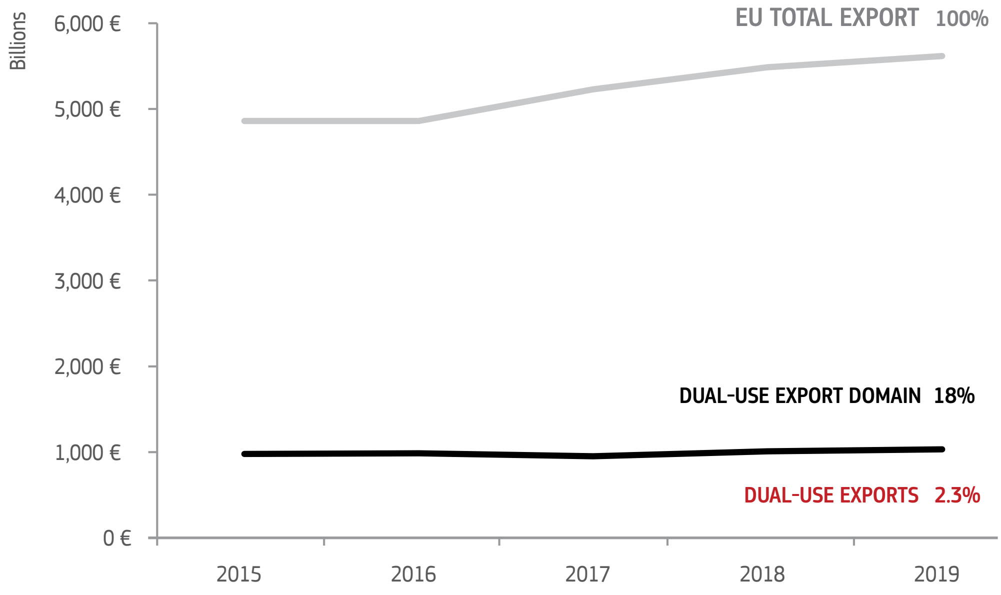
Figure 1: Number of dual-use entries listed in the ten Categories of Annex I further to the adoption of Regulation (EU) 2020/1749.



Statistical estimates of the relative importance of dual-use trade indicate that dual-use exports represent about 2.3% of EU27 total exports (intra and extra-EU), within a broad 'dual-use export domain' ([21]) of customs commodities that may include, to varying degrees, certain dual-use items (Figure 2). This would put the value of dual-use trade at € 119 billion in 2019.

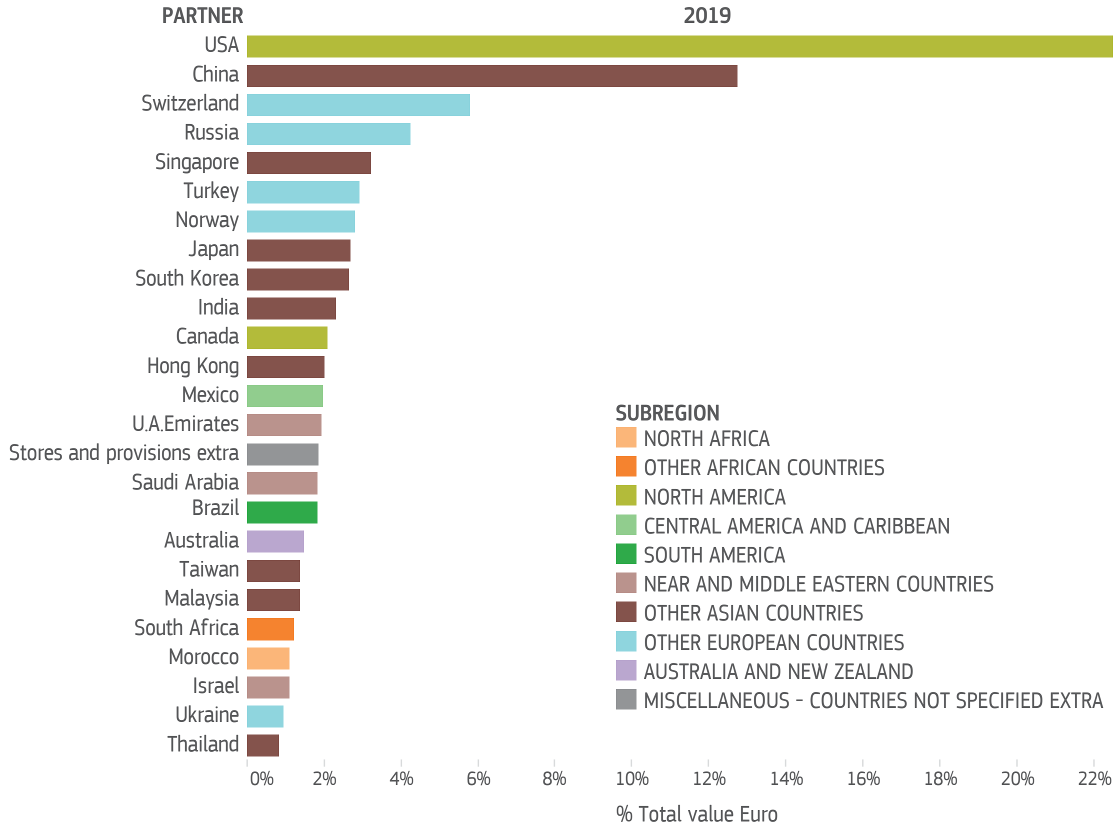
([21]) The statistical methodology developed by the Commission's Joint Research Centre makes use of a correlation table, developed by DG TAXUD, between dual-use classification numbers and customs codes and of Eurostat's COMEXT data, as well as of licensing data provided by EU27 Member States. The notion of *dual-use export domain* refers to a large mixed commodity area, which includes dual-use items. Trade in dual-use items takes place *within* this commodity area, but is not identical to it, since by far, not all of the commodities within the *dual-use export domain* are really dual-use.

Figure 2: Statistical estimates of dual-use intra and extra-EU exports.



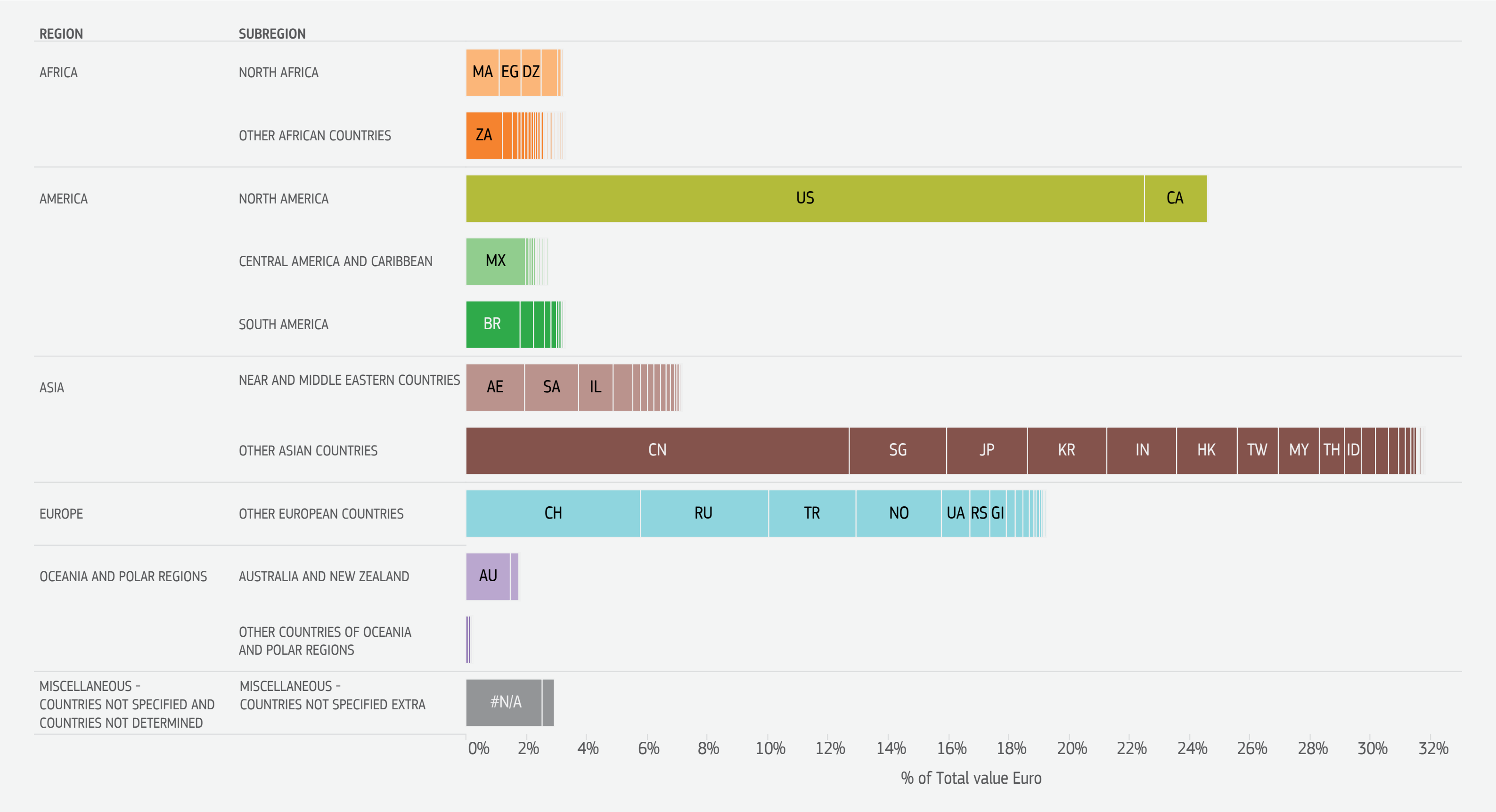
Statistical estimates also show the main export destinations and indicate that a large part of the dual-use exports are directed towards countries listed on Union General Export Authorisations (EUGEAs). The destination countries reflect the EU export market structure in the relevant commodities as well as trade facilitation under EUGEAs (Figure 3 and 4) ([22]).

Figure 3: EU dual-use export estimates: top 25 export destination countries and their sub-regions in 2019.



([22]) "Stores and provisions extra" are defined as delivery of ships' and aircrafts' stores. "Miscellaneous –countries not specified extra" includes countries and territories not specified within the framework of trade with third countries (i.e., these codes are usually used for goods delivered for offshore installations).

Figure 4: EU dual-use export estimates: destination countries by regions and sub-regions in 2019.



4.2. EU dual-use licenses: applications, authorisations, denials

In light of Article 19(2) of the Regulation, which stipulates that "*Member States shall take all appropriate measures to establish direct cooperation and exchange of information between competent authorities with a view to enhance the efficiency of the Community export control regime*", the DUCG has exchanged licensing data and information in order to improve the understanding of export controls and their economic effect. Some data collected for the reporting period is reported below; it should be noted, however, that not all Member States collect all data. The information provided below thus represents approximate estimates of aggregate quantities and values within the limits of the data made available by Member States.

The total value ([23]) of applications reached EUR 40 billion and controlled dual-use exports thus represented 2.2% of total extra-EU27 exports. Authorised dual-use trade amounted to EUR 31.5 billion, representing 1.7% of total extra-EU27 exports, with a majority of transactions authorised under individual licenses ([24]) (around 20,300 single licenses issued in 2019) and global licenses ([25]) (by their value). Only a small portion of exports were actually denied: 603 denials were issued in 2019, representing about 0.89% of the value of controlled dual-use exports in that year, and 0.02% of total extra-EU27 exports.

([23]) This figure includes value for licence applications and notifications under General Export Authorisations.

([24]) Individual licenses are licenses granted to one specific exporter for one end-user or consignee in a third country and covering one or more dual-use items.

([25]) Global licenses are licenses granted to one specific exporter in respect of a type or category of dual-use items which may be valid for exports to one or more specified end-users and/or in one or more specified third countries.

Figure 5: Volume (number) of authorisations and denials in 2014-2019 ([26]).

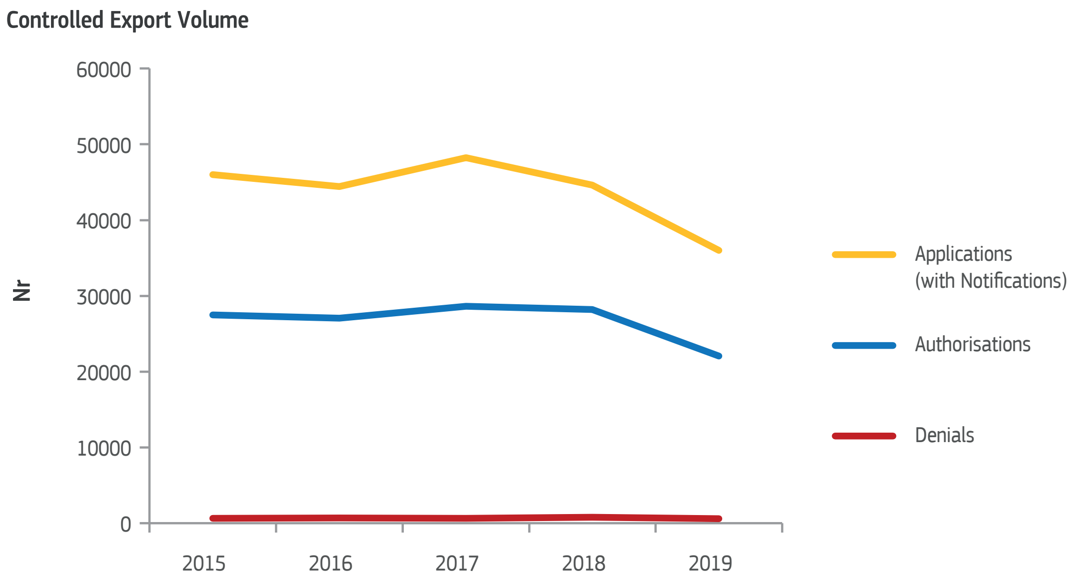
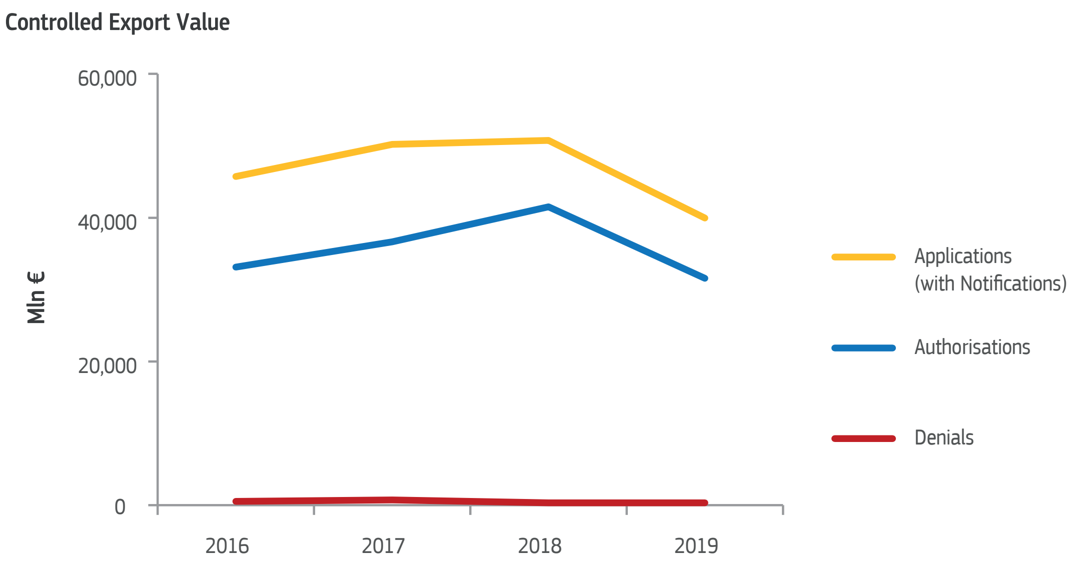


Figure 6: Value (mln EUR) of authorisations and denials in 2014-2019.



([26]) In Figures 5 and 6, "Applications" data include all applications for licenses, including notifications under general authorisations, thus providing an indication of "controlled exports", i.e. the value of extra-EU exports subject to an authorisation process. In cases where no application data is available, the charts make use of authorisation data as estimate for application data. "Authorisations" data refers to dual-use exports authorised under individual and global licences. It should be noted that applications do not necessarily correspond to the sum of authorisations and denials, as a number of applications may be cancelled and some applications may not be finalised within the same year. "Denial" refers to the volume and value of denied exports. Differences in data that indicate a decline in comparison to the previous years are due to Brexit and the fact that UK did not provide data for 2019.

Figure 7: Volume (number) of authorisations per type of licence in 2019.

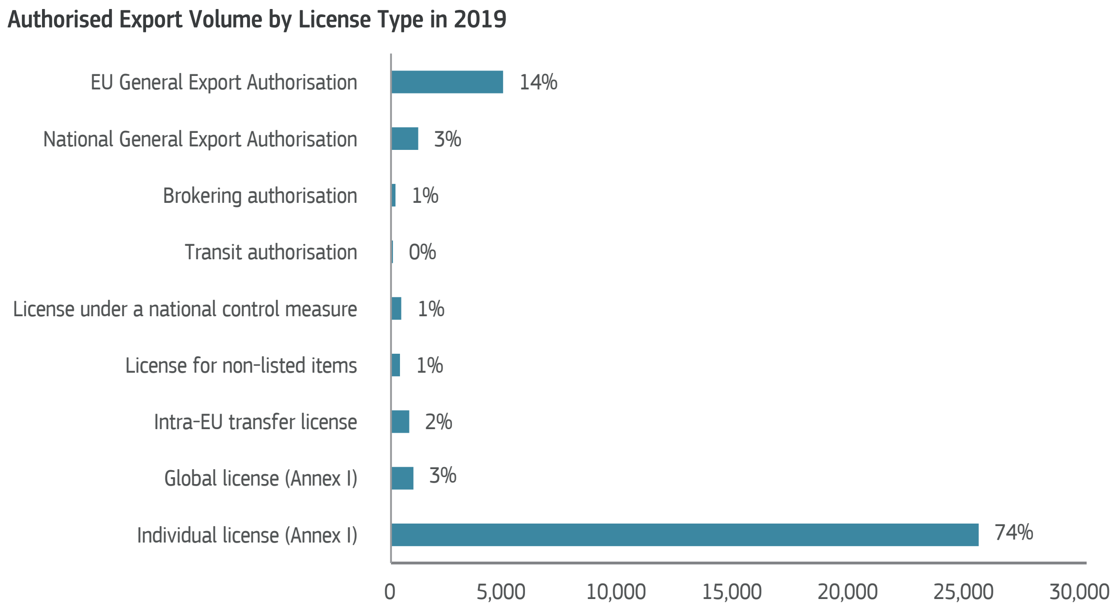
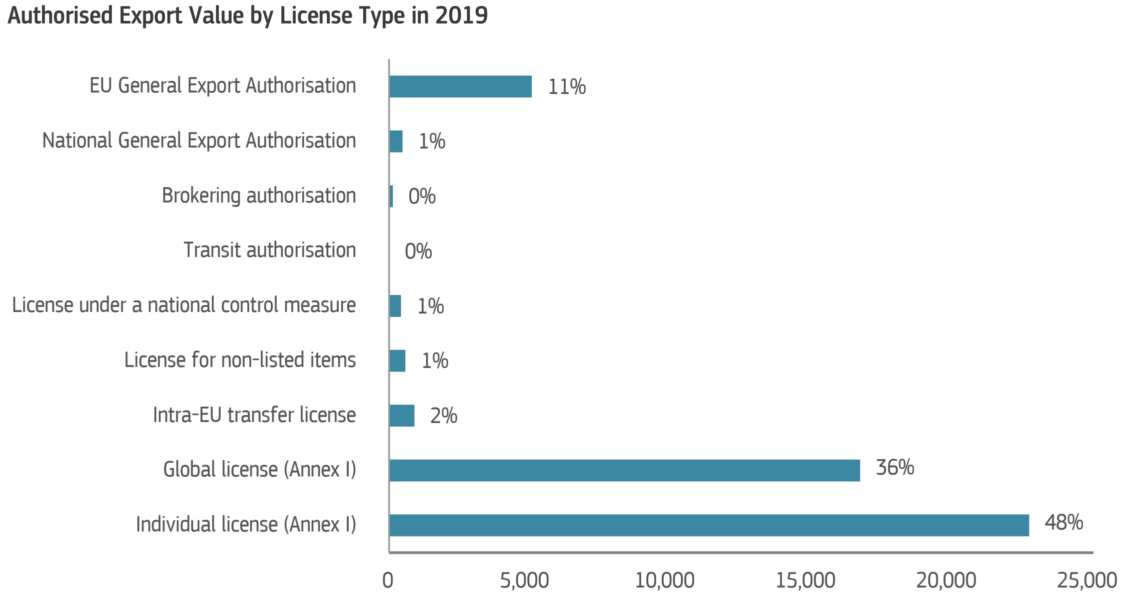


Figure 8: Value (mln EUR) of authorisations per type in 2019.



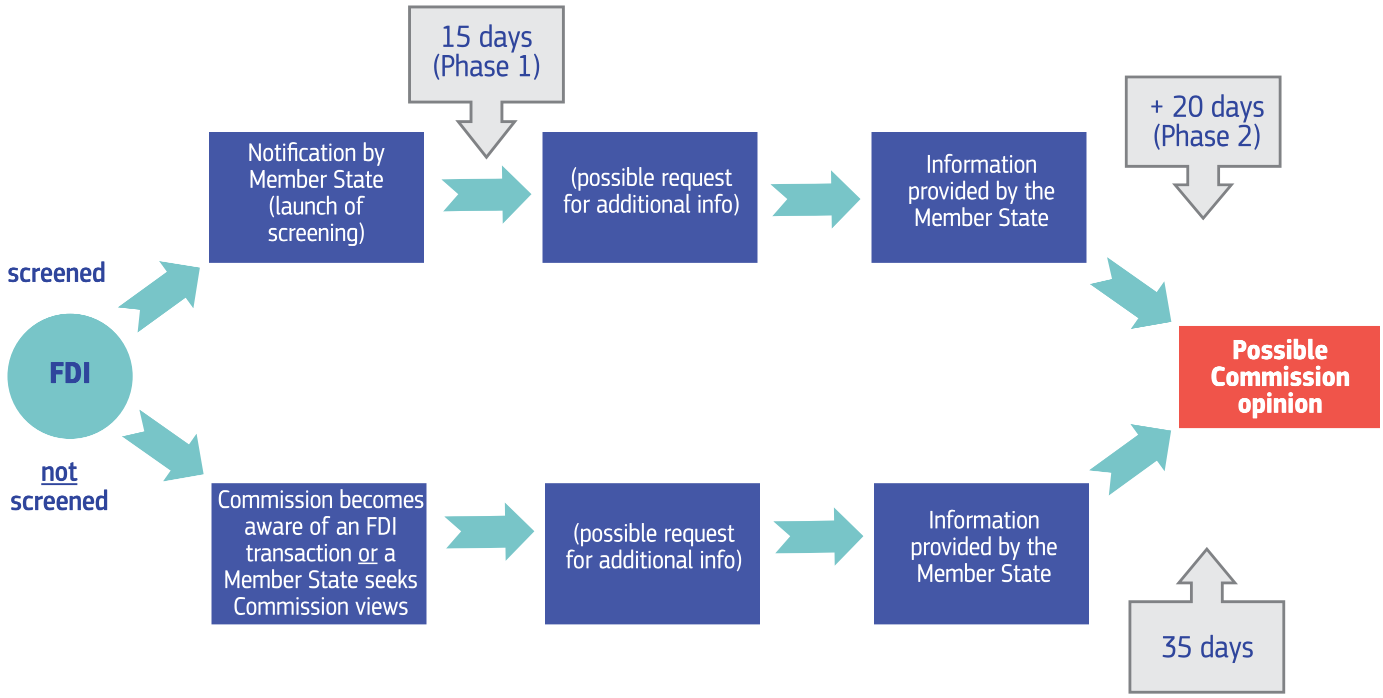
5. Way Forward

The new Regulation and the resulting system-upgrade brings about substantive changes to export control in the EU which is generating considerable preparatory work and actions to be taken by the Commission and Member States to make the most of the full potential that the new Regulation offers. These include:

- the new Regulation provides that *"the Commission, in close consultations with the Member States and stakeholders, should develop guidelines to support practical applications of controls",* and specifically calls for guidelines on transparency of licensing decisions and on exports of cyber-surveillance items;
- calls from industry regarding guidelines on e.g. technology transfers and cloud computing will also have to be addressed;
- in order to implement new information-sharing and transparency provisions that call for the development of information exchange between the Member States and the Commission, and for high-levels of transparency, including through the publication of an annual report including detailed information on licensing decisions, the Commission is, in particular, mandated to adopt guidelines for annual reporting. It is also developing IT tools to support the related data exchange;
- the new Regulation recognises enforcement as a key dimension of effective export control policies and calls in particular for the creation of an enforcement coordination mechanism;
- finally the Commission with the support of Member States will work on developing an EU capacity-building and training programme for Member States licensing and enforcement authorities and deepen dialogues with third countries to promote the global convergence of controls.

The Commission invites the European Parliament and the Council to take note of this report.

1. Flowchart illustrating the handling of cases among the Member States and the Commission under the cooperation mechanism set up by the EU FDI Screening Regulation



Note that the 15 and 20-day time-lines are calendar days.

2. Foreign Direct Investments into the EU – 2019/2020 overview

As could be expected, 2020 proved a particularly challenging year for multinational enterprises and investors, operating in a deeply uncertain environment.

The uncertainty was largely fueled by the exponential growth of COVID-19 cases ([1]) and its fall-out on economic activity across the globe, as well as actions shielding domestic industries in key critical sectors from foreign speculative takeovers. The growing tensions between the United States (US) and China, and the increased pace in the reshaping of international supply chains added further pressure to an already challenging environment for multinational enterprises and investors.

The particular characteristics of 2020, and their related impact on foreign direct investment, including for the European Union, are best understood when placed within a broader time-frame. Consequently, this Section covers the time-period of January 2019 through first quarter of 2021 ([2]). This allows for proper context and for the 2020 numbers to be contrasted against both the pre-COVID-19 pandemic environment and developments, as well as the indication, albeit not uniformly for all sectors and investors, of some rebound in economic activity globally for the first quarter of 2021, including FDI transactions.

This Section looks closely at FDI inflows into the EU and individual member states, the origins of foreign investors in the EU, and the impact of COVID-19 on foreign direct investment into particular sectors.

Official FDI flows, covering equity transactions, reinvestment of earnings, and intercompany debt transactions, measure financial links between the reporting country and its first counterpart. The need to look deeper into the origin of investors underpins the use of firm level data on mergers and acquisitions (M&A) deals ([3]) and greenfield projects.

The word "uneven" captures developments well. The negative impact on FDI activity has been uneven dependent on the foreign investor, the host EU Member States, and the sectors at issue. Likewise, the rebound, however fragile and subject to the further handling of the pandemic, is proving to be uneven across EU Member States and economic sectors.

([1]) With 166 million confirmed cases worldwide and over 3.4 million deaths as of May 2021, WHO, May 2021

([2]) For FDI flows from National Account figures (Fig. 1) the time window 2015-2020 allows to see the effect of COVID-19 within an already decreasing trend in flows.

([3]) The terms deal and transactions will be used interchangeably.

Main findings

In 2020, global FDI flows fell to €885bn, 35% less than in 2019. In the EU, 2020 is characterised by a decrease of inward FDI by 71% to €98bn in 2020, down from €335bn in 2019.

In 2020, 33.6% fewer foreign (4) M&A deals were announced as compared to 2019. Deal-making recovered slowly by end-2020 and in the first quarter of 2021 (+4.5% on a year-on-year comparison), but remained 30% below the 2019 level. In 2020 Europe has lost €31bn in foreign greenfield investments and 115,000 expected jobs when compared with 2019.

In 2020, the largest share of foreign investments in Europe originated in the United States (US) and Canada, with nearly 35% of M&A transactions and 44% of greenfield projects, followed by the United Kingdom (UK) with 30.5% and 21% respectively. EFTA comes next with about 12% of the foreign M&A transactions and 8% of greenfield projects. China, with 2.5% of the M&A transactions (down from 4% in 2019) and 7.5% of greenfield projects, was the fourth foreign investor in the EU after US, UK and Switzerland.

The drop in the number of M&A transactions in 2020 involved all EU Member States, even if France and Sweden were particularly affected. Germany, with a more contained drop in the number of M&A transactions, suffered from sinking Chinese and US investments, while in Spain and the Netherlands deals from EFTA countries and from Korea and Japan lost ground in 2020 as compared to 2019.

Economic sectors in Europe were not equally impacted by COVID-19. The hardest-hit sector was accommodation with a drop of more than 70% in the number of foreign deals. With a quarter of all foreign M&A transactions, manufacturing suffered a 40% drop in 2020 deal numbers as compared to 2019, and still shows a cloudy outlook in the first quarter of 2021 with a year-on-year performance rounding -1.3%. Over 56% of acquisitions done in manufacturing in 2020 involved medium or large companies, about 15 percentage points more than the EU average for all sectors. A non-negligible 8% of the deals involved acquisitions of enterprises with less than 10 employees in this sector.

Information and communication technologies (ICT) is the sector least affected by the pandemic, with a modest drop of 12% in 2020 as compared to 2019. In 2020 ICT totaled 35% of all M&A deals, surpassing manufacturing for the first time ever. ICT also drives the recovery in 2021, with a year-on-year increase in M&A transactions rounding 53% in the first quarter of 2021, which brings the number of deals in this sector to its pre-COVID level.

The numbers in detail

In 2020, global FDI flows fell drastically to €885bn (5), meaning 35% less than in 2019 and 55% less as compared to the peak year of 2016 (Fig.1). The COVID-19 pandemic accelerated the steady decline of global FDI and contributed to global FDI flows plummeting to their lowest levels in 25 years, recorded in 2020, with FDI values 30% below the lowest point recorded after the global financial crisis (6).

In the EU, the COVID-19 pandemic produced even harsher effects when compared to the world average, with inward FDI falling by 71% to €98bn in 2020, down from €335bn in 2019. This is an 80% reduction with respect to the European peak year of 2018. In 2020 inward FDI accounted for a mere 0.7% of EU27 GDP, sharply down from 3.6% in 2018 (7).

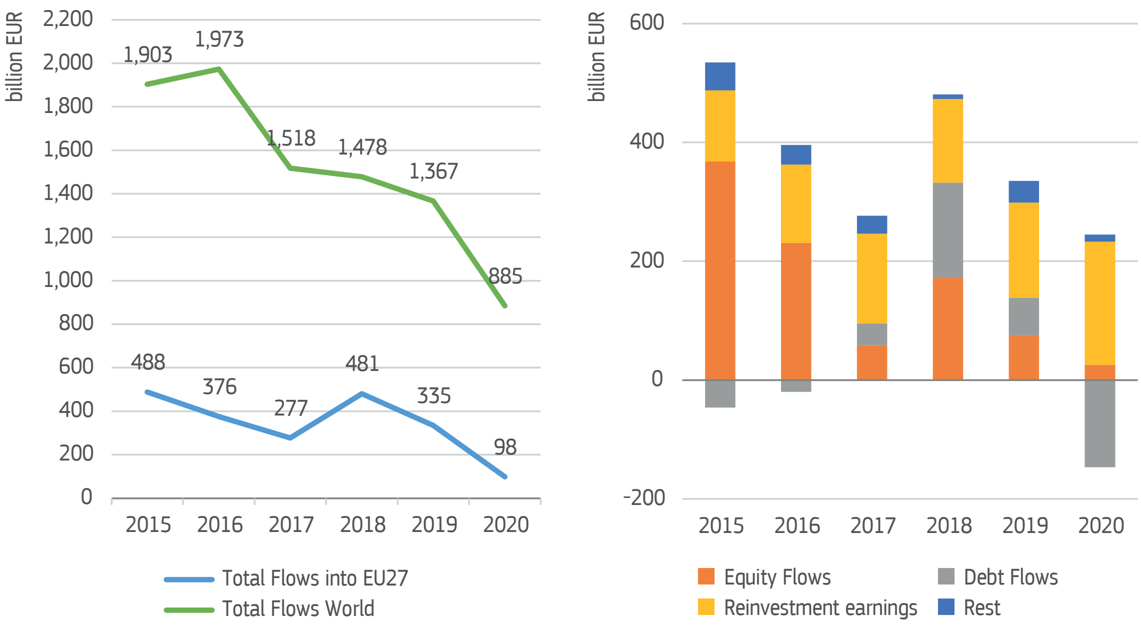
(4) The term *foreign*, when associated to M&A deals or to greenfield projects, refers to transactions made by non-EU investors in Europe. See the section on methodology and sources.

(5) Global FDI flows are the world FDI inflow values reported by the OECD (FDI in figures, OECD, June 2021); the exchange rate used is extracted from the database International Financial Statistics-IMF and refers to the yearly average of the Exchange Rates per U.S. Dollar (ENDA_XDC_USD_RATE).

(6) UNCTAD, Investment Trends Monitor n. 38, January 2021.

(7) Source: OECD, data extracted in May 2021.

Figure 1: World and EU FDI inflow (left panel) and FDI inflow in EU with breakdown by instrument (right panel)



Source: OECD data, extracted on 20 May 20 2021. The details by instrument does not include inflows into Bulgaria, Croatia, Cyprus, Malta, and Romania whose value is grouped under Rest. FDI values exclude investments from resident special purpose entities.

A different picture, all depending on the EU Member State

This decline in European FDI inflows in 2020 is driven by significant disinvestments in the Netherlands, where FDI fell to -€98bn from +€38bn in 2019 ([8]). Large reduction of investments, especially from US, are also observed in Ireland, where FDI inflows were €29bn in 2020, down from €72bn the year before ([9]). German and French FDI inflows fell to €31bn and €16bn respectively, recording a -36% and -48% decrease compared to 2019. Italian FDI inflows dried out almost entirely reaching -€338ml in 2020, down from €16bn in 2019 ([10]). In conclusion, 2020 has been an *annus horribilis* almost everywhere in the EU, with the notable exceptions of Luxemburg, Belgium and Sweden and to a lesser extent in Spain and Hungary, which saw increased flows despite a decline in the number of deals and projects.

Three months into 2021, the EU landscape has started to improve in all developed countries. Investors seem to be gearing up for a recovery of FDI inflows to Europe, as the last quarter of 2020 recorded €11bn, up from the -€17bn of the third quarter. Both corporate and private equity investors are increasingly considering new investments, in order to capitalise on a potential market upswing as economies reopen ([11]).

However, while there appears to be some light at the end of the tunnel, the post COVID-19 recovery represents a marathon, not a sprint. Baseline projections suggest that the EU recovery will depend on how successfully vaccination programmes will manage the pandemic, and how quickly governments will ease or lift restrictions. The EU economy is forecast to grow by 4.2% in 2021, returning EU GDP to its pre-crisis level by the end of 2021 ([12]). Yet FDI remains on shaky grounds. The enduring challenges of the pandemic (including the surge of new variants, with some more resistant to available

([8]) UNCTAD estimates -€105bn for sales of equity stakes in Dutch companies by foreign parents, and -€86bn in intra-company loans (increased borrowing of the foreign parent from its affiliate or decrease of loan amount paid off by the affiliate to the parent). Source: UNCTAD, Investment Trends Monitor n. 38, January 2021.

([9]) 2019 value for Ireland accounts for the $62bn acquisition of the pharmaceutical company Shire plc by the Japanese Takeda Pharmaceutical.

([10]) Foreign direct investment (FDI) - FDI flows - OECD Data, extraction May 2021.

([11]) Refinitiv news 5/13/2021

([12]) European Commission, European Economic Forecast, Spring 2021.

vaccines), the fear of an increase in trade frictions, the rise in technology competition, and the continuous reshaping and regionalisation of supply chains, are all factors likely to influence the volume and direction of future FDI flows worldwide (13).

Mergers & acquisitions deals and greenfield investment projects in Europe – general trends

While official FDI figures at macro-level describe investment links between the reporting country and the first partner country (14), the link between the foreign investment and the ultimate origin of the investor can only be established by looking at individual transactions, namely mergers & acquisitions (M&As) and greenfield projects.

In 2020, 33.6% fewer foreign M&A deals were announced when compared to 2019 (Fig.2, upper panel). The drop in M&A transactions in the second quarter of 2020 (-45.7% on year-on-year comparison (15)) corresponds to the first lock-down period in many EU Member States and is particularly severe. Foreign M&A transactions stagnated to a smaller reduction of around 25% in the following two quarters, reflecting the uncertainty facing investors and the significant confinement measures worldwide. Deal-making recovered slowly in the first quarter of 2021 (+4.5% on a year-on-year comparison), although remaining 30.7% below the level of 2019.

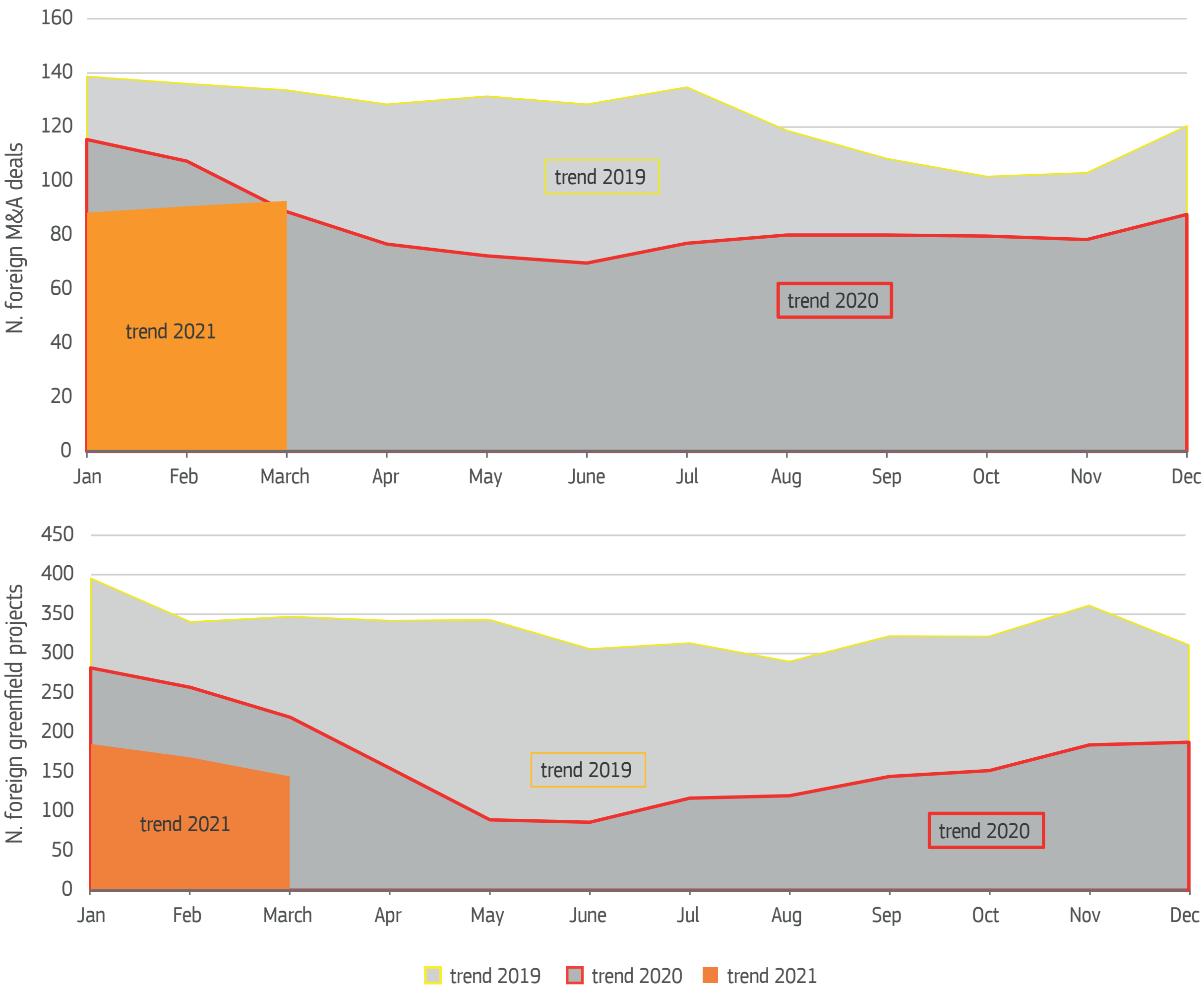
The drop in the number of M&A transactions involved all EU Member States. France and Sweden (Fig.4, left panel), were particularly affected, especially for the foreign M&A deals involving US and EFTA investors. Germany, with a more contained drop in the number of M&A transactions, suffered from decreasing Chinese and US investments, while in Spain and the Netherlands deals from EFTA countries and from Korea and Japan lost ground in 2020 as compared to 2019 (Tab.3). In the first quarter of 2021 the number of deals are on the rise in all Member States, except Italy, Spain, Luxembourg and Portugal.

(13) 2021 FDI Confidence Index.

(14) FDI flows consist of equity transactions, reinvestment of earnings, and intercompany debt transactions. Fig.1, right panel, reports the proportions for each type of instrument in EU.

(15) Year-on-year is the % variation of a period (here quarter) with respect the same period of the previous year.

Figure 2: General trends of foreign M&A deals and greenfield projects into the EU from January 2019 to March 2021 (three months rolling average).



Source: JRC calculations on Bureau van Dijk data extracted on 6 May 2021.

The negative effect of COVID-19 on greenfield projects has been even more pronounced than on M&A transactions (Fig. 2, bottom panel) ([16]). This partly reflects the long-term nature of a greenfield investment which requires, in its initial phase, visits to the future production sites ([17]) and meetings with local authorities ([18]), all extremely difficult in pandemic times with lock-downs and travel restrictions.

In 2020, foreign investors cut the number of greenfield investments in Europe by over 50% as compared to 2019. Projects dried out in the second and third quarters of 2020 with a year-on-year variation of -72% and -55%, respectively. The last quarter of 2020 showed a temporary rebound, with +30% in the number of projects as compared to the first quarter, despite the lock-down in many EU countries. In value-terms, the rebound in the last quarter of 2020 is even more significant, with €12.6bn of capital expenditures announced or completed between October and December 2020, up from €6.3bn in the third quarter of 2020. Irrespective of this uptick, in the last quarter of 2020 the number of greenfield projects was 40% less than the number observed in the last quarter of 2019, whereas the value of the projects was only 10% lower.

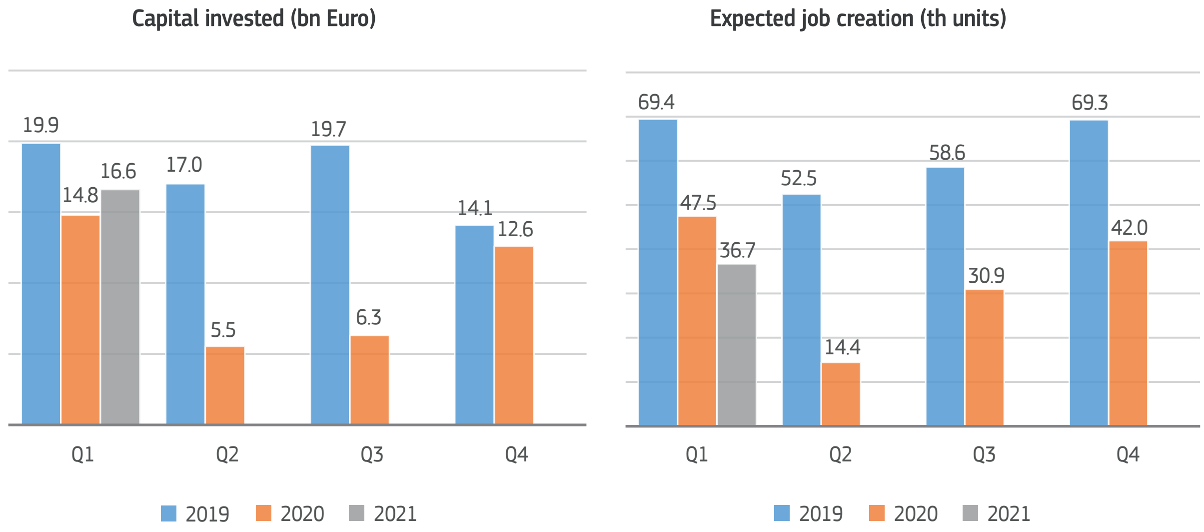
([16]) Greenfield investments are projects aiming at setting up a new site or expanding an existing site. The section on methodology and sources describes the data used here.

([17]) Some investment agencies, e.g. Portugal and Poland, organised in 2020 virtual site visits to assist investors.

([18]) More information on Investment Promotion agencies is available in www.oecd.org/coronavirus/policy-responses/investment-promotion-agencies-in-the-time-of-covid-19-50f79678/#section-d1e48. Greenfield projects also depend on government incentives (e.g. tax rebates, land availability, trained HR).

Altogether, the losses in terms of foregone investments and job creation, due to cancelled or post-poned greenfield projects, were considerable. In 2020 Europe has lost €31bn in foreign greenfield investments and 115,000 expected jobs when compared with 2019 (Fig.3). The first quarter of 2021 shows a mixed picture. The number of greenfield projects is estimated to be 34% lower than in 2019, but the capital invested amounts to €16.6bn, up from €14.8bn in the first quarter of 2020.

Figure 3: Foreign greenfield projects, capital invested and expected job creation, 2019-Q1, 2021-Q1



Source: JRC calculations on Bureau van Dijk data extracted on 6 May 2021.

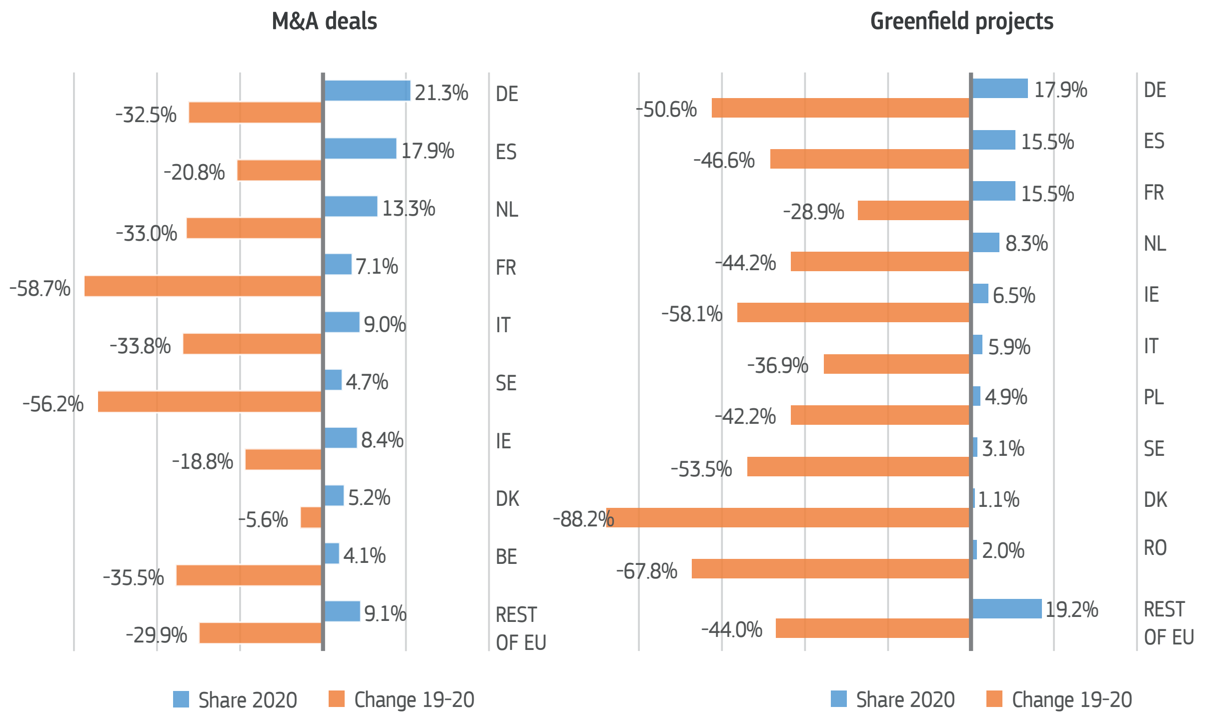
A closer look at the host countries for foreign investments shows that foreign projects in the COVID-19 year fell in all EU countries.

Denmark, Romania and Germany suffered the most from the COVID-19 outbreak (Fig. 4, right panel). In particular, US greenfield projects declined considerably, from -38% in Germany to -84% and -87% in Romania and Denmark respectively. Swiss greenfield projects in Germany dropped by 90% in 2020 as compared with 2019 ([19]).

In the first quarter of 2021, in Denmark, Hungary and Greece a recovery of greenfield investments by more than 40% on a year-on-year basis is observed, while in Spain and Portugal the improvement observed is between 3% and 16%. All remaining Member States with a sizable number of greenfields remain in negative territory.

([19]) In 2020, Germany hosted 56% of all Swiss greenfield investment projects in the EU.

Figure 4: Number of foreign M&A deals and greenfield projects by target EU country: share over the total in 2020 and percentage change with respect to 2019



Source: JRC calculations on Bureau van Dijk data extracted on 6 May 2021.

Origins of foreign investors in the European Union

In 2020, the largest share of foreign investments in Europe originated in the US and Canada, with nearly 35% of M&A transactions and 44% of greenfield projects, followed by the UK with 30.5% and 21% respectively. EFTA comes next with about 12% of the foreign M&A transactions and 8% of greenfield projects. China, with 2.5% of the M&A transactions (down from 4% in 2019) and 7.5% of greenfield projects was the fourth foreign investor in the EU after US, UK and Switzerland ([20]) (Tab.1).

While heavily affected by the pandemic, US outward investments to Europe are slowly recovering, with 37% more M&A transactions in the first quarter of 2021 as compared to the first quarter of 2020, topping the pre-COVID level of 2019-Q1. The positive outlook is also shared with offshore financial centres ([21]), which represent about 7% of all M&A transactions in 2020 and 4% of green-field projects. Offshores were only moderately affected by the pandemic and display a year-on-year upturn of M&A transactions reaching 47% in the first quarter of 2021.

([20]) Chinese figures include Hong Kong and Macao.

([21]) Offshore financial centres are defined according to IMF (2014) "Offshore Financial Centers (OFCs): IMF Staff Assessments" and IMF (2000) "Offshore Financial Centres" IMF Background Paper. The main Offshores by number of deals or greenfields are (in alphabetical order) Bermuda, British Virgins Islands, Cayman Islands, Mauritius and the United Kingdom Channel Islands. For a 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.

Table 1. Foreign M&A transactions and greenfield projects in 2020 by nationality of the investor's ultimate owner. Percentage change in 2020 as compared to 2019, and share over total, are displayed

	Percentage change 2020 over 2019		Share over total	
	M&A	Greenfield	M&A	Greenfield
USA and CAN	-35	-47	34.9	44.2
UK	-21	-46	30.5	20.9
EFTA	-25	-68	12.1	8.2
Offshores	-34	-25	6.9	4.2
Developed Asia	-47	-59	5.6	6.3
China	-63	-50	2.5	7.5
Central & S. America	-37	-67	1.7	1.0
India	-44	-47	1.4	1.4
AUS and NZ	-50	-50	1.2	0.7
Gulf Coop Countries	0	-35	1.2	0.8
Turkey and other ME	-50	-57	0.9	2.3
Other Asia	-73	-55	0.4	0.5
Russian Federation	-83	-41	0.1	0.5
Rest of the World	-54	-44	0.6	1.0

Source: JRC calculations on Bureau van Dijk data extracted on 6 May 2021 (22).

While accounting for a relatively small share of deals, Chinese companies increased their presence in the EU considerably in the past years. During the three years prior to the pandemic, Chinese M&A in EU grew by 26.1% as compared to the previous four years, despite the deceleration of Chinese GDP growth. Other strategic economic partners like the US, Switzerland or Japan reported significantly more modest increases of 20.8%, 13.2% and 15.6% respectively.

Chinese outward investment deals into Europe have sharply slowed down starting from November 2019, i.e. two months prior to the lock-down in Wuhan (China) at end-January 2020. Irrespective of the early re-opening of the Chinese economy, in mid-2020, Chinese M&A activity in the EU declined by 62.5% as compared to 2019 (Tab.1), and M&A transactions in the first quarter of 2021 are failing to take off (as contrasted against greenfield investments which display positive year-on-year growth). Together with COVID-19, continuing political tensions between the US and China, and the reshoring of global value chains (23), largely exposed to China to avoid geopolitical and tariff fallout (24), also slowed down such Chinese foreign investments. However, the appetite of Chinese investors for high tech sectors is likely to increase and could shape future FDI flows from and to China. Since 2013, about 80% of the greenfield projects and 74% of the M&A transactions have been in sectors linked to "Made In China 2025" (25), and the new Chinese multi-annual plan presented in March aims at boosting an innovation-led growth model (26).

(22) Acronyms: CAN (Canada), EFTA (Switzerland, Norway, Iceland, Liechtenstein), AUS (Australia), NZ (New Zealand), ME (Middle East). For the listing of Offshores see footnote 25. Developed Asia includes Japan, Korea, Singapore and Taiwan; Gulf Cooperation Countries include United Arab Emirates, Qatar, Saudi Arabia, Kuwait, Oman, and Bahrain. Other ME includes Israel and Lebanon. Chinese data include Hong Kong and Macao.

(23) On general trends in global value chains, see OECD 2020. See also WEF 2020.

(24) Japan is favoring companies to relocate from China. In the US, President Biden has pushed forward an executive order strengthening Buy American provisions. Whether reshoring will be a mass phenomenon is still unclear.

(25) Made in China 2025 is a national strategic plan to further develop the manufacturing sector.

(26) Next-generation artificial intelligence, quantum information, brain science, semiconductors, genetic research and biotechnology, clinical medicine and health, and deep space, deep sea and polar exploration. See Reuters, March 5, 2021.

EU economic sectors unevenly impacted by COVID-19

Economic sectors in Europe were not equally impacted by COVID-19. Some sectors saw unprecedented surges in deal-making (such as medical supplies, pharma manufacturing, e-commerce), while others such as tourism, leisure, aviation and marine transportation have been adversely affected.

The hardest-hit sector was accommodation with a drop of more than 70% in the number of foreign deals. Real estate and transportation sectors followed, with -52% and -63% drops on a year-on-year comparison, respectively. Retail, representing 6.4% of all foreign deals in 2020 (down from 8.4% of 2019) was also impacted heavily in 2020 (Tab. 2 and Fig.5, upper panel).

With a quarter of all foreign M&A transactions, manufacturing suffered a 40% drop in 2020 deal numbers as compared to 2019, and still shows a cloudy outlook in the first quarter of 2021 with a year-on-year performance rounding -1.3%. Over 56% of the transactions done in manufacturing in 2020 involved medium or large companies, about 15 percentage points more than the average for all sectors (Tab.2). However, a non-negligible 8% of the deals involved acquisitions of enterprises with less than 10 employees in this sector.

The sky is no clearer for greenfield projects in manufacturing. Third by number of foreign projects (after wholesale and ICT), manufacturing is nevertheless the top sector in terms of investments with €11bn of foreign projects in 2020, down from €22.5bn in 2019. Foreign investors have been more cautious, also in the amount invested per project. The average value of investments decreased from €27.5ml in 2019 to €20ml in 2020 ([27]).

For the period observed (2019-Q1 to 2021-Q1), US, China and Japan have been the main non-European investors in manufacturing. About 26% of all US deals in EU, involved companies in the manufacturing sector. This percentage increased to 61% for China and 42% for Japan. The UK and Switzerland have been the main European players, with 22% and 34% of their investment deals targeting manufacturing.

If the COVID-19 crisis revealed the widespread fragility of global supply chains, the recovery certainly goes through technology and innovation. Information and communication technologies (ICT) is the sector least affected by the pandemic, with a modest drop of 12% for M&A deals in 2020 as compared to 2019. In 2020 ICT totaled 32% of all M&A deals, surpassing manufacturing for the first time ever. Two third of the M&A deals in ICT involved small or very small EU companies. Only 8% of the foreign deals involved large EU companies.

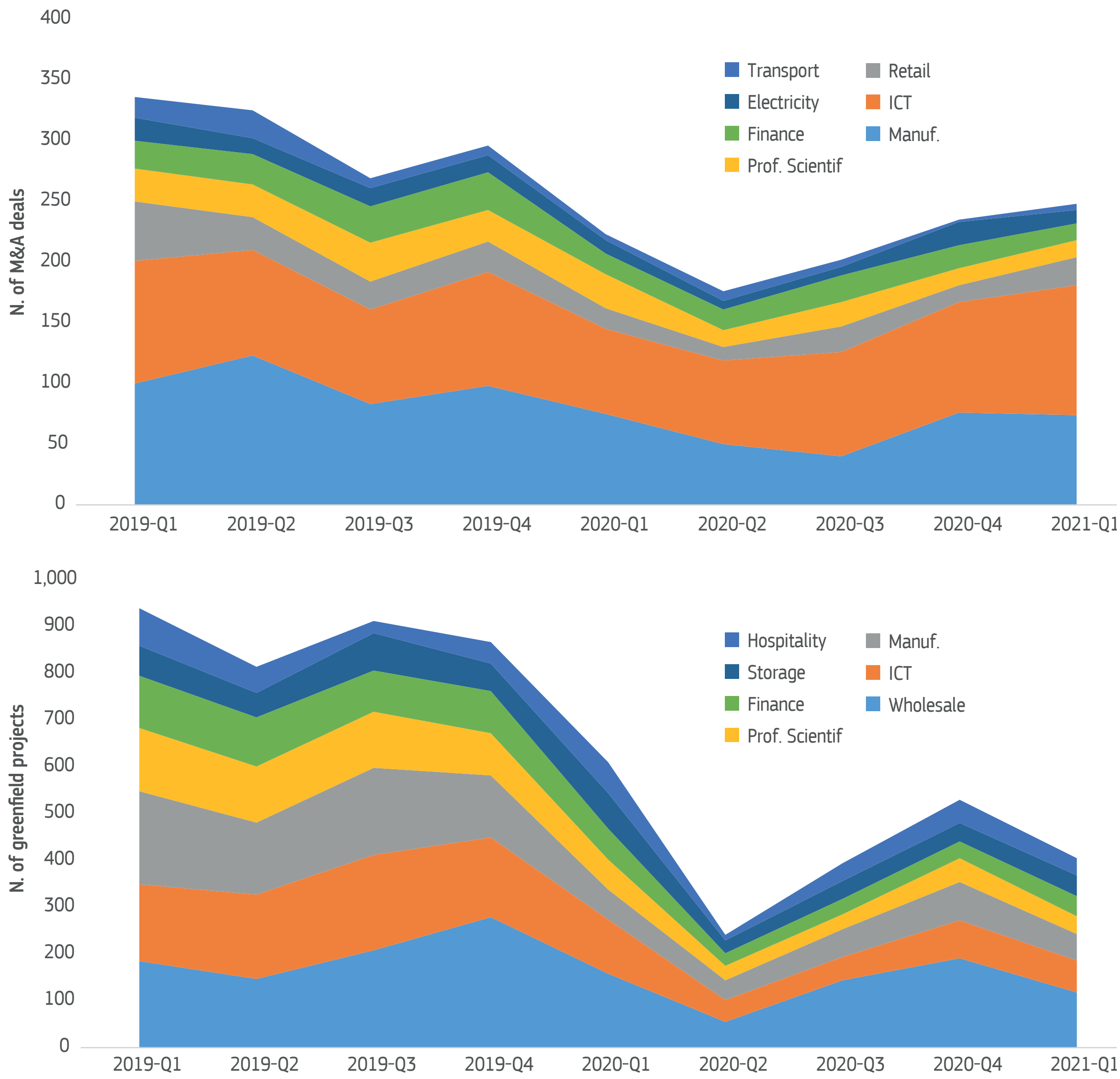
ICT also drives the recovery of foreign investments in 2021, with a year-on-year jump in M&A transactions of 53% in the first quarter of 2021, which brings the number of deals in this sector to its pre-COVID level. The picture for greenfield investments is slightly different. While buoyant before the pandemic, greenfield investments in ICT more than halved in 2020 and are failing to take off, also in the first quarter of 2021 (Fig. 5, bottom panel). In 2020, ICT and R&D related activities represented over 25% of all foreign greenfield investments in EU, and 22% of the capital invested (about €9bn), with an average size of investment unaltered across the timeframe observed ([28]). In terms of expected job creation, ICT and R&D related projects represented 31% of the entire job creation produced by foreign greenfield investments, eight percentage points more than manufacturing. Among the projects announced, those related to green transportation, and data use, storage and transmission stand out.

The US is, by far, the main foreign investor in ICT. In the past two years, as much as 45% of US foreign M&A transactions in the EU targeted ICT and R&D activities. The UK follows with 34%. Japan and Switzerland come next with 26% and 27% respectively, while China lags behind with a mere 7%.

([27]) It is worth noting that figures for 2021 will pick up with the €7bn project announced by Intel to open a semiconductors fab facility in Ireland.

([28]) The percentage is obtained by summing up greenfield investments in NaceRev.2 sections J and M. In 2020 ICT (section J) represented 15.3% of all foreign greenfields, 21.3% of the expected job creation and 15.1% of the investment (about €6bn). Professional, scientific and technical activities (section M), broadly containing R&D activities, represented about 8.5% of all foreign greenfields, 9.7% of the expected job creation and 7.2% of the investment (about €8.2bn).

Figure 5: Foreign M&A deals and greenfield projects by target EU sector, 2019-Q1 – 2021-Q1



Source: JRC calculations on Bureau van Dijk data extracted on 6 May 2021. Prof. and Scientif. stands for Section M of the NACE Rev. 2 Classification "Professional, scientific and technical activities", this section broadly contains R&D activities.

Table 2. Size of acquired companies in EU (share over total by sector, 2020) and share of foreign M&A deals (share over total). Detail by Nace-rev2 sectors.

Sectors	Share over total by sector, 2020				Share over total	
	Micro	Small	Medium	Large	2019	2020
ICT	20.30%	46.50%	25.60%	7.60%	24.5%	32.3%
Manuf.	7.50%	36.30%	41.80%	14.40%	27.4%	24.6%
Prof. Scientif	22.00%	45.10%	24.40%	8.50%	7.6%	7.8%
Retail	19.70%	49.30%	18.30%	12.70%	8.4%	6.4%
Finance	30.30%	28.80%	9.10%	31.80%	7.4%	7.7%
Health	13.33%	20.00%	33.33%	33.33%	2.1%	3.0%
Transport	30.80%	30.80%	23.10%	15.40%	3.8%	2.1%
Construction	9.10%	36.40%	36.40%	18.20%	1.9%	1.7%
OtherService	27.30%	36.40%	36.40%	0.00%	0.3%	0.1%
Real.Estate	50.00%	30.00%	10.00%	10.00%	3.0%	2.1%
All remaining sectors	20.80%	34.00%	30.20%	15.10%	13.6%	12.1%
Average all sectors	19.10%	40.00%	27.20%	13.70%		

Source: JRC calculations on Bureau van Dijk Orbis-Global data extracted on 6 May 2021. The first four data columns are based on detailed balance sheet data, available only for 66% of the M&A observed. Each row in blue sums to 100. The last 2 columns are based in the entire M&A sample an each column sums to 100. Micro: enterprises with less than 10 persons employed; Small: enterprises with 10-49 persons employed; Medium: enterprises with 50-249 persons employed; Large: enterprises with 250 or more persons employed.

Table 3. Foreign M&A deals by origin of the investor and location of the investment in EU. Share over yearly total by top receivers.

Origin of the investor	Year	Target EU member state									
		AT	BE	DE	ES	FI	FR	IE	IT	NL	SE
US+CAN	2019	1.5%	5.0%	21.1%	14.5%	2.1%	14.3%	7.2%	9.0%	12.4%	5.7%
	2020	2.3%	4.7%	19.9%	16.7%	3.5%	8.8%	9.7%	11.4%	0.3%	4.1%
UK	2019	0.3%	4.2%	20.6%	14.0%	2.6%	10.8%	11.3%	9.5%	11.6%	7.1%
	2020	0.7%	4.4%	19.1%	19.8%	0.3%	5.7%	13.4%	6.7%	1.7%	6.7%
EFTA	2019	3.2%	3.2%	20.3%	12.7%	5.7%	10.1%	1.3%	5.7%	11.4%	17.1%
	2020	4.2%	2.5%	27.1%	5.9%	7.6%	3.4%	4.2%	6.8%	1.7%	5.1%
China	2019	3.1%	1.6%	32.8%	14.1%	3.1%	6.3%	3.1%	14.1%	14.1%	6.3%
	2020	4.2%	4.2%	25.0%	4.2%	4.2%	4.2%	0.0%	29.2%	4.2%	8.3%
Developed Asia	2019	2.9%	4.9%	24.3%	12.6%	1.0%	9.7%	2.9%	7.8%	21.4%	1.9%
	2020	1.8%	3.6%	32.7%	9.1%	5.5%	16.4%	1.8%	3.6%	3.6%	1.8%
Rest of the world	2019	1.2%	3.7%	16.9%	20.6%	2.5%	8.6%	5.3%	9.9%	14.8%	6.2%
	2020	2.8%	3.5%	19.0%	32.4%	1.4%	5.6%	2.1%	8.5%	2.1%	2.1%

Source: JRC calculations on Bureau van Dijk data extracted on 6 May 2021

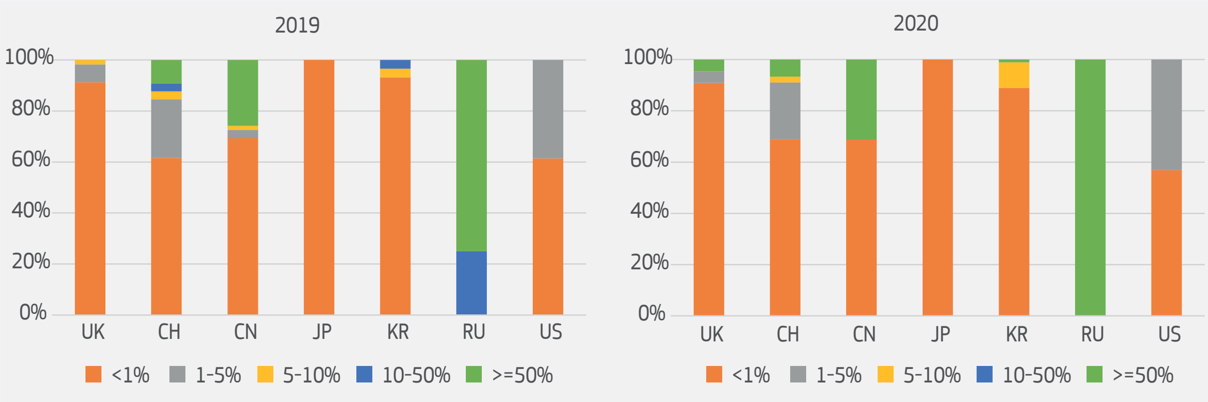
Public shareholding in foreign investors

This Box presents evidence of *public* shareholding in EU foreign M&A transactions and greenfield investments for the period 2019-2020. *Public* shareholding refers here to any case where a state-controlled body or company belonging to a selection of countries (Switzerland, China, Japan, South Korea, Russia, UK, US ([29])) holds stakes in a foreign investor in the EU. The ownership structure of the foreign investor is investigated at any level of holding, both direct and indirect, and both control and minority shares are considered for these purposes.

In 2020 *public* shareholding is more pronounced in M&A transactions than in greenfield investments. 15% of the foreign M&A transactions (unchanged as compared to 2019) and 11% of the greenfield- investments (10% in 2019) have cases of *public* shareholding.

The presence of *public* shareholding is mainly by way of minority shares, with an average *public* share of 4% for M&A deals and for greenfield investments, so looking only at actual control would leave out a significant number of cases (Fig.B1). The results for each deal type are very similar, showing that *public* influence in greenfield investments and M&A transactions is comparable.

Figure B.1. Foreign M&A deals and greenfield projects with public participation: share by amount of participation and country.



Source: JRC calculations on Bureau van Dijk data extracted on 6 May 2021.

The foreign countries under analysis hold *public* shareholding in rather different amounts. The largest proportion of *public* shareholding cases (45%) comes from the US, but with average stakes below 1%. This is the case of both federal and local funds, controlled by *public* bodies, that hold small stakes in both US, and foreign, companies investing in the EU. South Korea follows (present in 22% of the cases), again with very small average stakes. The remaining countries hold shares on average below 2%, the exceptions being Switzerland, with an average *public* stake of 7%, China with about 25%, and, Russia with a very significant average presence of 68% ([30]).

Public shareholding is more frequent (43% of cases) in foreign investors investing in the Manufacturing sector, although the amount of *public* stakes is rather limited in this group (on average 3%). The second-largest group of foreign investors with *public* shareholding are in the ICT industry (15% of cases), with an average stake of 3%. *Public* shareholding in the Financial sectors is found in 9% of cases, with a mean *public* stake of 9%. *Public* shareholding in investors acting in other sectors is less frequent, with the highest *public* average shares recorded in Transportation, Professional Activities, and Electricity (12%, 12% and 9% respectively).

Roughly half of the analysed M&A deals and greenfield investments entail the *public* owners holding stakes in an investor registered in the same country (e.g. Russia being shareholder of a Russian investor in EU). This percentage is significantly lower (around 3%) for China and Japan as their presence is mostly detected in investors registered outside Japan or China. At the other end of the spectrum, in almost all cases UK *public* bodies or companies appear as stakeholders in UK investors investing in EU, however, with minority shares. For the US and Switzerland, this is the case for two-thirds of the investments by Swiss and US investors.

([29]) These countries represent about 75% of all deals and 81% of all greenfield projects in EU in 2019-2020.

([30]) The data on State influence depends on the reconstruction of ownership links among subsidiaries, sometimes very difficult for Chinese companies. Those companies often use offshore subsidiaries to enter the EU, with little or no information on the links with Mainland China, or have complex nested structures not fully captured by Bureau van Dijk raw data.

3. Methodology and sources

For purposes of Section 2 of this Staff Working Document, raw data on Mergers and Acquisitions (M&As) and greenfield projects is from Bureau van Dijk datasets Orbis-Global, Zephyr and Orbis-CrossBorder. Data has been retrieved in May 2021 and then further elaborated by the Joint Reseach Center (JRC).

The term "foreign investor" is used whenever the investor is ultimately controlled by a non-EU subject (either a company or an individual). When the ultimate owner cannot be established, the location of the investor applies. This definition is not identical to the definition of foreign investor used in the FDI screening regulation ([31]).

"EU" indicates EU27, i.e. excluding the UK.

Only the observed number of M&A deals are reported, rather than deal values, as those values are only available for less than half of the deals. The reluctance of companies in reporting the financial details of the transactions motivates this lack of data. National account data at the start of the section, although based on the first counterpart location principle, should help in devising the importance and variations of M&A deals (see Fig. 1 on equity flows in Section 2).

For greenfield projects, the expected investment and the job creation is always available and reported in the text. All types of greenfield projects are accounted for in this document, including the construction of new sites, the relocation of a foreign presence, and the expansion of existing sites.

The reader should consider these figures (particularly those referring to the latest months in the sample) as preliminary and incomplete projections. Raw data are regularly updated, but a delay usually exists between the publication of a deal in the news and its recording in the dataset. Note also that the data provider updates old deals when new information becomes available, so data extractions for the same time window, but done at different points in time, could lead to different figures.

Section 2 considers deals and projects completed and assumed completed, but reports them with their announced date. For the latest transactions, Section 2 includes also the announcements, while rumours and postponed deals/projects are excluded. A special treatment is accorded to multi-deals, i.e. deals where there are multiple targets and/or multiple investors. Section 2 considers the multi-deal as a sum of multiple transactions. This means that if a foreign investor acquires two companies, this is recorded as two transactions. Conversely, if a foreign investor acquires a company with multiple subsidiaries (in different countries), the transaction remains unique and is attributed to the main company's country. Transactions with multiple targets and multiple investors (a negligible amount) are disregarded, as it is very difficult to devise a general rule to attribute the deal. This classification rule is also applied to greenfield investments in case of multi-purpose projects in which several sites are built and/or the projects with multiple investors is announced.

For the analysis of public shareholding, for each investor, the ownership information available at the time of the deal/project is used. Where not available for 2020, the ownership information used is that of 2019, the latest information available.

Finally, data on the size of EU target companies acquired by a foreign investor is based on raw data from Bureau van Dijk Orbis-Global. This database contains detailed balance sheet data for about 40 million companies world-wide. Where not available for 2020, the information on balance sheet used is that of 2019. Note that very small firms (and to some extent small companies) are poorly covered in this database (see OECD, 2020 for additional insights).

(31) See Regulation 452/2019, Article 2 (2).

4. EU Member States – legislative developments [32]

Introduction

This part of the Staff Working Document reflects the information provided by the EU Member States pursuant to their annual reporting obligation set out in Article 5 of the EU FDI Screening Regulation.

The section for each Member State reflects:

- whether the relevant Member State has, as of 1 July 2021, a national investment screening mechanism in place;
- legislative developments in the field of investment screening during the reporting period (Q1 2019 – Q1 2021);
- any ongoing initiatives that may be expected to result in the introduction of a national screening mechanism or amendments to an existing mechanism.

[32] For purposes of this Section, legislative developments means the formal introduction or adoption of a legislative text under the constitutional procedures of a Member State, be it an amendment to existing legislation related to investment screening, or a legislative text creating a screening mechanism.

AUSTRIA

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
The Austrian Investment Control Act (ICA) entered into force on 25 July 2020. Prior to this Act, Section 25a of the Foreign Trade Act 2011 applied.

Compared to Section 25a of the Foreign Trade Act 2011, the Investment Control Act entails substantial improvements:

- More precise definition of included sectors;
- Enhanced possibilities of screening indirect acquisitions;
- Lower threshold (10%) triggering the authorisation obligation in particularly sensitive areas (e.g. water, 5G networks, pharmaceutical sector, energy, medical products, protective equipment);
- Exemptions from the authorisation obligation for certain microenterprises, including start-up enterprises, with fewer than ten employees and an annual turnover or an annual balance sheet total of less than €2 ml;
- The cooperation mechanism between the European Commission and EU Member States.

The authorisation obligation under the ICA applies when The Austrian undertaking targeted by the acquisition is active in an area of particular relevance for security or public order. A non-exhaustive list of these areas is set out in the annex to the Investment Control Act.

- An authorisation is required in the following cases:
- Acquisition of the whole undertaking;
- Acquisition of a specific share of voting rights (ten per cent or twenty-five per cent);
- Acquisition of a controlling interest; or
- Acquisition of material assets, whereby a determining influence on part of an undertaking is acquired.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
Austria has no ongoing initiatives which can be expected to lead to updates to its existing screening mechanism and related legislation.

BELGIUM

NATIONAL SCREENING MECHANISM IN PLACE: No

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
Shortly after the adoption of the Regulation, the Belgian federal government took the initiative to gather all relevant stakeholders, including civil society, to set out the guiding principles that should apply to a Belgian national screening mechanism.

This broad consultation subsequently has led to a preliminary draft law that was adopted by the federal Council of Ministers in July 2020 under the condition of further examination. By September 2020, an advisory opinion of the Legislation Section of the Council of State was issued, pointing out remarks regarding, among others, the allocation of competences within the Belgian federal structure.

As soon as the new government took office in October 2020, further initiatives were taken to reach a broad consensus on the allocation of competences and the necessary legal instruments to implement and apply a screening mechanism.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
At the time of reporting, further discussions are being held to establish an efficient and effective screening mechanism as soon as possible. It remains the objective to finalise the preparatory drafting of the legal instruments swiftly, which will have to be followed by parliamentary procedures to adopt and implement the Belgian national screening mechanism.

BULGARIA

NATIONAL SCREENING MECHANISM IN PLACE: No

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q1 2021):
In 2020, the Minister of Economy sent to the national authorities, which are responsible for sensitive areas, an information request regarding the current legislation and the sector-specific measures.

Based on the analysis of the national legal framework, the competent Bulgarian authorities have concluded that the Bulgarian legislation provides sufficient tools for the monitoring of investment at sectoral and national level. Against this backdrop, no legislative changes have been initiated at this stage.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
Bulgaria has no ongoing initiatives which can be expected to lead to the adoption of a national screening mechanism and related legislation.

CROATIA

NATIONAL SCREENING MECHANISM IN PLACE: No

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q1 2021):
See below.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
Croatia has no ongoing initiatives which can be expected to lead to the adoption of a national screening mechanism and related legislation.

REPUBLIC OF CYPRUS

NATIONAL SCREENING MECHANISM IN PLACE: No.

Cyprus is in the process of evaluating the opportunity to establish a screening mechanism with other stakeholders, also taking into account any difficulties encountered up to now.

Depending on a pending political decision on appointing a permanent contact point for Regulation (EU) 2019/452 some changes in the relevant legislation may be required.

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
See below.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
Cyprus has no ongoing initiatives which can reasonably be expected to lead to the adoption of a national screening mechanism and related legislation.

CZECHIA

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
The draft bill establishing the national screening mechanism and implementing the FDI Screening Regulation was submitted to the Chamber of Deputies in April 2020 and was passed in January 2021. The Act No. 24/2021 on screening of foreign investments entered into effect on 1 May 2021.

The Act focuses on foreign investors whose ultimate beneficial owner originates from non-EU countries, and who acquire at least 10% of voting rights in or/and substantial control over a targeted Czech company active in a sector important for the security, public, or internal order of the Czech Republic. If the target company does business in the field of production of military material, selected dual-use goods, or belongs to critical or critical information infrastructure (defined by special laws), the investor will have to request mandatory authorisation from the Ministry of Industry and Trade (MOIT) before completion of the investment. The screening period is 90 days. If a national security risk is identified, the Czech government will have a further 45 days to decide whether it will approve, conditionally approve, or, prohibit the transaction.

Other national security relevant investments could be subject to ex officio screening up to 5 years after completion of the investment as well, however, the mandatory permission will not be required before the investment is concluded.

To strengthen the transparency of the investment environment, the law introduces a regime of voluntary consultations whether their investment could be relevant for national security, public or internal order. By consulting MOIT, foreign investors will gain legal certainty through learning whether their transaction could be subject to a screening procedure. Such a consultation will be concluded within a shortened period of 45 days. The consultation is mandatory only for investments into the most significant media houses and leading media outlets (e.g. holders of nationwide broadcasting licenses).

The Act also sets up the necessary internal and external procedures to process comments and requests for information by other Member States and/or the Commission.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
The Czech Republic has no ongoing initiatives which can be expected to lead to updates to its existing screening mechanism and related legislation.

DENMARK

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
On 10 March 2021, the Danish Government introduced a proposal for new FDI screening legislation in Denmark (the Investment Screening Act).

The purpose of the Investment Screening Act is to prevent that foreign direct investments constitute a threat to national security or public order in Denmark, through screening and possible interventions against such investments, etc.

The Investment Screening Act is designed as a combination of a compulsory scheme for authorisation of foreign direct investments, etc. within particularly sensitive sectors and activities (defence, dual-use, IT security, critical infrastructure, and critical technology), and an optional scheme for notification of foreign direct investments within other sectors.

Following the approval of the Investment Screening Act by the Danish Parliament, the Act will enter into force on 1st July 2021. However, the legislation does not apply to foreign direct investments that have been implemented before 1 September 2021.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
See above.

ESTONIA

NATIONAL SCREENING MECHANISM IN PLACE: No

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
See below.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
Estonia does not currently have a national screening mechanism and related legislation in place.

A legislative intent regarding the need to prepare a draft act for a foreign investment screening mechanism was sent to public consultation and approved in July 2020.

An independent legal impact assessment of the planned draft Act was subsequently ordered by the Government Office and was prepared by the Centre for Applied Social Sciences of the University of Tartu. The impact assessment was finalised in April 2021.

The draft law is planned to be submitted to the Government of the Republic in January 2022, and its adoption in the Parliament could take place in the second quarter of 2022.

The expected time of entry into force of the act would be the beginning of 2023.

FINLAND

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
A law amending the Act on the Screening of Foreign Corporate Acquisitions entered into force on 11 October 2020. The amendments aligned the existing mechanism with Regulation (EU) 2019/452. Specifically, the amendment provided anti-circumvention clauses and rules on the disclosure of confidential information. In addition, the amendment provides the possibility of imposing conditions in the confirmation decision (mitigating measures) and provides a clarification of certain definitions, such as key national interest.

Furthermore, the scope of mandatory prior application was extended to acquisitions in the security sector when the undertaking concerned produces or supplies critical products or services related to the statutory duties of Finnish Authorities essential to the security of society. In the previous legislation, these acquisitions were mainly subject to a voluntary announcement, and it was also possible after the final conclusion of the transaction.

In addition, in January 2020, further legislation on screening of foreign acquisitions of certain land and properties of importance to defense entered into force. This mechanism falls under the responsibility of the Ministry of Defence.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
At the time of reporting, Finland had no ongoing initiatives which can be expected to lead to updates to its existing screening mechanism and related legislation.

FRANCE

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
Several amendments were made to the applicable framework for FDI screening in France since January 1 2019:

Entry into force of the "PACTE" (Loi portant Plan d'Action pour la Croissance et la Transformation des Entreprises» law - May 2019): the updated provisions led to (i) increased powers with the Minister for the Economy for injunction and sanctions; (ii) strengthened powers for the State to investigate FDI cases ; (iii) increased transparency of the procedure with the introduction of parliamentary control and the obligation for the Government to publish data on FDI screening; (iv) increased foreseeability towards stakeholders evidenced by the revision of the assessment time-limits and the clarification of the scope of prior authorisation and opinion.

Entry into force of the infra-legislative decree implementing the « PACTE » law – April 2020: through this reform (i) the scope of sensitive sectors was extended to new fields of activity; (ii) definitions of foreign investor and takeover were broadened.

Emergency measures taken in response to the COVID 19 crisis - April and July 2020: (i) inclusion of R&D activities in the field of biotechnologies to the list of sensitive sectors / critical technologies; (ii) lowering of the threshold triggering the screening to 10% of voting rights for takeovers by extra EU-investors in listed companies (valid until 31 December 2021).

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
No

GERMANY

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
On 20 May 2020, the German government adopted a revision of the Foreign Trade and Payments Ordinance, which changes procedural and substantive aspects of Germany's investment screening procedure to safeguard essential security interests (so-called 15. AWV-Novelle). The changes extend the application of a 10 % trigger threshold for acquisitions by non-EU-foreigners and an associated notification requirement to health-related sectors. Furthermore, it adjusts some procedural rules to close identified shortcomings in the operation of the mechanism. The changes entered into force 3 June 2020.

On 18 June 2020, the German Bundestag adopted a revision of the Foreign Trade and Payments Act which aligns Germany's investment screening procedure with the FDI Screening Regulation (452/2019) (so-called 1 AWG-Novelle). The Federal Ministry for Economic Affairs and Energy serves as Germany's contact point pursuant to Art. 11 of the FDI Screening Regulation. Due to the new law, it is now possible to take into account a threat to the security or public order of other EU Member States within the German FDI screening process. In accordance with Art. 4 of the FDI Screening Regulation the amendment changed the benchmark for the investment screening from "immediate danger to security or public order" to "likely to affect security or public order", so that now more prognostic aspects of the acquisition can be integrated into the screening. Further amendments include a prohibition to close the deal ahead of the government's decision if the notification is mandatory. It is now also prohibited to disclose information which potentially impairs Germany's public order or security during an ongoing screening procedure. The changes entered into force on 17 July 2020.

On 29 October 2020, a further amendment to the Foreign Trade and Payments Ordinance entered into force (so-called 16. AWV-Novelle). The amendment adjusted the FDI screening related rules of the ordinance to the changes brought by the reform of the Foreign Trade and Payments Act.

On 1 May 2021, another amendment to the Foreign Trade and Payments Ordinance came into effect (so-called 17. AWV-Novelle). The most important change is the extension of the notification requirement to several specifically defined emerging technologies (including artificial intelligence, robotics, semiconductors, optoelectronics, quantum and nuclear technologies) and introduction of a 20% trigger threshold for acquisitions by non-EU-foreigners in the defined sectors. The amendment allows – in specific circumstances – the screening of investments which enable effective participation in the management or control of a company by other means than the acquisition of voting rights. The amendment further adjusts some procedural rules to close identified shortcomings in the operation of the mechanism.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
Germany is currently working on a further amendment to the Foreign Trade and Payments Ordinance (so-called 18. AWV-Novelle) which addresses a limited number of identified legislative shortcomings.

GREECE

NATIONAL SCREENING MECHANISM IN PLACE: No

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
The legislation regarding the organisation of the Hellenic Ministry of Foreign Affairs (the national competent Authority for FDI Screening), which entered into force on 28 February 2021, includes a specific clause designating the new department which will be responsible for FDI screening, on the basis of the relevant EU legislation.

As provided by the said legislation, the new department will be responsible for the operation of the contact point as regards the implementation of the FDI Screening Regulation, as well as for the operation of the national screening mechanism currently under preparation.

Greece is planning to establish a national FDI screening mechanism on the grounds of security or public order. This information has previously been shared with the European Commission and Greece has actively participated in the exchange of good practices concerning Member States' screening mechanisms as organised by the European Commission.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
The legislation regarding the FDI screening mechanism is currently being drafted.

HUNGARY

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests entered into force on 1 January 2019. It was the basic legislation for implementing the FDI Screening Regulation with respect to compliance with its Article 6 and 8.

In response to the COVID 19 pandemic, a new Government Decree 532/2020. (XI. 28.) entered into force on 28 November 2020. This Decree modified the Act LVII of 2018 so that, during a state of emergency, citizens of the EU, the EEA and the Swiss Confederation, or legal persons established in the aforementioned countries shall also be considered as foreign investors. Furthermore, the scope of screened activities was also widened. The Government Decree will be in force until the end of the state of emergency declared by the Government due to the COVID-19 pandemic.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
At the time of reporting, Hungary had no ongoing initiatives which can be expected to lead to updates to its existing screening mechanism and related legislation.

IRELAND

NATIONAL SCREENING MECHANISM IN PLACE: No

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
Ireland does not currently screen foreign investment. The introduction of an Investment Screening mechanism in Ireland will require primary legislation.

To inform and support the Government's decision-making process in this policy area, a Regulatory Impact Assessment (RIA) was conducted in 2020, exploring the various options available, and setting out the pros and cons of alternate policy interventions. In parallel, a public consultation exercise on Ireland's implementation of the FDI Screening Regulation and on the options for the development of a domestic screening regime was undertaken. In all of the submissions received, there was a general appreciation of the need to address the current vulnerability in this regard.

Based on this work, a draft General Scheme of the Bill was submitted to Government for consideration. The General Scheme outlined the objectives of the proposed Investment Screening Bill and provided an initial indication of the types of measures that would need to be included in the final legislation. In July 2020, the Government confirmed their decision to introduce a screening mechanism and approved the drafting of the necessary legislation. The Investment Screening Bill 2021 will give full effect to the EU Regulation Investment Screening, as well as facilitating the introduction of an investment screening mechanism in Ireland.

The Department of Enterprise, Trade and Employment is working with the Office of the Attorney General to progress the drafting of legislation.

It is expected that a Bill providing for an Investment Screening mechanism in Ireland will be published in the latter part of 2021.

Ultimately, the approach taken will balance Ireland's longstanding FDI Strategy whilst also acknowledging the challenge posed by potentially hostile investments.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
See above.

ITALY

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
The Italian FDI screening framework (commonly known as 'Golden Power' legislation or 'special powers') is established by Law Decree no. 21 of 15 March 2012 ('DL 21/2012'), converted with amendments by Law no. 56 of 11 May 2012, and Law Decree no. 105 of 21 September 2019 ('DL 105/2019'), converted with amendments by Law no. 133 of 18 November 2019, which aimed to adapt national legislation to the provisions of the FDI Screening Regulation. The main legislative developments during the reporting period are the following:

Law Decree No. 22 of 25 March 2019, converted with amendments by Law No. 41 of 20 May 2019, introduced in DL 21/2012, Article 1-bis, which regulates the exercise of special powers in relation to operators signing contracts for the supply of ICT tools with non-EU providers – related to broadband electronic telecommunications networks with 5G technology.

Law Decree No. 23 of 8 April 2020 ('DL 23/2020'), responding to the COVID-19 emergency and following EU Commission guidelines of 25 March 2020, introduced Articles 15, 16 and 17, amending DL 21/2012 and DL 105/2019, to temporarily expand the scope of special powers until 31 December 2020. This urgent measure required a further implementing decree specifying the sectors and assets falling within the areas mentioned to extend the scope. The main amendments:

Included critical infrastructures, critical technologies, supply of critical inputs, access to sensitive information and the freedom and pluralism of the media, as referred to in Article 4 of the Regulation, in the scope;

Lowered the thresholds of acquisitions by any non-EU entity to at least 10% of the corporate capital or voting rights in the target as long as the investment value exceeds €1ml and included acquisitions by EU entities only if they result in majority control in all areas outlined above (hence beyond defence and national security sectors);

Introduced the possibility to exercise the special powers *ex officio* in case of failed notification of a transaction by the parties.

The Decrees of the President of Council of Ministers (DPCM) no. 179 of 18 December 2020 and no. 180 of 23 December 2020 clarified the scope by defining and listing all strategic assets in (i) the energy, transport, and communications sectors, and (ii) in all other critical areas of Article 4 of the Regulation, such as artificial intelligence, robotics, semiconductors, etc.

Article 10-ter of Law no. 176 of 18 December 2020, extended the application of the temporary regime introduced by DL 23/2020 until 30 June 2021; and Article 4 of Law Decree no. 56 of 30 April 2021, further extended the application until 31 December 2021.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
Italy is currently reviewing the sectors/list of technologies screened under its legislation so as to be fully compliant with Article 4 of the FDI Screening Regulation.

LATVIA

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q1 2021):
On 11 October 2020 amendments to the Regulations of Cabinet of Ministers of Republic of Latvia No. 606 of 3 October 2017 "*Regulations Regarding the Institution Determined in the National Security Law, the Scope of Information to be Submitted, the Procedures for Submission Thereof, and the Evaluation of the Submitted Information, and also the Taking and Notification of the Decision Determined in the National Security Law*" entered into force.

In particular, the amount of information to be provided has been supplemented by the regulatory framework in case the investor is a foreign investor. Furthermore, the new regulatory framework has established procedures for transmitting information (including comments and an opinion) received from other Member States and the European Commission to the national security authorities for assessment.

The main legislative developments during the reporting period are the following:

National Security Law, Chapter VI - Restrictions on Commercial Companies of Significance to National Security (Amended on 23 November 2020 and 20 May 2021)

Regulation No. 606 adopted on 3 October 2017 regarding the Information to be Submitted to the Authority Determined in the National Security Law and the Handling of Information on Foreign Direct Investments (6 October 2020) (Amended on 04 February 2021)

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
Latvia has no ongoing initiatives which can be expected to lead to updates to its existing screening mechanism and related legislation.

LITHUANIA

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
The Lithuanian national investment screening mechanism is governed by the Law on the Protection of Objects of Importance to Ensuring National Security of the Republic of Lithuania**.**

The Law foresees safeguards to prevent national security threats associated with investments in enterprises, facilities and protection zones important to national security and in economic sectors important to national security.

Several amendments to the Law have been adopted during the reporting period. Most amendments were minor and/or related to the updates of the list of enterprises important to national security or economic activities within sectors important to national security. However, more significant amendments to the Law were introduced on 30 June 2020 (amendment No. XIII-3257) and included:

- Review of the criteria for assessing the compliance of investors with national security interests;
- Clarification of the criteria for transactions which have to undergo mandatory screening;
- Simplification of screening procedure by removing redundant requirements;
- Review of specific time frames for the investment screening procedure;
- Strengthening the role and functions of the Governmental Commission, which is responsible for national investment screening.
- Specific provisions related to the implementation of the FDI Screening Regulation

    1) Additional criteria for the assessment of an investor's compliance with national security interests have been added in order to have the possibility of taking into account the comments of Member States and the opinions of the European Commission.
    2) Possibility to temporarily suspend the national screening procedure has been foreseen in order to take into account comments from Member States and the European Commission
    3) Additional competences have been given to the Commission for Coordination of Protection of Objects of Importance to Ensuring National Security to be involved in the process of reviewing FDI in other Member states, reviewing comments received, as well as cooperation with other Member States and the Commission.

The national screening procedure in Lithuania is implemented by the Commission for Coordination of Protection of Objects of Importance to Ensuring National Security. The Commission is composed of representatives from Lithuanian government's ministries, state security and special investigations services, and the Bank of Lithuania. The Commission follows the Rules of Procedure which were amended on 28 October 2020 (amendment No. 1213). The amendments are to ensure compliance with the newest edition of the Law On The Protection Of Objects Of Importance To Ensuring National Security (valid from 1 August 2020). The new Rules of Procedure also specify additional requirements for information to be submitted by an investor for the screening procedure.

In addition, Government of Lithuania has appointed the Ministry of Foreign Affairs of the Republic of Lithuania as a contact point for the implementation of the FDI Screening Regulation on 30 September 2020.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
At the time of reporting, Lithuania had no ongoing initiatives which could be expected to lead to updates to its existing screening mechanism and related legislation.

LUXEMBOURG

NATIONAL SCREENING MECHANISM IN PLACE: Luxembourg has no national screening mechanism and related legislation in place.

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
A government bill is underway.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
The Government Council has approved on July 16 2021, a government initiative to introduce a national screening mechanism and to set up the rules for the intra-European cooperation mechanism. The government bill will now follow the normal legislative procedure.

MALTA

NATIONAL SCREENING MECHANISM IN PLACE: Yes.

The screening of foreign direct investments originating from third countries (i.e. non-EU) started in April 2020 with the establishment of the National FDI Screening Office. Initially the basis for screening was the FDI Screening Regulation.

The Office has since promoted and piloted a legislation in order to transpose the FDI Screening Regulation into the laws of Malta. This was effectively achieved on 18 December 2020, with the enactment of Chapter 620 of the Laws of Malta. The FDI Screening Office of Malta is tasked with implementing the provisions of Chapter 620.

The Law regulates e.g. the establishment of a Board to direct the National FDI Screening Office. The Law describes in detail the functions and duties of the Office, and the notification and the screening process.

The Law also describes the Office's executive powers, mainly the imposition of conditions, unwinding and prohibiting of investments; and administrative penalties in case of breaches or offences by any person(s) involved in the foreign direct investment. In such cases, an appeal application process (also included in the Law) shall be filed within 20 days from receipt of the decision taken by the Office in relation to the foreign direct investment or an administrative penalty imposed.

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q1 2021):
See above.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
Malta has no ongoing initiatives which can be expected to lead to updates to its existing screening mechanism and related legislation.

NETHERLANDS

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
The Netherlands has implemented the Uitvoeringswet Screeningsverordening Buitenlandse Investeringen (Implementation Act Regulation 2019/452) in December 2020.

This Act assigns to the Dutch FDI Screening Authority (the Bureau for Investment Screening, which is part of the Ministry of Economic Affairs & Climate Policy) powers to retrieve information from several internal sources in order to be able to answer any questions asked by the European Commission or Member States.

Currently, the national screening legislation of the Netherlands is contained in the following sector-specific laws:

- • Telecommunications Act;
- • Electricity Production, Transport and Supply Act
- • Gas Transportation and Supply Act

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
A bill for the assessment of the impact of investments in vital sectors on national security interests has been submitted to parliament on the 30 June 2021.

The bill includes a screening mechanism for investments in companies with a role in national security or public order, or companies with sensitive technologies.

Any major developments with regard to this bill will be communicated to the European Commission.

POLAND

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q1 2021):
The most important amendments regarding the Polish FDI screening mechanism have been introduced by the Act of 19 June 2020 on Subsidies on Interest on Bank Loans Granted to Entrepreneurs affected by COVID-19 and on the Simplified Procedure for the Approval of Arrangements in Connection with COVID-19, which introduced among others, changes to Act of 24 July 2015 on the Control of Certain Investments (Journal of Laws 2020, item 2145).

In order to strengthen the protection of domestic companies against takeovers by non-EU entities, a comprehensive framework was introduced on a temporary basis (a period of 24 months) for the control of activities that may threaten safety, order and public health in connection with the deteriorating economic situation caused by the COVID-19 epidemic, affecting, inter alia, the increased risk of reduced financial liquidity of enterprises.

A procedure consisting of two phases was introduced. The first phase is to separate cases into those not requiring further control actions (non-controversial cases), and those requiring such actions.

An anti-circumvention clause has also been introduced, which allows checking entities from outside the EU, which, in order to avoid controls, are being introduced as EU entities. Proceedings conducted on this basis may be initiated only ex officio. In all other cases, proceedings will be conducted upon notification or ex officio.

The Act indicates the sectors in which Polish entities are protected. These are strategic sectors (e.g. energy, communications), sectors that have a significant impact on Poland's GDP, as well as sectors particularly important in the fight against the epidemic and ensuring the protection of the life and health of citizens (medical equipment, pharmaceutical sector). In times of epidemics, the food sector has also gained importance. Thus, the protection applies to:

1) public companies within the meaning of the Act of 29 July 2005 on Public Offerings and Conditions for Introducing Financial Instruments into an Organised Trading System, and on Public Companies,
2) entities which hold assets that form part of critical infrastructure,
3) companies from the IT sector that develop or modify software used in the power industry, water supply and sewage treatment, telecommunications (communications), mass transport and logistics, non-cash payments, data processing and services for hospitals and laboratories, medical devices, or sales of prescription drugs,
4) companies that operate in the electricity, natural gas, oil, and other fuel sectors (e.g., production, storage, transportation, and trading),
5) companies that produce rhenium,
6) companies that produce chemicals, fertilizers and chemical products,
7) companies that manufacture or trade explosives, weapons, ammunition or other products and technologies for the army and police or extract and process metal ores for this purpose,
8) companies from the telecommunications sector,
9) companies handling at inland ports,
10) entities producing medical equipment or manufacturing medicines and other pharmaceutical products,
11) entrepreneurs from the food sector dealing with processing of meat, milk, cereals, fruits and vegetables.

The President of the Office of Competition and Consumer Protection became the control authority.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
Poland has no ongoing initiatives which can be expected to lead to updates to its existing screening mechanism and related legislation.

PORTUGAL

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
The Portuguese investment screening framework is governed by the Decree-Law nº. 138/2014, of 15 September, published in the DR nº 177, series I, from 15.09.2014

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?

Efforts are currently ongoing to update the existing screening legislation:

- An inter-ministerial Working Group at technical level was established in 2020.
- A set of possible changes to the existing law is being discussed.

There is initial agreement on adjustments proposed, including on:

- the alignment of deadlines between national and EU mechanisms,
- the establishment of the contact point
- the introduction of the possibility of imposing mitigation measures

A number of important issues remain to be decided. It is therefore not yet possible to conclude the review and begin the legislative process.

ROMANIA

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q1 2021):
The Romanian authorities have prepared a legislative proposal aimed at modifying their national screening mechanism.

Discussions are still ongoing between the relevant national authorities and the law is expected to entry into force by the end of 2021.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
The amendments to the national screening legislation are expected to enter into force by the end of 2021.

SLOVAKIA

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q1 2021):
The Slovak Republic does not have a comprehensive legal framework for screening foreign investments to protect the security and public order of the Slovak Republic.

However, a partial scheme covering the elements of critical infrastructure under the competence of the Ministry of Economy of the Slovak Republic has been incorporated into Act 45/2011 Coll. on critical infrastructure.

The legislation entered into force on 1 March 2021 and covers all direct and indirect transfers and transitions of the elements of critical infrastructure (energy and industry) under the competence of the Ministry of Economy (not only FDI). The legislation also sets out the rules and procedures for the assessment of such transfers and transitions. Transfers and transitions cover changes to and transfer of ownership of an entity, including as a result of liquidation, bankruptcy proceedings and restructuring and other legal proceedings.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
The Slovak Republic recognises the need to adopt additional legislation for the screening of foreign investment.

The Ministry of Economy of the Slovak Republic continues with intensive preparatory work on the draft Act on Screening of Foreign Investment which would be of general application, covering additional sectors beyond critical infrastructure. The official legislative process has started It is expected that the proposed screening mechanism will enter into effect by 1 January 2022.

SLOVENIA

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q1 2021):
Slovenia did not have a national screening mechanism prior to the crisis brought about by the COVID-19 pandemic.

The risk of acquisitions of strategic companies by third countries was increasing significantly due to the decline in value of European companies. Given these circumstances, Slovenia was even more exposed to hostile takeovers of strategic companies and infrastructure, crucial for the systemic functioning of the state and the welfare of its citizens.

With the entry into force on 31 May 2020 of the Intervention Measures to Mitigate and Eliminate the Consequences of the COVID-19 Epidemic Act (Official Gazette of the Republic of Slovenia, No. 80/20, hereinafter referred to as ZIUOOPE), the Foreign Direct Investment Review Mechanism became fully operational as the first screening mechanism in Slovenia.

The screening of FDI entails the following obligations for foreign investors: if the transaction represents a foreign direct investment under Article 70 of the ZIUOOPE, i.e. if a foreign direct investor acquires at least 10% of the share capital or voting rights in a Slovenian company through a transaction; and; if the activity of the target company relates to one of the risk factors, i.e. critical infrastructure, critical technology, supply of critical resources, access to sensitive information, freedom and pluralism of the media and projects or programmes of Union interest, the FDI must be notified to the Slovenian Ministry of Economic Development and Technology ("MGRT"):

- within 15 days from the conclusion of the merger agreement or from the publication of the takeover bid (any contract by which a foreign investor acquires at least 10% of the share capital or voting rights in a Slovenian company),
- within 15 days from the establishment of the company in the Republic of Slovenia (in case of a "greenfield" investment),
- within 15 days from the conclusion of the sales contract, in the case of the purchase of real estate crucial for the use of critical infrastructure (or land in its vicinity).

During the preliminary procedure, the Notification Commission (comprised of three members of MGRT and two members of SPIRIT Slovenia (Public Agency for Entrepreneurship, Internationalisation, Foreign Investments and Technology) examines the FDI notifications and issues opinions on the introduction of the review procedure.

If any potential risks are identified in the preliminary procedure, the Minister may appoint an interdepartmental commission consisting of 3 to 10 members (ministries, agencies, chambers, universities, institutes, etc.) for each review procedure. Based on the opinion of the interdepartmental commission, the Minister then decides whether the FDI under review is either authorised; authorised with conditions; prohibited; or cancelled.

The FDI screening mechanism entered into force on 31 May 2020 and will remain in force until 30 June 2023.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
The screening mechanism will be permanently included in the Investment Promotion Act (Official Gazette of the Republic of Slovenia, No. 13/18, hereinafter referred to as: ZSInv) within the framework of the regular/shortened legislative procedure.

Slovenia will take into account the experience in using the existing mechanism (in force until June 2023), and concerns and suggestions of investors and their representatives, and will then permanently include the mechanism in ZSInv.

SPAIN

NATIONAL SCREENING MECHANISM IN PLACE: Yes

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
The Spanish investment screening framework is governed by the following:

- Royal Decree 137/1993, which approves the regulation on weapons.
- Royal Decree 664/99, on foreign investment.
- Law 19/2003, on the legal system on transfers of capitals and foreign economic transactions and specific measures for the prevention of money laundering.
- Law 7/2010, General Law on audiovisual communication.
- Law 3/2013, creating the National Commission on Markets and Competition (Additional Provision nine).
- Law 9/2014 on Telecommunications.

Since January 1, 2019 the main amendments to the FDI screening framework have been the following:

- Royal Decree 8/2020 of 17 March introduced an amendment to Law 19/2003 of 4 July on the legal regime of capital movements and economic transactions abroad, which introduced article 7 bis. Article 7 bis suspends the liberalisation regime, based on national security, public order and/or public health reasons, for those direct foreign investments that require authorisation when they meet any of the assumptions set out in Article 7 bis.
- Article 7 bis was subsequently amended by Royal Decree 11/2020 of 31 March 2020 and Royal Decree 34/2020 of 17 November 2020 (later amended by Royal Decree 12/2021 of 24 June 2021).
- Royal Decree 11/2020 introduced a simplified procedure for the notification and authorisation of foreign investments below a €5ml threshold.
- Royal Decree 34/2020 established a transitory regime (until 30 June 2021) for foreign investments, by EU or EFTA country investors, in listed or non-listed companies if the investment exceeds €500ml. Royal Decree 12/2021 has extended this transitory regime until 31 December 2021.

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
Spain does not have ongoing initiatives which can be expected to lead to updates to its existing screening mechanism and related legislation.

SWEDEN

NATIONAL SCREENING MECHANISM IN PLACE: No

LEGISLATIVE DEVELOPMENTS DURING THE REPORTING PERIOD (Q1 2019 – Q2 2021):
No

ANY ONGOING INITIATIVES THAT MAY RESULT IN THE INTRODUCTION OF A NATIONAL SCREENING MECHANISM OR AMENDMENTS TO AN EXISTING MECHANISM?
Preparatory work is currently ongoing to introduce Swedish FDI Screening legislation.

In August 2019 the Swedish Government initiated a government inquiry to propose a framework for screening of foreign direct investments in Sweden.

The government inquiry's conclusions will be presented in a report in November 2021. The Swedish Government thereafter intends to introduce a government bill to the Swedish Parliament regarding new legislation regarding screening of foreign direct investments into Sweden.

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