Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No.

COMPETITION

The Enterprise Act 2002 (EU Foreign Direct Investment) (Modifications) Regulations 2020

Made - - - -	***
Coming into force - -	*11th October 2020*

The Secretary of State, being a Minister designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to measures relating to the control of concentrations between undertakings, makes these Regulations in exercise of the powers conferred by that section.

A draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament in accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972.

Citation and commencement

1. These Regulations may be cited as the Enterprise Act 2002 (EU Foreign Direct Investment) (Modifications) Regulations 2020 and come into force on 11th October 2020.

Power to request information relating to foreign direct investments

2.—(1) For the purpose of providing information to a member State or the European Commission in response to a request made under Article 7(5) of the FDI Regulation, the Competition and Markets Authority may exercise any power under section 109 of the Enterprise Act 2002(**c**) which it may exercise under that section for a permitted purpose; and accordingly that section has effect as if that purpose were a "permitted purpose" within the meaning of that section.

(2) The Enterprise Act 2002, in its application to things done under section 109 of that Act by virtue of paragraph (1) above, has effect as if sections 110A and 110B of that Act were omitted.

(**a**) S.I. 1990/1304. This SI was revoked by Regulation 2 of, and the Schedule to, the European Communities (Designation Orders) (Revocation) (EU Exit) Regulations 2018/1011 with effect from exit day, but continues to have effect by virtue of the saving for EU-derived domestic legislation for the implementation period under section 1B of the European Union (Withdrawal) Act 2018 (c. 16), as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(**b**) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020) (c. 1). Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part I of the Schedule to, the European Union (Amendment) Act 2008 (c. 27).

(**c**) 2002 c. 40.

(3) In this regulation "the FDI Regulation" means Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union(**a**).

Permitted disclosures relating to foreign direct investments

3. Part 9 of the Enterprise Act 2002 (information) has effect as if after section 240 there were inserted—

"**240A Disclosures relating to foreign direct investments**

(1) This Part does not prohibit the disclosure of information held by the CMA or the Secretary of State to a member State or the European Commission if the disclosure is made for the purposes of Article 6(2), 7(1) or 8(2) of the FDI Regulation.

(2) In subsection (1) "the FDI Regulation" means Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.".

Name
Parliamentary Under Secretary of State
Date Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the European Union(**b**) ("the FDI Regulation") to the extent that it has not already been implemented. The FDI Regulation creates a cooperation mechanism within the European Union for the exchange of information and raising of concerns around foreign direct investment.

Regulation 2 makes a modification to the Enterprise Act 2002 (c. 40)(**c**) in order to allow the Competition and Markets Authority to exercise the powers contained in section 109 of that Act to collect information to provide to a member State or the European Commission in response to a request made under the FDI Regulation.

Regulation 3 makes a further modification to the Enterprise Act 2002 to allow either the Competition and Markets Authority or the Secretary of State to disclose information to a member State or the European Commission for the purposes of Articles 6(2), 7(1) or 8(2) of the FDI Regulation, which permit member States to provide comments on foreign direct investments in other member States.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.

(**a**) OJ No. L 79, 21.3.2019, p. 1–14.
(**b**) OJ No. L 79, 21.3.2019, p. 1–14.
(**c**) 2002 c. 40.

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