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►B 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

(OJ L 79I, 21.3.2019, p. 1)

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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

Article 1

Subject matter and scope

1. This Regulation establishes a framework for the screening by Member States of foreign direct investments into the Union on the grounds of security or public order and for a mechanism for cooperation between Member States, and between Member States and the Commission, with regard to foreign direct investments likely to affect security or public order. It includes the possibility for the Commission to issue opinions on such investments.

2. This Regulation is without prejudice to each Member State having sole responsibility for its national security, as provided for in Article 4(2) TEU, and to the right of each Member State to protect its essential security interests in accordance with Article 346 TFEU.

3. Nothing in this Regulation shall limit the right of each Member State to decide whether or not to screen a particular foreign direct investment within the framework of this Regulation.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) ‘foreign direct investment’ means an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity;

(2) ‘foreign investor’ means a natural person of a third country or an undertaking of a third country, intending to make or having made a foreign direct investment;

(3) ‘screening’ means a procedure allowing to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments;

(4) ‘screening mechanism’ means an instrument of general application, such as a law or regulation, and accompanying administrative requirements, implementing rules or guidelines, setting out the terms, conditions and procedures to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments on grounds of security or public order;

(5) ‘foreign direct investment undergoing screening’ means a foreign direct investment undergoing a formal assessment or investigation pursuant to a screening mechanism;

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(6) ‘screening decision’ means a measure adopted in application of a screening mechanism;

(7) ‘undertaking of a third country’ means an undertaking constituted or otherwise organised under the laws of a third country.

Article 3

Screening mechanisms of Member States

1. In accordance with this Regulation, Member States may maintain, amend or adopt mechanisms to screen foreign direct investments in their territory on the grounds of security or public order.

2. Rules and procedures related to screening mechanisms, including relevant timeframes, shall be transparent and not discriminate between third countries. In particular, Member States shall set out the circumstances triggering the screening, the grounds for screening and the applicable detailed procedural rules.

3. Member States shall apply timeframes under their screening mechanisms. The screening mechanisms shall allow Member States to take into account the comments of other Member States referred to in Article 6 and 7 and the opinions of the Commission referred to in Articles 6, 7 and 8.

4. Confidential information, including commercially-sensitive information, made available to the Member State undertaking the screening shall be protected.

5. Foreign investors and the undertakings concerned shall have the possibility to seek recourse against screening decisions of the national authorities.

6. Member States which have a screening mechanism in place shall maintain, amend or adopt measures necessary to identify and prevent circumvention of the screening mechanisms and screening decisions.

7. Member States shall notify the Commission of their existing screening mechanisms by 10 May 2019. Member States shall notify the Commission of any newly adopted screening mechanism or any amendment to an existing screening mechanism within 30 days of the entry into force of the newly adopted screening mechanism or of any amendment to an existing screening mechanism.

8. No later than three months after having received the notifications referred to in paragraph 7, the Commission shall make publicly available a list of Member States' screening mechanisms. The Commission shall keep that list up to date.

Article 4

Factors that may be taken into consideration by Member States or the Commission

1. In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission may consider its potential effects on, inter alia:

(a) critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or

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storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure;

(b) critical technologies and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No 428/2009 ([1]), including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies;

(c) supply of critical inputs, including energy or raw materials, as well as food security;

(d) access to sensitive information, including personal data, or the ability to control such information; or

(e) the freedom and pluralism of the media.

2. In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission may also take into account, in particular:

(a) whether the foreign investor is directly or indirectly controlled by the government, including state bodies or armed forces, of a third country, including through ownership structure or significant funding;

(b) whether the foreign investor has already been involved in activities affecting security or public order in a Member State; or

(c) whether there is a serious risk that the foreign investor engages in illegal or criminal activities.

Article 5

Annual reporting

1. By 31 March of each year, Member States shall submit to the Commission an annual report covering the preceding calendar year, which shall include aggregated information on foreign direct investments that took place in their territory, on the basis of information available to them, as well as aggregated information on the requests received from other Member States pursuant to Articles 6(6) and 7(5).

2. For each reporting period, Member States that maintain screening mechanisms shall, in addition to the information referred to in paragraph 1, provide aggregated information on the application of their screening mechanisms.

3. The Commission shall provide an annual report on the implementation of this Regulation to the European Parliament and to the Council. That report shall be made public.

([1]) Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134, 29.5.2009, p. 1).

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4. The European Parliament may invite the Commission to a meeting of its committee responsible to present and explain systemic issues related to the implementation of this Regulation.

Article 6

Cooperation mechanism in relation to foreign direct investments undergoing screening

1. Member States shall notify the Commission and the other Member States of any foreign direct investment in their territory that is undergoing screening by providing the information referred to in Article 9(2) of this Regulation as soon as possible. The notification may include a list of Member States whose security or public order is deemed likely to be affected. As part of the notification, and where applicable, the Member State undertaking the screening shall endeavour to indicate whether it considers that the foreign direct investment undergoing screening is likely to fall within the scope of Regulation (EC) No 139/2004.

2. Where a Member State considers that a foreign direct investment undergoing screening in another Member State is likely to affect its security or public order, or has information relevant for such screening, it may provide comments to the Member State undertaking the screening. The Member State providing comments shall send those comments to the Commission simultaneously.

The Commission shall notify the other Member States that comments were provided.

3. Where the Commission considers that a foreign direct investment undergoing screening is likely to affect security or public order in more than one Member State, or has relevant information in relation to that foreign direct investment, it may issue an opinion addressed to the Member State undertaking the screening. The Commission may issue an opinion irrespective of whether other Member States have provided comments. The Commission may issue an opinion following comments from other Member States. The Commission shall issue such opinion where justified, after at least one third of Member States consider that a foreign direct investment is likely to affect their security or public order.

The Commission shall notify the other Member States that an opinion was issued.

4. A Member State which duly considers that a foreign direct investment in its territory is likely to affect its security or public order may request the Commission to issue an opinion or other Member States to provide comments.

5. The comments referred to in paragraph 2 and the opinions referred to in paragraph 3 shall be duly justified.

6. No later than 15 calendar days following the receipt of the information referred to in paragraph 1, other Member States and the Commission shall notify the Member State undertaking the screening of their intention to provide comments pursuant to paragraph 2 or an opinion pursuant to paragraph 3. The notification may include a request for additional information to the information referred to in paragraph 1.

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Any request for additional information shall be duly justified, limited to information necessary to provide comments pursuant to paragraph 2 or to issue an opinion pursuant to paragraph 3, proportionate to the purpose of the request and not unduly burdensome for the Member State undertaking the screening. Requests for information and replies provided by Member States shall be sent to the Commission simultaneously.

7. Comments referred to in paragraph 2 or opinions referred to in paragraph 3 shall be addressed to the Member State undertaking the screening and shall be sent to it within a reasonable period of time, and in any case no later than 35 calendar days following receipt of the information referred to in paragraph 1.

Notwithstanding the first subparagraph, if additional information was requested pursuant to paragraph 6, such comments or opinions shall be issued no later than 20 calendar days following receipt of the additional information or the notification pursuant to Article 9(5).

Notwithstanding paragraph 6, the Commission may issue an opinion following comments from other Member States where possible within the deadlines referred to in this paragraph, and in any case no later than five calendar days after those deadlines have expired.

8. In the exceptional case where the Member State undertaking the screening considers that its security or public order requires immediate action, it shall notify the other Member States and the Commission of its intention to issue a screening decision before the timeframes referred to in paragraph 7 and duly justify the need for immediate action. The other Member States and the Commission shall endeavour to provide comments or to issue an opinion expeditiously.

9. The Member State undertaking the screening shall give due consideration to the comments of the other Member States referred to in paragraph 2 and to the opinion of the Commission referred to in paragraph 3. The final screening decision shall be taken by the Member State undertaking the screening.

10. Cooperation pursuant to this Article shall take place through the contact points established in accordance with Article 11.

Article 7

Cooperation mechanism in relation to foreign direct investments not undergoing screening

1. Where a Member State considers that a foreign direct investment planned or completed in another Member State which is not undergoing screening in that Member State is likely to affect its security or public order, or has relevant information in relation to that foreign direct investment, it may provide comments to that other Member State. The Member State providing comments shall send those comments to the Commission simultaneously.

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The Commission shall notify the other Member States that comments were provided.

2. Where the Commission considers that a foreign direct investment planned or completed in a Member State which is not undergoing screening in that Member State is likely to affect security or public order in more than one Member State, or has relevant information in relation to that foreign direct investment, it may issue an opinion addressed to the Member State in which the foreign direct investment is planned or has been completed. The Commission may issue an opinion irrespective of whether other Member States have provided comments. The Commission may issue an opinion following comments from other Member States. The Commission shall issue such opinion where justified, after at least one third of Member States consider that a foreign direct investment is likely to affect their security or public order.

The Commission shall notify the other Member States that an opinion was issued.

3. A Member State which duly considers that a foreign direct investment in its territory is likely to affect its security or public order may request the Commission to issue an opinion, or other Member States to provide comments.

4. The comments referred to in paragraph 1 and the opinions referred to in paragraph 2 shall be duly justified.

5. Where a Member State or the Commission considers that a foreign direct investment which is not undergoing screening is likely to affect security or public order as referred to in paragraph 1 or 2, it may request from the Member State where the foreign direct investment is planned or has been completed the information referred to in Article 9.

Any request for information shall be duly justified, limited to information necessary to provide comments pursuant to paragraph 1, or to issue an opinion pursuant to paragraph 2, proportionate to the purpose of the request and not unduly burdensome for the Member State where the foreign direct investment is planned or has been completed.

Requests for information and replies provided by Member States shall be sent to the Commission simultaneously.

6. Comments pursuant to paragraph 1 or opinions pursuant to paragraph 2 shall be addressed to the Member State where the foreign direct investment is planned or has been completed and shall be sent to it within a reasonable period of time, and in any case no later than 35 calendar days following receipt of the information referred to in paragraph 5 or of the notification pursuant to Article 9(5). In cases where the opinion of the Commission follows comments from other Member States, the Commission shall have 15 additional calendar days for issuing that opinion.

7. A Member State where a foreign direct investment is planned or has been completed shall give due consideration to the comments of the other Member States and to the opinion of the Commission.

8. Member States may provide comments pursuant to paragraph 1 and the Commission may provide an opinion pursuant to paragraph 2 no later than 15 months after the foreign direct investment has been completed.

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9. Cooperation pursuant to this Article shall take place through the contact points established in accordance with Article 11.

10. This Article shall not apply to foreign direct investments completed before 10 April 2019.

Article 8

Foreign direct investments likely to affect projects or programmes of Union interest

1. Where the Commission considers that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission may issue an opinion addressed to the Member State where the foreign direct investment is planned or has been completed.

2. The procedures set out in Articles 6 and 7 shall apply *mutatis mutandis*, subject to the following modifications:

(a) as part of the notification referred to in Article 6(1) or the comments referred to in Articles 6(2) and 7(1), a Member State may indicate whether it considers that a foreign direct investment is likely to affect projects and programmes of Union interest;

(b) the opinion of the Commission shall be sent to the other Member States;

(c) the Member State where the foreign direct investment is planned or has been completed shall take utmost account of the Commission's opinion and provide an explanation to the Commission if its opinion is not followed.

3. For the purpose of this Article, projects or programmes of Union interest shall include those projects and programmes which involve a substantial amount or a significant share of Union funding, or which are covered by Union law regarding critical infrastructure, critical technologies or critical inputs which are essential for security or public order. The list of projects or programmes of Union interest is set out in the Annex.

4. The Commission shall adopt delegated acts in accordance with Article 16 to amend the list of projects and programmes of Union interest.

Article 9

Information requirements

1. Member States shall ensure that the information notified pursuant to Article 6(1) or requested by the Commission and other Member States pursuant to Articles 6(6) and 7(5) is made available to the Commission and the requesting Member States without undue delay.

2. The information referred to in paragraph 1 shall include:

(a) the ownership structure of the foreign investor and of the undertaking in which the foreign direct investment is planned or has been completed, including information on the ultimate investor and participation in the capital;

(b) the approximate value of the foreign direct investment;

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(c) the products, services and business operations of the foreign investor and of the undertaking in which the foreign direct investment is planned or has been completed;

(d) the Member States in which the foreign investor and the undertaking in which the foreign direct investment is planned or has been completed conduct relevant business operations;

(e) the funding of the investment and its source, on the basis of the best information available to the Member State;

(f) the date when the foreign direct investment is planned to be completed or has been completed.

3. Member States shall endeavour to provide any information additional to that referred to in paragraphs 1 and 2, if available, to requesting Member States and to the Commission without undue delay.

4. The Member State where the foreign direct investment is planned or has been completed may request the foreign investor or the undertaking in which the foreign direct investment is planned or has been completed to provide the information referred to in paragraph 2. The foreign investor or the undertaking concerned shall provide the information requested without undue delay.

5. A Member State shall notify the Commission and the other Member States concerned without delay, if, in exceptional circumstances, it is unable, despite its best efforts, to obtain the information referred to in paragraph 1. In the notification, that Member State shall duly justify the reasons for not providing such information and explain the best efforts undertaken to obtain the information requested, including a request pursuant to paragraph 4.

If no information is provided, any comment issued by another Member State or any opinion issued by the Commission may be based on the information available to them.

Article 10

Confidentiality of information transmitted

1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.

2. Member States and the Commission shall ensure the protection of confidential information acquired in application of this Regulation in accordance with Union and the respective national law.

3. Member States and the Commission shall ensure that classified information provided or exchanged under this Regulation is not downgraded or declassified without the prior written consent of the originator.

Article 11

Contact points

1. Each Member State and the Commission shall establish a contact point for the implementation of this Regulation. Member States and the Commission shall involve those contact points on all issues relating to the implementation of this Regulation.

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2. A secure and encrypted system shall be provided by the Commission to support direct cooperation and exchange of information between the contact points.

Article 12

Group of experts on the screening of foreign direct investments into the European Union

The group of experts on the screening of foreign direct investments into the European Union providing advice and expertise to the Commission shall continue to discuss issues relating to the screening of foreign direct investments, share best practices and lessons learned, and exchange views on trends and issues of common concern relating to foreign direct investments. The Commission shall also consider seeking the advice of that group on systemic issues relating to the implementation of this Regulation.

The discussions in that group shall be kept confidential.

Article 13

International Cooperation

Member States and the Commission may cooperate with the responsible authorities of third countries on issues relating to the screening of foreign direct investments on grounds of security and public order.

Article 14

Processing of personal data

1. Any processing of personal data pursuant to this Regulation shall be carried out in accordance with Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 and only in so far as it is necessary for the screening of foreign direct investments by Member States and for ensuring the effectiveness of the cooperation provided for in this Regulation.

2. Personal data related to the implementation of this Regulation shall be kept only for the time necessary to achieve the purposes for which they were collected.

Article 15

Evaluation

1. By 12 October 2023 and every five years thereafter, the Commission shall evaluate the functioning and effectiveness of this Regulation and present a report to the European Parliament and to the Council. Member States shall be involved in this exercise and if necessary provide the Commission with additional information for the preparation of that report.

2. Where the report recommends amendments to this Regulation, it may be accompanied by an appropriate legislative proposal.

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Article 16

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 8(4) shall be conferred on the Commission for an indeterminate period of time from 10 April 2019.

3. The delegation of power referred to in Article 8(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 8(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 17

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from 11 October 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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ANNEX

List of projects or programmes of Union interest referred to in Article 8(3)

1. European GNSS programmes (Galileo & EGNOS):

   Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of the European satellite navigation systems and repealing the Council Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council (OJ L 347, 20.12.2013, p. 1).

2. Copernicus:

   Regulation (EU) No 377/2014 of the European Parliament and of the Council of 3 April 2014 establishing the Copernicus Programme and repealing Regulation (EU) No 911/2010 (OJ L 122, 24.4.2014, p. 44).

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3. Horizon 2020 including research and development programmes pursuant to Article 185 TFEU, and joint undertakings or any other structure set up pursuant to Article 187 TFEU:

   Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104), including actions therein relating to Key Enabling Technologies such as artificial intelligence, robotics, semiconductors and cybersecurity.

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4. Trans-European Networks for Transport (TEN-T):

   Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

5. Trans-European Networks for Energy (TEN-E):

   Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).

6. Trans-European Networks for Telecommunications:

   Regulation (EU) No 283/2014 of the European Parliament and of the Council of 11 March 2014 on guidelines for trans-European networks in the area of telecommunications infrastructure and repealing Decision No 1336/97/EC (OJ L 86, 21.3.2014, p. 14).

7. European Defence Industrial Development Programme:

   Regulation (EU) 2018/1092 of the European Parliament and of the Council of 18 July 2018 establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovation capacity of the Union's defence industry (OJ L 200, 7.8.2018, p. 30).

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8. Permanent structured cooperation (PESCO):

   Council Decision (CFSP) 2018/340 of 6 March 2018 establishing the list of projects to be developed under PESCO (OJ L 65, 8.3.2018, p. 24).

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Council Decision (CFSP) 2018/1797 of 19 November 2018 amending and updating Decision (CFSP) 2018/340 establishing the list of projects to be developed under PESCO (OJ L 294, 21.11.2018, p. 18).

Council Decision (CFSP) 2019/1909 of 12 November 2019 amending and updating Decision (CFSP) 2018/340 establishing the list of projects to be developed under PESCO (OJ L 293, 14.11.2019, p. 113).

9. Preparatory Action on Preparing the new EU GOVSATCOM programme:

Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, and in particular Article 58(2)(b) thereof (OJ L 193, 30.7.2018, p. 1).

10. Preparatory Action on Defence Research:

Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, and in particular Article 58(2)(b) thereof (OJ L 193, 30.7.2018, p. 1).

11. European Joint Undertaking for ITER:

Council Decision (Euratom) 2007/198 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it (OJ L 90, 30.3.2007, p. 58).