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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

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

{SWD(2022) 219 final}

INTRODUCTION

This Report is the second Annual Report by the European Commission on the application of the EU Foreign Direct Investment (FDI) Screening Regulation (the “FDI Screening Regulation”, or the “Regulation”).

The Report covers the year 2021¹ and 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.

It is based on reports by the 27 Member States and other sources and consists of four chapters:

- Chapter 1 on trends and figures for FDI into the EU;
- Chapter 2 on legislative developments in Member States;
- Chapter 3 on FDI screening activities by Member States;
- Chapter 4 on the EU cooperation mechanism 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 to ensure security in the European Union.

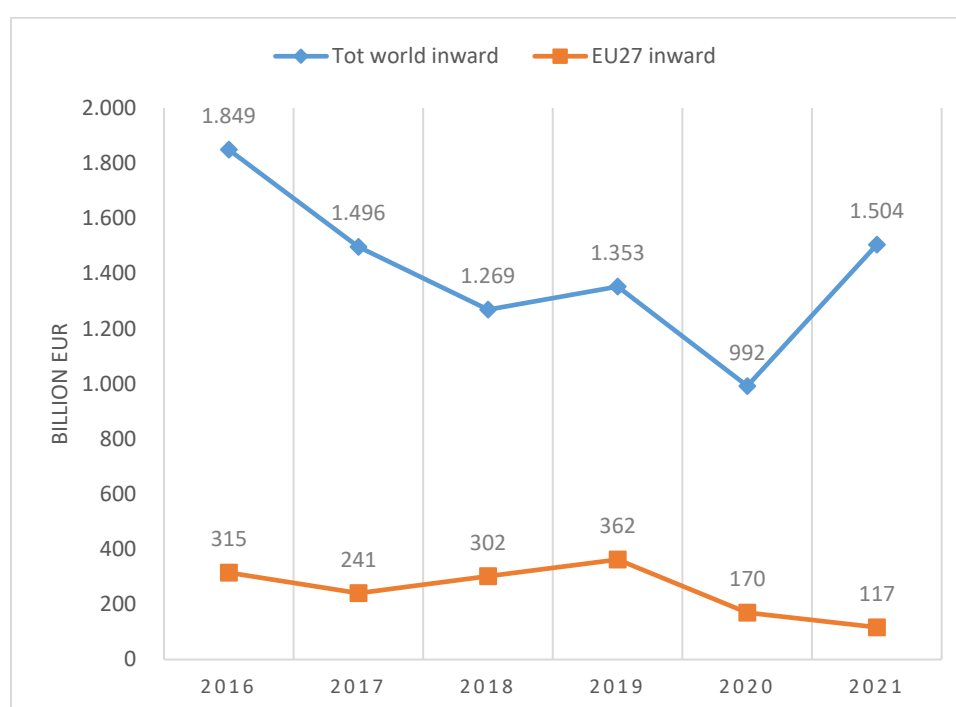
¹ The first annual report covered a shorter period, i.e. from 11 October 2020 to 30 June 2021. Hence, there is an overlap with the present report which encompasses the period from 1 to 30 June as well.

CHAPTER 1 – FOREIGN DIRECT INVESTMENT INTO THE EUROPEAN UNION – TRENDS AND FIGURES

In 2021, global foreign direct investments (FDI) rebounded from the COVID-19-induced slowdown in 2020. Global inflows reached EUR 1.5 trillion in 2021 (**Figure 1**), recording a +52% increase with respect to 2020 and a +11% increase with respect to the pre-COVID-19 levels of 2019.

The EU contributed to 2021's global recovery with EUR 117 billion of inward FDI, 8% of the world level (it was 27% in 2019), which represents a 31% decrease with respect to 2020 levels and a -68% decrease compared to 2019. The EU result is driven by the decreases of inward FDI in Ireland, Germany and Luxembourg and by disinvestments in the Netherlands².

Figure 1: World and EU inward FDI flows



Source: [OECD data](#), extracted 29 April 2022. Data refers to inward FDI flows.

In 2021, strong equity markets and a recovery in business confidence led to increased mergers & acquisitions (M&A) and greenfield transactions globally but not yet in the EU27³ (**Figure 1**), in spite of the drop in aggregated FDI inflows. The number of acquisitions and greenfield investments increased in the EU by +32% and +12%, respectively, compared to 2020⁴.

² OECD [FDI IN FIGURES](#), April 2022.

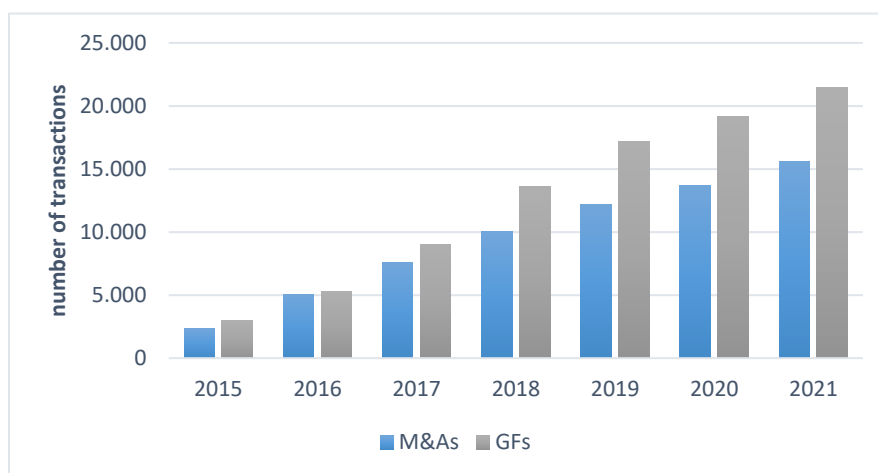
³ Pitchbook, [Global M&A report](#), 2021.

⁴ GLOSSARY: We use the term *foreign investor* to identify non-EU entities (companies or persons) acquiring equity stakes or initiating greenfield investment projects (in short: 'greenfields' or 'greenfield investments') in the EU. The terms *foreign* and *non-EU* are used interchangeably. Throughout the text the term *acquisitions* will identify the acquisitions of equity stakes in EU companies, be it M&A or stakes below 50% but above 10% of the capital, and the

Acquisitions remained however 9% below the level reached in 2019. For greenfield investments the difference with the pre-pandemic year reached -39%.

The upward trend in cumulated flows of foreign transactions in the EU27 confirms the openness of EU countries to foreign investments, despite the slow-down caused by the COVID-19 pandemic (**Figure 2**), with an average rise of over 2 100 acquisitions and 3 200 greenfield investments per year in the past five years.

Figure 2: 2015-2021 yearly cumulative number of transactions into the EU27



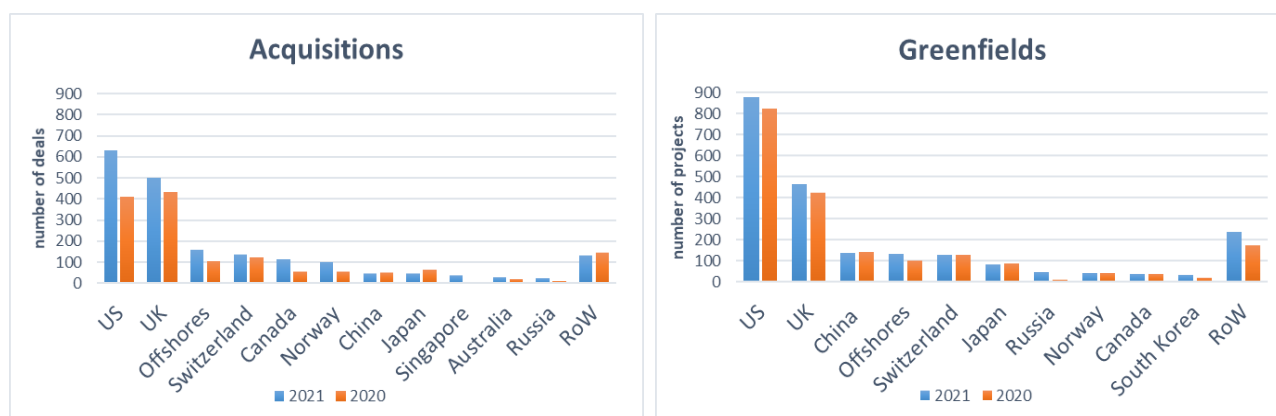
Source: JRC elaboration based on Bureau van Dijk data, extracted on 22/02/2022. Data for 2015 corresponds to the flows of FDI in 2015, while data for the subsequent years correspond to the cumulated sum of yearly flows.

Year-on-year data by foreign jurisdiction shows an increase in the number of deals and projects for most origin countries in 2021 (**Figure 3**). The US was the top foreign investor in 2021, accounting for 32.3% of all acquisitions and 39.4% of the greenfield investments, followed by the UK with 25.6% and 20.9%, respectively. Notable exceptions are China and Japan, both remaining below their 2020 levels. China, in particular, with 2.3% of all foreign acquisitions in 2021 (down from 3.4% in 2020) and 6% of the greenfield investments (down from 7.1% in 2020), failed to take off in dealmaking, despite some large announced M&A and greenfield investments driving up the value of Chinese investments to EUR 9 billion in 2021 (from EUR 6.5 billion in 2020).

term *transactions* will be referred to the sum of acquisitions and greenfield investments. Foreign transactions refer to operations where the investor has an ultimate owner outside the EU. The ultimate owner is an entity owning, directly or indirectly, at least 50.01 percent of direct investor's shares.

Strict Chinese capital controls and the concentration of investment activities in core industry sectors were negatively influencing Chinese dealmaking in 2021.⁵ While in 2021 most of the jurisdictions reached the pre-COVID-19 levels of acquisition of equity stakes, some of them even improving on 2019 levels⁶, greenfield investment projects remained lower compared to 2019 levels. The only exception here being offshore countries⁷ (grouping 133 projects in 2021, up from 106 in 2019) and Russia⁸ (with 46 projects in 2021, up from 20 in 2019).

Figure 3: Number of acquisitions of equity stakes (left) and greenfield investments (right) in 2021 and 2020 – Detail by foreign jurisdiction (top ten investors)*



Source: JRC elaboration based on Bureau van Dijk data, extracted on 22/02/2022. Offshores: Offshore financial Centre⁹. RoW: Rest of the World.
 (*) Acquisitions of equity stakes above 10% of the capital of the EU business.

Despite analysts' positive outlook for 2022, arising from the expectation that the worst of the pandemic had been left behind, hopes are rapidly vanishing with the uncertain business climate stemming from Russia's unprovoked and unjustified invasion of Ukraine. The economic effects of the sharp increase in the cost of energy (which was already having an effect prior to the invasion) and raw materials, and the extent of the economic repercussions of supply chain disruptions, in particular for critical raw materials and critical technologies, and weaker global activity and trade, which are still not fully assessed, will influence the dealmaking *momentum* in the EU, potentially leading to a downward revision of the initial positive stance for 2022.

⁵ See the analysis of Chinese investments, [Rhodium](#) (2022).

⁶ This is the case e.g. for the US, the Offshore Countries, Canada and Norway.

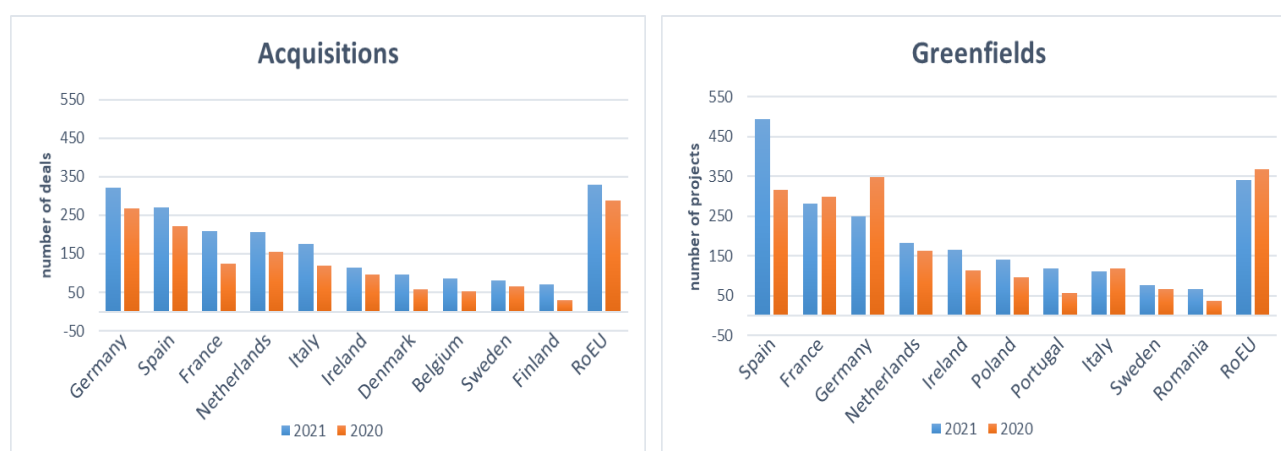
⁷ The main offshores by number of M&A or GFs are (in alphabetical order): Bermuda, British Virgins Islands, Cayman Islands, Mauritius and the United Kingdom Channel Islands. For the full list of Offshore Financial Centres, see e.g. Commission Staff Working Document - Following up on the Commission Communication "Welcoming Foreign Direct Investment while Protecting Essential Interests" – SWD(2019) 108 final – 13 March 2019.

⁸ More information under "Russian shareholding in Europe (EU27)" in the accompanying Commission Staff Working Document.

⁹ See footnote 7.

The number of transactions by target EU country showed a widespread rebound in the number of foreign transactions in 2021 compared to 2020 (**Figure 4**). Germany, with a share of 16.4% of all acquisitions done by foreign investors, was the top destination in 2021 and recorded a 20% increase in the number of transactions with respect to 2020. Spain, France and the Netherlands followed with a share of foreign transactions standing at 13.8%, 10.7% and 10.5%, respectively, and double-digits yearly growth rates compared to the previous year. In 2021, Spain led the EU ranking of top foreign greenfield investments' recipients (22.2% of the total), preceding France and Germany with 12.7% and 11.2%, respectively. These last two countries, together with Italy, were the only top ten greenfield investments' recipients where foreign projects failed to take off in 2021 compared to 2020¹⁰.

Figure 4: Number of acquisitions of equity stakes (left) and greenfield investments (right) in 2021 and 2020 – Detail by destination country (top ten EU recipients)*



Source: JRC elaboration based on Bureau van Dijk data, extracted on 22/02/2022. RoEU stands for Rest of EU. (*) Acquisitions of equity stakes above 10% of the capital of the EU business.

A closer look to the sectors targeted by foreign investors shows that ICT (Information and Communications Technology) and Manufacturing are driving the rebound of foreign transactions in the EU (**Figure 5**¹¹). ICT ranked first in acquisitions and second in greenfield investments (after Retail) with 30% of the new acquisitions and 15.4% of new greenfield investments in 2021, representing a growth of 34% and 15%, respectively, compared to 2020. Manufacturing accounting for 25.9% of total foreign acquisitions and 12% of foreign greenfield investments, came next recording in 2021 a +38% and +12%, respectively, compared to the year before.

Foreign transactions gained new *momentum* in all the main sectors compared with 2020, reaching, or even surpassing, pre-COVID-19 levels in some categories. For acquisitions of equity stakes, 2019 levels have been hit in ICT, Professional and Scientific activities and Construction, among others, with +27%, +8.3% and +10% increases in 2021 compared to 2019. Foreign greenfield investments are instead more resilient to recovery.

¹⁰ The rebound in greenfield investments shown by the group Rest of EU is driven by Hungary, the Czech Republic and Greece. Hungary hosted in 2021 2.4% of all foreign greenfields in the EU, showing an increase of 38% compared to 2020. The Czech Republic, with 1.5% of all foreign greenfield investments, recorded in 2021 a +50% compared to 2020 and Greece (1.4% of all foreign greenfield investments) a +63%.

¹¹ The categories used refer to the NACE Rev. 2 Broad Structure, see: <https://ec.europa.eu/eurostat/web/nace-rev2>.

With the exception of the Hospitality sector, greenfield investments in 2021 are lagging behind 2019 levels, although in a positive track after the plunge of 2020.

Figure 5: Number of acquisitions (left) and greenfield investments (right) in 2021 and 2020 – By NACE sector (top five categories)



Source: JRC elaboration based on Bureau van Dijk data, extracted on 22/02/2022. PST stands for professional, scientific and technical activities (Nace. Rev2, section M), it contains among other things R&D facilities. ICT stands for Information and communication (Nace. Rev2, section J).

Further details

More details on the above figures are provided in the accompanying Commission Staff Working Document, Section 1. There, additional data is provided on the impact and recovery per Member State and sector, on the origin of foreign investors in the EU, and on foreign state participation in foreign investors in the EU.

CHAPTER 2 – LEGISLATIVE DEVELOPMENTS IN MEMBER STATES IN 2021

The EU FDI Screening Regulation and EU Member States' FDI screening mechanisms

While the EU FDI Screening Regulation does not require Member States to establish a national screening mechanism¹², the European Commission continues to encourage Member States, both at political and technical level, to adopt, adapt, and implement national screening mechanisms. Most recently, the European Commission called upon Member States to set up a fully-fledged screening mechanism in the 2020 Guidance to Member States on how to use FDI screening in times of public health crisis and economic vulnerability in the EU¹³ and in the 2022 Guidance to Member States on FDI from Russia and Belarus¹⁴.

The European Commission is actively fostering this development in all Member States, facilitating the progress and alignment of national legislative processes. Throughout 2021, the European Commission has assisted Member States with technical and policy guidance, technical meetings and information exchange including exchanges of best practices.

Nevertheless, despite this regular cooperation and a number of important similarities between national screening mechanisms, Member States continue to show significant degrees of variation in terms of what constitutes a formal screening of an FDI, applicable timelines, sectoral coverage, notification requirements and other elements. Therefore, the European Commission remains dedicated to support the alignment of national screening mechanisms and expects that all 27 EU Member States will soon have a national FDI screening mechanism in place.

A national screening mechanism in all 27 Member States is necessary to safeguard the Union against potentially risky foreign investments from third countries. It would ensure that all 27 Member States and the European Commission screen relevant FDI, thereby protecting the collective security of the Member States and the Union, as well as the security of the Single Market and the very high level of economic integration which it allows.

¹² However, 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 mechanism:

- has defined timeframes;
- is transparent and non-discriminatory;
- allows for taking into consideration any comments by other Member States and the opinion of the Commission;
- allows the relevant parties to seek recourse against an adverse decision by an FDI screening authority;
- maintains measures to prevent the circumvention of FDI screening mechanisms and related decisions.

¹³ Guidance to the Member States concerning foreign direct investment and free movement of capital from third countries, and the protection of Europe's strategic assets, ahead of the application of Regulation (EU) 2019/452 (FDI Screening Regulation), OJEU C 991, 26.3.2020, p.1-5: "(...) the European Commission calls upon Member States to:

- Make full use already now of its FDI screening mechanisms to take fully into account the risks to critical health infrastructures, supply of critical inputs, and other critical sectors as envisaged in the EU legal framework;
- For those Member States that currently do not have a screening mechanism, or whose screening mechanisms do not cover all relevant transactions, to set up a full-fledged screening mechanism and in the meantime to use all other available options 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, including a risk to critical health infrastructures and supply of critical inputs"

¹⁴ Communication from the Commission - Guidance to the Member States concerning foreign direct investment from Russia and Belarus in view of the military aggression against Ukraine and the restrictive measures laid down in recent Council Regulations on sanctions, OJEU C 151 I, 6.4.2022, p. 1-12.

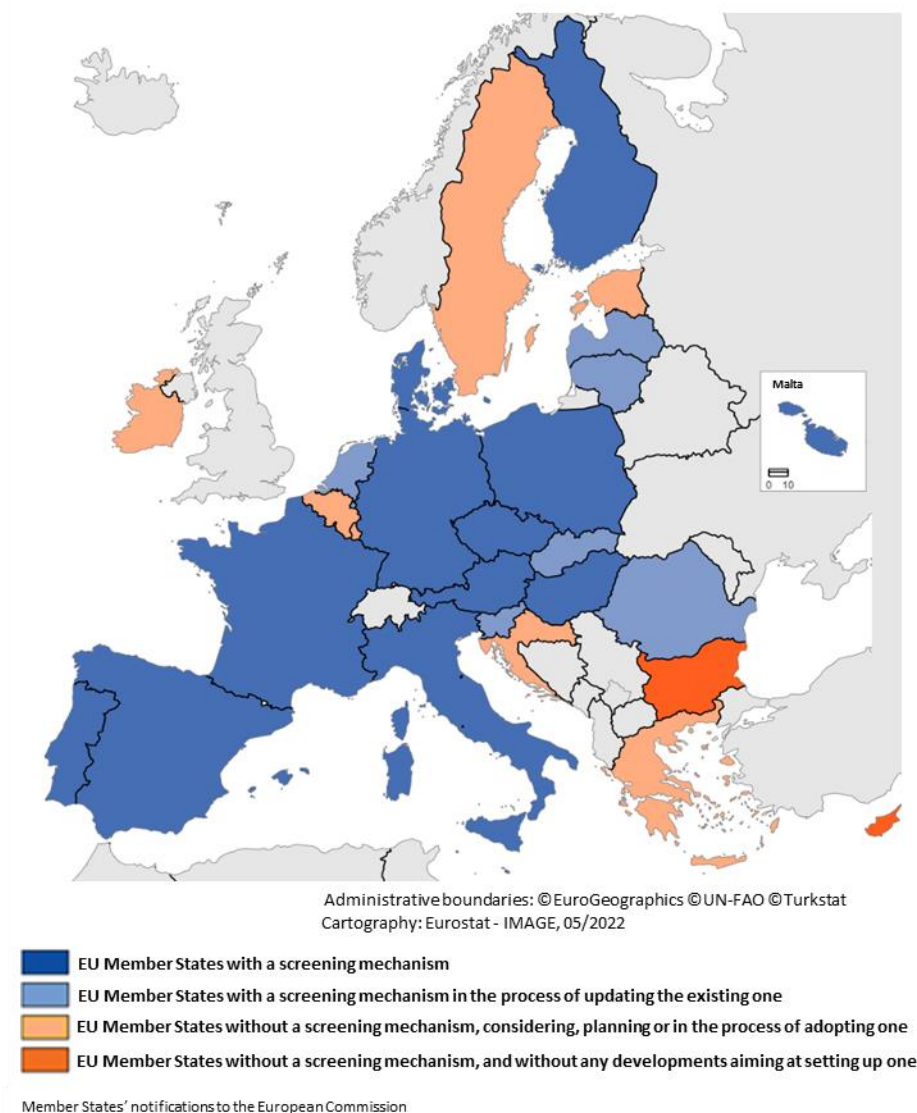
Overview of Member States with a screening mechanism or in the process of setting one up

The global pandemic and recent disruptions in global supply chains have brought into focus the criticality of certain key industries, such as healthcare and energy. Consequently, many EU Member States have either adopted new national screening mechanisms, or updated and expanded existing ones. In 2021, three Member States adopted a new screening mechanism and six Member States amended their existing one. By the end of 2021, seven Member States had already initiated consultative or legislative processes to establish a national screening mechanism. In total, in 2021, two thirds of all EU Member States had an FDI screening legislation in place. FDI Screening is increasingly gaining *momentum* in the EU.

The map below gives an overview of the legislative status quo of EU Member States.

Member States with screening mechanism/legislative activities

Produced in June 2022



Developments in EU Member States in 2021 – FDI screening mechanisms

So far, 25 out of 27 EU Member States either:

- had a national FDI screening mechanism in place; or
- adopted a new national FDI screening mechanism; or
- 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.

The following table gives an overview of all 27 Member States' legislative situation and developments in 2021¹⁵.

National FDI screening mechanism in place	Austria, Finland, Malta, Poland, Portugal, Slovenia, Spain
Have amended an existing mechanism	France, Germany, Hungary, Italy, Latvia, Lithuania
Had a consultative or legislative process expected to result in updates to an existing mechanism	The Netherlands, Romania
Have adopted a new national FDI screening mechanism	Czechia, Denmark, Slovakia
Had a consultative or legislative process expected to result in the adoption of a new mechanism	Belgium, Croatia, Estonia, Greece, Ireland, Luxembourg, Sweden
No publicly reported initiative underway	Bulgaria, Cyprus

Most amendments to national legislation revolved around three topics: upgrading screening procedures, expanding covered sectors, and prolonging the validity of national mechanisms. For instance, **France** lowered the threshold at which investments of non-EU investors are screened and now also requires investors to submit the EU Notification “Form B”¹⁶ alongside other documents. **Germany** introduced a variety of procedural changes (e.g. the addition of 16 new case groups¹⁷ relating to emerging/sensitive technologies), applied new thresholds on the acquisition of capital and voting rights that require a notification, and introduced new requirements for investors. **Italy** extended the applicability of its existing screening mechanism. **Latvia**, *inter alia*, extended the national authorities' power to request further information from investors. **Lithuania**, *inter alia*, adjusted its list of enterprises and strategic infrastructure that it considers important. **Hungary** added to their legislation further activities of target companies that require a notification of the planned transactions. Finally, several other Member States have indicated that they are currently planning amendments to their existing mechanisms.

¹⁵ See accompanying Commission Staff Working Document for more details.

¹⁶ The EU notification form serves as a suggestion for Member States on how transactions could be notified to the EU cooperation mechanism.

¹⁷ In the German legislation, case groups describe sectors. As such, if the business associated with a transaction relates to any of these sectors, investors are required to notify the transaction to authorities and the execution of the transaction (“closing”) is invalid until approved by the German authorities.

More detailed information on the legislative developments in Member States' national screening legislations can be found in the accompanying Commission Staff Working Document. Also, a list of national legislative updates is maintained by the European Commission¹⁸.

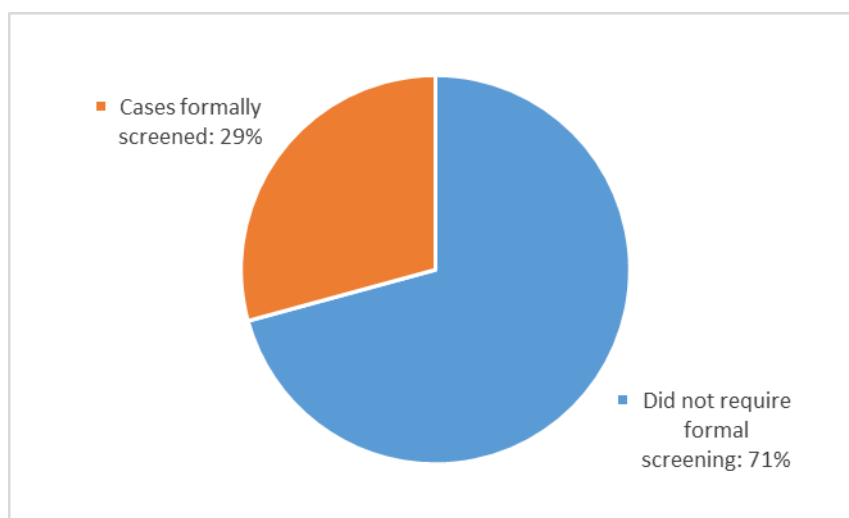
¹⁸ The list of screening mechanisms notified by Member States is available under: https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157946.pdf

CHAPTER 3 - MEMBER STATES' FDI SCREENING ACTIVITIES

The FDI Screening Regulation establishes a cooperation mechanism for FDI screening among the European Commission and EU Member States. However, the decision on which investments to screen, approve, condition, or block, is taken by the Member States where the investment takes place. This chapter relies on - and aggregates - data provided by Member States on cases screened under their legislation and screening mechanisms during 2021.

Overall, there has been a considerable number of requests for authorisations received in 2021 at national level¹⁹. Pursuant to Article 5 of the Regulation, which organises their reporting obligation, Member States have reported 1 563 requests for authorisation and *ex-officio* cases in 2021²⁰.

Figure 6 - Member States' FDI Screening Activity



Source: Member States' reporting.

There is an apparent trend towards screening more cases formally. Indeed, out of the 1 563 authorisation requests and *ex-officio* cases, roughly 29% of the cases were formally screened. This seems to mark an increase in the proportion of formally screened cases from 2020.²¹ It could be explained by a greater attention of what national authorities consider as potentially “critical”, as well as a change in overall investment trends. About 71% of all applications were deemed ineligible or did not require formal screening because of an evident lack of impact on security and public order.

¹⁹ Some Member States did not report any cases under their screening legislation. Also, one Member State reported a general figure on the number of requests for authorisation and two (partial) figures on outcomes. Another Member State communicated a considerably lower number of cases screened in 2021 - compared to numbers communicated for the first report - as it performed a pre-evaluation of files before its legislation entered into force. Some Member States also reported ‘consultations’ on the eligibility of the cases, which are included in this number.

²⁰ It is important to note that Member States have different screening procedures in place, meaning that the cases reported depend on the domestic procedures (scope, eligibility check upfront or later, etc.). For instance, some Member States declare cases ineligible before a formal screening procedure is carried out, while others are first formally screening cases and only then declare them as ineligible. Hence, the graphs and numbers reported in this chapter aim at accurately reflecting Member States' screening activities as reported by them, regardless of their domestic system.

²¹ It was 20% in the first annual report for the whole year 2020.

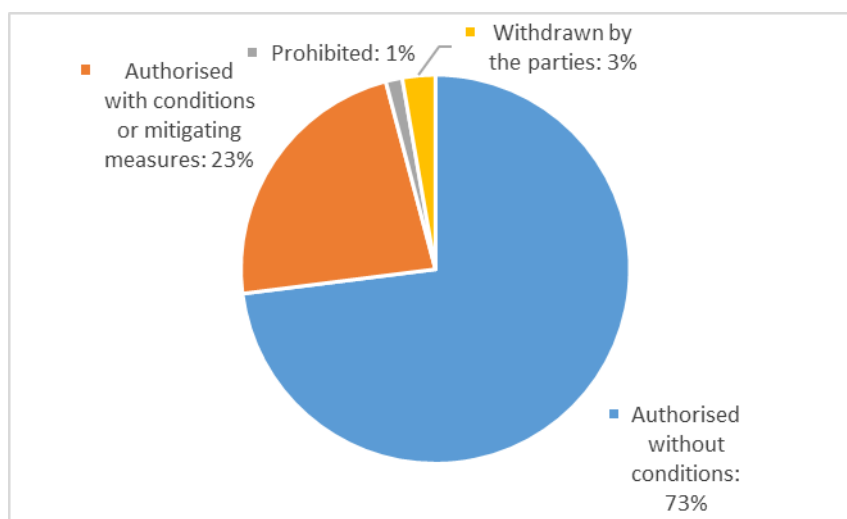
The number of authorisation requests is also very unevenly distributed across EU Member States. Indeed, four Member States accounted for roughly 70% of all authorisation requests and *ex-officio* cases in 2021.

Out of the cases formally screened in 2021, and for which Member States have reported a decision²², the majority (73%) were authorised without conditions, which means that the transaction was approved without any additional action required from the investor.

However, 23% of the decisions involved an approval with conditions or mitigating measures. In these cases, national screening authorities have negotiated certain actions, assurances, and commitments from the investors before approving the planned foreign direct investment.

Finally, national authorities ultimately blocked transactions in only 1% of all decided cases, while for a further 3% the transaction was withdrawn by the parties.

Figure 7 – Notified decisions on FDI cases



Source: Member States' reporting.

In summary, the above findings give rise to the following key take-aways:

- In comparison to 2020, Member States have considered the requests received as more sensitive in 2021, as the proportion of formally screened cases has increased.
- Authorisation requests are unevenly distributed across EU Member States, with four countries accounting for roughly 70% of all applications received. It was 86.5% in the first annual report. This speaks for a diversification of screening among Member States.
- Throughout 2021, the majority of transactions, where a decision was reported, was authorised without any conditions (73%, it was 79% in the first report).

²² From the total reported cases formally screened, a number of cases were subtracted to produce the data shown in Figure 7. Indeed, Member States reported the outcome of decisions in 68.5% of the cases. Moreover, some cases were carried-over in 2022 and hence their outcome was unknown in 2021. Also, the subtracted cases were reported by one Member State, which only indicated two of the four possible outcomes of these cases.

- 23% of the decided cases did entail mitigating measures (this is a significant increase compared to the last report, with 12%).
- Only 1% of the transactions were blocked by Member States (compared to slightly more before, i.e. 2% in the first report), confirming that the European Union remains open to foreign direct investments and Member States only deny cases that pose very serious threats to security and public order.

CHAPTER 4 – EU COOPERATION MECHANISM ON FDI SCREENING

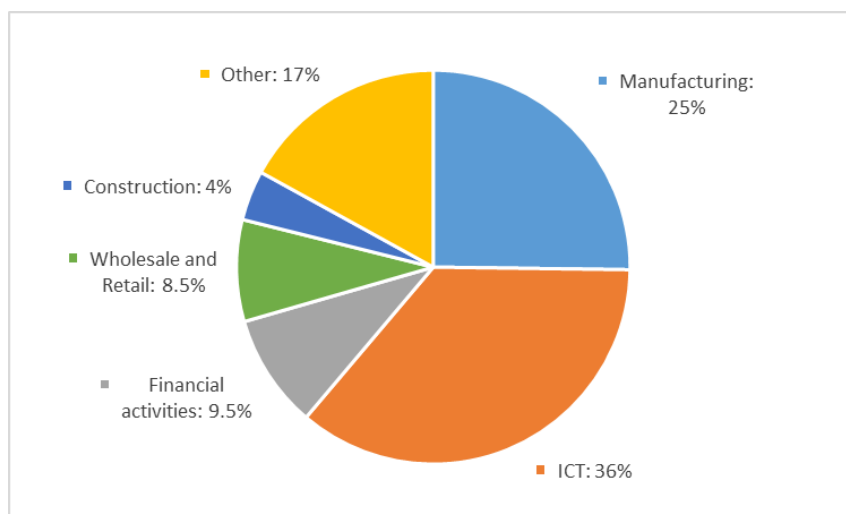
1. Notifications and other actions taken under the FDI Screening Regulation

Chapter 3 summarised the level of screening activity at a national level. It captures those investments caught at a national level that met the conditions to be subject to screening under the FDI Regulation.

In 2021, 13 Member States submitted a total of 414 notifications²³, pursuant to Article 6 of the FDI Screening Regulation, compared to 11 Member States during the period covered by the first annual report on FDI screening²⁴. Five Member States, namely Austria, France, Germany, Italy and Spain, were responsible for more than 85% of those notifications. The notified transactions vary greatly in terms of sectors of the investment target, origins of the ultimate investor and value of the transaction.

The five sectors with the highest number of transactions were ICT, Manufacturing, Financial activities²⁵, Wholesale and Retail - and construction²⁶ (in the first annual report, “construction” was incorporated in the category “Other”). The first three sectors are the same ones as in the first annual report but in a different order.

*Figure 8- Main targeted sectors overall in 2021*²⁷



Source: Member States' notifications.

²³ This includes 5 cases pre-notified in 2020 but handled in 2021.

²⁴ See https://trade.ec.europa.eu/doclib/docs/2021/november/tradoc_159935.pdf

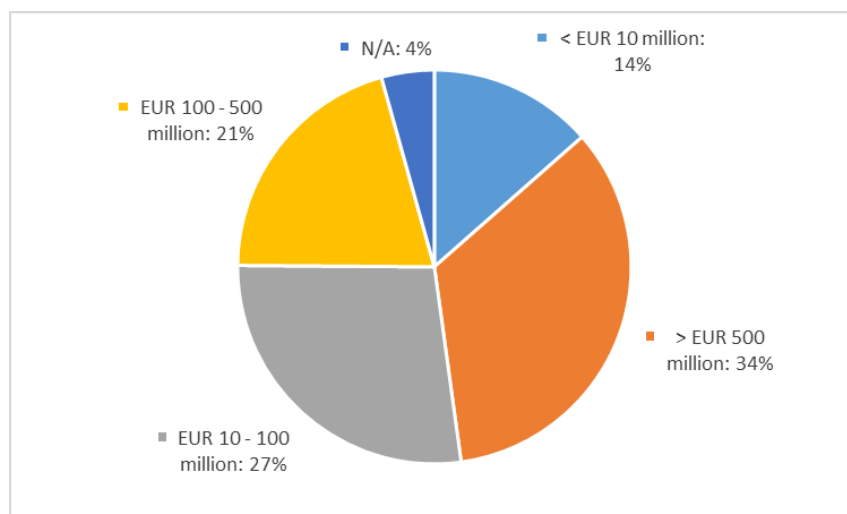
²⁵ Financial activities encompass activities pursued by (or attributable to) holdings, funds or similar actors in the financial sector which aim at acquiring a specific (equity) stake or control in a target company.

²⁶ In the first annual report it was Manufacturing, ICT, and, Wholesale and Retail, categorised under the NACE codes C, J and G respectively.

²⁷ As cases can encompass several sectors (i.e. NACE codes), the total in the graph is higher than the total number of cases notified in 2021. The category 'other' encompasses all other sectors below 4%, for example, electricity, gas, steam and air conditioning supply; transporting and storage.

Looking at the transactions' value, the majority of the transactions had a value²⁸ of²⁹ less than EUR 500 million yet the biggest part (34%) was over EUR 500 million.

Figure 9 – Respective value per notified FDI transaction in 2021³⁰



Source: Member States' notifications.

The notified transactions show a broad range in terms of value, with the lowest deal-value at EUR 1 and the highest approximately EUR 29-31 billion.

The FDI Screening Regulation foresees that an assessment of FDI transactions is undertaken in two possible phases: All notified transactions are assessed under Phase 1, with only a limited number proceeding to Phase 2. 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. Phase 2 cases could ultimately be concluded by the European Commission issuing an opinion on the case in question.

²⁸ The value, where available, relates to the target company which may be an EU-based subsidiary of a larger corporate target.

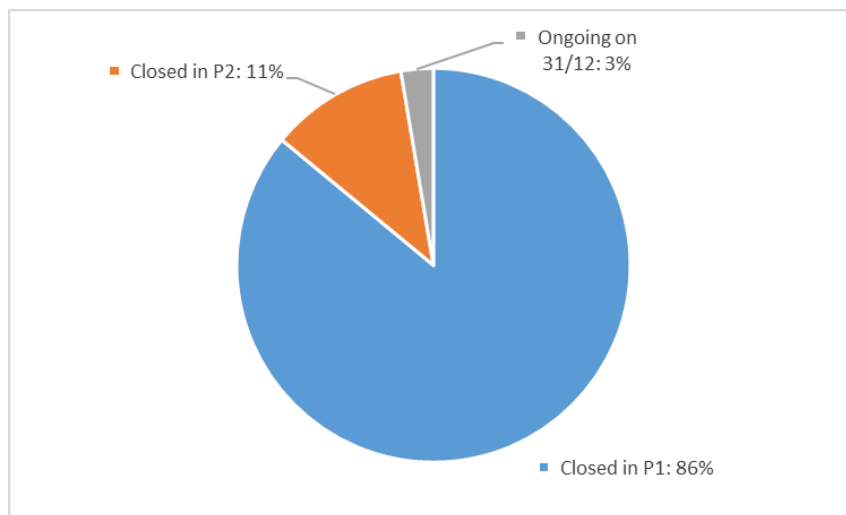
²⁹ In the first annual report, the majority of the transactions had a lower value, i.e. within the range of EUR 10-100 million, with transactions in the ICT sector representing the highest deal value, and transactions in the sector of "Other service activities" representing the lowest value range.

³⁰ N/A includes blanks, not available/not disclosed and not applicable.

Of the 414 cases notified, 86% of the cases were closed by the European Commission in Phase 1, with the remaining 11% (14% in the previous report) proceeding to Phase 2 with additional information being requested from the notifying Member State. 3% of those cases were still ongoing on the cut-off date of this report, i.e. not yet closed in Phase 1 or 2.³¹

Additional information requested by the European Commission when opening Phase 2 varies considerably, depending on the specific transaction and the detail and quality of the information supporting the notification³².

Figure 10 - Cases closed in Phase 1 and Phase 2 and ongoing ones



Source: Member States' notifications.

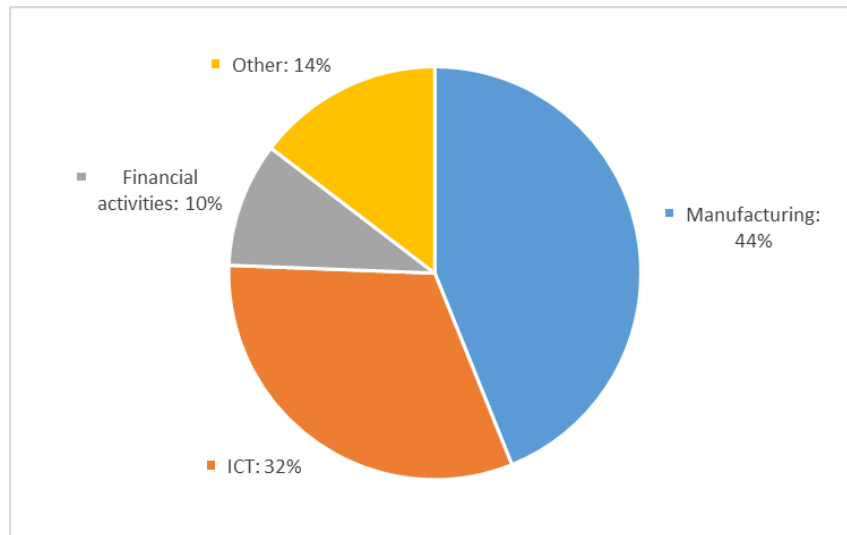
The information requested typically includes one or more of the following elements: data on products and/or services of the target company; possible dual-use classification of any products involved; customers, alternative suppliers and market shares; the influence of the investor on the target company after the transaction; the IP portfolio and R&D activities of the target company; and additional defining characteristics of the investor and its strategy. This information is requested in order to assess better 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 activities. Manufacturing and ICT accounted for 76% of all Phase 2 cases. The ICT sector rose quite drastically from 17% in the previous report to 32% in the current one.

³¹ As of 31 December 2021, of the 414 cases notified, 11 were still ongoing at the cut-off date of this report.

³² The notification form for information from an investor for purposes of a notification pursuant to Article 6 of the Regulation, and an 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>

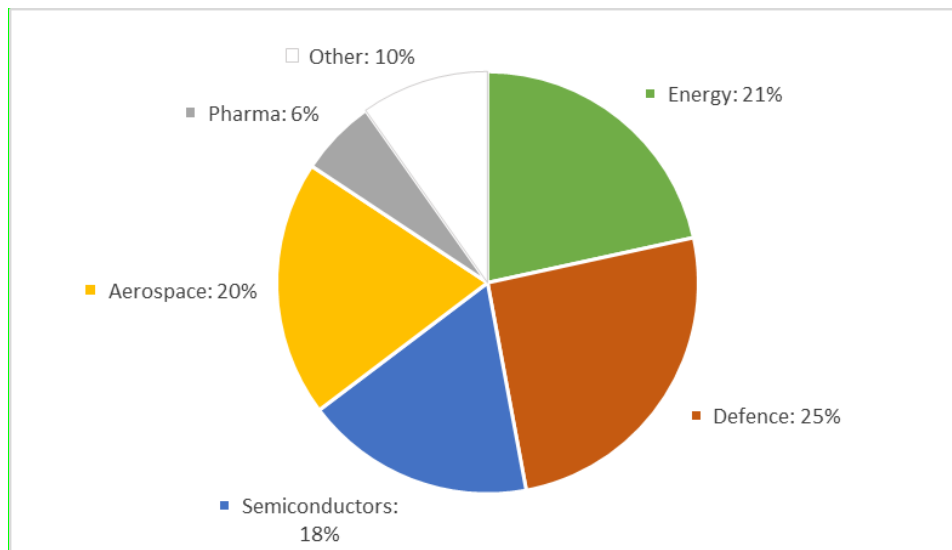
Figure 11 - Phase 2 main targeted sectors in 2021 cases³³



Source: Member States' notifications.

On the top sector - manufacturing, it encompasses critical infrastructures and/or technologies, i.e. defence, aerospace, energy, health (including pharma) and semiconductor equipments. Defence and aerospace account for almost half of the notifications in that sector (45%).

Figure 12 - Manufacturing sub-sectors in Phase 2 in 2021 cases



Source: Member States' notifications

Nine Member States accounted for 47 Phase 2 cases³⁴. For all Phase 2 cases, the average duration for Member States to provide the requested information has been 22 calendar days (compared to 31 calendar days in the first report), with a range from 3 to 101 days (compared to 2 to 101 calendar days in the first report).

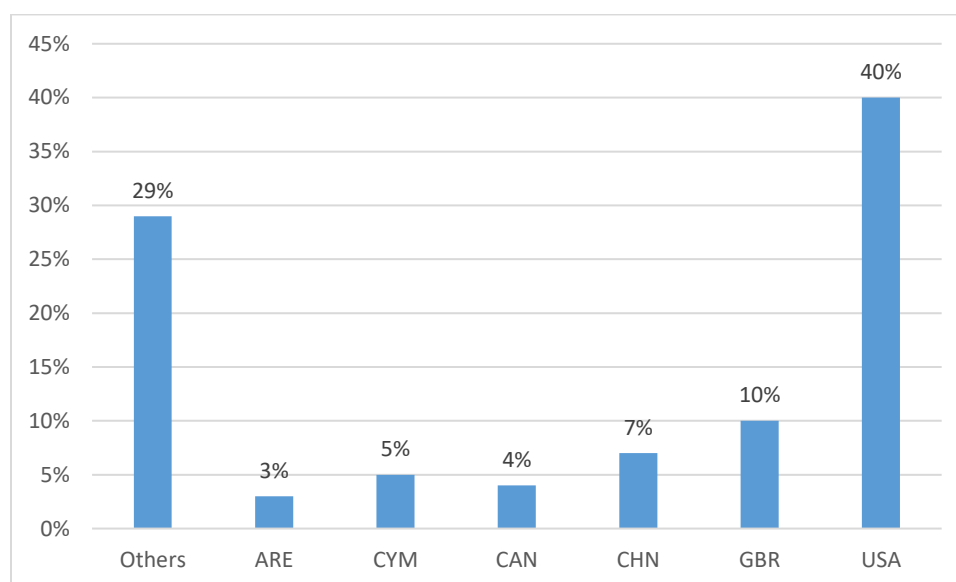
³³ See footnote 25.

³⁴ It was six Member States for 36 Phase 2 cases in the first report.

The FDI Regulation does not set precise timelines within which Member States must respond, but the timelines under the Regulation are suspended until full information is received.

As for the origin of the ultimate investor, in the 414 cases notified to the European Commission in 2021, the five main countries of origin were the USA, the UK, China, the Cayman Islands and Canada. Russia accounted for less than 1.5% of the cases and Belarus for 0.2%.

Figure 13 - Origin of Ultimate Investors in 2021 cases



Source: Member States' notifications.

Of all the cases notified in 2021, 28% (compared to 29% in the first report) constituted multi-jurisdiction FDI transactions because they concerned (and were notified by) several Member States³⁵. The main sectors that were the subject of such notifications were ICT, Manufacturing, Wholesale and Retail and Financial activities.

Table - Multi-jurisdiction FDI transactions and main sectors



Source: Member States' notifications

³⁵ “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), e.g. by way of subsidiaries 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.

Besides all the cases notified pursuant to Article 6 of the Regulation, the European Commission has in 2021 not made use of Article 7 of the Regulation (but did previously, as stated in the first report). Article 7 allows the European Commission to screen *ex officio* investments of which it becomes aware with a Member State and, independent, of the question of whether that Member State has its own screening mechanism or not.

As for the adoption of Commission opinions, pursuant to either Articles 6, 7 or 8 of the Regulation, such opinions remain confidential pursuant to Article 10 of the Regulation. Hence, no information can be published on individual opinions in this report.

Opinions have been issued in less than 3% of all cases notified (same figure as in the first annual report) 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 Member State where the investment takes place to decide on the transaction, while it shall give due consideration to any Commission opinion.

The data above leads to the same key conclusions as the ones drawn in the first annual report.

First and foremost, the processing of cases through the EU cooperation mechanism continues to function well. Of the 414 cases notified in 2021, the vast majority (86%) were closed in Phase 1, i.e. very quickly, with only 11% of the notified cases (compared to 14% in period covered by the previous report) closed in Phase 2, and less than 3% of cases resulting in a Commission opinion.

Second, there is a trend toward more diversification of screening among Member States. Indeed, four Member States accounted for roughly 70% of all applications received in 2021 but it was 86.5% in the first annual report.

Third, 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, with them often depending on the investor for the requested information.

Fourth, the main sectors (ICT, Manufacturing, Financial activities and Wholesale and Retail) at issue and origin of the ultimate investor (USA, UK, China, Cayman Islands and Canada) involved in cases notified under the Regulation, largely reflects the overall investment trends as described in Chapter 1 of this annual report and Section 1 of the accompanying Staff Working Document regarding main sectors and origin of the ultimate investor.

Fifth, 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. This includes notably 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.

2. FDI from Russia and Belarus in the context of Russia's invasion of Ukraine

In response to Russia's unprovoked and unjustified military aggression against Ukraine, supported actively by Belarus, the EU has been adopting in 2022 large and robust packages of restrictive measures ('sanctions') against both countries. The sanctions against Russia are designed to undermine the Kremlin's ability to finance the war, impose clear economic and political costs on those in Russia's political elite responsible for the invasion and diminish their economic base. In light of Belarus' material support to the Russian invasion, the EU has adopted further sanctions against Belarus. The sanctions against Belarus are designed to have a similar impact as the ones against Russia.

While FDI screening and sanctions are distinct legal instruments, each with a different purpose, and with a different way of operating, Russia's military aggression against Ukraine calls for greater vigilance towards Russian and Belarusian direct investments within the Union. This goes beyond investments by persons or entities that are subject to sanctions. In the current circumstances, there is a heightened risk that any investment - directly or indirectly related to a person or entity associated with, controlled by or subject to influence by the Russian or Belarusian government - into critical assets in the EU may pose a threat to security or public order in Member States.

Against this background, the European Commission in April 2022 adopted Guidance³⁶ to Member States on FDI from Russia and Belarus, in order to ensure that particular attention is given to investments into critical EU assets from entities or persons somehow related to the Russian or Belarusian governments.

3. Steps taken since 1 January 2021, and looking further ahead

This report marks the consolidation of a European policy, essential for the protection of security and public order in the Union. Indeed, the creation of Member States' FDI screening mechanisms and their continuous improvement, the further development of the EU cooperation mechanism during 2021, as well as the FDI cooperation with partner countries, including with the United States of America through the Trade and Technology Council Working Group on FDI, has allowed the EU to consolidate the foundations of the EU screening system. The EU is already – just over one year and half after the entry into force of the Regulation – a well-established and pro-active player in the field of FDI screening.

The report confirms the clear value-added of the FDI Regulation and the cooperation mechanism. It has proven to be a valuable and efficient tool. There has been no reported leaks regarding notifications, opinions or other action under the Regulation. Appropriate handling and **protection of any information submitted** for the purpose of Article 6, 7 and 8 of the Regulation **is vital** to ensure the necessary trust between all parties involved, i.e. the parties to a transaction, the notifying Member State, the 26 other Member States and the European Commission.

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. It also provided an updated **Frequently Asked Questions** document (in June 2021).

As regards **best practices**, the European Commission continues to facilitate exchanges amongst Member States, having organised the very first in-person meeting with representatives from all

³⁶ See footnote 14.

Member States in March 2022, after virtual exchanges during the pandemic. Experience shows that there is room for further improvement overall, notably in areas identified by Member States. However, all agreed that the functioning of the instrument and cooperation mechanism is very satisfactory and brings high added value to national authorities in their ultimate decisions on the transactions in question and for the protection of the interest (projects or programmes) of the European Union.

The European Commission firmly expects that additional Member States will very soon adopt and strengthen national FDI screening legislation and related mechanisms for potentially risky foreign investments. This position has been expressed already a number of times, notably in the 2020 Guidance to Member States on how to use FDI screening in times of public health crisis and economic vulnerability in the EU³⁷ - and more recently in the Guidance to Member States on FDI from Russia and Belarus³⁸. It should be merely a question of time before all 27 Member States have such a mechanism in place and hence directly contribute to the shared security objective. The increase in the number of Member States with a national FDI screening mechanism should lead to an intensification of the cooperation under the FDI screening regulation. Yet, as the economic environment is uncertain, the number and nature of future notifications is all the more difficult to predict.

On **avenues for future developments**, the European Commission launched in 2021 a **study on the FDI cooperation mechanism**. Its objective is to assess the articulation between the screenings carried out by the national authorities and the European Commission, and to identify any significant efficiency or effectiveness issue in light of the policy goals of the FDI Screening Regulation³⁹. The study will contribute to the Commission's reflections on the potential need for a revision of the FDI Screening Regulation in 2023. The study is expected to be concluded in the summer of 2022.

³⁷ See footnote 13.

³⁸ See footnote 14.

³⁹ 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.