

Amendment to the list of projects or programmes of Union interest in the EU framework of FDIs

On 4 October 2021, the European Commission (EC) published an informal version of the *Commission Delegated Regulation (EU) .../... of 29.9.2021 amending the Annex to Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Unionⁱ and its Annexⁱⁱ.*

The Regulation (EU) 2019/452 was the first instrument regulating foreign direct investments (FDIs) at the EU level. It is noteworthy that it is under the exclusive competence of the EU since the Lisbon Treaty. It has indeed extended the scope of the Common Commercial Policy to the regulation of FDI pursuant to Article 206 and 207 TFEU.¹ However, the Treaties do not provide any definition of FDI, therefore leaving open the actual scope of the new EU competence.ⁱⁱⁱ

The Regulation has been adopted to raise awareness and establish a common framework about the FDI screening likely to affect the security or public order in the EU. Although the EC recommended Member States to establish a framework on FDI screening at national level – particularly in the context of the COVID-19 pandemic^{iv} -, the Regulation itself does not put any obligation on them to do so. Mostly, it aims at coordinating screening mechanisms throughout the EU by setting up certain minimum requirements (e.g. the notification by EU Member States of their existing national investment screening mechanisms², the establishment of formal contact points etc.) and a coordination mechanism³ between Member States as well as between Member States and the EC. In fact, since FDI regimes remain under the Member States responsibility (only they can determine their own national interests and acting accordingly by accepting or rejecting an FDI) the latter is a crucial mechanism that enables the EC and other Member States to be informed on all transactions undergoing (or not) screening in Member States as well as to take action in accordance, but only by means of comments or opinions. The concerned Member State should give “due consideration” to such opinions and comments.

Seemingly, when a Member State plans or completed a FDI that according the EC *may affect the Union interest* on grounds of security and public order, the Commission (only) may issue an opinion to the concerned Member State (that is also sent to the other Member States) which however is non-binding. The Member State is indeed only required to “take utmost account” of it and provide an explanation to the EC in case its opinion is not followed. It is noteworthy that the Commission will be aware of a FDI possibly affecting its interests only in case the concerned Member State has an FDI screening system at national level (and thus will notify the information to the EC) or if another Member States will consider the FDI of another Member States as affecting the Union interest. In both cases, it seems the Commission has to rely on Member States willingness and readiness to notify such transactions.

¹ To know about the evolution in the Treaties see: Q. Michel, *From Lisbon to Rome. Article per article evolution of the Treaties founding the EU*, 2014-2015.

² The current state on Member States FDI’s legislations updated to 14 July 2021 can be consulted on https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157946.pdf

³ Article 7 of the Regulation.

The most recent delegated act would amend the Annex to the Regulation governing FDIs into the Union by adding and modifying the previous list of *projects or programmes of Union interest*, as referred to in Article 8(3).

The amendments reflect the developments since the previous Annex update (on 13 July 2020), notably including the Multiannual Financial Framework for the years 2021 to 2027.

The table below illustrates what programmes or projects have been maintained from the previous list, which ones have been amended and which ones have been added – since they were identified as fulfilling the criteria of Article 8(3)⁴.

Brief explanations of the projects may be found in the *Commission Delegated Regulation (EU) .../... of 29.9.2021* (hereinafter ‘the Regulation’).

	MAINTAINED	AMENDED	NEW
1	European GNSS programmes (Galileo & EGNOS) ^{5v}		
2	Copernicus ^{6vi}		
3			Preparatory Action on Preparing the new EU GOVSATCOM programme ^{vii}
4			Space Programme ^{viii}
5		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 ^{ix}	
6			Horizon Europe, including research and development programmes pursuant to Article 185 TFEU, and joint undertakings or any other structure set up pursuant to Article 187 TFEU ^x
7			Euratom Research and Training Programme 2021-2025 ^{xi}

⁴ « ...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... »

⁵ Regulation (EU) No 1285/2013 is maintained in the Annex in view of Article 110(1) of Regulation (EU) 2021/696 (Regulation (EU) 2021/696 establishes the Union Space Programme and the European Union Agency for the Space Programme and repeals Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU. Its Article 110 is about transitional provisions and continuity of services after 2027).

⁶ Regulation (EU) No 377/2014 is maintained in this Annex in view of Article 110(1) of Regulation (EU) 2021/696.

8	Trans-European Networks for Transport (TEN-T) ^{xii}		
9	Trans-European Networks for Energy (TEN-E) ^{xiii}		
10	Trans-European Networks for Telecommunications ^{7xiv}		
11			Connecting Europe Facility ^{xv}
12			Digital Europe Programme ^{xvi}
13	European Defence Industrial Development Programme ^{xvii}		
14			Preparatory Action on Defence Research ^{xviii}
15			European Defence Fund ^{xix}
16		Permanent structured cooperation (PESCO) ^{xx}	
17			European Joint Undertaking for ITER ^{xxi}
18			EU4Health Programme ^{xxii}

All things considered, while until few years ago the FDI screening was mostly addressed at national level and with concern to national interests, now it seems that more and more attention is paid to FDI at the EU level and with regard to *Union interests*.

⁷ Regulation (EU) No 283/2014 is maintained in this Annex in view of Article 27(2) of Regulation (EU) 2021/1153 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014.

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- ⁱ COMMISSION DELEGATED REGULATION (EU) .../... of 29.9.2021 amending the Annex to Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union (C(2021) 6924 final).
- ⁱⁱ ANNEX to the Commission Delegated Regulation (EU) .../... amending the Annex to Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union (C(2021) 6924 final – ANNEX).
- ⁱⁱⁱ European Parliament, Directorate-General for External Policies of the Union, Policy Department Study, *The EU Approach to international investment policy after the Lisbon Treaty*, October 2010, p. 11.
- ^{iv} EU Commission, *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)*, C(2020) 1981 final, 25 March 2020.
- ^v 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).
- ^{vi} 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).
- ^{vii} 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)
- ^{viii} Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU (OJ L 170, 12.5.2021, p. 69).
- ^{ix} 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.
- ^x Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p. 1).
- ^{xi} Council Regulation (Euratom) 2021/765 of 10 May 2021 establishing the Research and Training Programme of the European Atomic Energy Community for the period 2021-2025 complementing Horizon Europe – the Framework Programme for Research and Innovation and repealing Regulation (Euratom) 2018/1563 (OJ L 167 I, 12.5.2021, p. 81).
- ^{xii} 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).
- ^{xiii} 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).
- ^{xiv} 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).
- ^{xv} Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014 (OJ L 249, 14.7.2021, p. 38).
- ^{xvi} Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240 (OJ L 166, 11.5.2021, p. 1).
- ^{xvii} 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).
- ^{xviii} 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).

^{xix} Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 (OJ L 170, 12.5.2021, p. 149).

^{xx} 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).

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 of 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 of 14.11.2019, p. 113).

^{xxi} 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 of 30.3.2007, p. 58).

^{xxii} Regulation (EU) 2021/522 of the European Parliament and of the Council of 24

March 2021 establishing a Programme for the Union's action in the field of health ('EU4Health Programme') for the period 2021-2027, and repealing Regulation (EU) No 282/2014 (OJ L 107, 26.3.2021, p. 1).