



Brussels, 29.9.2021
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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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The main objective of Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union¹ ('the Regulation') is to create greater awareness of the Member States and the European Commission for risks from certain foreign direct investments ('FDI') that may, in certain circumstances, affect security or public order in the Union.

Articles 6 to 11 of the Regulation establish a cooperation mechanism under which the Member States and the Commission are to exchange information and comment on FDI, which are likely to affect security or public order in more than one Member State.

The Regulation also aims at increasing the awareness of FDI affecting projects and programmes of Union interest. To this end, Article 8 of the Regulation allows the Commission to issue an opinion when it considers that an FDI is likely to affect projects or programmes of Union interest on grounds of security or public order, which shall be sent to all Member States. Article 8(2)(c) states that such opinion shall be taken into 'utmost account' by the Member State where the investment is planned or completed and the Member State shall provide an explanation to the Commission in case its opinion is not followed.

Article 8(3) sets out that projects and programmes of Union interest are 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 and programmes is annexed to the Regulation. Pursuant to Article 8(4) the Commission shall adopt delegated acts to amend this list.

In view of developments since the previous update of the Annex on 13 July 2020², including the adoption of the Multiannual Financial Framework for the years 2021 to 2027³ ('MFF 2021-2027'), the following projects and programmes of Union interest were identified as fulfilling the criteria of Article 8(3) and are thus proposed to be added to the list annexed to the Regulation.

1. The Space Programme aims to ensure investment continuity in EU space activities, encourage scientific and technical progress and support the competitiveness and innovation capacity of the European space industry. It brings together the existing infrastructure and safeguards continuity and evolution of the EU's Global Navigation Satellite System (Galileo), the European Geostationary Navigation Overlay Service (EGNOS), as well as the EU's free and openly accessible Earth Observation programme (Copernicus). Secondly, it also aims at developing new security components, such as Space Situational Awareness (SSA), which includes the Space Surveillance and Tracking sub-component (SST) and new Governmental Satellite Communication service (GOVSATCOM) for EU and Member State authorities. Thirdly, it fosters a strong and innovative space industry, e.g. by improving access for space start-ups and small and medium-sized enterprises (SMEs) to risk finance, facilitating access to testing and processing facilities, or promoting certification and

¹ OJ L 79I, 21.3.2019, p. 1.

² Commission Delegated Regulation (EU) 2020/1298 of 13 July 2020 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 (OJ L 304, 18.9.2020, p. 1).

³ Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (OJ L 433I, 22.12.2020, p. 11).

standardisation. Fourthly, it aims at maintaining the EU's autonomous access to space, e.g. by aggregating the EU demand for launch services and investments in innovative technology, such as reusable launchers.

2. Horizon Europe is the Union's key funding programme for research and innovation and it supports, inter alia, actions critical for security or public order in the Union. When implementing Horizon Europe, the Union may enter into certain legally defined forms of public-private and public-public partnerships. Despite being aligned to the objectives of and arguably covered by Horizon Europe, these partnerships are distinct and sizeable instruments with an individual legal basis in primary law, i.e. Articles 185 and 187 TFEU. For greater certainty, it is appropriate to expressly mention partnerships taking the form of Union participation in programmes undertaken by several Member States, instruments such as Joint Undertakings or bodies such as the European Institute of Technology.
3. The Euratom Research and Training Programme 2021-2025 supports nuclear research and training activities with an emphasis on nuclear safety, security, radioactive waste and spent fuel management, radiation protection and fusion energy. It also aims at improvements in the areas of education, training and access to research infrastructures. Furthermore, it supports the mobility of researchers in the nuclear field in the framework of Horizon Europe's Marie Skłodowska-Curie Actions (MSCA). The programme uses the same instruments and rules for participation as Horizon Europe. It is limited to 5 years, to be extended in 2025 by 2 years in order to be aligned with the MFF 2021-2027.
4. The Connecting Europe Facility funds key projects in the areas of transport, digital and energy. Its aim is to accelerate investment in the field of trans-European networks and to leverage funding from both the public and the private sectors, while increasing legal certainty and respecting the principle of technological neutrality. In the field of transport, it promotes interconnected and multimodal networks to develop and modernise railway, road, inland waterway and maritime infrastructure, as well as safe and secure mobility. It also ensures that when infrastructure is adapted to improve military mobility within the EU, it is dual-use compatible, meeting both civilian and military needs. In the energy sector, the programme aims to contribute to further integration of the European energy market, improving the interoperability of energy networks across borders and sectors, facilitating decarbonisation, and ensuring security of supply. Funding is also available for cross-border projects in the field of renewable energy generation. In the area of digital connectivity, the scope of the programme reflects the fact that the digital transformation of the economy and society at large depends on universal access to reliable and affordable high and very high capacity networks. To qualify for support, a project has to contribute to the digital single market and EU connectivity targets.
5. The Digital Europe Programme is the first financial instrument of the EU focused on bringing digital technology to businesses and citizens. It provides funding for projects in five crucial areas: supercomputing, artificial intelligence, cybersecurity, advanced digital skills, and ensuring the wide use of digital technologies across the economy and society. The programme is fine-tuned to fill the gap between the research of digital technologies and their deployment, and to bring the results of research to the market - for the benefit of Europe's citizens and businesses, and in particular small and medium-sized enterprises. Investments under the Digital Europe Programme support the Union's twin objectives of a green transition and digital transformation and strengthen the Union's resilience, open strategic autonomy and

digital sovereignty. It complements other EU programmes, such as the Horizon Europe programme for research and innovation and the Connecting Europe Facility for digital infrastructure.

6. The European Defence Fund is aiming to foster the competitiveness and innovativeness of the European defence technological and industrial base thereby contributing to the EU's security and strategic autonomy. It aims to trigger cooperative programmes and, by supporting collaborative research and development activities, to provide the necessary incentives to boost cooperation at each stage of the industrial cycle. It follows up two programmes already mentioned in the Annex, namely the Preparatory Action on Defence Research and the European Defence Industrial Development Programme. Furthermore, there will be close links between the Fund and projects implemented in the framework of Permanent Structured Cooperation (PESCO) in the form of a higher funding rate to be granted to eligible PESCO projects.
7. The EU4Health Programme is one of the EU's response to the COVID-19 pandemic, which has had a major impact on medical and healthcare staff, patients and health systems in the EU. Being the largest EU health programme ever, it aims to make health systems more resilient to deal with cross-border health threats like COVID-19 and improve crisis management capacity and better pandemic preparedness; improving the availability, accessibility and affordability of medicinal products and medical devices and crisis-relevant products in the Union, supporting innovation; and advance digital transformation.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission, appropriate and transparent consultations, including at expert level, have been carried out on this delegated act. The Group of experts on the screening of foreign direct investments into the European Union was consulted.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 8(3) of the Regulation empowers the Commission to adopt delegated acts in order to amend the list of projects and programmes of Union interest.

The following projects and programmes should be added to the Annex of the Regulation:

- 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.
- 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.
- 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.

- 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.
- 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.
- 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.
- 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.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 Union¹, and in particular Article 8(4) thereof,

Whereas:

- (1) Pursuant to Article 8(3) of Regulation (EU) 2019/452, projects or programmes of Union interest are to 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.
- (2) The list of projects or programmes of Union interest referred to in Article 8(3) of Regulation (EU) 2019/452 is set out in the Annex to that Regulation.
- (3) The Commission has identified several other projects and programmes which are eligible to be included in the list annexed to Regulation (EU) 2019/452.
- (4) The Space Programme² aims to ensure investment continuity in Union space activities, encourage scientific and technical progress and support the competitiveness and innovation capacity of the Union space industry. It brings together the existing infrastructure and safeguards continuity and evolution of the EU's Global Navigation Satellite System (Galileo), the European Geostationary Navigation Overlay Service (EGNOS) as well as the Union's free and openly accessible Earth Observation programme (Copernicus). It also aims at developing new security components, such as Space Situational Awareness (SSA), which includes a Space Surveillance and Tracking sub-component (SST) and new Governmental Satellite Communication service for Union and Member State authorities. It fosters a strong and innovative space industry and it aims at maintaining the Union's autonomous access to space.
- (5) Horizon Europe³ is the Union's key funding programme for research and innovation and it supports, inter alia, actions critical for security or public order in the Union.

¹ OJ L 79I, 21.3.2019, p. 1.

² 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).

³ 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

- (6) The Euratom Research and Training Programme 2021-2025⁴ supports nuclear research and training activities with an emphasis on nuclear safety, security, radioactive waste and spent fuel management, radiation protection and fusion energy. It also aims at improvements in the areas of education, training and access to research infrastructures.
- (7) The Connecting Europe Facility⁵ funds key projects in the areas of transport, digital and energy. Its actions may provide funding for critical infrastructure, whether physical or virtual, and critical technologies.
- (8) Digital Europe Programme⁶ is the first financial instrument of the Union focused on bringing digital technology to businesses and citizens. It provides funding for projects in areas that may appear critical for security or public order in the Union, such as supercomputing, artificial intelligence, cybersecurity and advanced digital skills.
- (9) The European Defence Fund⁷ is intended as an instrument to foster the competitiveness and innovativeness of the Union defence technological and industrial base thereby contributing to the Union's security and strategic autonomy.
- (10) The EU4Health Programme⁸ is one of the Union's response to the COVID-19 pandemic, therefore it plays an important role in ensuring public order through public health. It aims to make health systems more resilient to deal with cross-border health threats like COVID-19 and improve crisis management capacity and better pandemic preparedness; improving the availability, accessibility and affordability of medicinal products and medical devices and crisis-relevant products in the Union, supporting innovation; and advance digital transformation.
- (11) Regulation (EU) 2019/452 should therefore be amended accordingly,
- HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EU) 2019/452 is replaced by the text in the Annex to this Regulation.

Article 2

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

participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p. 1).

⁴ 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 167I , 12.5.2021, p. 81).

⁵ 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, 14.07.2021, p. 38-81).

⁶ 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).

⁷ 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).

⁸ 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).

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

Done at Brussels, 29.9.2021

For the Commission
The President
Ursula VON DER LEYEN