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## New European Commission Guidance Calls for Increased Scrutiny of Investments Amid COVID-19 Crisis

***The new guidance encourages EU Member States to make full use of existing, and adopt new, investment screening mechanisms. Investments in the health care sector and related industries are likely to face increased scrutiny and may be blocked or subjected to conditions.***

The European Commission has issued [new guidance](#) addressing foreign investment screening in the context of the current coronavirus (COVID-19) crisis. The guidance highlights that critical EU industries are subject to an increased risk of foreign takeover in the current crisis. The guidance outlines how Member States can utilize existing EU rules, including the framework established under the EU FDI Regulation (see our previous *White Paper*, "[Screening of Foreign Direct Investments in the EU Under the New FDI Regulation.](#)")

First, the guidance calls upon the Member States that already have FDI screening mechanisms in place to make full use of them and, where appropriate, to block investments or impose mitigating measures such as conditions guaranteeing the supply of medical products/devices.

Second, the guidance calls upon 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. This is significant, since the EU FDI Regulation specifically does not do so. In the meantime, Member States are asked to consider other options to address cases where an acquisition of a particular business, infrastructure, or technology would create a risk to security or public order, including health security, in the European Union. The Commission also highlights that, even though the FDI Regulation will not apply until October 2020, a foreign investment completed now could be subject to *ex post* scrutiny under that Regulation as from October.

Lastly, the guidance specifies that restrictions may also be imposed on portfolio investments. In this context, the Commission describes the various grounds on the basis of which Member States may adopt measures restricting the free movement of capital from third countries, for instance where a foreign investment may lead to overreliance on foreign investors for the provision of essential supplies or services.



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