



AN GHNÍOMHAIREACTH INVESTMENT AND
INFHEISTÍOCHTA AGUS FORBARTHA DEVELOPMENT AGENCY

TRÍ, PLÁS NA PÁIRCE THREE PARK PLACE
SRÁID HAISTE UACHTARACH HATCH STREET UPPER
BAILE ÁTHA CLIATH 2 ÉIRE DUBLIN 2 IRELAND

www.idaireland.com
+353 1 603 4000
@IDAIRELAND

Investment Screening Unit
Department of Business, Enterprise and Innovation
23 Kildare Street
Dublin 2
D02 TD30

22nd May 2020.

Re: public consultation on the transposition of the EU Regulation of the European Parliament and of the Council establishing a framework for screening of Foreign Direct Investments (FDI) into the European Union.

Dear Sir / Madam,

IDA Ireland is grateful to the Department of Business, Enterprise and Innovation (DBEI) for the opportunity to input to the public consultation on investment screening. IDA recognises that the European Union (EU) has legitimate concerns about potential security and public order issues arising from FDI into Europe and that these have resulted in the adoption of the new Regulation.

As the public body with statutory responsibility for promoting this jurisdiction for FDI, the introduction of a formal investment screening mechanism has the potential to alter investor perceptions of Ireland and to shape their experience of investing in this country. Therefore, in our view, it is important that any future investment screening process is introduced and operated in a manner that supports the attraction of FDI while fulfilling necessary obligations. The following are our preliminary views on some of the questions posed in the consultation document.

A future investment screening process should adhere to certain basic principles. It should be fair, transparent, proportional, efficient, consultative and non-discriminatory. It should also take account of the various forms of FDI and of the extent to which they give rise to security and public order concerns. In our experience, the typical greenfield investment and organic expansion i.e. non-M&A investment, undertaken by IDA client companies does not have security and public order impacts.

To provide clarity to investors, we believe it important that any future policy concerning investment screening clearly designates, ex-ante, the type of transactions, assets, sectors or activities that could trigger a screening event. A designated or sensitive sectors approach would be without prejudice to the right of the Department (Minister) to subject any transaction that it believes might pose a risk to security and public order to a screening exercise.

Early identification of relevant FDI transactions is a major challenge for investment screening. To address this issue, we recommend consideration be given to establishing a reporting platform whereby investors from third countries can notify the Irish authorities of their intention to invest in a designated sector / activity. This will enable the investor to trigger a reasonably early engagement process e.g. post heads of terms but pre-close, that results in a decision to subject the transaction to a screening process or not. Investors can then provide for a condition precedent clause in the purchase agreement to make the transaction subject to the outcome of any screening exercise. The screening process should be time limited and undertaken in a systematic and expeditious manner. This approach would help ensure that Ireland's screening process is transparent and efficient from an investor perspective. Equally, from the perspective of the screening authority, this type of approach could help avoid a situation whereby awareness of a relevant transaction and the commencement of a screening exercise occurs very late in the investment process or after completion with the attendant risks and complications of a late stage prohibition or ex post unwind.

With respect to M&A activity, the value of a transaction is not always an accurate guide to the security implications of an investment. There are also pros and cons to a monetary threshold approach to screening. One way forward might be to seek notification of a transaction in a designated sector or activity, irrespective of value, especially if it will lead to a transfer of ownership and control to an entity headquartered in a third country. If necessary, a combination of anti-circumvention rules and equity caps could be used to address issues related to indirect ownership and the degree of external control.

As suggested in the consultation paper, the Minister for Business, Enterprise and Innovation should have the ultimate decision-making power in relation to which transactions / investments are screened and are subsequently authorised, subject to conditionality or disallowed. However, it is vital that the Minister be supported to exercise this duty through the establishment of appropriate institutional arrangements. We have no definitive views on a potential sanctions regime for non-compliance with screening decisions other than penalties should be proportionate.

Finally, there would be merit in considering a Regulatory Impact Analysis of any proposal to give effect to the EU regulation so that any screening mechanism introduced in Ireland is efficient, effective and continues to facilitate FDI.

If you have any questions in relation to this submission, please don't hesitate to contact me. We look forward to discussing the subject of the consultation in more detail with the Department in due course.

Yours sincerely,



Kieran Donoghue
Head of Strategy & Public Policy

CC. Martin Shanahan, CEO, IDA.