An Roinn Fiontar,
Turasóireachta agus Fostaíochta
Department of Enterprise,
Tourism and Employment

IIS Inward Investment Screening

Inward Investment Screening

Guidance for Stakeholders and Investors

December 2024

Contents

Glossary of Terms

The Act	The Screening of Third Country Transactions Act, 2023 is the primary legislation underpinning Ireland's Inward Investment Screening mechanism.
Adjudication	The process whereby an initial appeal is heard against a *Screening Decision* made by the Minister.
Adjudication Notice	In response to an *Intent to Appeal*, the Minister will assign an *Adjudicator* and inform the appellant about the requirements they must fulfil to submit an appeal. These details are set out in the *Adjudication Notice*.
Adjudicator	Once an appeal has been submitted, an Adjudicator will hear the initial appeal against a *Screening Decision* of the Minister. The Adjudicator will be external to the Department, remunerated, and suitably qualified. Section 22 of the Act sets out details about the appointment of an *Adjudicator*.
Call-in Power	The Minister has the right to review a transaction regardless of whether it is subject to mandatory notification (i.e., a *Notifiable Transaction*), once there are reasonable grounds for believing that the transaction negatively impacts upon security or public order of the State. This is referred to as the Minister's C*all-in Power*.
Case Management System (CMS)	D/ETE's online tool to facilitate communication and interaction between the Department and the party or parties submitting a *Notification*. The CMS will be used to manage all communication between the Department and the parties to the transaction, throughout the notification and screening process.
Clock Pause	The pausing of the 90-day timeline – will be applied upon issuance of a *Notice of Information*. The timeline will only recommence once confirmation is issued to the notifying party that the information requested has been received
Decisive Influence	The ability to determine the strategic commercial behaviour of an undertaking.
D/ETE	The Department of Enterprise, Tourism and Employment, or "the Department". Within the Department, the Inward Investment Screening (IIS) Unit is responsible for the implementation and operation of Ireland's Inward Investment Screening mechanism.

EU Cooperation Mechanism	Under EU Regulation 2019/452, Ireland is obliged to share the details of transactions that are undergoing a *Screening Review* with other EU Member States and with the European Commission. In response, Member States and Commission are entitled to submit opinions/comments to Ireland on individual transactions.
EU FDI Screening Regulation	EU Regulation 2019/452 "Establishing a framework for the screening of foreign direct investments into the Union. The Regulation provides the basis for cooperation with other EU Member States and for the exchange of views on transactions undergoing *Screening Reviews*.
Intent to Appeal	A party that has been subject to a *Screening Decision* has the right to appeal that decision. The party seeking an appeal must submit
	their *Intent to Appeal* within 30 days of the date of the *Screening Decision*.
Investor	The undertaking, entity, or individual acquiring shares/voting rights or control of a *Target Undertaking*.
Minister	Unless otherwise stated, the *Minister* refers to the Minister for Enterprise, Tourism and Employment.
Notice of Information	A notice issued by the Minister to the *Notifying Party* requesting additional information to support the *Screening Review* process.
Notifiable Transaction	A transaction that requires mandatory notification as a result of meeting the criteria set out in Section 9 of the Act.
Notification	An online submission made by a *Notifying Party* including details of a transaction, as set out in Section 9 of the Act. A standardised notification form is available from the Department.
Notifying Party	The person or entity that submits a *Notification* – this may be the *Investor*, the *Target*, or their legal representatives.
Oral Hearing	An in-person *Adjudication* heard before an *Adjudicator*.
Relevant Person	A "relevant person" is a *Third Country* person or undertaking that exercises control over an undertaking which is subject to a *Screening Review*.
Screening Review	The review by the Minister of a foreign direct investment from a *Third Country* pursuant to Section 9 of the Act to identify any threats to security or public order.
Screening Decision	The decision issued by the Minister to the *Notifying Parties* upon completion of a *Screening Review.* The Minister may: ▫ Approve the transaction; or ▫ Approve the transaction but with conditions attached; or ▫ Prohibit the transaction from proceeding.
Screening Notice	A notice issued to the *Notifying Party* or *Parties* by the Minister advising them that their *Notification* has been reviewed and confirming that the transaction is a *Notifiable Transaction* and as such, is subject to a *Screening Review*.

Submission of Appeal	An appellant has 14 days from the date they receive an *Adjudication Notice* to submit their appeal along with any supporting evidence and documentation.
Target Undertaking	The undertaking, company or entity in which shares/voting rights or control are being acquired.
Third Country	A State or territory other than the State, an EU Member State, an EEA Member State or Switzerland.
Timeline	The 90-day timeline within which a *Screening Review* is to be completed. This timeline begins on the day the *Screening Notice* is issued.
Timeline Extension	A 45-day extension to the above 90-day timeline – where it is determined that an extension is required, this is communicated in writing to the *Notifying Parties* before the expiration of the initial 90-day timeline.

SECTION 1: OVERVIEW AND OBJECTIVES

1. Background

Against a backdrop of an increasingly globalised world, capital flows between countries have grown substantially in recent decades. The introduction of a screening mechanism in Ireland is a response to the growing awareness of the risks that can be associated with certain foreign direct investments.

In particular, these concerns relate to the acquisition of, or investment in, strategic sectors, technologies, or assets by foreign-owned firms (and in certain cases, state-owned firms) that may undermine the State's security or public order.

There is potential for hostile parties to use such investments to exert political pressure, to cause various forms of disruption that would undermine or threaten security or public order or could result in the transfer of sensitive technology or intellectual property rights (IPR) back to the investor's home country.

Based on OECD and other analysis, there is increasing awareness of the potential risks that can arise where third country investments deviate from a multilateral and rules-based international order in order to gain political leverage and achieve foreign policy priorities. Risks also arise from such actors gaining access to commodities and technologies that would provide the investor country with a competitive advantage in key economic sectors.

2. EU Context for Inward Investment Screening

EU Regulation 2019/452 creates a cooperation mechanism through which Member States and the European Commission can exchange information and raise specific concerns about a foreign investment on security or public order grounds.

The Regulation does not affect Member States' ability to maintain their existing inward investment screening mechanisms, to adopt new ones or to remain without such a mechanism. Individual Member States have the last word as to whether a specific investment can take place in their territory.

The European Council adopted Conclusions on 26 March 2020 which also refer to investment screening[1]. The Conclusions stress the need for Member States to take all necessary action to protect Europe's strategic assets and technology from foreign investments. The Conclusions have provided added impetus to those Member States that are developing a screening mechanism for the first time.

It is important to note that the EU Regulation 2019/452 is relatively minimalist. While it represents something of a milestone, it remains only a framework for "coordination and

1 Joint statement of the Members of the European Council, Brussels, 26 March 2020

cooperation" and is less comprehensive or proactive than the approach taken by most Member States (and other OECD countries) who already apply inward investment screening.

3. The Irish Inward Investment Screening Mechanism

As noted, the EU Regulation 2019/452 does not provide for the actual screening of investments, nor does it require Member States to introduce an inward investment screening mechanism. Any decision to screen third country investments remains a decision for individual Member States.

In recognition of the need to protect Ireland's security and public order from potentially hostile investments, the Screening of Third Country Transactions Act, 2023 has been enacted to put in place an Irish Inward Investment Screening mechanism. The main elements of the Act are illustrated in Figure 1.

4. What is the role of the Department of Enterprise, Tourism & Employment?

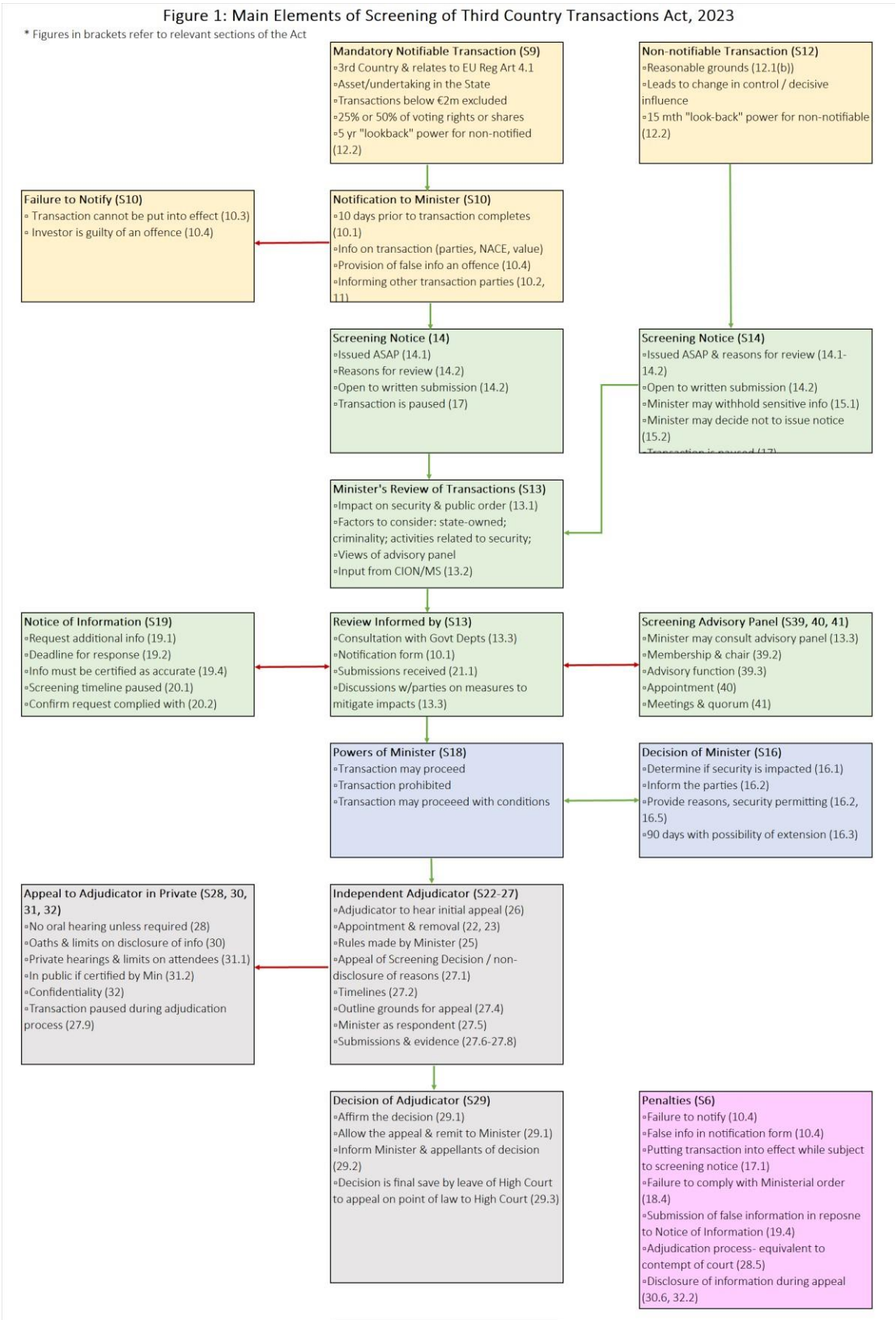
The Department of Enterprise, Tourism and Employment is responsible for ensuring that Ireland plays its part as a responsible member of the global community and specifically the EU Single Market, in mitigating risks arising from potentially hostile third country investment.

The Department is responsible for implementing the EU Regulation 2019/452 “Establishing a framework for the screening of foreign direct investments into the Union”. In this regard, it acts as Ireland’s National Contact Point for cooperation with the European Commission and with other EU Member States on inward investment screening matters and facilitates the exchange of information on transactions undergoing screening throughout the EU.

The Department is also responsible for developing Ireland’s national policy and legislation on the screening of third country investments, and for implementing Ireland’s Inward Investment Screening mechanism.

The Department endeavours to operate the screening mechanism system in as efficient a manner as possible, to minimise the burden on investors and companies, and to facilitate lowrisk, legitimate investment. However, it must also ensure the integrity of Ireland’s screening mechanism.

Figure 1: Main Elements of Screening of Third Country Transactions Act, 2023



5. What are the Objectives of the Irish Investment Screening Mechanism?

The Irish Inward Investment Screening mechanism provides Government with powers to protect security and public order from hostile third country actors seeking to harm the country through ownership of, or influence over, sensitive businesses and assets. The mechanism provides the Minister with the power to assess, investigate, authorise, mitigate, or prohibit foreign investments based on a range of security criteria.

At the same time, while acknowledging the necessity to respond to the threats posed, foreign investment remains key to Ireland's economic growth and development. It is anticipated that only a small number of investments, mergers or transactions might pose a risk to our security and public order and so, the investment screening mechanism must be proportionate and tailored to these risks, without undermining Ireland's attractiveness to inward FDI more generally.

SECTION 2: THE FOCUS FOR SCREENING

1. Who does the Act Apply To?

The Act applies to the parties to a transaction where a third country investor seeks to acquire control of a sensitive or critical asset or undertaking in the State, provided that all of the criteria in Section 9(1) of the Act are fulfilled.

2. What is a Third Country?

The Irish Inward Investment Screening mechanism focuses on transactions by investors from "third countries". A third country is every country that is not a member of the European Union, the European Economic Area ("EEA"), or Switzerland.

3. What is a Third Country Undertaking?

The screening mechanism applies to transactions and acquisitions by:

- Investors that are constituted or otherwise governed by the laws of a third country;
- Entities that are controlled by at least one director, member, or another person who is ordinarily resident in a third country; or
- Natural persons or partnerships that are ordinarily resident in a third country.

Mandatory notification is required where the direct investor or the ultimate owner of the investor is a third country undertaking. Notification is required even in transactions where the direct acquirer meets the definition of a third country undertaking under the Act but is ultimately controlled by an EU/EEA/Swiss parent (i.e., not meeting the definition of a third country undertaking).

4. What are The Key Considerations when Screening?

The focus of the Inward Investment Screening mechanism is on transactions that potentially pose a risk to the security and public order of the State, or the security or public order of another EU member state.

- For a transaction to be subject to mandatory notification and a screening review, a transaction must meet all of the criteria in Section 9(1) of the Act.
- The objective is to screen, where necessary, investments from third countries (i.e., from outside of the EU, EEA and Switzerland). Concerns relating to security and public order

can potentially arise from anywhere. Non-discrimination among foreign investors is a key principle of both EU Regulation 2019/452 and of the Act. The sole grounds for screening a foreign investment are risks to security and public order, regardless of the foreign investor's origin, and the Act clearly sets out the criteria determining which investments will be screened.

- Screening is limited to third country transactions that meet the criteria set out in Section 9(1) of the Act, where a change of control occurs, and that relate to "undertakings or assets in the State" as defined in Sections 2(4) and 2(5) of the Act (i.e., undertakings either constituted or otherwise governed by the laws of the State, or undertakings that have their principal place of business in the State; or assets physically located in the State, etc.).

- This geographic component is focused on those areas of the business that are considered critical (i.e., if the Irish element of the target relates to one of the critical activities listed in Section 9 of the Act, then mandatory notification is required; if the Irish element of target is not engaged in any of these activities, then notification is not required).
- The concept of "control" is a key aspect of the Inward Investment Screening mechanism and is clearly defined in Section 2 of the Act[2].

- Control of an *asset* is exercised when a person has ownership of, or the right to use, all or part of the asset.

- Control of an *undertaking* exists where a person can exercise decisive influence over the activities of an undertaking. "Decisive influence" is the power to "determine the strategic commercial behaviour of an undertaking", particularly in relation to matters such as "the budget, the business plan, major investments or the appointment of senior management"[3].

- Screening will concentrate on transactions where a degree of control over the target company is being newly acquired or increased (i.e., where a third country undertaking or a person connected with such an undertaking acquires control of an asset or undertaking in the State, or where they acquire a share of more than 25 percent[4] of shares or voting rights in an undertaking).
  - The shareholding threshold refers to (i) actual shares as set out in the company register, and (ii) actual voting rights attached to the shares in the company register and exercisable at general meetings.

2 The Department's understanding of "decisive influence" reflects the concept of control used in both EU and Irish merger control. The Competition Act 2002 (as amended) and Article 2 of Council Regulation No 139/2004 on the control of concentrations between undertakings ("EUMR") both refer specifically to the concept of "decisive influence".

3 Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01)

4 Notification is required regardless of whether the acquiring party is building on an existing stake in an undertaking or is acquiring an entirely new stake in an undertaking, once the share being acquired exceeds 25

percent. Notification is also required where a third country undertaking, or a person connected with such an undertaking, increases their share to more than 50 percent.

- Notification is required, therefore, when either "control" of an asset or undertaking is acquired, or when shares or voting rights are acquired in line with the thresholds set out in Section 9.
- Parties to transactions must determine whether the transaction meets the criteria for notification; the Department will determine whether risks to the security or public order of the State arise as a result of the transaction.
- Commercial risks to individual companies arising as a result of a transaction are matters for the company themselves to assess and mitigate against.

5. What is a Connected Person?

Section 3 of the Act provides a definition of a "connected person" – this may relate to either an individual or an undertaking, and mirrors the understanding set out in Section 220 of the Companies Act 2014. The definition includes:

- A spouse, civil partner, parent, brother, sister or child of a relevant person;
- A person acting in his capacity as the trustee of a trust the principal beneficiaries of which are a relevant person;
- A partner (within the meaning of the Partnership Act 1890) of a relevant person; or
- Any "body corporate" controlled by a relevant person.

In interpreting this Act and determining whether the involvement of an individual or undertaking brings a transaction within the mandatory scope, it is necessary to consider the level of control being exerted: the "connected person" must be in a position to influence or control the other person or undertaking.

SECTION 3: MANDATORY SCREENING

1. Mandatory Notification – When Do I Need to Notify a Transaction?

The legislation provides for a mandatory element and a discretionary element. Mandatory notification applies to investments that meet all of the criteria set out in Section 9(1)(a)-(d) of the Act. A transaction is notifiable where:

- 9(1)(a) a third country undertaking, or a person connected with such an undertaking, acquires control of an asset or undertaking in the State, or increases the percentage of shares or voting rights it holds in an undertaking in the State to more than 25 percent[5] (or from less than 50 per cent to more than 50 percent).

- 9(1)(b) the cumulative value of the transaction (and other related transactions between the parties) is equal to or greater than €2,000,000 in the 12 months prior to the date of the transaction.
- 9(1)(c) the same undertaking does not control all of the parties involved in the transaction (i.e., internal restructuring).
- 9(1)(d) the transaction relates to, or impacts upon, one or more of the matters referred to in Article 4(1)(a)-(e) of EU Regulation 2019/452. Reflecting the objectives of the EU Regulation, risks will primarily arise due to the activity or sector that the target is engaged in, and so this is the focus for the Irish screening mechanism. Further information on each of the categories (a)-(e) is provided below.

The legislation also provides for criminal offences to apply to investors that do not adhere to the mandatory notification requirements. Such offences, however, are intended to counter deliberate attempts to circumvent the screening mechanism, rather than to punish honest mistakes. It is a matter, however, for the parties to a transaction to determine whether their transaction is within scope and requires a mandatory notification to the Minister.

In addition, the Minister will be able to initiate screening of other investments which do not require mandatory notification, but which the Minister deems, on reasonable grounds, may pose a risk to security or public order. This ensures that the screening system is flexible enough to adapt to changing economic and technological developments and allows the Minister to respond to deliberate attempts to circumvent the screening mechanism.

5 Whether an investor initially holds some shares or voting rights or holds zero shares or voting rights is irrelevant; acquisition of shares or voting rights above the 25 percent threshold is a trigger for notification.

2. Does my Business Fall within the Activities set out in Section 9(1)(d)?

The nature of the activity being undertaken by the target is one of the key criteria determining whether a transaction must be notified to the Minister. Specifically, transactions relating to, or impacting upon, one or more of the matters referred to in points (a) to (e) of Article 4(1) of the EU Regulation 2019/452 fall within scope of the legislation:

(a) Critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure;

(b) Critical technologies and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No 428/2009 (15), including artificial intelligence, robotics,

semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies;

(c) Supply of critical inputs, including energy or raw materials, as well as food security;

(d) Access to sensitive information, including personal data, or the ability to control such information; or

(e) The freedom and pluralism of the media.

Ireland's approach is intended to mirror the EU Regulation which aims to identify risks related to the acquisition or control of strategic assets by third country parties[1]. In line with this approach, the balance of risk in this regard arises primarily through the activity of the target, and so, in interpreting the Act and determining whether mandatory notification applies, it is the activity of the target that is the focus for the Irish screening mechanism.

Recital 13 of the EU Regulation is also relevant in this regard, noting that when Member States are conducting screening they should:

> "C*onsider all relevant factors, including the effects on critical infrastructure, technologies (including key enabling technologies) and inputs which are essential for security or the maintenance of public order, the disruption, failure, loss or destruction of which would have a significant impact in a Member State or in the Union*",

In this context, in order to trigger a mandatory notification, the transaction should relate to or impact upon a sensitive activity or sector, as outlined in this Guidance. The phrase "relates to, or impacts upon" is broad and subjective to ensure that any acquisitions that could give rise to risks to the security or public order of the State, as per the considerations outlined in Section 13 of the Act, are within scope.

As such, a transaction involving, for example, the acquisition of a stake in an undertaking where the sole function of the Irish subsidiary is a sales office or other such support functions may not necessarily trigger a mandatory notification, (unless, for instance, such an office has access to sensitive data). All other relevant aspects of the Act, however, must be considered when making such a determination.

The subsequent sections elaborate on these categories. The list of relevant categories needs to be read in conjunction with the other factors determining mandatory notification, which are also set out in Section 9 of the Act – that the investment is from a third country, that it is of a value equal to or above €2 million, that it relates to the acquisition of control of an asset or undertaking in Ireland (or more than 25 percent or 50 percent of shares or voting rights is being acquired).

[1] See Question 2 "What is the objective of the Regulation?" in European Commission, Frequently asked questions on Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union, July 2022

3. What is Critical Infrastructure?

EU Directive 2022/2557 on the resilience of critical entities defines "critical infrastructure" as

> "*An asset, a facility, equipment, a network or a system, or a part of an asset, a facility, equipment, a network or a system, which is necessary for the provision of an essential service*" [7].

Critical infrastructure is essential for the maintenance of vital societal functions, health, safety, security, economic or social wellbeing of the people and the disruption or destruction of which would have a significant impact in the State as a result of failure to maintain those functions[8]. This includes energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure.

Ireland has not yet published a list of identified and designated critical infrastructures. For the purposes of this Act, potential investors, should however, take into account the definitions used in EU Directive 2022/2557 when determining whether a transaction meets the threshold for notification. EU Directive 2022/2557 identifies 11 categories of infrastructure, the subsectors related to these infrastructures, and the categories of entities operating such infrastructures. Parties to a third country transaction, when determining whether a mandatory notification is required, should consider this list (see Annex 1). Investors and parties to transactions dealing with cybersecurity issues should also be cognisant of entities in scope of Directive (EU) 2022/2555[9].

---

7 Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC

8 Department of Defence, Strategic Emergency Management, Guideline 3 – Critical Infrastructure Resilience, July 2021

9 Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union. Where relevant, the results of the Union level "coordinated security risk assessments of critical supply chains" carried out in accordance with Article 22(1) of Directive (EU) 2022/2555 should also be taken into account when determining whether a transaction falls within the scope of this Act.

For the purpose of Ireland's screening mechanism, infrastructure within any of these categories and target entities or undertakings operating such infrastructure may be subject to the mandatory requirements of the Screening of Third Country Transactions Act 2023.

In conjunction with the critical infrastructure categories, the circumstances outlined in Article 6 of Directive 2022/2557 must also be considered, specifically whether the target:

(a) *provides one or more essential services;*

(b) *operates, and its critical infrastructure is located, on the territory of that Member State; and*

(c) *an incident would have significant disruptive effects, as determined in accordance with Article 7(1)[10], on the provision by the entity [target] of one or more essential services or*

on the provision of other essential services in the sectors set out in the Annex that depend on that or those essential services.

Furthermore, when determining the significance of a disruptive effect as referred to in Article 6(2), point (c), the criteria outlined in Article 7 of Directive 2022/2557 should also be considered by the parties to the transaction:

(a) the number of users relying on the essential service provided by the entity concerned;
(b) the extent to which other sectors and subsectors as set out in the Annex depend on the essential service in question;
(c) the impact that incidents could have, in terms of degree and duration, on economic and societal activities, the environment, public safety and security, or the health of the population;
(d) the entity's market share in the market for the essential service or essential services concerned;
(e) the geographic area that could be affected by an incident, including any cross-border impact, taking into account the vulnerability associated with the degree of isolation of certain types of geographic areas, such as insular regions, remote regions or mountainous areas;
(f) the importance of the entity in maintaining a sufficient level of the essential service, taking into account the availability of alternative means for the provision of that essential service.

In determining whether a notification is required, parties should consider the combination of the categories of infrastructure included in the relevant Directives, and the "assessment of criticality" outlined above.

10 Article 7(1) of the EU Directive states that "when determining the significance of a disruptive effect as referred to in Article 6(2), point (c), Member States shall take into account the following criteria: (a) the number of users relying on the essential service provided by the entity concerned; (b) the extent to which other sectors and subsectors as set out in the Annex depend on the essential service in question; (c) the impact that incidents could have, in terms of degree and duration, on economic and societal activities, the environment, public safety and security, or the health of the population; (d) the entity's market share in the market for the essential service or essential services concerned; (e) the geographic area that could be affected by an incident, including any cross-border impact, taking into account the vulnerability associated with the degree of isolation of certain types of geographic areas, such as insular regions, remote regions or mountainous areas; (f) the importance of the entity in maintaining a sufficient level of the essential service, taking into account the availability of alternative means for the provision of that essential service.

Critical Financial Infrastructure

When determining whether a transaction involving financial entities are within scope, parties should consider the Critical Entities Directive, as referenced above. Additionally, the following categories of financial infrastructure and services may be within scope of the mandatory notification regime.

- Central counterparties[11]

- Payment systems and payment institutions[12]
- Electronic money institutions[13]
- Market operators and investment firms that operate a multilateral trading facility or an organised trading facility[14]
- Central securities depositories[15]
- Significant issuers of asset-referenced tokens or e-money tokens and crypto asset service providers operating trading platforms for crypto-assets[16]
- Large institutions[17]
- Global providers of specialised financial messaging services and designated critical ICT third-party service providers[18] based on DG FISMA's best estimations.

4. What are Critical Technologies and Dual Use Items?

As per Article 4(1)(b) of the EU Regulation, for the purposes of the Screening of Third Country Transactions Act, a technology is considered critical, and within scope if it relates to artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum, and nuclear technologies as well as nanotechnologies and biotechnologies.

11 Article 2(1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.
12 Article 4(7) and Art 4(4) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.
13 Article 2(1) of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.
14 Article 4(1)(18) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014.
15 Article 2(1)(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014.
16 Articles 3(1)(6), 3(1)(7) and 3(1)(10), 3(1)(15) and Article 3(1)(18) of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937.
17 Article 4(1)(146) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012.
18 Article 3(23) of Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909.

In particular, a technology is within scope of the Act if it is listed as either a dual-use item, or as military technology or equipment. Point 1 of Article 2 of Council Regulation (EC) No 2021/821 defines "dual-use items" as

> *"Items, including software and technology, which can be used for both civil and military purposes, and includes items which can be used for the design, development, production or use of nuclear, chemical or biological weapons or*

> *their means of delivery, including all items which can be used for both nonexplosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices*" [19].

Dual-use items are products and components, including software and technology, which can be used for both civil and military purposes. Controls also apply to ancillary items necessary for the development, production, testing, deployment of controlled items; brokering of controlled items; and providing technical assistance (including data and information) related to controlled items.

The definitive list of dual-use items is set out in EU legislation, namely, Annex I of Council Regulation (EC) 2021/82 and is comprised of 1,800 items across materials, chemicals, machinery, electronics, sensors, computers, telecommunications, information security, marine, aviation, and space. The list is updated annually by the European Commission, based on the work of technical experts in a number of multilateral non-proliferation regimes, to take account of advances in technology and geo-political developments.

The range of controlled items is broad and spans 10 categories:

- Category 0 Nuclear materials, facilities and equipment
- Category 1 Special materials and related equipment
- Category 2 Materials processing
- Category 3 Electronics
- Category 4 Computers
- Category 5 Telecommunications and "information security"
- Category 6 Sensors and lasers
- Category 7 Navigation and avionics
- Category 8 Marine
- Category 9 Aerospace and propulsion

Many ICT products, both hardware and software (e.g., data storage, networking, cybersecurity), are classified as dual-use items by virtue of the fact that they incorporate strong encryption for security purposes. Products for aerospace applications (e.g., drones, planes, rockets) can also be controlled when there is a risk of diversion to weapon delivery systems.

19 Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items. The Regulation is available here.

For many items, their control status is determined by their performance characteristics. Lowspecification items may not be controlled while higher specification variants or very specialised models are controlled[20].

Parties to a third country transaction should familiarise themselves with the technologies identified in the Regulation and determine whether any of the target undertakings involved in

the transaction fall within scope as a result of their activities and/or products being subject to Regulation 2021/821.

Furthermore, equipment covered in the Council Common Position 2008/944/CFSP which governs the export of military technology and equipment is also within the mandatory scope of the Act[21].
Further information is also available from the Department's website here: Export Licensing Unit

5. What are Critical Inputs?

Critical inputs include but are not limited to, energy, raw materials and food security. Other sectors and activities are also considered critical – for example, the resilience of industries relating to human health, and their capacity to continue to respond to the needs of EU citizens. This includes medicines for human use that are essential for the proper functioning of the EU healthcare system and whose shortage would lead to an interruption in treatment and thus serious harm to patients The Union list for critical medicines provides guidance and should be consulted in this regard, albeit the list may not be exhaustive, and a case-by-case consideration is required[22].

Looking specifically at raw materials, these inputs are crucial to Europe's economy. They form a strong industrial base, producing a broad range of goods and applications used in everyday life and modern technologies. Reliable and unhindered access to certain raw materials is a growing concern within the EU and across the globe.

To address this challenge, the European Commission has published the Critical Raw Materials Act 2024[23] (CRMA). The CRMA aims to strengthen EU's critical raw materials capacities along all stages of the value chain, and to increase resilience by reducing dependencies, increasing preparedness and promoting supply chain sustainability and circularity. The Act identifies a list of Critical Raw Materials (CRMs) and a list of Strategic Raw Materials (SRMs) crucial for technologies for the green and digital transition, as well as for defence and space, listed in Appendix 2 of this

20 Note, the Dual Use Regulation includes a number of decontrol notes that provide for exemptions from licensing requirements. These decontrol notes generally apply to more widely available products with a commercial use. The most commonly used decontrol note is the Cryptography Note found under Category 5 Part 2 of the control list. Products subject to such exemptions are also considered exempt from mandatory notification for the purpose of this Act.

21 Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

22 European Medicines Agency, Union list of critical medicines, December 2023

23 Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 (Text with EEA relevance)

document. The lists are to be updated every three years or as required due to supply chain pressures/risks. The CRM list is determined on the basis of economic importance and supply

risk, while the SRM list (a subset of the CRM list) additionally denotes those materials also in high demand for strategic technologies.

The CRM and SRM lists underpin consideration of whether a transaction should be notified under Ireland's screening mechanism – if the Irish target of a third country transaction is engaged in the extraction, production or supply of the identified critical raw materials in Ireland, then notification is mandatory.

The licencing processes for prospecting and mining are entirely distinct and separate from the screening process. It is a matter for the Department of the Environment, Climate and Communications to determine whether a new applicant is eligible to be granted a prospecting or mining licence, regardless of whether they are from a third country or not. Similarly, Environmental Protection Agency permitting requirements – for example, in relation to processing and recycling projects – are completely separate from investment screening requirements.

Where an existing prospecting or mining operation is being acquired by a third country party and it relates to one or more of the categories of critical raw materials, then mandatory notification for Inward Investment Screening is required (assuming all other criteria set out in Section 9(1) of the Act are fulfilled).

6. What is Sensitive Information?

Sensitive information is data that must be protected from unauthorized access to safeguard the privacy or security of an individual, organisation or the State. Access to "sensitive information" includes the ability to process, license, sell or store such information.

Sensitive information includes personal data, as per European Commission rules on data protection, with the following personal data being considered "sensitive":

- Personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs;
- Trade-union membership;
- Genetic data, biometric data processed solely to identify a human being;
- Health-related data;
- Data concerning a person's sex life or sexual orientation.

For the purposes of the mandatory notification requirement, a transaction is notifiable if it involves sensitive data that is held as an essential or critical part of the business or asset (i.e., not in relation to data held on employees of the target undertaking or asset, or not essential or critical to the operation of the business). The volume of such data should be "substantial" and/or the transaction should relate to a business model that depends on generating turnover from such sensitive data.

Sensitive information may also relate to a government body, where access by a third country undertaking to such information could be used to undermine security or public order.

7. What is Freedom and Pluralism of the Media?

In determining whether a transaction relates to media plurality, parties should take account of the definition of media plurality set out in the Competition and Consumer Protection Act 2014. This defines media plurality in the following manner:

- Diversity of Content means the extent to which the broad diversity of views (including diversity of views on news and current affairs and diversity of cultural interests prevalent in Irish society) is reflected through the activities of media businesses in the State, including their editorial ethos, content, and sources.
- Diversity of Ownership means the spread of ownership and control of media businesses in the State linked to the market share of those media businesses as measured by listenership, readership, reach or other appropriate measures.

Further, a "media business" is also defined and refers to:

a) The publication of newspapers or periodicals consisting substantially of news and comment on current affairs, including the publication of such newspapers or periodicals on the internet,
b) Transmitting, re-transmitting or relaying a broadcasting service,
c) Providing any programme material consisting substantially of news and comment on current affairs to a broadcasting service, or
d) Making available on an electronic communications network any written, audio-visual, or photographic material, consisting substantially of news and comment on current affairs, that is under the editorial control of the undertaking making available such material;

Obligations arising as a result of this Act are separate and distinct from the requirements set out in Part 4 the Competition and Consumer Protection Act 2014 relating to media mergers: where relevant, an inward investment screening review will be conducted alongside but separately from the media merger process.

Transactions that relate to media businesses that operate, sell or are otherwise active in the State are within the scope of the Irish inward investment screening mechanism. The level of activity in the State - based on sales, subscribers, viewers or other relevant metrics – must be substantive in order to trigger mandatory notification.

8. What Type of Asset Transactions are within Scope?

Mandatory notification requirements can apply in connection with the acquisition of an interest in assets regardless of whether these constitute an enterprise or business, provided the transaction relates to, or impacts upon, the critical criteria set out in Section 9(1)(d) of the Act.

Assets must either be physically located in Ireland or, in the case of intangible assets, be owned, controlled, or otherwise in the possession of an undertaking in Ireland.

Further, assets include both tangible and intangible assets, so the sale or acquisition of intellectual property rights (including a license to use such rights) in Ireland by a third country undertaking could potentially give rise to notification requirements in some circumstances.

9. Does Deal Size Matter with respect to Mandatory Notification?

It is essential that the screening mechanism is as robust as possible whilst also ensuring that unnecessary red tape is avoided. However, risk and value are not always directly correlated. For instance, we are keen to ensure that small but high-potential start-up firms in key strategic sectors of the economy are covered by the legislation where a risk to security and public order may arise.

With this in mind, deals below a value of €2 million are excluded from the mandatory notification requirement. The €2 million threshold relates to the value of an entire transaction (i.e., the consideration being paid by the acquiring party), including any international dimension that might include assets or undertakings not located in the state.

In determining whether a deal meets this threshold, it is important to take other related transactions between the parties into account – if the cumulative value of the transaction and each transaction between the parties (or involving persons connected to the parties) in the 12 months prior to the transaction is equal to €2 million, then the notification criteria outlined in Section 9(1)(b) is fulfilled. "Related transactions" include any transactions between the parties resulting in a change of control of the undertaking in question.

Regardless of the deal size, however, if the Minister believes that a deal below this threshold poses a risk to security and public order, the legislation provides for a call-in power, allowing the Minister to initiate a screening review.

10. What is Decisive Influence?

Section 2 of the Act sets out the definition of "control" in relation to an undertaking, and explicitly links this to the concept of "decisive influence".

When assessing, therefore, whether an undertaking is controlled by another person or undertaking, it is necessary to conduct a factual assessment of all the organisational, structural and economic links between the two undertakings. The determining factor is whether the listed entity is able to and effectively asserts a "decisive influence" over the conduct of the undertaking in question. Whilst a significant shareholding is one factor that may suggest control, there is not necessarily a minimum threshold. Even a minority shareholding may be sufficient if it is allied to rights greater than those normally granted to minority shareholders.

As noted above, in the context of the Act, the Department will draw on the approach of the European Commission as set out in the Consolidated Jurisdictional Notice which defines "decisive influence" as the power to "determine the strategic commercial behaviour of an

undertaking" in particular in relation to matters such as the budget, the business plan, major investments or the appointment of senior management"[24].

11. Does a Greenfield Investment Require Notification?

Foreign direct investment can take two different forms: greenfield, and mergers and acquisitions (M&As). International greenfield investment typically involves the creation of a new company or establishment of facilities abroad, whereas an international merger or acquisition amounts to transferring the ownership of existing assets to an owner abroad.

While particular forms of investment are not explicitly included or excluded, the criteria set out in the Act and the risk factors therein ensure that the primary focus will be on merger activity and purchases of assets that may entail a risk to security and public order. Hence, Section 9 of the Act references transactions that result in the acquisition of control over an undertaking in the State (i.e., an undertaking which already exists).

The purchase of land – an asset – only comes into scope in a limited set of circumstances, notably when land being purchased relates to critical infrastructure such as energy, water, or communications, as set out in Section 9.

However, the Minister has a "call-in power" to screen other, non-notifiable transactions if the Minister has reasonable grounds for believing that such transactions pose a threat to security or public order.

12. Do Portfolio Investments Require Mandatory Notification?

The European Court of Justice has described 'portfolio investments' as "the acquisition of shares on the capital market solely with the intention of making a financial investment without any intention to influence the management and control of the undertaking". Since this type of investment is not made with the intention of acquiring control of the issuing company, mandatory notification is only required where 25 percent or more of shares is being acquired by a third country undertaking.

24 Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01)

13. Does Restructuring Fall within the Scope of the Mandatory Regime?

The focus of the Irish Inward Investment Screening mechanism is not on internal restructuring or re-domiciling. For example, transactions where the foreign investor and the EU target are owned or controlled by the same foreign undertaking do not require mandatory notification (i.e., internal restructuring whereby a holding company sells its participation in a target undertaking to one of its subsidiaries, or a holding company separating part of its business and creating a new subsidiary, which would still be within the same group).

The Act explicitly applies mandatory notification to transactions whereby the same undertaking does not, directly or indirectly, control all the parties to the transaction. Where the ultimate control remains unchanged, no mandatory notification is required.

14. How will Joint Ventures be Handled?

Joint Ventures could be used as an avenue to acquire access to sensitive assets or technologies. Generally, Joint Ventures are creations of new enterprises to which existing enterprises or other investors contribute capital or assets.

- The creation of a Joint Venture does not typically constitute the acquisition of a stake in an existing company unless it is accompanied by a change of the shareholding in an existing business. For example, a Joint Venture could be related to the construction of a new plant, and where it does not involve the transfer of existing assets, is more akin to a Greenfield investment. Such transactions would not require mandatory notification.
- However, where a third country party participating in a Joint Venture acquires control over an undertaking as a result of the transaction (e.g., a Joint Venture may acquire a stake in an existing company if this stake is the contribution to the Joint Venture by one or the partners), then mandatory notification is required if the criteria set out in Section 9(1) are fulfilled.
- Likewise, if, as a result of a Joint Venture, a third country undertaking acquires control over a relevant asset in the State, mandatory notification is required.
- The Act does not consider the degree to which a Joint Venture is “full-function” – it is up to the parent companies creating a Joint Venture to determine whether their transaction requires notification.
- The Minister may still review a Joint Venture regardless of whether or not mandatory notification is required, using the “call-in power” provided under Section 12 of the Act.

15. What about Receivership, Examinership or Liquidation?

- In relation to undertakings or assets placed into receivership[25] or examinership[26], usually, no change in control occurs (i.e., the receiver or examiner will not be the ultimate legal or beneficial owner).

- Likewise, in relation to undertakings or assets entering into liquidation, while the liquidator (i.e., the person appointed to wind up an undertaking) usually takes over the powers of the directors, no automatic vesting of shares or change of ownership of assets occurs by virtue of the appointment to the position. Ownership does not transfer to the liquidator, but the liquidator acts in the company's name[27].
- While the appointment of a receiver, examiner or liquidator may confer rights to use the secured asset or the right to exercise decisive influence over the activities of the undertaking in question, a notification is not required on the basis of the "existence" of such rights; rather, a notification would be required only where such rights are actually exercised.
- Therefore, no mandatory notification is required on the appointment of a receiver, examiner or liquidator over such undertaking or assets, or in respect of the performance of the statutory functions taken by such appointees during the receivership, examinership or liquidation that fall short of the actual disposition of the legal or beneficial ownership of the secured assets in question.
- Notification is only required in relation to any disposal of assets resulting in a change of control as defined by this Act, where the criteria in Section 9(1)(a), (b) and (c) are fulfilled.
- Similarly, where a lender acquires shares as a result of an unpaid debt, no notification is required unless control (e.g., in the form of voting rights) is attached to those shares and exercised (i.e., notification would be required at the point where a lender or security holder has gained controlling rights over shares or is entitled to exercise all voting rights in respect of the undertaking, and decides to dispose of the asset or undertaking in question, if all other criteria set out in Section 9(1) of the Act are fulfilled). This includes the 25 percent and 50 percent thresholds, set out in Section 9(1)(a)(ii)).
- Furthermore, mandatory notification is required in relation to a "mortgagee in possession[28]" enforcing their security only at:
  - the point of actual disposition of the legal and beneficial ownership of the assets/shares of a company to a third party (which could include an affiliate of the mortgagee in possession, where the mortgagee in possession has decided to effectively become the legal and beneficial owner of the assets/shares through an affiliate); or

25 In receivership, the company's powers and the authority of its directors are suspended in relation to the assets affected by the receivership. The directors can only use those powers with the receiver's permission.

26 In examinership, the company's directors keep their management functions unless the High Court orders otherwise. Neither the appointment of an examiner nor the vesting of directors' powers in an examiner, would result in a change of control for the purposes of the Act.

27 In rare circumstances, the assets of a company are vested in the name of the liquidator pursuant to an application under Section 614 of the Companies Act 2014. However, there is no change of control for the purposes of the Act as the liquidator holds all such assets in a fiduciary capacity only, for the benefit of the company's creditors. 28 It is usual for a security document to set out when a secured lender may enforce its security. At that time, the secured lender may decide to enforce its security by becoming a 'mortgagee in possession'. Alternatively, it may decide to appoint a receiver or to negotiate a standstill period or waiver with the borrower (i.e. agree not to take enforcement action / not to become 'mortgagee in possession', provided that the borrower takes certain actions). In instances where either of these two scenarios applies, no mandatory notification is triggered, as the secured lender is not exercising its right to become a 'mortgagee in possession'.

  - the point at which the mortgagee in possession itself acquires the legal and beneficial ownership of the assets/shares of a company (where the mortgagee in possession has formed the decision to become the legal and beneficial owner of the assets/shares.

SECTION 4: DISCRETIONARY POWERS

1. What is the Minister's "Call in" Power?

In addition to the mandatory regime, Section 12 of the Act provides the Minister with a discretionary "call-in" power.

This is designed to prevent deliberate circumvention of the Act. It may also be used to deal with transactions that should have been notified but which, due to an honest mistake on behalf of the investor, were not notified, or alternatively, transactions that were not notifiable in the first place. In such instances, the Minister can still review these transactions.

The "call-in" power is also designed to allow the Minister to review transactions which do not meet the mandatory notification criteria, but where the Minister has grounds to believe risks to security or public order may arise as a result of the investment. This is particularly aimed at new or emerging technologies or sectors that are not captured by the mandatory criteria set out in Section 9(1) of the Act.

To exercise this power, the Minister must:

- Have reasonable grounds for believing that the transaction affects, or would be likely to affect, the security or public order of the State, and
- Be sure that the transaction would result in a third country undertaking, or a person connected with such an undertaking, acquiring, or changing the extent to which it has control of an asset in the State, control of or an interest in an undertaking in the State, legal rights in relation to a person, asset or undertaking in the State, the ability to exercise effective participation in the management or control of an undertaking in the State, or the ability to exercise control over an undertaking in the State.

To provide as much certainty as possible to investors, time limits are provided to ensure that this is not an open-ended power: in the case of a transaction that is not notifiable, the Minister cannot "call-in" a transaction for review more than 15 months after the transaction is completed.

2. Is There a Retrospective Element?

Section 12(2)(c) allows the Minister to examine transactions that have been completed in the 15 months prior to the commencement of the Act.

3. Can the Minister Examine Transactions that have Already been Completed?

Section 12(2) of the Act provides the Minister with the authority to review transactions that should have been, but which were not notified. Such a power is designed to prevent deliberate

circumvention of the screening mechanism. The Minister is empowered to screen these transactions for a period up to 5 years after the completion of a transaction, and within 6 months of the Minister becoming aware of said transaction.

In the case of a transaction that is not notifiable, but for which the Minister has reasonable grounds for believing that it may pose a risk to security and public order, they may initiate screening for up to 15 months after the transaction has concluded.

SECTION 5: THE NOTIFICATION PROCESS

1. How is a Notification Submitted?

The Department is developing an online Case Management System (CMS) to facilitate the notification process, and to offer support to parties to a transaction. The CMS will be used to manage all of the interaction between the notifying parties, and the Department. Additional guidance on the CMS will be provided prior to roll-out however, further details on the steps required throughout the notification, review and decision-making process are available below.

In the meantime, all necessary information can be found here: Investment Screening - DETE (enterprise.gov.ie).

2. Who Submits a Notification?

As per Section 10, the Act does not specify which of the parties to a notifiable transaction must notify the Minister of the transaction. All that is required is that one of the parties does so, at least 10 days before the transaction is due to be completed.

Section 11 sets out the responsibilities of the various parties to a transaction in relation to the notification process and sets out the conditions whereby one party to a transaction may fulfil the notification obligations.

Only one notification per transaction is required and parties should coordinate their actions to avoid duplication. In practice, the Department expects that the acquiring party (or their representative) will typically take primary responsibility for the notification.

All parties to a transaction have an obligation to ensure that the information being submitted is accurate, to the extent that they are aware that a notification is being made.

3. What Does Notification Involve?

As per Section 10 of the Act, parties to a notifiable transaction must notify the Minister of the transaction at least 10 days before it is due to be completed. The Act does not impose any other conditions on when a notification must be submitted. Notification on the basis of a "good faith intention" to complete a deal is not precluded by the Act and, therefore, the parties to a transaction may decide to submit a notification at whatever time is most convenient for their purposes. Parties are reminded, however, that a notifiable transaction cannot be completed until the required screening process is complete.

A draft Notification Form is available on the Department's website and will also be made available through the Department's Case Management System.

A notifying party is required to register for an account to access the CMS – this is a simple, secure process. Thereafter, all steps required throughout the notification process *and* the entire screening process, will be undertaken using this system.

A notifiable transaction that is the subject of a Screening Notice cannot proceed until it has been reviewed, and a Screening Decision has been communicated from the Minister to the parties to the transaction. Deliberate failure to submit a notification of a notifiable transaction is an offence. It is also an offence to deliberately provide false information to the Minister as part of the notification process.

Several sections of the Act deal with the notification requirements.

- Section 11 sets out the responsibilities of the various parties to a transaction in relation to the notification process.
- Section 14 requires that the Minister, as soon as practicable after commencing a review of a transaction, to provide all parties to the transaction, with a Screening Notice. A Screening Notice will be issued in response to all Notifications received that are deemed within scope (i.e., once the Department confirms that a notified transaction meets the criteria in Section 9(1) of the Act, it is considered a Notifiable Transaction), and where a fully completed notification form has been received.
- A Screening Notice only deals with issues relating to scope (i.e., whether a transaction is within scope) and does not address questions of risk: assessments of risks to security or public order. These are dealt as part of the Screening Review process.
- The Screening Notice may include details on the reason that screening is being conducted and other relevant information.
- For notifications received that are determined not to fall within the scope of the mandatory regime (i.e., that do not meet all of the criteria set out in Section 9(1) of the Act), the Department will issue a letter to the parties confirming that mandatory notification does not apply, no Screening Notice is being issued, and the transactions may proceed without a Screening Review being undertaken. This, however, does not impact upon the Minister's power to subsequently review a transaction on the basis of their discretionary power under Section 12 of the Act (i.e., the Minister reserves the right to review a transaction, regardless of whether it fulfils the criteria for mandatory notification).
- Once a Screening Notice has been issued, the clock starts, and the screening process must be completed within 90 days (or within 135 days in more complex cases). A transaction subject to a screening notice cannot be put into effect until the screening review has been completed.
- In some instances, additional information may be required from some of the parties to the transaction. In such cases, a Notice of Information will be issued, and parties will have 30 days to comply. Details on this process are outlined in Section 19 of the Act, while Section 20 elaborates on how and when the timeline is stopped and restarted in relation to a request for additional information.

- A Notice of Information issued by the Minister suspends the screening timeline. The timeline will restart within 10 days of the Minister receiving the requested information, so long as they are satisfied with the response. A process to certify that the Minister's request has been responded to in a satisfactory manner is also provided for.
- In addition to providing the Minister with the information required as part of the notification process, or as a result of a Notice of Information, parties to a transaction which is being screened also have the right to make written submissions to the Minister, within a timeline determined by the Minister. The timelines within which any such submission must be made will be communicated to the parties to the transaction as part of the Screening Notice.

4. What does the Notification Form Look Like?

The Notification Form used by the Department replicates the form used by the European Commission to facilitate the exchange of information between Member States. While the form is lengthy, and there is an element of duplication in some sections, the Department considers this preferable to requiring investors to fill in separate national and EU notification forms, as often occurs in other Member States.

The form can be downloaded from the Department's website. Once completed, the form can then be uploaded to the CMS.

5. The Right to Be Heard

In addition to the information provided via a notification form, a Notifying Party to a transaction that is subject to a Screening Notice may also make an additional submission to the Minister, that relates to their application. This is provided for in Section 21 of the Act, in compliance with Article 41 of the EU Charter of Fundamental Rights[29]. Section 13(3)(c) confirms that any such submission will be taken into consideration by the Minister when reviewing a transaction.

6. Commencement and the Transition Period

6(a). How will DETE calculate the 10-day period referred to in S11(4) of the Act?

The 10-day period commences on and includes the day that the Act comes into operation (e.g., if the Act commences on Monday 6th January, then transactions that close between 6th and 15th January come within scope of Section 11(4). Once a commencement date is finalised, this date,

29 Article 41 (the "Right to good administration+ states that "Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

This right includes (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken…".
and the relevant time period relating to Section 11(4) will be confirmed on the Department's website.

6(b). Does the suspensory regime apply to transactions closing in the first 10 days of the operation of the Act?

Section 10 requires parties to a transaction to notify the Minister of a transaction 10 days prior to completion. In response, Section 14 confirms that the Minister will issue a Screening Notice confirming that the transaction is subject to review. Once a Screening Notice is issued, the transaction in question is suspended and cannot progress, as per Section 17.

Of course, a party cannot submit a notification 10 days in advance of closing for a transaction that is only closing in the first 10 days of operation of the Act. Section 11 is intended to regularise this situation.

The policy intent is to allow parties to notify the Minister of a transaction closing in this narrow window. There is, however, no policy intent to suspend the transaction, or to conduct in depth screening, unless a threat to security or public order is evident.

Instead, the Department will review the notification form to ensure that it is complete and accurate. The suspensory regime will not apply, unless the Department contacts the notifying party to state otherwise. The Minister will, however, reserve the right to subsequently utilise their "call-in" power under Section 12 of the Act to retrospectively review the transaction should they have reasonable grounds for doing so.

6(c). Will a screening notice issue in response to notifications submitted during this period – if not, will the Department issue written confirmation of compliance with Section 11(4)?

In the context of a notification received under Section 1(4) – during the first 10 days of the operation of the Act - no screening notice shall issue, thereby ensuring that the suspensory elements of Section 17 do not apply. Instead, the Department will issue a letter in response confirming that the notification has been received in compliance with the requirements of Section 11(4), and that the suspensory regime does not apply.

SECTION 6: THE SCREENING PROCESS

1. How Long will the Screening Process Take?

Section 16(3) provides 90 days for the screening process.

The timeline commences once the Minister issues a Screening Notice to the relevant parties (i.e., in the case of a mandatory notification confirming receipt of the notification form – see below for further details). In exceptional circumstances, the time period may be extended by the Minister by an additional 45 days, where further time is required to assess and/or mitigate risk. In such instances, an Extension Notice will be issued.

Provision is also made in the legislation to "stop the clock" where additional information is requested by the Minister (via a Notice of Information) from parties to the transaction. Once information requests are complied with and the Minister is satisfied with the response received, the clock will restart. Such a provision is common in most screening mechanisms and is an essential tool to ensure that the Minister has the information necessary to effectively review a transaction.

In providing a 90-day process, the legislation ensures that the Department can take account of any comments or opinions issued by the Commission or Member States, as provided for under the EU Regulation 2019/452 – the Regulation sets out timelines within which such comments or opinions must be submitted. The timeline is also designed to ensure that all relevant Departments and Agencies have sufficient time to undertake the necessary research and input to the screening process as required.

It is envisaged, however, that in practice many notified transactions will be cleared quicker than this if the evidence supports such an outcome. It is the intention of the Department to ensure that where no risks are identified, screening reviews are completed in as short a time frame as possible, subject to all inputs required, including inputs from the European Commission or other Member States, being received. The 90-day time period is the outer bound of the time permitted to complete the screening process, not the intended target.

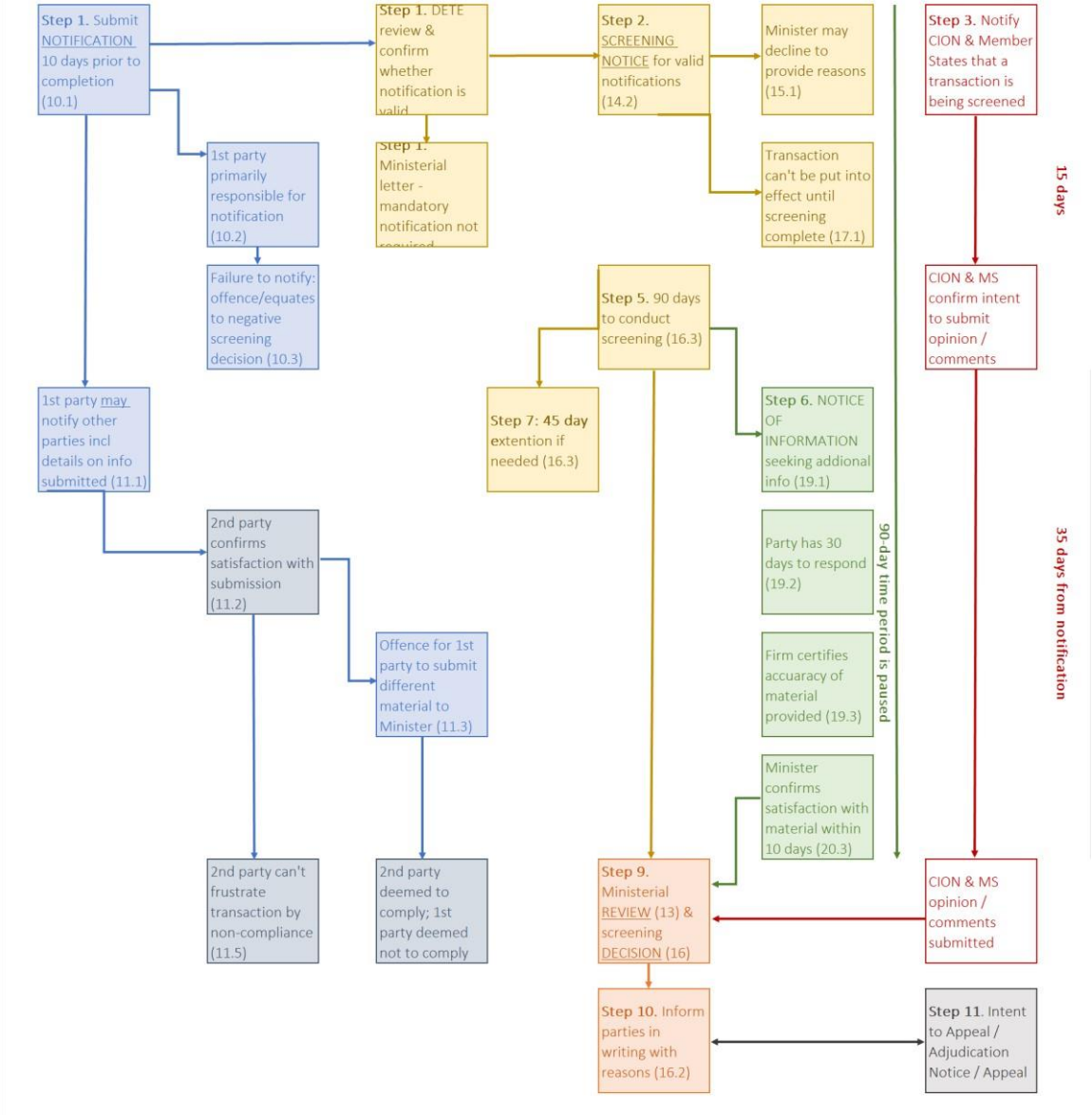
2. What Steps are Undertaken as Part of the Screening Process?

The Act provides significant detail on the notification process, the timelines and responsibilities, and the screening process itself. These steps are summarised in Figure 2. In summary:

- Step 1: Submission of notifications by the parties to the transaction, and verification of the notification (i.e., that the form is complete) by the Inward Investment Screening (IIS) Unit in D/ETE.
- Step 2: Issuing a **Screening Notice** – the IIS Unit will determine whether a notification is within the scope of the Act and, therefore, proceeds to screening (i.e., whether it meets the criteria set out in the Act and is, therefore, subject to the mandatory screening regime), or whether the transaction is able to proceed without any screening. Alternatively, for notifications received that are determined not to fall within the scope of the mandatory regime, the Department will issue a letter to the parties confirming that mandatory notification does not apply.
- Step 3: EU Cooperation Mechanism - once a screening notice has been issued, the notification will be shared with the European Commission and other Member States, with CION/MS, as per the EU cooperation mechanism.
- Step 4: Sharing with Advisory Panel – the notification will be shared with relevant members of the Advisory Panel.
- Step 5: Screening a transaction – this will be undertaken by the IIS Unit utilising a range of internal and external resources.

- Step 6: Issuing a Notice of Information – *where required*, a notice of information will be issued to the parties to the transaction, seeking further information. The subsequent response will be reviewed by the IIS Unit to determine whether the response is satisfactory, and a confirmation (or otherwise) will be issued.
- Step 7: Extending the timeline – *if* additional time is required for the screening review, the IIS Unit will issue an Extension Notice, extending the 90-day period to 135 days. This will occur before the end of the initial 90-day period.
- Step 8: Meetings of the Advisory Panel – the panel will be convened, as required, by the IIS Unit to consider transactions under review.
- Steps 9 and 10: The decision – the decision in relation to a transaction will be communicated via a Screening Decision, setting out the Minister's decision, and any conditions that might apply to the transaction.
- Thereafter, a party subject to a Screening Decision may submit an Intent to Appeal within 30 days, and a formal Appeal within 14 days of receiving an Adjudication Notice from the Minister.

Figure 2: Notification & Screening Process



3. Is a Screening Notice Always Issued?

In rare instances, the Minister may proceed to screen a transaction but can opt not to issue a Screening Notice. Section 15 of the Act provides the Minister with a degree of discretion to determine whether the issuing of a Screening Notice, or the inclusion of certain information in such a notice might pose a security risk. However, barring exceptional circumstances, a Screening Notice will be issued. The calculation of the timeline within which a Screening Review must be conducted remains unchanged and the 90-day limit still applies, regardless of whether a Screening Notice is issued.

4. What Factors are Considered During the Screening Process?

Section 13 of the Act sets out the factors that the Minister shall consider when reviewing a transaction. The Minister must consider, for example:

- Whether an investor is controlled by a third country government;
- The extent to which parties to the transaction are involved in activities related to security or public order – including whether or not a party to the transaction has previously taken actions affecting the security or public order of the State;
- Any evidence of criminality or illegal activities amongst the parties to the investment;
- The likelihood of the transaction resulting in actions that are disruptive or destructive to people, assets, or undertakings in the State;
- The likelihood of the transaction improving a person's access to sensitive undertakings, assets, people, or data in the State;
- The likelihood of the transaction presenting opportunities to undertake espionage affecting or relevant to the interests of the State;
- Whether the transaction is likely to have a negative impact in the State on the stability, reliability, continuity, or safety of one or more of the matters referred to in points (a) to (e) of Article 4(1) of EU Regulation 2019/452;
- Whether or not the transaction would result in persons acquiring access to information, data, systems, technologies, or assets that are of general importance to the security or public order of the State;
- The views of the European Commission and other EU Member States (as required under the EU Regulation) and the extent to which the transaction affects, or would be likely to affect, the security or public order of the EU, or of a Member State other than Ireland;
- The extent to which the transaction affects, or would be likely to affect, projects or programmes of Union interest; and
- The views of the Investment Screening Advisory Panel.

During the screening process, the Minister may consult with other Government Ministers or with other relevant parties to inform the review process. The Minister also has the option to enter into discussions with the parties to the transaction to mitigate any concerns about the impact of the transaction on security and public order, and the Minister may consider certain relevant written submissions.

5. What Screening Decisions Can the Minister Make?

A range of decisions are available to the Minister in relation to the outcome of a screening review. Whatever decision is made, however, once it is determined that a transaction impacts upon security or public order, parties to the transaction must comply with the Minister's direction. Failure to comply with a Ministerial screening decision is an offence.

In terms of the specific options available to the Minister, these are set out in Section 18 of the Act.

- Where there is a finding that a transaction poses a threat to security or public order, the Minister may allow the transaction to proceed subject to certain conditions being

fulfilled. Examples of these mitigation measures are set out in Section 18(4) of the Act and will be subject to further guidance.

- Alternatively, where mitigation measures would be insufficient, the Minister may prohibit the transaction.

Where no concerns are identified, the transaction may proceed without any further intervention.

6. Will the Screening Decision be Published?

Individual screening decisions or details about any individual transaction will not be published. The Act requires an annual report to be laid before each House of the Oireachtas. This, however, will focus on aggregated data, trends and outcomes, with no information included that could result in the identification of individual parties to any transaction.

7. What are the Cost Implications of the Screening Process?

There are no application charges in relation to the notification and screening process.

Administrative burdens may arise for potential investors and target investee firms. However, strict timelines for the completion of the various stages required in the screening process are set out in the legislation and will be adhered to by the State in order to minimise the impact on enterprise.

SECTION 7: RIGHTS OF APPEAL

1. Do I have a Right of Appeal?

The EU Regulation states that "Foreign investors and the undertakings concerned shall have the possibility to seek recourse against screening decisions of the national authorities".

In line with this, and with OECD guidance, the Minister's powers under the Inward Investment Screening mechanism will be subject to robust and transparent oversight. As well as laying an annual report before the Oireachtas, outlining the activity and outcomes of the screening mechanism, a tailored and appropriate appeals mechanism is provided for.

Appeals can be taken in relation to a screening decisions and in relation to a Minister's decision not to provide detailed reasons for a screening decision.

2. What Does the Appeals Process Look Like?

The appeals process will consist of:

(i) An initial review of the Minister's decision by an independent Adjudicator. The Adjudicator will be external to the Department, remunerated, and suitably qualified. The appeal will be against the decision of the Minister (i.e., the decision to prohibit or to mitigate a transaction, or the Minster's choice not to provide an explanation for their screening decision). The Minister will be the respondent to the appellant.

Following consideration, the independent Adjudicator may affirm the decision of the Minister, or where they are satisfied that a serious or significant error or a series of errors was made in making the screening decision (or that the decision was made without complying with fair procedure), allow the appeal and remit it to the Minister for reconsideration.

(ii) Following the decision of the adjudicator and where a party to the appeal does not accept the decision of the adjudicator, that party may appeal to the High Court. This might be either the parties to the transaction or the Minister (e.g., if the Adjudicator overturns the Minister's initial decision, and the Minister seeks to challenge this).

(iii) Finally, the High Court may grant leave to appeal a decision of the High Court on a point of law of exceptional public importance.

Parties may also seek a Judicial Review where appropriate.

While transparency is an important feature of the Irish judicial system, the proposed appeals structure takes account of the fact that some information related to Screening Decisions cannot be disclosed publicly without undermining national security, even where that decision is appealed to court.

3. What is the Process to Lodge an Appeal?

Section 34 and following sections set out the approach for appeals under the Act.

Where parties to a transaction wish to challenge a Screening Decision, they have the right to submit an appeal. The first step in this regard requires an appellant to submit an Intent to Appeal notice within 30 days of the Screening Decision being issued. If no "Intent to Appeal" is submitted, then the screening case will be fully closed once the 30-day period has elapsed.

Having received an Intent to Appeal, the Minister will assign an Adjudicator and issue an Adjudication Notice setting out the various requirements which must be fulfilled in order to proceed to an appeal.

The appellant must formally submit their Appeal, along with relevant documentation, within 14 days of the Adjudication Notice being received, via a Notice of Appeal. If no Notice of Appeal is submitted within the required 14-day period, then the case is closed.

The Appeals process will be managed separately from the Screening Review. More detailed information will be available in the Department's "Inward Investment Screening: Guidance on Appeals" document, which will be published separately on www.enterprise.gov.ie.

SECTION 8: OFFENCES AND PENALTIES

1. What Offences are Provided for in the Act?

The Act sets out a number of offences relating to various stages of the Notification and Screening Review process. The offences listed in the Act are as follows:

- Section 10(4): Failure to notify the Minister about a transaction that meets the mandatory notification requirements set out in Section 9(1) of the Act.
- Section 10(4): Providing false information to the Minister as part of the notification process.
- Section 17(1): Putting a transaction that is subject to a Screening Notice into effect prior to a Screening Decision being issued.
- Section 18(4): Failure to comply with a direction of the Minister as set out in a Screening Decision (i.e., failure to adhere to either the mitigation measures imposed on a transaction, or with an order prohibiting the transaction from being completed).
- Section 19(4): Providing false information to the Minister in response to a Notice of Information request.
- Section 28(5): Failure to comply with instructions issued by an Adjudicator as part of the Adjudication process.
- Section 30(6): Disclosure of information provided during the Adjudication process on oath or affirmation without the authorisation of the Minister.
- Section 32(2): Disclosure of confidential information obtained as a result of an Adjudication or an Appeal to the Courts.

2. What are the Penalties for Non-compliance with a Screening Decision?

The penalties for breaches of Screening Decisions are set out in Section 6 of the Act. A person who contravenes a Screening Decision would be liable:

- On summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months, or to both; or
- On conviction on indictment, to a fine not exceeding €4,000,000 or to imprisonment for a term not exceeding 5 years, or to both.

The same penalties apply to all of the other offences set out in the Act, with the exception of an offence under Section 28(5). A person who commits an offence Section 28(5) is liable:

- On summary conviction, to a class C fine or to imprisonment for a term not exceeding 6 months, or to both; or
- On conviction on indictment, to a fine not exceeding €250,000 or to imprisonment for a term not exceeding 3 years, or to both.

SECTION 9: CONFIDENTIALITY & DATA PROTECTION

1. What about my Personal Data?

Your privacy is important to us, and we are fully committed to keeping your personal information safe. A Data Protection Statement is available on the Inward Investment Screening page of the Department's website here.

As noted in the Statement, the collection of some Personal Data is required as part of the notification process to assist with the identification of the source of an investment (e.g., identification and contact data, professional data and data related to foreign direct investment).

Where personal data is shared by the IIS Unit with other parties (e.g., other Government Departments), arrangements to facilitate this sharing, including the technical and physical safeguards to protect your privacy rights are set out by way of appropriate data protection agreements.

Personal data of individuals contained in records collected by the Department as part of the investment screening process will be securely stored, and only used for the purposes set out in the Act.

Data which is no longer required for business purposes will be kept for no longer than 5 years after the creation of the file, in line with the retrospective provisions set out in Section 12(2)(a) of the Act.

The Department will not transfer your personal data outside the European Economic Area (EEA).

2. How will Commercially Sensitive Information be Managed?

The Department, its agencies, and all other bodies involved in the screening process will ensure that material provided by the parties to an investment is managed with due regard for commercial confidentiality. Commercially sensitive data submitted as part of the notification process will be protected[30], and where appropriate, will be exempted from Freedom of Information Requests.

In the event that the Department requires additional external expertise (including from the private sector), standard robust provisions are included in all contracts to ensure that confidentiality is maintained in relation to commercially sensitive information.

30 Article 3(4) of the EU Regulation also confirms that "confidential information, including commercially sensitive information, made available to the Member State undertaking the screening shall be protected".

Useful Links

Department of Enterprise, Tourism & Employment: Investment Screening - DETE (enterprise.gov.ie)

Information about the EU framework for foreign direct investment screening: Investment screening (europa.eu)

Contact Us

For more information on investment screening, please visit enterprise.gov.ie or contact the Trade Regulation and Investment Screening Unit.

E investmentscreening@enterprise.gov.ie

T +353 1 631 2121

Trade Regulation and Investment Screening Unit,

Department of Enterprise, Tourism and Employment,

Earlsfort Centre,

Lower Hatch St,

Dublin 2,

D02 PW01

Annex 1: EU Directive 2022/2557 – Sectors, Subsectors & Categories of Entities

Sectors	Subsectors	Categories of entities
1. Energy	(a) Electricity	Electricity undertakings as defined in Article 2, point (57), of Directive (EU) 2019/944 of the European Parliament and of the Council [(1)], which carry out the function of 'supply' as defined in Article 2, point (12), of that Directive
		Distribution system operators as defined in Article 2, point (29), of Directive (EU) 2019/944
		Transmission system operators as defined in Article 2, point (35), of Directive (EU) 2019/944
		Producers as defined in Article 2, point (38), of Directive (EU) 2019/944

		Nominated electricity market operators as defined in Article 2, point (8), of Regulation (EU) 2019/943 of the European Parliament and of the Council [2]
		Market participants as defined in Article 2, point (25), of Regulation (EU) 2019/943 providing aggregation, demand response or energy storage services as defined in Article 2, points (18), (20) and (59), of Directive (EU) 2019/944
	(a) District heating and cooling	Operators of district heating or district cooling as defined in Article 2, point (19), of Directive (EU) 2018/2001 of the European Parliament and of the Council [3]
	(b) Oil	Operators of oil transmission pipelines
		Operators of oil production, refining and treatment facilities, storage and transmission
		Central stockholding entities as defined in Article 2, point (f), of Council Directive 2009/119/EC [4]
	(c) Gas	Supply undertakings as defined in Article 2, point (8), of Directive 2009/73/EC of the European Parliament and of the Council [5]
		Distribution system operators as defined in Article 2, point (6), of Directive 2009/73/EC
		Transmission system operators as defined in Article 2, point (4), of Directive 2009/73/EC
		Storage system operators as defined in Article 2, point (10), of Directive 2009/73/EC
		LNG system operators as defined in Article 2, point (12), of Directive 2009/73/EC
		Natural gas undertakings as defined in Article 2, point (1), of Directive 2009/73/EC
		Operators of natural gas refining and treatment facilities
	(d) Hydrogen	Operators of hydrogen production, storage and transmission
2. Transport	(a) Air	Air carriers as defined in Article 3, point (4), of Regulation (EC) No 300/2008 used for commercial purposes
		Airport managing bodies as defined in Article 2, point (2), of Directive 2009/12/EC of the European Parliament and of the Council [6], airports as defined in Article 2, point (1), of that Directive, including the core airports listed in Section 2 of Annex II to Regulation (EU) No 1315/2013 of the European Parliament and of the Council [7], and entities operating ancillary installations contained within airports
		Traffic management control operators providing air traffic control (ATC) services as defined in Article 2, point (1), of Regulation (EC) No 549/2004 of the European Parliament and of the Council [8]
	(b) Rail	Infrastructure managers as defined in Article 3, point (2), of Directive 2012/34/EU of the European Parliament and of the Council [9]

		Railway undertakings as defined in Article 3, point (1), of Directive 2012/34/EU and operators of service facilities as defined in Article 3, point (12), of that Directive
	(c) Water	Inland, sea and coastal passenger and freight water transport companies, as defined for maritime transport in Annex I to Regulation (EC) No 725/2004, not including the individual vessels operated by those companies
		Managing bodies of ports as defined in Article 3, point (1), of Directive 2005/65/EC, including their port facilities as defined in Article 2, point (11), of Regulation (EC) No 725/2004, and entities operating works and equipment contained within ports
		Operators of vessel traffic services (VTS) as defined in Article 3, point (o), of Directive 2002/59/EC of the European Parliament and of the Council [10]
	(d) Road	Road authorities as defined in Article 2, point (12), of Commission Delegated Regulation (EU) 2015/962 [11] responsible for traffic management control, excluding public entities for whom traffic-management or the operation of intelligent transport systems is a non-essential part of their general activity
		Operators of Intelligent Transport Systems as defined in Article 4, point (1), of Directive 2010/40/EU of the European Parliament and of the Council [12]
	(e) Public transport	Public service operators as defined in Article 2, point (d), of Regulation (EC) No 1370/2007 of the European Parliament and of the Council [13]
3. Banking		Credit institutions as defined in Article 4, point (1), of Regulation (EU) No 575/2013
4. Financial Market Infrastructure		Operators of trading venues as defined in Article 4, point (24), of Directive 2014/65/EU
		Central counterparties (CCPs) as defined in Article 2, point (1), of Regulation (EU) No 648/2012
5. Health		Healthcare providers as defined in Article 3, point (g), of Directive 2011/24/EU of the European Parliament and of the Council [14]
		EU reference laboratories as referred to in Article 15 of Regulation (EU) 2022/2371 of the European Parliament and of the Council [15]
		Entities carrying out research and development activities of medicinal products as defined in Article 1, point (2), of Directive 2001/83/EC of the European Parliament and of the Council [16]
		Entities manufacturing basic pharmaceutical products and pharmaceutical preparations as referred to in Section C division 21 of NACE Rev. 2
		Entities manufacturing medical devices considered as critical during a public health emergency ('public health emergency critical devices list') within the meaning of Article 22 of
		Regulation (EU) 2022/123 of the European Parliament and of the Council [17]

		Entities holding a distribution authorisation as referred to in Article 79 of Directive 2001/83/EC
6. Drinking Water		Suppliers and distributors of water intended for human consumption as defined in Article 2, point (1)(a), of Directive (EU) 2020/2184 of the European Parliament and of the Council [(18)], excluding distributors for which distribution of water for human consumption is a non-essential part of their general activity of distributing other commodities and goods
7. Wastewater		Undertakings collecting, disposing of or treating urban waste water, domestic waste water or industrial waste water as defined in Article 2, points (1), (2) and (3), of Council Directive 91/271/EEC [(19)], excluding undertakings for which collecting, disposing of or treating urban waste water, domestic waste water or industrial waste water is a non-essential part of their general activity
8. Digital Infrastructure		Providers of internet exchange points as defined in Article 6, point (18), of Directive (EU) 2022/2555
		DNS service providers as defined in Article 6, point (20), of Directive (EU) 2022/2555, excluding operators of root name servers
		top-level-domain name registries as defined in Article 6, point (21), of Directive (EU) 2022/2555
		Providers of cloud computing services as defined in Article 6, point (30), of Directive (EU) 2022/2555
		Providers of data centre services as defined in Article 6, point (31), of Directive (EU) 2022/2555
		Providers of content delivery networks as defined in Article 6, point (32), of Directive (EU) 2022/2555
		Trust service providers as defined in Article 3, point (19), of Regulation (EU) No 910/2014 of the European Parliament and of the Council [(20)]
		Providers of public electronic communications networks as defined in Article 2, point (8), of Directive (EU) 2018/1972 of the European Parliament and of the Council [(21)]
		Providers of electronic communications services as defined in Article 2, point (4), of Directive (EU) 2018/1972 insofar as their services are publicly available
9. Public Administration		Public administration entities of central governments as defined by Member States in accordance with national law
10. Space		Operators of ground-based infrastructure, owned, managed and operated by Member States or by private parties, that support the provision of space-based services, excluding providers of public electronic communications networks as defined in Article 2, point (8), of Directive (EU) 2018/1972

11. Production, Processing and Distribution of Food		Food businesses as defined in Article 3, point (2), of Regulation (EC) No 178/2002 of the European Parliament and of the Council [(22)] which are engaged exclusively in logistics and wholesale distribution and large scale industrial production and processing

Annex 2: Lists of Strategic and Critical Raw Materials, 2024

List of Strategic Raw Materials as per Annex I of Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020.

(a) Bauxite/alumina/aluminium	(j) Manganese - battery grade
(b) Bismuth	(k) Graphite - battery grades
(c) Boron - metallurgy grade	(l) Nickel - battery grade
(d) Cobalt	(m) Platinum Group Metals (ruthenium, rhodium, palladium, osmium, iridium, platinum)
(e) Copper	(n) Rare Earth Elements for permanent magnets (dysprosium, terbium, cerium, gadolinium, neodymium, praseodymium, samarium)
(f) Gallium	(o) Silicon metal
(g) Germanium	(p) Titanium metal
(h) Lithium - battery grade	(q) Tungsten
(i) Magnesium metal	(j) Manganese - battery grade

List of Critical Raw Materials as per Annex II of Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020.

(a) Antimony	(l) Fluorspar	(w) Nickel - battery grade
(b) Arsenic	(m) Gallium	(x) Niobium
(c) Bauxite/alumina/aluminium	(n) Germanium	(y) Phosphate rock
(d) Baryte	(o) Hafnium	(z) Phosphorus
(e) Beryllium	(p) Helium	(aa) Platinum Group Metals (ruthenium, rhodium, palladium, osmium, iridium, platinum)

(f) Bismuth	(q) Heavy Rare Earth Elements (dysprosium, erbium, holmium, lutetium, terbium, thulium, yttrium, ytterbium)	(ab) Scandium
(g) Boron	(r) Light Rare Earth Elements (cerium, europium, gadolinium, lanthanum, neodymium, promethium, praseodymium, samarium)	(ac) Silicon metal
(h) Cobalt	(s) Lithium	(ad) Strontium
(i) Coking Coal	(t) Magnesium	(ae) Tantalum
(j) Copper	(u) Manganese	(af) Titanium metal
(k) Feldspar	(v) Graphite	(ag) Tungsten