

Alignment of the Six Countries of the Western Balkans (WB6) with the EU Regulation on Screening of Foreign Direct Investments

Policy Brief

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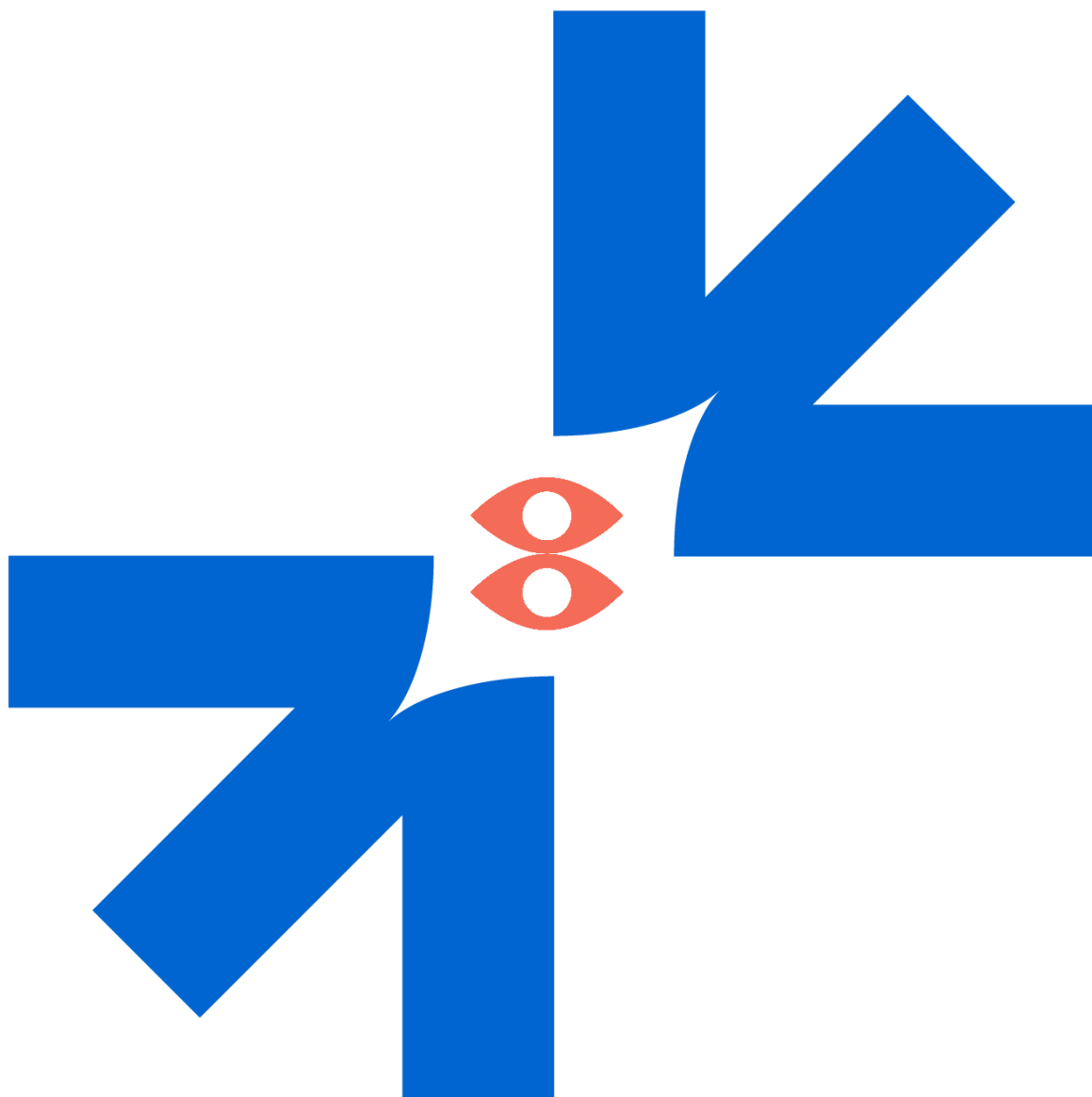


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List of Abbreviations and Acronyms

A/LSI	Albania's Law on Strategic Investments
AIDA	Albanian Investment Development Agency
AFIEP	Agency for Foreign Investments and Export Promotion (<i>of North Macedonia</i>)
AIE	Agency of Investments and Exports (<i>of Kosovo</i>)
BiH	Bosnia and Herzegovina (<i>Bosna i Hercegovina</i>)
CRM	Common Regional Market
DAS	Development Agency of Serbia
EC	European Commission
EP	European Parliament
EU	European Union
FDI	Foreign Direct Investments
FDISEG	FDI Screening Expert Group
FDISR	EU FDI Screening Regulation (<i>Regulation 2019/452 establishing a framework for the screening of foreign direct investments into the Union</i>)
FDISCP	FDI Screening Contact Point (<i>in a Member State</i>)
FIA	Foreign Investment Acts (<i>of entities of BiH</i>)
FIPA	Foreign Investment Promotion Agency (<i>of BiH</i>)
LFI	Law on Foreign Investments (<i>Albania, Montenegro</i>)
LFSI	Law on Financial Support of Investments (<i>North Macedonia</i>)
LoFEO	Law on Foreign Exchange Operations (<i>North Macedonia, Serbia</i>)
LoI	Law on Investments (<i>of Serbia</i>)
LPFDI	Law on the Policy of Foreign Direct Investment (<i>of BiH</i>)
LTC	Law on Trade Companies (<i>North Macedonia</i>)
LTIDZ	Law on Technological Industrial Development Zones (<i>North Macedonia</i>)
K/LSI	Kosovo's Law on Sustainable Investments
MDFT	Ministry of Domestic and Foreign Trade (<i>of Serbia</i>)
MEA	Ministry of European Affairs (<i>North Macedonia</i>)
MECI	Ministry of Economy, Culture and Innovation (<i>of Albania</i>)
MED	Ministry of Economic Development (<i>of Montenegro</i>)
MFAFT	Ministry of Foreign Affairs and Foreign Trade (<i>of North Macedonia</i>)
MFN	"Most-Favoured Nation" principle
MFTER	Ministry of Foreign Trade and Economic Relations (<i>of BiH</i>)
MIA	Montenegrin Investment Agency
MIET	Ministry of Industry, Entrepreneurship and Trade (<i>of Kosovo</i>)
MoE	Ministry of Economy (<i>of North Macedonia</i>)
MS	(EU) Member State
NBS	National Bank of Serbia
NM/LSI	North Macedonia's Law on Strategic Investments
OPM	Office of the Prime Minister (<i>Kosovo, Montenegro, Serbia</i>)
RA	Reform Agenda (within the RGF)
RGF	EU Reform and Growth Facility for the Western Balkans
TRIPS Agreement	Agreement on Trade Related Aspects of Intellectual Property Rights
WB6	Six countries of the Western Balkans (<i>Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia</i>)
WTO	World Trade Organisation

Reflection: Foreign Direct Investment (FDI) screening as an essential dimension of regional security cooperation and integration in the EU

The report *“Alignment of the Six Countries of the Western Balkans (WB6) with the EU Regulation on Screening of Foreign Direct Investments.”* is an added value of the policy discussions within the broader context of EU enlargement process, regional security cooperation, and institutional reform in our region. This report is a substantive contribution to the ongoing debates on how the Western Balkan Six (WB6) can move toward phased integration with the European Union (EU), not just politically, but operationally through alignment with specific regulatory frameworks such as the EU’s Foreign Direct Investment Screening Regulation (FDISR, Regulation 2019/452).

Why this report matters?

This policy brief serves as a diagnostic and prescriptive document that examines the alignment of WB6 countries with the EU’s FDI screening regulation and recommends a roadmap for complete harmonization. The brief is not just a technical mapping as it implicitly speaks to the EU’s broader ambition to secure its economic space in a region subject to geopolitical agenda and malign foreign interference. Foreign direct investment, long viewed as a facilitator of development, now carries dual valence: it is both an economic opportunity and a potential security detriment, mainly when originating from authoritarian states or actors with opaque ownership structures.

In this context, the report plays a dual role. First, it informs policymakers in WB6 and the EU about the legislative gaps, institutional capacities, and political will surrounding FDI screening. Second, it outlines a stepwise path toward institutional and legislative convergence, positioning the FDI screening framework as a major test for how seriously WB6 countries are preparing to participate in the EU’s single market, not only as recipients of investments but also as actors responsible for the collective economic and security of the European Union (EU). The report’s relevance also lies in how it approaches the concept of “phased integration.” Focusing on a specific regulatory area—FDI screening—the report identifies a concrete area for the EU to engage in that

is politically feasible, technically necessary, and symbolically powerful. This matters not only for aligning and transposing EU norms but also for the credibility of the enlargement process itself.

Four key takeaways from this report:

First, FDI screening is one potentially low-hanging fruit for phased accession. The report argues that FDI screening is more than a compliance issue of WB6 with EU norms; it is a mechanism for WB6 countries to be gradually integrated into the EU's institutional and regulatory fabric. By aligning with the FDISR, WB6 countries are not only protecting their own economic sovereignty but also demonstrating readiness to act in concert with EU member states on shared security concerns. This is especially relevant in the current geopolitical situation, where investments, especially in critical infrastructure, digital technologies, and energy, are increasingly viewed through a national security lens, not only in WB6 but across the EU. Alignment with the FDISR offers WB6 countries the opportunity to participate in the EU's evolving security architecture without waiting for full membership. It operationalizes integration by enabling structured interaction with EU mechanisms, including access to the EU's FDI Screening Contact Points network and the FDI Screening Expert Group. This incremental approach reinforces the logic of "phased accession" by incentivizing tangible reforms that are sector-specific and politically manageable, especially in a context where enlargement might enjoy popular support within certain EU member states.

Second, Kosovo seems to spearhead the efforts on FDI alignment and demonstrates regulatory leadership. Among the WB6 countries, Kosovo is arguably the most advanced in aligning its legislative framework with the FDISR. It is the only country in the region that has adopted the 2024 Law on Sustainable Investments, which explicitly incorporates provisions for FDI screening on national security and public order grounds. The law establishes a screening mechanism and institutional roles, including a newly created Agency of Investments and Exports (AIE) and a high-level Investment Council chaired by the Prime Minister. Kosovo's example also shows that alignment on FDI screening norms of WB6 with the EU is not only a technical issue but one of political will and institutional ambition. It reflects some understanding that attracting investment and protecting national interests are not contradictory goals. Instead, credible screening mechanisms can enhance investor confidence by creating transparent, rule-based governance of FDI. Kosovo's progress challenges the assumption that a lack of clarity in the EU accession process necessarily leads to stagnation, at least regarding this policy area.

Third, the Institutional gap is the main obstacle across WB6 regarding FDI screening and alignment with EU norms. A key finding of the report is that in most WB6 countries, the legal and institutional frameworks for FDI screening are either absent or severely underdeveloped. Apart from Kosovo, other WB6 countries are yet to adopt a comprehensive legislation on FDI screening. Draft laws exist in Albania and are under discussion in North Macedonia and Montenegro, but Bosnia and Herzegovina and Serbia have not initiated any the process. The report underlines the point that the absence of FDI screening is not due to a lack of need, but rather a combination of limited institutional capacities, lack of political prioritization, and insufficient external pressure, from the EU to push for FDI screening alignment. It warns that the current policy vacuum exposes these countries to security risks, including influence operations through strategic investments in telecommunications, energy, and media sectors. Moreover, the institutional fragmentation, where investment promotion, trade policy, and national security are housed in separate and uncoordinated institutional bodies, further hinders the establishment of functional screening mechanisms. Accordingly, the report argues that without clearly defined roles for ministries and agencies, and without implementation-ready legislation, the adoption of screening mechanisms will remain superficial and ineffective.

Lastly, the EU should go beyond encouragement and move toward conditionality on FDI screening alignment. The report's final argument is implicitly critical of the EU's current hands-off approach regarding FDI screening in the Western Balkans. While the FDISR is binding for EU member states, its alignment is not yet part of the core conditionality for the WB6 accession process. The report makes a strong case that this should change. It proposes that the European Commission incorporate FDI screening alignment into formal reform dialogues and begin assessing progress in annual country reports. The absence of this conditionality has created a perverse incentive: some WB6 governments avoid introducing screening mechanisms to signal that they are "open for business" without bureaucratic hurdles, especially to non-EU investors. This undermines not only the EU's internal market coherence but also its strategic autonomy in the region. By not insisting on FDISR alignment, the EU may inadvertently facilitate the entrenchment of foreign influence that runs counter to its own geopolitical and economic interests. In this sense, the policy brief contributes to a more assertive vision of EU engagement with the Western Balkans, one that recognizes that technical alignment is also a geopolitical imperative.

Based on all of this, two significant recommendations emerge. First, the EU should explicitly include FDI screening alignment in the enhanced enlargement methodology's Cluster 1 (Fundamentals) as a reform priority. The European Commission must begin

assessing and reporting on the status of alignment in its annual Country Reports. It should also offer technical support to WB6 governments through twinning projects and targeted assistance from the EU's Structural Reform Support Programme. Finally, observer status for the WB6 in the FDI Screening Contact Points network should be granted as part of a broader strategy of operational integration. Secondly, WB6 countries should treat FDI screening not as a regulatory burden but as an opportunity to demonstrate maturity and institutional readiness to the EU. National governments must adopt legislation that transposes FDISR norms, assign responsibility to competent institutions, and ensure sufficient staffing and expertise.

Introduction

Despite the initial promise and ambition to integrate them as a group, the six Western Balkan countries (WB6) – Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia – have made slow progress over the past decade in implementing the reforms required for European Union accession. As things stand, with the possible exception of Albania and Montenegro, none of the WB6 countries has a clear pathway or timeline for membership. On the EU side, a lack of consensus among member states continues to stall the process. This is partly due to widespread public opposition to further enlargement in several EU member states, as well as the limitations of the EU's institutional structure, which is already under strain and ill-equipped to absorb new members into its complex decision-making system. This stagnation has served as a disincentive for reform in the WB6. However, efforts are underway to keep the process alive. One increasingly discussed approach, particularly among civil society organizations in the region that actively support EU integration, is that of phased accession. This model would enable WB6 countries to gradually align with EU standards by allowing access to specific EU mechanisms in parallel with the implementation of reforms.

This would be implemented in practice by allowing WB6 countries' institutions and other stakeholders dealing with specific policy areas to engage directly with their peers in the EU in an institutional learning process. EU agencies are typical such mechanisms. They are EU-level institutions specialized in specific policy area that exercise regulatory functions. In this role they drive through expertise – together with the European Commission (which also conducts membership negotiations with WB6 countries) – the EU *acquis* development in their policy areas. They also guide and support implementation and enforcement of the *acquis* and are involved in overseeing this.

Rule of law as a component of governance that includes several policy areas is a priority pillar for EU accession, and thus also part of the Cluster 1 (on Fundamentals) of EU membership negotiations in the recently introduced 'enhanced enlargement methodology'. Moreover, foreign direct investments are critical for the WB6 countries to grow their economies and to make them more competitive and thus more capable to cope with competitive pressure and market forces within the EU. This means openness to FDI from both the EU and other countries. However, increased openness with the rest of the world may bring security risks. Therefore, WB6 countries need to gradually align their legislation with the *EU Regulation 2019/452 establishing a framework for the screening of foreign direct investments into the Union* (FDI Screening Regulation). In addition, as EU

member states, they also need to design national FDI screening mechanisms and make them operational.

The purpose of this policy brief is to better inform decision-makers in WB6 and in the EU institutions on EU requirements in relation to FDI screening and on the state of play in WB6 in this policy issue. It also seeks to inform policy discourse and other players interested in the EU accession process in the WB6. As such, it is mainly designed for policy-makers, think tanks and other policy experts engaged in policy and EU integration advocacy, and is also useful for policy researchers in academia and elsewhere.

The policy brief discusses how WB6 countries could approach alignment of their respective legislation with this regulation and implementation, including the aspect of FDI screening mechanisms at the national level. It consists of three sections. The first section provides a background on the FDI Screening Regulation, summarizing its provisions and obligations. The second section discusses the state of play in this regard in each WB6 country with relevance to this regulation and FDI screening in general, focusing on the current legal and policy framework and the relevant institutional setup. Given that none of them has started with implementation, this aspect is not discussed in this policy brief. The final section puts forward a list of reform priorities that need to be pursued for alignment with this regulation and with regard to implementation on FDI screening.

Background on the EU FDI Screening Regulation

The European Union (EU) *Regulation 2019/452 establishing a framework for the screening of foreign direct investments into the Union*¹, or the EU FDI Screening Regulation (FDISR), was adopted on 19 March 2019, published in the EU Official Journal on 21 March and entered into force on 10 April. It has become fully operational throughout the EU on 11 October 2020, following a period of eighteen months, as stipulated under Article 17, during which the European Commission (EC) and Member States (MSs) put in place a coordination mechanism² for its implementation. The FDISR is the first EU law regulating FDI screening as a subject matter. It is directly applicable in all MSs and binding in its entirety.

Last year the EC initiated a consultation process for a new regulation on FDI screening. This amendment process has been initiated in order to better respond to address new geopolitical and security challenges and regulatory gaps identified during the application of the FDISR. The latter include the need to ensure that all MSs have a screening mechanism in place; to harmonise national rules and make cooperation among MSs and with the EC more effective and more efficient; to identify a minimum sectorial scope that all MSs are required to screen, while other MSs can go beyond the minimum scope depending on their own national security interests; and to extend the scope of EU screening to cover transactions within the EU.³

The *purpose* of the FDI screening framework established by the FDISR is to make the EU better capable to identify, assess and mitigate potential risks to its security or public order while also ensuring that the EU remains amongst the most open investment areas in the world.⁴ To this end, the FDISR establishes a framework for the screening by MSs of FDI coming from third countries into the EU single market. It also establishes a

¹ Eur-Lex, *Regulation 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (FDI Screening Regulation)*, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0452>.

² European Commission, *EU foreign investment screening mechanism becomes fully operational*, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1867.

³ European Commission, *Factsheet Economic Security - Proposal for a new regulation on the screening of foreign investments*, pg. 2, <https://ec.europa.eu/commission/presscorner/api/files/attachment/877349/Factsheet%20Economic%20Security%20-%20FDI%20Screening.pdf>.

⁴ European Commission, *Investment screening*, https://policy.trade.ec.europa.eu/enforcement-and-protection/investment-screening_en.

mechanism of cooperation among MSs and between MSs and the EC on FDI screening.⁵ This means that the only legal grounds to screen an FDI under this regulation are its potential effects on security or public order in a MS.

The FDI screening framework in the EU consists of the following main components:

- Notification by MSs of their existing national investment screening mechanisms to the EC;
- Formal contact points in the EC and MSs;
- Secure channels in the EC and MSs for the exchange of information and analysis;
- Procedures for the EC and MSs to quickly react to FDI concerns and to issue opinions; and
- Informal cooperation among MSAs on FDI screening where a foreign investment could also affect the EU single market.⁶

The FDISR is a short piece of EU legislation, consisting of seventeen articles and one annex. In addition to the subject matter and scope, and definitions (Art. 1 and 2), it establishes FDI screening mechanisms (Art. 3, 4, 6-8, 9-14), as well as reporting and evaluation requirements (Art. 5 and 15). Lastly, Article 16 regulates the exercise of delegation by the EC regarding the implementation of FDISR. The FDISR also contains an annex containing the list of projects or programmes of Union interest, which includes those involving a substantial amount or a significant share of Union funding or those covered by Union law regarding critical infrastructure, critical technologies or critical inputs that are essential for security or public order. Under **definitions**, it is important to highlight the following ones:

- *Foreign investor*: a person or an undertaking of a third country (any country that is not a MS of the EU) intending to make or having made a foreign direct investment in the EU single market;
- *Screening*: a procedure allowing to assess, investigate, authorise, condition, prohibit or unwind FDI on grounds of security or public order;
- *Screening mechanism*: an instrument of general application, such as a law or regulation, and accompanying administrative requirements, implementing rules or guidelines, setting out the terms, conditions and procedures for screening; and
- *Screening decision*: a measure adopted in application of a screening mechanism.

⁵ FDI Screening Regulation, Art. 1.

⁶ European Commission, *EU foreign investment screening mechanism becomes fully operational* (op. cit. 2).

The rest of substantive provisions of the FDISR can be grouped in two main categories: (1) provisions establishing FDI screening mechanisms and regulating their functioning; and (2) provisions regulating reporting and evaluation obligations.

FDI screening mechanisms established by the FDISR: The FDISR provisions on *mechanisms in place for FDI screening* in MSs and at the EU level regulate the following aspects: factors to take into account for FDI screening; screening mechanisms in MSs; mechanisms of cooperation between MSs and the EC; information sharing obligations (including protection of personal data); institutional mechanisms established to coordinate cooperation between MSs and the EC; as well as FDI that are likely to affect projects or programmes of Union interest; and international cooperation.⁷

On factors that may be taken into account by MSs or the EC in determining whether and FDI is to undergo screening, the FDISR obliges them to take into account whether it is likely to affect security or public order, crucially:

- Critical infrastructure;
- Critical technologies and dual use items;
- Supply of critical inputs, including energy or raw materials, as well as food security;
- Access to sensitive information, including personal data, or the ability to control such information; or
- Media freedom and pluralism.

They may also take into account the following additional factors related to the foreign investor in question:

- Whether the investor is directly or indirectly controlled by a third country government, including state bodies or armed forces, including through ownership structure or significant funding;
- Whether the investor has already been involved in activities affecting security or public order in a MS; or
- Whether there is a serious risk that the investor engages in illegal or criminal activities.

On FDI screening mechanisms in MSs, the FDISR sets uniform rules the later have to comply with:

⁷ FDI Screening Regulation, Art. 3-8, 11-13.

- They should set out circumstances triggering such screening, as well as grounds for it, detailed procedural rules applicable and timeframes;
- Rules and procedures and timeframes should be transparent;
- Rules and procedures should not discriminate between third (non-EU) countries;
- During the screening procedure they should take into account other MSs' comments and EC opinions;
- They should protect confidential information, including commercially-sensitive information, made available to them;
- They should allow foreign investors and the undertakings concerned the possibility to seek recourse against screening decisions of national authorities, in other words, to protect its rights if it considers that them violated by such decisions;
- They should put in place measures necessary to identify and prevent circumvention of screening mechanisms and screening decisions;
- They should notify the EC of their existing screening mechanisms, initially within 52 days after the entry into force of the FDISR (by 12 May 2019), and in the future within 30 days following the entry into force of a new one or any amendment to the existing one;

On the other hand, the EC is obliged to publish a list of MSs' FDI screening mechanisms no later than three months following notification by a MS of it having established such a mechanism, as well as to keep it up to date.

According to the list of FDI screening mechanisms in MSs currently published, such mechanisms are so far established by 23 of them, namely all but Bulgaria, Croatia, Cyprus and Greece. The list contains two pieces of information: the law regulating it (including amendments), as well as the date of its adoption and of entry into force; and a link of its official webpage containing detailed information on the screening mechanism in place. This list shows that in most MSs the mandate of FDI screening is given to ministries of either trade, finance or economic affairs, and there are also ones where this is covered by a regulatory authority (Estonia).⁸ It also means that it is a practice for MSs that have established FDI screening to have a dedicated section of the official webpage of their ministry in charge of such a mechanism to publish relevant information.

⁸ European Commission, *List of Screening Mechanisms Notified by Member States*, <https://circabc.europa.eu/ui/group/be8b568f-73f3-409c-b4a4-30acfcec5283/library/7e72cdb4-65d4-4eb1-910b-bed119c45d47/details?download=true>.

The FDISR also foresees *mechanisms of cooperation between MSs and the EC* on FDI undergoing screening and on those not undergoing it. On *FDI undergoing screening*, the FDISR foresees specific obligations for a MS carrying out a screening of FDI in their territory to inform other MSs and the EC on it, and to provide comments if they consider that the FDI concerned is likely to affect their security or public order or if they have information on such FDI. A MS carrying out screening of FDI in their territory have to notify other MSs and the EC on this, to provide information on the respective FDI, in order to allow other MSs to provide comments, as well as to take their comments into account in making its screening decision. A MS carrying out such screening is obliged to provide information as required under the FDISR, including, optionally, the list of MSs that are likely to be affected)

In all cases the EC may issue comments and opinions to the MS carrying out an FDI screening, whereas it is obliged to issue an opinion on an ongoing FDI screening if one third of MSs consider that the FDI in question is likely to affect their security or public order. In all cases, it is obliged to share its comments and opinions with other MSs. The FDISR also specifies the timeframe of such cooperation, with up to 55 calendar days for the procedures before a screening decision is made. The FDISR does not specify a deadline to issue a screening decision. However, it allows the respective MS to do so before this deadline, in exceptional cases, if it considers that its security or public order requires immediate action. It also requires the MS doing so to inform other MSs and the EC of its intention to issue its decision before the deadline.

A similar mechanism is established by the FDISR on *FDI not undergoing screening*, namely for FDI that are planned or completed. If a MS considers that an FDI planned or completed in other MSs is likely to affect their security or public order, or if it has information on it, may provide comments to the respective MS. Regardless of whether other MSs issue comments, the EC may issue comments and opinions on such an FDI if it considers that it is likely to affect the security or public order in more than one MS, or if it has relevant information on that FDI. In this process both other MSs and the EC may request information as foreseen by the FDISR or additional information on the FDI concerned, and the MS in which it is planned or has been completed is obliged to provide such information. Finally, the EC may issue a duly justified opinion addressed to the MS in which the FDI is planned or has been completed within 15 months after that FDI has been completed.

In order for the mechanism of cooperation between MSs and the EC on FDI that are undergoing screening and those that are not undergoing screening to function effectively, the FDISR stipulates the information required to be shared. Such information

is required to be shared by the MS carrying out an FDI screening with relevant MSs, for the purpose of receiving comments from those that have expressed their interest to share comments, and with the EC, for the purpose of receiving its opinion. More specifically, it requires that the following information on the respective FDI is shared:

- The ownership structure of the foreign investor and (if applicable) of the existing undertaking in the receiving country in which it plans to invest or has done so, including on the ultimate investor and participation in the capital;
- Its approximate value;
- Products, services and business operations of the foreign investor and the existing undertaking in the receiving country in which it plans to invest or has done so;
- MSs in which the foreign investor and the undertaking in which it is planned or has been completed conduct business operations;
- Its funding and source, on the basis of the best information available to the MS; and
- The date when it is planned to be completed or has been completed.

Furthermore, the FDISR also obliges MSs, as well as foreign investors and undertakings concerned to share such information without undue delay. If a MS is unable to obtain the information outlined above, the respective MS is obliged to provide the reasons for not being able to obtain it. If the respective MS is not provided with such information, it may issue its opinion based on information available to it. Likewise, if the EC is not provided with such information, it may issue its opinion based on information available to it.

The FDISR stipulates that the information shared has to be shared confidentially. It also has to be shared only for the purpose for which it is requested under this regulation. Third, such confidential information also has to be protected in accordance with the respective EU and national law. Last, MSs and the EC are obliged not to downgrade the level of classification of such information or to declassify it without prior written consent of its originator.

In terms of the *institutional mechanisms* to coordinate cooperation between MSs and the EC, the FDISR establishes two mechanisms: the network of FDI Screening Contact Points in MSs (FDISCPs) and the FDI Screening Expert Group (FDISEG). There are two requirements on FDISCPs. First, all MSs are obliged to establish and involve them in all issues related to implementation of FDISR. Second, the EC is obliged to put in place a secure and encrypted system to support cooperation and exchange of information

between FDISCPs. On the other hand, the FDISEG is an advisory body to the EC. It exercises this legal mandate by sharing best practices and lessons learned and by exchanging views on trends and issues of common concern relating to FDI.⁹

The provisions of FDISR on *FDI that are likely to affect projects or programmes of Union interest* allow the EC to intervene in cases when an FDI affects programmes or projects that are in the interest of the Union as a whole on grounds of security or public order. The EC is in such cases given the same procedures to follow as under mechanisms of cooperation with MSs on FDI undergoing screening and those not undergoing screening, with three modifications. One concerns notification by a MS carrying out FDI screening, as well as comments to be provided by other MSs on FDI undergoing screening and on FDI planned or completed (not undergoing screening). In such cases, the MSs concerned are also obliged to indicate whether the FDI concerned is likely to affect projects or programmes of Union interest. Secondly, in such cases the EC is obliged to submit its opinion to other MSs. Thirdly, the MS where such an FDI is planned or has been completed are obliged to take utmost account of EC's opinion and to provide an explanation if its opinion is not followed.

On *international cooperation*, the FDISR is very general, providing MSs and the EC with the option to engage in cooperation with respective authorities of third countries on screening of FDI on the grounds it has established – security and public order. This provision is relevant for WB6 countries, because it gives them the possibility of cooperation with EU MSs and the EC on FDI screening.

Reporting and evaluation obligations under the FDISR: The FDISR contains two groups of provisions of this category: those on annual reporting and those on evaluation.

Annual reporting: The FDISR obliges MSs to submit to the EC annual reports on FDI screening by the end of March of the following year. They are obliged to include in such reports the following aggregate information covering the reporting period:

- Application of their FDI screening mechanism;
- FDI that took place in the country during the reporting period, based on the information available to them;
- Requests received from other MSs to provide comments to a MS carrying out an FDI screening and the comments provided, as well as additional information requested and received by them in addition to the information whether the FDI that were subject to screening were part of a merger; and

⁹ FDI Screening Regulation, Art. 11-12.

- Requests received from other MSs to provide comments to it on FDI in their territory that are not undergoing screening but which such MSs consider that they are likely to affect their security or public order.

On the other hand, the EC is obliged to report to the EP on implementation of FDISR on annual basis. This obligation includes the right of the EP to ask the EC to report to it on systemic issues related to the implementation of this regulation.

Evaluation: The FDISR obliges the EC to evaluate its implementation every five years, starting from the first evaluation, to be completed by 12 October 2023. Such evaluations should focus on its functioning and effectiveness. Evaluations should be presented in the form of reports to the EP and the Council, and if amendments to the FDISR are recommended, they may be accompanied by an appropriate legislative proposal. It also obliges that the evaluation exercise involves MSs, which, if necessary, are obliged to provide the EC with additional information.

Exercise of the delegation: FDISR confers to the EC the right to adopt delegated acts to implement it as from the date of its entry into force, under certain conditions. One condition is that this right in relation to amending the list of project or programmes of Union interest may be revoked by the EP or the Council at any time. Another condition is that the EC should consult MSs in the process of adopting a delegated act. Thirdly, such an act will only enter into force if no objections are raised by either the EC or the Council within a period of two months of notification of that act to them. This period may be extended for two more months upon their request.

Pursuant to these provisions (Art. 16), on 29 September 2021 the EC adopted the Delegated Regulation No. (EU) 2021/2126¹⁰ amending the annex of FDISR. This delegated act has expanded the list of projects or programmes of Union interest from eight to eighteen.

¹⁰ Eur-Lex, *Commission Delegated Regulation (EU) 2021/2126 of 29 September 2021 amending the Annex to Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union*, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R2126>.

Alignment with the EU Regulation on FDI Screening – State of Play in WB6

This section summarizes the state of play in each WB6 country on alignment with the FDISR and its implementation. Overall, all but Kosovo have yet to align their framework legislation with this regulation, and all of them have yet to adopt the implementing legislation. Next, they need to establish their national FDI screening mechanisms in line with the FDISR, to define institutional responsibilities, to establish procedural frameworks, and finally to start implementing such mechanisms in practice. Given this, we look at the legal, policy and institutional frameworks that are currently in place in each country in the context of alignment with the FDISR and its implementation and enforcement.

Investments are also a key priority in the next medium-term period for each WB6 country, agreed with the EC under the Reform and Growth Facility for the Western Balkans (RGF) and their respective Reform Agendas (RAs). In this regard, the ambition is that the RGF as a reform and financial support package will contribute to doubling of their economies in the next decade. This is sought to be achieved through economic convergence within the Common Regional Market (CRM) and with the EU single market.¹¹

Albania

Through its Constitution and two laws governing FDI, Albania has established the constitutional basis for a free market economy that is open to FDI and the legal basis governing the latter. It is also a member of the World Trade Organisation, which is important for an FDI friendly economic environment. Its Ministry of Economy, Culture and Innovation and the Albanian Investment Development Agency are the two main institutions responsible for trade in general and for FDI specifically. Albania has not yet adopted the legal framework on FDI screening in line with the FDISR. Therefore, it has yet to establish an FDI screening mechanism in line with it, to assign institutional responsibilities to implement such a mechanism, and to commence implementation and enforcement.

¹¹ European Commission, *Growth Plan for the Western Balkans*, https://enlargement.ec.europa.eu/enlargement-policy/growth-plan-western-balkans_en.

Legal framework: The Constitution of the Republic of Albania specifies that the country's economic system is based on both public and private property, as well as on market economy and the freedom of economic activity. It also stipulates that restrictions on the freedom of economic activity can only be established by law and only for important public reasons.¹² Thus, Albania's Constitution establishes the general principle of free market economy, while it does not contain any specific reference to the FDI, which are subject to *lex specialis*.

The framework legislation, governing FDI consists of the Law on Foreign Investments (LFI) and the Law on Strategic Investments (A/LSI). LFI establishes an open and welcoming investment environment in Albania by ensuring equal treatment for domestic and foreign investors. Among others, it stipulates that none of its provisions shall prevent the implementation of measures necessary to maintain public order and to protect national security or defence interests.¹³ A/LSI seeks to attract both foreign and domestic investors in five key economic sectors: energy and mining, transport, electronic communications infrastructure and urban waste, tourism, and agriculture and fisheries. It also seeks to attract investments in economic zones and development priority areas, and foresees several incentives, favourable conditions and streamlined procedures for strategic investors operating in Albania.¹⁴ None of these laws establish any mechanism to screen FDI.

Thus, the current legal framework in Albania does not establish an FDI screening mechanism on grounds of national security or public order as required by the FDISR.

However, it is worth noting that on 15 October 2024 a draft-law has been submitted to the Albanian Parliament by an opposition MP. The draft-law on screening of foreign direct investments in the Republic of Albania¹⁵ aims to set up the screening mechanism and achieve alignment with the FDISR. This draft-law is still under the review in the parliament and there is no timeline for its (potential) adoption.

There is a screening mechanism on grounds of national security for petroleum products that applies to local and foreign investments equally. It is established by the Petroleum

¹² Council of Europe – Venice Commission, *Consolidated version of the Constitution of the Republic of Albania*, Art. 11, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)064-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)064-e).

¹³ EURALIUS Project, *Law on Foreign Investments*, Art. 10, <https://track.unodc.org/uploads/documents/BRI-legal-resources/Albania/15 -Albania - Foreign Investment Act English.pdf>.

¹⁴ EURALIUS Project, *Law on Strategic Investments in the Republic of Albania*, <https://track.unodc.org/uploads/documents/BRI-legal-resources/Albania/16 -Albania - Law on Strategic Investments English.pdf>.

¹⁵ Assembly of the Republic of Albania, *Draft-law on screening of foreign direct investments in the Republic of Albania* (in Albanian), <https://kuvendiwebfiles.blob.core.windows.net/webfiles/202410281311030612Projektligj%20dhe%20relacion.pdf>.

Law. It, among others, allows the responsible ministry to refuse the granting of a petroleum agreement or the transfer of shares on grounds of national security. Thus, it allows the Government to reject a petroleum-sharing agreement or the sale of shares in such an agreement to any prospective investor due to national security concerns.¹⁶

As a WTO member since 2000¹⁷, Albania has granted the “Most-Favoured Nation” (MFN) treatment to all its trading partners. It is a party to the Information Technology Agreement (accepting the expansion of product coverage in 2018) and the Trade Facilitation Agreement (accepted on 10 May 2016), while it has a pending accession status to the Agreement on Government Procurement. Albania has accepted the Protocol amending the TRIPS Agreement on 28 January 2009. Accession instruments do not provide for any specific provision other than for general rules governing exceptions referred to by GATS on security and public order.

Policy framework: Although FDI screening is not mentioned in any public policy document in Albania, the country has committed to align its regulatory framework with the EU within its EU integration process. During the bilateral meetings with the EU, Albania has committed to assess its alignment needs and modalities by the end of 2026, as indicated in the EU Common Position for the 6th Cluster of membership negotiations, on external relations. This joint document outlining Albania’s official policy in the area of trade also puts forward, as mid-term benchmark, alignment with the FDISR, including future revisions.¹⁸

Institutional framework: Trade as a policy area in Albania falls under the remit of the Ministry of Economy, Culture and Innovation (MECI). This includes free trade agreements¹⁹, which, since they are international agreements, are concluded in coordination with the Ministry of Foreign Affairs (MFA). In lieu of an FDI screening mechanism, there are no provisions granting MECI powers regarding such a mechanism. It is also worth noting that the Albanian Investment Development Agency (AIDA) is the specialised agency of the Albanian Government responsible for investments, established in 2010 by the Law on Organisation and Functioning of AIDA. Its mission includes enhancing competitiveness of the private sector and its export potential and promoting and supporting FDI in it. AIDA provides investors access to up

¹⁶ Official Publications Centre, *Petroleum Law*, <https://qbz.gov.al/eli/ligj/1993/07/28/7746>.

¹⁷ World Trade Organisation, *Albania and the WTO*, https://www.wto.org/english/thewto_e/countries_e/albania_e.htm.

¹⁸ Council of the European Union, *European Union Common Position – Cluster 6: External Relations*, pg. 5, <https://data.consilium.europa.eu/doc/document/AD-25-2024-INIT/en/pdf>.

¹⁹ Ministry of Economy, Culture and Innovation of Albania, *Decision No. 30, dated 17.01.2024, of the Council of Ministers on Definition of Areas of State Responsibility of the Ministry of Economy, Culture and Innovation* (in Albanian), <https://meki.gov.al/wp-content/uploads/2024/09/vendim-2024-01-17-30.pdf>.

to date information, an efficient way of communicating with government bodies. It also serves as a “one-stop-shop” supporting them through the investment process and provides them with aftercare services.²⁰

Bosnia and Herzegovina

Through its Constitution and three laws governing FDI (one at the state level and two at the level of entities, one in each), Bosnia and Herzegovina (BiH) has established the constitutional basis for a free market economy that is open to FDI and the legal basis governing the latter. Its Ministry of Foreign Trade and Economic Relations and the Foreign Investment Promotion Agency are the two main institutions responsible for trade and FDI, respectively. BiH has not yet adopted the legal framework on FDI screening in line with the FDISR. Therefore, it has yet to establish an FDI screening mechanism in line with this regulation, to assign institutional responsibilities to implement such a mechanism, and to commence implementation and enforcement.

Legal framework: The Constitution of BiH, in its preamble, refers to, among others, the desire to promote economic growth through the protection of private property and the promotion of a market economy.²¹ It does not contain any reference to open investment environment, to commitment to FDI or any similar reference. However, it should be noted that BiH is a complex state and entities carry significant competences over the central government. The framework legislation governing FDI consists of three laws. At the state level, the Law on the Policy of Foreign Direct Investment (LPFDI) is the overarching legal document.²² It provides foreign investors with the same rights as domestic ones and guarantees national (equal) treatment, protection against nationalisation/expropriation and the right to dispose of profits and transfer funds. Entities also have laws governing FDI: the Act on Foreign Investments in the Federation of BiH²³ and the Foreign Investments Act in the Republic of Srpska.²⁴

Thus, foreign investors are allowed to invest in any sector of the economy in the same form and under the same conditions as country’s residents. Exceptions include the defence industry and some areas of publishing and media, specifically public television

²⁰ Albanian Investment Development Agency, *Albanian Investment Development Agency (AIDA)*, <https://aida.gov.al/en/aida>.

²¹ Office of the High Representative, *Constitution of Bosnia and Herzegovina*, <https://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/001%20-%20Constitutions/BH/BH%20CONSTITUTION%20.pdf>.

²² Paragraf Lex - Database of Legislation, *Law on the Policy of Foreign Direct Investment* (Official Gazette of BiH No. 4/1998, 17/1998, 13/2003, 48/2010 and 22/2015), <https://www.paragraf.ba/propisi/bih/zakon-o-politici-direktnih-stranij-ulaganja-u-bosni-i-hercegovini.html>.

²³ *Law on Foreign Investments in the Federation of BiH* (Official Gazette of FBiH No. 61/2001, 50/2003 and 77/2015), available at <https://advokat-prnjavorac.com/zakoni/Zakon-o-stranim-ulaganjima-Federacije-BiH.pdf>.

²⁴ Paragraf Lex - Database of Legislation, *Law on Foreign Investments, Republic of Srpska* (Official Gazette of RS No. 21/2018), <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-stranim-ulaganjima.html>.

and radio services, where foreign ownership is restricted to 49%, and electric power transmission, which is closed to foreign investment altogether. Under this law, foreign investors can seek exceptions for some of these ownership restrictions, which must then be approved by the relevant (entity-level) government and minister.

Along the same line, LPFDI stipulates, in article 4, that foreign ownership of a business entity engaged in the production and sale of arms, ammunition, explosives for the military use, military equipment and media shall not exceed 49% of the equity. It also requires investors in this sector to receive prior approval from the competent body of the respective entity before initiating the investment. They are required to submit a request, and then the responsible institution is required to decide and inform the applicant of its decision within 30 days. If the decision is not made by this deadline, the FDI in question is considered approved unless such an institution has advised the applicant in writing of its decision to postpone the decision beyond the 30-day deadline. Then, if the institution does not make a decision within 30 days following the date of submission of the proper request for approval of the foreign investment, it shall notify the applicant of the request in the next 30 days. The decision with an explanation on the foreign investment concerned has to be adopted by the institution and submitted to the applicant no later than 60 days from the date of submission of the proper request. If such decision is not yet made within these 60 days, the FDI is considered approved. This implies how there is at least sufficient time – 60 days – to screen investments in question. It remains unclear whether the competent authority can intervene after this second deadline elapses. BiH does not screen investments on national security grounds unless there is “reasonable doubt” that said investment might pose a threat to the national security.

The current legal framework in BiH does not establish an FDI screening mechanism on grounds of national security or public order as required by the FDISR.

Policy and institutional framework: BiH has not yet reflected FDI screening in its policy framework relevant for trade. Domestic demand remains arguable at best; for instance, there has been no media reporting whatsoever on this important issue. In principle, one would expect that the EU would drive the demand, since under FDISR countries are to develop and adopt their FDI screening mechanisms. There is, however, no reference to the FDI screening in the latest (2024) EC country report for BiH.

Since it has not yet aligned its legislation with the FDISR and has yet to establish an FDI screening mechanism, it has not assigned this responsibility to any institution. However, it would belong to the Ministry of Foreign Trade and Economic Relations (MFTER),

respectively its Department of Foreign Trade Policy, Control and Safeguard Measures. This department is responsible for regulatory measures for the export and import of goods and services, export and import regimes for goods and services (permits, quotas, contingents, detachments, etc.), as well as regulatory and other activities related to various forms of economic cooperation with foreign partners. However, it lacks expertise, resources, and ultimately interest by decision makers that this should become a priority. In addition, the Department for Control of Foreign Trade in Strategic Goods is responsible for the control of foreign trade of goods that are of strategic importance for the security of BiH (weapons, military equipment, dual-use goods and special-purpose goods). MFTER is also responsible for negotiating trade agreements.

BiH also has its Foreign Investment Promotion Agency (FIPA)²⁵, established in 1998 and functioning as regulated by the Law on FIPA adopted in 2004 through a law. It maintains a list of laws, rules, procedures, and reporting requirements relevant to investors on its website: Other institutions that MFTER would need to cooperate with on FDI screening include the Ministry of Foreign Affairs, Ministry of Security, Ministry of Finance and Treasury and the BiH Central Bank, as well as, if necessary, with the State Investigation and Protection Agency. With better coordination, utilizing the resources of government bodies, security issues and threats that might arise as a result of FDI in critical infrastructure (energy, telecommunication, and health) could be mitigated. In obtaining the necessary know-how for FDI screening, BiH authorities have been supported by counterparts of Czechia, the EU MS that has transposed the FDISR in January 2021. Though BiH has not yet established an FDI screening mechanism and thus MFTER has not yet screened any FDI, it has a general intent to do so, as demonstrated by participation in roundtables organized by Centre for International Private Enterprise (CIPE).

Furthermore, BiH has a Competition Council, designed as an independent public institution responsible for enforcing anti-trust laws, preventing monopolies and enhancing private sector competition. It also reviews and approves FDI in cases of mergers and acquisitions of local companies by foreign ones. As a possible option, it could also initiate screening, but it has not done so thus far. However, it is questionable how efficient it would be given that its decisions are subject to an ethnic veto. At least one representative of each constituent people (Croat, Serb and Bosniak) must vote in favour of a decision for it to pass, which can significantly impede institution's functioning.

²⁵ Foreign Investment Promotion Agency of Bosnia and Hercegovina, *Law on FIPA*, https://www.fipa.gov.ba/o_fipa/zakon/default.aspx?id=285&langTag=en-US.

BiH is not a member of WTO. It is a member of the International Centre for the Settlement of Investment Disputes since 1997 and it accepts arbitration to settle private investment disputes, if parties have specified so in the contract.

Kosovo

Through its Constitution and a law governing FDI, Kosovo has established the constitutional basis for a free market economy that is open to FDI and the legal basis governing the latter. Its Ministry of Industry, Entrepreneurship and Trade (MIET) and the Kosovo Investment and Enterprise Support Agency (KIESA) are currently the two main institutions responsible for trade and FDI, respectively, while FDI related functions are gradually being transferred from KIESA to a new agency – Agency of Investments and Exports (AIE) – to be established within the Office of the Prime Minister (OPM). Kosovo has achieved a significant level of alignment of its framework legislation on FDI with the FDISR and it is working on the implementing legislation. The task ahead for Kosovo is to establish an FDI screening mechanism in line with this regulation, to adopt implementing legislation, as well as to assign institutional responsibilities to implement such a mechanism, and to commence implementation and enforcement. These results achieved by Kosovo show that political will is key to set up this mechanism.

Legal framework: The Constitution of the Republic of Kosovo establishes market economy based on free competition as one of the values of the state and the basis of its economic order. It also guarantees a legal environment that is favourable for a market economy and economic freedom and that safeguards private property, free and fair competition, equal legal rights for domestic and foreign investors and enterprises, as well as the right to foreign investors to legally and freely transfer their profit and invested capital out of the country.²⁶ Kosovo has also consolidated its legal framework to attract FDI and foster economic growth. Its legislation governing FDI treats foreign and domestic businesses equally, with no discriminatory licensing restrictions or joint venture requirements. Foreign entities face no barriers to establishing, acquiring, expanding or selling businesses.²⁷ The 2017 Law on Strategic Investments laid the foundation for incentivizing and facilitating strategic investments. Building upon it, the 2024 Law on Sustainable Investments (K/LSI), aims to promote, encourage and protect sustainable investments and identify priority sectors for development.²⁸ Its focus on sustainable investment demonstrates Kosovo's commitment to responsible economic growth.

²⁶ Official Gazette of the Republic of Kosovo, *Constitution of the Republic of Kosovo*, Art. 7, 10, 119, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=3702>.

²⁷ U.S. Department of State, *2024 Investment Climate Statements: Kosovo*, <https://www.state.gov/reports/2024-investment-climate-statements/kosovo/>

²⁸ Official Gazette of the Republic of Kosovo, *Law on Sustainable Investments*, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=96277>.

The K/LSI is partially aligned with the FDISR, thus establishing a national FDI screening mechanism on grounds of public order or national security, regulated in detail in chapter VII. It consists of the following aspects: determination of screening, circumstances and causes, procedure and deadlines, and screening decision. K/LSI establishes a comprehensive screening process, involving evaluation and investigation, potentially leading to authorisation, conditional approval, prohibition, or even the removal of an FDI. This process emphasizes compliance with legislation and measures against money laundering, terrorist financing and offshore investments, as well as adherence to international sanctions, while also requiring the protection of trade secrets in the process. Circumstances and causes triggering screening of an FDI include FDI in critical infrastructure, critical technologies (including dual-use goods), supply of essential goods, sensitive information and media freedom. It also specifies factors to be taken into account when assessing the potential impact on public order or national security, such as foreign government control or ownership of the investor, investor's past activities and the risk of illegal or criminal activities.²⁹

In terms of procedures and deadlines and institutional responsibilities in this regard, the power to initiate a screening is given to the AIE. The latter may initiate it at the request of an actual or potential investor (either a physical person or a legal entity); an interested party; the Investment Council of the Republic of Kosovo; the minister in charge of industry, entrepreneurship and trade or another relevant body, or *ex officio*. AIE is given up to sixty days to carry out screening and at the end of the process it is obliged to submit a recommendation to this effect to the Investment Council, the body mandated by this law to make the final screening decision. The AIE has three options, namely to either: (1) conclude that the FDI scanned does not violate public order or national security; (2) set appropriate conditions and deadlines to prevent or eliminate circumstances that threaten public order or national security; or (3) prohibit or order the removal of the FDI scanned in case it violates public order or national security.³⁰

The Investment Council is a collegial body established by K/LSI, consisting of seven members (the Prime Minister and six ministers), chaired by the PM. It has, among others, the power to request screening of FDI and to issue screening decisions. The FDI are also given the right to seek recourse against screening decisions, stipulating that complaints against such a decision have to be dealt with by the Complaints Panel, another body established by K/LSI and mandated to deal with all investor complaints, including against an FDI screening decision. K/LSI stipulates that this panel's five members have to be experts appointed by the Government for a term of four years. This panel is obliged to

²⁹ Ibid, Art 40-41.

³⁰ Ibid, Art. 42-43.

issue a recommendation on the complaint received and address it to the competent institution to make the respective decision. The last instance for dispute resolution are the courts in charge of commercial justice, while mediation and arbitration are also recognized by this law as dispute resolution mechanisms.³¹ This shows that Kosovo's approach to FDI screening balances the need for foreign investment with the protection of national interests, thus demonstrating its commitment to safeguarding its interests. Two draft-regulations on FDI screening have been finalized³² and are pending adoption.

This shows that *the current legal framework in Kosovo establishes an FDI screening mechanism on grounds of national security or public order as required by the FDISR, but implementing legislation is not yet adopted.*

Policy and institutional framework: While K/LSI formally establishes the Agency of Investments and Exports (AIE), a new agency responsible for FDI, in the OPM, the National Development Plan (NDP) 2024-2026 foresaw its operationalisation, though with no specific timeframe.³³ MIEST³⁴ is Kosovo's national institution in charge of trade, whereas KIESA³⁵ is currently the specialised agency in charge of FDI. As foreseen by the K/LSI, functions related to FDI will be transferred to the AIE as a specialised agency while KIESA will retain its enterprise support functions. AIE will also be responsible for screening of FDI, namely of investors and investment projects, and for coordination with relevant ministries and agencies on evaluation and verification processes.³⁶ To date, the AIE has not been established, nor has the FDI screening mechanism introduced by the K/LSI been established³⁷, and implementing legislation is also yet to be adopted. Designated as an executive agency under Prime Minister's oversight, AIE's structure and operation will be based on the legislation governing state administration and independent bodies. Its planned management structure includes an Executive Director and a Deputy Executive Director, senior-level civil servants governed by the Law on Public Officials.³⁸ Its internal organisation will be defined through a bylaw that is also yet to be developed and adopted.³⁹

³¹ Ibid, Art. 21-22, 45.

³² Interview with an official of KIESA, Pristina, January 2025.

³³ Office of the Prime Minister, Government of the Republic of Kosovo, *National Development Plan 2024-2026*, <https://kryeministri.rks-gov.net/wp-content/uploads/2023/03/06032023-RKS-Plani-Kombetar-per-Zhvillim-2023-2025.pdf>.

³⁴ Republic of Kosovo – Ministry of Industry, Entrepreneurship and Trade, *Ministry – Mission Statement*, <https://mint.rks-gov.net/page.aspx?id=2,78>.

³⁵ Republic of Kosovo – Kosovo Investment and Enterprise Support Agency, *About Us*, <https://kiesa.rks-gov.net/page.aspx?id=2,2>.

³⁶ *Law on Sustainable Investments*, Art. 19.

³⁷ Interview with an official of KIESA, Pristina, January 2025.

³⁸ *Law on Sustainable Investments*, Art 19.

³⁹ Interview with an official of KIESA, Pristina, January 2025.

The AIE may initiate screening upon request from a foreign investor, an interested party, the Council, the Minister, or another competent body, or ex officio. This broad scope of initiation ensures that potential risks are identified and addressed. The AIE is mandated to conduct the screening with the assistance of other competent bodies, with a 60-day timeframe for completion. Following the screening, it submits recommendations to the Council for a decision. This collaborative approach aims to ensure thorough and informed decision-making. The Council may authorize the investment, set conditions to mitigate risks, or prohibit it if it threatens public order or national security. The investor may either comply or request modifications. The AIE monitors compliance and submits reports to the Council, which may then adjust conditions, authorize the investment, or prohibit it if conditions are not met. Decisions under this Article are final administrative acts subject to legal challenge. There will also be an Appeals Panel reviewing complaints, hearing parties and issuing recommendations within 90 days. Public institutions must notify the Panel of their actions regarding the recommendation or their reasons for non-compliance. Investors retain the right to pursue other legal remedies.⁴⁰

Companies have expressed concern that the institutions responsible for investment promotion and facilitation have limited capacities to deliver essential services, hindering their ability to attract and support investors.⁴¹ This is due to insufficient staffing, a lack of expertise in key sectors, cumbersome bureaucratic procedures, inadequate communication and coordination, and a general lack of resources.⁴² Strengthening these institutions through capacity building, streamlining processes, and improving inter-agency cooperation is vital for fostering a more positive investment climate and realizing the full potential of foreign and domestic investment.

Montenegro

Montenegro has established the constitutional basis for a free market economy that is open to FDI and the legal basis on FDI through its Constitution and a law governing FDI. Importantly for an FDI friendly environment, it is also a WTO member. The Ministry of Economic Development is the national institution in charge of trade and FDI, while the Montenegro Investment Agency is the specialized institution on the latter. Montenegro has not yet adopted the legal framework on FDI screening in line with the FDISR. Therefore, it has yet to establish an FDI screening mechanism in line with it, to establish institutional responsibilities on it and to implement such a mechanism.

⁴⁰ Official Gazette of the Republic of Kosovo, *Law on Sustainable Investments*, Art. 42-44.

⁴¹ U.S. Department of State, *2024 Investment Climate Statements: Kosovo*, <https://www.state.gov/reports/2024-investment-climate-statements/kosovo/>.

⁴² European Commission, *Kosovo 2024 Report*, pg. 74, https://neighbourhood-enlargement.ec.europa.eu/document/download/c790738e-4cf6-4a43-a8a9-43c1b6f01e10_en?filename=Kosovo%20Report%202024.pdf.

Legal framework: The Constitution of Montenegro establishes that the country's economic system is based on a free and open market, and freedom of entrepreneurship and competition. It also guarantees the protection and equality of all forms of property.⁴³ The framework law governing FDI in Montenegro is the Law on Foreign Investments⁴⁴ (LFI). Some of its provisions include those setting out the principles (Art. 6), as well as those on FDI policies (Art. 14) and institutions (Art. 16). Other relevant laws include the Law on Investment Funds, Law on Capital Market and the Consumer Protection Law. Montenegro has been a WTO member since 29 April 2012.⁴⁵

The current legal framework in Montenegro does not establish an FDI screening mechanism on grounds of national security or public order as required by the FDISR.

However, it operates a sector-specific authorisation system covering the defence sector. Otherwise, FDI are allowed in most sectors without prior approval. As an aspiring EU MS, Montenegro is developing a screening mechanism for inbound foreign investments, with U.S. support. Exploratory efforts by government officials, including consultations with EU MSs on their national FDI screening procedures and organisation of informational training, have begun. Following a workshop held in September 2024, supported by the U.S. Department of Commerce, it was announced that further steps are underway to establish an investment screening mechanism in Montenegro through inter-agency cooperation. A law on strategic investments is also being prepared, and a public debate on it was held in December 2024.

Policy and institutional framework: The LFI foresees for Montenegro to have its investment strategy and a specialized FDI institution⁴⁶, which is the Montenegrin Investment Agency (MIA).⁴⁷ The central national institution in charge of trade and FDI is the Ministry of Economic Development (MED). It has the powers necessary to negotiate trade agreements and is also the authority in charge of the review and decision-making with regard to foreign investments. More specifically, the FDI screening mechanism could be put under the Directorate for Investments and Regional Development, working closely with the Directorate for Internal Market and Competition and the Directorate for International Cooperation and European Integration. On this MED would need to cooperate with a range of institutions: MIA, the Ministry of Finance, Office of the Prime

⁴³ Parliament of Montenegro, *The Constitution of Montenegro*, Art. 139, <https://api.skupstina.me/media/files/1708526717-constitution-of-montenegro.pdf>.

⁴⁴ Government of Montenegro, *Law on Foreign Investments*, <https://wapi.gov.me/download-preview/e0437b05-faa2-4b36-gae1-0504of6a7c6d?version=1.0>.

⁴⁵ World Trade Organisation, *Montenegro and the WTO*, https://www.wto.org/english/thewto_e/countries_e/montenegro_e.htm.

⁴⁶ Government of Montenegro, *Law on Foreign Investments*, Art. 14, 16.

⁴⁷ Montenegro Investment Agency, <https://mia.gov.me/en>.

Minister, Ministry of Foreign Affairs, Agency for National Security, Police Directorate, Special Prosecutor's Office and the National Assembly, as well as with the Development Bank of Montenegro and the Investment and Development Fund of Montenegro.

North Macedonia⁴⁸

North Macedonia has established the constitutional basis for a free market economy that is open to FDI: its Constitution guarantees the freedom of the market and entrepreneurship as a fundamental right. It has also established the legal basis governing FDI, with six laws regulating specific aspects on them. In addition, it is a WTO member, which also contributes to an FDI friendly environment in the country. The main national institution in charge of trade is the Ministry of Foreign Affairs and Foreign Trade, whereas the Agency for Foreign Investments and Export Promotion is the specialized institution for FDI. North Macedonia has not yet adopted the legal framework on FDI screening in line with the FDISR, but it has commenced the legal reforms towards this. Therefore, it needs to establish an FDI screening mechanism in line with it, to establish institutional responsibilities on it and to implement such a mechanism.

Legal framework: The Constitution of the Republic of North Macedonia enlists the freedom of the market and entrepreneurship as one of the fundamental rights guaranteed by it. It also stipulates that this right may be restricted by law only on grounds of state's defence and protection of the natural and living environment or public health. It also obliges the state to ensure an equal legal position for all entities in the market and to take measures against monopolies and monopolistic conduct in the market. On FDI specifically, the Constitution guarantees foreign investors the right to the free transfer of invested capital and profits, and prohibits the reduction by law or other regulations of the rights obtained on the basis of the capital invested.⁴⁹ This means that the Constitution provides for the free-market economy and it guarantees equal rights for both national and foreign persons and legal entities when conducting economic activities in the country, except as otherwise provided for by the law.

FDI in North Macedonia are regulated by several laws. In general, the Law on Trade⁵⁰ (LoT) regulates the policy area of trade, i.e. conditions and practices of conducting trade. On FDI specifically, pursuant to the Constitution, the Law on Trade Companies (LTC) prohibits rights acquired on the basis of contributions of foreign persons in a trade

⁴⁸ The authors would like to thank Vlatko Tokarev for his valuable insights in completing this chapter/section

⁴⁹ Assembly of the Republic of North Macedonia, *The Constitution of the Republic of North Macedonia*, Art. 55 and 59, https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.

⁵⁰ De Jure – The Platform of Legal Acts in RM, *Law on Trade* (in Macedonian and Albanian), <https://dejure.mk/zakon/zakon-za-trgovija>.

company to be constrained by law or any other regulation.⁵¹ The Law on Strategic Investments in the Republic of North Macedonia⁵² (NM/LSI) sets the criteria, conditions and procedure for application and determination of status, as well as for the selection, preparation and implementation of investment projects of the highest strategic priority for the country. This is based on principles of free movement of goods, services and capital, free competition and equal treatment, non-discrimination and transparency. It outlines thirteen sectors with priority for strategic investments: energy with infrastructure; transport and telecommunications; tourism; manufacturing industry; agriculture, forestry and water economy; food industry; health; industrial and technology parks; wastewater and waste management; information-technological zones; sports; science and education; and construction of large multifunctional building complexes covering more than one of the other areas.

North Macedonia also has its Law on Financial Support of Investments⁵³ (LFSI), under which the Government offers financial support for productive initial investments aimed at increasing economic competitiveness and employment. Another specialized law affecting FDI is the Law on Foreign Exchange Operations (LoFEO). It regulates the aspect of capital, stipulating, among others, that direct investments of non-residents in the country are free, unless otherwise stipulated by law. It requires residents receiving capital from non-residents, qualified as direct investments, to report transactions and modifications thereof, within 60 days in a Central Register.⁵⁴ The Law on Technological Industrial Development Zones (LTIDZ) aims to accelerate economic development by attracting foreign and domestic capital intended for development of new technologies and their application in the national economy, as well as to increase competitiveness and the level of employment.⁵⁵ A control mechanism for investments applies in this country in the defence sector, as foreseen by the Law on Development, Production and Trade of Military Goods. This law establishes the requirement to submit for approval, investments by a foreign legal entity into a company active in the development and production of military equipment.

⁵¹ De Jure – The Platform of Legal Acts in RM, *Law on Trade Companies*, Art. 31, <https://dejure.mk/pdfen/175114.pdf>.

⁵² De Jure – The Platform of Legal Acts in RM, *Law on Strategic Investments in the Republic of North Macedonia* (in Macedonian and Albanian), <https://dejure.mk/zakon/zakon-za-strateshki-investicii-vo-republika-severna-makedonija>.

⁵³ De Jure – The Platform of Legal Acts in RM, *Law on Financial Support of Investments* (in Macedonian and Albanian), <https://dejure.mk/zakon/zakon-za-finanzidzka-poddrzka-na-invedzicii>.

⁵⁴ Central Bank of the Republic of North Macedonia, *Law on Foreign Exchange Operations*, Art. 8, https://www.nbrm.mk/content/Law_on_Foreign_Exchange_Operations_unof_OVofRM_23_16.pdf.

⁵⁵ De Jure – The Platform of Legal Acts in RM, *Law on Technological Industrial Development Zones* (only available in Macedonian and Albanian), Art. 2, <https://dejure.mk/zakon/zakon-za-tehnoloski-industriski-razvojni-zoni>.

North Macedonia became a WTO member on 4 April 2003.⁵⁶ Since then, it has accepted and ratified two multilateral instruments: the Protocol Amending the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement (in 2010) and the Trade Facilitation Agreement Protocol (in 2015). It is also a party to the multilateral Civil Aircraft Agreement and, since October 2023, a party to the Government Procurement Agreement (GPA). It also participates in joint initiatives on E-commerce Moratorium; Fossil Fuel Subsidy Reform and on Trade and Environmental Sustainability. There are no specific provisions regarding restrictive measures.

From the review of the above, it can be concluded that *the current legal framework in North Macedonia does not establish an FDI screening mechanism on grounds of national security or public order as required by the FDISR.*

Policy and institutional framework: North Macedonia has committed to align its legislation with the EU acquis through its EU integration process. Although FDI screening is not mentioned in any public policy document, in the screening for the chapter 30 for negotiations it has committed to develop its national legislation on FDI screening, with a view to have a fully functional system on this by 2026.⁵⁷ To this end, the country plans to adopt new legislation on this by the end of 2025 and have a functional mechanism by 2026, while following closely EU developments on this. For such a purpose, an inter-institutional working group, chaired by the Ministry of European Affairs (MEA), has been established.⁵⁸

The main institution in charge of trade is the Ministry of Foreign Affairs and Foreign Trade (MFAFT)⁵⁹. Under the Law on Organization and Operation of State Administrative Bodies, MFAFT is responsible for foreign trade: to propose and implement measures on economic relations with foreign countries; to propose, create and implement the foreign trade policy; to conclude and monitor implementation of international trade agreements and arrangements; and to align regulations on foreign trade exchange with those of the EU, WTO and of other multilateral institutions and organisations and to implement them. LoFEO also mandates the Ministry of Economy (MoE) to regulate in detail the functioning

⁵⁶ World Trade Organisation, *North Macedonia and the WTO*, https://www.wto.org/english/thewto_e/countries_e/macedonia_e.htm.

⁵⁷ European Commission, *Screening Report – North Macedonia: Chapter 30 – External Relations*, pg. 6, https://enlargement.ec.europa.eu/document/download/e82f1c1e-6dc3-4b6e-9fef-21ee4b366e7c_en?filename=Screening%20report%20MK%20Cluster%206_FINAL%20TO%20MK%2018oct2024.pdf&prefLang=sl.

⁵⁸ MIA News Agency, *Minister Murtezani addresses constitutive session of working group on establishing the model of national screening mechanism for FDI*, <https://mia.mk/en/story/minister-murtezani-addresses-constitutive-session-of-working-group-on-establishing-model-for-national-screening-mechanism-for-fdis>.

⁵⁹ Ministry of Foreign Affairs and Foreign Trade of the Republic of North Macedonia, <https://mfa.gov.mk/en>.

of the capital flow registration mechanism and of the Central Register.⁶⁰ In addition, the specialized agency in charge of FDI in North Macedonia is the Agency for Foreign Investments and Export Promotion (AFIEP), established through a dedicated law.⁶¹ It is mandated to work directly with potential foreign investors, provide detailed explanations and guidance for registering a business in the country, and to produce analyses on potential industries and sectors for investing, share information on business regulations, and publish reports about the domestic market. It also manages an aftercare programme for investors.⁶² As regards the institution which could be mandated to take over the FDI screening mechanism in line with the FDISR, based on the current institutional setup this mandate belongs to the MFAFT and to the AFIEP as the two institutions in charge of trade and FDI. The former would be in charge of proposing and drafting legislation and the latter of implementation.

Serbia

Serbia has established the constitutional basis for a free market economy that is open to FDI, since its Constitution provides for an economic system based on free, open market. It has also established the legal basis governing FDI, mainly through the Law on Investments and implementing legislation. The main national institution in charge of trade is the Ministry of Domestic and Foreign Trade, while the Development Agency of Serbia is the specialized institution for FDI. Serbia has yet to adopt its legal framework on FDI screening in line with the FDISR. Therefore, it needs to establish the legal basis on an FDI screening mechanism in line with it, to establish institutional responsibilities on it and to implement such a mechanism.

Legal framework: The Constitution of the Republic of Serbia stipulates that the economic system in the country is based on free, open market, freedom of entrepreneurship, independence of economic entities and equality of private and other forms of ownership. It allows for the freedom of entrepreneurship to be restricted by law on grounds of public health, environmental protection and security, and prohibits the restriction of free competition and the abuse of monopolistic or dominant status in the market. Thirdly, it provides for equal rights for foreigners and nationals in the market,

⁶⁰ Central Bank of the Republic of North Macedonia, *Law on Foreign Exchange Operations*, Art. 8.

⁶¹ Agency for Foreign Investments and Export Promotion, *Law on Establishment of Agency for Foreign Investments and Export Promotion of the Republic of North Macedonia* (in Macedonian), <https://investnorthmacedonia.gov.mk/stored/2021/03/%D0%97%D0%B0%D0%BA%D0%BE%D0%BD-%D0%B7%D0%Bo-%D0%BE%D1%81%D0%BD%D0%BE%D0%B2%D0%B0%D1%9A%D0%B5-%D0%BD%D0%Bo-%D0%90%D0%A1%D0%98%D0%9F%D0%98%D0%A0%D0%9C-57-10.pdf>.

⁶² Agency for Foreign Investments and Export Promotion, *About Us*, <https://investnorthmacedonia.gov.mk/about>.

and prohibits the curtailment of rights gained through capital investments in accordance with law.⁶³

Serbia's principal law on FDI is the Law on Investments⁶⁴ (LoI), but it does not contain any provisions on FDI screening. Another relevant law is the Law on Foreign Exchange Operations⁶⁵ (LoFEO), which makes no reference to FDI screening, but it contains provisions on the control of bank transactions. In addition, in 2024 the Government of Serbia has adopted regulations listing companies it considers as strategically important, be it state-owned enterprise, majority-state owned or minority-state owned ones. Serbia has a traditional authorisation system in the defence sector, regulated by the Law on Production and Trade of Arms and Military Equipment.⁶⁶

FDI are regulated in more detail by two bylaws: Regulation on Conditions and Ways of Attracting Foreign Investments⁶⁷ and Instruction for Implementation of the Decision on the Obligation to Report on Doing Business with Abroad.⁶⁸ The Regulation establishes obligations to exercise control over an investment project in terms of its value and structure, as well as to provide employment to a specified number of individuals as the principal precondition to receive government subsidies and on salaries paid. To this end, the entity is obliged to provide access to all project documentation. Though it does not establish an FDI screening mechanism in line with the FDISR, this regulation does provide solid foundations to conduct FDI screening because of the nature of information it requires business entities to provide as part of an 'Investment Report'. The latter contains data on funds' beneficiary: name, contract, personal and tax identification numbers, investment's amounts and dynamics and the deadline for implementation of the investment project. The Instruction requires business entities considered residents to submit two quarterly reports (with balances and transactions): report on FDI by non-residents in the country and the report on FDI of residents abroad. Serbia is not a member of the WTO.

⁶³ Assembly of the Republic of Serbia, *Constitution of the Republic of Serbia*, Art. 82-84, http://www.parlament.gov.rs/upload/documents/Constitution_%20of_Serbia_pdf.pdf.

⁶⁴ Paragraf Lex - Database of Legislation, *Law on Investments* (Official Gazette of the Republic of Serbia No. 89/2015 and 95/2018), https://www.paragraf.rs/propisi/zakon_o_ulaganjima.html.

⁶⁵ National Bank of Serbia, *Law on Foreign Exchange Operations*, https://www.nbs.rs/export/sites/NBS_site/documents-eng/propisi/zakoni/law_foreign_exchange_operations.pdf.

⁶⁶ Paragraf Lex - Database of Legislation, *Law on Production and Trade of Arms and Military Equipment* (Official Gazette of the Republic of Serbia No. 36/2018), <https://www.paragraf.rs/propisi/zakon-o-proizvodnji-i-prometu-naoruzanja-i-vojne-opreme-republike-srbije.html>.

⁶⁷ Development Agency of Serbia, *Regulation on Conditions and Ways of Attracting Foreign Investments* (Official Gazette of the Republic of Serbia No. 110/2016), <https://iras.gov.rs/uploads/2017/05/Uredba%20o%20uslovima%20i%20nacinu%20oprivlacenja%20direktnih%20investicija.pdf>.

⁶⁸ Paragraf Lex - Database of Legislation, *Decision on the Obligation to Report on Doing Business with Abroad* (Official Gazette of the Republic of Serbia No. 87/09 and 40/15), <https://www.paragraf.rs/propisi/odluka-o-obavezi-izvestavanja-u-poslovanju-sa-inostranstvom.html>.

The current legal framework in Serbia does not establish an FDI screening mechanism on grounds of national security or public order as required by the FDISR.

Policy and institutional framework: FDI screening is not reflected in the country's policy framework. In practice, since Serbia has been experiencing strong FDI influx, the general tendency has been to lay as few obstacles as possible to potential investors. There has neither been any push by the EU to introduce FDI screening, as demonstrated by no reference to this in the EC's country report over the past five years since the introduction of the FDISR. However, it has expressed concerns on issues such as FDI as share of the GDP, relationship between FDI and growth and the use of government subsidies for newly created jobs as an incentive for FDI.

The Ministry of Domestic and Foreign Trade⁶⁹ (MDFT) is Serbia's central national institution in charge of trade as a policy area. It has the power to negotiate and conclude trade agreements and to monitor their implementation. Within MDFT, the function of FDI screening would fit either in the Sector for Multilateral Cooperation and Foreign Economic Policy or in the Sector for Bilateral Economic Cooperation. The Development Agency of Serbia (DAS) is the specialised agency for FDI, mandated to promote investment potential, support exports and foster market competitiveness⁷⁰, including by assessing the eligibility of FDI for governmental subsidies. The unit in charge of FDI screening would need to cooperate with the DAS and several other institutions: Ministry of Finance, Office of the Prime Minister, Ministry of Foreign Affairs, National Security Agency, Police, Special Prosecutor's Office, National Assembly, National Bank of Serbia and Development Fund of the Republic of Serbia.

The DAS conducts consultations, though it generally presents tax incentives and subsidies available to companies and can present an initial assessment of benefits for foreign investors investing in the country. Furthermore, under the Regulation on Criteria for Subsidies for Attracting FDI, foreign investors may submit a letter of intent with the prescribed information and the DAS shall issue a nonbinding notification on the possible subsidies for such investment. This only relates to benefits, as the DAS does not issue permits for foreign investment. On the latter, governmental bodies often provide informal non-binding guidance. A general rule under the Law on Public Administration is that natural and legal persons can request the issuance of an opinion by the body and that public institutions shall issue the response and a legally nonbinding opinion

⁶⁹ Ministry of Domestic and Foreign Trade, Powers of the ministry (in Serbian), <https://must.gov.rs/tekst/sr/399/nadleznosti-ministarstva.php>.

⁷⁰ Development Agency of Serbia, *Vision Statement*, <https://ras.gov.rs/en/about-us/vision-statement>.

interpreting the application of the law. However, due to the authority of the issuer, it can provide some legal certainty that the respective organisational units will follow.

The Ministry of Defence, in charge of the authorisation system in the defence sector, is mandated to oversee foreign trade and export-import control of weapons, military equipment and dual-use goods. It also receives opinions of relevant ministries and security services, and also analyses the impact of foreign investment on defence, the development of Serbia's defence technological and industrial base and its export potential, as well as on the protection of health and the environment, and national and public security, and prepares a decision accordingly. The final decision is taken by the Government.

Alignment of WB6 Countries with the EU FDI Screening Regulation: A Proposed Roadmap

As this policy brief has shown, all WB6 countries have so far developed some basis towards alignment with FDISR and establishing their national FDI screening mechanisms: from preparatory work to prioritisation in their negotiations with the EU, to adoption of legislation establishing such national mechanisms, in line with the FDISR. Based on the analysis of the FDI Screening Regulation and of the current situation in each WB6 country in relation to alignment with it, as well as on the related legal, policy and institutional frameworks in each of them, this policy brief proposes main reform activities for alignment with it and implementation and enforcement of the respective legislation.

To this end, the following reform priorities need to be pursued by each WB6 countries:

- They need to adopt national laws governing FDI screening, in line with the FDISR:
 - Albania has not yet aligned its framework legislation on FDI with the FDISR; a draft-law on FDI screening has been submitted to the parliament by an MP for consideration, but no further proceedings on it have yet been initiated;
 - Bosnia and Herzegovina has not aligned its framework legislation on FDI with the FDISR and has taken no steps towards this;
 - Kosovo has partially aligned its framework legislation, specifically its Law on Sustainable Investments, with the FDISR;
 - Montenegro has not aligned its framework legislation on FDI with the FDISR, but it has started preparatory work towards this;
 - North Macedonia has not yet aligned its framework legislation on FDI with the FDISR, but it has planned to do so by the end of this year;
 - Serbia has not yet aligned its framework legislation on FDI with the FDISR and has taken no steps towards this.
- They need to establish national FDI screening mechanisms by law:
 - Albania has not yet established its FDI screening mechanism by law, in line with the FDISR;
 - Bosnia and Herzegovina has not yet established its FDI screening mechanism by law, in line with the FDISR;

- Kosovo has established its FDI screening mechanism by its Law on Sustainable Investments, in line with the FDISR;
 - Montenegro has not yet established its FDI screening mechanism by law, in line with the FDISR;
 - North Macedonia has not yet established its FDI screening mechanism by law, in line with the FDISR;
 - Serbia has not yet established its FDI screening mechanism by law, in line with the FDISR.
- They need to adopt implementing legislation regulating the functioning of their national FDI screening mechanisms, in line with the FDISR:
- Albania has not yet adopted such legislation;
 - Bosnia and Herzegovina has not yet adopted such legislation;
 - Kosovo has prepared such legislation, but it has not yet adopted it;
 - Montenegro has not yet adopted such legislation;
 - North Macedonia has not yet adopted such legislation;
 - Serbia has not yet adopted such legislation.
- Each needs to include in its laws governing FDI screening provisions assigning legislative and policy making functions on its FDI screening mechanisms to its ministry in charge of trade and the implementation function on this to its agency in charge of investments, as well as to adopt implementing legislation providing for such functions. It is necessary to keep the function of FDI screening separate from that of making FDI screening decisions, namely to not grant the two to the same authority. Specifically, it would mean as follows:
- Albania to its Ministry of Economy, Culture and Innovation, respectively to the Albanian Investment Development Agency (through a law and implementing legislation);
 - Bosnia and Herzegovina to its Ministry of Foreign Trade and Economic Relations, respectively to its Foreign Investment Promotion Agency (through a law and implementing legislation);
 - Kosovo to its Ministry of Industry, Entrepreneurship and Trade, respectively to its Agency of Investments and Exports, foreseen to be established soon (through implementing legislation; the law is already in force);
 - Montenegro to its Ministry of Economic Development, respectively to the Montenegrin Investment Agency (through a law and implementing legislation);
 - North Macedonia to its Ministry of Foreign Affairs and Foreign Trade, respectively to its Agency for Foreign Investments and Export Promotion (through a law and implementing legislation);

- Serbia to its Ministry of Domestic and Foreign Trade, respectively to the Development Agency of Serbia (through a law and implementing legislation).
- They need to undertake capacity-building measures on FDI screening, based on the FDISR and EU standards and practices, for their ministries in charge of trade and agencies in charge of investments.
- After they are formally assigned the function of implementing respective national FDI screening mechanisms, agencies in charge of FDI in each country need to develop clear and publically available procedures for FDI screening, in line with the FDISR and EU best practices.
- In a gradual process of alignment until full compliance with the FDISR and EU standards and practices is reached hand in hand with their progress towards EU membership, the respective institutions in charge need to ensure that the national FDI screening mechanisms function in compliance with the following key principles by articulating them in respective legislation and institutional rules and practice:
 - FDI screening to be carried out on grounds of security and public order;
 - FDI screening to be based on, as risk factors, potential effects on:
 - Critical infrastructure;
 - Critical technologies and dual use items;
 - Supply of critical inputs, including energy or raw materials, and food security;
 - Access to sensitive information, including personal data, or the ability to control such information; and
 - Media freedom and pluralism;
 - FDI screening to be based on the following additional risk factors:
 - Whether the foreign investor is directly or indirectly controlled by the government, including state bodies or armed forces, of countries whose companies, as investors, are subject to FDI screening in line with the FDISR, including through ownership structure or significant funding;
 - Whether the respective foreign investors have already been involved in activities affecting security or public order in the country; or
 - Whether there is a serious risk that the foreign investor engages in illegal or criminal activities.
 - Such mechanisms in all of the WB6 to gradually move towards applying the same rules for EU MSs and the rest of WB6 countries;

- Rules and procedures to be transparent, and respective timeframes to be transparent and in line with FDISR;
- Confidential information, including commercially sensitive information, made available to the respective institutions, as well as personal data, to be protected in line with the EU acquis, standards and practices;
- Foreign investors and undertakings that are subject to screening to be granted the legal right to seek recourse against screening decisions;
- In order to ensure compliance with the FDISR and EU standards and practices, the respective agencies need to ensure that their national FDI screening mechanisms establish and operationalise the following key implementation and enforcement mechanisms:
 - Clear information requirements from FDI undergoing screening, and procedures and mechanisms to collect them; in line with the FDISR, such information need to include the following:
 - The ownership structure of the foreign investor and of the undertaking in which the FDI is planned or has been completed, including information on the ultimate investor and participation in the capital;
 - The approximate value of the FDI;
 - The products, services and business operations of the foreign investor and of the undertaking in which the FDI is planned or has been completed;
 - The country (including the rest of WB6 and EU MSs) in which the foreign investor and the undertaking in which the FDI is planned or has been completed conduct relevant business operations;
 - The funding of the investment and its source, on the basis of the best information available to country carrying out the screening; and
 - The date when the FDI is planned to be completed or has been completed.
 - Establish the function of carrying out screening decisions, which would be best suited to be given to government agencies in charge of investments;
 - Establish the function of taking FDI screening decisions at the end of an FDI screening process, which could be given to either collegial bodies in charge of FDI and/or those overseeing the agency in charge of FDI, or to the minister in charge of trade;
 - Measures necessary to identify and prevent circumvention of the screening mechanisms and screening decisions;

- Cooperation mechanisms with the rest of WB6 countries, EU MSs and the EC about both FDI undergoing screening and FDI not undergoing screening;
- Contact points in charge of their national FDI screening mechanisms, which will serve as single points of contact for this purpose, including for cooperation mechanisms with the rest of WB6 countries, EU MSs and the EC, as well as with other countries;
- Secure and encrypted IT systems for the exchange of information with other contact points in the rest of WB6 countries, EU MSs and the EC;
- Annual reporting on the functioning of national FDI screening mechanisms in compliance with the FDISR and EU standards and practices, as well as aggregate information on FDI screening;
- Regular evaluation of functioning of national FDI screening mechanisms;
- Appoint a group of three experts tasked to provide advice to the institutions in charge of the FDI screening mechanism and to network with counterparts from the rest of WB6 countries, EU MSs and the EC;
- The EC needs to start actively addressing the alignment of all WB6 countries with the FDISR and national FDI screening mechanisms in the accession negotiations and other relevant formal reform dialogue structures;
- The EC needs to start assessing the progress of all WB6 countries in terms of alignment with the FDISR and in relation to their FDI screening mechanisms in its annual Country Reports assessing their EU accession progress.

About the main authors



Armando Bode is a lawyer and policy expert with a decade of professional experience in the private sector, diplomatic missions and international organizations. He has ample experience in the areas of rule of law, sustainability, digitalization and economic development. For 7 years he has advised in key investments projects across the Western Balkans region and is currently assisting Albanian government in the EU integration process in addition to short-term consultancy and research projects. Armando studied law at the University of Tirana (2014) and obtained his LLM in International Commercial Law from the University of Westminster (2020). He has received scholarships from French and UK Governments and is fluent in Albanian, English and Italian.



Dr. Marko Savković is a Senior Advisor at the ISAC Fund with two decades of experience in civil society and development aid. His work focuses on Serbia's EU integration, regional relations, and foreign policy, particularly at the intersection of security, development, and democracy. He has held key roles in organizations such as UNDP Serbia, the Office of the Prime Minister (on depopulation policy), and the Westminster Foundation for Democracy. As Executive Director of the Belgrade Fund for Political Excellence (2015–2021), he led initiatives like the Belgrade Security Forum and the Regional Academy for Democracy. Previously, he was instrumental in establishing the Belgrade Centre for Security Policy (BCSP) as a leading think tank. Dr. Savković earned his PhD from the University of Belgrade, focusing on the privatization of peacebuilding. He has published widely, including Serbia's first "Dictionary of European Security," and contributes regularly to media outlets. He is an alumnus of the Belgrade Open School and the Bucerius Summer School on Global Governance, and has served on the Program Council of Serbia's National Academy for Public Administration.



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