



Position of the European Sea Ports Organisation
on the Commission's Call for Evidence
regarding the evaluation and revision of the EU framework for the screening
of foreign direct investments

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In light of the ongoing evaluation and revision of the Foreign Direct Investment (FDI) Screening Regulation, the European Sea Ports Organisation (ESPO) welcomes the opportunity to provide feedback and urges the Commission to take into account the following points:

1. **ESPO underlines the importance of safeguarding Europe's open investment environment.** The port sector is highly capital intensive. Over the last decades, ports have benefitted from substantial investment from outside the European Union, contributing to the development and competitiveness of Europe's ports. Only with sufficient investments – be it European or foreign – European ports will be able to retain their competitive position, to progress as fast as possible towards meeting the Green Deal ambitions and enhancing Europe's resilience. Ports in Europe have over the years also been attracting a variety of investors and operators in the port in line with European legislation¹. As such, while ESPO welcomes the European Union to take measures to strengthen the resilience and protection of Europe's critical infrastructure, the port sector believes that having an open and attractive investment environment should remain one of the basic principles of Europe's Trade policy.
2. **A harmonised approach towards screening of FDIs is needed across all EU Member States, to ensure a level playing field within Europe.** After two and a half years of full application of the FDI Screening Regulation, not all Member States have a national screening mechanism in place. Moreover, the national screening mechanisms that have been set up reveal deviating approaches towards screening FDIs, including in terms of definitions, scope and procedural aspects. Such differences among EU Member should be addressed when revising the EU framework, in order to ensure equal rules and measures apply throughout Europe. ESPO is therefore in favour of making the FDI mechanism mandatory in all Member States and believes certain aspects of the 2019 Directive, in particular the scope, could be further harmonised in view of having a level playing field between the different national mechanisms.
3. **A revised EU framework for screening FDIs should ensure that Europe's critical infrastructures are treated equally and are subject to the same set of rules.** The recently adopted Resilience of Critical Entities Directive (2022/2557/EU) designates European ports, along with other types of critical infrastructures including in the areas of transport, energy and digital infrastructure, as

¹ Including the Port Services Regulation ((EU) 2017/352).

“critical infrastructure”. ESPO highly welcomes this recognition of ports as being of vital importance to Europe’s society and economy. In order to ensure a level playing field and provide for legal certainty, ESPO believes it is of high importance that Europe adopts a coherent screening approach. Such approach should avoid an isolated regime for ports and should ensure that critical port infrastructure is subject to the same set of rules applicable to other critical infrastructures in Europe.

4. ESPO believes that **legal certainty, confidentiality and clear and consistent timeframes** are paramount in any screening mechanism, in order to ensure that Europe remains an attractive place to invest in ports and that those signals are clear to investors. Screening processes should be clear and objective on the basis of concrete and qualitative assessment criteria. Authorities should employ sufficient staff in order to allow for thorough but swiftly screening processes. Screening processes when ongoing should take place in a confidential manner.