

## **Position Paper on the Foreign Direct Investment (FDI) Screening Regulation**

Invest Europe is the world's largest association of private capital providers, representing Europe's private equity, venture capital, and infrastructure investment firms, as well as their investors. Our association has a global presence, with more than 650 members covering 57 countries, many of which operate across multiple European markets, playing a significant role in shaping the future of Europe's financial landscape.

Our members are quite familiar with the EU's FDI screening rules. The fragmented landscape across Member States creates challenges for PE/VC investors, who must navigate varying procedures and outcomes. While the European Commission's proposal seeks to address this, a patchwork of national regimes still risks deterring capital flows without delivering proportionate safeguards against foreign control.

### **The role of foreign capital in EU private markets**

Foreign capital plays a vital role in financing EU companies. Today, more foreign capital flows to EU venture funds than EU capital flows to non-EU funds. This demonstrates both the value of European businesses and a gap in domestic capital. Around 40% of capital in private markets originates outside the EU.

Foreign investors should not be discouraged from committing capital to European businesses through PE/VC funds. Current FDI regimes, designed to prevent foreign control of strategic assets, are less applicable to PE/VC structures. Investors in such funds do not exercise control over target companies; instead, they invest in the fund manager's capacity to identify and support businesses.

### **PE/VC investments and safeguards against foreign influence**

For instance, a non-EU pension fund investing in an EU VC fund cannot dictate the fund manager's investment decisions or influence the governance of portfolio companies. These investments occur via "blind pool" structures without knowledge of, or input into, specific target companies.

Control over portfolio companies lies solely with the European fund manager (General Partner/GP). The fund's investors (Limited Partners/LPs) do not have management authority and cannot access sensitive information. This model is well regulated under EU law, including the Alternative Investment Fund Managers Directive (AIFMD), which confirms that investors in collective investment undertakings have no discretion or control over day-to-day operations.

Investor protections and governance rights are defined in Limited Partnership Agreements (LPAs), which restrict LP involvement to non-intrusive roles, such as

receiving quarterly updates or participating in advisory boards. These do not translate into operational influence or control.

### **Implications for the FDI regulation**

Given that control is the cornerstone of FDI screening, there is no justification for subjecting passive LPs to notification or review. Where a European fund manager is investing on behalf of a fund domiciled and managed in the EU, that investment should be exempt from screening, regardless of LP origin.

Furthermore, where a European GP invests across Member States, and is regulated under EU law, such investments should likewise be exempt. This would reflect the economic reality of cross-border funds and avoid penalising intra-EU activity.

### **Exclude passive structures from the EU FDI regime**

Recent changes to FDI regimes can lead to overly broad screening that goes beyond national security concerns—and also include intra-EU investments. The EU should acknowledge the characteristics of PE/VC fund structures and ensure passive structures are not unduly captured. Instead of restricting capital based on origin alone, the focus should be on whether foreign investors can exert control.

Capturing investments at the fund level where no foreign control exists imposes unnecessary administrative and financial burdens and risks reducing capital flows into EU businesses. A more targeted approach would hold managers accountable for ensuring LPs do not influence portfolio companies, rather than penalising passive capital.

### **Invest Europe recommendations**

1. **Exclude passive fund structures from scope:** The Regulation should explicitly exclude investments made through EU-based GPs managing collective investment undertakings, where LPs hold no control or governance rights.
2. **Focus on actual foreign control:** Screening should target cases where a non-EU entity has direct or indirect control over the EU target, not where capital is passively committed.
3. **Promote greater harmonisation:** If full harmonisation of national regimes is not feasible, Member States should at least align key procedural elements—timelines, documentation, and definitions.
4. **Centralise elements of the screening process:** A centralised FDI notification mechanism could streamline multi-country transactions, reduce duplication, and enhance legal certainty.

### **Conclusion**

The EU's foreign investment screening framework must strike a balance between legitimate security concerns and the need to remain open to global capital. Recognising the unique structure of PE/VC funds—where non-EU investors have no control—is essential to avoid overreach. Exempting passive fund structures managed by EU-regulated entities will support growth, legal clarity, and investor confidence across the Single Market.

Additional reading:

- Invest Europe's [response](#) to the European Commission targeted consultation on the evaluation and review of the EU's FDI Screening
- Invest Europe's [detailed follow-up response](#) to the European Commission targeted consultation on the evaluation and review of the EU's FDI Screening
- Joint Business Coalition [Letter](#)