ECONOMIC SECURITY COUNCIL *of* UKRAINE

CIPE | CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE

FOREIGN INVESTMENT SCREENING IN UKRAINE

WHAT BUSINESS NEEDS TO KNOW

Kyiv

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ABOUT ESCU

The Economic Security Council of Ukraine (ESCU) is an independent organisation established in 2021 in Kyiv to counter external and internal threats to the national security of Ukraine and its partner countries.

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ABOUT THE STUDY

This project is supported by a Grant from the Center for International Private Enterprise in Washington, D.C. In preparing the study, the Economic Security Council of Ukraine drew on materials from its meetings with representatives of foreign screening authorities, Ukrainian and international businesses, and independent experts. National screening systems examined for the study included the United States, the United Kingdom, Germany, Sweden, Finland, Romania, Latvia, Japan, South Korea, and Taiwan.

This document also reflects the outcomes of meetings of the informal working group under the Verkhovna Rada Committee on Economic Development on revising the draft law on investment screening, in which the authors of this document participated. The authors sought to present the key information on investment screening in Ukraine in a concise manner. As a result, some information, including certain provisions of the draft law, falls outside the scope of this analysis. This document should therefore not be relied upon as a substitute for conducting an independent assessment.

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EXECUTIVE SUMMARY

Foreign investment screening in the Ukrainian context

- **Foreign investment screening** is a state procedure of obtaining information about foreign investors and foreign investments, analysing and assessing that information for actual or potential threats to national security and deciding how identified security risks should be eliminated or mitigated.
- Ukraine needs large-scale private foreign capital for recovery. In wartime conditions **investment in strategic sectors can create not only economic opportunities but also national security risks.** The state therefore needs a transparent mechanism that can distinguish bona fide investment from transactions carrying potential security risks.
- The central requirement for foreign investment screening legislation is **to balance national security interests with the need to attract investment.** Screening should not create significant administrative burdens for low-risk business activity.
- Foreign investment screening is only one element of the broader national economic security system, alongside competition law, sanctions policy, financial monitoring, and export control.

Ukraine's draft law on investment screening

- The current draft law **broadly reflects Ukraine's current economic and security context and draws on international best practice.**
- As of early June 2026, **the text of the draft law on foreign investment screening has been shared with key state authorities and international partners for review.** If the feedback is positive, the next step may be the registration of an updated draft law in the Verkhovna Rada.
- Under the draft, foreign investments would be screened across two levels of qualified activity: critical activity and activity of general interest. **Critical activity is defined as activity in the sector of defence-related goods, technologies, works, and services.** Activities of general interest include the operation of critical infrastructure, use of strategic and/or critical subsoil deposits, media, electronic communications and radio spectrum, and information protection services.
- The draft law provides for **three forms of screening:** authorisation-based, notification-based, and retrospective. **The authorisation procedure** applies to companies carrying out critical activity and takes place before the controlled transaction is completed. **The notification procedure** applies to less critical sectors and requires the investor to submit information no later than one month after the controlled transaction. **Retrospective screening** may be initiated by the competent authority after the controlled transaction where a national security threat is identified.
- The screening system is expected to comprise **three core institutions:** the Cabinet of Ministers of Ukraine, the competent authority — the Ministry of Economy — and the Commission on Foreign Investment Screening.
- The maximum duration of screening is **limited to 90 days**, or 45 days for trusted investors.

Key recommendations

- The key expert recommendations have been incorporated into the revised draft law, but there remains room for improvement. **Screening should cover critical dual-use items and technologies.**
- Other proposed changes include strengthening restrictions on investors linked to the aggressor state and the Republic of Belarus, removing penalties for minor procedural violations, and defining the concepts of economic and technological sovereignty.
- **Companies and business associations** should monitor the legislative process, engage in the development of secondary legislation, avoid links with sanctioned countries and persons, prepare information on beneficial owners and sources of funding in advance, and plan for screening timelines in sensitive sectors.
- **Potential areas of institutional support** include technical assistance for secondary legislation, independent expertise to shape screening practice, consultations with business and investors, public guidelines, analytical capacity-building for the competent authority, support for digital screening infrastructure, and independent monitoring and evaluation.

1. UKRAINE'S NEED FOR FOREIGN INVESTMENT SCREENING

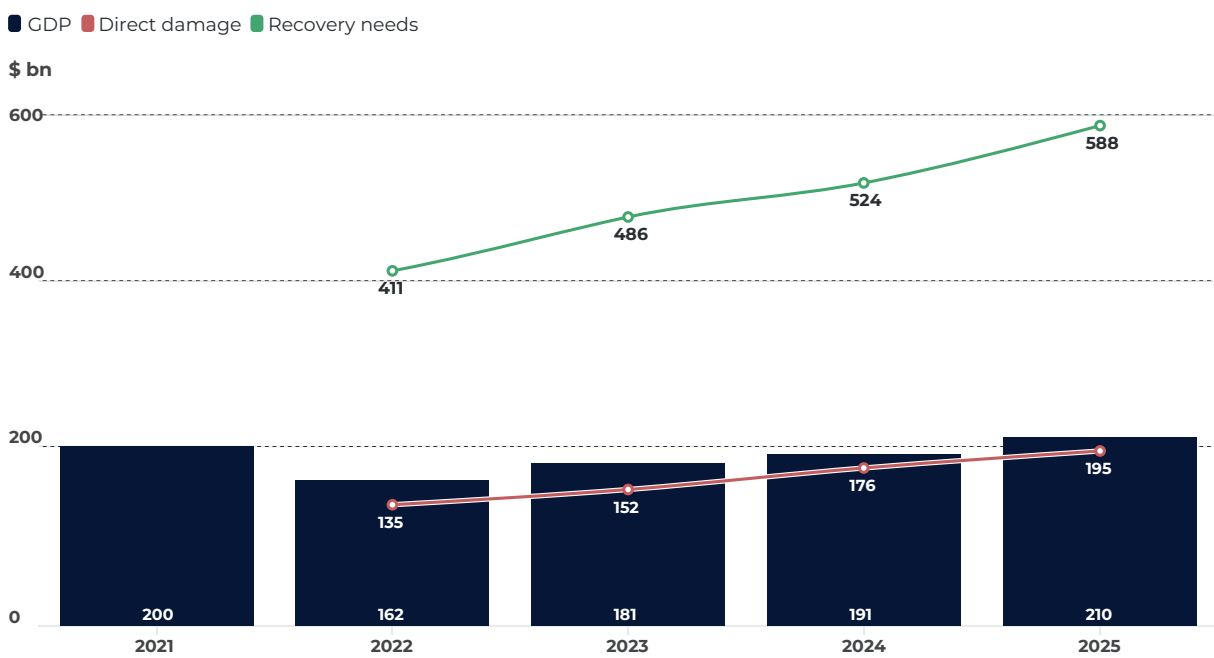
Ukraine needs large-scale private foreign capital to support recovery, industrial modernisation, and economic resilience. At the same time, investment in strategic sectors can create not only economic opportunities but also national security risks. The state therefore needs a transparent mechanism that can distinguish bona fide investment from transactions carrying potential security risks.

War and the scale of recovery needs

Since 2014, Ukraine has lived with the occupation of Crimea and parts of the Donetsk and Luhansk regions. Since February 2022, it has been resisting Russia's full-scale invasion. Hostilities continue, and the negotiation track gives no reason to treat the end of the war as a short-term precondition for recovery. In these circumstances, the state must not only attract capital for reconstruction, but also assess investment in sectors where access to assets, technologies, data, or infrastructure may create national security risks.

According to RDNA5, Ukraine's recovery and reconstruction needs over the next decade are estimated at approximately USD 588 billion, while direct war-related damage amounts to USD 195 billion.[1] This scale cannot be covered by budget resources, grants, or partner loans alone. For comparison, Ukraine's largest annual volume of foreign direct investment was recorded in 2008 and amounted to USD 11 billion. A further constraint is the dependence on external assistance and the growing share of loan financing. Private foreign investment must therefore complement official support: it can bring not only capital, but also technology, management expertise, localised production, and access to global supply chains.

Recovery needs are nearly three times greater than Ukraine's GDP in 2025



[1] https://documents1.worldbank.org/curated/en/099022026094036395/pdf/P514499-22f93f3a-4278-42bc-b907-db9553d12069.pdf

Private capital in strategic sectors: opportunities and risks

The need for private capital is particularly sensitive in sectors that combine reconstruction relevance with security significance. RDNA5 identifies the largest needs, among others, in housing, transport, energy, commerce, and industry, while the investment portal of the Ministry of Economy, Environment and Agriculture of Ukraine highlights the potential of energy, construction, transport and logistics, strategic minerals, and healthcare.[2] This group also includes the defence industry, high technologies, telecommunications, and critical infrastructure, where access by a foreign investor may also mean access to critical data, technologies, production processes, or infrastructure functions.

The risk does not lie in foreign capital as such. The risk is that certain investments may have a destructive rather than commercial logic from the outset. By acquiring a stake, establishing control, or exerting corporate influence, hostile actors may gain leverage over enterprises that are important for Ukraine's defence capability and economic resilience. In wartime, such investments may be used to circumvent sanctions, enable sabotage, support intelligence activity, facilitate technology leakage, or establish hidden control over strategic assets.

This is especially relevant for the defence-industrial complex. The sector requires foreign capital to scale production, support innovation, and build joint production capacity with international companies. Concurrently, it concentrates technologies, data, production processes, and intellectual property that are of interest to Russia and other hostile actors. The state's response should therefore not be to close strategic sectors to investment, but to create a transparent mechanism that distinguishes bona fide investment from transactions carrying potential security risks.

FDI screening as part of the economic security system

The spread of FDI screening is part of the global strengthening of economic security systems. The United States, the European Union, the United Kingdom, Japan, and other Ukrainian partners increasingly view foreign investment in strategic sectors not only as a development factor, but also as a potential security risk. At the same time, screening should not replace other economic and national security tools. Its role is to provide a preventive assessment of investment transactions before, or shortly after, an investor obtains access to a strategic asset. Unlike sanctions, criminal enforcement, competition review, or financial monitoring, screening assesses the potential national security consequences of access to assets, technologies, data, infrastructure, or managerial control.

Ukraine's screening system should also be compatible with the economic security architecture of its key partners. The 2021 U.S.-Ukraine Charter on Strategic Partnership and the 2025 agreement establishing the U.S.-Ukraine Reconstruction Investment Fund connect security, critical raw materials, investment, and long-term economic cooperation.[3] The European Union has already created a coordination framework for foreign investment screening and is moving toward stronger common requirements for screening transactions in sensitive sectors.[4] Ukraine's model, even without a direct obligation to align with EU regulations, should from the outset be transparent, proportionate, non-discriminatory, and capable of intergovernmental information exchange.

[2] https://investportalua.com/ua/

[3] https://zakon.rada.gov.ua/laws/show/840_001-25

[4] https://www.europarl.europa.eu/news/en/press-room/20260513IPR43304/protecting-eu-strategic-sectors-from-risky-foreign-investments

Table 1. Key mechanisms for economic security in Ukraine

Institution	Main focus	Limitation
Antimonopoly Committee of Ukraine	Protection of competition and prevention of monopolisation	Does not assess the full spectrum of security risks arising from investor access to a strategic asset
National Security and Defence Council of Ukraine	Sanctions decisions in relation to identified threats	Mostly responds to known threats rather than screening an investment before it is made
State Financial Monitoring Service/National Bank of Ukraine	Monitoring suspicious financial transactions and analysing the origin of funds	Does not assess the strategic consequences of acquiring control over an asset
State Service of Export Control of Ukraine	Control over the transfer abroad of military and dual-use items	Does not cover acquisition of control over a Ukrainian enterprise by a foreign investor
Security Service of Ukraine	Protection of state sovereignty and economic potential from national	Provides a security assessment, but is not a procedure for authorising or prohibiting
Sectoral regulators	Regulation of access to specific markets or activities	Do not provide a comprehensive cross-sectoral assessment of transaction-related security risks
Ministry of Justice/High Anti-Corruption Court	Removal of risky control over an asset after it has been acquired	Do not prevent the entry of risky capital at the transaction stage

Ukraine's need for FDI screening stems from the intersection of three factors: the scale of its need for private foreign capital, the security sensitivity of recovery sectors, and integration into the international economic security architecture. An effective system should not deter investment. It should increase confidence in the Ukrainian market, reduce the space for arbitrary decision-making, and protect strategic assets while keeping Ukraine open to international capital.

2. DEVELOPING A FOREIGN INVESTMENT SCREENING SYSTEM IN UKRAINE

Before turning to Ukrainian legislative initiatives, it is useful to briefly outline the broader European context.

In the European Union, the framework instrument for foreign investment screening is Regulation (EU) 2019/452, which, among other things, established coordination between Member States and the European Commission.[5] In May 2026, the European Parliament approved a draft revised regulation under procedure 2024/0017/COD, aimed at mandatory screening of investments in sensitive sectors, including defence, semiconductors, artificial intelligence, critical raw materials, and financial services. The revised framework strengthens coordination among Member States and covers certain intra-EU transactions where the ultimate owner originates outside the EU. In early June, the new rules were approved by the Council of the EU and will start applying 18 months after the regulation enters into force.[6] Ukraine's model should reflect both Regulation 2019/452 and the updated European framework on critical technologies, strategic sectors, and cross-border information exchange.

On 11 August 2021, Ukraine approved its Economic Security Strategy for the period up to 2025. The Strategy identifies the absence of a mechanism for assessing, or screening, foreign direct investments in objects of strategic importance for Ukraine's national security as one of the main threats in investment and innovation security.[7]

[5] https://eur-lex.europa.eu/eli/reg/2019/452/oj/eng

[6] https://www.consilium.europa.eu/en/press/press-releases/2026/06/09/foreign-investment-screening-council-signs-off-on-updated-framework/

[7] https://bit.ly/ukraine-investment-screening;
https://zakon.rada.gov.ua/laws/show/347/2021#n11;

In the Joint Statement on the U.S.-Ukraine Strategic Partnership of 1 September 2021, Ukraine expressly committed to adopting legislation that would establish a robust investment screening process.[8] Shortly thereafter, the Cabinet of Ministers submitted Draft Law No. 5011, "On Foreign Investments in Business Entities of Strategic Importance for the National Security of Ukraine," to the Verkhovna Rada.[9] It was registered and included on the agenda, but was ultimately withdrawn after the relevant committee recommended its fundamental revision.

Russia's full-scale invasion in 2022 delayed a return to FDI screening for several years. In 2025, two draft laws - No. 14062 and No. 14062-1 - were registered in the Verkhovna Rada, each proposing different models for FDI screening.[10] The first envisaged a commission under the Ministry of Economy and a defined list of sectors. The second gave the Antimonopoly Committee of Ukraine a leading role, placed final decisions with the Cabinet of Ministers in complex cases, and left sectoral coverage to later government determination. According to the CELIS Institute, both drafts contained significant gaps compared with EU and OECD standards.[11] The emergence of two parallel initiatives demonstrated renewed political attention to the issue but also revealed the absence of an agreed vision of the future system.

This led to the creation of an informal working group under the parliamentary Committee on Economic Development, bringing together members of parliament, legal advisers, experts, and representatives of civil society. During its work, participants developed a concept and prepared a separate draft law on FDI screening that incorporates expert recommendations.

As of early June 2026, the revised draft law, prepared with expert input, has been circulated for review to key state authorities and international partners. If positive feedback is received, the next expected step is registration of the revised draft law in the Verkhovna Rada and its consideration by the parliamentary Committee on Economic Development.

At the same time, the government has adopted an interim solution while the legislative mechanism is being developed. In January 2026, the Cabinet of Ministers established the Interagency Commission on Foreign Direct Investment Screening[12] as a temporary advisory body.[13] Its tasks include coordinating state authorities in assessing the impact of foreign investment on national security, analysing completed or planned investments in strategic entities, supporting international cooperation, and preparing recommendations on screening regulation. This arrangement can help the state respond to specific investment cases, but it does not replace a full screening mechanism. The Commission's proposals can be implemented only through a separate Cabinet of Ministers decision. In the first months after its establishment, no public information was available about the Commission's activities or its review of applications for the acquisition of Ukrainian assets.

The closest functional analogue to some elements of investment screening exists in Ukraine's banking sector: approval by the National Bank of Ukraine for the acquisition

[8] https://www.president.gov.ua/en/news/spilna-zayava-shodo-strategichnogo-partnerstva-ukrayini-ta-s-70485

[9] https://itd.rada.gov.ua/billinfo/Bills/Card/25437

[10] https://itd.rada.gov.ua/billinfo/Bills/Card/57344
https://itd.rada.gov.ua/billinfo/Bills/Card/57597;

[11] https://www.celis.institute/posts-celis-2019/the-horizon-of-investment-screening-in-ukraine/

[12] This temporary Interagency Commission should be distinguished from the Commission on Foreign Investment Screening envisaged by the draft law, which would operate as part of the permanent screening mechanism after the law enters into force.

[13] https://zakon.rada.gov.ua/laws/show/97-2026-%D0%BF#Text

of a qualifying holding is a key stage in transactions involving Ukrainian banks. The main legal acts regulating such approvals are the Law of Ukraine "On Banks and Banking Activity"[14] and the Regulation on Bank Licensing, approved by NBU Board Resolution No. 149 of 22 December 2018. [15]

Another form of investor review exists in the context of public-private partnership qualification requirements. In Ukraine, such review may take place under the Law of Ukraine "On Concession," which provides for a preliminary selection, or prequalification, stage. At this stage, participants may be subject to qualification requirements covering, among other things, ownership structure, business reputation, and compliance with legal requirements, including restrictions on links with the aggressor state or sanctioned persons.[16]

3. KEY PROVISIONS OF THE CURRENT DRAFT LAW

NOTE: The approaches described below reflect the working version of the draft law as of early June 2026, which the relevant parliamentary committee circulated to key state authorities and international partners for review. The version eventually registered in parliament may differ from the current version.

3.1. Competent authority

The draft law establishes an FDI screening system built around three elements: the Cabinet of Ministers of Ukraine, the competent authority — the Ministry of Economy — and the Commission on Foreign Investment Screening as a consultative and advisory body.

Most operational functions are assigned to the Ministry of Economy. The Cabinet of Ministers approves key secondary legislation and adopts decisions prohibiting controlled foreign transactions.

The Commission on Foreign Investment Screening includes representatives of the Ministry of Economy, the Ministry of Defence, the Security Service of Ukraine, the Foreign Intelligence Service, and the parliamentary Committee on Economic Development.

3.2. Sectors

For FDI screening purposes, the draft law distinguishes between two levels of qualified activity: critical activity and activity of general interest.

Critical activity includes:

- development, production, construction, assembly, testing, repair, maintenance, modification, modernisation, operation, management, demilitarisation, destruction, sale, storage, detection, identification, acquisition, or use of defence-related goods;
- development, storage, use, or dissemination of military technologies;
- provision of defence-related services;
- performance of defence-related works.

[14] https://zakon.rada.gov.ua/laws/show/2121-14#Text
[15] https://zakon.rada.gov.ua/laws/show/v0149500-18#Text
[16] https://zakon.rada.gov.ua/laws/show/en-sk/155-20/ed20251031

During the development of the draft law, the production and sale of dual-use items were considered as activities requiring screening, but this provision was not included in the current version. The reason is broadly understandable: the nomenclature of such goods is very extensive. At the same time, a complete exclusion of dual-use items from screening may create material security risks. A compromise could be to apply screening only to producers of critical dual-use items, with the relevant list to be defined by the government.

The draft allows the Cabinet of Ministers to establish clarifying requirements, conditions, and exemptions for classifying activities as critical, taking into account the importance of such activities for national defence capability and technological sovereignty.

Activities of general interest include:

- operation of category I and II critical infrastructure facilities;
- use of subsoil plots or mineral deposits of strategic and/or critical importance;
- activities in the fields of electronic communications and radio spectrum;
- licensed services in cryptographic and technical protection of information;
- media activities.

3.3. Forms of screening

The draft law provides for three forms of screening: authorisation-based screening, notification-based screening, and retrospective screening.

Authorisation procedure applies only to companies carrying out critical activity and is initiated by an application from the foreign investor. It takes place before the controlled transaction is completed.

For activities of general interest, **notification procedure** applies. It requires the investor to provide information no later than one month after the controlled transaction.

Retrospective screening may be initiated by the competent authority after the controlled transaction if false information was provided, mandatory screening was evaded, previously imposed conditions for transaction approval were not complied with, or the investor's ownership structure or activities changed in a way that affects national security.

The state may initiate retrospective screening within one, three, or five years of the transaction, depending on the grounds.

To reduce business risks, the draft provides for preliminary opinions, allowing an investor to obtain an official explanation before the transaction as to whether screening is required.

The draft also provides for an accelerated screening procedure – 45 days instead of 90 days – for trusted investors whose transactions have previously been approved or verified by the competent authority without prohibitions or additional conditions.

A foreign investor must apply for approval under the authorisation procedure or submit a notice of a completed transaction under the notification procedure. The investor may act personally or through an authorised representative, provided that a power of attorney or other document confirming authority is submitted.

The competent authority may request necessary information from both the foreign

investor and the transaction target. Consultations with both parties are envisaged during screening to establish all relevant circumstances of the transaction.

3.4. Minimum monetary transaction threshold

The draft law does not establish a minimum monetary threshold for initiating screening. Instead of financial thresholds, it uses the following criteria: the status of the foreign investor, the activity of the target, and the nature of the transaction. This is broadly consistent with practice in EU countries.

3.5. Types of transactions

Foreign investment screening applies to controlled foreign transactions, the exhaustive list of which is defined by the draft law.

A controlled foreign transaction must meet three cumulative conditions:

- the presence of a foreign investor;
- the investment target carries out qualified activity;
- the existence of a qualified transaction.

Qualified transactions include:

- the establishment by several companies of a new company that plans to carry out qualified activity, where at least one founder is a foreign investor;
- transactions that result in the acquisition or attainment of a qualifying holding in a business entity;
- transactions that result in the acquisition of control over companies, their parts, or other assets.

The draft law establishes the same criteria for greenfield and brownfield investments.

The draft also details the criterion of decisive influence, which may be exercised not only through ownership of more than 50% of shares, but also through the right to issue binding instructions, determine the conditions of business activity, or form management bodies. A notable procedural feature is that decisions of Ukrainian or foreign courts or arbitral tribunals are treated as qualified transactions if they result in a change of owner of strategic assets.

3.6. Review period

Under the Ukrainian draft law, the overall period for authorisation procedure is limited to 90 calendar days from the opening of the procedure. This is consistent with international practice: in the jurisdictions examined, screening timelines range from 45-90 days in Finland to 180-300 days in Germany.[17]

If no decision is adopted within 90 days, the investment is deemed approved automatically. This creates certainty for investors and gives the competent authority an incentive to comply with statutory deadlines. At the initial stage, the competent authority has up to 10 calendar days from the application date to check whether the application is complete and, if so, open the screening procedure.

[17] National screening systems examined for the study included the United States, the United Kingdom, Germany, Sweden, Finland, Romania, Latvia, Japan, South Korea, and Taiwan.

The review process is divided into stages. The competent authority must inform the applicant of identified security risks no later than 50 days after the screening procedure is opened. The investor then has 10 days to develop a mitigation plan. The procedure involving the consultative Commission must begin no later than day 65, and the Commission's opinion must be ready by day 80.

For activities of general interest subject to notification procedure, the review period is 30 days. For trusted investors or companies listed on specified foreign exchanges, an accelerated authorisation procedure is available, with a maximum duration of 45 days.

A key feature of the current draft is the possibility for an investor to obtain a preliminary opinion on whether a planned or completed transaction meets the criteria of a controlled foreign transaction. The opinion is provided within 10 calendar days of registration of the investor's request by the competent authority. It sets out the substance of the transaction and whether the statutory conditions of a controlled foreign transaction are present.

The approach proposed by the Verkhovna Rada Committee on Economic Development is consistent with international practice because it establishes clear timelines, provides separate regimes for different types of transactions, and includes automatic approval in case of inaction by the authority. At the same time, the Ukrainian model does not separately divide authorisation procedure into an initial review and an in-depth investigation f an approach used in some jurisdictions and envisaged under the updated EU screening framework.[18]

3.7. Restrictions on corrosive capital

The strictest investment restrictions apply to citizens and legal entities of the aggressor state – the Russian Federation – as well as to states subject to sanctions imposed by Ukraine or an international organisation of which Ukraine is a member. In addition, a foreign investor may not conduct activities in cooperation with Russia or local occupation authorities.

In such cases, the Cabinet of Ministers adopts a decision unconditionally prohibiting the investment. Exceptions are envisaged for individuals lawfully present in Ukraine, as well as for the acquisition of insignificant holdings: less than 10% of the capital of companies engaged in critical activity and less than 25% of a company carrying out activity of general interest.

3.8. Fees and fines

The Ukrainian draft law does not provide for fees for screening; screening is to be funded by the state.

The system of fines is differentiated and imposes liability on the foreign investor proportionate to its income. For the most serious violations, including completing a transaction in the defence sector without screening or contrary to a prohibition decision, the fine may reach 5% of the business entity's annual income for the previous reporting year. For a transaction completed without the mandatory notification procedure, the threshold is 3%.

A separate fine applies to the provision of false information that materially influenced the final decision on transaction approval. In that case, the fine may be up to 10% of the amount

[18] https://policy.trade.ec.europa.eu/enforcement-and-protection/investment-screening_en

of the foreign investment. Where the investor does not provide information about its income or such income cannot otherwise be established, fixed fines ranging from 50,000 to 100,000 non-taxable minimum incomes of citizens apply[19] (approximately USD 19,200-38,400 as of June 2026). Joint and several liability is also introduced for groups of companies.

Overall, Ukraine's approach to fees and fines is consistent with international practice: the procedure does not include an application fee, while liability for violations is built mainly around proportional fines tied to the investor's income or the value of the investment. At the same time, for jurisdictions seeking to maximise foreign capital inflows, excessive fines for minor procedural violations may discourage investment activity.

3.9. Transparency of the process

Under the draft law, the review of investment cases is largely confidential. Meetings of the Commission on Foreign Investment Screening are divided into open and closed parts. The open part may include representatives of state authorities competent in the matters under review, invited experts for specialised consultations, and the foreign investor personally and/or through a representative. The final discussion and adoption of the Commission's opinion take place in closed session.

All Commission members and officials of the competent authority must comply with confidentiality obligations regarding information obtained in the course of their duties and are liable for breaches of information protection rules.

The official website of the competent authority should publish annual information on the state of affairs in screening and information on trusted investors. Two years after the law enters into force, the Cabinet of Ministers must provide the Verkhovna Rada with detailed information on the state of its implementation.

3.10. Methodological support, consultative engagement and reporting

The draft law empowers the competent authority to provide advisory explanations, prepare generalised responses on practical procedural issues, and disseminate global best practice. In addition to pre-procedure requests, the draft provides for interaction during the review itself, including the mandatory hearing of the investor's arguments in retrospective screening.

3.11. Screening of reorganisations and intra-group transactions

The draft law provides a general exemption from screening for controlled transactions between business entities already linked by control. Intragroup transactions or corporate reorganisations that do not change the ultimate beneficial owner or control relationships would not require repeated state review. This exemption does not apply where the relevant rights or assets were previously acquired through a transaction that should have been screened but was completed in violation of that requirement.

Screening may still be required within the same group if the quality of the foreign investor's control over a strategic object changes. This parameter will be assessed based on the characteristics of controlling persons and changes in the form of influence itself, such as a shift from sole to collegial control or a substantial transformation in the nature of decisive influence over the enterprise.

[19] The non-taxable minimum income of citizens is a legacy legal term that no longer reflects its original meaning and is currently used as a base amount of UAH 17 (approximately USD 0.384).

3.12. Conditional approval of a transaction

Conditional approval allows the state to approve a transaction provided that the investor fulfils certain obligations, or mitigation measures. Such a mechanism exists in all national FDI screening systems examined for this paper.[20]

The Ukrainian draft law likewise allows for controlled foreign transactions to be approved subject to conditions as an alternative to prohibition. All restrictions and requirements are recorded directly in the decision of the competent authority and become binding on the investor.

This mechanism does not apply to investments that meet unconditional refusal criteria; such transactions must be prohibited.

The draft law provides that conditions for approval must be proportionate, directly linked to the identified threat, and the least burdensome among effective measures. The investor has the right, within 10 calendar days after being notified of security risks, to propose mitigation measures to the competent authority. If the transaction is approved, the investor must regularly report to the competent authority on the implementation of such measures within the deadlines set by the decision.

3.13. Forced divestment

Rights and assets acquired as a result of a prohibited transaction are subject to divestment. In such cases, the investor has six months to dispose of them. If the investor fails to comply, the rights and assets acquired are subject to forced sale.

If the six-month period is insufficient, the investor may transfer the rights and assets under a property management agreement or a trust ownership arrangement with an unrelated person. In that case, the manager or trustee must dispose of the rights and assets within three years from the date of the investment prohibition.

3.14. Appeals

The draft law guarantees foreign investors the right to judicial protection of their rights, freedoms, and legitimate interests. Any decision, action, or omission of the competent authority or the Cabinet of Ministers adopted in connection with the law may be challenged in administrative court. The limitation period is three months from the date on which the person learned or should have learned of the violation of its rights.

The draft law provides for the involvement of the High Anti-Corruption Court in cases concerning forced divestment. Such claims are heard by a panel of three judges within 60 days of receipt of the claim. A first-instance decision may be appealed to the Appeals Chamber of the High Anti-Corruption Court within 15 days. The appellate decision enters into force immediately and is not subject to further cassation appeal.

[20] National screening systems examined for the study included the United States, the United Kingdom, Germany, Sweden, Finland, Romania, Latvia, Japan, South Korea, and Taiwan.

4. PRINCIPLES OF A FOREIGN INVESTMENT SCREENING SYSTEM

The effectiveness of screening will depend on whether the legislative framework becomes a predictable, proportionate, and understandable decision-making mechanism for investors. Because the presence of a principle in the law does not always guarantee its practical implementation, the principles below are grouped by level of readiness: five are fully reflected in the draft law, while twelve are partially reflected and/or require further regulatory detail or assessment after the system is launched.

Principles fully reflected in the draft law

1. **Proportionality of response measures to the level of risk.** The draft law integrates this principle through proportionality, differentiated procedures for authorisation-based, notification-based, and retrospective screening, and the possibility of conditional approval. Additional conditions must be linked to identified risks and must not impose excessive burdens on the investor.

2. **Coordination of screening with other authorisation procedures.** The draft allows screening to proceed in parallel with other authorisation procedures, including competition review. It expressly provides that screening requirements are not grounds for the Antimonopoly Committee to refuse to accept an application or to issue a less favourable decision. During implementation, coordination should focus on aligning timelines and avoiding mutual blocking of procedures. Lists of sectors, goods, works, and services subject to screening should also be harmonised, though not identical, with export-control lists.

3. **Openness in the development of foreign investment screening legislation** was ensured during the preparation of the draft law through the establishment of a working group by the parliamentary committee, which included, among others, independent experts and representatives of civil society. The draft law further embeds this approach by empowering the competent authority to engage with the public, business representatives, and other stakeholders on improving the screening mechanism.

4. **A single competent and coordinating authority.** The draft designates the Ministry of Economy as the competent authority coordinating screening, administering the Register of Foreign Investors, interacting with applicants, and preparing decisions. The model preserves interagency expertise through the Commission on Foreign Investment Screening and the involvement of sectoral bodies depending on the sector and transaction profile. This structure combines a single entry point for investors with specialised security and sectoral assessment.

5. **Political confirmation only for decisions to prohibit an investment.** The competent authority decides on approval, conditional approval, or refusal, while the Cabinet of Ministers is involved only in prohibiting a controlled foreign transaction. This preserves political responsibility for the most sensitive decisions without complicating less risky cases. An additional safeguard for investors is the rule that a transaction is deemed approved if no decision is adopted within the statutory deadline.

Even principles that are fully reflected in the draft law may fail in practice if secondary legislation or implementation is suboptimal. It will therefore be important to monitor compliance with these principles until the law is adopted in its final form and throughout its implementation.

Principles partially reflected in the draft law and requiring further regulatory detail

The following principles were considered in developing the draft law, but their application will depend substantially on the quality of secondary regulation and the practice of the competent authority. This is where procedural details, technical solutions, and standards for interaction with investors must be defined.

1. **Balancing national security protection with a favourable investment climate.** This is the central condition for an effective screening system, especially for Ukraine, where both security risks and the need for foreign investment are high. The principle is reflected in the draft law by taking both factors into account in a balanced manner.

2. **Certainty as to deadlines, procedures, and communication with the investor.** The draft sets review periods, stages of authorisation-based, notification-based, and retrospective screening, the preliminary opinion mechanism, and automatic approval if no decision is made within the statutory period. Effectiveness will depend on interagency cooperation, digital infrastructure, and a consistent practice of communication with applicants.

3. **The availability of an fast-track procedure for trusted investors and/or jurisdictions of origin of ultimate beneficial owners** is reflected in the draft through a simplified authorisation-based screening procedure for trusted investors, as well as for legal entities whose shares are admitted to trading on specified foreign stock exchanges. At the same time, even trusted investors do not receive automatic approval for transactions subject to screening. The details of the simplified procedure require further clarification.

4. **Procedures that minimise legal and financial risks for the investor if approval is refused.** The draft reflects this through the possibility to correct application deficiencies, submit mitigation proposals, and use conditional approval instead of a full prohibition.

5. **Alignment of Ukraine's FDI screening system with European regulatory approaches.** The draft enshrines proportionality, non-discrimination, transparency, protection of confidential information, and investor rights. It defines sensitive sectors, procedural safeguards, and annual reporting. Further harmonisation should account not only for Regulation (EU) 2019/452, but also for the revised EU screening framework, including approaches to critical technologies, sensitive sectors, and cross-border information exchange.

6. **Public guidelines for investors and clarification of current screening practice.** The draft obliges the competent authority to provide advisory explanations, summarise practice, and publish annual reports.

7. **Clear lists of documents and investor disclosure requirements.** The draft identifies core information requirements regarding ownership structure, ultimate beneficial owners, and the origin of investment funds. The full list of documents will be defined in secondary legislation. Information requirements must be clear and exhaustive, and application forms should be understandable, secure, and easy to complete.

8. **A single electronic portal for filing documents and communication.** The draft allows online submission, including through the Unified State Web Portal of Electronic Services, and electronic communication with the competent authority. Implementation requires an electronic cabinet, integration with state systems, and an appropriate level of cybersecurity.

9. **Consideration of business needs in designing and applying screening procedures.** The draft defines maximum review periods, the preliminary opinion mechanism, a simplified procedure for trusted investors, and the possibility to receive explanations from the competent authority. The principle should be implemented through business consultations, testing of the electronic portal, and practical guidance for applicants.

10. **Adjacent legal and institutional infrastructure.** The draft defines the basic institutional architecture: screening authorities, the Register of Foreign Investors, information and analytical support, and information exchange mechanisms. Detailed procedures will be established by secondary legislation. Effectiveness will depend on the quality of data on ultimate beneficial owners, access to state registers, financial monitoring, protection of sensitive information, and the analytical capacity of the competent authority.

11. **Regular review of the list of critical sectors.** The draft empowers the Cabinet of Ministers to establish circumstances for classifying activities as critical, but does not define the frequency of review. This should be embedded in government practice through communication with business and regular assessment of changes in the security and technological environment.

12. **Limiting financial penalties as the main consequence of procedural violations.** The screening system should be aimed primarily at preventing unacceptable control over strategic assets, not at punishing investors financially for technical or minor violations. In such cases, the primary consequences should be non-acceptance of an application, non-approval of the transaction, or forced divestment if risky control has already been established. Financial penalties should be reserved for intentional concealment of information, submission of false data, or deliberate circumvention of screening rules.

5. RECOMMENDATIONS ON THE DRAFT LAW

The current version of the draft law generally creates a workable framework for launching an FDI screening system. Certain provisions, however, should be clarified before registration or at later stages of parliamentary consideration. The recommendations below do not change the concept of the mechanism; they aim to increase legal certainty, security effectiveness, and predictability for bona fide investors.

1. **Include selected categories of dual-use items and technologies within the scope of screening.**

In wartime, such goods are directly relevant to defence, technology transfer, localisation of production, and prevention of export-control circumvention. At the same time, the dual-use category is too broad, and its mechanical inclusion could create excessive notifications that do not carry material security risks. Screening should therefore apply only to risk-relevant categories of dual-use items and technologies defined by the Cabinet of Ministers on the basis of clear criteria and with regard to the updated European investment screening framework.

2. **Extend the review horizon for links with the aggressor state.**

The draft law prohibits investments where ultimate beneficial owners have links with the aggressor state or had such links during the previous five years. That horizon may leave outside screening links that persisted even after the full-scale invasion but were legally terminated before the law enters into force.

3. **Add restrictions concerning persons linked to the Republic of Belarus.**

The draft addresses risks related to the aggressor state and sanctions jurisdictions but applies these categories inconsistently. Certain Belarusian entities or links with Belarus may fall outside enhanced control if they are not covered by individual sanctions. For screening purposes, Russian and Belarusian jurisdictions should be treated consistently as high-risk jurisdictions across citizenship, registration, ownership structure, business interaction, and transition mechanisms for removing prohibited links from investment structures.

4. Remove financial penalties for minor procedural violations.

The draft provides mechanisms for correcting deficiencies in applications or notifications but also contains fines for submitting incomplete information. Unintentional technical violations should lead to a request for correction, return of an application, or non-approval of the transaction, not financial punishment. Fines should be reserved for intentional concealment, false information, or deliberate circumvention that materially affects the outcome.

5. Clear definition of the terminology used in the draft law.

The draft uses the terms "technological sovereignty" and "economic sovereignty", but current legislation does not define them. This creates scope for inconsistent interpretation, especially where these concepts form the basis for additional requirements, conditions, or exemptions in critical activities. The draft should define "technological sovereignty" in law, while "economic sovereignty" should be replaced with the more established concept of "economic security".

6. Description of the review stages for the simplified screening procedure.

The draft provides a simplified procedure for trusted investors with a total duration of up to 45 calendar days, but does not detail the duration of each stage as clearly as it does for the ordinary procedure. This may reduce the predictability of the accelerated track. The allocation of the 45-day period among key stages should be fixed either in the law or, at minimum, in the Screening Procedure.

7. Define how sensitive investments will be reviewed before the law becomes operational.

The draft provides for a 12-month period before the screening system is launched, but does not define how sensitive investments will be assessed during that time. A temporary assessment mechanism should be envisaged, including the role of the interagency commission and the treatment of its recommendations.

6. RECOMMENDATIONS FOR BUSINESS

The launch of the FDI screening system will primarily affect investors, Ukrainian companies in sensitive sectors, and advisers supporting relevant transactions. They will need to assess the security sensitivity of transactions in advance, plan review timelines, and prepare a strong substantiation of the bona fide nature of the investment.

- **Monitor the development of the law and secondary legislation on FDI screening in Ukraine.** Companies planning to attract foreign capital should also take part in public consultations on screening-related regulations and advocate a business-friendly approach.
- **Prepare information on ownership structure and sources of funding in advance.** Investors should have ready information on ultimate beneficial owners, control chains, related parties, and the origin of funds to avoid delays or requests for correction.
- **Check potential links with the aggressor state, sanctioned persons, and high-risk jurisdictions in advance.** Preliminary compliance and risk assessment should cover ownership structure, related parties, sources of funding, key counterparties, and any other circumstances that may indicate a security risk.
- **Assess transactions for potential screening in advance.** Companies should understand whether future transactions concern sensitive sectors, meet the criteria of controlled transactions, or result in control over sensitive assets, data, or technologies. If so, the company should be prepared for screening and possible risk mitigation measures.

- **Account for screening timelines in transaction planning.** Transactions in sensitive sectors should allow time for screening, define parties' obligations to provide information, and anticipate the possibility of conditional approval.

- When planning transactions during the first months of the screening system, **account for possible additional risks or delays.** In the first months after the law enters into force, administrative practice, electronic tools, and the competent authority's approaches will still be developing. Negotiating conditions for conditional approval may also take longer than in later periods, once the mechanism has matured.

7. POSSIBLE AREAS OF SUPPORT FOR IMPLEMENTING AN EFFECTIVE SCREENING SYSTEM

Launching an FDI screening system will require not only adoption of the draft law, but also proper institutional, analytical, and technical preparation. International partners can support this process by financing expert assistance, developing the capacity of screening authorities, and bringing in independent analysis during the preparation of secondary legislation and practical tools for business.

- **Technical assistance in drafting secondary legislation.** Support should be directed toward preparing the Screening Procedure, the methodology for assessing national security threats, the rules for the Register of Foreign Investors, interagency procedures, and standards for protecting sensitive information. This work should reflect international experience and Ukraine's specific wartime and investment context.

- **Independent expertise in shaping screening practice.** During the launch phase, specialised think tanks, legal, investment, and security experts can help the state develop practical risk criteria, typical transaction scenarios, and approaches to conditional approval. This will make the system more predictable for investors.

- **Support for consultations with business and investors.** Consultations with Ukrainian and international business associations, investors, legal advisers, and sectoral companies can identify problems before the system is launched, test application and notification forms, and avoid procedures that impose disproportionate burdens on bona fide business or state authorities.

- **Development of public guidelines for investors.** Donor support can be used to prepare practical guidance on when a transaction falls within screening, what information an investor must disclose, and how preliminary opinions, conditional approval, and retrospective screening work. These materials should be available in Ukrainian and English and regularly updated based on practice.

- **Development of the analytical capacity of the competent authority.** Training for public officials should cover corporate structures, beneficial ownership, sanctions compliance, dual-use technologies, critical infrastructure, and OSINT.

- **Support for digital screening infrastructure.** The system will require an investor e-cabinet, secure document exchange, integration with state registers, and internal tools for information analysis. International support could include automated preliminary risk assessment tools to help structure data on investors, funding sources, sanctions links,

and asset sensitivity. This would strengthen the analytical capacity of the competent authority without substituting for its decision-making discretion.

- **Independent monitoring and evaluation after launch.** Once the mechanism begins operating, independent assessment should cover review timelines, the quality of reasoning in decisions, proportionality of measures, impact on investors, and alignment with European approaches. Monitoring should also consider the quality of analysis in specific cases, including complex corporate structures, indirect control, sanctions risks, and sensitive sectors. This would allow problems to be identified, and the system updated without revising its basic concept.

APPENDIX:
CURRENT VERSION OF THE DRAFT LAW