

Investment Screening in the European Union

- New EU framework for foreign investment control
- National security risks and the Capital Markets Union
- Critical technologies, infrastructure, inputs, data, media
- Strategic implications for FDI and cross-border M&A

Brussels, 29-30 April 2020

**UP
GRADE**

YOUR LEGAL
EXPERTISE

**Banking,
Financial Markets
and Company Law**



Speakers and Chairs

Antonino Ali, Professor, University of Trento

Sylvia Baule, Deputy Head of Unit, DG TRADE, European Commission, Brussels

Henning Berger, Partner, White & Case, Berlin

Lourdes Catrain, Partner, Hogan Lovells, Brussels

Ming Du, Professor, Durham Law School

Dominik Eisenhut, Litigation & Regulatory Affairs, Airbus Defence and Space, Munich

Steffen Hindelang, Professor, University of Southern Denmark

Barbara Kaech, General Counsel & Corporate Secretary, Nord Stream 2 AG, Zug

Yarik Kryvoi, Director, Investment Treaty Forum, British Institute of International and Comparative Law, London

Simon Lacey, Senior Lecturer, International Trade and Investment, University of Adelaide

Michele Pastore, Senior Public Affairs Manager, Huawei Technologies, Brussels

Jens Hillebrand Pohl, Course Director, ERA; Lecturer, Maastricht University

Bärbel Sachs, Partner, Noerr, Berlin

Philipp Stompfe, Partner, Alexander & Partner, Berlin

Wolf Zwartkruis, Supervisor Specialist, De Nederlandsche Bank, Amsterdam

Key topics

- How to interpret and apply Regulation 2019/452 in practice
- How to identify and mitigate risks to EU and Member State security or public order
- Impact on EU foreign direct investments (FDI), takeovers and M&A transactions
- Ownership due diligence for purposes of foreign investment control
- Best practices for Member State authorities, foreign investors, legal counsel and financial intermediaries
- Legal or administrative recourse against screening decisions

Language
English

Event number
220D92

Organiser
Jens Hillebrand Pohl (ERA)

Venue
L42
Rue de la Loi, 42
B-1040 Brussels



With the support of the Erasmus+ programme
of the European Union

Investment Screening in the European Union

Wednesday, 29 April 2020

08:30 Arrival and registration of participants

I. INVESTMENT SCREENING IN EUROPE AND BEYOND

Chair: Jens Hillebrand Pohl

09:00 Introduction – Screening of external investments

- Origin and evolution of foreign investment control regulations
- Regulatory purpose and policy justifications: a shift in priorities or in ideology?

Steffen Hindelang

09:30 Discussion

09:45 EU Screening Regulation 2019/452 – Outline

- Legislative background, key policy considerations and design choices
- Overview of key provisions of Regulation 2019/452

Sylvia Baule

10:15 Discussion

10:30 Coffee break

11:00 Panel debate – Security and public order

- Legal basis of Regulation 2019/452 and limits to Union competence
- Concept of “security or public order”; sources of law and interpretation
- Delimiting the scope of interpretive autonomy: what degree of deference?

Antonino Ali, Sylvia Baule, Steffen Hindelang, Bärbel Sachs

12:30 Discussion

12:45 Networking lunch

II. KEY ELEMENTS OF THE NEW INVESTMENT SCREENING FRAMEWORK

Chair: Steffen Hindelang

13:45 Scope of application

- Notion of a “foreign direct investment” and a “foreign investor”
- Practical issues of application: subjectivity and anti-circumvention

Antonino Ali

14:15 Discussion

14:30 Screening process

- Notification and legal certainty: *ex ante* vs *ex post* screening
- Multilevel national and EU screening cooperation procedure

Bärbel Sachs

15:00 Discussion

15:15 Legal redress

- Access to “recourse”: legal remedy or administrative recourse?
- Scope and standard of judicial review: the question of justiciability

Jens Hillebrand Pohl

15:45 Discussion

16:00 Coffee break

Objective

This conference will help practitioners to understand the new investment screening framework introduced in 2019 and which will enter into force on 11 October 2020. It will explain how it will affect the free movement of capital, mergers and acquisitions (M&A) and other foreign direct investments into the EU.

Practical aspects for Member State screening authorities and for in-house and external legal counsel acting for foreign investors and target companies in European M&A will be addressed.

Who should attend?

Staff of EU and national screening authorities, in-house lawyers at private-sector financial institutions, lawyers in private practice.

You will learn about...

- how the new EU investment screening framework will be applied in practice
- to what types of investments and investors the new screening framework will apply
- from when the new investment screening framework will apply to affected investments
- what factors will determine whether an investment is screened
- what the steps are in the screening process at national and EU level
- what legal or administrative remedies are available to affected investors
- what factors are critical for the screening of investments in critical infrastructure, inputs, technologies
- best practices and advice for investors, target undertakings and screening authorities
- how capital allocation will be affected by screening in critical sectors
- how third-country investors and the funding of strategic investments are affected by investment screening

Your contact persons



Jens Hillebrand Pohl
Course Director
E-Mail: jpohl@era.int



Tatsiana Bras-Gonçalves
Assistant
E-Mail: tbras@era.int
Tel.: +49 651 9 37 37 221

III. IMPACT OF SCREENING ON INVESTMENTS: INDUSTRY INSIGHTS – PART 1

Chair: Jens Hillebrand Pohl

- 16:30 **Sector roundtable 1 – Critical infrastructure and supply of critical inputs**
- Energy, raw materials, food, water and health
 - Defence, aerospace, transport and other physical infrastructure
 - Financial, data-processing, communication and electoral infrastructure
- Henning Berger, Lourdes Catrain, Ming Du, Dominik Eisenhut, Barbara Kaeck*
- 18:00 Discussion
- 18:15 Networking reception and end of first conference day

Thursday, 30 April 2020

IV. IMPACT OF SCREENING ON INVESTMENTS: INDUSTRY INSIGHTS – PART 2

Chair: Steffen Hindelang

- 09:00 **The future of strategic investment in the EU**
- The geoeconomics of third-country access to the Capital Markets Union
 - What considerations will be driving EU strategic investment policy?
- Wolf Zwartkruis*
- 09:30 Discussion
- 09:45 Coffee break
- 10:15 **Sector roundtable 2 – Critical technologies, sensitive information and free media**
- Artificial intelligence, robotics, nanotechnology, defence technology
 - Cybersecurity, sensitive information, personal data and the freedom and plurality of the media
- Yarik Kryvoi, Simon Lacey, Michele Pastore, Philipp Stompfe, Wolf Zwartkruis*
- 11:45 Discussion

V. OUTLOOK

- 12:00 **The end of the *erga omnes* effect of the free movement of capital?**
- Assessing the impact of Regulation 2019/452 on third-country capital inflows
 - Outlook for the future of investment screening and capital mobility in the EU
- Steffen Hindelang*
- 12:30 Discussion
- 12:45 End of the conference

For programme updates: www.era.int
 Programme may be subject to amendment.

CPD

ERA's programmes meet the standard requirements for recognition as Continuing Professional Development (CPD). This event corresponds to **10,5 CPD hours**.

Save the date

Climate Change and Sustainable Finance

Trier, 6-7 February 2020

FinTech, RegTech and Cryptoassets

Trier, 26-27 March 2020

Summer Course on Financial Regulation and Supervision 2020

Trier, 22-26 June 2020

Summer Course on WTO and EU Trade Law 2020

Trier, 6-10 July 2020

e-Presentation

Distributed Ledger Technology and Cryptoassets: A Technical Outline

Joshua Ellul

Anti-Money Laundering and Cryptocurrencies in the EU

Rick McDonell

Smart Contracts and Property Law Issues

Sjef Van Erp

Basel IV: State of Play

Marco Bodellini

www.era.int/elearning

Registration

Investment Screening in the European Union

Brussels, 29-30 April 2020 / Event Number: 220D92



Europäische Rechtsakademie
Academy of European Law
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Accademia di Diritto Europeo

Registration

Fax: +49 (0) 651 93737-773

E-mail: info@era.int

Online registration:
www.era.int/?129433&en

Postal address:
ERA
Postfach 1640
D-54206 Trier

Location
L42
Rue de la Loi, 42
B-1040 Brussels
Belgium

Language
English

Contact Person

Tatsiana Bras-Goncalves
Assistant
E-Mail: tbras@era.int
Tel : +49 651 9 37 37 221



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☐ **Evening programme:** I shall attend the networking reception on 29 April 2020 (at no extra charge).

Registration fee

Fee	Standard	EU & ERA patrons*	Young lawyers & other groups**
Registration by 29 March 2020	€ 801.00 <input type="checkbox"/>	€ 480.60 <input type="checkbox"/>	€ 600.75 <input type="checkbox"/>
Registration after 29 March 2020	€ 890.00 <input type="checkbox"/>	€ 534.00 <input type="checkbox"/>	€ 667.50 <input type="checkbox"/>

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** Young lawyers & other groups

- For young lawyers up to 30 years of age (important: the participant must provide a copy or details of his or her passport or identity card on registration);
- Full-time staff of universities or comparable academic institutions;
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