

Transparency, Predictability and Accountability for investment screening mechanisms

An exchange on policy
among government experts

Agenda

11-12 May 2021

<p>■ Logistical information</p>	<p>The event will be held virtually over Zoom in two separate sessions on 11 and 12 May 2021, between 13:00 and 15:00 (Paris time). The sessions are scheduled and timed to allow participation from all time-zones.</p> <p>Participation is restricted to government experts from OECD Member countries as well as Costa Rica. Prior registration is mandatory through this link.</p> <p>The webinar languages are English and French, with simultaneous translation.</p>
<p>■ Suggested reading</p>	<p>Acquisition- and ownership-related policies to safeguard essential security interests (2020) – oe.cd/natsec2020</p> <p>Investment screening in times of COVID-19 and beyond (2020) – oe.cd/covidscreen</p> <p>Inventory of investment measures taken between 16 September 2019 and 15 October 2020 – oe.cd/INVINV2020</p> <p>Investment policy developments in 62 economies between 16 October 2020 and 15 March 2021 – oe.cd/INVINV2021</p> <p>Guidelines for Recipient Country Investment Policies relating to National Security (2009)</p> <p>Further material is available at oe.cd/natsec</p>
<p>■ Recent OECD events in this policy area</p>	<p>Webinar on investment screening in times of COVID-19 – and beyond, 25 June 2020</p> <p>Acquisition-and ownership-related policies to safeguard essential security interests – New policies to manage new threats, 12 March 2019</p>
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■ A decade of experience in designing and implementing international standards of investment policies relating to national security

In 2009, OECD Member governments agreed on [good policy standards for recipient country investment policies relating to national security](#) in a Recommendation of the OECD Council (the 2009 Guidelines). These Guidelines contain a set of principles for policies designed to manage national security risk associated with foreign investment. They call for these policies to be non-discriminatory and transparent, for outcomes to be predictable, measures taken to be proportionate and for accountability of implementing authorities.

In more than ten years since the adoption of the Guidelines, a large number of OECD Member countries have established or reformed mechanisms to manage potential national security risks that can come with the opportunities of foreign investment. While in 2009, less than two thirds of the OECD Member countries had any investment review mechanisms to protect their essential security interests, the share currently stands at 87% and continues to grow. In 2020 alone, 20 OECD Members have established such a mechanisms or carried out one or more reforms.

A [recent OECD report](#) on this policy area that covers current and emerging trends and takes stock of observed designs and policy practice in all OECD Members shows that different ways have been devised to implement the standards set out in the Guidelines.

This webinar seeks to bring together government experts from OECD Member countries to exchange on experiences on how selected aspects of the Guidelines are being implemented in current policy practice to better inform government reform efforts and foster peer-learning. The event focuses on the procedural aspects of investment review mechanisms set out in the Annex of the Guidelines, item 2 – “*Transparency/Predictability*” – and item 4 – “*Accountability*” – and addresses, in three sessions, all five elements contained in these items: *codification and publication; prior notification; consultation; procedural fairness and predictability; disclosure of investment policy actions; and accountability to citizens.*

Information on policy practice is available in a [recent OECD report](#), and in a research note that will be circulated separately.

The webinar is not a public event and access is limited to investment- and national security government experts from OECD Member countries as well as Costa Rica by virtue of the invitation extended by the Council to Costa Rica to become a Member of the Organisation.

The webinar seeks to facilitate open and informative exchanges among experts. Some experts will give introductory remarks on their countries' practice in a given area, but experts from all countries and the EU are invited to actively participate in the conversations.

■ 11 May 2021

13:00 – 13:10 **Introductory remarks and overview of the objectives of the webinar**

Ana Novik, Head, Investment Division, OECD.

13:10 – 13:25 **Current trends in investment policies related to essential security interests**

OECD Secretariat presentation on trends.

Joachim Pohl, Investment Division, OECD.

13:25 – 14:50 **Codification, publication, consultation and prior notification**

Predictability and transparency of investment policies are essential preconditions for international investment – these principles also apply to those policies that seek to safeguard countries' essential security interests. The 2009 Guidelines explicitly recognise these principles. They emphasise in particular the codification of policies to provide predictability and transparency; they also point to the importance that rules and rule-changes need to be known in advance and their design should be informed by prior engagement of stakeholders.

Heightened policy attention, public debate and efforts to consult stakeholders have led to greater knowledge of rules and greater engagement. Also, recent efforts to lay out rules in greater clarity and detail have brought greater transparency about the regulatory framework. At the same time, more frequent changes to rules and practices lately have brought new challenges in this regard.

Drawing on their recent experiences in codifying new policies and reforms, and on the implementation of less clearly defined policies, experts from selected countries will shed more light:

- on current practices with regard to these areas,
- on any efforts to enhance the transparency of policies, and
- on how challenges of a swiftly evolving policy and security environment can be reconciled with ensuring stakeholder involvement in the rule-making process.

After the inception presentations, experts from other jurisdictions would join the conversation and share their experience.

Moderation

Damien Levie, Head, "Tech&Security, FDI Screening" Unit, DG TRADE, European Commission, European Union

Panellists

Laura Black, Director, Office of Investment Security (CFIUS), Department of the Treasury, United States

Yuki Sakurada, Director for Foreign Direct Investment Issues, International Bureau, Ministry of Finance, Japan

Andrew Deitz, Assistant Secretary, Foreign Investment Division, Treasury Australia

Niall MacKenzie, Director, Consumer&Competition Policy, Department for Business, Energy&Industrial Strategy, United Kingdom

14:50 – 15:00 **Summing up the first session**

Review the discussions of the day in brief and provide closing statements.

■ 12 May 2021

13:00 – 13:05 Welcoming remarks

Ana Novik, Head, Investment Division, OECD.

13:05 – 13:45 Procedural fairness and predictability

Procedural fairness and predictability relate to the possibility for investors to anticipate whether a transaction needs to be subjected to a review, how such a review would be conducted, and how long the procedure is likely to take. Parties to transactions also need to be assured that sensitive information is not revealed. Such rules give investors confidence as they engage in the administrative process even though its outcome may be uncertain in some cases.

Investment review mechanisms use different instruments to ensure that the process is procedurally fair and conducted in a predictable manner: For example, whether or not a transaction needs to be reviewed depends on the scoping and design of the mechanism. Procedural rules may be set out in different degrees of detail and with timelines and responsibilities clearly set out.

This session seeks to shed light on countries' practices that contribute to ensuring procedural fairness and procedural predictability for investors and their acquisition targets. It will address:

- ways to enhance investor awareness of regulatory obligations;
- mechanisms and options that provide sufficient ex ante information to users of the review mechanism on the conduct of the procedures; and
- which instruments are available to governments to enhance predictability and fairness of the review processes.

After the inception presentations, experts from other jurisdictions would join the conversation and share their experience.

Moderator

Dan Leeman, Senior Adviser, Division for Legislation on Public Order and Safety and Crisis Preparedness, Ministry of Justice, Sweden

Panellists

DeNeige Dojack, Director of Operations, Investment Review Division, Canada

Ignacio Mezquita Perez-Andujar, Deputy Director General for Foreign Investment, Spain

Pierre Martin, Deputy Head, Office Foreign investments in France, France

Andrew Deitz, Assistant Secretary, Foreign Investment Division, Treasury, Australia

13:45 – 14:40

Accountability: Disclosure of Investment Policy Actions

The Guidelines call for a set of measures to ensure accountability for investment policy actions: they include accountability to citizens, international accountability mechanisms, and recourse for investors, among others. A principal prerequisite of accountability is timely, accurate and authoritative information on policy actions. Individual countries disclose such information to different audiences, such as the general public or their elected representatives in Parliament. In some cases, greater detail or more sensitive information is disclosed to only a limited audience, while more aggregate or less sensitive information is disclosed more broadly. Some governments release information proactively either at regular intervals or immediately in the context of individual decisions, while others only release information upon demand, such as in the context of parliamentary processes. Some information on country practices as of mid-2020 is available in the [OECD report](#) in section 2.5.

The availability and contents of public information and the level of aggregation vary on a wide spectrum. Some mechanisms do not contain any provisions on disclosure of actions; some foresee that a great level of detail be released, while others require annual aggregates. Delayed publication, presence of contextual information on investment trends and administrative practices as well as availability and comparability over time are additional factors that influence the usefulness of the information.

This session seeks to:

- set out the broad spectrum of practices with respect to the disclosure of policy actions; and
- review opportunities and advantages of regular public reports.

After the inception presentations, experts from other jurisdictions would join the conversation and share their experience.

Moderator

Matt Dooley, Senior Advisor, Investment Review Division, Canada

Panellists

Thomas Parry, Manager, International Team, Treasury, New Zealand

Bernardo Argiolas, Head of Service for the coordination of foreign direct investment screening, *Dipartimento per il coordinamento amministrativo*, Italy

Fabien Gehl, Deputy Head, "Tech&Security, FDI Screening" Unit, DG TRADE, European Commission, European Union

Pierre Martin, Deputy Head, *Office Foreign investments in France*, France

Ethan Treanor, Policy Advisor, Office of Investment Security (CFIUS), Department of the Treasury, United States

14:40 – 15:00

Conclusions, outlook and closing**Moderator**

Ana Novik, Head, Investment Division, OECD

This brief session allows for feedback on the format and content of the webinar.

- Is this a useful format for addressing issues of national security investment review as they relate to the Guidelines?
- Are there suggestions for future issues that should be discussed in this format?

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