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Foreign Investment Screening in Montenegro:

OPEN TO INVESTMENT, UNPREPARED FOR THE RISKS

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Content:

1. Introduction

Since the restoration of independence, Montenegro's development has relied heavily on foreign direct investment. Thanks to its open investment regime, the country has attracted billions of euros in capital, primarily in tourism, real estate and energy. This policy has contributed to economic growth, but at the same time has raised numerous questions about the quality of investments, their long-term sustainability, and the state's capacity to safeguard the public interest when projects of strategic importance are concerned.

Over the past two decades, hardly any major investment cycle has been free of controversy. Some investments failed, some were accompanied by allegations of corruption, opaque ownership structures or preferential treatment of individual investors, while others raised concerns about the economic and political influence of foreign states. The experience of substantial inflows of Russian capital during the second half of the 2000s demonstrated the extent to which strong economic dependence can also have political consequences. Later, the construction of the priority section of the motorway with a Chinese partner was frequently portrayed, both domestically and internationally, as an example of the risks that may arise from major infrastructure projects financed under non-transparent or fiscally demanding terms. Today, similar concerns are being raised by the agreements between Montenegro and the United Arab Emirates, which have reignited debate over transparency, environmental protection, public participation, regulatory oversight, and the role of the state in the selection and implementation of major investment projects.

At the same time, the international regulatory framework has also changed. While foreign investment was for decades viewed almost exclusively as a development opportunity, in recent years it has increasingly become an issue of economic security. The European Union has developed a foreign direct investment screening system aimed at striking a balance between openness to capital and the protection of security, public order and other strategic interests.

For Montenegro, which plans to join the European Union precisely at a time when the new rules are beginning to apply, the question is no longer simply how to attract foreign investment, but how to ensure that such investment is carried out transparently, with appropriate safeguards for the public interest and in line with European standards. Against the backdrop of the development of the European foreign direct investment screening system, this analysis examines its significance for Montenegro, with particular emphasis on whether a future national mechanism can effectively safeguard security and public order if major investment projects implemented through bilateral intergovernmental agreements or other special legal regimes remain outside its scope.

2. The European framework for foreign direct investment screening

The European Union has traditionally been one of the world's most open economies to foreign direct investment. The free movement of capital is one of the four fundamental principles of the internal market, while openness to investment has for decades served as an important instrument of economic development, competitiveness and technological progress. Foreign investment was predominantly viewed through an economic lens, as a source of capital, new jobs and innovation, and as a means of integrating the European economy into global flows.

This approach began to change over the past decade. Geopolitical shifts, intensifying strategic competition among major powers, rapid technological development, and growing concerns over dependence on third countries have raised the question of whether certain foreign investments may have implications extending beyond their economic value. Particular attention has been paid to investments in critical infrastructure, advanced technologies, energy, supply chains and other strategically important sectors, where changes in ownership or control may have implications for security and public order.

The European Union's response has not been to abandon the principle of an open market. The underlying objective remains to preserve the openness of the European economy while establishing a mechanism that enables states to identify and assess investments that may pose risks to security or public order. It was on this basis that Regulation (EU) 2019/452[1] was adopted in 2019, establishing for the first time a common European framework for the screening of foreign direct investments.

The Regulation established the basic concept of foreign investment screening as a risk-management instrument rather than a means of restricting foreign investment. The assessment does not focus on the economic benefits of an investment, but rather on its potential effects on security or public order, particularly where it concerns strategic sectors, critical infrastructure, key technologies or other resources of particular importance.

The 2019 Regulation did not establish a single EU-wide screening system, nor did it confer on any EU institution the power to approve or prohibit individual investments. The final decision remained within the competence of the Member State in which the investment takes place, while the Regulation established a framework for cooperation and information exchange between Member States and the European Commission in cases where a particular investment may have implications beyond the borders of a single Member State. Although the Regulation did not require Member States to establish national screening mechanisms, it provided a strong impetus for the development of national systems,

[1] Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.

and the number of Member States that introduced or reformed investment screening mechanisms increased significantly in the years that followed.[2]

It is important to note that the implementation of these mechanisms to date has not resulted in widespread restrictions on foreign investment. European Commission data[3] show that the vast majority of transactions are approved, most often without additional conditions, while prohibitions remain an exceptionally rare outcome. In 2024, 86% of transactions subject to formal screening were approved without conditions, 9% were approved subject to measures aimed at mitigating identified risks, while only 1% of transactions were prohibited. These figures confirm that, in practice, the primary effect of screening is to strengthen oversight, improve access to information, and enable identified risks to be addressed through appropriate conditions, rather than to close markets to foreign investment.

The first several years of implementation have shown, however, that a voluntary and decentralized approach has significant limitations. National systems developed at different speeds and under different rules. Member States applied different criteria, covered different sectors, and established different institutional arrangements, resulting in a fragmented regulatory framework across the European Union. These differences, together with growing security and geopolitical challenges, were among the key reasons for the adoption of the new Regulation (EU) 2026/1386,[4] which further strengthened the European framework for foreign direct investment screening.

While the previous Regulation primarily established a cooperation mechanism between Member States and the European Commission, the new framework is based on the premise that safeguarding security and public order requires a functioning screening system in every Member State. Accordingly, for the first time, Member States are required to establish national screening mechanisms, subject to common minimum standards that all national systems must meet. Foreign direct investment screening thereby becomes one of the key instruments of the EU's economic security policy, aimed at preserving the openness of the European market while strengthening its resilience to security and geopolitical risks.[5]

One of the most significant changes is the introduction of a common minimum scope for national screening mechanisms. Unlike the previous framework, under which Member States independently determined which foreign investments would be subject to screening, the new Regulation establishes a minimum set of investments that all Member States must be able to assess. The common minimum scope covers, among other areas, investments in entities active in dual-use goods and defense, certain advanced technologies, strategic raw materials, critical financial infrastructure, electoral information systems, as well as critical energy, transport and digital infrastructure. At the same time, Member States may extend the scope of screening through national legislation to other investments or sectors they consider relevant to the protection of their security interests.

[2] European Commission, List of screening mechanisms notified by Member States to the European Commission, last updated 9 February 2026. Available at: https://circabc.europa.eu/rest/download/7e72cdb4-65d4-4eb1-910b-bed119c45d47](https://circabc.europa.eu/rest/download/7e72cdb4-65d4-4eb1-910b-bed119c45d47

[3] European Commission, Report from the Commission to the European Parliament and the Council – Fifth Annual Report on the Screening of Foreign Direct Investments into the Union, COM(2025) 632 final, Brussels, 14 October 2025.

[4] Regulation (EU) 2026/1386 of the European Parliament and of the Council of 17 June 2026 on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452.

[5] European Commission, European Economic Security Strategy – EU Foreign Direct Investment Screening: 2024 Revision (Factsheet).

In addition to harmonizing the scope of screening, the new Regulation establishes common criteria for risk assessment. When making their decisions, competent authorities consider not only the sector or activity in which the investment is made, but also the investment's potential impact on security or public order, including its possible effects on critical infrastructure, critical technologies, the protection of sensitive information, media freedom and pluralism, as well as other circumstances relevant to the risk assessment. At the same time, the characteristics of the investor itself are assessed, including its ownership structure, any control or significant influence exercised by the government of a third country, and other facts that may indicate a security risk.

The new Regulation also further harmonizes the procedural rules with which national systems must comply. Investments falling within the common minimum scope must be subject to prior screening, meaning that they must be assessed before they are implemented. The Regulation also lays down minimum procedural safeguards and requirements for regular reporting on the implementation of screening mechanisms. Although the final decision on whether to authorize, condition or prohibit an investment remains within the competence of the Member State in which the investment takes place, the new framework significantly reduces disparities among national systems and strengthens the European Union's capacity to identify and respond in a timely manner to risks that may have cross-border implications.

Member States are required to bring their national screening mechanisms into line with the new Regulation within 18 months of its entry into force, i.e. by January 2028. For Montenegro, which aims to join the European Union within this same timeframe, establishing a foreign direct investment screening mechanism is therefore not merely a matter of future alignment with the EU acquis, but also part of the broader institutional preparations required to assume the obligations arising from EU membership.

3. Institutional and legal challenges in Montenegro

Montenegro currently has no general mechanism for screening foreign direct investment. There is no dedicated law regulating the scope of investments subject to screening, risk assessment criteria, thresholds for mandatory notification, the competent authority, procedural deadlines, or the measures the state may impose where it determines that a particular investment could threaten security or public order. Consequently, there is no single procedure through which, prior to the implementation of an investment, the nature and strategic importance of the target entity or asset, the investor's ownership and governance structure, the origin of the capital, potential links to third-country governments, and other risks that form an integral part of assessments under modern screening systems could be considered together.

Nevertheless, Montenegro's legal system contains individual instruments that subject certain investments or business activities to additional requirements and controls. The most explicit restrictions concern the production and trade of arms and military equipment, as defined by the Law on Foreign Investments, while other public interests are protected through legislation governing critical infrastructure, state property, concessions, competition, energy, the banking and financial sector, media, spatial planning, the environment and nature protection.

An important component of the existing framework is the Law on the Designation and Protection of Critical Infrastructure, which regulates the identification and protection of infrastructure whose damage or disruption could have serious consequences for the provision of essential services. However, this law does not establish a mechanism for the prior screening of a foreign investor seeking to acquire ownership, control or another form of decisive influence over an entity operating critical infrastructure. The existing system is primarily designed to protect the functioning of specific infrastructure, but does not provide for a comprehensive assessment of the security implications arising from changes in its ownership or control.

The need to formally regulate this issue was also recognized by the Government of Montenegro when, in March 2025, it adopted the Information on the Importance of Establishing a Foreign Direct Investment Screening Mechanism in Montenegro[6] and tasked the Ministry of Economic Development[7] with establishing an interministerial working group to consider the introduction of an effective mechanism aligned with European Union standards and Montenegro's domestic legislative framework.

The principal weakness of the existing system is its fragmentation. Individual authorities make decisions within the limits of their sector-specific mandates, but there is no institution responsible

6 Government of Montenegro, Information on the Importance of Establishing a Foreign Direct Investment Screening Mechanism in Montenegro, March 2025
7 Government of Montenegro, Conclusions of the Government of Montenegro, No. 11-053/25-803/3, 21 March 2025.

for assessing an investment as a whole and evaluating its overall implications for security and public order. The authority responsible for concessions may verify compliance with the requirements for the use of public assets, a regulator may assess whether the conditions for issuing a license have been met, and the competition authority may assess the impact on the market. None of these procedures, however, can in itself answer the question of whether acquiring control over a particular resource, infrastructure asset or business entity creates a strategic risk for the state.

A second weakness is that existing procedures generally assess a specific project or legal transaction rather than the investor's overall profile. They often do not systematically examine the ultimate beneficial owner, the investor's links to the authorities or political forces of a third country, its financing structure, its previous conduct in other countries, money-laundering risks, the potential transfer of sensitive data or technology, or the long-term implications of acquiring control over strategic assets.

A third weakness concerns the absence of formalized interinstitutional coordination. Different authorities may hold relevant information, but there is no prescribed procedure through which such information can be consolidated and used as the basis for a single decision. The breadth of the working group envisaged by the Government in 2025 itself indirectly confirms that assessing foreign investment requires expertise and information that no single institution possesses on its own.

A fourth problem is the predominantly reactive nature of the existing mechanisms. Disputes concerning sensitive investments in Montenegro most often arise only after a political decision has been made, an agreement concluded, a concession awarded or a specific project launched. Attempts are then made to manage the risks through litigation, challenges to tender procedures, or public and political pressure. Such a model of protection intervenes too late, is dispersed across multiple forums, and does not provide for a predictable ex ante procedure in which risks can be assessed before the state assumes obligations or the investor acquires a legally protected position.

A particular concern arises from the fact that sector-specific legislation, even where it provides a certain level of protection, may be overridden or circumvented by special legal regimes established through bilateral intergovernmental agreements. Under Article 9 of the Constitution of Montenegro, ratified and published international treaties form an integral part of the domestic legal order, take precedence over domestic legislation, and apply directly where they regulate matters differently. This constitutional status of international treaties makes it possible, through their ratification, to establish special legal regimes for individual investment projects that may derogate from generally applicable laws and standard administrative procedures.

The practice of concluding special intergovernmental agreements for the implementation of major investment projects is not new in Montenegro. In recent years, several projects have been implemented, or planned for implementation, under special legal regimes established through international agreements or specific legislation. Illustrative examples include the agreement on the construction of the priority section of the motorway with a Chinese partner, which raised questions concerning the application of public procurement rules, transparency requirements, environmental protection and other generally applicable procedures, as well as the agreements with the United Arab Emirates in the fields of tourism and real estate development, which have raised similar questions regarding investor selection, competition and the application of domestic procedures.

In such circumstances, the importance of a foreign direct investment screening mechanism becomes even more pronounced. Designating a particular project as “strategic” or a “project of public interest” does not mean that the investor and the associated security risks have previously been subject to an independent assessment based on predefined statutory criteria. On the contrary, a special legal regime may accelerate the implementation of a project without any institution being required beforehand to examine the investor’s ownership structure, the origin of its capital, potential influence by a third country, or the project’s long-term implications for national security and public order.

Agreements with the United Arab Emirates: Can bilateral agreements circumvent FDI screening?

The agreements concluded between Montenegro and the United Arab Emirates (UAE) in 2025 have become the subject of one of the most significant debates over the governance of major investments in Montenegro in recent years.

In March 2025, the Government of Montenegro concluded an Agreement on Economic Cooperation and an Agreement on Cooperation in Tourism and Real Estate Development with the United Arab Emirates, which Parliament subsequently ratified under an expedited procedure. Cooperation was further expanded later that year through an agreement in the field of energy. The agreements prompted strong reactions from experts and the broader public, primarily due to concerns over the transparency of the process, the possibility of allocating state-owned assets without competitive procedures, the application of public procurement rules, environmental protection, and compliance with European legal standards.

Paradoxically, the agreements with the UAE were concluded at precisely the time when Montenegro was intensively aligning its legislation with the EU acquis in the field of public procurement. This raised the question of how effective such alignment can be in practice if the largest strategic projects are simultaneously implemented through special legal regimes that derogate from generally applicable rules.

The constitutionality of the laws ratifying these agreements has been challenged before the Constitutional Court of Montenegro. Although the Court held a public hearing and considered the initiative for a review of constitutionality, the required majority to initiate proceedings was not reached, and the agreements therefore remained in force. This outcome did not resolve the constitutional questions surrounding the agreements; rather, the issue of their compatibility with the Constitution and the fundamental principles of the legal order remained open. Following the election of two judges in July 2026, which restored the Constitutional Court to its full composition, the issue is expected to be considered again.

For all these reasons, the experience with the UAE agreements provides an important lesson for Montenegro. Unless the future law on foreign direct investment screening explicitly covers projects implemented on the basis of bilateral intergovernmental agreements, special laws or other special legal regimes, there is a genuine risk that precisely the largest, most financially significant and politically sensitive investments will remain outside the scope of the very mechanism designed to assess their potential impact on security and public order.

[8] For a broader analysis of the legal and political context of the agreements with the UAE, including issues of transparency, special legal regimes and their relationship with the EU accession process, see Iliriana Gjoni, Iva Čukić, Alba Çela and Aleksandër Trajçe, Rules or Deals? The EU's Challenge in Regulating Corrosive Capital in the Western Balkans (Carnegie Europe, 2025), chapter "Montenegro: Rules Bent Before Membership".

4. Key recommendations for establishing a national screening mechanism

Establishing a foreign direct investment screening system in Montenegro should not be reduced to the formal fulfilment of yet another obligation arising from the EU integration process. Such an approach could easily result in legislation that exists on paper but fails to reflect the actual ways in which major investments in Montenegro are negotiated, approved and implemented. The future system must be designed with both the new European framework and the specific vulnerabilities of Montenegro's economy, institutional system and model of public resource governance in mind.

The first step, therefore, should not be to draft technical legislation behind closed doors, but to make a clear policy decision on what Montenegro seeks to protect, against which risks, and through what type of procedure.

1. Build a functional national system in line with the new European framework

Montenegro should adopt a dedicated law on foreign investment screening rather than attempting to link existing sector-specific restrictions into what would only appear to be a unified system. The current framework does not provide for a central authority capable of assessing an investment from the perspective of security and public order; it does not establish a general notification requirement or uniform assessment criteria; nor does it provide for the standard outcomes of a screening procedure – authorization, authorization subject to conditions, or prohibition of an investment. In practice, sensitive investments are considered through procedures designed for other purposes, including public procurement, concessions, the lease of state-owned property, spatial planning, competition and environmental protection, or through individual political decisions.

Montenegro is in the particular position of establishing its screening system at a time when the European Union is completing the most significant reform of its framework since the adoption of the first Regulation in 2019. It would therefore be short-sighted to build a national framework around rules that, by the time Montenegro is expected to join the EU, will already have been replaced by a new European standard. This means that the future law should not be limited to the minimum transposition of EU requirements, but should from the outset be aligned with the provisions of the new Regulation, including a mandatory national screening mechanism, a common minimum scope, the screening of indirect investments made through companies registered in the EU, and clear procedural rules. Such an approach would reduce the need for further legislative amendments immediately after accession and allow institutions, businesses and investors to adapt to a system designed to remain applicable over the longer term.

At the same time, establishing a national mechanism entails more than simply adopting a new law; it also requires the development of a functional institutional model. The future system must designate a clearly identified authority responsible for conducting the screening procedure, coordinating the work of other competent authorities, and taking or preparing decisions. Broad interinstitutional cooperation will remain essential, as individual investments may raise security, economic, financial, regulatory and foreign policy considerations. However, experience shows that involving a large number of institutions does not in itself guarantee an effective system. Decision-making must therefore be based on predefined criteria and a documented risk assessment rather than ad hoc political assessments of individual investments.

At the same time, Montenegro should not replicate the European model mechanically. EU rules establish a common framework while leaving states considerable scope to tailor their systems to their own security and economic priorities. The next step must therefore be to identify the sectors and resources of particular strategic importance to Montenegro.

2. Define what is strategic for Montenegro rather than simply replicating the EU list of sectors

The European framework establishes common standards while leaving states considerable scope to adapt their national systems to the structure of their economies, their geographical circumstances and their assessment of security risks. This is precisely why there is no single list of sectors subject to screening across all Member States. In addition to common areas such as defense, critical infrastructure and advanced technologies, individual countries afford particular protection to sectors and resources that are especially important in their national context.

This is an important lesson for Montenegro. The future law should certainly cover the common minimum scope established by the new EU Regulation. However, simply replicating that list would not address the most significant risks specific to Montenegro.

Montenegro's economy is heavily dependent on tourism and real estate development, with a significant share of such investment concentrated within its limited coastal and mountainous areas. A major tourism project is therefore not necessarily just another investment in a hotel or apartment complex. Depending on its location and scale, it may entail long-term control over substantial stretches of the coastline, access to ports and marinas, management of beaches and other public assets, the use of water and energy resources, the construction of supporting infrastructure at the state's expense, or development in areas of particular environmental, border or security significance.

This does not mean that the entire tourism sector should automatically be designated as critical. Such an approach would be overly broad and could turn screening into a general authorization regime for virtually all major investments. Instead, the law could identify specific categories of tourism and real estate development projects that may raise security or public order concerns due to their scale, location, the duration of the rights granted, or the nature of the resources involved. These could include projects in coastal and border areas, in the vicinity of ports, airports and military infrastructure, in protected areas, or projects that grant a single investor long-term control over a substantial share of a limited public resource.

[9] Zakon br. 5202/2025 o sprovođenju Uredbe (EU) 2019/452 o uspostavljanju okvira za skrining stranih direktnih investicija u Uniji iz razloga bezbjednosti ili javnog poretka, *Službeni list Helenske Republike* (Εφημερίδα της Κυβερνήσεως), br. A' 84 od 23. maja 2025

Greece, for example, explicitly identifies tourism infrastructure in border areas as a particularly sensitive sector, alongside port infrastructure and critical subsea infrastructure.[9] This does not designate the tourism sector as a whole as a matter of national security; rather, it recognizes that certain tourism investments, because of their location and potential impact on strategic resources and infrastructure, may require prior assessment from the perspective of security and public order. Montenegro does not face the same security challenges as Greece, but it has its own development and spatial specificities that the legislator should take into account when defining the scope of the national screening mechanism. This requires a systematic assessment of the resources, infrastructure and activities where a change of control could have implications for security or public order.

Similar considerations apply to the energy sector. Although energy infrastructure already forms part of the common European application scope, when designing its national mechanism Montenegro should pay particular attention to the specific characteristics of investments in hydropower plants, wind farms, solar power plants and other energy infrastructure of importance to energy security and the long-term resilience of the system.

The media sector warrants particular consideration. From the outset, the European framework has recognized media freedom and pluralism as relevant factors in risk assessments, while some Member States, including Spain[10], Germany[11] and France[12], explicitly include the media among the sectors covered by their screening mechanisms. In Montenegro, changes in media ownership are currently considered primarily under rules governing licensing, concentration and competition. These rules remain essential, but they do not address every issue that may arise where control is acquired by a foreign state actor or a politically connected foreign investor. Screening should therefore provide an additional, rather than a substitute, layer of protection, particularly where an investment may affect information infrastructure, access to sensitive data, media pluralism or democratic processes.

3. Ensure that screening cannot be circumvented through bilateral agreements or special legal regimes

The future system must be designed so that the screening requirement cannot be circumvented through the choice of legal instrument used to implement an investment. It is particularly important that the mechanism also cover projects implemented on the basis of international agreements, special laws or other special legal regimes, since these investments are typically among the largest, most valuable and politically sensitive.

This does not mean that international agreements or other special legal regimes cannot serve as a basis for implementing individual investment projects. However, the law should explicitly provide that the screening requirement also applies to investments implemented under such

[9] Hellenic Republic, Law No. 5202/2025 implementing Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union on grounds of security or public order, Government Gazette of the Hellenic Republic (Εφημερίδα της Κυβερνήσεως), No. A' 84, 23 May 2025.
[10] Kingdom of Spain, Law 19/2003 of 4 July on the legal regime governing capital movements and economic transactions with foreign countries (Ley 19/2003, de 4 de julio, sobre régimen jurídico de los movimientos de capitales y de las transacciones económicas con el exterior), as subsequently amended, in particular Article 7 bis regulating the foreign direct investment screening mechanism, Boletín Oficial del Estado, No. 160/2003.
[11] Federal Republic of Germany, Foreign Trade and Payments Act (Außenwirtschaftsgesetz – AWG) and Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung – AWV), as subsequently amended.
[12] French Republic, Commercial Code (Code de commerce), Book I, Title V, Chapter I (Article L151-3 et seq.), as subsequently amended.

arrangements. In other words, the fact that a particular project is governed by an international or intergovernmental agreement, a special law, a concession, a public-private partnership or another special regime should not constitute grounds for exemption from scrutiny on security and public order grounds. At the same time, screening should be completed before the state assumes a final international or contractual obligation, so that its findings can genuinely inform the decision on whether and how the project should proceed.

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