



# Screening of foreign investments: an EU perspective

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# 1. Context – how does the EU control foreign investments?

# The current FDI Screening Regulation

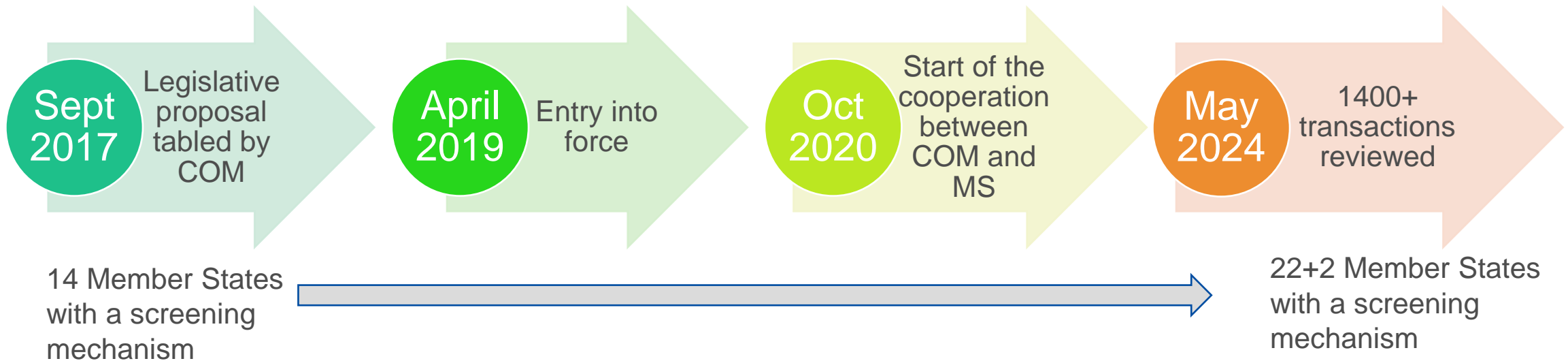
## Main objective

- Closing blind spots missed by screening only @ nat'l level: X-border risks to **security / public order**; protection of EU projects and programmes from risky FDI.

## Balance between openness and protection

- FDI screening is a very targeted tool to identify and address risks while preserving EU's openness to foreign investments.

# The journey so far:



## FDI screening does not impede the EU's openness:

- The cooperation mechanism does not delay transactions.
- COM opinions < 3%, well received by the MS
- Stronger cooperation & trust between MS and COM

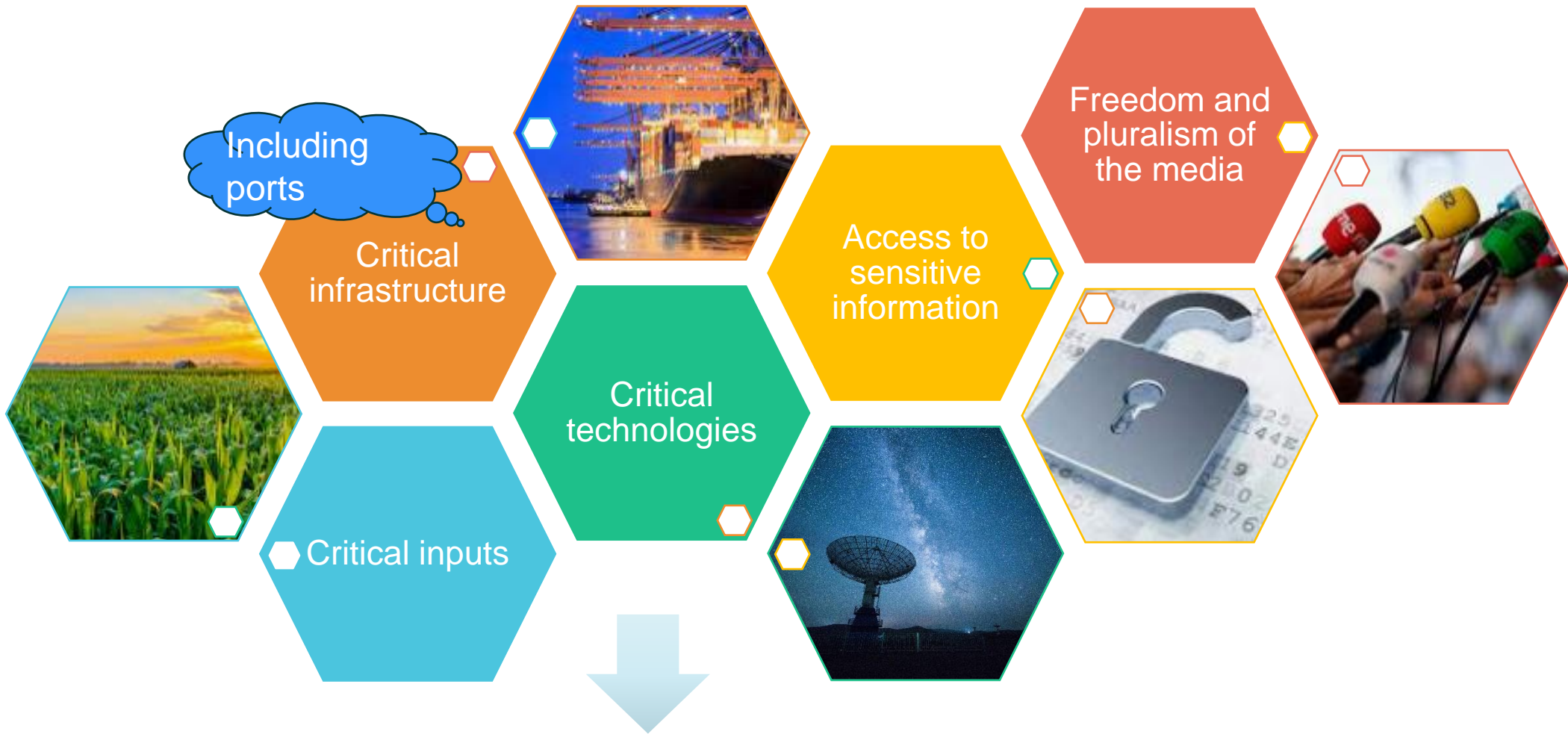


*How does the EU  
control foreign  
investments?*

# The front office: Member States



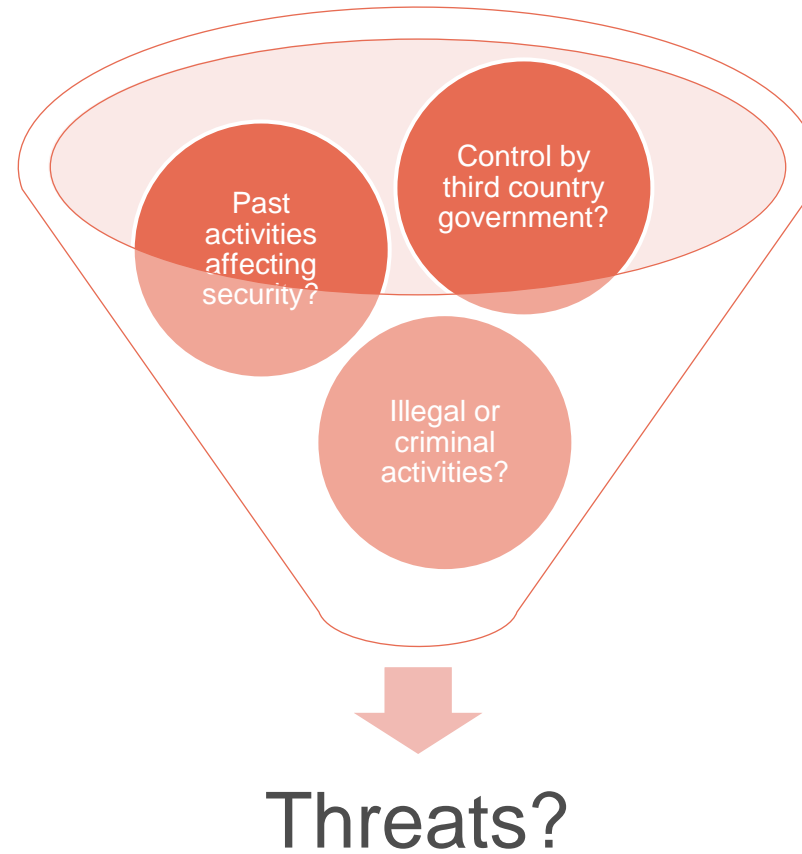
# Target vulnerabilities



Vulnerabilities?



# Possible threat factors – investor



# 2. Shortcomings & solutions

## 2.1 Main shortcomings due to the **lack of harmonisation** between MS screening mechanisms

Shortcoming	Proposed solution	Related article
Not all MS maintain a screening mechanism	All MS would be required to maintain a screening mechanism.	Art. 3(1)
Not all Screening mechanisms require authorisation <b><u>before</u></b> the FDI is completed.	ex-ante authorisation for foreign investments that meet the criteria set out in the regulation.	Art. 3(2), Art. 4(1)-(3)
Significant differences between the sectors/activities screened by MS.	MS required to screen a common core of transactions -> <u>at least</u> transactions related to EU projects and programmes (list in Annex I) and areas listed in Annex II.	Art. 4(4)

## 2.1 Main shortcomings due to the **lack of harmonisation** between MS screening mechanisms (cont.)

Shortcoming	Proposed solution	Related article
MS screen many intra-EU investments, but these are not notified to other MS and COM.	MS would be required to screen direct investments made by non-EU investors and direct investments made by EU investors who are controlled by a non-EU entity.	Art. 2(1)-(3) Art. 3(1)-(2)
Regulatory fragmentation undermines the internal market: lack of common standards for the security risk assessment by MS & the measures to take.	MS would be required to apply the standards for assessment and decision set out by the regulation.	Art. 13-14

## 2.2 Main shortcomings of the **cooperation mechanism** between COM and MS on transactions

Shortcomings	Proposed solution	Related article
<ul style="list-style-type: none"> <li>• Too many non-sensitive cases</li> <li>• No notification of potentially critical cases, mainly due to the limitation of the cooperation to <u>FDI</u></li> </ul>	Substitution with risk-based notification criteria.	Art. 5(1)-(2)
No rules for the efficient assessment of multi-country transactions*.	Specific rules to ensure the simultaneous and coordinated assessment of multi-country transactions and the coordinated enforcement of mitigating measures if conditions were imposed on the parties.	Art. 6(2)

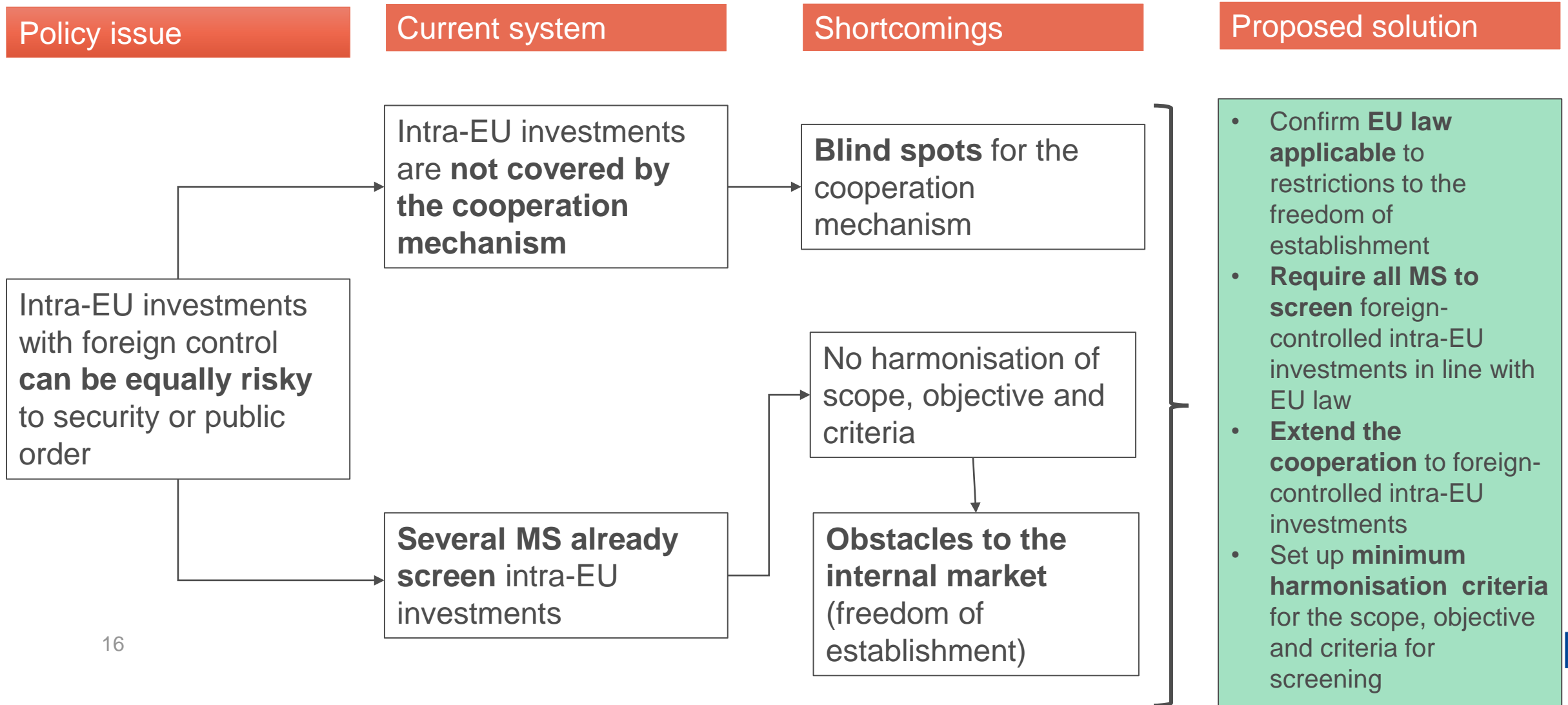
## 2.2 Main shortcomings of the **cooperation mechanism** between COM and MS on transactions (cont.)

Shortcomings	Proposed solution	Related article
Lack of information to other MS and COM about screening decisions.	Obligation for MS to provide basic information about the outcome of their screening decisions (confidential database)	Art. 7(10)
Lack of accountability for the screening MS how it took into account comments by other MS and the opinion by COM.	Where comments and opinion were issued, the screening MS needs to engage with the relevant MS/COM before and after the screening decision to ensure that the concerns are duly taken into account (‘accountability mechanism’).	Art. 7(6), Art. 7(8), Art. 7(9)

## 2.2 Main shortcomings of the **cooperation mechanism** between COM and MS on transactions (cont.)

Shortcomings	Proposed solution	Related article
Lack of ability of MS to act upon the security or public order interests of other MS unless these interests fully align with the concerns of the screening MS.	National screening laws would have to allow imposing measures to address the security or public order concerns of other MS.	Art. 11(5), Art. 14(1)
Timelines are too short for potentially critical transactions. Timelines suboptimal for the cooperation between COM and MS.	Phase I: 15 days for MS, 20 days for COM. Phase II: 20 days for MS, 30 days for COM.	Art. 8(1), Art. 8(3)

# Use of an internal market legal basis (Art. 114 TFEU)





# 3. Improvements for businesses

# Harmonisation of national screening procedures

Current system	Proposed changes
<ul style="list-style-type: none"><li>No <b>alignment</b> of the <i>organisation</i> and <i>deadlines</i> of the national screening processes.</li></ul>	<ul style="list-style-type: none"><li>Requirements for procedural steps: eligibility check, first assessment („Phase I”) and in-depth investigation („Phase II”).</li><li><i>In practice, the screening MS will have to complete its Phase I within 60 days in order to comply with Art. 6(1)(b).</i></li></ul>
<ul style="list-style-type: none"><li>No rules for the screening MS for the <i>timing of notifying transactions</i> to the other MS and COM.</li></ul>	<ul style="list-style-type: none"><li>Notification within 15/60 days of the receipt of the request for authorisation.</li></ul>
<ul style="list-style-type: none"><li>No procedure for the handling of <b>multi-country transactions</b>.</li></ul>	<ul style="list-style-type: none"><li>Coordinated filing by the investors to national authorities (Art. 6(2)(a)).</li><li>Coordinated notification of multi-country transactions by the screening MS to the other MS and COM (Art. 6(2)(b), (c)).</li><li>Coordinated provision of additional information to COM and other MS (Art. 8(7)). 15-day deadline for businesses to provide the requested information to the screening MS (Art. 10(4))</li><li>Coordination of screening decisions where comments/opinion were issued (Art. 7(6), (9)).</li></ul>

# Other improvements

Current system	Proposed changes
<ul style="list-style-type: none"><li>• No <b>mandatory considerations</b> for screening.</li></ul>	<ul style="list-style-type: none"><li>• Mandatory criteria for the determination of likely negative impact on security and public order (Art. 13)</li><li>• Mandatory criteria for screening decisions (Art. 14) &amp; conditions/prohibition only as „last resort” (Art. 14(2)).</li></ul>
<ul style="list-style-type: none"><li>• No requirements for national screening mechanisms to have „<b>due process</b>” rules.</li></ul>	<ul style="list-style-type: none"><li>• Mandatory „due process” rules in national mechanisms (right to be heard, reasoned decisions) (Art. 4(3)).</li></ul>
<ul style="list-style-type: none"><li>• Mandatory <b>recourse</b> against national screening decisions (Art. 3(5)).</li></ul>	<ul style="list-style-type: none"><li>• Mandatory <u>judicial</u> recourse against screening decisions (Art. 4(2)(e)).</li></ul>
<ul style="list-style-type: none"><li>• MS may or may not publish <b>annual reports</b> about their screening activity and the elements of national reports are not aligned.</li></ul>	<ul style="list-style-type: none"><li>• Mandatory annual reporting by MS to the public with common minimum elements (Art. 4(2)(f)).</li></ul>
<ul style="list-style-type: none"><li>• The existing form for EU notifications to the cooperation mechanism is an informal tool.</li></ul>	<ul style="list-style-type: none"><li>• The form for EU notifications will be adopted and published in an implementing act (Art. 10(2)).</li></ul>

# 4. Key features unchanged



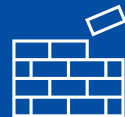
### Key principles unchanged

- Grounds: security and public order
- Investigation, & final decision remain @ nat'l level
- Focus on cross-border risks and EU assets



### Fix shortcomings of the current system

- All MS to have a screening mechanism
- Minimum harmonisation of national mechanisms
- Extension to foreign-controlled intra-EU deals



### Consolidate existing good practices

- Screening is a tool of „last resort”
- Cumulative Impact of transactions
  - Public annual reports

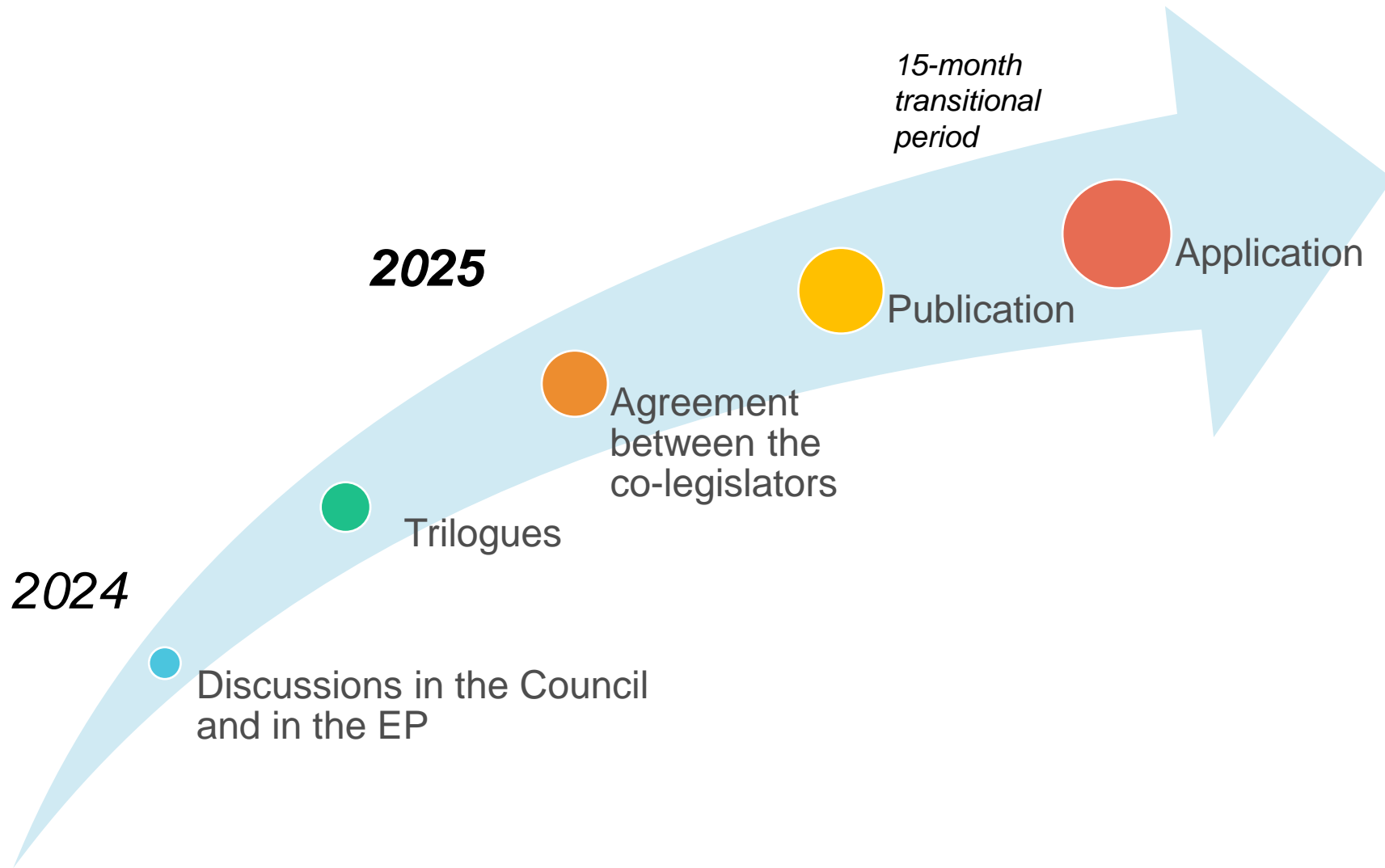
**Evolution, not  
revolution**



### Don't fix what is not broken

- Own-initiative procedure
  - Confidentiality
  - Notification form

# 5. Next Steps



# Thank you for your attention



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