Significant Investment and Screening of Foreign Investment in Slovakia

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Abstract

One of the current key priorities is the definition of rules for a more sustainable and fair globalization, where investments and trade play an important role. The current economic environment faces challenges that involve the need to promote social justice and environmental sustainability. The economic reality in Slovakia entails appropriate measures taken, including a stable macroeconomic policy, a non-discriminatory approach to commercial companies and prudent supervision of the investment activities of investors. A part of these measures taken in Slovakia include granting investors the status of "significant investment in the public interest" and the implementation of the regulation of the European Union on the screening of foreign direct investment into the Union. The benefit of this scientific study both for the theory and practice is the analysis of EU legal acts that have an impact on the development of investment relations and on the formation of a common investment policy within the European economic area.

Keywords: *investment relations, screening of foreign investment, legal act.*

JEL Classification: F15, F21, K22, K33

1. Introduction

The national economic policy in Slovakia is adapted to the current goals of the European Union and is implemented as part of a common investment policy respecting the European Green Deal. The Slovak Republic has assumed obligations established in the Treaty on the Functioning of the European Union as a result of its membership in the European Union. These obligations concern the free movement of capital and investment. According to Rojíček (2012) „*the accompanying phenomenon of the globalization of the economic world is the blurring the borders between individual nation states*."[4] Removing obstacles to the development of investment relations and the realization of the investment intentions of investors on the territory of other states is subject to legal regulation, especially in connection with the primary and secondary legislation of the European Union and the decision of the Court of Justice of the EU in case C-284/16 Achmea.[5] The correct implementation of the legal instruments of the European Union represents the guarantee for the creation of suitable and favourable

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[4] Rojíček, M., *Vliv globalizace na fungování mezinárodního obchodu.*, Political Economy Praha VŠE. Vol. 60, 2/17, 2012, ISSN 2336-8225, pp. 187-207.
[5] Court of Justice of the EU, *Judgment of the Court (Grand Chamber) of 6 March 2018*. Slowakische Republik *v Achmea* BV. C-284/16 [online cit.23.4.2023]. Available: https://curia.europa.eu/juris/document/document.jsf;jsessionid =2BD1C59 D4EA5.

conditions for investors as well as for the proper functioning of the internal market of the EU. Globalization and European economic integration have common systemic signs, namely the prohibition of discrimination and the most favoured nation clause. There is no doubt that investment are beneficial for economic development in a state, nonetheless, even here the strict legal regulation applies if we want to talk about favourable investment environment. The current system of European investment policy is undergoing fundamental changes and a common European investment policy is formed, which also amends the international obligations of states regarding the protection and support of investment, especially in relation to bilateral investment agreements concluded between the member states of the European Union.

2. Objective and methodology

The aim of the scientific study is to point out the systemic approach of the European Union in shaping the common investment policy and in granting the status of significant investment by Slovak authorities to foreign investors who are realizing their investment intention within the territory of the Slovak Republic.

In order to fulfil the main goal of the scientific study, we focused on:

a) clarification of the term foreign direct investment according to international institutions;

b) analysis of requirements for granting the status of significant investment to foreign investor;

c) protection of foreign investment in Slovakia;

d) identification of legal acts and international treaties ensuring the protection of the foreign investors

e) introduction of a system of screening of foreign investments in Slovakia.

When processing the given topic, we used several scientific and professional sources from different authors, but also documents, conventions or legal acts of several international organizations, as well as Slovak legal regulations. Using the legal logic, we have analysed the relevant legal acts, decisions of the Court of Justice of the EU as well as Slovak legal regulations.

Using the logical and empirical argumentation we have clarified phenomena and procedures relating to the impact of the EU law on the shaping of common investment policy within the European economic area.

The first part of this study is aimed at clarification of the notion of investment. In the second part, the problematic of granting the status of significant investment is clarified. The general theory on the protection of investment is dealt with in the third part. The fourth part of this study deals with the mechanism of screening of foreign investment in Slovakia.

3. Clarification of the notion of direct investment

There are several opinions of different authors on the notion of direct investment at present. In the interest of pursuing goals of this study we have applied case law of the Court of Justice of the European Union with the aim to point out the impact of legal statements included in the judgements on the forming of theory and legal practice. The Decision in case C-446/04 in paragraph 181 introduces the notion of

„direct investment" as *„direct investment concerns investment of any kind undertaken by natural or legal persons and which serve to establish or maintain lasting and direct links between the persons providing the capital and the undertakings to which that capital is made available in order to carry out an economic activity* ".[6] In addition to case law of the Court of Justice of the EU the secondary legislation applies. Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty defines the direct investment as „*investment of all kinds by natural persons or commercial, industrial or financial undertakings, and which serve to establish or to maintain lasting and direct links between the person providing the capital and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity.''*[7]

Further to the current development in Europe and in the world the notion of foreign direct investment is defined in the Regulation 2019/452 (Art.2) as follows: *„foreign direct investment' means an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investment which enable effective participation in the management or control of a company carrying out an economic activity.''*[8] The universal sign of investment activity is the economic activity of foreign investor and the control over economic activity of a company. If we would like to compare the subject matter of secondary acts, we should take into account the fact that they are legal acts with different legal effects, nonetheless the substance of the notion of the foreign direct investment remains preserved.

Besides the European Union there are other international organisations that introduce the notion of foreign direct investment in their acts. In this context the definition of UNCTAD, which is quite often referred to, cannot be omitted: „*Foreign direct investment (FDI) is defined as an investment involving a long-term relationship and reflecting a lasting interest and control of a resident entity in one economy (foreign direct investor or parent enterprise) in an enterprise resident in an economy other than that of the foreign direct investor (FDI enterprise or affiliate enterprise or foreign affiliate*")[9].

As we can see from the definitions of various international organisations the direct foreign investment do not only represent the movement of capital (both financial and physical), but also the transfer of management, control over the activity of the company. Ivanová and Masarová (2013) are of the opinion that: "*foreign direct investment is the category of international investment made by an entity resident in one*

[6] Court of Justice of the EU, *Judgment of the Court (Grand Chamber) of 12 December 2006*. Case C-446/04. ECLI:EU:C:2006:774.

[7] European Economic Community, *Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty*. OJ L 178, 8.7.1988, p. 5–18.

[8] European Union, *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*. OJ L 79I, 21.3.2019, p. 1–14.

[9] This general definition of FDI is based on OECD, *Detailed Benchmark Definition of Foreign Direct Investment*, second edition (Paris, OECD, 1992) and International Monetary Fund, *Balance of Payments Manual*, fifth edition (Washington, D.C., IMF, 1993) United Nations Conference on Trade and Development (1998) World Investment Report 1998. http:://www.unctad.org/system/files/official-document/wir1998_en.pdf.

economy (direct investor) to acquire a lasting interest in an enterprise operating in another economy (direct investment enterprise). The lasting interest is deemed to exist if the direct investor acquires at least 10% of the voting power of the direct investment enterprise"[10].The decisive feature of direct foreign investment is the control of assets gained abroad. In general one can state, that they are both movable or immovable assets that has economic value. The investor is free to mortgage the assets of the company, to invest into the company, to export and import goods and to provide services cross border, especially when it comes to financial services. In this context, it cannot be forgotten that the investment is connected with the expectation of certain revenues, because it consists in denying current consumption with the vision of the possibility of higher potential consumption in the future.[11] The following Table 1 illustrates the value of foreign Direct Investment in Slovakia in years 2019-2021.

The value of foreign direct investment into Slovakia in 2021 was 59 million USD, compared with the previous year when 2.4 billion USD of FDI was disinvested. Slovakia invested 389 USD abroad in 2021, up from the previous year when 347 billion USD was invested abroad.

Table 1: Foreign Direct Investment 2019-2021

Foreign Direct Investment	**2019**	**2020**	**2021**
FDI Inward Flow (million USD)	2,519	-1,931	59
FDI Stock (million USD)	60,604	64,237	59,367
Number of Greenfield Investment	43	26	46
Value of Greenfield Investment (million USD)	2,017	2,274	2,867

Source: UNCTAD, Word Investment Report 2022.

According to data from OECD, the main investing countries in Slovakia are the Netherlands, Czech Republic, Austria and Germany. As per sectors of activity, manufacturing and industrial production, financial and insurance services, wholesale and retail are those that attract the most investment.

4. Significant investment to Slovakia

Investment inflow to Slovakia started after the year 1991, when Czech and Slovak Federative Republic started to conclude bilateral investment treaties with other states. Foreign investors entered the market with the aim to invest their capital to existing industrial enterprises and to realize their investment intentions even on the scratch. With regard to the importance of ensuring the inflow of foreign investment and the stability the institute of special treatment with foreign investors, who realized their investment intention in Slovakia, were created. The problematic of issuing the certificate of significant investment has its history. Already in the year 1999 the investment of foreign investor was recognized as the significant investment. The national legal

[10] Ivanová, E., Masarová, T., *Importance of Road Infrastructure in the Economic Development and Competitiveness*, in Economics and Management, Kaunas University of Technology Vol. 18 No. 2, 2013, ISSN 2029-9338 (online), p. 269.

[11] Hassett, K. A., *Investment*, in The Concise Encyclopedia of Economics: Library of Economics and Liberty [online], 2008 [cit. 24.4.2023]. Available: http://www.econlib.org/library/Enc/Investment.html.

regulation since 1999 was amended and it did not complied with current trends of development of investment relations and the impact of globalization on activities of transnational companies in the territory of the Slovak Republic. In the year 2021 the new Act No. 371/2021 Coll. on significant investment was adopted. The Slovak legal regulation establishes general conditions and procedural steps that have to be taken for granting the status of significant investment. The certificate approved by the Government of the Slovak Republic and issued by the Ministry of Economy of the Slovak Republic represents the deed certifying that the investment is realized in the public interest. Píry (2021) is of the opinion that the notion of public interest is not anchored in the legislation as the definition applicable for all cases. The wording of constitutional Act No. 357/2004 Coll. on the Protection of Public Interested as amended is most often used in an effort to find the definition or to identify the public interest.

This Act having the quality of the constitutional law defines in its article 3 paragraph 2 the notion of public interest. According to this provision it is the interest that brings the property benefit or other benefit to all citizens or to many.[12] Held (1970) understands the public interest as the common good that is objective and normative. It cannot be the subject of the discussion, but it forms part of natural law.[13] If we would like to search for system compliance features, the result would be the public benefit or good that has economic significance with regard to the realization of investment intention. In fact, the investor is granted of significant position from the point of view of national economic policy of a state and public interest. The requirement for granting the certificate on significant investment are also the investment costs, that have to be at least 30 million euro at least 50 new jobs have to be created.

The decisive factors in deciding about the public interest are:

a) investment benefit for improving the competitiveness of the Slovak economy,

b) added value of the investment,

c) creation of new jobs,

d) protection of environment,

e) positive influence on the regional development.

The investment intention has to be realized in the area of industrial production, services, research and development or in the area of public services. Holder of certificate of significant investment has certain duties related to the realization of investment intention. The holder of certificate has to procure long-term assets in the value of investment costs stated in the certificate within seven years at the latest from the issuing the certificate and to keep and use the significant investment minimum seven years from the finalization of realization of the significant investment. Another duty is to create new jobs within three years at the latest from the finalization of realization of significant investment and to keep those jobs minimum two years after their creation. These requirements seem to be demanding, however, investors in their investment intentions declare that they will comply with these conditions. Investors with granted status of significant investment are quite often the recipients of state aid, mainly in the form of tax exemption.

For illustration we show the overview of issued certificates to significant investors realizing their investment intention in Slovakia in the Table 2. Not every year

[12] Píry, M., *Public Interest*, University Matej Bel. Banská Bytrica, 2021, ISBN 978-80-557-1907-8.

[13] Held, V., *The Public Interest and Individual Interests*, New York: Basic Books, 1970, p. 87.

the foreign investor was granted the status of significant investment (2006, 2008, 2010, 2011, 2012, 2013, 2014, 2020). From this reason, the table does not contain data, because the result would be 0.

Table 2: Overview certificate of significant investment

Year	**1999**	**2000**	**2001**	**2003**	**2004**	**2005**	**2007**	**2009**
Count	1	2	4	1	8	2	1	1
Year	**2015**	**2016**	**2017**	**2018**	**2019**	**2021**	**2022**	
Count	3	1	3	1	2	1	10	

Source: Ministry of Economy of the SR (2023). Significant investment. Available: Významné investície | Podpora investícií | Podpora podnikateľov | MHSR (gov.sk).[Online Cit. 3.4.2023.]

The biggest number of certificates of significant investment were issued in the year 2022 that can be marked as the biggest development of investment relationships and it is related with pursuing the objectives stipulated in the Recovery and Resilience Plan of Slovakia. The part of National Reform Programme of the Slovak Republic 2022 is *inter alia* the regional development and support of employment that also involves the realization of investment intentions in Slovakia. These significant investments are therefore made in the regions with the insufficient jobs. These investors take significant part in export (automotive industry), employment, in creation of new subcontracting relationships and in regional development.

5. Protection of significant investment in Slovakia

Lisbon Treaty has brought many significant changes. One of these is enshrined in the wording of article 207 paragraph 1, on the basis of which direct foreign investment and copyrights became part of common trade policy.[14] Further to article 3 TFEU the common trade policy belongs to the exclusive competences of the European Union. In the interest of pursuing the goals of development of investment relations the EU institutions have also adopted several significant documents having impact on forming the common investment policy within the European economic area.[15] One of these documents is the Declaration of the representatives of the governments of the member states of 15 January 2019 on the legal consequences of the judgment of the Court of Justice EU in Achmea and on investment protection in the European Union.[16] In the Declaration the Member State assume to end the validity of all bilateral investment treaties concluded between the Member States of the European Union („intra EU BITs"). During the preparatory negotiations to the Declaration the Slovak Republic also played important role in negotiations of multilateral agreement on the termination of intra EU BITs. Another important document is the Communication from the Commission to the European Parliament and the Council protection of intra-EU investment (COM/2018/ 547 final). The fundamental change and breakthrough represents the adoption of

[14] European Union, *Consolidated version of the Treaty on the Functioning of the European Union* OJ C 326, 26.10.2012, p. 47–390.
[15] Ibid, p. 47–390.
[16] European Union, *Declaration of the representatives of the governments of the member states*, 2019, [online cit. 23.4.2023]. Available: https://finance.ec.europa.eu/system/files/2019-01/190117-bilateral-investment-treaties_en.pdf.

the Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union.[17] The Agreement establishes the obligation for the Member States to terminate the validity of bilateral investment agreement binding among the EU Member States. According to article 4 paragraph 1 of the Agreement of 2020 the arbitration clauses that contradict the EU primary law cannot be applied and they cannot represent the legal basis for arbitration proceedings. Recital of the Agreement of 2020 explicitly stipulates that*: „Member States are obliged under the second subparagraph of Article 19(1) TEU to provide remedies sufficient to ensure effective legal protection of investors' rights under Union law. In particular, every Member State must ensure that its courts or tribunals, within the meaning of Union law, meet the requirements of effective judicial protection (Judgment of the CJEU in Case C-64/16 Associação Sindical dos Juízes Portugueses, paragraphs 31 to 37).“* This obligation can also be understood as the duty of fulfilment in *bona fide* the obligations stemming from the membership in the European Union. The Slovak Republic played the significant role in this process as the breakthrough decision in case Achmea involved the Slovak Republic. Following the judgement of the Court of Justice of the EU in case Achmea all Member States of the EU are obliged to draw consequences on the basis of the principle of sincere cooperation enshrined in article 4 paragraph 3 on the Treaty on the Functioning of the European Union as well as in accordance with general principles of autonomy, precedence and direct effect of the EU law.[18]

The investors who are realizing their investment intention in Slovakia can be divided into two groups. First group is composed by investors from the Member States of the EU (Germany, France, Belgium) and to second group investors from non-EU Member States can be ranked (South Korea, United Kingdom).

Provisions of article 63 to 67 of the Treaty on the Functioning of the EU relate to investors from the EU Member States, as well as relevant secondary legislation.[19] Applicable legislation of the EU provides for sufficient protection of investors´ rights. The EU legal system also protects cross-border investors active in the EU internal market. The investors can establish a company, to buy movable and immovable assets, to dispose with it, to provide credits, to get patents, trademarks, and other rights.

Rights of investors from non-member States are protected by bilateral investment treaties, the Slovak Republic being party to them. The bilateral investment treaties guarantee certain standard of treatment and protection of investment against direct or indirect expropriation from the side of the host State. They include provisions on dispute settlement. These provisions made the BITs so effective and popular instrument of protection of foreign investment.[20]

Not only the EU legal regulation, but also the Slovak Commercial Code provides for the protection of assets of foreign investor. It is only possible to expropriate the asset in the public interest that cannot be satisfied otherwise, for compensation provided without any delay (article 25 Commercial Code).[21] It means that also the Slovak legal

[17] OJ L 169, 29.5.2020, p. 2.
[18] European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, OJ C 326, 26.10.2012, p. 47–390.
[19] Ibid, p. 47–390.
[20] Mclachlan, C., Shore, L., Weiniger, M., *International investment arbitration*: *substantive principles*. New York: Oxford University Press, 2007, ISBN 01992-8664-7.
[21] Act No. 513/1991 Coll. Commercial Code.

provision of 1991 stipulates the protection of investors´ rights against expropriation, while the foreign investor enjoys same rights and obligations as the Slovak investor. The system of protection of investment under the Slovak legal system is based on the principle of equality and fair treatment.

6. Screening of foreign investment

Current development and trends in global economic area as well as mutual openness of the economies of the European Union contributed to the fact that in spite of overall positive impact of inflowing foreign investment it is necessary to pay increased attention to the foreign investment and to identify their potential and capability to negatively influence the security or public order.[22] Screening of investment is not the domain of the Member States of the EU, but also the United States already in 1975 introduced the system of *Committee on Foreign Investment in the United States,* that provides for the system of screening of investment.[23] Other states in the world have also introduced similar legal regulation. China adopted in 2018 the *Foreign Investment Law of China,* which replaced the previous legal regulation and introduced several forms of measures limiting the inflow of foreign investment.[24]

The introduction of so-called screening mechanism of foreign investment has its origin in the secondary legislation of the EU, in particular in Regulation (EU) 2019/452 screening of foreign direct investment into the Union.[25] The special feature of the regulation is that it does not cover portfolio investment, as that are not part of common commercial policy within the meaning of article 207 TFEU. This Regulation was reflected in Slovakia in the Act No. 497/2022 coll. on Screening of Foreign Investment. The aim of process of screening of foreign investment is to create the legal framework for the control of foreign investment in order to ensure protection and public order within the framework of European economic area. In clarifying the notion of public order we have to take account the balance that has to be established between the necessary limitation of certain activity with legal justification of public policy, where public security may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society (see, to this effect, Rutili, cited above, paragraph 28, and Case C-348/96 paragraph 21).[26] The concept of 'public policy', as interpreted by the Court of Justice, covers the protection against a genuine and sufficiently serious threat affecting one of the fundamental interests of society and may include, in particular, issues relating to human dignity, the protection of minors and vulnerable adults and

[22] National Council of the Slovak Republik, *Explanatory Report on Draft Law on Screening of Foreign Investment,* 2019, [online cit.02.04.2023] Available: http:www.nrsr.sk/web/Dynamic/DocumentPreview.aspx? DocID=518284.

[23] U.S. Department of the Tresaury, *The Committee on Foreign Investment in the United States.* [online cit. 23.04.2023], Available: https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment.

[24] UNTAD (2023). Foreign Investment Law of the People's Republic of China. [online cit. 23.04.2023] Available: https://investmentpolicy. unctad.org/investment-laws/laws/317/china-foreign-investment.

[25] European Union, *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.* OJ L 79I, 21.3.2019, p. 1–14.

[26] Court of Justice of the EC, *Judgment of the Court of 19 January 1999.* Case C-348/96. Criminal proceedings against Donatella Calfa. ECLI:EU:C:1999:6.

animal welfare. Similarly, the concept of public security includes issues of public safety.[27] Screening mechanism represents the legal instrument to eliminate security risk involved in foreign investment. In this connection, we have to point out that Slovak legal regulation does not serve enforcing any economic, political or other interests.

This legal regulation relates to subjects – investors who:

a) are not nationals of the EU Member State,

b) do not have their main seat in the EU Member States,

c) are EU nationals/have seat in the EU, but are managed by subjects from third countries.

This legal regulation covers broad spectrum of investment, by which lasting and direct relationship between investors from third countries including state entities and companies performing economic activity in one Member State are created or maintained. According to article 3 of the Act on Screening of Foreign Investments the critical foreign investment is the investment that involves increased risk of negative influence on security or public order of the Slovak Republic with regard to the significance of target person or the activity from the point of view of keeping the fundamental functions of the state. Investments realized in critical sectors are subject to screening: specific products and trade in military material, products of dual-use items, entities designated as entities of economic mobilisation, business activities in the field of biotechnology digital service providers, providers of content sharing platforms; press agencies, entities in the information security encryption sector and others.

This legal regulation will also influence the acquisitions made by companies with their seat in the EU Member States in the future, which are controlled or financially supported from abroad or whose end users of the benefits are not nationals of the EU Member States.

The coordination and realization of screening mechanism of foreign investment belongs to the competence of the Ministry of Economy of the Slovak Republic. In this process other national authorities are involved - Ministry of Defence of the Slovak Republic, Ministry of Interior of the Slovak Republic – as the screening involves security issues. This mechanism can influence the foreign investors from third countries to realize their investment intention to Slovakia. From this reason we perceive the screening mechanism as the administrative limitation of free movement of capital (article 63 TFEU) and freedom of establishment (article 49 TFEU). It means that if the investor plans to realize his/her investment intention involving critical investment, s/he has the duty to ask relevant institutions for verification. In case of infringement the law the investor risks sanctions ranging from 1 to 2 per cent of the aggregate total net turnover of the foreign investor or from EUR 100 000 to 1 million. In this context the analysis has to be made before the realization of the investment intention and the Ministry of Economy has to be asked to verify, whether it is critical foreign investment in accordance with the mentioned act.

[27] European Union, *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.* OJ L 79I, 21.3.2019, p. 1–14.

7. Practical examples

In the Czech Republic, further to the Regulation (EU) 2019/452 on screening of foreign direct investment into the Union the national Act no. 34/2021 Coll on screening of foreign investment was adopted. The Ministry of Industry and Trade of the Czech Republic is responsible for screening of investments. In the period between 1 May 2021 and 30 April 2022 it was screening 12 cases of foreign investments in the Czech Republic. Most of these investments were approved and granted the status, in two cases the investors reconsidered their priorities and give up their intention to realize investment in the Czech Republic.[28] From geographic point of view the investments from China, USA, Malaysia, Singapore were reviewed. The objectives of investment intentions of foreign investors have been biotechnologies, engineering, chemical industry, telecommunications.

Annual Report by the European Commission regarding the application of the EU Foreign Direct Investment contains data on investments in the world, both within the EU and non-EU Member States. Information on screening foreign investment within the framework of EU Member States are included this report. In the year 2020 there were 91 % cases approved in the EU Member States, in 7 % of cases the investors have withdrawn and only in 2 % of cases the investment was not approved.[29] These results evidence the fact that mentioned legal framework does not have limiting effects and investment in the framework of European economic area are rising.

8. Discussion

Open investment environment contributes to sustainable development in the world. Nevertheless, the European Union introduces measures aimed at protection of security and public order, in accordance with objectives for which it was established. One of these measures is screening of foreign investment aimed at:

a) non-discriminatory treatment with investors;

b) legal certainty for foreign investors and target subjects;

c) transparent screening of foreign investment;

d) exchange of information on the development of investment relations between the EU Member States and the European Commission;

e) narrow cooperation in the area of common European investment policy;

f) limitation of influence of undesirable investors by limiting their investment intention within the territory of the EU.

In this context the question of independence of national authority – Ministry of Economy of the Slovak Republic, who plays an important role in the process of screening and issuing certificates on foreign investment, arises. The minister of economy is appointed to this function representing a political party. That is why our statement is relevant, questioning whether issuing decision on screened investment should not fall

[28] Ministry of Industry and Trade of The Czech Republic (2022). Výročná správa o preverovaní zahraničných investícií v Českej republike. Praha. [online cit.4.4.2023]. Available: https://www.mpo.cz/assets/cz/zahranicni-obchod/proverovani-zahranicnich-investic/2.

[29] European Parliament and the Council Annual Report by the European Commission regarding the application of the EU Foreign Direct Investment (FDI) Screening Regulation Brussels, 23.11.2021 COM (2021) 714 final.

within the competence of independent authority, such as the Anti-Monopoly Office of the Slovak Republic. Its chairperson is not a member of any political party and has the status of independent national authority. The political parties or business entities should not have impact on the decision of national authority.

We are convinced that the independent national authority, and as such undoubtedly is the Anti-Monopoly Office of the Slovak Republic, is the guarantee of impartial, objective, competent and ethical decision-making. The Slovak Republic has the exclusive responsibility for its national security as confirmed by article 4 paragraph 2 TFEU, while it has the right to protect its fundamental interests of security in accordance with article 346 TFEU.[30]

9. Conclusion

In this study we have clearly reached the conclusion that forming the common European policy has the future and that adopting measures at the level of the European Union has its importance from the point of view of security and protection of public interest. We have pointed out the system of granting the status of important investment in Slovakia that are market also as significant investment or investment in public interest and that contribute to the development of regions, to increased employment and thus they represent driving force for the development of national economy. These investments contribute to large extent to the foreign export and they create sub-contracting relations for SMEs. Creating the concept of screening follows the interest of preserving peace, security and public order at the level of the European Union and contributes to deepening the European economic integration and mutual cooperation among the Member States. The Slovak legal regulation on screening foreign investment pursues the goal to create favourable investment environment in Slovakia for investors from various States, not only from the EU Member States. In the long term, these measures will improve the perspective of sustainability in business and sub-contracting production with higher added value. In broader terms, in combination with screening the activities of foreign investors the current development in area of common investment policy represents the new transnational economic model.

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[30] European Union, *Consolidated version of the Treaty on the Functioning of the European Union* OJ C 326, 26.10.2012, p. 47–390.

the implementation of Article 67 of the Treaty, OJ L 178, 8.7.1988.
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