

Investment Screening Unit
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Dear Minister Humphreys,

The American Chamber is grateful for the opportunity to comment on the Transposition of the EU Regulation *Establishing a Framework for Screening of Foreign Direct Investments into the EU*. The Chamber recognises that this is an important step in ensuring a balanced and proportionate Irish framework in line with investment screening mechanisms across EU Member States. The correct implementation of the Regulation will ensure that Ireland will continue to be the location of choice for foreign direct investment, based on compelling market based principles, while complying with our obligations under international law and responding to valid public policy concerns across Europe.

Today, Ireland is one of the most open and innovative economies in the world – a member of the European Union and a key trade and investment partner with the United States. The Chamber believes US companies and their teams here play a critical role in Ireland’s economy and society. Their Irish operations are the ‘shining lights’ of these global organisations. Ireland is at the centre of a vibrant, two-way transatlantic bridge between the world's largest and most integrated economies. The US operations of Irish companies are leaders in many sectors, from construction supplies to nutrition. As noted in the consultation document, it is vital that the establishment of any Investment Screening Board would promote Ireland’s role in the Transatlantic economy.

As the competent Irish authority, an Investment Screening Board’s primary focus should be the safeguarding of Irish security concerns, in particular the protection of the civil and privacy rights of people living and working in Ireland. Additionally, in the context of our

globalised economy, an Investment Screening Board should align with our EU neighbours and key third countries, including the US and the UK, to the extent permitted by the Regulation to share resources and information that promotes investment and free flowing trade.

In designing an Irish Investment Screening mechanism, the Chamber believes the focus should be in step with international best practice and ensuring that the Irish system has the capacity to respond to potential requests for information from other EU Member States and the European Commission. To this end, the Chamber is supportive of the list of factors that may be taken into consideration in Article 4 and believe this list is sufficiently comprehensive. We note that it has been necessary for other EU Member States, with existing investment screening mechanisms, to expand the scope of their systems to meet the suggested standard in the Regulation. Furthermore, we believe that the expansion of this list, at this time, would undermine Ireland's ability to attract and retain global investment.

At a Union level, we note the Commission's power to protect programmes and projects which "represent an important contribution to its [the Union's] economic growth, jobs and competitiveness", including Horizon 2020. Our members are a key accelerator of the innovation ecosystem in Ireland - CSO data for 2017-2018 shows that 69% of the €2.77 billion of business expenditure on research and development (BERD) is by foreign companies, and since the introduction of the credit in 2004 nearly 600 new R&D projects have been announced by multinational clients of IDA Ireland. Science Foundation Ireland centres and other innovation programmes are a key cornerstone of many of the joint project between FDI and indigenous innovation endeavours in Ireland. The Chamber is therefore strongly opposed to the adoption of a provision similar to Article 8 into the Irish mechanism.

The Chamber recommends the establishment of an independent statutory body, building on the success of the Data Protection Commission, to administer the investment screening process. This would establish a clear differentiation between organisations responsible for the growth of foreign investment in Ireland and the regulation of such investment.

Furthermore, an independent organisation would more easily facilitate the implementation of the confidential data protection mechanism required by the Regulation. It is paramount that this organisation would be adequately funded and resourced with economic and trade experts, with the capacity to provide timely and considered decisions.

The Chamber notes that the introduction of a screening mechanism will place an additional administrative burden on some organisations wishing to invest in Ireland. It is important that consideration is given to identifying ways to ensure that businesses are not asked to unnecessarily replicate administrative formalities across different functions, such as in complying with antitrust obligations.

In addition to the requirement for judicial redress contained within the recommendation, the Chamber also recommends the establishment of a redress mechanism in the first instance within the statutory body. The introduction of an investment screening mechanism will add significantly to the time it will take to complete some investment; a first instance complaint mechanism will allow for smaller issues to be dealt with without recourse to a full and costly judicial review process.

The Chamber notes that the European Commission will conduct a review of the Regulation in 2023 and every five years thereafter. We suggest that the Irish system is reviewed in line with the European system, to ensure that it is achieving the optimal balance between protecting Irish national interest and encouraging foreign investment.

The Chamber appreciates Ireland's commitment to a rules-based multilateral global trading system. In addition to the introduction of an investment screening mechanism, the Chamber encourages the continuance of measures to strengthen the protection of citizens' and organisations' data through the continued development of IP regimes at national and EU level, in particular the finalisation of the Unified Patent Court.

The COVID 19 pandemic has given rise to a period of uncertainty for all business organisations, including global firms. The Chamber recommends that Ireland learns from the experience of increased investment screening at EU level introduced as a result of the current crisis. As it did during the last recession, foreign direct investment, both the installed

base and the future pipeline, will play a key role in Ireland's path to recovery. Ireland must continue to prove it is the best partner for global companies expanding and developing needs overseas as a competitive and cost-efficient place to do business.

The objective of the mechanism should be to maintain Ireland's reputation as the location of choice for US FDI in Europe and Ireland's hard-won place at the centre of the global trade and investment stage. Policy certainty and transparency is essential in securing this reputation; remaining nimble and responsive in a highly uncertain and fast-changing global environment is key to our competitiveness.

The Chamber looks forward to continuing dialogue and discussion on these topics, and indeed on any investment-related topic.

Yours sincerely,

A handwritten signature in black ink that reads "Mark Redmond". The signature is written in a cursive, slightly slanted style.

Mark Redmond

Chief Executive