



# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation 2017/0224(COD)	Procedure completed 13/06/2018 Decision to enter into interinstitutional negotiations confirmed by plenary (Rule 69c)
Screening of foreign direct investments into the European Union	
Subject 6.20.06 Foreign direct investment (FDI)	
Legislative priorities <a href="#">Joint Declaration 2018</a>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>INTA</b> International Trade (Associated committee)		11/10/2017
		PPE <a href="#">PROUST Franck</a>	
		Shadow rapporteur	
		S&D <a href="#">MAUREL Emmanuel</a>	
		ECR <a href="#">STARBATTY Joachim</a>	
		ALDE <a href="#">CHARANZOVÁ Dita</a>	
		GUE/NGL <a href="#">KOULOGLOU Stelios</a>	
		Vers/ALE <a href="#">JADOT Yannick</a>	
		EFDD <a href="#">BEGHIN Tiziana</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
<b>AFET</b> Foreign Affairs			21/11/2017
		ECR <a href="#">VAN ORDEN Geoffrey</a>	
<b>ECON</b> Economic and Monetary Affairs			05/10/2017
		ECR <a href="#">ZILE Roberts</a>	
<b>ITRE</b> Industry, Research and Energy (Associated committee)			09/11/2017
		Vers/ALE <a href="#">BÜTIKOFER Reinhard</a>	
<b>JURI</b> Legal Affairs		The committee decided not to give an opinion.	
<b>LIBE</b> Civil Liberties, Justice and Home Affairs		The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Environment</a>	<a href="#">3676</a>	05/03/2019
European Commission	Commission DG	Commissioner	
	<a href="#">Trade</a>	MALMSTRÖM Cecilia	

Key events			
13/09/2017	Legislative proposal published	<a href="#">COM(2017)0487</a>	Summary

26/10/2017	Committee referral announced in Parliament, 1st reading/single reading		
18/01/2018	Referral to associated committees announced in Parliament		
28/05/2018	Vote in committee, 1st reading/single reading		
28/05/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
05/06/2018	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A8-0198/2018</a>	Summary
10/12/2018	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	<a href="#">PE631.953</a>	
13/02/2019	Debate in Parliament		
14/02/2019	Results of vote in Parliament		
14/02/2019	Decision by Parliament, 1st reading/single reading	<a href="#">T8-0121/2019</a>	Summary
05/03/2019	Act adopted by Council after Parliament's 1st reading		
19/03/2019	Final act signed		
19/03/2019	End of procedure in Parliament		
21/03/2019	Final act published in Official Journal		

### Technical information

Procedure reference	2017/0224(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the EU TFEU 207-p2
Stage reached in procedure	Procedure completed
Committee dossier	INTA/8/11011

### Documentation gateway

Legislative proposal		<a href="#">COM(2017)0487</a>	13/09/2017	EC	Summary
Document attached to the procedure		<a href="#">SWD(2017)0297</a>	13/09/2017	EC	
Committee draft report		<a href="#">PE619.160</a>	13/03/2018	EP	
Committee opinion	<b>AFET</b>	<a href="#">PE616.888</a>	22/03/2018	EP	
Committee of the Regions: opinion		<a href="#">CDR5423/2017</a>	23/03/2018	CofR	
Committee opinion	<b>ECON</b>	<a href="#">PE615.441</a>	05/04/2018	EP	
Amendments tabled in committee		<a href="#">PE620.765</a>	12/04/2018	EP	
Amendments tabled in committee		<a href="#">PE620.810</a>	12/04/2018	EP	

Committee opinion	ITRE	<a href="#">PE615.451</a>	25/04/2018	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A8-0198/2018</a>	05/06/2018	EP	Summary
Text adopted by Parliament, 1st reading/single reading		<a href="#">T8-0121/2019</a>	14/02/2019	EP	Summary
Draft final act		<a href="#">00072/2019/LEX</a>	13/03/2019	CSL	
Commission response to text adopted in plenary		<a href="#">SP(2019)354</a>	16/04/2019		

<b>Additional information</b>	
Research document	<a href="#">Briefing</a>

<b>Final act</b>
<a href="#">Regulation 2019/452</a> <a href="#">OJ L 079I 21.03.2019, p. 0001</a> Summary

## 2017/0224(COD) - 13/09/2017 Legislative proposal

**PURPOSE:** to propose a framework for the screening of foreign direct investment into the European Union (trade package).

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** foreign direct investment (FDI) is included in the list of matters under the common commercial policy pursuant to Article 207(1) TFEU. FDI is an important source of growth, employment and innovation. It has brought significant benefits to the EU as to the rest of the world. This is why the EU wants to maintain an open investment environment.

While the Union's openness to foreign direct investment will not change, it has to be accompanied by vigorous and effective policies to, on the one hand, open up other economies and ensure that everyone plays by the same rules, and, on the other hand, to protect critical European assets against investment that would be detrimental to legitimate interests of the Union or its Member States.

Today, nearly half of the Member States have screening mechanisms in place. A mechanism which allows the State to monitor foreign investments in companies/sectors considered of strategic importance and to oppose them under certain conditions. However, existing screening mechanisms have differences in scope and procedure.

The proposed framework shall ensure that foreign investment remains a major source of growth in the EU and at the same time contribute to protecting the EU's core values.

The proposal is fully in line with the 2015 Trade for All [Communication](#) to create a rules-based regime for trade and investment. The proposed Regulation follows up on the Commission's [reflection paper](#) of 10 May 2017 on Harnessing Globalisation highlighting the benefits and the challenges of globalisation.

**CONTENT:** the aim of the proposed Regulation is to establish an enabling framework for the screening by the Member States and the Commission of foreign direct investments in the Union on the grounds of security or public order. It does not require Member States to adopt or maintain a screening mechanism for foreign direct investment.

It sets out the basic requirements to be met by screening mechanism, such as the possibility of a judicial redress of decisions, non-discrimination between different third countries and transparency.

The proposed Regulation:

- confirms that foreign direct investment may be screened by Member States and the Commission on the grounds of security or public order. These grounds are defined in accordance with the relevant provisions of the WTO (World Trade Organisation) Agreement and other trade and investment agreements to which the Union or its Member States are parties;
- establishes a cooperation mechanism between Member States and the Commission to inform each other and exchange information on foreign direct investment likely to threaten security or public order. Such cooperation should enable Member States to exchange information and, where possible, coordinate their response to foreign direct investment where appropriate;
- provides for the possibility for the Commission to issue an advisory opinion to the Member States concerned if it considers that a FDI may affect security or public order in relation to projects or programmes of Union interest. These include projects and programmes in the fields of research (Horizon 2020), space (Galileo), transport (trans-European transport network, TEN-T), energy (trans-European network energy, TEN-E) and telecommunications. The Commission should also be able to issue an advisory opinion in case it considers that a FDI in one Member State affects the security or public order in another Member State;
- obliges Member States to inform other Member States and the Commission about any foreign direct investment that is undergoing screening within the framework of their national screening mechanisms. The proposed cooperation mechanisms will allow a Member

State to raise concerns as regards a foreign direct investment in another Member State and to provide comments. The Commission may also issue a non-binding opinion on such foreign direct investment;

- provides that Member States and the Commission may request certain information on a specific foreign direct investment on a case-by-case basis in order to be able to analyse in detail whether this investment affects or threatens to undermine security or order public;
- requires Member States to establish contact points within their administration which can be consulted on all matters relating to the implementation of the Regulation.

In addition, the Commission intends to set up a coordination group composed of Member States representatives and the Commission to examine issues relating to FDI into the EU as a forum for exchanging information between Member States on foreign direct investment flows and trends in this area.

BUDGETARY IMPLICATIONS: the impact on appropriations of an administrative nature is estimated at EUR 3.224 million over a 4-year period.

## 2017/0224(COD) - 05/06/2018 Committee report tabled for plenary, 1st reading/single reading

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The Committee on International Trade adopted the report by Franck PROUST (EPP, FR) on the proposal for a regulation of the European Parliament and of the Council establishing a framework for screening of foreign direct investments into the European Union.

The Committee on Industry, Research and Energy, exercising its prerogative as an associated committee in accordance with [Article 54 of the Rules of Procedure](#), also gave its opinion on the report.

The committee responsible recommended that the European Parliaments position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows:

Definitions and terms: Members wanted to clarify that the term foreign direct investment covered investments of all kinds, regardless of their volume or participation threshold by a foreign investor, whether or not such investor is the ultimate investor. The definition of foreign investor shall include natural or legal persons, undertakings from third countries or public or national institutions. The term foreign government-controlled direct investment has also been clarified.

As regards screening, the screening time-limit should start to run only when all the information needed to constitute a comprehensive file has been submitted.

FDI screening: Members pointed out that projects and programmes of EU interest shall include in particular those in which involve EU funding or which are covered by EU legislation in relation to critical and strategic infrastructure, including key enabling technologies and critical inputs, essential for security and public order.

The Commission should be empowered to adopt delegated acts in order to update the open list of projects or programmes in the Annex to the Regulation.

Factors to consider: in determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission shall take into account, in particular, whether:

- there is a risk of a disruption, failure, loss or destruction of supply exists, that would have an impact in a Member State or in the Union;
- the foreign investor is directly or indirectly controlled by the government, state bodies or armed forces of a third country;
- the fact that the foreign investment is part of a state-led outward projects or programmes and foreign government-controlled direct investments for strategic industrial goals, acquiring or transferring key enabling technologies or knowledge, supporting strategic national interests.

The following potential effects shall also be considered:

- critical and strategic infrastructure, critical and strategic technologies,
- the strategic autonomy of the Union,
- the access to sensitive information or to personal data of Union citizens,
- the plurality and independence of media and services of general interest and services of general economic interest.

Other elements shall be taken into account:

- the context and the circumstances under which the investment is or was made, including if the sector is regarded as a strategic sector by the investors country of origin;
- whether there is a serious and legitimate risk that the foreign investor engages in illegal or criminal activities, such as money-laundering, diversion of funds, corruption, financing of terrorism, organised-crime or infringements of intellectual property rights or breaches international human rights instruments and core ILO labour standards;
- whether the statutes of the undertaking to which the investment is made include change of ownership clauses;
- whether market in the foreign investors country of origin is open, restricted or closed and whether there is reciprocity and a level playing field.

The examination shall be conducted on the basis of the best information available, which should be accurate, comprehensive and reliable.

Framework for filtering and cooperation: Members stressed the possibility of initiating proceedings before the national authorities or courts against the screening decisions must be ensured, while safeguarding the legal system of the Member State in question.

Member States shall have the possibility to send comments to a Member State in which an investment is planned. Members stated that these comments shall be sent simultaneously to all other Member States and to the Commission, which should then have the possibility to issue an opinion to the Member State in which the investment is planned. This opinion shall be transmitted simultaneously to all other Member States

and shall not be made public.

A Member State should have the possibility to request the opinion of the Commission or other Member States for comments on an FDI taking place in its territory.

In addition, where economic operators, civil society organisations or social partners, such as trade unions, have relevant and substantial information or concerns on a FDI, they should be able to inform the Commission. The Commission could then take this information into account when issuing an opinion.

Annual report: Member States shall provide the Commission with an annual report covering foreign direct investments which took place in their territory, their Exclusive Economic Zone or continental shelf. On the basis of these annual reports, the Commission shall draw up an annual report outlining the overall investment situation in the Union including the implementation of this Regulation and should submit it to the European Parliament.

In order to enhance dialogue between Union institutions and to ensure greater transparency and accountability, the competent committee of the European Parliament may invite the Commission to issue an opinion on a foreign direct investment planned or completed in a Member State. The Commission shall inform the European Parliament of its action following such requests.

## 2017/0224(COD) - 14/02/2019 Text adopted by Parliament, 1st reading/single reading

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The European Parliament adopted by 500 votes to 49, with 56 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing a framework for screening foreign direct investment in the European Union.

The European Parliaments position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

### Overall framework at EU level

There is currently no comprehensive framework at Union level for the screening of foreign direct investments on the grounds of security or public order, while the major trading partners of the Union have already developed such frameworks.

The proposed Regulation establishes a framework:

- for the screening by Member States of foreign direct investments into the Union on the grounds of security or public order;
- for a mechanism for cooperation between Member States, and between Member States and the Commission, with regard to foreign direct investments likely to affect security or public order.

It includes the possibility for the Commission to issue opinions on such investments.

The Regulation is without prejudice to each Member State having sole responsibility for its national security and to the right of each Member State to protect its essential security interests. Nothing in this Regulation shall limit the right of each Member State to decide whether or not to screen a particular foreign direct investment within the framework of this Regulation.

### Cooperation mechanism

The proposed Regulation provides for the establishment of a mechanism that would allow Member States to cooperate and assist each other when foreign direct investment in one Member State is likely to affect the security or public policy of other Member States.

Member States may send comments to a Member State in which an investment is planned or has been made, regardless of whether or not that Member State has a screening mechanism or whether or not the investment in question is being screened.

Requests for information, replies and comments from Member States shall also be forwarded to the Commission, which may issue an opinion to the Member State in which the investment is planned or has been made. A Member State may also request the Commission to issue an opinion or other Member States to comment on foreign direct investment in its territory.

When a Member State receives comments from other Member States or an opinion from the Commission, it shall take them into account, but the final decision would be its sole responsibility.

### Factors to be taken into consideration by the Member States and the Commission

In determining whether a foreign direct investment may affect security or public order, it should be possible for Member States and the Commission to consider all relevant factors, including:

- the effects on critical infrastructure, technologies (including key enabling technologies) and inputs which are essential for security or the maintenance of public order, the disruption, failure, loss or destruction of which would have a significant impact in a Member State or in the Union. In that regard, it should also be possible for Member States and the Commission to take into account the context and circumstances of the foreign direct investment, in particular whether a foreign investor is controlled directly or indirectly, for example through significant funding, including subsidies, by the government of a third country or is pursuing State-led outward projects or programmes .

### Factors that may be taken into consideration by Member States or the Commission

In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission may consider its potential effects on, inter alia:

- critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure;
- critical technologies and dual use items, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies;

- supply of critical inputs, including energy or raw materials, as well as food security;
- access to sensitive information, including personal data, or the ability to control such information;
- the freedom and pluralism of the media.

Other elements may be taken into account:

- whether the foreign investor is directly or indirectly controlled by the government, including state bodies or armed forces, of a third country, including through ownership structure or significant funding;
- whether the foreign investor has already been involved in activities affecting security or public order in a Member State; or
- whether there is a serious risk that the foreign investor engages in illegal or criminal activities.

Annual reporting

By 31 March of each year, Member States shall submit to the Commission an annual report covering the preceding calendar year, which shall include aggregated information on foreign direct investments that took place in their territory, on the basis of information available to them, as well as aggregated information on the requests received from other Member States.

Parliament may invite the Commission to a meeting of its committee responsible to present and explain systemic issues related to the implementation of this Regulation.

Group of experts

The group of experts on the screening of foreign direct investments into the European Union providing advice and expertise to the Commission shall continue to discuss issues relating to the screening of foreign direct investments, share best practices and lessons learned, and exchange views on trends and issues of common concern relating to foreign direct investments.

## 2017/0224(COD) - 21/03/2019 Final act

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**PURPOSE:** to propose a framework for the screening of foreign direct investment into the European Union.

**LEGISLATIVE ACT:** Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union.

**CONTENT:** the Regulation aims to provide the Union with a set of new rules allowing better control of direct investment from third countries.

Overall framework at EU level

At present, there is no comprehensive framework at EU level for screening foreign direct investment for security or public policy reasons, whereas the EU's main trading partners have already developed such frameworks.

This Regulation establishes a framework for the screening by Member States of foreign direct investment in the Union on grounds of security or public policy and for a mechanism for cooperation between Member States and between Member States and the Commission on foreign direct investment likely to affect security or public policy.

Cooperation mechanism

The Regulation provides for the establishment of a mechanism that would allow Member States to cooperate and assist each other when foreign direct investment in one Member State is likely to affect the security or public policy of other Member States.

Member States may send comments to a Member State in which an investment is planned or has been made, regardless of whether or not that Member State has a screening mechanism or whether or not the investment in question is being screened.

Requests for information, replies and comments from Member States shall also be forwarded to the Commission, which may issue an opinion to the Member State in which the investment is planned or has been made. A Member State may also request the Commission to issue an opinion or other Member States to comment on foreign direct investment in its territory.

However, Member States shall remain competent to examine and possibly restrict foreign direct investment on grounds of security and public policy. The decision to set up and maintain national screening mechanisms shall also remain in the hands of the individual Member States.

Factors that may be taken into consideration by Member States or the Commission

In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission may consider its potential effects on, inter alia:

- critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure;
- critical technologies and dual use items, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies;
- supply of critical inputs, including energy or raw materials, as well as food security;
- access to sensitive information, including personal data, or the ability to control such information; or
- the freedom and pluralism of the media.

In this respect, Member States and the Commission may take into account the specific context and circumstances of foreign direct investment, whether it is directly or indirectly controlled by the government, including state bodies or armed forces, of a third country, including through ownership structure or significant funding; whether it has already been involved in activities affecting security or public order in a Member

State; or there is a serious risk that the foreign investor engages in illegal or criminal activities.

The Commission shall also have the possibility to issue opinions in cases involving several Member States or where an investment could affect a project or programme of EU-wide interest, such as Horizon 2020 or Galileo.

The Regulation also provides for:

- the obligation for Member States to send the Commission an annual report containing aggregated information on foreign direct investment in their territory;
- the obligation of Member States and the Commission to ensure the protection of confidential information acquired in application of this Regulation, in accordance with Union law and their respective national laws;
- the designation by each Member State and the Commission of a contact point for the implementation of the Regulation;
- the screening by a group of experts of issues related to foreign direct investment.

The European Parliament may invite the Commission to a meeting of its committee responsible to present and explain systemic issues related to the implementation of this Regulation.

ENTRY INTO FORCE: 10.4.2019.

APPLICATION: from 11.10.2020.