

Screening of foreign direct investments into the European Union

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.