

Screening of foreign direct investments into the European Union

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

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.