

Screening of foreign direct investments into the European Union

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

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 Parliament's 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.