

Screening of foreign direct investments into the European Union

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

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.