



Plenary sitting

A8-0198/2018

4.6.2018

*****I**
REPORT

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
(COM(2017)0487 – C8-0309/2017 – 2017/0224(COD))

Committee on International Trade

Rapporteur: Franck Proust

Rapporteur for the opinion (*):
Reinhard Bütikofer, Committee on Industry, Research and Energy

(*) Associated committee – Rule 54 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in bold italics in the left-hand column. Replacements are indicated in bold italics in both columns. New text is indicated in bold italics in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in bold italics. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in bold italics and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	49
OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY	53
OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS	87
OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS	110
PROCEDURE – COMMITTEE RESPONSIBLE.....	142
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE.....	143

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(COM(2017)0487 – C8-0309/2017 – 2017/0224(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0487),
 - having regard to Article 294(2) and Article 207(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0309/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade and the opinions of the Committee on Industry, Research and Energy, the Committee on Foreign Affairs and the Committee on Economic and Monetary Affairs (A8-0198/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Citation 3 a (new)

Text proposed by the Commission

Amendment

- ***Having regard to the Opinion 2/2015 of the European Court of Justice of 16 May 2017^{1a}.***

^{1a} Opinion 2/2015 of the Court of Justice of 16 May 2017 (OJ C 239, 24.7.2017, p.

3).

Justification

Given recent case law, it is appropriate to clarify that portfolio investments cannot be covered by the regulation.

Amendment 2

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) Foreign direct investment contributes to the Union's growth, by enhancing its competitiveness, creating jobs and economies of scale, bringing in capital, technologies, innovation, expertise, and by opening new markets for the Union's exports. It supports the objectives of the *Commission's* Investment Plan for Europe and contributes to other Union projects and programmes.

Amendment

(1) Foreign direct investment contributes to the Union's growth, by enhancing its competitiveness, creating jobs and economies of scale, bringing in capital, technologies, innovation, expertise, and by opening new markets for the Union's exports. It supports the objectives of the Investment Plan for Europe and contributes to other Union projects and programmes.

Amendment 3

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) The Union and the Member States have an open investment environment, which is enshrined in the Treaty on the Functioning of the European Union ("TFEU") and embedded in the international commitments undertaken by the Union and its Member States with respect to foreign direct investment.

Amendment

(2) The Union and the Member States have an open investment environment, which is enshrined in the Treaty on the Functioning of the European Union ("TFEU") and *in accordance with Article 3(5) of the Treaty on the European Union (TEU), and* embedded in the international commitments undertaken by the Union and its Member States with respect to foreign direct investment.

Amendment 4

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) Pursuant to the international commitments undertaken in the World Trade Organisation, the Organisation for Economic Cooperation and Development, and in the trade and investment agreements concluded with third countries, the Union and Members States may adopt **restrictive** measures **relating** to foreign direct investment on the grounds of security or public order, subject to certain requirements.

Amendment

(3) Pursuant to the international commitments undertaken in the World Trade Organisation, the Organisation for Economic Cooperation and Development, and in the trade and investment agreements concluded with third countries, **it is possible for** the Union and Members States **to** adopt measures **restricting market-access with respect** to foreign direct investment on the grounds of security or public order, subject to certain requirements.

Amendment 5

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) Several Member States have put in place measures according to which **they may** restrict the movement of capital between Member States and between Member States and third countries on grounds of public policy or public security. Those measures reflect **Member States'** objectives and concerns with respect to foreign direct investment, and result in a number of different measures in terms of scope and procedure. **Other** Member States do not have such mechanisms.

Amendment

(4) Several Member States have put in place measures according to which **it is possible for them to** restrict the movement of capital between Member States and between Member States and third countries on grounds of public policy or public security. Those measures reflect **the** objectives and concerns **of Member States** with respect to foreign direct investment, and result in a number of different **and not coordinated** measures in terms of **their** scope and procedure. Member States **that** do not have such mechanisms **might establish their own based on the functioning, experience and best practices of national mechanisms already in place.**

Amendment 6

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) There is currently no comprehensive framework at **EU-level** for the screening of foreign direct investments on the grounds of security or public order.

Amendment

(5) 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, including the G7 countries, have developed such frameworks using various kinds of screening mechanisms of varying levels of transparency, restrictiveness and predictability.**

Amendment 7

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) **It is important to** provide legal certainty and **to** ensure EU wide coordination and cooperation by establishing a framework for the screening of foreign direct investment in the Union on grounds of security or public order. This is without prejudice to the sole responsibility of the Member States for the maintenance of national security.

Amendment

(7) **This Regulation should** provide legal certainty **for Member States' screening mechanisms** and ensure EU wide coordination and cooperation by establishing a framework for the screening of foreign direct investment in the Union on grounds of security or public order. This is without prejudice to the sole responsibility of the Member States for the maintenance of national security. **The Commission's monitoring of screening systems in third countries should also provide legal certainty.**

Amendment 8

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) The framework for the screening of foreign direct investment should provide the Member States and the Commission

Amendment

(8) The framework for the screening of foreign direct investment should provide the Member States and the Commission

with the *means* to address risks to security or public order in a comprehensive manner, and to adapt to changing circumstances, whilst maintaining the necessary flexibility for Member States to screen foreign direct investments on grounds of security and public order taking into account their individual situations and national circumstances.

with the *legal, human and financial resources necessary* to address risks to security or public order in a comprehensive manner, and to adapt to changing circumstances, whilst maintaining the necessary flexibility for Member States to screen foreign direct investments on grounds of security and public order taking into account their individual situations and national circumstances, *as well as “golden shares” and golden powers”*.

Amendment 9

Proposal for a regulation Recital 9

Text proposed by the Commission

(9) A broad range of investments which establish or maintain lasting *and* direct links between *investors from third countries* and undertakings carrying out an economic activity in a Member State *should be covered*.

Amendment

(9) *This Regulation should cover a broad range of investments, including foreign government-controlled direct investments, irrespective of their volumes or participation thresholds, which establish or maintain lasting direct or indirect links between a foreign investor, whether or not such investor is the ultimate investor, and undertakings carrying out an economic activity in the territory of a Member State, in its Economic Exclusive Zone declared pursuant to the United Nations Conventions on the Law of the Sea (UNCLOS), or continental shelf.*

Amendment 10

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) Member States should *be able to take the necessary measures*, in compliance with Union law, *to* prevent circumvention of their screening mechanisms and decisions to protect

Amendment

(10) Member States should in compliance with Union law *maintain, amend, reinforce or adopt measures necessary to identify and* prevent circumvention of their screening

security *or* public order. This should cover investments within the Union by means of artificial arrangements that do not reflect economic reality and circumvent the screening mechanisms and screening decisions, *where* the investor is ultimately owned or controlled by a natural person or an undertaking of a third country. This is without prejudice to the freedom of establishment and free movement of capital enshrined in the TFEU.

mechanisms and decisions to protect security *and* public order. This should cover investments within the Union by means of artificial arrangements that do not reflect economic reality and circumvent the screening mechanisms and screening decisions, *including cases when ownership structure or other key characteristics of the investor have significantly changed, when* the investor is *acting as an intermediary, or undertaking* ultimately owned or controlled by a natural person or an undertaking of a third country. *Member States should inform the Commission of any anti-circumvention measure taken by them.* This is without prejudice to the freedom of establishment and free movement of capital enshrined in the TFEU.

Amendment 11

Proposal for a regulation Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) In the framework of this Regulation, the Commission and Member States should promote cooperation and the commitment by third countries through trade and investment agreements and in the international fora on the application of screening procedures.

Amendment 12

Proposal for a regulation Recital 11

Text proposed by the Commission

Amendment

(11) To guide Member States and the Commission in the application of the Regulation, it is appropriate to provide a list of factors that *may* be taken into consideration when screening foreign

(11) To guide Member States and the Commission in the application of the Regulation, it is appropriate to provide a list of factors that *might* be taken into consideration when screening foreign

direct **investment** on the grounds of security or public order. This list **will** also improve transparency of the screening process for investors considering making or having made foreign direct investments in the Union. This list of factors that **may** affect security or public order should remain non-exhaustive.

direct **investments** on the grounds of security or public order. This list **would** also improve transparency of the screening process for investors considering making or having made foreign direct investments in the Union. This list of factors that **might** affect security or public order should remain non-exhaustive.

Amendment 13

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) In determining whether a foreign **direct** investment **may** affect security or public order, Member States and the Commission should ***be able 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, and the*** disruption, loss or destruction of which ***would have a significant*** impact in a Member State or in the Union. ***In that regard, Member States and the Commission should also be able to take into account whether*** a foreign investor is controlled directly or indirectly (*e.g. through significant funding, including subsidies*) by the government of a third country.

Amendment

(12) In determining whether a foreign investment ***might*** affect security or public order, Member States and the Commission should ***take into account in particular whether a*** disruption, ***failure***, loss or destruction of ***supply exists***, which ***could have an*** impact in a Member State or in the Union, a foreign investor is controlled directly or indirectly by the government of a third country ***or foreign government-controlled investment, the foreign investment is part of a state-led project, or a programme or part of an economic industrial or political strategy carried out by a third country with the aim of acquiring or transferring key enabling technologies or knowledge, or in support of strategic national interests. This should also apply in cases when the investor has already been involved in investment projects affecting security or public order of a Member State.***

Member States and the Commission might also be able to consider, on the grounds of security or public order, the potentials effects on, inter alia, 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.

Amendment 14

Proposal for a regulation Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) In determining whether a foreign investment might affect security or public order, Member States and the Commission might also have regard to the context and the circumstances under which the investment is or was made including whether, inter alia, the investment might lead to a monopolistic structure, and whether the market in the foreign investor's country of origin is open, restricted or closed, whether there is reciprocity and a level playing field and whether there is a risk of breach of international human rights instruments or core ILO standards. The examination should be conducted on the basis of the best information available, which should be accurate, comprehensive and reliable.

Amendment 15

Proposal for a regulation Recital 12 b (new)

Text proposed by the Commission

Amendment

(12b) Member States might allow economic operators, civil society organizations, or social partners such as trade unions to request Member States to consider the activation of the screening without prejudice to different systems that allow for greater procedural involvement.

Amendment 16

Proposal for a regulation Recital 12 c (new)

Text proposed by the Commission

Amendment

(12c) Where economic operators, civil society organisations, or social partners such as trade unions, have relevant information or substantial and duly justified concerns on a foreign direct investment that is likely to affect projects or programs of union interest on the grounds of security and public order, it should be possible to provide the Commission with that information. The Commission might duly take that information into account when issuing an opinion.

Amendment 17

Proposal for a regulation Recital 13

Text proposed by the Commission

Amendment

(13) It is appropriate to lay down the essential elements of the procedural framework for the screening of foreign direct investment by Member States to allow investors, the Commission and other Member States to understand how such investments are likely to be screened ***and to ensure that these investments are screened*** in a transparent manner and that they are non-discriminatory between third countries. Those elements should at least include the establishment of timeframes for the screening and the possibility for foreign investors to seek judicial redress ***of*** screening decisions.

(13) It is appropriate to lay down the essential elements of the procedural framework for the screening of foreign direct investment by Member States to allow investors, the Commission and other Member States to understand how such investments are likely to be screened in a transparent manner and that they are non-discriminatory between third countries. Those elements should at least include the establishment of timeframes for the screening and the possibility for foreign investors to seek judicial redress ***against*** screening decisions ***before Member States authorities and courts in accordance with Member States law.***

Amendment 18

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) A mechanism which enables Member States to cooperate and assist each other where a foreign direct investment in one Member State **may** affect the security or public order of other Member States should be set up. Member States should be able to provide comments to a Member State in which the investment is planned or has been completed, irrespective of whether the Member States providing comments or the Member States in which the investment is planned or has been completed maintain a **screening** mechanism or are screening the investment. **The** comments **of Member States** should also be forwarded **to the Commission**. The Commission should **also** have the possibility, **where appropriate**, to issue an opinion to the Member State in which the investment is planned or has been completed, irrespective of whether this Member State maintains a screening mechanism or is screening the investment **and irrespective of whether** other Member States **have provided** comments.

Amendment

(14) A mechanism which enables Member States to cooperate and assist each other where a foreign direct investment in one Member State **could** affect the security or public order of other Member States should be set up. Member States should be able to provide comments to a Member State in which the investment is planned or **it** has been completed, irrespective of whether the Member States providing comments or the Member States in which the investment is planned or has been completed maintain a **screen** mechanism or are screening the investment. **Those** comments should also be forwarded **simultaneously to all other Member States and** the Commission **which** should **then** have the possibility to issue an opinion to the Member State in which the investment is planned or has been completed, irrespective of whether this Member State maintains a screening mechanism or is screening the investment. **This opinion should be forwarded simultaneously to all other Member States and it should not be made public. A Member State should have the possibility to ask the Commission for an opinion or** other Member States **for** comments **on a foreign direct investment taking place in its territory**.

Amendment 19

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) Furthermore, the Commission should **have the possibility to** screen foreign direct investments likely to affect

Amendment

(15) Furthermore, the Commission should screen foreign direct investments likely to affect projects and programmes of

projects and programmes of Union interest on grounds of security or public order. This would give the Commission a tool to protect projects and programmes which serve the Union as whole and represent an important contribution to its economic growth, jobs and competitiveness. This should include in particular projects and programmes involving a substantial EU funding or established by Union legislation regarding critical infrastructure, critical technologies *or* critical inputs. For greater clarity, *an indicative* list of projects *or* programmes of Union interest in relation to which foreign direct investment can be subject to *a* screening by the Commission should be listed in an Annex.

Union interest on grounds of security or public order. This would give the Commission a tool to protect projects and programmes which serve the Union as whole and represent an important contribution to its economic growth, jobs and competitiveness. This should include in particular projects and programmes involving a substantial EU funding or established by Union legislation regarding critical *and strategic* infrastructure, critical *and strategic* technologies, critical *and strategic* inputs. For greater clarity, *a non exhaustive* list of projects *and* programmes of Union interest in relation to which foreign direct investment can be subject to screening by the Commission should be listed in an Annex. *The Commission should be empowered to adopt delegated acts in order to update such a list.*

Amendment 20

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In order to enhance dialogue between the institutions of the Union, it should be possible for the competent committee of the European Parliament to invite the Commission to issue an opinion on a foreign direct investment planned or completed in a Member State. The Commission should inform the European Parliament of its action following the receipt such request.

Amendment 21

Proposal for a regulation Recital 16

Text proposed by the Commission

Amendment

(16) Where the Commission *considers*

(16) Where the Commission *or one or*

that a foreign *direct* investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission should **have the possibility to** address an opinion to the Member States in which such investment is planned or completed within a reasonable timeframe. **The** Member States should take **utmost** account of the opinion and provide **an** explanation to the Commission if they do not follow this opinion, in compliance with their duty of sincere cooperation under Article 4(3) TEU. The Commission should also have the possibility to request from those Member States the information necessary for its screening of such investment.

more Member States consider that a foreign investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission should address an opinion to the Member States in which such investment is planned or completed within a reasonable timeframe **and such Member States should have the possibility to provide comments to the Member States in which such investment is planned or completed. The opinion, which should not be made public, should be forwarded simultaneously to the other Member States.** Member States should take **utmost** account of the opinion and provide **a written** explanation to the Commission **and the relevant Member States** if they do not follow this opinion, in compliance with their duty of sincere cooperation under Article 4(3) TEU. The Commission should also have the possibility to request from those Member States the information necessary for its screening of such investment. **A Member State should have the possibility to ask the Commission for an opinion or other Member States for comments on a foreign direct investment taking place in its territory.**

Amendment 22

Proposal for a regulation Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Where at least one third of Member States consider that a foreign direct investment is likely to affect their security or public order, or at least one third of Member States and the Commission consider that projects or programmes of Union interest are affected on grounds of security and public order, Member States should take utmost account of the opinion of the Commission and the comments of the other Member

States and provide an written explanation to the Commission and the relevant Member States. Where those comments or opinions are not followed, the Commission should seek to foster dialogue between the Member States having issued comments and the Member State in which the foreign direct investment is planned or has been completed.

Amendment 23

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) In order to facilitate the cooperation with other Member States and the screening of foreign direct investment by the Commission, Member States should notify their screening mechanisms and any amendment thereto to the Commission, and should report on the application of their screening *mechanisms* on a regular basis. For the same reason, Member States that do not have a screening mechanism should also report on the foreign direct investments that took place in their territory, on the basis of the information available to them.

Amendment

(17) In order to facilitate the cooperation with other Member States and the screening of foreign direct investment by the Commission *and improve the reliability and comparability of data provided by Member States*, Member States should notify their screening mechanisms and any amendment thereto to the Commission, and should report on the application of their screening *mechanism* on a regular basis. For the same reason Member States that do not have a screening mechanism should also report on the foreign direct investments that took place in their territory, *their Exclusive Economic Zone or continental shelf* on the basis of the information available to them. *They should also provide information on the steps undertaken to obtain such information.*

Amendment 24

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) To that end, it is also important to

Amendment

(18) To that end, it is also important to

ensure a minimum level of information and coordination with regard to foreign direct investments falling under the scope of this Regulation in all Member States. ***This information should be made available by the Member States*** in which the foreign direct investment is planned or has been completed upon request of the Member ***States*** or of the Commission. Relevant information includes aspects such as the ownership structure of the foreign investor and the financing of the planned or completed investment, including, when available, information about ***subsidies*** granted by third countries.

ensure a minimum level of information and coordination with regard to foreign direct investments falling under the scope of this Regulation in all Member States in which the foreign direct investment is planned or has been completed upon request of a Member ***State*** or of the Commission. Relevant information includes aspects such as the ownership structure of the foreign investor and the financing of the planned or completed investment, including, when available, information about ***subsidies*** granted by third countries. ***Such information should be provided subject to the rules set out in Article 346 TFEU. It should be accurate, comprehensive and reliable and seek to facilitate the comparability of data.***

Amendment 25

Proposal for a regulation Recital 19

Text proposed by the Commission

(19) The communication and cooperation at Member State and Union level should be enhanced through the establishment of contact points for the screening of foreign direct ***investments*** in each Member State.

Amendment

(19) The communication and cooperation at Member State and Union level should be enhanced through the establishment of ***institution -based*** contact points for the screening of foreign direct ***investment*** in each Member State ***and a dedicated Investment Screening Coordination Group.***

Amendment 26

Proposal for a regulation Recital 20

Text proposed by the Commission

(20) Member States and the Commission should ***take all necessary measures to ensure the*** protection of confidential ***and other sensitive***

Amendment

(20) Member States and the Commission should ***guarantee the highest level of*** protection ***for all*** confidential information, ***made available by foreign investors and the undertaking of the***

information.

Union concerned.

Amendment 27

Proposal for a regulation Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) Member States should 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 the best information available. They should also provide information on the steps undertaken to obtain such information. On the basis of these annual reports, the Commission should 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. That report should be made public.

Amendment 28

Proposal for a regulation Recital 21

Text proposed by the Commission

Amendment

(21) No later than three years after the entry into force of this Regulation, the Commission should present to the European Parliament and the Council a report *on the application of* this Regulation. Where the report proposes modifying the provisions of this Regulation, it may be accompanied, where appropriate, by a legislative proposal.

(21) No later than three years after the entry into force of this Regulation *and every three years thereafter*, the Commission should present to the European Parliament and *to* the Council a report *assessing the functioning and effectiveness of this Regulation. The assessment should also include the long term economic control capabilities, other than foreign direct investment, which result in the acquisition by means of a public contract of lasting and direct influence capabilities permitting the*

management or control of projects or programmes of Union interest as defined in this Regulation. Where the report proposes modifying the provisions of this Regulation, it may be accompanied, where appropriate, by a legislative proposal, and in all other cases should inform the European Parliament and the Council.

Amendment 29

Proposal for a regulation

Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) In order to update that list of projects and programs of Union interest, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of amending the Annex to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Amendment 30

Proposal for a regulation

Article 2 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

1. 'foreign direct investment' means

(1) 'foreign direct investment' means

investments of any kind by a foreign investor aiming to establish or to maintain lasting **and** direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity;

an investment of any kind, **irrespective of its volume or participation threshold** by a foreign investor **whether or not such investor is the ultimate investor**, aiming to establish or to maintain lasting direct **or indirect** links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in **the territory of** a Member State, **in its Exclusive Economic Zone declared pursuant to the United Nations Convention on the Law of the Sea (UNCLOS), or continental shelf**, including investments which enable effective participation in the management or **direct or indirect** control of a company carrying out an economic activity;

Amendment 31

Proposal for a regulation

Article 2 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

(1a) ‘foreign government-controlled direct investment’ means any foreign direct investment that could result in the control of any legal person established in the Union by a foreign government or an entity controlled by, acting on behalf of, or under instructions of, a foreign government;

Amendment 32

Proposal for a regulation

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

2. ‘foreign investor’ means a natural person of a third country or an undertaking **of a third country** intending to make or having made a foreign direct investment;

(2) ‘foreign investor’ means a natural person **or legal person** or an undertaking of a third country, or **a national, or state institution**, intending to make or having **already** made a foreign direct investment,

whether they are the ultimate investor or an intermediary representing that investor of a third country;

Amendment 33

Proposal for a regulation

Article 2 – paragraph 1 – point 3

Text proposed by the Commission

3. 'screening' means a procedure allowing to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments;

Amendment

(3) 'screening' means a procedure allowing to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments, ***the period for the completion of which starts once all the information required to launch a screening has been received by the relevant authorities;***

Justification

Steps must be taken to ensure that foreign investors do not forward incomplete information simply in order to start the clock on the screening period running. The screening time-limit should start to run only when all the information needed to constitute a comprehensive file has been submitted.

Amendment 34

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

1. Member States may maintain, amend or adopt mechanisms to screen foreign direct investments on the grounds of security or public order, ***under the conditions and in accordance with the terms set out in this Regulation.***

Amendment

1. ***In accordance with the provisions of this Regulation,*** Member States may maintain, amend, ***reinforce*** or adopt mechanisms to screen foreign direct investments on the grounds of security or public order.

Amendment 35

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

2. The Commission **may** screen foreign direct investments that are likely to affect projects or programmes of Union interest on the grounds of security or public order.

Amendment

2. The Commission **shall** screen foreign direct investments that are likely to affect projects or programmes of Union interest on the grounds of security or public order.

Amendment 36

Proposal for a regulation
Article 3 – paragraph 3

Text proposed by the Commission

3. Projects or programmes of Union interest shall include in particular those projects and programmes which involve **a substantial amount or a significant share of** EU funding, or which are covered by Union legislation regarding critical infrastructure, **critical** technologies **or** critical inputs. **An indicative** list of projects or programmes of Union interest is included in Annex **1**.

Amendment

3. Projects or programmes of Union interest shall include in particular those projects and programmes which involve EU funding, or which are covered by Union legislation regarding critical **and strategic** infrastructure, **technologies, including key enabling** technologies, **and** critical inputs **which are essential for security or the maintenance of public order. A non-exhaustive** list of projects or programmes of Union interest is included in **the Annex to this Regulation. The Commission shall be empowered to adopt delegated acts in accordance with Article 13a to amend this Regulation by updating the list set out in the** Annex.

Amendment 37

Proposal for a regulation
Article 4 – title

Text proposed by the Commission

Factors **that may be** taken into consideration in the screening

Amendment

Factors taken into consideration in screening

Amendment 38

Proposal for a regulation

Article 4 – paragraph 1- introductory part

Text proposed by the Commission

In screening a foreign direct investment on the grounds of security or public order, Member States and the Commission may consider the potential effects on, inter alia:

Amendment

1. In screening a foreign direct investment on the grounds of security or public order, Member States and the Commission may consider the potential effects on, inter alia:

Amendment 39

Proposal for a regulation

Article 4 – paragraph 1 – indent 1

Text proposed by the Commission

- critical infrastructure, including energy, transport, communications, ***data storage***, space ***or financial*** infrastructure, as well as sensitive facilities;

Amendment

(a) critical ***and strategic*** infrastructure, ***whether physical or virtual***, including ***inter alia*** energy ***and water distribution***, transport ***networks, ports, rails, airports and shipyards, transport services***, communications ***and media, aerospace and*** space infrastructure, ***data storage facilities, large-scale data analysis, election-infrastructure, financial services infrastructure*** as well as sensitive facilities;

Amendment 40

Proposal for a regulation

Article 4 – paragraph 1 – indent 2

Text proposed by the Commission

- critical technologies, including artificial intelligence, robotics, semiconductors, ***technologies with potential*** dual use ***applications***, cybersecurity, ***space*** or nuclear ***technology***;

Amendment

(b) critical ***and strategic*** technologies, including, ***inter alia***, artificial intelligence, robotics, ***quantum technology, nano-, bio- and medical technologies, information and communication technologies (ICTs), electronic chips***, semiconductors, ***energy storage***, dual use ***items, defence***, cybersecurity ***and cybertechnologies, the automotive sector, rail, aerospace*** or nuclear ***technologies, research and***

development facilities;

Amendment 41

Proposal for a regulation

Article 4 – paragraph 1 – indent 3

Text proposed by the Commission

- the security of supply of critical inputs; or

Amendment

(c) the strategic autonomy of the Union, the security and continuity of supply of critical inputs, including, inter alia, commodities, raw materials, rare earths, agricultural assets, farmland, and agrifood production; or

Amendment 42

Proposal for a regulation

Article 4 – paragraph 1 – indent 4

Text proposed by the Commission

- access to sensitive information or the ability to control sensitive information.

Amendment

(d) access to sensitive information or to the personal data of Union citizens, including, inter alia, personal data concerning health, and the ability to control large-scale data or sensitive information,

Amendment 43

Proposal for a regulation

Article 4 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) the plurality and independence of media, services of general interest and services of general economic interest, cultural services, including audio-visual services, as well as sports-facilities and betting services, and cultural heritage.

Amendment 44

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission *may* take into account whether the foreign investor is controlled by the government of a third country, including through significant funding.

Amendment

2. 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:

(a) *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;*

(b) *the foreign investor is directly or indirectly controlled by the government, state bodies or armed forces of a third country and/or pursuing 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, including through ownership structure or significant funding which may take the form of subsidies, extended credit and lending by the government of a third country or a state-owned financial institution and/or has a political presence in its decision-making centres;*

(c) *the investor has already been involved in investment projects threatening the security or the public order of a Member State.*

Amendment 45

Proposal for a regulation

Article 4 – paragraph 2 a (new)

2a. For the purposes of paragraph 2, Member States and the Commission may also have regard to inter alia:

(a) 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;

(b) 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;

(c) whether the statutes of the undertaking to which the investment is made include change of ownership clauses;

(d) whether the investment can reinforce or lead to a monopolistic structure or the control of a value chain, for example through the communication of the list of all the mergers analysed by the Commission involving the undertaking of a third country as well as the communication of the list of all the mergers analysed by the national competition authorities involving the same undertaking;

(e) whether market in the foreign investor's country of origin is open, restricted or closed and whether there is reciprocity and a level playing field;

(f) the previous relations between the Commission or the Member States with the foreign investor;

Amendment 46

Proposal for a regulation

Article 4 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. *The examination shall be conducted on the basis of the best information available, which shall be accurate, comprehensive and reliable.*

Amendment 47

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

Amendment

Member States *may* maintain, amend or adopt measures necessary to prevent circumvention of the screening mechanisms and screening decisions.

Member States *shall* maintain, amend, ***reinforce***, or adopt measures necessary to ***identify and*** prevent circumvention of the screening mechanisms and screening decisions ***including in cases when ownership structure or other key characteristics of the investor have significantly changed***. Member States ***shall inform the Commission of any anti-circumvention measure taken by them.***

Amendment 48

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall establish timeframes for issuing screening decisions. Such timeframes shall allow them to take into account the comments of Member States referred to in Article 8 and the opinion of the Commission referred to in Articles 8 and 9.

2. Member States shall establish timeframes for issuing screening decisions ***and make such timeframes publicly available***. Such timeframes shall allow them to take into account the comments of Member States referred to in Article 8 and the opinion of the Commission referred to in Articles 8 and 9.

Amendment 49

Proposal for a regulation Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may allow, economic operators, civil society organisations, or social partners such as trade unions, to request Member States authorities to consider the activation of screening without prejudice to Member State systems that allow for greater procedural involvement.

Amendment 50

Proposal for a regulation Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. Confidential **information, including commercially-sensitive** information, made available by foreign **investors** and undertaking concerned **shall be protected.**

3. **Member States and the Commission shall guarantee the highest level of protection for all** confidential information, made available by **a** foreign **investor or** undertaking **of the Union** concerned **when carrying out screening procedures pursuant to Commission Decisions (EU, Euratom) 2015/443 and (EU/Euratom) 2015/444.**

Amendment 51

Proposal for a regulation Article 6 – paragraph 4

Text proposed by the Commission

Amendment

4. Foreign investors and undertakings concerned shall have the possibility to seek **judicial** redress against screening decisions **of the national authorities.**

4. Foreign investors and **the** undertakings **of the Union** concerned shall have the possibility to seek redress **before Member States authorities and jurisdictions** against screening decisions, **in accordance with national law.**

Amendment 52

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

2. Member States that maintain screening mechanisms shall provide the Commission with **an annual report** on the application of their screening mechanisms. **For each reporting period, the report shall include** in particular information on:

- (a) foreign direct investments screened and undergoing screening;
- (b) screening decisions prohibiting foreign direct investments;
- (c) screening decisions subjecting foreign direct investments to conditions or mitigating measures;
- (d) the sectors, origin, and value of foreign direct investment screened and undergoing screening.

Amendment

3. **For each reporting period,** Member States that maintain screening mechanisms shall provide the Commission with **additional information** on the application of their screening mechanisms, in particular information on:

- (a) foreign direct investments screened and undergoing screening;
- (b) screening decisions prohibiting foreign direct investments;
- (c) screening decisions subjecting foreign direct investments to conditions or mitigating measures;
- (d) the sectors, origin, and value of foreign direct investment screened and undergoing screening.

(da) screening decisions regarding projects or programmes of Union interest.

Amendment 53

Proposal for a regulation Article 7 – paragraph 3

Text proposed by the Commission

3. Member States **that do not maintain screening mechanisms** shall provide the Commission with an annual report covering foreign **directs** investments that took place in their territory, on the basis of information available **to them**.

Amendment

2. Member States shall provide the Commission with an annual report covering foreign **direct** investments that took place in their territory, **their Exclusive Economic Zone or continental shelf**, on the basis of **the best** information available **and information on the steps undertaken to obtain such information**.

Amendment 54

Proposal for a regulation

PE619.160v03-00

30/143

RR\1155168EN.docx

Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. On the basis of, inter alia, the annual reports submitted by all the Member States, and with due respect to the confidential nature of certain information included in those reports, the Commission shall draw up an annual report outlining the overall investment situation in the Union including the implementation of this Regulation and submit it to the European Parliament. That report shall be made public.

Amendment 55

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall inform the Commission and the *other* Member States of any foreign direct investments that are undergoing screening within the framework of their screening *mechanisms*, **within 5** working days **from** the start of the screening. As part of the information, and when applicable, the screening Member *States* shall endeavour to indicate whether it considers that the foreign direct investment undergoing screening is likely to fall within the scope of Regulation (EC) No 139/2004.

1. Member States shall inform the Commission and the Member States of any foreign direct investments that are undergoing screening within the framework of their screening *mechanism*, **at the latest five** working days **after** the start of the screening. As part of the information, and when applicable, the screening Member *State* shall endeavour to indicate whether it considers that the foreign direct investment **which is** undergoing screening is likely to fall within the scope of Regulation (EC) No 139/2004.

Amendment 56

Proposal for a regulation Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. A Member State may ask the Commission for an opinion or other

Member States for comments on a foreign direct investment taking place in its territory.

Amendment 57

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

2. Where a Member State considers that a foreign direct investment planned or completed in another Member State is likely to affect its security or public order, it may provide comments to the Member State where the foreign direct investment is planned or has been completed. The comments shall be forwarded to the Commission *in parallel*.

Amendment

2. Where a Member State considers that a foreign direct investment, planned or completed in another Member State, is likely to affect its security or public order, it may provide comments to the Member State where the foreign direct investment is planned or has been completed. The ***Member State's*** comments shall be forwarded *simultaneously* to the Commission ***as well as to all other Member States***.

Amendment 58

Proposal for a regulation Article 8 – paragraph 3

Text proposed by the Commission

3. Where the Commission considers that a foreign direct investment is likely to affect security or public order in one or more Member States, it may issue an opinion addressed to the Member State in which the foreign direct investment is planned or has been completed. The Commission may issue an opinion irrespective of whether other Member States have provided comments.

Amendment

3. Where the Commission considers that a foreign direct investment is likely to affect security or public order in one or more Member States it may issue an opinion addressed to the Member State in which the foreign direct investment is planned or has been completed. The Commission may issue an opinion irrespective of whether other Member States have provided comments. ***The Commission's opinion shall be forwarded simultaneously to all other Member States***.

Amendment 59

Proposal for a regulation

Article 8 – paragraph 4

Text proposed by the Commission

4. ***The Commission or a*** Member State which ***duly considers*** that a foreign direct investment is likely to affect its security or public order may request from the Member State where the foreign direct investment is planned or has been completed, any information necessary to provide comments referred to in paragraph 2, ***or*** to issue the opinion referred to in paragraph 3.

Amendment

4. Member State which ***has justified reasons to consider*** that a foreign direct investment is likely to affect its security or public order may ***address a substantiated request to the Commission asking to receive*** from the Member State where the foreign direct investment is planned or has been completed, any information necessary to provide ***the*** comments referred to in paragraph 2. ***The Commission shall collect all requests for information received and forward them without delay to the Member State where the foreign direct investment is planned or has been completed. Where justified, the Commission may also request, on its own initiative, any information necessary to issue the opinion referred to in paragraph 3.***

Amendment 60

Proposal for a regulation

Article 8 – paragraph 5

Text proposed by the Commission

5. Comments pursuant to ***paragraphs 2 or*** opinions pursuant to paragraph 3 ***shall be addressed*** to the Member State where the foreign direct investment is planned or has been completed within a reasonable period of time, and in any case no later than 25 working days following receipt of the information ***referred to in paragraphs 1 or 4***. In cases where the opinion of the Commission follows comments from other Member States, ***the Commission*** shall have 25 additional working days for issuing the opinion.

Amendment

5. Comments pursuant to ***paragraph 2 shall be addressed to the Commission and the Member States and*** opinions pursuant to paragraph 3 to the Member State where the foreign direct investment is planned or has been completed within a reasonable period of time, and in any case no later than 25 working days following receipt of the information. In cases where the opinion of the Commission follows comments from other Member States, ***it*** shall have 25 additional working days for issuing the opinion.

Amendment 61

Proposal for a regulation

Article 8 – paragraph 6

Text proposed by the Commission

6. The Member States where the foreign direct investment is planned or has been completed shall give due consideration to the comments of the other Member States referred to in paragraph 2 and to the opinion of the Commission referred to in paragraph 3.

Amendment

6. The Member States where the foreign direct investment is planned or has been completed shall give due consideration to the comments of the other Member States referred to in paragraph 2 and to the opinion of the Commission referred to in paragraph 3, ***as well as to views expressed within the framework of the Investment Screening Coordination Group set up in accordance with Article 12a.***

Amendment 62

Proposal for a regulation

Article 8 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. If at least one third of Member States consider that a foreign direct investment is likely to affect their security or public order, the Member State where the foreign direct investment is planned or has been completed shall take utmost account of their comments and the opinion of the Commission and provide a written explanation.

Where those comments or opinions are not followed, the Commission shall foster dialogue between the Member States having issued comments and the Member State in which the foreign direct investment is planned or has been completed.

Amendment 63

Proposal for a regulation

Article 8 – paragraph 7

Text proposed by the Commission

7. Cooperation between Member States pursuant to this Article shall take place through **the** contact points **referred to in Article 12**.

Amendment

7. Cooperation between Member States pursuant to this Article shall take place through **institution-based foreign direct investment screening** contact points (**'institution-based FDI screening contact point'**) and the **Investment Screening Coordination Group set up in accordance with Article 12a**.

Amendment 64

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

1. Where the Commission **considers** that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission **may** issue an opinion addressed to the Member State where the foreign direct investment is planned or has been completed.

Amendment

1. Where the Commission **or one or more Member States consider** that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission **shall** issue an opinion addressed to the Member State where the foreign direct investment is planned or has been completed. **The opinion of the Commission shall simultaneously be forwarded to the other Member States. That opinion shall not be made public.**

Amendment 65

Proposal for a regulation Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. A Member State may ask the Commission for an opinion or other Member States for comments on a foreign direct investment taking place in its territory.

Amendment 66

Proposal for a regulation Article 9 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Where a Member State considers that a foreign direct investment planned or completed in another Member State is likely to affect its security or public order in the context of the Union’s projects or programmes, or the interests of the Union, it may provide comments to the Member State where the foreign direct investment is planned or has been completed. Those comments shall be forwarded simultaneously to the Commission.

Amendment 67

Proposal for a regulation Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission may request from the Member State where the foreign direct investment is planned or has been completed any information necessary to issue the opinion referred to in paragraph 1.

2. The Commission may request from the Member State where the foreign direct investment is planned or has been completed any information necessary to issue the opinion referred to in paragraph 1. ***In handling of such information the Commission shall pay utmost attention to its potential sensitivity. The Member State, the foreign investor and the entrepreneur to whom or the undertaking to which the investment is made may submit to the Commission any relevant information it deems necessary to issue an opinion. Such information shall be accurate, comprehensive and reliable and shall seek to facilitate the comparability of data.***

Amendment 68

Proposal for a regulation

Article 9 – paragraph 3

Text proposed by the Commission

3. The Commission shall **address** its opinion to the Member State concerned within a reasonable period of time, and in any case no later than 25 working days following receipt of the information requested by the Commission pursuant to paragraph 2. **Where a Member State has a screening mechanism in place as referred to in Article 3(1) and the information on foreign direct investment undergoing screening has been received by the Commission pursuant to Article 8(1), the opinion shall be delivered no later than 25 working days following receipt of such information. Where additional information is needed to issue an opinion, the 25-day period shall run from the date of receipt of the additional information.**

Amendment

3. The Commission shall **issue** its opinion to the Member State concerned within a reasonable period of time, **in order not to cause prejudice through unreasonable delays, either to the foreign direct investment or the Member State's screening**, and in any case no later than 25 working days following receipt of the information requested by the Commission pursuant to paragraph 2.

Amendment 69

Proposal for a regulation

Article 9 – paragraph 4

Text proposed by the Commission

4. The opinion of the Commission shall be communicated to the other Member States.

Amendment

4. The opinion of the Commission shall be communicated to the other Member States **and to the European Parliament.**

Amendment 70

Proposal for a regulation

Article 9 – paragraph 5

Text proposed by the Commission

5. The Member States where the

Amendment

5. The Member States where the

foreign direct investment is planned or has been completed shall take utmost account of the Commission's opinion and provide *an* explanation to the Commission in case *its* opinion *is* not followed.

foreign direct investment is planned or has been completed shall take utmost account of the Commission's opinion *referred to in paragraph 1 or the Member States comments referred to in paragraph 1b (new)* and provide *a written* explanation to the Commission *and the relevant Member States* in case *the Commission's opinion or the Member States comments are* not followed.

Amendment 71

Proposal for a regulation

Article 9 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. *Where economic operators, civil society organisations, or social partners such as trade unions, have relevant information and substantial and duly justified concerns on a foreign direct investment that is likely to affect projects or programs of Union interest on the grounds of security and public order, they may provide the Commission with that information. The Commission may duly take that information into account when issuing an opinion.*

Amendment 72

Proposal for a regulation

Article 9 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. *If at least one third of Member States and the Commission consider that a foreign direct investment is likely to affect their security or public order, the Member State where the foreign direct investment is planned or has been completed shall take utmost account of the comments of the other Member States and the opinion of the Commission and*

provide a written explanation.

Where those comments or opinions are not followed, the Commission shall foster dialogue between the Member States having issued comments and the Member State in which the foreign direct investment is planned or has been completed.

Amendment 73

Proposal for a regulation

Article 9 – paragraph 5 c (new)

Text proposed by the Commission

Amendment

5c. *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 and to appear before the committee to discuss all issues relating to the application of this Regulation and in particular the application of provisions on the screening of investments that are likely to affect projects or programmes of Union interest pursuant to this Regulation. The Commission shall inform the European Parliament of its action following such requests.*

Amendment 74

Proposal for a regulation

Article 10 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that the information requested by the Commission and other Member States pursuant to Articles 8(4) and 9(2) is made available to the Commission and the requesting

1. Member States shall ensure that the information requested by the Commission and other Member States pursuant to Articles 8(4) and 9(2) is made available to the Commission and the requesting

Member States without undue delay.

Member States without undue delay,
subject to the rules set out in Article 346 TFEU. Such information shall be accurate, comprehensive and reliable and shall seek to facilitate the comparability of data.

Amendment 75

Proposal for a regulation

Article 10 – paragraph 2 – point a

Text proposed by the Commission

(a) The ownership structure of the foreign investor and of the undertaking in which the foreign direct investment is planned or has been completed, including information on the ultimate controlling shareholder or shareholders;

Amendment

(a) The ownership structure, ***the participation in the capital, the nature*** of the ***direct*** foreign ***investor and of the ultimate*** investor and of the undertaking in which the foreign direct investment is planned or has been completed, including information on the ultimate controlling shareholder or shareholders;

Amendment 76

Proposal for a regulation

Article 10 – paragraph 2 – point e

Text proposed by the Commission

(e) The funding of the investment, on the basis of information available to the Member State.

Amendment

(e) The funding of the investment ***and its source, including proof of its lawfulness***, on the basis of ***the best*** information available to the Member State.

Amendment 77

Proposal for a regulation

Article 11 – paragraph 2

Text proposed by the Commission

2. Member States and the Commission shall ***ensure the*** protection of confidential information acquired in

Amendment

2. Member States and the Commission shall ***guarantee the highest levels and standards of*** protection of confidential information acquired in

application of this Regulation.

application of this Regulation, *with due regard to sensitive information and in compliance with Commission Decisions (EU, Euratom) 2015/443 and (EU, Euratom) 2015/444.*

Amendment 78

Proposal for a regulation Article 12 – title

Text proposed by the Commission

Amendment

Contact points

Institution-based FDI screening contact points

Amendment 79

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

Amendment

Each Member State shall appoint ***a foreign direct investment screening contact point*** ('FDI screening contact point') for the screening of foreign direct investment. The Commission and other Member States shall involve these FDI screening contact points on all issues related to implementation of this Regulation.

1. Each Member State shall appoint ***an institution-based*** FDI screening contact point for the screening of foreign direct investment. The Commission and other Member States shall involve these ***institution-based*** FDI screening contact points ***responsible for foreign direct investment screening and ensure close cooperation between them*** on all issues related to ***the*** implementation of this Regulation, ***notably within the Investment Screening Coordination Group.***

Amendment 80

Proposal for a regulation Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) The institution-based FDI screening contact points should be able to maintain a link with other contact points

set up by Union or national legislation with the same objectives, in order to promote networked development.

Justification

Directive 2008/114, for example, creates contact points responsible for protecting critical European infrastructure. Links and feedback between these contact points do not require additional resources and will facilitate a better exchange of information.

Amendment 81

Proposal for a regulation

Article 12 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

(1b) The institution-based FDI screening contact points must meet requirements of the same level as national investment screening systems, for example with regard to access to the required information, the coordinating role and maintenance of the highest standard of protection of confidential and sensitive information.

Justification

The institution-based contact points must be subject to the same obligations, particularly with regard to keeping information secure.

Amendment 82

Proposal for a regulation

Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Investment Screening Coordination Group

1. An Investment Screening Coordination Group chaired by a representative of the Commission shall be set up. Each Member State shall appoint a

representative to that Group.

2. The Investment Screening Coordination Group shall bring together representatives and experts from the Member States and the Commission to, inter alia, share best practices, to address the concerns of Member States regarding the functioning of their screening systems and to discuss any issue falling within the scope of this Regulation;

3. Local authorities, economic operators, institutional and political stakeholders and authorities, civil society organisations, social partners – such as trade unions – Union agencies and agencies responsible for promoting particular regions, or experts in economic information, as well as representatives of their screening systems of third countries may also be invited regularly to communicate their experience.

4. The Commission shall facilitate the participation of the European Parliament as observer in all relevant meetings.

Amendment 83

Proposal for a regulation Article 12 b (new)

Text proposed by the Commission

Amendment

Article 12b

International Cooperation

Member States and the Commission shall promote cooperation, in trade and investment agreements with third countries and in international fora on the application of screening procedures.

Amendment 84

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

1. The Commission shall *evaluate and* present to the European Parliament and the Council a report *on the application* of this Regulation *no later than 3 years after its entry into force*. Member States shall be involved in this exercise and shall provide the Commission with necessary information for the preparation of that report.

Amendment

1. *By ... [three years after the entry into force of this Regulation], and every three years thereafter*, the Commission shall present to the European Parliament and the Council a report *assessing the functioning and effectiveness* of this Regulation. Member States shall be *closely* involved in *that* exercise and shall provide the Commission with necessary information for the preparation of that report.

Amendment 85

Proposal for a regulation Article 13 – paragraph 2

Text proposed by the Commission

2. Where the report recommends modifying the provisions of *the* Regulation, the report may be accompanied by an appropriate legislative proposal.

Amendment

2. Where the report recommends modifying the provisions of *this* Regulation, the report may be accompanied by an appropriate legislative proposal. *If the Commission considers that such modification is not required, it shall give the European Parliament and the Council reasons thereof.*

Amendment 86

Proposal for a regulation Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

1. *The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*

2. The power to adopt delegated acts referred to in Article 3(3) shall be conferred on the Commission for a period of three years from ... [date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the three-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 3(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 3(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will

not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Amendment 87

Proposal for a regulation Annex – indent 6 a (new)

Text proposed by the Commission

Amendment

– EFSI

Regulation (EU) No 2015/1017 of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and Regulations amending Regulations (EU) No 1291/2013, (EU) No 1316/2013 and (EU) 2015/1017 as regards the extension of the duration of the European Fund for Strategic Investments as well as the introduction of technical enhancements for that Fund and the European Investment Advisory Hub.

Amendment 88

Proposal for a regulation Annex – indent 6 b to 6 i (new)

Text proposed by the Commission

Amendment

– SESAR - Single European Sky:

Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation).

– Joint technology initiatives of the Union including:

Fuel Cells and Hydrogen, Aeronautics and Hydrogen, Innovative medicines

Initiative, Electronic components and systems for European Leadership, Bio-based industries, Shift2Rail.

– Connecting Europe Facility:

Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010.

– Action Plan for 5G in Europe.

– European Defence Fund:

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Launching the European Defence Fund' (COM(2017)0295).

– European Defence Industrial Development Programme:

Regulation of the European Parliament and of the Council of ... establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovative capacity of the EU defence industry, and European Defence Fund- European Commission Decision on the Financing of the Preparatory Defence Research (PADR).

– Permanent structured cooperation (PESCO):

Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States.

– Research Fund for Coal and Steel:

Council Decision (EU) 2017/955 of 29 May 2017 amending Decision 2008/376/EC on the adoption of the Research Programme of the Research Fund for Coal and Steel and on the

multiannual technical guidelines for this programme.

EXPLANATORY STATEMENT

All the G7 countries and EU partner countries already have an investment screening mechanism, which they have already reinforced several times. Thirteen out of twenty-eight Member States have already introduced this mechanism into their system; in its text the Commission proposes filling this legislative void at European level to establish a foreign direct investment screening framework. Your rapporteur wishes to congratulate the Commission on the presentation of this legislative proposal and on its responsiveness. It is neither a harmonisation nor a new mechanism but a framework:

this approach can be supported, even though the text requires a series of clarifications about the concepts, the factors that justify the intervention and its specific scope.

I THE CONCEPTS

The Commission's proposal contains many key concepts in the screening mechanisms. The difficulty is to define them, while leaving a leeway for interpretation so that they can be adapted to a variety of situations. That is why it would be unwise to make these concepts precise definitions, because this would mean that the mechanism would no longer be viable on a case-by-case basis and be subject to too many constraints.

1. Investment

The definition of investment is mentioned by the Commission, highlighting the lasting and direct links between the investor and the entrepreneur to whom or the undertaking to which the capital is made available. The notion of a lasting economic link is of major importance, especially in strategic sectors.

Investors - a natural or legal person - are said to be foreign when they are also directly or indirectly under the ultimate control of non-European entities or States.

2. Taking control

Your rapporteur supports the Commission's proposal that thresholds are ineffective here and can easily be circumvented. All investments are potentially included in the Commission proposal. The main thing is to take into account the ultimate investor.

There are various different ways of taking over control of an undertaking (acquisition, a shareholders' agreement, governance rights, choice of directors, targeting of the shareholders' meeting, 'activist' funds), whatever the assets in the hands of the investor, even in the case of portfolio investments.

3. Security and public order

The concept of 'security and public order' is consistent with the terms used in the GATS/WTO and allows a definition of the scope of the exceptions with regard to our international commitments and permits Member States to restrict investment in the event of a threat to security and public order. This must remain a concept and not be precisely defined so that it can remain dynamic according to the specific circumstances of the Member States. It should be noted that the defence sector remains excluded or is at least subject to exemptions linked to Article 346 TFEU.

4. Sensitive and/or strategic

The same applies to sensitive or strategic aspects of a sector, an undertaking or a branch. An undertaking's sensitivity depends on its goods, services, technologies or know-how related to

the major security and public order interests of a State.

The strategic nature is potentially derived from its role in a value chain. Your rapporteur considers that more precise indications should be given in the list proposed by the Commission. Infrastructure requires special vigilance, sensitive technologies need to be added as well as specifications on security of supply and access to sensitive information. The list must remain open and non-exhaustive.

5. *Link between foreign investment and security and public order*

The link between investment and security and public order should not be limited to taking into account only the control exercised by the government of a third country, but should be extended to include the context and the conditions under which the investment is taking or has taken place, including the level of openness of the sector in the country of origin of the foreign investment. While these are not screening criteria, they are aspects that will help decision-making.

II CONTENT OF THE PROPOSAL

The proposed mechanism does not replace the decision-making power of the Member States with regard to investments in their territory. It aims above all to create a mechanism for the exchange of information at European level.

The European Union's strength in other areas lies in the quality of the information collected. Contacts between Member States and investors will be more regular and create trust owing to this transparency.

The Member State which will remain sovereign over the investments which take place on its territory may thus use as it sees fit the information, knowledge, questions or analyses of the Member States and/or of the Commission to take its sovereign decision to authorise, prohibit or especially to modulate an investment through transitional or flanking measures.

Clearly, some of the information transmitted between an undertaking or an investor and a Member State may be highly confidential and it must therefore be clearly stated that the Member States and the Commission must guarantee the highest level of protection for that information.

The most common rule remains ex-ante use, that is, controls are carried out before the investment is finalised. This provides predictability for the undertaking that wishes to consult the national authorities before investing but also for the State that can anticipate the impact.

In order to achieve this, the provision of an ex-post or ex-officio verification of an investment is useful in some States for screening to be more effective, as in Germany. This is particularly the case where there is a desire to circumvent the rules.

As we have seen, in an information exchange system, the quality and speed of information are vital. And having a screening mechanism makes it possible to fully meet this objective.

It must also be borne in mind that Member States do not have this mechanism and the proposal will not oblige them to create one. However, measures must be taken to facilitate the exchange of information in the system had having such a system may be considered an added value.

Your rapporteur considers that a contact point without adequate institutional underpinning will not be sufficient to meet the objectives so as to ensure the proper functioning of this mechanism for the exchange of information at European level. For example, there needs to be the possibility of effective coordination between it and other points of contact, and provision

must therefore be made for a State that lacks a screening mechanism to be able to consult the Commission or the Member States, while preserving the confidentiality of the data.

The establishment of this new mechanism creates expectations. Your rapporteur believes that it will be important properly to anticipate the follow-up and improvement of the mechanism with a view to the revision of the regulation three years after its entry into force.

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.

III THE ROLE OF THE INSTITUTIONS

The Council

Member States lie at the heart of this mechanism. The coordinating group relating to the screening of foreign investment set up by the Commission will start work even before final ratification of the draft regulation. Your rapporteur considers that the functioning and role of the committee need to be clarified. The presence of the European Parliament as an observer would be an asset.

Your rapporteur would like to encourage Member States to exchange best practices in order to move towards the creation of efficient mechanisms in the Member States.

The Commission

The Commission would be given a power of analysis but not of decision-making by acting as an information transmission belt.

Your rapporteur believes that the role assigned to it in the draft regulation is balanced. However, it is necessary to specify two things: the content and value of the Commission's opinions regarding some investments.

The Commission's opinions must go beyond the investment and bring real added value by taking into account the influence of a third State through State aid in particular or by specifying, by way of information, the level of openness of the State of origin of the undertaking wishing to invest.

In view of the strategic importance of some investments, there is one scenario that the Commission's draft regulation fails to provide for. Where the Commission and at least one third of the Member States raise concerns about an investment, the latter and the Member State in which the investment is taking place must cooperate in finding an alternative solution.

Listed in the annex in a non-exhaustive way, it is quite legitimate that European projects should be followed by the Commission which already plays a major role in organising, financing and monitoring them.

The Commission should therefore be delegated the authority to update the non-exhaustive list of projects or programmes.

The European Parliament

The European Parliament must have the right to comment on the annual reports by the Member States on the use of their national mechanism or on the state of play of foreign investments if they do not have a mechanism; this will also give it a proactive role in making

proposals. This will both assist Member States wishing to establish a mechanism but also help when it comes to reviewing the European mechanism.

MEPs must contribute to safeguarding the interests of the Union. Consideration should be given to establishing a rule so that the European Parliament can request an opinion from the Commission on a foreign investment. In view of the confidentiality of such an opinion, Parliament would only obtain confirmation from the Commission that an opinion has indeed been issued.

25.4.2018

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on International Trade

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 (COM(2017)0487 – C8-0309/2017 – 2017/0224(COD))

Rapporteur: Reinhard Bütikofer

SHORT JUSTIFICATION

Your rapporteur supports the overall objectives and the main elements of the proposal for Regulation to establish a framework for the screening by the Member States and the Commission of the Foreign Direct Investments (FDI) originating from third-countries in the EU. Although FDI are often an opportunity for the EU's economy, there can also be some instances where allowing certain investments can bear a risk to the Union's and Member State's security and public order.

The EU is far from speaking with a single voice on foreign investment in Europe, thus streamlining the convergences, where possible, will be a crucial first step in formulating solid and complementary policy positions at EU level. It will enable the EU to have a common response to the rapidly evolving and increasingly complex investment landscape while at the same time positioning the EU in line with other global trade and investment partners that already operate FDI screening mechanisms.

Setting up a fully functioning coordination framework across the EU will however be a long-term endeavour, as Member States have today different approaches, some having no screening mechanism in place at all. Your rapporteur therefore supports that the establishment of such a screening mechanism by the Member States should remain voluntary, as put forward in the Commission proposal, while on the other hand enabling those countries that perform such a screening to cooperate more closely. In addition your rapporteur believes that there is a need to streamline the information processes, while at the same time reduce the administrative burdens for all the Member States.

The amendments and clarification proposal include:

- Clarifying the definition of foreign investor with regards to its ownership and effective control, as the location of an undertaking does not necessarily reveal from where the

investment is effectively coming from;

- In line with screening frameworks established across OECD countries, enlarge the non-exhaustive list of areas of critical technologies, infrastructure and sectors that may be taken into consideration and on which potential foreign investment may have an effects on grounds of security or public order,
- Possibility of enabling screening mechanisms of the Member States and the Commission to be activated by Trade Unions, taking example from the current system in the United States;
- Possibility for the European Parliament to request the activation of the cooperation mechanism for projects and programmes of Union interest;
- Ensure that the Commission performs its screening on relevant projects and programmes of Union interest financed under the current, but also the future, Multi-Annual Financial Frameworks;
- To limit the possible misuse or abuse of such a framework by ensuring that Member States provide justified explanations on how a foreign direct investment planned in another Member State is likely to affect their security or public order, as well as by strengthening the coordination function of the Commission;
- The introduction of an Investment Screening Coordination Group where Member States that have a screening a mechanism in place would exchange information and opinions of ongoing screening by Member States and the Commission;
- Reduce burden of information requirements on the Member States and set the reporting requirements to every three years after two years from the entry into force of the Regulation;

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on International Trade, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) The Union and the Member States have an open investment environment, which is enshrined in the Treaty on the Functioning of the European Union

Amendment

(2) The Union and the Member States have an open investment environment, which is enshrined in the Treaty on the Functioning of the European Union

("TFEU") and embedded in the international commitments undertaken by the Union and its Member States with respect to foreign direct investment.

("TFEU") and embedded in the international commitments undertaken by the Union and its Member States with respect to foreign direct investment. *Considering this openness, the Union should foster the level playing field in the relations with third countries.*

Amendment 2

Proposal for a regulation Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Whereas screening mechanisms which exist in several Member States or in third countries never constitute an obstacle to foreign direct investments provided that they are known, anticipated and don't extensively delay investments' realisation.

Amendment 3

Proposal for a regulation Recital 7

Text proposed by the Commission

Amendment

(7) It is important to provide legal certainty and to *ensure* EU wide *coordination and* cooperation by establishing a framework for the screening of foreign direct investment in the Union on grounds of security or public order. This is without prejudice to the sole responsibility of the Member States for the maintenance of national security.

(7) It is important to provide legal certainty and to *aim at* EU wide cooperation by establishing a framework for the screening of foreign direct investment in the Union on grounds of security or public order *where strategic interests are affected, including, among others, enabling key technologies, strategic assets, strategic and sensitive data etc.* This is without prejudice to the sole responsibility of the Member States for the maintenance of national security *and public order.*

Amendment 4

Proposal for a regulation
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) In assessing the mechanism for controlling foreign direct investment, care should be taken to verify the proper functioning of the internal market through measures to prevent downward competition between companies and between Member States regarding tax and remuneration and reward socially responsible company purchasing policies that ensure sustained employment and decent pay.

Amendment 5

Proposal for a regulation
Recital 8

Text proposed by the Commission

Amendment

(8) The framework for the screening of foreign direct investment should provide the Member States and the Commission with the means to address risks to security or public order in a comprehensive manner, and to adapt to changing circumstances, whilst ***maintaining the necessary flexibility for*** Member States to screen foreign direct investments on grounds of security and public order taking into account their individual situations and national circumstances.

(8) The framework for the screening of foreign direct investment should provide the Member States and the Commission with the means to address risks to security or public order in a comprehensive manner, and to adapt to changing circumstances ***in global trade, whilst fully safeguarding the prerogatives of the*** Member States to screen foreign direct investments on grounds of security and public order, ***including, among others, strategic interests, enabling key technologies, strategic assets, strategic and sensitive data, etc., and*** taking into account their individual situations and national circumstances. ***The framework should also facilitate the Member States without a screening mechanism adopting one.***

Amendment 6

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) **A broad range of** investments which establish or maintain lasting and direct links between investors from third countries and undertakings carrying out an economic activity in a Member State should be covered.

Amendment

(9) Investments which establish or maintain lasting and direct links between investors from third countries and undertakings carrying out an economic activity in a Member State should be covered, ***to the extent they relate to security and public order.***

Amendment 7

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) In determining whether a foreign direct investment may affect security or public order, Member States and the Commission should be able 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, and the disruption, loss or destruction of which would have a significant impact in a Member State or in the Union. In that regard, Member States and the Commission should ***also be able to*** take into account whether a foreign investor is controlled directly or indirectly (*e.g.* through significant funding, ***including*** subsidies) by the government of a third country.

Amendment

(12) In determining whether a foreign direct investment may affect security or public order, Member States and the Commission should be able to consider all relevant factors, including the effects on critical infrastructure, ***critical*** technologies, including key enabling technologies, and inputs ***or sensitive information*** which are essential for security or the maintenance of public order, and the disruption, loss or destruction of which would have a significant impact in a Member State or in the Union. In that regard, Member States and the Commission should take into account whether a foreign investor is ***owned, operated or otherwise*** controlled directly or indirectly ***by the government or state bodies of a third country and/or pursuing state-led outward foreign direct investments policies for strategic industrial goals, corroborated*** through significant funding ***and*** subsidies, ***extended credit and lending*** by the government of a third country ***or a state-owned financial institution. When screening a foreign direct investment, the Commission may also assess the effect on specific key know-how and technologies, which could be significant for the mid- and long-term***

economic security.

Amendment 8

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) A mechanism which enables Member States to cooperate and assist each other where a foreign direct investment in one Member State may affect the security or public order of other Member States should be set up. Member States should be able to provide comments to *a* Member State ***in which*** the investment is planned ***or has been completed, irrespective of whether the*** Member States ***providing comments or the Member States in which the investment is planned or has been completed maintain a screening mechanism or are screening the investment. The comments of Member States should also be forwarded to the Commission.*** The Commission should also have the possibility, where appropriate, to issue an opinion to the Member State in which the investment is planned ***or has been completed, irrespective of whether this Member State maintains a screening mechanism or is screening the investment and irrespective of whether other Member States have provided comments.***

Amendment

(14) A mechanism which enables Member States ***and the Commission*** to cooperate ***in a transparent manner*** and assist each other where a foreign direct investment in one Member State may affect the security or public order of other Member States should be set up. Member States, ***whose security or public order may be affected by a foreign direct investment in another Member State,*** should be able to provide comments to ***the Commission. The Commission should then forward all comments to the*** Member State ***where*** the investment is planned ***as well as all other*** Member States ***concerned.*** The Commission should also have the possibility, where appropriate, to issue an opinion to the Member State in which the investment is planned. ***Based on the comments received, the Commission may request the issue to be discussed in the framework of the Investment Screening Coordination Group.***

Amendment 9

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) Furthermore, the Commission should ***have the possibility to*** screen foreign direct investments likely to affect projects and programmes of Union interest on grounds of security or public order. This

Amendment

(15) Furthermore, the Commission should screen foreign direct investments likely to affect projects and programmes of Union interest on grounds of security or public order. This would give the

would give the Commission a tool to protect projects and programmes which serve the Union as whole and represent an important contribution to its economic growth, jobs and competitiveness. This should include in particular projects and programmes involving a substantial EU funding or established by Union legislation regarding critical infrastructure, critical technologies or critical inputs. For greater clarity, *an indicative* list of projects or programmes of Union interest in relation to which foreign direct investment can be subject to a screening by the Commission should be listed in an Annex.

Commission *and Member States* a tool to protect projects and programmes which serve the Union as whole and represent an important contribution to its economic growth, jobs and competitiveness. This should include in particular projects and programmes involving a substantial EU funding or established by Union legislation regarding critical infrastructure, critical technologies or critical inputs. For greater clarity, *a* list of projects or programmes of Union interest in relation to which foreign direct investment can be subject to a screening by the Commission should be listed in an Annex.

Amendment 10

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) Where the Commission considers that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission should *have the possibility to* address an opinion to the Member States in which such investment is planned or completed within a reasonable timeframe. The Member States should take *utmost* account of the opinion and provide an explanation to the Commission if they *do not follow this* opinion, in compliance with their duty of sincere cooperation under Article 4(3) TEU. The Commission should also have the possibility to request from those Member States the information necessary for its screening of such investment.

Amendment

(16) Where the Commission *or more than one Member State* considers that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission should address an opinion to the Member States in which such investment is planned or completed within a reasonable timeframe. The Member States should take account of the opinion and provide an explanation to the Commission if they *diverge from the* opinion, in compliance with their duty of sincere cooperation under Article 4(3) TEU. The Commission should also have the possibility to request from those Member States the information necessary for its screening of such investment.

Amendment 11

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) In order to facilitate the cooperation with other Member States and the screening of foreign direct investment by the Commission, Member States should notify their screening mechanisms and any amendment thereto to the Commission, and should report on the application of their screening mechanisms on a regular basis. ***For the same reason***, Member States that do not have a screening mechanism should ***also*** report on the foreign direct investments that took place in their territory, ***on the basis of the information available to them***.

Amendment

(17) In order to facilitate the cooperation with other Member States and the screening of foreign direct investment by the Commission, Member States should notify their screening mechanisms and any amendment thereto to the Commission, and should report on the application of their screening mechanisms on a regular basis. ***However***, Member States that do not have a screening mechanism should report ***annually*** on the foreign direct investments that took place in their territory ***where such investments pertain to projects and programmes of Union interest***. ***All reporting obligations should be applicable from ... [two years after entry into force of this Regulation]***.

Amendment 12

Proposal for a regulation
Recital 18

Text proposed by the Commission

(18) To that end, it is also important to ensure a minimum level of information and coordination with regard to foreign direct investments falling under the scope of this Regulation in all Member States. ***This information should be made available by the*** Member States in which the foreign direct investment is planned or has been completed upon request of the Member States or of the Commission. Relevant information includes aspects such as the ownership structure of the foreign investor and the financing of the planned or completed investment, including, ***when available***, information about subsidies granted by third countries.

Amendment

(18) To that end, it is also important to ensure a minimum level of information ***exchange*** and coordination ***between Member States*** with regard to foreign direct investments falling under the scope of this Regulation in all Member States. Member States in which the foreign direct investment is planned or has been completed ***should make this information available*** upon request of the Member States or of the Commission ***or the Investment Screening Coordination Group***. Relevant information includes aspects such as the ownership structure of the foreign investor and the financing of the planned or completed investment, including information about subsidies granted by third countries.

Amendment 13

Proposal for a regulation Recital 19

Text proposed by the Commission

(19) The communication and cooperation at Member State and Union level should be enhanced through the establishment of contact points for the screening of foreign direct investments in each Member State.

Amendment

(19) The communication and cooperation at Member State and Union level should be enhanced through the establishment of contact points for the screening of foreign direct investments in each Member State, ***as well as through the establishment of an Investment Screening Coordination Group. The group should be formed of representatives of Member States and chaired by a representative of the Commission and may serve as a platform to exchange views and information, to improve cooperation and coordination, and to assist each other on foreign direct investment.***

Amendment 14

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) No later than ***three*** years after the entry into force of this Regulation, the Commission should present to the European Parliament and the Council a report on the application of this Regulation. Where the report proposes modifying the provisions of this Regulation, it may be accompanied, where appropriate, by a legislative proposal.

Amendment

(21) No later than ... ***[four*** years after the entry into force of this Regulation], ***and every five years thereafter***, the Commission should present to the European Parliament and the Council a report on the application of this Regulation. Where the report proposes modifying the provisions of this Regulation, it may be accompanied, where appropriate, by a legislative proposal.

Amendment 15

Proposal for a regulation Recital 21 a (new)

(21a) In order to update the projects or programmes of Union interest in relation to which foreign direct investment can be subject to a screening by the Commission, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the list of the projects and programmes of Union interest referred to in Article 3(3) and listed in Annex 1. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making^{1a}. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

^{1a} OJ L 123, 12.5.2016, p. 1.

Amendment 16

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

This Regulation establishes a 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.

Amendment

This Regulation establishes a framework for the screening by the Member States of foreign direct ***investment*** in the Union on the grounds of security or public order ***and establishes the role of*** the Commission ***therein***.

Amendment 17

Proposal for a regulation

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

2. 'foreign investor' means a natural person of a third country or an undertaking of a third country intending to make or having made a foreign direct investment;

Amendment

2. 'foreign investor' means a natural person of a third country or an undertaking ***effectively controlled or owned by nationals*** of a third country, intending to make or having made a foreign direct investment;

Amendment 18

Proposal for a regulation

Article 2 – paragraph 1 – point 6

Text proposed by the Commission

6. 'undertaking of a third country' means an undertaking constituted or otherwise organised under the laws of a third country.

Amendment

6. 'undertaking of a third country' means an undertaking constituted or otherwise organised under the laws of a third country ***or an undertaking effectively controlled or owned by nationals of a third country.***

Amendment 19

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

1. Member States may maintain, amend or adopt mechanisms to screen foreign direct investments on the grounds of ***security or*** public order, under the conditions and in accordance with the terms set out in this Regulation.

Amendment

1. Member States may maintain, amend or adopt mechanisms to screen foreign direct investments on the grounds of public order ***or security,*** under the conditions and in accordance with the terms set out in this Regulation.

Amendment 20

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

2. The Commission *may* screen foreign direct investments that are *likely* to affect projects or programmes of Union interest on the grounds of security or public order.

Amendment

2. The Commission *shall* screen foreign direct investments that are *considered* to affect projects or programmes of Union interest on the grounds of security or public order

Amendment 21

Proposal for a regulation

Article 3 – paragraph 3

Text proposed by the Commission

3. Projects or programmes of Union interest shall include in particular those projects and programmes which involve a substantial amount or a significant share of EU funding, or which are covered by Union legislation regarding critical infrastructure, critical technologies or critical inputs. *An indicative* list of projects or programmes of Union interest is included in Annex 1.

Amendment

3. Projects or programmes of Union interest shall include in particular those projects and programmes which involve a substantial amount or a significant share of EU funding *under current and future Multiannual Financial Frameworks*, or which are covered by Union legislation regarding critical infrastructure, critical technologies or critical inputs. *The* list of projects or programmes of Union interest is included in Annex I.

Amendment 22

Proposal for a regulation

Article 3 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Commission is empowered to adopt delegated acts in accordance with Article 13a to amend projects and programmes listed in Annex I.

Amendment 23

Proposal for a regulation Article 3 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. *The cooperation mechanisms referred to in Articles 8 and 9 may be activated only after the Member States have notified the activation of their screening mechanisms. In no way can the cooperation mechanisms be activated for completed investments where Member States only screen planned investments. Only in exceptional cases and if Member States and the Commission have reasonable ground to believe that any information listed in Article 10 paragraph 2 have changed and only in cases of investments completed after the entry into force of this Regulation, can the cooperation mechanism be activated for completed investments. When the cooperation mechanism referred to in Article 9 is activated for investments taking place in Member States that do not have a screening mechanism, completed investments may be addressed in the framework of the Investment Screening Coordination Group as referred to in Article 12a.*

Amendment 24

Proposal for a regulation Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

In screening a foreign direct investment on the grounds of security or public order, Member States and the Commission may consider the potential effects on, inter alia:

In screening a foreign direct investment on the grounds of security or public order *of one or more Member State or the security or public order in terms of projects or programmes of Union interest*, Member States and the Commission may consider the potential effects on, inter alia:

Amendment 25

Proposal for a regulation

Article 4 – paragraph 1 – indent 1

Text proposed by the Commission

- critical infrastructure, including energy, transport, communications, data storage, space or financial infrastructure, as well as sensitive facilities;

Amendment

- critical **and strategic** infrastructure, including energy, **water**, transport, communications **and the media**, data storage, space, **health services, research** or financial infrastructure, as well as sensitive facilities **and any security and defence infrastructure**;

Amendment 26

Proposal for a regulation

Article 4 – paragraph 1 – indent 2

Text proposed by the Commission

- critical technologies, including artificial intelligence, robotics, semiconductors, technologies with potential dual use applications, cybersecurity, space or nuclear technology;

Amendment

- critical **and strategic** technologies, including artificial intelligence, robotics, semiconductors, **advanced materials, nanotechnologies, biotechnologies, medical technologies**, technologies with potential dual use applications, cybersecurity, **aerospace, defence**, space or nuclear technology;

Amendment 27

Proposal for a regulation

Article 4 – paragraph 1 – indent 3

Text proposed by the Commission

- the security of supply of critical inputs; or

Amendment

- the security of supply of critical inputs **of rare and strategic materials; or**

Amendment 28

Proposal for a regulation

Article 4 – paragraph 1 – indent 4

Text proposed by the Commission

- access to **sensitive information** or the ability to control sensitive information.

Amendment

- access to or the ability to control sensitive **data and** information.

Amendment 29

Proposal for a regulation
Article 4 – paragraph 2

Text proposed by the Commission

In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission **may take into** account whether the foreign investor is controlled by the government of a third country, **including through** significant **funding**.

Amendment

In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission **shall take** account **of** whether the foreign investor is **directly or indirectly** controlled by the government **or state bodies** of a third country **and/or pursuing state-led outward foreign direct investments policies for strategic industrial goals, corroborated** through significant funding **or subsidies, extended credit and lending by the government of a third country or a state-owned financial institution. When screening a foreign direct investment, the Commission may also assess the effect on specific key know-how and technologies, which could be significant for the mid- and long-term economic security.**

Amendment 30

Proposal for a regulation
Article 6 – paragraph 1

Text proposed by the Commission

1. Member States' screening mechanisms shall be transparent and not discriminate between third countries. In particular, Member States shall set out the circumstances triggering the screening, the grounds for screening and the applicable

Amendment

1. Member States' screening mechanisms shall be transparent and not discriminate between third countries. In particular, Member States shall set out the circumstances triggering the screening, the grounds for screening and the applicable detailed procedural rules **regarding the**

detailed procedural rules.

screening and the screening decisions.

Amendment 31

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

2. Member States shall establish timeframes for issuing screening decisions. Such timeframes shall allow them to take into account the comments of Member States referred to in Article 8 and the opinion of the Commission referred to in Articles 8 and 9.

Amendment

2. Member States shall establish timeframes for issuing screening decisions **and make them publicly available**. Such timeframes shall allow them to take into account the comments of Member States referred to in Article 8 and the opinion of the Commission referred to in Articles 8 and 9.

Amendment 32

Proposal for a regulation Article 6 – paragraph 3

Text proposed by the Commission

3. Confidential information, including commercially-sensitive information, made available by foreign investors and undertaking concerned shall be protected.

Amendment

3. Confidential information, including commercially-sensitive information, made available by foreign investors and undertaking concerned shall be **duly** protected.

Amendment 33

Proposal for a regulation Article 7 – title

Text proposed by the Commission

Notification by Member States of screening mechanisms and **annual** reporting

Amendment

Notification by Member States of screening mechanisms and reporting

Amendment 34

Proposal for a regulation

Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall notify to the Commission their existing screening mechanisms by [...] (30 days of the entry into force of this Regulation) at the latest. Member States shall notify to the Commission any amendment to an existing screening mechanism or any newly adopted screening mechanism within 30 days of entry into force of the screening mechanism at the latest.

Amendment

1. Member States shall notify to the Commission their existing screening mechanisms by [...30 days of the entry into force of this Regulation] at the latest. Member States shall notify to the Commission any amendment to an existing screening mechanism or any newly adopted screening mechanism within 30 days of entry into force of the screening mechanism **or of the amendments to the existing one** at the latest.

Amendment 35

Proposal for a regulation

Article 7 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States that maintain screening mechanisms shall provide the Commission with **an annual** report on the application of their screening mechanisms. For each reporting period, the report shall include in particular information on:

Amendment

2. **By ... [2 years after the entry into force of this Regulation], and every two years thereafter,** Member States that maintain screening mechanisms shall provide the Commission with **a** report on the application of their screening mechanisms. For each reporting period, the report shall include in particular information on:

Amendment 36

Proposal for a regulation

Article 7 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) screening decisions regarding projects and programmes of Union interest;

Amendment 37

Proposal for a regulation Article 7 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) *the sectors, origin, and value of foreign direct investment screened and undergoing screening.* **deleted**

Justification

The aim is to reduce the administrative burden for the Member States. This information will already be provided to the Commission (provision Article 8 paragraph 1) who will be able to aggregate the data.

Amendment 38

Proposal for a regulation Article 7 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States that do not maintain screening mechanisms shall provide the Commission with *an annual* report covering foreign direct investments that took place in their territory, *on the basis of information available to them.*

3. ***By ... [two years after the entry into force of this Regulation], and every year thereafter,*** Member States that do not maintain screening mechanisms shall provide the Commission with a report covering foreign direct investments that took place in their territory ***when such investments pertain to projects and programmes of Union interest.***

Amendment 39

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1. Member *States* shall inform the Commission and the other Member States of any foreign direct investments that are *undergoing* screening within the framework of *their* screening *mechanisms*, within 5 working days from the start of the

1. A Member *State* shall inform the Commission and the other Member States of any foreign direct investments that are *subject to* screening within the framework of *its* screening *mechanism*, within *five* working days from the start of the

screening. As part of the information, and when applicable, the screening Member States shall endeavour to indicate whether it considers that the foreign direct investment undergoing screening is likely to fall within the scope of Regulation (EC) No 139/2004.

screening. As part of the information, and when applicable, the screening Member **State** shall endeavour to indicate whether it considers that the foreign direct investment **which is subject to the** screening is likely to fall within the scope of Regulation (EC) No 139/2004.

Amendment 40

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

2. Where a Member State considers that a foreign direct investment planned or completed in another Member State is likely to affect its security or public order, it may provide comments to the Member State where the foreign direct investment is planned or has been completed. ***The comments shall be forwarded to the Commission in parallel.***

Amendment

2. Where a Member State considers that a foreign direct investment, planned or completed, in another Member State is likely to affect its security or public order, it may provide comments to the ***Commission. The Commission shall collect all comments received and transmit them to the*** Member State where the foreign direct investment is planned or has been completed, ***as well as to all other Member States.***

Amendment 41

Proposal for a regulation Article 8 – paragraph 3

Text proposed by the Commission

3. Where the Commission considers that a foreign direct investment is likely to affect security or public order in one or more Member States, it may issue an opinion addressed to the Member State in which the foreign direct investment is planned or has been completed. The Commission may issue an opinion irrespective of whether other Member States have provided comments.

Amendment

3. Where the Commission considers that a foreign direct investment is likely to affect security or public order in one or more Member States, it may issue an opinion addressed to the Member State in which the foreign direct investment is planned or has been completed. ***Such opinion shall also be transmitted to all other Member States.*** The Commission may issue an opinion irrespective of whether other Member States have provided comments.

Amendment 42

Proposal for a regulation

Article 8 – paragraph 4

Text proposed by the Commission

4. ***The Commission or*** a Member State which duly considers that a foreign direct investment is likely to affect its security or public order may request from the Member State where the foreign direct investment is planned or has been completed, any information necessary to provide comments referred to in paragraph 2, ***or to issue*** the opinion referred to in paragraph 3.

Amendment

4. A Member State which duly considers that a foreign direct investment is likely to affect its security or public order may ***address a request to the Commission to provide it with*** any information received from the Member State where the foreign direct investment is planned or has been completed which is necessary to provide comments referred to in paragraph 2. ***Member States have five working days from the day of the notification of the activation of a screening mechanism under paragraph 1 to address a request for information to the Commission. The Commission shall collect all requests for information received and immediately transmit them to the Member State where the foreign direct investment is planned or has been completed, as well as to the other Member States. The Commission may also on its own initiative request the Member State where the foreign direct investment is planned or has been completed to provide it with any information necessary to issue*** the opinion referred to in paragraph 3

Amendment 43

Proposal for a regulation

Article 8 – paragraph 5

Text proposed by the Commission

5. Comments pursuant to paragraphs 2 ***or opinions pursuant to paragraph 3*** shall be addressed to the Member State where the foreign direct investment is planned or has been completed ***within a reasonable***

Amendment

5. Comments referred to in paragraph 2 shall be sent to ***the Commission within a reasonable period of time, and in any case no later than 20 working days following the receipt of the information referred to***

period of time, and in any case no later than 25 working days following receipt of the information referred to in paragraphs 1 or 4. In cases where the opinion of the Commission follows comments from other Member States, the Commission shall have 25 additional working days for issuing the opinion.

in paragraphs 1 or 4. The Commission shall transmit the comments it received within five working days to the Member State where the foreign direct investment is planned or has been completed. The Commission shall issue the opinion referred to in paragraph 3 within 25 working days and in cases where the opinion of the Commission follows the comments from other Member States, the Commission shall have 25 additional working days for issuing the opinion.

Amendment 44

Proposal for a regulation Article 8 – paragraph 6

Text proposed by the Commission

6. The Member States where the foreign direct investment is planned or has been completed shall give due consideration to the comments of the other Member States referred to in paragraph 2 and to the opinion of the Commission referred to in paragraph 3.

Amendment

6. The Member States where the foreign direct investment is planned or has been completed shall give due consideration to the comments of the other Member States referred to in paragraph 2 and to the opinion of the Commission referred to in paragraph 3, *as well as to comments expressed within the framework of the Investment Screening Coordination Group as referred to in Article 12a.*

Amendment 45

Proposal for a regulation Article 8 – paragraph 7

Text proposed by the Commission

7. Cooperation between Member States pursuant to this Article shall take place through *the contact points* referred to in Article 12.

Amendment

7. Cooperation between Member States pursuant to this Article shall take place through *discussion in the Investment Screening Coordination Group* referred to in Article 12a *if requested by the Commission.*

Amendment 46

Proposal for a regulation Article 9 – title

Text proposed by the Commission

Framework for Commission screening

Amendment

Cooperation mechanism for screening of projects or programmes of Union interest

Amendment 47

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

1. Where the Commission *considers* that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission *may* issue an opinion addressed to the Member State where the foreign direct investment is planned or has been completed.

Amendment

1. Where the Commission *or more than one Member State duly consider* that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order *of one or more Member States*, the Commission *shall* issue an opinion addressed to the Member State where the foreign direct investment is planned or has been completed.

Amendment 48

Proposal for a regulation Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The European Parliament may request the activation of the cooperation mechanism for projects and programmes of Union interest on grounds of security or public order. The Commission shall take utmost account of the European Parliament's position and provide an explanation in the event it is not taken into account.

Amendment 49

Proposal for a regulation Article 9 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. If a Member State considers that a foreign direct investment may affect projects or programs of Union interest, it may request the Commission to issue an opinion to the Member State in which the foreign direct investment is planned.

Amendment 50

Proposal for a regulation Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission may request from the Member State where the foreign direct investment is planned or has been completed ***any*** information ***necessary to issue the opinion referred to in paragraph 1.***

2. The Commission may request ***additional information as referred to in Article 10*** from the Member State where the foreign direct investment is planned or has been completed. ***When requesting such information, the Commission shall explain how security and public order may be affected by the foreign direct investment which is planned, is under consideration or which has been completed.***

Amendment 51

Proposal for a regulation Article 9 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall ***address*** its opinion to the Member State concerned within a reasonable period of time, and in any case no later than 25 working days following receipt of the information ***requested by the Commission*** pursuant to paragraph 2. ***Where a Member State has a***

3. The Commission shall ***issue*** its opinion to the Member State concerned within a reasonable period of time, ***in order to not hamper due to unreasonable delays either the foreign direct investment or the national screening,*** and in any case no later than 25 working days following

screening mechanism in place as referred to in Article 3(1) and the information on foreign direct investment undergoing screening has been received by the Commission pursuant to Article 8(1), the opinion shall be delivered no later than 25 working days following receipt of such information. Where additional information is needed to issue an opinion, the 25-day period shall run from the date of receipt of the additional information.

receipt of the information *necessary to issue an opinion* pursuant to paragraph 1.

Amendment 52

Proposal for a regulation Article 9 – paragraph 4

Text proposed by the Commission

4. The opinion of the Commission shall be communicated to the other Member States.

Amendment

4. The opinion of the Commission shall be communicated to the other Member States. ***Where the Commission has provided an opinion under this article, it shall inform the European Parliament as part of a structured dialogue on foreign direct investment that affects security and public order. Article 11, Paragraph 2 has to be taken into full account.***

Amendment 53

Proposal for a regulation Article 9 – paragraph 5

Text proposed by the Commission

5. The Member States where the foreign direct investment is planned or has been completed shall take ***utmost*** account of the Commission's opinion and provide ***an*** explanation to the Commission in case its opinion is not followed.

Amendment

5. The Member States where the foreign direct investment is planned or has been completed shall take account of the Commission's opinion and provide ***a written*** explanation to the Commission in case its opinion is not followed. ***The Commission shall transmit this explanation to other Member States, taking full account of Article 11 (2).***

Amendment 54

Proposal for a regulation Article 10 – title

Text proposed by the Commission

Amendment

Information *requirements*

Information *exchange*

Amendment 55

Proposal for a regulation Article 10 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that the information requested by the Commission **and other Member States** pursuant to Articles 8(4) and 9(2) is made available **to the Commission and the requesting Member States** without undue delay.

1. Member States shall ensure that **any** information requested by the Commission pursuant to Articles 8(4) and 9(2) **or by the Investment Screening Coordination Group** is made available without undue delay, **while taking into account the sensitivity of the information and guaranteeing confidentiality.**

Amendment 56

Proposal for a regulation Article 10 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. The information referred to in paragraph 1 of this Article **shall** include **in particular**:

2. The information referred to in paragraph 1 of this Article **may** include **inter alia**:

Amendment 57

Proposal for a regulation Article 10 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) The ownership structure of the

(a) The ownership structure of the

foreign investor and of the undertaking in which the foreign direct investment is planned or has been completed, including information on the ultimate controlling shareholder or shareholders;

foreign investor and of the undertaking in which the foreign direct investment is planned or has been completed, including information on the ultimate controlling shareholder or shareholders, ***the administrative management and supervisory bodies.***

Amendment 58

Proposal for a regulation Article 10 – paragraph 2 – point b

Text proposed by the Commission

(b) The value of the foreign direct investment;

Amendment

(b) The value of the foreign direct investment ***and a projection of its sectorial impact;***

Amendment 59

Proposal for a regulation Article 10 – paragraph 2 – point e

Text proposed by the Commission

(e) The funding of the investment, on the basis of information available to the Member State.

Amendment

(e) The funding of the investment ***and the lawfulness of its source,*** on the basis of information available to the Member State.

Amendment 60

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

2. Member States and the Commission shall ensure the protection of confidential information acquired in application of this Regulation.

Amendment

2. Member States, ***the European Parliament*** and the Commission shall ensure the ***full*** protection of confidential information, ***including commercially-sensitive information,*** acquired in application of this Regulation.

Amendment 61

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

Each Member State shall appoint a foreign direct investment screening contact point ('FDI screening contact point') **for the screening of foreign direct investment**. The Commission and other Member States shall involve these FDI screening contact points on all issues related to implementation of this Regulation.

Amendment

Each Member State, **regardless of whether it maintains a screening mechanism**, shall appoint a foreign direct investment screening contact point ('FDI screening contact point'). The Commission and other Member States shall involve these FDI screening contact points **and the Investment Screening Coordination Group** on all issues related to implementation of this Regulation.

Amendment 62

Proposal for a regulation Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Investment Screening Coordination Group

- 1. An Investment Screening Coordination Group chaired by a representative of the Commission shall be set up. Each Member State shall appoint a representative/expert to this group.***
- 2. The group may exchange views and information on any foreign direct investment that is subject of the screening within the framework of Member States' screening mechanisms and for which a cooperation mechanism has been activated under Article 8 or 9, including on the share of best practices and lessons learned among Member States on screening of foreign direct investment.***
- 3. The group may also discuss any issue pertaining to Union inward foreign investment policy.***

4. At the request of the Member States the Commission may put on the agenda the investments planned in Member States that do not have a screening mechanism.

5. The Commission shall submit an annual report to the European Parliament on the activities, examinations and exchange of views of the Investment Screening Coordination Group.

Amendment 63

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

1. The Commission shall evaluate and present to the European Parliament and the Council a report on the application of this Regulation no later than **3** years after *its* entry into force. Member States shall be involved in this exercise and shall provide the Commission with necessary information for the preparation of that report.

Amendment

1. The Commission shall evaluate and present to the European Parliament and the Council a report on the application of this Regulation no later than ... **[4** years after ***the*** entry into force ***of this Regulation***], ***and every 5 years thereafter***. Member States shall be involved in this exercise and shall provide the Commission with necessary information for the preparation of that report.

Amendment 64

Proposal for a regulation Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 3(3a) shall be conferred on the Commission for a period of five years from ... [date of the entry into

force of this Regulation].

3. The delegation of power referred to in Article 3(3a) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 3(3a) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Amendment 65

Proposal for a regulation Annex I – indent 3 a (new)

Text proposed by the Commission

Amendment

- Joint technology initiatives of the Union including: Fuel Cells and

Hydrogen, Aeronautics and Air Transport, Innovative Medicines Initiative, Electronic Components and Systems for European Leadership, Bio-based Industries, Shift2Rail, Single European Sky (SESAR);

Amendment 66

**Proposal for a regulation
Annex I – indent 3 b (new)**

Text proposed by the Commission

Amendment

- ***Connecting Europe Facility: Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010.***

Amendment 67

**Proposal for a regulation
Annex I – indent 3 c (new)**

Text proposed by the Commission

Amendment

- ***European Fund for Strategic Investments***

Amendment 68

**Proposal for a regulation
Annex I – indent 3 d (new)**

Text proposed by the Commission

Amendment

- ***Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and***

*amending Regulations (EU) No
1291/2013 and (EU) No 1316/2013;*

Amendment 69

**Proposal for a regulation
Annex I – indent 3 e (new)**

Text proposed by the Commission

Amendment

- *Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) 2015/1017 as regards the extension of the duration of the European Fund for Strategic Investments as well as the introduction of technical enhancements for that Fund and the European Investment Advisory Hub;*

Amendment 70

**Proposal for a regulation
Annex I – indent 6 a (new)**

Text proposed by the Commission

Amendment

- *European Defence Industrial Development Programme;*
 - a) *European Defence Industrial Development Programme, and*
 - b) *European Defence Research programme / European Defence Fund*
- *European Commission Decision on the financing of the Preparatory Action on Defence Research (PADR);*

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Establishing a framework for screening of foreign direct investments into the European Union
References	COM(2017)0487 – C8-0309/2017 – 2017/0224(COD)
Committee responsible Date announced in plenary	INTA 26.10.2017
Opinion by Date announced in plenary	ITRE 26.10.2017
Associated committees - date announced in plenary	18.1.2018
Rapporteur Date appointed	Reinhard Bütikofer 9.11.2017
Discussed in committee	21.2.2018
Date adopted	24.4.2018
Result of final vote	+: 36 –: 8 0: 19
Members present for the final vote	Zigmantas Balčytis, José Blanco López, David Borrelli, Jonathan Bullock, Cristian-Silviu Buşoi, Reinhard Bütikofer, Jerzy Buzek, Angelo Ciocca, Edward Czesak, Jakop Dalunde, Pilar del Castillo Vera, Christian Ehler, Fredrick Federley, Ashley Fox, Adam Gierek, Theresa Griffin, Rebecca Harms, Hans-Olaf Henkel, Eva Kaili, Kaja Kallas, Barbara Kappel, Krišjānis Kariņš, Seán Kelly, Jeppe Kofod, Peter Kouroumbashev, Zdzisław Krasnodębski, Miapetra Kumpula-Natri, Christelle Lechevalier, Janusz Lewandowski, Paloma López Bermejo, Edouard Martin, Angelika Mlinar, Csaba Molnár, Nadine Morano, Dan Nica, Angelika Niebler, Morten Helveg Petersen, Miroslav Poche, Julia Reda, Paul Rübig, Massimiliano Salini, Algirdas Saudargas, Neoklis Sylikiotis, Dario Tamburrano, Evžen Tošenovský, Claude Turmes, Vladimir Urutchev, Kathleen Van Brempt, Henna Virkkunen, Martina Werner, Hermann Winkler, Flavio Zanonato, Carlos Zorrinho
Substitutes present for the final vote	Pilar Ayuso, Cornelia Ernst, Francesc Gambús, Françoise Grossetête, Werner Langen, Rupert Matthews, Răzvan Popa, Dominique Riquet, Theodor Dumitru Stolojan
Substitutes under Rule 200(2) present for the final vote	Rosa D'Amato

FINAL VOTE BY ROLL CALL

IN COMMITTEE ASKED FOR OPINION

36	+
ALDE	Dominique Riquet
ECR	Edward Czesak, Zdzisław Krasnodębski, Evžen Tošenovský
EFDD	Rosa D'Amato, Dario Tamburrano
ENF	Angelo Ciocca, Barbara Kappel, Christelle Lechevalier
NI	David Borrelli
PPE	Pilar Ayuso, Cristian-Silviu Buşoi, Jerzy Buzek, Pilar del Castillo Vera, Christian Ehler, Francesc Gambús, Françoise Grossetête, Krišjānis Kariņš, Seán Kelly, Werner Langen, Janusz Lewandowski, Nadine Morano, Angelika Niebler, Paul Rübig, Massimiliano Salini, Algirdas Saudargas, Theodor Dumitru Stolojan, Vladimir Urutchev, Henna Virkkunen, Hermann Winkler
S&D	Adam Gierek
VERTS/ALE	Reinhard Bütikofer, Jakop Dalunde, Rebecca Harms, Julia Reda, Claude Turmes

8	-
ALDE	Frederick Federley, Kaja Kallas, Angelika Mlinar, Morten Helveg Petersen
ECR	Ashley Fox, Hans-Olaf Henkel, Rupert Mathews
EFDD	Jonathan Bullock

19	0
GUE/NGL	Cornelia Ernst, Paloma López Bermejo, Neoklis Sylikiotis
S&D	Zigmantas Balčytis, José Blanco López, Theresa Griffin, Eva Kaili, Jeppe Kofod, Peter Kouroumbashev, Miapetra Kumpula-Natri, Edouard Martin, Csaba Molnár, Dan Nica, Miroslav Poche, Razvan Popa, Kathleen Van Brempt, Martina Werner, Flavio Zanonato, Carlos Zorrinho

Key to symbols:

+ : in favour
- : against

0 : abstention

22.3.2018

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on International Trade

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 (COM(2017)0487 – C8-0309/2017 – 2017/0224(COD))

Rapporteur: Geoffrey Van Orden

SHORT JUSTIFICATION

Foreign direct investment has always been essential for the development of European nations and the European Union. Whilst the sectors of economic and social development see the largest direct benefit from sources of foreign direct investment (FDI), the corresponding impact on Union and Member State security and strategic interests may also be significant. Recent developments in European security and defence, most recently through the signing of PESCO in November 2017, widen the implications of FDI flows. While achieving the stated goals of improved transparency, accountability and security in the way FDI is handled within the EU, such a process must be carefully managed to ensure that the competencies and rights of individual Member States are respected, without being gradually subsumed by the Commission or other Union bodies, and that Member States retain the ultimate right to approve or deny FDI within their own borders. This is particularly important given the responsibility of each Member State for its national security and the fact that commercially sensitive information and time sensitive procedures may be involved.

It is therefore critical that Member States are not forced to adopt or maintain screening mechanisms where such mechanisms do not meet their interests. Whilst the Commission proposal purports to respect the will of the individual Member States in this regard, it is crucial that the “basic requirements” future screening mechanisms hold in common do not impinge upon the varied and unique requirements of individual Member States, particularly in the areas of security and strategic interests, and that in sharing data and sensitive information, Member States do not surrender their integrity and security to another authority. Mandatory elements therefore need to be avoided.

Finally, with the forthcoming departure of the United Kingdom from the European Union, a hub for foreign investors seeking to access the EU single market, it is additionally necessary for screening mechanisms to take into special consideration those FDI flows to the EU directed through the United Kingdom, as well as to make special arrangements for the future

of UK investment in the EU as a fresh source of FDI.

AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on International Trade, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) Foreign direct investment contributes to the Union's growth, by enhancing its competitiveness, creating jobs and economies of scale, bringing in capital, technologies, innovation, expertise, and by opening new markets for the Union's exports. It supports the objectives of the Commission's Investment Plan for Europe and contributes to other Union projects and programmes.

Amendment

(1) Foreign direct investment contributes to the Union's growth, by enhancing its competitiveness, **generating growth**, creating jobs and economies of scale, bringing in capital, technologies, innovation, expertise, and by opening new markets for the Union's exports. It supports the objectives of the Commission's Investment Plan for Europe and contributes to other Union projects and programmes.

Amendment 2

Proposal for a regulation

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The European economy is one of the most open in the world, and the European's growth and competitiveness are dependent on this openness and trade; Europe, however, suffers from a lack of reciprocal access to the markets of its trading partners, which undermines its economy and industry and hampers its companies.

Amendment 3

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) Pursuant to the international commitments undertaken in the World Trade Organisation, the Organisation for Economic Cooperation and Development, and in the trade and investment agreements concluded with third countries, the Union and Members States may adopt restrictive measures relating to foreign direct investment on the grounds of security *or* public order, subject to certain requirements.

Amendment

(3) Pursuant to the international commitments undertaken in the World Trade Organisation, the Organisation for Economic Cooperation and Development, and in the trade and investment agreements concluded with third countries, the Union and Members States may adopt restrictive measures relating to foreign direct investment on the grounds of security, public order, *strategic interest, fundamental rights or the protection of key technologies*, subject to certain requirements.

(This amendment applies throughout the text.)

Amendment 4

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) Several Member States have put in place measures according to which they may restrict the movement of capital between Member States and between Member States and third countries on grounds of public policy or public security. Those measures reflect Member States' objectives and concerns with respect to foreign direct investment, and result in a number of different measures in terms of scope and procedure. Other Member States do not have such mechanisms.

Amendment

(4) Several Member States have put in place measures according to which they may restrict the movement of capital between Member States and between Member States and third countries on grounds of public policy or public security. Those measures reflect Member States' objectives and concerns with respect to foreign direct investment, and result in a number of different measures in terms of scope and procedure. Other Member States do not have such mechanisms *and should therefore introduce them*.

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) It is important to provide legal certainty and to ensure **EU** wide coordination and cooperation by establishing a framework for the screening of foreign direct investment in the Union on grounds of security or public order. This **is without prejudice to the sole** responsibility of **the** Member States **for the maintenance of** national security.

Amendment

(7) It is important to provide legal certainty and to ensure EU wide coordination and cooperation by establishing a framework for the screening of foreign direct investment in the Union on grounds of security or public order. This **legal certainty should not interfere with the sole** responsibility of Member States **to mandate and control the** national security **of their respective countries and should have due account for the provisions of Article 346 TFEU.**

Amendment 6

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) The framework for the screening of foreign direct investment should provide the Member States and the Commission with the means to address risks to security or public order in a comprehensive manner, **and to adapt** to changing circumstances, whilst maintaining the necessary flexibility for Member States to screen foreign direct investments on grounds of security and public order taking into account **their** individual situations and national circumstances.

Amendment

(8) The framework for the screening of foreign direct investment should provide the Member States and the Commission with the **necessary** means to address risks to security or public order in a comprehensive manner, **enabling adaptation** to changing circumstances, whilst maintaining the necessary flexibility for Member States to screen foreign direct investments on grounds of security and public order taking into account **the** individual situations and **varying** national circumstances **in each Member State.**

Amendment 7

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) To guide Member States and the Commission in the application of the

Amendment

(11) To guide Member States and the Commission in the application of the

Regulation, it is appropriate to provide a list of factors that may be taken into consideration when screening foreign direct investment on the grounds of security or public order. This list will also improve transparency of the screening process for investors considering making or having made foreign direct investments in the Union. This list of factors that may affect security or public order should remain non-exhaustive.

Regulation, it is appropriate to provide a list of factors that may be taken into consideration when screening foreign direct investment on the grounds of security or public order. This list will also improve transparency of the screening process for investors considering making or having made foreign direct investments in the Union ***and will provide a basis for the competent authority to respond to any potential judicial review of such screening***. This list of factors that may affect security or public order should remain non-exhaustive.

Justification

There should be a clear link between the screening of an investment and a security threat. In any potential judicial review, the courts should be able to identify the factors the authority has taken into account.

Amendment 8

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) In determining whether a foreign direct investment may affect security or public order, Member States and the Commission should ***be able 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, ***and*** the disruption, loss or destruction of which would have a significant impact in a Member State or in the Union. In that regard, Member States and the Commission should also ***be able to*** take into account whether a foreign investor is controlled directly or indirectly (e.g. through significant funding, including subsidies) by the government of a third country.

Amendment

(12) In determining whether a foreign direct investment may affect security or public order, Member States and the Commission should consider all relevant factors, including the effects on critical infrastructure, ***implications for national defence and the European defence industries, critical*** technologies, including key enabling technologies, and inputs which are essential for security or the maintenance of public order, the disruption, loss or destruction of which would have a significant impact in a Member State or in the Union. In that regard, Member States and the Commission should also take into account whether a foreign investor is controlled directly or indirectly (e.g. through significant funding, including subsidies) by the government of a third country, ***bearing in mind that effective control can also***

stem from the use of extended credit and lending by the government of a third country or a State-owned financial institution, or any other State-owned enterprise of a third country.

Amendment 9

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) It is appropriate to lay down the essential elements of the procedural framework for the screening of foreign direct investment by Member States to allow investors, the Commission and other Member States to understand how such investments are likely to be screened and to ensure that these investments are screened in a transparent manner and that they are non-discriminatory between third countries. Those elements should at least include the establishment of timeframes for the screening and the possibility for foreign investors to seek judicial redress of screening decisions.

Amendment

(13) It is appropriate to lay down the essential elements of the procedural framework for the screening of foreign direct investment by Member States to allow investors, the Commission and other Member States to understand how such investments are likely to be screened and to ensure that these investments are screened in a transparent manner and that they are non-discriminatory between third countries. Those elements should at least include the establishment of timeframes for the screening *of, and minimum qualitative requirements for, data to be provided by Member States to improve the reliability and comparability of data sets on foreign direct investment* and the possibility for foreign investors to seek judicial redress of screening decisions.

Amendment 10

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) A mechanism which enables Member States to cooperate and assist each other where a foreign direct investment in one Member State may affect the security or public order of other Member States should be set up. Member States should be *able to provide comments to a* Member

Amendment

(14) A mechanism which enables Member States to cooperate and assist each other where a foreign direct investment in one Member State may affect the security or public order of other Member States should be set up. Member States should be *able to adequately communicate, through*

State in which *the* investment is planned or has been completed, irrespective of whether the Member States providing comments or the Member States in which the investment is planned or has been completed maintain a screening mechanism or are screening the investment. The comments of Member States should also be forwarded to the Commission. The Commission should also have the possibility, where appropriate, to issue an opinion to the Member State in which the investment is planned or has been completed, irrespective of whether this Member State maintains a screening mechanism or is screening the investment and irrespective of whether other Member States have provided comments.

appropriate channels, with any other Member State in which *an* investment is planned or has been completed, irrespective of whether the Member States providing comments or the Member States in which the investment is planned or has been completed maintain a screening mechanism or are screening the investment. The comments of Member States should also be forwarded to the Commission. The Commission should also have the possibility, where appropriate, to issue an opinion to the Member State in which the investment is planned or has been completed, irrespective of whether this Member State maintains a screening mechanism or is screening the investment and irrespective of whether other Member States have provided comments.

Amendment 11

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) Furthermore, the Commission should have the possibility to screen foreign direct investments likely to affect projects and programmes of Union interest on grounds of security or public order. This would give the Commission a tool to protect projects and programmes which serve the Union as whole and represent an important contribution to its economic growth, jobs and competitiveness. This should include in particular projects and programmes involving *a substantial* EU funding or established by Union legislation regarding critical infrastructure, critical technologies or critical inputs. For greater clarity, an indicative list of projects or programmes of Union interest in relation to which foreign direct investment *can* be subject to a screening by the Commission should be listed in an Annex.

Amendment

(15) Furthermore, the Commission should have the possibility to screen foreign direct investments likely to affect projects and programmes of Union interest on grounds of security or public order. This would give the Commission a tool to protect projects and programmes which serve the Union as whole and represent an important contribution to its economic growth, jobs, *security, strategic interest* and competitiveness. This should include in particular projects and programmes involving EU funding or established by Union legislation regarding critical infrastructure, *defence*, critical technologies or critical inputs. For greater clarity, an indicative list of projects or programmes of Union interest in relation to which foreign direct investment *should* be subject to a screening by the Commission should be listed in an Annex. *This list*

should be promptly updated whenever new projects or programmes are established.

Amendment 12

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) The European Parliament should have the possibility to request from the Commission the activation of the cooperation mechanism for projects and programmes of Union interest on grounds of security or public order. The Commission should take utmost account of the European Parliament's position and provide explanations whenever the Parliament's position has not been taken into account.

Amendment 13

Proposal for a regulation Recital 16

Text proposed by the Commission

Amendment

(16) Where the Commission considers that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission should have the possibility to address an opinion to the Member States in which such investment is planned or completed within a reasonable timeframe. The Member States should take utmost account of the opinion and provide ***an*** explanation to the Commission if they do not follow this opinion, in compliance with their duty of sincere cooperation under Article 4(3) TEU. The Commission should also ***have the possibility*** to request from those Member States the information necessary for its screening of such

(16) Where the Commission considers that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission should have the possibility to address an opinion to the Member States in which such investment is planned or completed within a reasonable timeframe. The Member States should take utmost account of the opinion and provide ***a detailed*** explanation to the Commission if they do not follow this opinion, in compliance with their duty of sincere cooperation under Article 4(3) TEU. The Commission should also ***be able*** to request from those Member States the information necessary for its screening of such

investment.

investment.

Amendment 14

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) In order to facilitate *the* cooperation with other Member States and the screening of foreign direct investment by the Commission, Member States should notify their screening mechanisms and any *amendment* thereto to the Commission, and should report on the application of their screening mechanisms on a regular basis. For the same reason, Member States that do not have a screening mechanism should also report on the foreign direct investments that took place in their territory, on the basis of the information available to them.

Amendment

(17) *Since national security remains the responsibility of Member States*, in order to facilitate cooperation with other Member States and the screening of foreign direct investment by the Commission *as well as to improve the reliability and comparability of data provided by the Member States*, Member States should notify their screening mechanisms and any *amendments* thereto to the Commission and should report on the application of their screening mechanisms on a regular basis. For the same reason, Member States that do not have a screening mechanism should also report on the foreign direct investments that took place in their territory, on the basis of the information available to them.

Amendment 15

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) Member States and the Commission should take all necessary measures to ensure the protection of confidential and other sensitive information.

Amendment

(20) Member States and the Commission should take all necessary measures to ensure the protection of confidential and other sensitive information, *particularly where the security and integrity of a Member State are concerned*.

Amendment 16

Proposal for a regulation

Article 1 – paragraph 1

Text proposed by the Commission

This Regulation establishes a 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.

Amendment

This Regulation establishes a 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, *without prejudice to the sole responsibility of the Member States for their national security.*

Amendment 17

Proposal for a regulation

Article 2 – paragraph 1 – point 1

Text proposed by the Commission

1. 'foreign direct investment' means investments of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry *on* an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity;

Amendment

1. 'foreign direct investment' means investments of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry *out* an economic activity *in the territory or the Exclusive Economic Zone of* a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity;

Justification

It is necessary to clarify that investments for economic activity in the Exclusive Economic Zone of Member States be covered.

Amendment 18

Proposal for a regulation

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

2. 'foreign investor' means a natural person of a third country or an undertaking of a third country intending to make or having made a foreign direct investment;

2. 'foreign investor' means a natural person of a third country or an undertaking of a third country intending to make or having made a foreign direct investment, ***as well as a natural person or an undertaking based in a Member State but effectively controlled or financed by a third country;***

Amendment 19

Proposal for a regulation

Article 2 – paragraph 1 – point 6 a (new)

Text proposed by the Commission

Amendment

6a. Key technologies means technologies or firms which a branch of industries depends on, as provided for, by way of example, in the second indent of Article 4, paragraph 1;

Amendment 20

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States ***may*** maintain, amend or adopt mechanisms to screen foreign direct investments on the grounds of security or public order, under the conditions and in accordance with the terms set out in this Regulation.

1. Member States ***shall*** maintain, amend or adopt mechanisms to screen foreign direct investments on the grounds of security or public order, under the conditions and in accordance with the terms set out in this Regulation.

Amendment 21

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission ***may*** screen foreign direct investments that are likely to affect projects ***or*** programmes ***of Union***

2. The Commission ***shall*** screen foreign direct investments that are likely to affect ***Union*** projects ***and*** programmes on

interest on the grounds of security or public order.

the grounds of security or public order.

Amendment 22

Proposal for a regulation

Article 3 – paragraph 3

Text proposed by the Commission

3. Projects or programmes of Union interest shall include in particular those projects and programmes which involve **a substantial amount or a significant share of** EU funding, or which are covered by Union legislation regarding critical infrastructure, critical technologies or critical inputs. An indicative list of projects or programmes of Union interest is included in Annex 1.

Amendment

3. Projects or programmes of Union interest shall include in particular those projects and programmes which involve EU funding, or which are covered by Union legislation regarding critical infrastructure, **defence**, critical technologies or critical inputs. An indicative **and non-exhaustive** list of projects or programmes of Union interest is included in Annex 1.

Amendment 23

Proposal for a regulation

Article 4 – title

Text proposed by the Commission

Factors that **may** be taken into consideration in the screening

Amendment

Factors that **shall** be taken into consideration in the screening

Amendment 24

Proposal for a regulation

Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

In screening a foreign direct investment on the grounds of security or public order, Member States and the Commission **may** consider the potential effects on, inter alia:

Amendment

In screening a foreign direct investment on the grounds of security or public order, Member States and the Commission **shall** consider the potential effects on, inter alia:

Amendment 25

Proposal for a regulation

Article 4 – paragraph 1 – indent 1

Text proposed by the Commission

- critical infrastructure, including **energy**, transport, communications, data storage, **space** or financial infrastructure, as well as sensitive facilities;

Amendment

- critical infrastructure, including **critical material and raw materials, energy security**, transport, communications, **public health provision, media**, data storage, **aerospace** or financial infrastructure, as well as sensitive facilities **and security and defence industries and infrastructure, such as military bases, and foreign direct investment in land and real estate that may affect use of that defence infrastructure**;

Amendment 26

Proposal for a regulation

Article 4 – paragraph 1 – indent 2

Text proposed by the Commission

- critical technologies, including artificial intelligence, robotics, semiconductors, technologies with potential dual use applications, cybersecurity, space or nuclear technology;

Amendment

- critical technologies, including artificial intelligence, robotics, semiconductors, **nanotechnologies, biotechnologies, other** technologies with potential dual use applications, cybersecurity, **military and defence technologies, cybersurveillance and intrusion technology, aerospace**, space or nuclear technology **or any other state-of-the-art technology of strategic importance, as well as undertakings in the supply chain for defence products and technologies where a risk of transfer to a country exists that poses a global or regional security risk**;

Amendment 27

Proposal for a regulation

Article 4 – paragraph 1 – indent 2 a (new)

- ***the role that the undertaking plays in collaborative research and development projects and the access to technology, IPR and know-how associated with the research and development programme;***

Amendment 28

Proposal for a regulation

Article 4 – paragraph 1 – indent 4

Text proposed by the Commission

- access to sensitive information or the ability to control sensitive information.

Amendment

- access to sensitive ***or strategic national and European security*** information, or the ability to control sensitive ***or strategic security*** information.

Amendment 29

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission ***may*** take into account whether the foreign investor is controlled by the government of a third country, including through significant funding.

Amendment

In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission ***shall*** take into account whether the foreign investor is controlled by the government, ***directly or indirectly***, of a third country, including through significant funding, ***especially if that government does not fully respect international human rights law, international humanitarian law and is not complying with relevant international arms control norms such as the Arms Trade Treaty (ATT), whether opaque ownership structures are used where the ultimate owner is not clear, or if common market rules are contravened.***

The Commission or Member States may assess positively geopolitical factors, such

as whether the undertaking is based in a NATO country.

Amendment 30

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

Member States *may* maintain, amend or adopt measures necessary to prevent circumvention of the screening mechanisms and screening decisions.

Amendment

Member States *shall* maintain, amend or adopt measures necessary to prevent circumvention of the screening mechanisms and screening decisions.

Amendment 31

Proposal for a regulation Article 6 – paragraph 4

Text proposed by the Commission

4. Foreign investors and undertakings concerned shall have the possibility to seek judicial redress against screening decisions of the national authorities.

Amendment

4. Foreign investors and undertakings concerned shall have the possibility to seek judicial redress against screening decisions of the national authorities, *but such redress shall not be considered contrary to the essential security interests of the Member State or infringe the decision making capacities of Member States.*

Amendment 32

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall notify to the Commission their existing screening mechanisms by [...] (30 days of the entry into force of this Regulation) at the latest. Member States shall notify *to* the Commission any amendment to an existing screening mechanism or any newly adopted screening mechanism within 30

Amendment

1. Member States shall notify to the Commission their existing screening mechanisms by [...] (30 days of the entry into force of this Regulation) at the latest. Member States shall notify the Commission *of* any amendment to an existing screening mechanism or any newly adopted screening mechanism

days of entry into force of the screening mechanism at the latest.

within 30 days of entry into force of the screening mechanism at the latest.

Amendment 33

Proposal for a regulation

Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall not be obliged to provide any information the disclosure of which they consider contrary to their essential security interests.

Justification

Certain information regarding screening can legitimately be considered secrets of national security and shall be protected.

Amendment 34

Proposal for a regulation

Article 7 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States that do not maintain screening mechanisms shall provide the Commission with an annual report covering foreign direct investments that took place in their territory, on the basis of information available to them.

3. Member States that do not maintain screening mechanisms shall ***undertake to introduce them and shall*** provide the Commission with an annual report covering foreign direct investments that took place in their territory, on the basis of information available to them.

Amendment 35

Proposal for a regulation

Article 8 – paragraph 3

Text proposed by the Commission

Amendment

3. Where the Commission considers that a foreign direct investment is likely to affect security or public order in one or more Member States, it ***may*** issue an

3. Where the Commission considers that a foreign direct investment is likely to affect security or public order in one or more Member States, it ***shall*** issue an

opinion addressed to the Member State in which the foreign direct investment is planned or has been completed. The Commission *may* issue an opinion irrespective of whether other Member States have provided comments.

opinion addressed to the Member State in which the foreign direct investment is planned or has been completed. The Commission *shall* issue an opinion irrespective of whether other Member States have provided comments.

Amendment 36

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

1. Where the Commission considers that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission *may* issue an opinion addressed to the Member State where the foreign direct investment is planned or has been completed.

Amendment

1. Where the Commission considers that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission *shall* issue an opinion addressed to the Member State where the foreign direct investment is planned or has been completed.

Amendment 37

Proposal for a regulation Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The European Parliament may request the activation of the cooperation mechanism for projects and programmes of Union interest on grounds of security or public order.

Amendment 38

Proposal for a regulation Article 9 – paragraph 4

Text proposed by the Commission

4. The opinion of the Commission shall be communicated to the other Member States.

Amendment

4. The opinion of the Commission shall be communicated to the other Member States. ***Where the Commission***

has provided an opinion under this Article, it shall inform the European Parliament as part of a structured dialogue on foreign direct investment affecting security and public order.

Amendment 39

Proposal for a regulation Article 9 – paragraph 5

Text proposed by the Commission

5. The Member States where the foreign direct investment is planned or has been completed shall take utmost account of the Commission's opinion and provide *an* explanation to the Commission in case its opinion is not followed.

Amendment

5. The Member States where the foreign direct investment is planned or has been completed shall take utmost account of the Commission's opinion and *shall* provide *a detailed* explanation to the Commission in case its opinion is not followed.

Amendment 40

Proposal for a regulation Article 10 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the information requested by the Commission and other Member States pursuant to Articles 8(4) and 9(2) is made available to the Commission and the requesting Member States without undue delay.

Amendment

1. Member States shall ensure that the information requested by the Commission and other Member States pursuant to Articles 8(4) and 9(2) is made available to the Commission and the requesting Member States without undue delay, *within the timeframe set out in Article 6(2), and complies with minimum qualitative requirements for the reliability and comparability of data sets.*

Amendment 41

Proposal for a regulation Article 10 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) The products, services and business operations of the foreign investor and of the undertaking in which the foreign direct investment is planned or has been completed ;

(c) The products, services, *patents* and business operations of the foreign investor and of the undertaking in which the foreign direct investment is planned or has been completed ;

Amendment 42

Proposal for a regulation Article 10 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) the third countries in which the foreign investor carries out a substantial part of investments and business operations;

Amendment 43

Proposal for a regulation Article 10 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) any other information available to the Member State that can help to determine whether the investment falls within the scope of this Regulation.

Amendment 44

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States and the Commission shall ensure the protection of confidential information acquired in application of this Regulation.

2. Member States and the Commission shall ensure the protection of confidential information acquired in application of this Regulation, *particularly in respect to the protection of trade secrets.*

Amendment 45

Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission

Each Member State shall appoint *a* foreign direct investment screening contact point ('FDI screening contact point') for the screening of foreign direct investment. The Commission and other Member States shall involve these FDI screening contact points on all issues related to implementation of this Regulation.

Amendment

Each Member State shall appoint *an institutional* foreign direct investment screening contact point (*'institutional* FDI screening contact point') for the screening of foreign direct investment. The Commission and other Member States shall involve these FDI screening contact points on all issues related to implementation of this Regulation. *The Commission and the Member States shall meet regularly to discuss best practices in investment screening and coordinate on factors that are taken into consideration within the meaning of Article 4 with a view to harmonising those factors.*

Amendment 46

Proposal for a regulation
Article 13 – paragraph 1

Text proposed by the Commission

1. The Commission shall evaluate and present to the European Parliament and the Council a report on the application of this Regulation no later than 3 years after its entry into force. Member States shall be involved in this exercise and shall provide the Commission with necessary information for the preparation of that report.

Amendment

1. The Commission shall evaluate and present to the European Parliament and the Council a report on the application of this Regulation no later than 3 years after its entry into force. Member States shall be involved in this exercise and shall provide the Commission with necessary information for the preparation of that report. *In any event, the Commission shall submit a revision of this Regulation no later than six years after its entry into force. If the Commission takes the view that such a revision is not required, it shall give the European Parliament and the Council a justification for its decision.*

Amendment 47

Proposal for a regulation

Annex I – indent -1 (new)

Text proposed by the Commission

Amendment

- ***European Defence Fund and EU Defence Industrial Development Programme:***
- ***Regulation of the European Parliament and the Council establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovative capacity of the European defence industry;***
- ***European Commission Decision on the financing of the Preparatory Action on Defence Research (PADR);***

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Establishing a framework for screening of foreign direct investments into the European Union
References	COM(2017)0487 – C8-0309/2017 – 2017/0224(COD)
Committee responsible Date announced in plenary	INTA 26.10.2017
Opinion by Date announced in plenary	AFET 26.10.2017
Rapporteur Date appointed	Geoffrey Van Orden 21.11.2017
Discussed in committee	26.2.2018
Date adopted	20.3.2018
Result of final vote	+: 49 -: 5 0: 7
Members present for the final vote	Michèle Alliot-Marie, Nikos Androulakis, Francisco Assis, Petras Auštrevičius, Amjad Bashir, Mario Borghezio, Victor Boștinaru, Elmar Brok, Klaus Buchner, James Carver, Fabio Massimo Castaldo, Lorenzo Cesa, Javier Couso Permuy, Andi Cristea, Georgios Epiteideos, Knut Fleckenstein, Anna Elżbieta Fotyga, Eugen Freund, Michael Gahler, Iveta Grigule-Pēterse, Sandra Kalniete, Manolis Kefalogiannis, Tunne Kelam, Wajid Khan, Andrey Kovatchev, Eduard Kukan, Ilhan Kyuchyuk, Ryszard Antoni Legutko, Arne Lietz, Barbara Lochbihler, Sabine Lösing, Andrejs Mamikins, David McAllister, Tamás Meszerics, Francisco José Millán Mon, Clare Moody, Javier Nart, Pier Antonio Panzeri, Demetris Papadakis, Ioan Mircea Pașcu, Alojz Peterle, Tonino Picula, Cristian Dan Preda, Michel Reimon, Sofia Sakorafa, Jaromír Štětina, Charles Tannock, László Tőkés, Ivo Vajgl, Johannes Cornelis van Baalen, Anders Primdahl Vistisen
Substitutes present for the final vote	Asim Ademov, Laima Liucija Andrikiienė, Brando Benifei, Angel Dzhambazki, Andrzej Grzyb, Antonio López-Istúriz White, Tokia Saïfi, Marietje Schaake, Igor Šoltes, Bodil Valero

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

49	+
ALDE	Petras Auštrevičius, Johannes Cornelis van Baalen, Iveta Grigule-Pēterse, Ilhan Kyuchyuk, Javier Nart, Marietje Schaake, Ivo Vajgl
EFDD	Fabio Massimo Castaldo
PPE	Asim Ademov, Michèle Alliot-Marie, Laima Liucija Andrikienė, Elmar Brok, Lorenzo Cesa, Michael Gahler, Andrzej Grzyb, Sandra Kalniete, Manolis Kefalogiannis, Tunne Kelam, Andrey Kovatchev, Eduard Kukan, Antonio López-Istúriz White, David McAllister, Francisco José Millán Mon, Alojz Peterle, Cristian Dan Preda, Tokia Saïfi, Jaromír Štětina, László Tökés
S&D	Nikos Androulakis, Francisco Assis, Brando Benifei, Victor Boștinaru, Andi Cristea, Knut Fleckenstein, Eugen Freund, Wajid Khan, Arne Lietz, Andrejs Mamikins, Clare Moody, Pier Antonio Panzeri, Demetris Papadakis, Ioan Mircea Pașcu, Tonino Picula
VERTS/ALE	Klaus Buchner, Barbara Lochbihler, Tamás Meszerics, Michel Reimon, Igor Šoltes, Bodil Valero

5	-
EFDD	James Carver
GUE/NGL	Javier Couso Permuy, Sabine Lösing, Sofia Sakorafa
NI	Georgios Epitideios

7	0
ECR	Amjad Bashir, Angel Dzhambazki, Anna Elżbieta Fotyga, Ryszard Antoni Legutko, Charles Tannock, Anders Primdahl Vistisen
ENF	Mario Borghezio

Key to symbols:

+ : in favour

- : against

0 : abstention

3.4.2018

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on International Trade

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 (COM(2017)0487 – C8-0309/2017 – 2017/0224(COD))

Rapporteur: Roberts Zīle

SHORT JUSTIFICATION

Foreign direct investment (FDI) is an integral part of the Union's economy, contributing to development and growth. FDI is not only about the money and the associated job creation, but technologies, expertise, management and other best practices that the investors bring. At the same time, certain investments can carry risks — often not so much for the receiving country as for the others around. Member States that can potentially be affected by certain investments are entitled to have a framework to exchange information and communicate their concerns to others.

Your Rapporteur welcomes the European Commission's proposal for a regulation to establish a framework for screening the foreign direct investment coming into the European Union from the third countries. The initiative is constructive, but would benefit from the following amendments and clarifications.

The screening procedures

The proposal provides the Commission with the possibility to issue opinions addressed to Member States where FDI is planned or completed. Even though the time frames proposed to release such opinions are adequate, it is vital that the Commission does so as soon as possible, so as to avoid unnecessary uncertainty for the Member States and the investors.

FDI definition and ultimate investors

The definition of what constitutes an investment from a third country needs to be expanded. Whilst the Commission's proposal does address the fact that an EU company can be used as a vehicle to disguise foreign FDI, other loopholes remain. Even if not yet prevalent, the so-called cash-for-passport programmes of certain Member States "naturalise" not only the foreign investor, but the associated money too. Often the ultimate investor is not known at all

or is hiding behind opaque multi-layered structures. Within the context, Member States concerned need to have the means to find information about the ultimate investors and ultimate host countries of the foreign direct investments. Your Rapporteur believes the proposed contact points could be used by Member States to obtain information from the Commission about the ultimate investors and ultimate host countries of the foreign direct investments in other Member States.

Reasons for screening

Your Rapporteur believes that the list of factors to screen the investments on the grounds of security or public order should include the media. The direct or indirect government's control associated with the third country investor has to be taken into account as well. Attention also needs to be given to those investments that originate from or are directly or indirectly linked to countries that are subject to EU sanctions, or have consistently failed to abide by the rule of law or best tax practices. The portfolio investments, too, cannot be entirely ignored. For instance, an excessive amount of foreign demand deposits in a Member State's major bank can have a number of implications for the neighbouring countries. The screening mechanism needs to include and the Member States in their reporting should also list the investments taking place in their territorial waters. On the other hand, transparent direct investment for clearly marked security or defence purposes that originates from NATO Member Countries and is government backed or financed should not be subjected to increased scrutiny.

Information requests and securing of confidential information

The information requests by either the Commission or other Member States about certain investments in a country should be duly motivated. Member States receiving FDI need not be unnecessarily burdened by an increased number of requests. This can result in an uncertainty for the investors and decrease the competitiveness of not only the Member States concerned individually, but of the Union as a whole. Furthermore, those parties provided with the confidential information requested not only have to ensure, but take responsibility for protecting it. Nevertheless, the confidentiality clause should not be abused so as to hide vital information about the investments.

To sum up, it is important to be vigilant of the foreign direct investment originating from third countries. However, that has to be done in a proportional and constructive manner, with clear and comprehensive guidelines for all: the investors, those receiving the FDI as well as the parties concerned about it. The EU must remain an investment friendly Union.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on International Trade, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) Foreign direct investment contributes to the Union's growth, by enhancing its competitiveness, creating jobs and economies of scale, bringing in capital, technologies, innovation, expertise, and by opening new markets for the Union's exports. It supports the objectives of the Commission's Investment Plan for Europe and contributes to other Union projects and programmes.

Amendment

(1) Foreign direct investment contributes to the Union's growth, by enhancing its competitiveness, creating jobs and economies of scale, ***stimulating productivity***, bringing in capital, technologies, innovation, expertise, and by opening new markets for the Union's exports. It supports the objectives of the Commission's Investment Plan for Europe and contributes to other Union projects and programmes. ***In implementing the Regulation, Member States should endeavour not to limit foreign direct investment in non-strategic sectors unnecessarily.***

Amendment 2

Proposal for a regulation

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) A strong economy, based on open markets, creating an entrepreneurial climate fostering innovations, global leadership and growth is the best base for security, integrity and sovereignty. Foreign investments contribute not only to European growth but also to European leadership in respect of innovations, research and science. When foreign actors invest in innovation and research in Europe, they are investing in Europe's future strength and capacities. Protectionism makes Europe weaker and open markets makes Europe stronger. This doesn't prevent some investments from certain actors being of a kind in respect of which Europe needs to be vigilant in order to hinder threats to its security, integrity and sovereignty.

Amendment 3

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) Pursuant to the international commitments undertaken in the World Trade Organisation, the Organisation for Economic Cooperation and Development, and in the trade and investment agreements concluded with third countries, the Union and Members States may adopt restrictive measures relating to foreign direct investment on the grounds of security or public order, subject to certain requirements.

Amendment

(3) Pursuant to the international commitments undertaken in the World Trade Organisation, the Organisation for Economic Cooperation and Development, and in the trade and investment agreements concluded with third countries, the Union and Members States may adopt restrictive measures relating to foreign direct investment **only** on the grounds of security or public order, subject to certain requirements.

Amendment 4

Proposal for a regulation Recital 7

Text proposed by the Commission

(7) It is important to provide legal certainty and to ensure EU wide coordination and cooperation by establishing a framework for the screening of foreign direct investment in the Union on grounds of security or public order. This is without prejudice to the sole responsibility of the Member States for the maintenance of national security.

Amendment

(7) It is important to provide legal certainty and to ensure EU wide coordination and cooperation by establishing a framework for the screening of foreign direct investment in the Union on grounds of security or public order. This is without prejudice to the sole responsibility of the Member States for the maintenance of national security. ***The current legal framework must be bolstered in the light of changes in practices relating to direct foreign investment and in screening systems around the world.***

Amendment 5

Proposal for a regulation Recital 7 a (new)

(7a) The framework for the screening of foreign direct investment should be seen as a tool for promoting more regular dialogue between the competent national and European authorities and investors. It should create a relationship of trust and greater transparency, whilst at the same time offering investors greater legal security. The Commission should be able to monitor the screening systems used in other jurisdictions around the world.

Amendment 6

Proposal for a regulation

Recital 8

Text proposed by the Commission

Amendment

(8) The framework for the screening of foreign direct investment should provide the Member States and the Commission with the means to address **risks** to security or public order in a comprehensive manner, and to adapt to changing circumstances, whilst maintaining the necessary flexibility for Member States to screen foreign direct investments on grounds of security and public order taking into account their individual situations and national circumstances.

(8) The framework for the screening of foreign direct investment should provide the Member States and the Commission with the means to **monitor and** address **any risk** to security or public order in a comprehensive manner, and to adapt to changing circumstances, whilst maintaining the necessary flexibility for Member States to screen foreign direct investments on grounds of security and public order taking into account their individual situations and national circumstances.

Amendment 7

Proposal for a regulation

Recital 9

Text proposed by the Commission

Amendment

(9) A broad range of investments which establish or maintain lasting and direct links between investors from third

(9) A broad range of investments which establish or maintain lasting and direct links between investors from third

countries and undertakings carrying out an economic activity in a Member State should be covered.

countries and undertakings carrying out an economic activity in a Member State should be covered. ***In addition, the framework for the screening of foreign direct investment should cover short-term investment masquerading as long-term commitment, including direct investment flows intended to avoid tax or for money laundering purposes, and investment channelled towards sectors with high research and product development expenditure with a view to acquiring technology.***

Justification

The increased direct investment from outside the EU has largely been channelled towards high-tech sectors, both as regards acquisitions and as regards new investments. Computers and electronics are, when it comes to acquisitions, the target of choice, in terms of their relative value, for third country investors. More than EUR 323 billion was invested in that sector in the second quarter of 2017. Research shows that business operations are determined according to where investment comes from and why it was made.

Amendment 8

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) To guide Member States and the Commission in the application of the Regulation, it is appropriate to provide a list of factors that ***may*** be taken into consideration when screening foreign direct investment on the grounds of security or public order. This list will also improve transparency of the screening process for investors considering making or having made foreign direct investments in the Union. This list of factors that may affect security or public order should remain non-exhaustive.

Amendment

(11) To guide Member States and the Commission in the application of the Regulation, it is appropriate to provide a list of factors that ***should*** be taken into consideration when screening foreign direct investment on the grounds of security or public order. This list will also improve transparency of the screening process for investors considering making or having made foreign direct investments in the Union. This list of factors that may affect security or public order should remain non-exhaustive. ***When screening foreign direct investment, Member States and the Commission should also consider whether similar possibilities for investment exist for European investors in***

the third countries concerned thus respecting the principle of reciprocity.

Amendment 9

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) In determining whether a foreign direct investment may affect security or public order, Member States and the Commission should be able 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, and the disruption, loss or destruction of which would have a significant impact in a Member State or in the Union. In that regard, Member States and the Commission should also *be able to* take into account whether a foreign investor is controlled directly or indirectly (e.g. through significant funding, including subsidies) by the government of a third country.

Amendment

(12) In determining whether a foreign direct investment may affect security or public order, Member States and the Commission should be able 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, and the disruption, loss or destruction of which would have a significant impact in a Member State or in the Union. ***This should also include the security of food supply, including investments in agricultural land and other agricultural assets.*** In that regard, Member States and the Commission should also take into account whether a foreign investor is controlled directly or indirectly (e.g. through significant funding, including subsidies, ***preferential tax treatment, guarantees or investments by State funds etc.***) by the government of a third country ***or whether that foreign investor is beneficially owned by such a government. Attention should be paid to investments that originate from countries mentioned in the Council Conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes, including the 47 jurisdictions that have committed to addressing deficiencies in their tax systems. Attention should also be paid to sovereign wealth fund investments, which need to be aligned with the Generally Accepted Principles and Practices (GAPP) on Sovereign Wealth Funds***

(“Santiago Principles”).

Amendment 10

Proposal for a regulation Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) When a decision about a screening procedure is taken, the Member States and the Commission should pay particular attention to complex and artificial tax arrangements, since they can be a way of circumventing screening systems. The reputation of the investor and the country of origin and transit for the investment should therefore also be taken into account.

Amendment 11

Proposal for a regulation Recital 12 b (new)

Text proposed by the Commission

Amendment

(12b) Particular attention should be paid to investments originating from countries designated as tax havens, as well as to third countries that illegally protect financial assets and goods acquired in the Union.

Amendment 12

Proposal for a regulation Recital 12 c (new)

Text proposed by the Commission

Amendment

(12c) When screening is carried out, the Member States and the Commission should take account of the impact of the direct foreign investments on the strategic autonomy of the Union and its Member

Amendment 13

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) It is appropriate to lay down the essential elements of the procedural framework for the screening of foreign direct investment **by Member States** to allow investors, the Commission and other Member States to understand how such investments are likely to be screened and to ensure that these investments are screened in a transparent manner and that they are non-discriminatory between third countries. Those elements should at least include the establishment of timeframes for the screening and the possibility for foreign investors to seek judicial redress of screening decisions.

Amendment

(13) It is appropriate **for Member States** to lay down the essential elements of the procedural framework for the screening of foreign direct investment to allow investors, the Commission and other Member States to understand how such investments are likely to be screened and to ensure that these investments are screened in a transparent manner and that they are non-discriminatory between third countries. Those elements should at least include the establishment of timeframes for the screening and the possibility for foreign investors to seek judicial redress of screening decisions.

Amendment 14

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The framework for the screening of foreign direct investment should give the Member States and the Commission the flexibility needed to screen direct foreign investments both before (ex-ante) and after (ex-post) they are made.

Amendment 15

Proposal for a regulation Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) Member States and the Commission should be able to consider the potential effects of foreign investment on, inter alia: critical infrastructure, including energy, transport, communications, media, data storage, space or financial infrastructure, as well as sensitive facilities; critical technologies, including artificial intelligence, robotics, semiconductors, technologies with potential dual use applications, cybersecurity, space or nuclear technology; the security of supply of critical inputs; and access to sensitive information or the ability to control such information.

Amendment 16

Proposal for a regulation Recital 13 c (new)

Text proposed by the Commission

Amendment

(13c) In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission should be able to take into account whether the foreign investor is directly or indirectly controlled or supported by the government of a third country.

Amendment 17

Proposal for a regulation Recital 15

Text proposed by the Commission

Amendment

(15) Furthermore, the Commission should have the possibility to screen foreign direct investments likely to affect projects and programmes of Union interest

(15) Furthermore, the Commission should have the possibility to screen foreign direct investments likely to affect ***past, current and future*** projects and

on grounds of security or public order. This would give the Commission a tool to protect projects and programmes which serve the Union as whole and represent an important contribution to its economic growth, jobs and competitiveness. This should include in particular projects and programmes involving a substantial EU funding or established by Union legislation regarding critical infrastructure, critical technologies or critical inputs. For greater clarity, an indicative list of projects or programmes of Union interest in relation to which foreign direct investment can be subject to a screening by the Commission should be listed in an Annex.

programmes of Union interest on grounds of security or public order. This would give the Commission a tool to protect projects and programmes which serve the Union as whole and represent an important contribution to its economic growth, jobs and competitiveness. This should include in particular projects and programmes involving a substantial EU funding or established by Union legislation regarding critical infrastructure, critical technologies or critical inputs. For greater clarity, an indicative list of projects or programmes of Union interest in relation to which foreign direct investment can be subject to a screening by the Commission should be listed in an Annex.

Justification

Projects and programmes that are in the Union's strategic interest; such as those that are funded or have been funded by EU taxpayer money in critical infrastructure. need to be safeguarded by the Commission where appropriate; before, during and after completion.

Amendment 18

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) In order to facilitate the cooperation with other Member States and the screening of foreign direct investment by the Commission, Member States should notify their screening mechanisms and any amendment thereto to the Commission, and should report on the application of their screening mechanisms on a regular basis. For the same reason, Member States that do not have a screening mechanism should also report on the foreign direct investments that took place in their territory, on the basis of the information available to them.

Amendment

(17) In order to facilitate the cooperation with other Member States and the screening of foreign direct investment by the Commission, Member States should notify their screening mechanisms and any amendment thereto to the Commission, and should report on the application of their screening mechanisms on a regular basis. For the same reason, Member States that do not have a screening mechanism should also report on the foreign direct investments that took place in their territory, ***including in their territorial waters***, on the basis of the information available to them.

Amendment 19

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) To that end, it is also important to ensure a *minimum* level of information and coordination with regard to foreign direct investments falling under the scope of this Regulation in all Member States. This information should be made available by the Member States in which the foreign direct investment is planned or has been completed upon request of the Member States or of the Commission. Relevant information includes aspects such as the ownership structure of the foreign investor and the financing of the planned or completed investment, including, when available, information about subsidies granted by third countries.

Amendment

(18) To that end, it is also important to ensure a *sufficient* level of information and coordination with regard to foreign direct investments falling under the scope of this Regulation in all Member States. *All* this information should be made available by the Member States in which the foreign direct investment is planned or has been completed upon request of the Member States or of the Commission. Relevant information includes aspects such as the ownership structure of the foreign investor and the financing of the planned or completed investment, including, when available, information about subsidies granted by third countries. *Sensitive information should be excluded from the reporting scope and the Commission should in no way interfere with the right of each Member State to protect sensitive or confidential information.*

Amendment 20

Proposal for a regulation Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) In conformity with point (a) of Article 346(1) TFEU, no Member State is to be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security. This also applies when Member States are screening foreign direct investments that are likely to affect the projects or the programmes of Union interest on the grounds of security or public order. The Commission and the other Member States should refrain from requesting such

information from the Member State concerned.

Amendment 21

Proposal for a regulation Recital 19

Text proposed by the Commission

(19) The communication and cooperation at Member State and Union level should be **enhanced** through the establishment of contact points for the screening of foreign direct investments in each Member State.

Amendment

(19) The communication and cooperation at Member State and Union level should be **ensured** through the establishment of contact points for the screening of foreign direct investments in each Member State, **which should be coordinated by a central contact point. It should be possible for Member States to use the contact points inter alia to obtain information from the Commission about the ultimate investors and the ultimate host countries of the foreign direct investments in other Member States.**

Amendment 22

Proposal for a regulation Recital 20

Text proposed by the Commission

(20) Member States and the Commission should take all necessary measures **to ensure** the protection of confidential and other sensitive information.

Amendment

(20) Member States and the Commission should take all necessary measures **for and take responsibility for ensuring** the protection of confidential and other sensitive information.

Amendment 23

Proposal for a regulation Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) This Regulation relates to a new action by the Union to scrutinise foreign

direct investments. The importance of an open investment environment should continue to be stressed. This Regulation also aims to achieve the objective of free movement of capital between Member States and third countries to the greatest possible extent.

Amendment 24

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) *No later than three years* after the entry into force of this Regulation, the Commission should present *to* the European Parliament and the Council a report on the application of this Regulation. *Where the report proposes modifying the provisions* of this Regulation, *it may be* accompanied, where appropriate, by a legislative proposal.

Amendment

(21) *Each year* after the entry into force of this Regulation, the Commission should present the European Parliament and the Council *with* a report on the application of this Regulation. *That report should contain relevant information about the way the Member States and the Commission have used their screening systems. No later than three years after the entry into force* of this Regulation, *the Commission should present the European Parliament and the Council with an in-depth assessment of the frameworks for screening foreign direct investments and developments in screening systems in non-EU jurisdictions in Europe,* accompanied, where appropriate, by a legislative proposal.

Amendment 25

Proposal for a regulation

Article 2 – paragraph 1 – point 1

Text proposed by the Commission

1. 'foreign direct investment' means investments of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is

Amendment

1. 'foreign direct investment' means investments of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is

made available in order to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity;

made available in order to carry on an economic activity *in the territory or the exclusive economic zone of* a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity;

Amendment 26

Proposal for a regulation

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

2. 'foreign investor' means a natural person of a third country or an undertaking of a third country intending to make or having made a foreign direct investment;

Amendment

2. 'foreign investor' means a natural person *or an undertaking* of a third country, *or a natural person or an undertaking registered in a Member State that is financially linked or directly or indirectly controlled by a natural person* or an undertaking of a third country, intending to make or having made a foreign direct investment *in the Union*;

Amendment 27

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

1. Member States *may* maintain, amend or adopt mechanisms to screen foreign direct investments *on the grounds of* security or public order, *under the conditions and in accordance with* the terms set out in this Regulation.

Amendment

1. Member States *shall* maintain, amend or adopt mechanisms to screen foreign direct investments *on their own territory. Screening may be undertaken if necessary to protect* security or *to maintain* public order *and shall be done in particular on the basis of* the terms set out in this Regulation.

Amendment 28

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

2. The Commission *may* screen foreign direct investments that are likely to affect projects or programmes of Union interest on the grounds of security or public order.

Amendment

2. The Commission, *in addition to the Member States, shall* screen foreign direct investments that are likely to affect projects or programmes of Union interest on the grounds of security or public order.

Amendment 29

Proposal for a regulation
Article 3 – paragraph 3

Text proposed by the Commission

3. Projects or programmes of Union interest shall include in particular those projects and programmes which involve a substantial amount or a significant share of EU funding, or which are covered by Union legislation regarding critical infrastructure, critical technologies or critical inputs. An indicative list of projects or programmes of Union interest is included in Annex 1.

Amendment

3. Projects or programmes of Union interest shall include in particular those projects and programmes which involve *or have involved* a substantial amount or a significant share of EU funding, or which are covered by Union legislation regarding critical infrastructure, critical technologies or critical inputs. An indicative list of projects or programmes of Union interest is included in Annex 1.

Amendment 30

Proposal for a regulation
Article 4 – title

Text proposed by the Commission

Factors that *may* be taken into consideration in the screening

Amendment

Factors that *shall* be taken into consideration in the screening

Amendment 31

Proposal for a regulation
Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

In screening a foreign direct investment on the grounds of security or public order,

Amendment

In screening a foreign direct investment on the grounds of security or public order,

Member States and the Commission *may* consider the potential effects on, inter alia:

Member States and the Commission *shall* consider the potential effects, *direct and indirect*, on, inter alia:

Amendment 32

Proposal for a regulation

Article 4 – paragraph 1 – indent 1

Text proposed by the Commission

- critical infrastructure, including energy, transport, communications, data storage, space or financial infrastructure, as well as sensitive facilities;

Amendment

- critical infrastructure, including energy, *water supply*, transport, communications, *media, health, education, basic research*, data storage, space or financial infrastructure, as well as sensitive facilities;

Amendment 33

Proposal for a regulation

Article 4 – paragraph 1 – indent 1 a (new)

Text proposed by the Commission

Amendment

- *property acquisitions that might affect security or public order;*

Amendment 34

Proposal for a regulation

Article 4 – paragraph 1 – indent 2

Text proposed by the Commission

- critical technologies, including artificial intelligence, robotics, semiconductors, technologies with potential dual use applications, *cybersecurity, space* or nuclear technology;

Amendment

- critical technologies, including artificial intelligence, robotics, semiconductors, *advanced materials, critical raw materials, nanotechnologies, biotechnologies, medical technologies*, technologies with potential dual use applications, *cyber security, aerospace* or nuclear technology *as well as technologies developed using public support;*

Amendment 35

Proposal for a regulation

Article 4 – paragraph 1 – indent 3

Text proposed by the Commission

- the security of supply of critical *inputs*; or

Amendment

- the *strategic autonomy of the Union, its Member States, and the value chain of critical technologies and sectors, and the security of supply of critical input; the security of supply of food including agricultural land and other agricultural assets* or

Amendment 36

Proposal for a regulation

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

When screening foreign direct investment, Member States and the Commission shall also consider whether similar possibilities for investment exist for European investors in the third countries concerned, taking into account the structure of least developed countries (principle of reciprocity).

Amendment 37

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission *may* take *into* account whether the foreign investor is controlled by the government of a third country, including through significant funding.

Amendment

In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission *shall* take *utmost* account of whether the foreign investor is *directly or indirectly* controlled by the government of a third country, including through significant funding, *as well as whether that foreign investor is multinational in nature*

, and in particular what are its practices concerning tax evasion, aggressive tax planning, and the systematic relocation of

Amendment 38

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

Member States *may* maintain, amend or adopt measures necessary to prevent circumvention of the screening mechanisms and screening decisions.

Amendment

Member States *shall* maintain, amend or adopt measures necessary to prevent circumvention of the screening mechanisms and screening decisions *including those that relate to situations where, despite being registered in a Member State, an undertaking is effectively controlled or owned by nationals of a third country.*

Amendment 39

Proposal for a regulation Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

In order to exclude balance of payments financial flows, the measures referred to in the first paragraph shall include direct investment statistics reflecting real investment, compiled in accordance with OECD and IMF guidelines.

Justification

Instead of real investment, statistics on foreign direct investment often record flows of money between the domestic and foreign units of multinational conglomerates, as well as international company acquisitions. Investments 'flow through' when, for example, a subsidiary of a foreign conglomerate uses financing capital received as a direct investment in order to make further investments abroad, thereby adding to the in- and outflow of direct investment.

Amendment 40

Proposal for a regulation
Article 5 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Member States shall notify other Member States and the Commission of any attempts by investors to circumvent the screening mechanisms and screening decisions.

Justification

If a foreign investor were to attempt to circumvent the screening mechanisms, and thereby Member State and EU legislation, this implies that risks for that Member State, and potentially others, is involved. It is only logical to then notify the other Member States of such a potential risk.

Amendment 41

Proposal for a regulation
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States' screening mechanisms shall be transparent and ***not discriminate between third countries***. In particular, Member States shall set out the circumstances triggering the screening, the grounds for screening and the applicable ***detailed*** procedural rules.

1. Member States' screening mechanisms shall be transparent and ***non-discriminatory***. In particular, Member States shall set out the circumstances triggering the screening, the grounds for screening and the applicable procedural rules.

Amendment 42

Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. ***Confidential*** information, including commercially-sensitive information, made available by foreign investors and undertaking concerned ***shall be protected***.

3. ***Member States shall guarantee the absolute confidentiality of*** information, including commercially-sensitive information ***and business secrets***, made available by foreign investors and ***the*** undertaking concerned ***in screening procedures***.

Amendment 43

Proposal for a regulation Article 6 – paragraph 4

Text proposed by the Commission

4. Foreign investors and undertakings concerned shall have the possibility to seek judicial redress against screening decisions of the national authorities.

Amendment

4. Foreign investors and undertakings concerned shall have the possibility to seek judicial redress against screening decisions of the national authorities, ***unless such action is considered contrary to the essential security interests of the Member State.***

Justification

While the right to judicial redress is fundamental to rule of law in Europe, this right can under certain circumstances be limited if would be contrary to the interest of national security, especially if screening decisions are made by the highest executive authority in the country.

Amendment 44

Proposal for a regulation Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The Commission shall develop and share a ‘best practice’ screening mechanism which may be adopted by Member States, for instance where there is currently no screening mechanism in place. Member States may call upon the Commission’s Structural Reform Support Service (SRSS) in setting up their screening mechanism.

Amendment 45

Proposal for a regulation Article 7 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. Member States *that maintain screening mechanisms* shall provide the Commission with an annual report on the application of their screening mechanisms. For each reporting period, the report shall include in particular information on:

2. Member States shall provide the Commission with an annual report on the application of their screening mechanisms. For each reporting period, the report shall include in particular information on:

Amendment 46

Proposal for a regulation

Article 7 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

In conformity with point (a) of Article 346(1) TFEU, no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.

Justification

Certain information regarding screening can legitimately be considered secrets of national security and shall be protected.

Amendment 47

Proposal for a regulation

Article 7 – paragraph 3

Text proposed by the Commission

Amendment

3. ***Member States that do not maintain screening mechanisms shall provide the Commission with an annual report covering foreign direct investments that took place in their territory, on the basis of information available to them.***

deleted

Justification

Member States shall maintain screening mechanisms.

Amendment 48

Proposal for a regulation
Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. *On the basis of annual reports by the Member States and with due regard to the confidentiality of sensitive information, the Commission shall publish an annual report with aggregated information on the application of the screening mechanisms.*

Amendment 49

Proposal for a regulation
Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. Where a Member State considers that a foreign direct investment planned or completed in another Member State is likely to affect its security or public order, it **may** provide comments to the Member State where the foreign direct investment is planned or has been completed. The comments shall be forwarded to the Commission in parallel.

2. Where a Member State considers that a foreign direct investment planned or completed in another Member State is likely to affect its security or public order, it **shall** provide comments to the Member State where the foreign direct investment is planned or has been completed. The comments shall be forwarded to the Commission in parallel.

Amendment 50

Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

Amendment

3. Where the Commission considers that a foreign direct investment is likely to affect security or public order in one or more Member States, it **may** issue an opinion addressed to the Member State in which the foreign direct investment is planned or has been completed. The Commission **may** issue an opinion irrespective of whether other Member States have provided comments.

3. Where the Commission considers that a foreign direct investment is likely to affect security or public order in one or more Member States, it **shall** issue an opinion addressed to the Member State in which the foreign direct investment is planned or has been completed. The Commission **shall** issue an opinion irrespective of whether other Member States have provided comments.

Amendment 51

Proposal for a regulation Article 8 – paragraph 4

Text proposed by the Commission

4. The Commission or a Member State which duly considers that a foreign direct investment is likely to affect its security or public order **may request from** the Member State where the foreign direct investment is planned or has been completed, **any** information necessary to provide comments referred to in paragraph 2, or to issue the opinion referred to in paragraph 3.

Amendment

4. **At the request of** the Commission or a Member State which duly considers that a foreign direct investment is likely to affect its security or public order, the Member State where the foreign direct investment is planned or has been completed, **shall deliver relevant** information necessary to provide comments referred to in paragraph 2, or to issue the opinion referred to in paragraph 3. **Additionally, the Commission may request that the issue be discussed in the central screening point.**

Amendment 52

Proposal for a regulation Article 8 – paragraph 5

Text proposed by the Commission

5. Comments pursuant to paragraphs 2 or opinions pursuant to paragraph 3 shall be addressed to the Member State where the foreign direct investment is planned or has been completed **within a reasonable period of time**, and in any case no later than 25 working days following receipt of the information referred to in paragraphs 1 or 4. In cases where the opinion of the Commission follows comments from other Member States, the Commission shall have 25 additional working days for issuing the opinion.

Amendment

5. Comments pursuant to paragraphs 2 or opinions pursuant to paragraph 3 shall be addressed **without delay** to the Member State where the foreign direct investment is planned or has been completed, and in any case no later than 25 working days following receipt of the information referred to in paragraphs 1 or 4. In cases where the opinion of the Commission follows comments from other Member States, the Commission shall have 25 additional working days for issuing the opinion.

Amendment 53

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

1. Where the Commission considers that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission **may** issue an opinion addressed to the Member State where the foreign direct investment is planned or has been completed.

Amendment

1. Where the Commission considers that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission **shall** issue an opinion addressed to the Member State where the foreign direct investment is planned or has been completed.

Amendment 54

Proposal for a regulation
Article 9 – paragraph 2

Text proposed by the Commission

2. The Commission **may request from** the Member State where the foreign direct investment is planned or has been completed **any** information **necessary to issue the opinion referred to in paragraph 1.**

Amendment

2. **At the request of** the Commission, the Member State where the foreign direct investment is planned or has been completed **shall deliver the relevant** information **referred to in Article 10.**

Amendment 55

Proposal for a regulation
Article 9 – paragraph 3

Text proposed by the Commission

3. The Commission shall address its opinion to the Member State concerned **within a reasonable period of time**, and in any case no later than 25 working days following receipt of the information requested by the Commission pursuant to paragraph 2. Where **a Member State has a screening mechanism in place as referred to in Article 3(1) and** the information on foreign direct investment undergoing screening has been received by the Commission pursuant to Article 8(1), the

Amendment

3. The Commission shall address its opinion to the Member State concerned **without delay**, and in any case no later than 25 working days following receipt of the information requested by the Commission pursuant to paragraph 2. Where the information on foreign direct investment undergoing screening has been received by the Commission pursuant to Article 8(1), the opinion shall be delivered no later than 25 working days following receipt of such information. Where additional information

opinion shall be delivered no later than 25 working days following receipt of such information. Where additional information is needed to issue an opinion, the 25-day period shall run from the date of receipt of the additional information.

is needed to issue an opinion, the 25-day period shall run from the date of receipt of the additional information.

Amendment 56

Proposal for a regulation Article 10 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the information requested by the Commission and other Member States pursuant to Articles 8(4) and 9(2) is made available to the Commission and the requesting Member States without **undue** delay.

Amendment

1. Member States shall ensure that the information requested by the Commission and other Member States pursuant to Articles 8(4) and 9(2) is made available to the Commission and the requesting Member States without **unjustified** delay.

Amendment 57

Proposal for a regulation Article 10 – paragraph 2 – point a

Text proposed by the Commission

(a) The ownership structure of the foreign investor and of the undertaking in which the foreign direct investment is planned or has been completed, including information on the ultimate **controlling shareholder or shareholders**;

Amendment

(a) The **full** ownership structure of the foreign investor and of the undertaking in which the foreign direct investment is planned or has been completed, including information on the ultimate **beneficial owners**;

Amendment 58

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was

Amendment

1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was

requested.

requested *and shall not lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information the disclosure of which would be contrary to public policy.*

Justification

A part of this regulation entails cooperation involving an exchange of information. This amendment addresses potential concerns with regard to confidentiality, safeguarding commercially and professionally sensitive information.

Amendment 59

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

2. Member States and the Commission shall ensure the protection of ***confidential*** information acquired ***in application of this Regulation.***

Amendment

2. Member States and the Commission shall ensure the ***highest degree of confidentiality and*** protection of ***sensitive*** information ***including trade secrets as defined by Directive (EU) 2016/943^{1a}, acquired and provided by foreign investors and the undertaking concerned. Member States and the Commission shall be responsible for the protection of trade secrets when carrying out screening procedures.***

^{1a} ***Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).***

Amendment 60

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

Each Member State shall appoint a foreign direct investment screening contact point ('FDI screening contact point') for the screening of foreign direct investment. The Commission and other Member States shall involve these FDI screening contact points on all issues related to implementation of this Regulation.

Amendment

Each Member State shall appoint a foreign direct investment screening contact point ('FDI screening contact point') for the screening of foreign direct investment. The Commission ***shall provide a central screening point through which Member States are able to closely cooperate with one another. The Commission*** and other Member States shall involve these FDI screening contact points on all issues related to implementation of this Regulation.

Amendment 61

**Proposal for a regulation
Article 13 – paragraph 1**

Text proposed by the Commission

1. The Commission shall ***evaluate and*** present to the European Parliament and the Council a report on the application of this Regulation no later than 3 years after ***its*** entry into force. ***Member States shall be involved in this exercise and shall provide the Commission with necessary information for the preparation of that report.***

Amendment

1. ***Each year after ... [date of the entry into force of this Regulation],*** the Commission shall present to the European Parliament and the Council a report on the application of this Regulation ***setting out relevant information on the activities of Member States' and the Commission's filtering systems.*** No later than ... ***[date three*** years after ***the*** entry into force of ***this Regulation], the Commission shall submit to the European Parliament and the Council an in-depth assessment of the frameworks for filtering foreign direct investment in Europe and developments in filtering systems in non-EU jurisdictions, accompanied, where appropriate, by a legislative proposal.***

Amendment 62

**Proposal for a regulation
Annex – indent 6 a (new)**

Text proposed by the Commission

Amendment

– *European Defence Industrial Development Programme:*

Regulation of the European Parliament and of the Council of ... establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovative capacity of the EU defence industry; OJ L ... (COM(2017)0294).

Amendment 63

Proposal for a regulation
Annex – indent 6 b (new)

Text proposed by the Commission

Amendment

– *European Defence Fund:*

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Launching the European Defence Fund' (COM(2017)0295).

Amendment 64

Proposal for a regulation
Annex – indent 6 c (new)

Text proposed by the Commission

Amendment

– *Permanent structured cooperation (PESCO):*

Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States; OJ L 331, 14.12.2017, p. 57.

Amendment 65

Proposal for a regulation
Annex – indent 6 d (new)

PE619.160v03-00

138/143

RR\1155168EN.docx

– ***European Fund for Strategic Investments***

Regulation (EU) No 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013;

Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) 2015/1017 as regards the extension of the duration of the European Fund for Strategic Investments as well as the introduction of technical enhancements for that Fund and the European Investment Advisory Hub;

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Establishing a framework for screening of foreign direct investments into the European Union	
References	COM(2017)0487 – C8-0309/2017 – 2017/0224(COD)	
Committee responsible Date announced in plenary	INTA 26.10.2017	
Opinion by Date announced in plenary	ECON 26.10.2017	
Rapporteur Date appointed	Roberts Zīle 5.10.2017	
Discussed in committee	25.1.2018	20.3.2018
Date adopted	27.3.2018	
Result of final vote	+: 38 –: 8 0: 4	
Members present for the final vote	Gerolf Annemans, Burkhard Balz, Hugues Bayet, Pervenche Berès, Esther de Lange, Jonás Fernández, Neena Gill, Roberto Gualtieri, Brian Hayes, Gunnar Hökmark, Cătălin Sorin Ivan, Petr Ježek, Othmar Karas, Wolf Klinz, Georgios Kyrtzos, Bernd Lucke, Olle Ludvigsson, Ivana Maletić, Marisa Matias, Alex Mayer, Bernard Monot, Caroline Nagtegaal, Luděk Niedermayer, Stanisław Ożóg, Dariusz Rosati, Pirkko Ruohonen-Lerner, Anne Sander, Alfred Sant, Molly Scott Cato, Theodor Dumitru Stolojan, Kay Swinburne, Paul Tang, Ramon Tremosa i Balcells, Marco Valli, Tom Vandenkendelaere, Marco Zanni, Sotirios Zarianopoulos	
Substitutes present for the final vote	Matt Carthy, Syed Kamall, Krišjānis Kariņš, Jeppe Kofod, Thomas Mann, Eva Maydell, Ana Miranda, Luigi Morgano, Romana Tomc, Lieve Wierinck	
Substitutes under Rule 200(2) present for the final vote	Carlos Iturgaiz, Arndt Kohn, Peter Liese	

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

38	+
ALDE	Caroline Nagtegaal
ECR	Syed Kamall, Bernd Lucke, Stanislaw Ozóg, Pirkko Ruohonen-Lerner, Kay Swinburne
PPE	Burkhard Balz, Brian Hayes, Gunnar Hökmark, Carlos Iturgaiz, Othmar Karas, Krišjānis Kariņš, Georgios Kyrtos, Esther de Lange, Peter Liese, Ivana Maletić, Thomas Mann, Eva Maydell, Luděk Niedermayer, Dariusz Rosati, Anne Sander, Theodor Dumitru Stolojan, Romana Tomc, Tom Vandenkendelaere
S&D	Hugues Bayet, Pervenche Berès, Jonás Fernández, Neena Gill, Roberto Gualtieri, Cătălin Sorin Ivan, Jeppe Kofod, Arndt Kohn, Olle Ludvigsson, Alex Mayer, Luigi Morgano, Paul Tang
VERTS/ALE	Ana Miranda, Molly Scott Cato

8	-
ALDE	Petr Ježek, Wolf Klinz, Ramon Tremosa i Balcells, Lieve Wierinck
ENF	Gerolf Annemans
GUE/NGL	Matt Carthy
NI	Sotirios Zarianopoulos
S&D	Alfred Sant

4	0
EFDD	Marco Valli
ENF	Bernard Monot, Marco Zanni
GUE/NGL	Marisa Matias

Key to symbols:

+ : in favour

- : against

0 : abstention

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Establishing a framework for screening of foreign direct investments into the European Union			
References	COM(2017)0487 – C8-0309/2017 – 2017/0224(COD)			
Date submitted to Parliament	13.9.2017			
Committee responsible Date announced in plenary	INTA 26.10.2017			
Committees asked for opinions Date announced in plenary	AFET 26.10.2017	ECON 26.10.2017	ITRE 26.10.2017	JURI 26.10.2017
	LIBE 26.10.2017			
Not delivering opinions Date of decision	JURI 9.10.2017	LIBE 16.10.2017		
Associated committees Date announced in plenary	ITRE 18.1.2018			
Rapporteurs Date appointed	Franck Proust 11.10.2017			
Discussed in committee	22.11.2017	22.3.2018	24.4.2018	
Date adopted	28.5.2018			
Result of final vote	+: –: 0:	30 7 0		
Members present for the final vote	Laima Liucija Andrikienė, Tiziana Beghin, David Borrelli, Daniel Caspary, Salvatore Cicu, Santiago Fisas Aixelà, Christofer Fjellner, Eleonora Forenza, Karoline Graswander-Hainz, Nadja Hirsch, France Jamet, Jude Kirton-Darling, Patricia Lalonde, Danilo Oscar Lancini, Bernd Lange, Emmanuel Maurel, Emma McClarkin, Anne-Marie Mineur, Sorin Moisă, Alessia Maria Mosca, Franz Obermayr, Artis Pabriks, Franck Proust, Godelieve Quisthoudt-Rowohl, Inmaculada Rodríguez-Piñero Fernández, Tokia Saïfi, Helmut Scholz, Joachim Schuster, Joachim Starbatty, Adam Szejnfeld			
Substitutes present for the final vote	Klaus Buchner, Dita Charanzová, Sander Loones, Bolesław G. Piecha, José Ignacio Salafranca Sánchez-Neyra, Ramon Tremosa i Balcells			
Substitutes under Rule 200(2) present for the final vote	Reinhard Bütikofer			
Date tabled	5.6.2018			

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

30	+
ALDE	Dita Charanzová, Nadja Hirsch, Patricia Lalonde, Ramon Tremosa i Balcells
ECR	Sander Loones
EFDD	Tiziana Beghin
ENF	Danilo Oscar Lancini, Franz Obermayr
NI	David Borrelli
PPE	Laima Liucija Andrikienė, Daniel Caspary, Salvatore Cicu, Santiago Fisas Aixelà, Christofer Fjellner, Sorin Moisă, Artis Pabriks, Franck Proust, Godelieve Quisthoudt-Rowohl, Tokia Saïfi, José Ignacio Salafranca Sánchez-Neyra, Adam Szejnfeld
S&D	Karoline Graswander-Hainz, Jude Kirton-Darling, Bernd Lange, Emmanuel Maurel, Alessia Maria Mosca, Inmaculada Rodríguez-Piñero Fernández, Joachim Schuster
VERTS/ALE	Klaus Buchner, Reinhard Bütikofer

7	-
ECR	Emma McClarkin, Bolesław G. Piecha, Joachim Starbatty
ENF	France Jamet
GUE/NGL	Eleonora Forenza, Anne-Marie Mineur, Helmut Scholz

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention