

EU framework for FDI screening

In 2017, the European Commission submitted a proposal for the creation of an EU enabling framework for the screening of foreign direct investment (FDI), with which it aimed to strike a balance between maintaining the EU's general openness to FDI inflows and ensuring that the EU's essential interests are not undermined. The Parliament and Council have reached agreement on the proposal, which is scheduled to be voted by Parliament at first reading during the February plenary session.

Background

The EU lacks a single (FDI) screening mechanism comparable to well-established schemes in Australia, Canada, China, Japan, New Zealand, South Korea and the USA. Currently, only half of EU Member States have FDI screening mechanisms that allow them to review FDI on grounds of security or public order.

European Commission proposal

On 13 September 2017, the Commission adopted a [proposal](#) for a regulation establishing an EU enabling framework for FDI screening. It proposes that Member States may maintain, amend or adopt FDI screening mechanisms, on grounds of security or public order under certain conditions, but that no Member State would be obliged to create an FDI screening mechanism. It proposes to set out minimum procedural requirements for such mechanisms, and a non-exhaustive list of factors that may be taken into account in the screening process. It proposes to introduce a new Commission power to screen FDI and to issue a non-binding opinion, if planned FDI in a Member State may affect the security or public order of projects or programmes 'of Union interest', or if planned FDI in a Member State may affect the security or public order of other Member States. It reaffirms that Member States retain the final decision-making power. The proposal envisages the creation of a cooperation mechanism between Member States and the Commission. It also proposes to introduce new transparency and information requirements for Member States.

European Parliament position

The European Parliament's Committee on International Trade (INTA) adopted its [report](#) on the proposal on 28 May 2018. It proposed to add a number of factors to be considered in the screening process, such as water, health, media, aerospace, election infrastructure and foreign investors directly or indirectly controlled by the government, including 'state bodies or armed forces' of a third country, including through ownership structure or significant funding. On 13 June 2018, the Permanent Representatives of the Member States (Coreper) [agreed](#) the [Council's position](#) on the proposed regulation. It eliminates references to the proposed Commission right to screen FDI, and divides the cooperation mechanism into a procedure for FDI undergoing screening and one for FDI not undergoing screening. It backs the obligation for Member States to notify the Commission and the other Member States, once FDI is screened. It sets different conditions and timeframes for Member States to give comments and for the Commission to provide a non-binding opinion in different scenarios, and establishes different requirements for Member States' compliance, under their duty of sincere cooperation – Article 4(3) of the Treaty on European Union (TEU), with this new input in their decision-making. The interinstitutional (trilogue) negotiations ended on 20 November 2018 with an [agreement](#) on a [provisional text](#). After Council endorsed the text on 5 December 2018, INTA [endorsed](#) it on 10 December 2018. The text now needs to be formally approved by Parliament during the February plenary session.

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For more information, see our 'EU Legislation in Progress' [briefing](#).

