



2017/0224(COD)

5.4.2018

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

PA_Legam

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

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 or public order, subject to certain requirements.

(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)

Text proposed by the Commission

Amendment

(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

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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.

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

(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) 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. ***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

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. 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.

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 States and on the value chain for critical technologies and sectors.

Amendment 13

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

(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.

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)

(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 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.

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

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

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.

(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

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**

legislative proposal.

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 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 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

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.

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, 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, **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

Amendment

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

- 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

Amendment

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

- 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 production.**

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

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.

Amendment

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

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

Amendment

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

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 **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

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 **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

Amendment

4. **At the request of** the Commission or a Member State which duly considers that a foreign direct investment is likely to

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.

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

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.

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 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 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 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 requested.

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 **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

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)

Text proposed by the Commission

Amendment

– ***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 Kyrtos, 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, Stanisław Ożóg, 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