



6.12.2018

PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS

Subject: 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))

The interinstitutional negotiations on the aforementioned proposal for a regulation have led to a compromise. In accordance with Rule 69f(4) of the Rules of Procedure, the provisional agreement, reproduced below, is submitted as a whole to the Committee on International Trade for decision by way of a single vote.

REGULATION (EU) NO .../...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

**establishing a framework for screening
of foreign direct investments into the European Union**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (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.
- (2) *Article 3(5) of the Treaty on the European Union (TEU) specifies that the Union, in its relations with the wider world, shall uphold and promote its values and interests and contribute to the protection of its citizens. Moreover, 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.*
- (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 restrictive measures to foreign direct investment on the grounds of security or public order, subject to certain requirements. The framework established by this Regulation relates to foreign direct investment into the European Union. Outward investment and market access to third countries are dealt with under other trade and investment policy instruments.*

- (4) *This Regulation is without prejudice to the right of Member States to derogate to the free movement of capital as laid down in Article 65(1)(b) TFEU. Several Member States have put in place measures according to which they may restrict **those movements** 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 measures in terms of scope and procedure. Other Member States do not have such mechanisms. Member States wanting to put in place such mechanisms in the future may take into account the functioning, experiences and best practices of mechanisms already in place.*
- (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 have already developed such frameworks.*
- (6) Foreign direct investment falls within the common commercial policy. In accordance with Article 3(1)(e) TFEU, the European Union has exclusive competence with respect to the common commercial policy.

(7) It is important to provide legal certainty *for Member States' screening mechanisms on the grounds of security and public order, and* ■ ensure EU wide coordination and cooperation ■ *on the screening of foreign direct investment* ■ *likely to affect* security or public order. This *common framework* is without prejudice to the sole responsibility of the Member States for *safeguarding their* ■ national security, *as provided for in Article 4(2) TEU. It is also without prejudice to the protection of their essential security interests in accordance with Article 346 TFEU.*

(8) The framework for the screening of foreign direct investment *and cooperation* 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.

The decision whether to set up a screening mechanism, or to screen a particular foreign direct investment remains the sole responsibility of the Member State concerned.

(9) A broad range of investments which establish or maintain lasting and direct links between investors from third countries *including State entities*, and undertakings carrying out an economic activity in a Member State should be covered. *For greater certainty, this Regulation does not apply to portfolio investment.*

- (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 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.
- (11) *Member States should be able to assess risks to security or public order arising from significant changes to the ownership structure or key characteristics of a foreign investor.*
- (12) 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 **■ determining whether a** foreign direct investment **■ is likely to affect** security or public order. This list will also improve transparency of **■ Member States' screening mechanisms** 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.

- (13) 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, *failure*, 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 *the context and circumstances of the foreign direct investment, in particular* whether a foreign investor is controlled directly or indirectly (e.g. through significant funding, including subsidies) by the government of a third country *or is pursuing State-led outward projects or programmes*.
- (14) *Member States or the Commission, as appropriate, might consider relevant information received from economic operators, civil society organisations, or social partners such as trade unions, in relation to a foreign direct investment likely to affect security or public order.*
- (15) 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. **Rules and procedures related to screening mechanisms should be transparent and should not discriminate** between third countries. Those elements should at least include **timeframes for the screening and the possibility for foreign investors to seek recourse against** screening decisions.

(16) 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 has been completed, irrespective of whether *this Member State maintains a screening mechanism, or such investment is undergoing screening.* **■**

The requests for information, replies and comments of Member States should also be forwarded to the Commission. The Commission should **■** have the possibility, where appropriate, to issue an opinion *within the meaning of Article 288 TFEU* to the Member State in which the investment is planned or has been completed. **■**

A Member State should have the possibility to request the Commission to issue an opinion or other Member States to provide comments on a foreign direct investment taking place in its territory.

(17) *When a Member State receives comments from other Member States or an opinion from the Commission, it should give them due consideration through, where appropriate, measures available under their national legislation, or in their broader policy-making, in line with its duty of sincere cooperation under Article 4(3) TEU.*

The final decision in relation to any foreign direct investment undergoing screening or any measure taken in relation to a foreign direct investment not undergoing screening remains the sole responsibility of the Member State where the foreign direct investment is planned or completed.

- (18) *The cooperation mechanism should only be used for the purpose of protecting security or public order. For that reason, Member States should duly justify any request for information as regards a specific foreign direct investment in another Member State, as well as any comment they may address to that Member State. The same requirements should apply when the Commission requests information on a particular foreign direct investment or issues an opinion to a Member State. Compliance with these requirements is also important in situations where an investor of a Member State competes with investors of third countries for acquiring assets or making an investment in another Member State.*
- (19) Furthermore, the Commission should have the possibility to **provide an opinion within the meaning of Article 288 TFEU with regard to** 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 *a* 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, **those** projects or programmes of Union interest **should be listed in an Annex. The opinion should be communicated in parallel to the other Member States** .

The Member State should take utmost account of the opinion received from the Commission through, where appropriate, measures available under its national legislation, or in its broader policy-making, and provide an explanation to the Commission if it does not follow this opinion, in line with its duty of sincere cooperation under Article 4(3) TEU. The final decision in relation to any foreign direct investment undergoing screening or any measure taken in relation to a foreign direct investment not undergoing screening remains the sole responsibility of the Member State where the foreign direct investment is planned or completed.

- (20) **█** *In order to update the list of projects and programs of Union interest, 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 to amend the list of projects and programmes of Union interest annexed 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.*

- (21) *In order to provide greater certainty for investors, Member States should have the possibility to make comments and the Commission should have the possibility to issue an opinion in relation to completed investments not undergoing screening for a limited period of 15 months after the completion of the foreign direct investment. The cooperation mechanism should apply only to foreign direct investments completed after the entry into force of this Regulation.*
- (22) **█** 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 *an annual █* basis, *including as regards the decisions allowing, prohibiting or subjecting foreign direct investments to conditions or mitigating measures and the decisions regarding foreign direct investments likely to affect projects or programmes of Union interest. █* All Member States **█** should **█** report on the foreign direct investments that took place in their territory, on the basis of the information available to them. *In order to improve the quality and comparability of information provided by Member States as well as to facilitate compliance with the notification and reporting obligations, the Commission should provide standardised forms considering, inter alia, relevant forms applied for the purpose of reporting to Eurostat when appropriate.*

- (23) ***In order to ensure the effectiveness of the cooperation mechanism***, 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 ***for*** foreign direct investment ***undergoing screening as well as, upon request, for other foreign direct investment***. 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 ***funding of the investment, including subsidies*** granted by third countries. ***Member States should seek to provide accurate, comprehensive and reliable information.***
- (24) ***Upon request by a Member State where the foreign investment is planned or has been completed, the foreign investor or the undertaking concerned should provide the information requested. In exceptional circumstances, when, despite its best efforts, a Member State is unable, to obtain such information, it should notify the Member States concerned or the Commission without delay. In such case any comment issued by another Member State or any opinion issued by the Commission in the framework of the cooperation mechanism may be made on the basis of the information available to them.***
- (25) ***When making available the information requested, Member States shall comply with Union law and national legislation that complies with Union law.***

- (26) The communication and cooperation at Member State and Union level should be enhanced through the establishment of *a contact point* for the *implementation of the Regulation* in each Member State *and the Commission*.
- (27) *The contact points appointed by the Member States and the Commission should be appropriately placed within the administration, qualified to perform their functions under the coordination mechanism and to ensure a proper handling of confidential information.*
- (28) *The development and implementation of comprehensive and effective policies should be supported by the Commission expert group on the screening of foreign direct investments into the European Union composed of representatives of the Member States. This group should discuss, in particular, issues related to the screening of foreign direct investments, share best practices and lessons learned, exchange views on trends and issues of common concern related to foreign direct investments and consider systemic issues relating to the implementation of this Regulation. The Commission should consult the expert group on draft delegated acts in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making¹.*

¹ *OJ L123, 12.5.2016, p. 1.*

(29) *Member States and the Commission should be encouraged to cooperate with the responsible authorities of like-minded third countries on issues related to screening of foreign direct investment likely to affect security or public order. Such administrative cooperation should aim at strengthening the effectiveness of the framework for screening of foreign direct investment by the Member States and for cooperation between Member States and the Commission pursuant to this Regulation. The Commission should also be able to monitor developments with regard to screening mechanisms in third countries.*

(30) Member States and the Commission should take all necessary measures to ensure the protection of confidential and other sensitive information *in compliance with in particular the Commission Decision (EU, Euratom) 2015/443¹ of 13 March 2015, on security in the Commission, Commission Decision (EU, Euratom) 2015/444² of 13 March 2015, on the security rules for protecting EU classified information and the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union³.*

This includes notably the obligation not to downgrade or declassify classified information without the prior written consent of the originator⁴.

Any information which is by nature sensitive (but not classified) or which is provided on a confidential basis should be handled as such by the authorities.

¹ OJ L 72, 17.3.2015, p. 41.

² OJ L 72, 17.3.2015, p. 53.

³ OJ C 202, 7.7.2011, p. 13.

⁴ *Article 4(1)(a) of the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union and Article 4(2) of Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information.*

- (31) *Any processing of personal data pursuant to this Regulation should comply with the applicable rules on the protection of personal data. Processing of personal data by the contact points and other entities within the Member States should be carried out in accordance with Regulation (EU) No 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)¹. Processing of personal data by the Commission should be carried out in accordance with [revised Regulation (EC) No 45/2001²].*
- (32) *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 should draw up an annual report on the implementation of this Regulation and submit it to the European Parliament and the Council. For greater transparency, the report should be made public.*
- (33) *The European Parliament should have the possibility to invite the Commission to an ad-hoc meeting of its responsible committee to present and explain systemic issues related to the implementation of this Regulation.*

¹ *Ref to be inserted*

² *Ref to be inserted*

- (34) **█** *By (INSERT A DATE: 3 years of the start of application of this Regulation) and every five years thereafter, the Commission should **█** evaluate the functioning and effectiveness of this Regulation and present a report to the European Parliament and the Council. The report should include an assessment of whether or not the Regulation requires a modification.* Where the report proposes modifying the provisions of this Regulation, it may be accompanied, where appropriate, by a legislative proposal.
- (35) The implementation of this Regulation by the Union and the Member States should comply with the relevant requirements for the imposition of restrictive measures **█** on grounds of security **█** and public order **█** *in the WTO Agreements* (including in particular Article XIV (a) and Article XIV bis of the GATS)**█**. *It should also comply with EU law and be consistent with commitments made under other trade and investment agreements **█** and arrangements to which the Union or Member States are *adherents or* parties.*

- (36) When a foreign direct investment constitutes a concentration falling within the scope of Council Regulation (EC) No 139/2004¹, the implementation of this Regulation should be without prejudice to the application of Article 21(4) of Regulation (EC) No 139/2004. This Regulation and Article 21(4) of Regulation (EC) No 139/2004 should be applied in a consistent manner. To the extent that the respective scope of application of the two regulations overlap, the grounds for screening set out in Article 1 of this Regulation and the notion of legitimate interests within the meaning of Article 21(4), third paragraph, of Regulation (EC) No 139/2004 should be interpreted in a coherent manner, without prejudice to the assessment of the compatibility of the national measures aimed at protecting these interests with the general principles and other provisions of Union law.
- (37) *This Regulation does not affect EU rules for the prudential assessment of acquisitions of qualifying holdings in the financial sector, which is a distinct procedure with a specific objective².*
- (38) This Regulation is consistent with and without prejudice to other notification and screening procedures set out in sectoral Union law,

HAVE ADOPTED THIS REGULATION:

¹ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

² *Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector, OJ L 247, 21.9.2007, p. 1; Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338; Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 17.12.2009, p. 1; Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014, p. 349.*

Article 1

Subject matter and scope

1. This Regulation establishes a framework for the screening by the Member States of foreign direct investments *into* the Union on the grounds of security or public order *and for a cooperation mechanism between Member States and between them and the Commission with regard to foreign direct investments likely to affect security or public order, including the Commission's possibility to issue opinions on such investments.*
2. *This Regulation is without prejudice to the sole responsibility of the Member States for the maintenance of national security, as provided for in Article 4(2) TEU, and to the right of the Member States to protect their essential security interests in accordance with Article 346 TFEU.*
3. *Nothing in this Regulation shall limit the right of each Member State to decide whether or not to screen a particular foreign direct investment within the framework of this Regulation.*

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

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;
2. 'foreign investor' means a natural person ■ or an undertaking of a third country, intending to make or having made a foreign direct investment;
3. 'screening' means a procedure allowing to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments;
4. 'screening mechanism' means an instrument of general application, such as a law or regulation, and accompanying administrative requirements, implementing rules or guidelines, setting out the terms, conditions and procedures ***to assess, investigate, authorise, condition, prohibit or unwind*** foreign direct investments on grounds of security or public order;

5. *'foreign direct investment undergoing screening' means a foreign direct investment undergoing a formal assessment or investigation pursuant to a screening mechanism;*
6. 'screening decision' means a measure adopted in application of a screening mechanism;
7. 'undertaking of a third country' means an undertaking constituted or otherwise organised under the laws of a third country.

Article 3

Screening *mechanisms of Member States* ■

1. *In accordance with the provisions of this Regulation,* Member States may maintain, amend or adopt mechanisms to screen foreign direct investments *in their territory* on the grounds of security or public order ■ .
2. *Rules and procedures related to* ■ screening mechanisms, *including relevant timeframes,* 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.
3. Member States shall ■ *apply* timeframes ■ *under their* screening *mechanisms.* ■ *The screening mechanisms* shall allow ■ *Member States* to take into account the comments of *other* Member States referred to in Article *6 and 7* ■ and the opinion of the Commission referred to in Articles *6, 7 and 8* ■ .

4. **█ Confidential information, including commercially-sensitive information, made available to the Member State undertaking screening █ shall be protected.**
5. **█ Foreign investors and undertakings concerned shall have the possibility to seek █ recourse against screening decisions of the national authorities.**
- █**
6. Member States *with a screening mechanism* **█ shall** maintain, amend or adopt measures necessary to *identify and* prevent circumvention of the screening mechanisms and screening decisions.
7. **█** Member States shall notify to the Commission their existing screening mechanisms by [...] (*INSERT DATE: 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 its amendments* at the latest.
8. *No later than three months after notifications referred to in paragraph 7, the Commission shall make publicly available a list of Member States' screening mechanisms. The Commission shall keep the list up to date.*

Article 4

Factors that may be taken into consideration *by the Member States or the Commission*

1. In **■** *determining whether* a foreign direct investment *is likely to affect* **■** security or public order, Member States and the Commission may consider *its* potential effects on, inter alia:
 - (a) critical infrastructure, *whether physical or virtual*, including energy, transport, *water, health*, communications, *media*, data *processing or* storage, *aerospace, defence, electoral* or financial infrastructure, as well as sensitive facilities *and investments in land and real estate, crucial for the use of such infrastructure*;
 - (b) critical technologies *and dual use items as defined in Article 2.1 of Regulation (EC) No 428/2009*, including artificial intelligence, robotics, semiconductors, **■** cybersecurity, *quantum, aerospace***■**, *defence, energy storage*, nuclear *technologies, nanotechnologies and biotechnologies*;
 - (c) supply of critical inputs, **■** *including energy or raw materials, as well as food security*;
 - (d) access to sensitive information, *including personal data*, or the ability to control **■** *such* information; *or*
 - (e) *the freedom and pluralism of the media*.

2. In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission may *also* take into account, *in particular*, whether:
- (a) the foreign investor is *directly or indirectly* controlled by the government, *including state bodies or armed forces* of a third country, including through *ownership structure or* significant funding;
 - (b) *the foreign investor has already been involved in activities affecting security or public order of a Member State; or*
 - (c) *whether there is a serious risk that the foreign investor engages in illegal or criminal activities.*

Article 5
Annual reporting

█

1. *By 31 March of each year, Member States █ shall provide the Commission with an annual report covering the preceding calendar year and including aggregated information on foreign direct █ investments that took place in their territory, on the basis of information available to them, and aggregated information on the requests received from other Member States pursuant to Articles 6(6) and 7(5).*

2. *For each reporting period, Member States that maintain screening mechanisms shall provide **in addition** aggregated information on the application of their screening mechanisms.*
3. *The Commission shall provide an annual report on the implementation of this Regulation to the European Parliament and the Council. That report shall be made public.*
4. *The European Parliament may invite the Commission to an ad-hoc meeting of its responsible committee to present and explain systemic issues related to the implementation of this Regulation.*

Article 6

Cooperation mechanism *in relation to foreign direct investments undergoing screening*

1. Member States shall **notify** the Commission and the other Member States of any foreign direct **investment** *in their territory* that is undergoing screening **by providing the information referred to in Article 9(2) as soon as possible**. *The notification may include a list of Member States whose security or public order is deemed likely to be affected.* As part of the **notification**, 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.

2. Where a Member State considers that a foreign direct investment **■** *undergoing screening* in another Member State is likely to affect its security or public order, *or has information relevant for such screening*, it may provide comments to the Member State *undertaking the screening* **■**. *Those* **■** comments shall be forwarded to the Commission in parallel. *The Commission shall notify other Member States that comments were provided or an opinion was issued.*
3. Where the Commission considers that a foreign direct investment *undergoing screening* is likely to affect security or public order in **■** more *than one* Member State, *or has relevant information in relation to that foreign direct investment*, it may issue an opinion addressed to the Member State *undertaking the screening* **■**. The Commission may issue an opinion irrespective of whether other Member States have provided comments. *The Commission may issue an opinion following comments from other Member States. The Commission shall issue such opinion where justified, after at least one third of Member States consider that a foreign direct investment is likely to affect their security or public order.*
4. *A Member State which duly considers that a foreign direct investment on its territory is likely to affect its security or public order may request the Commission to issue an opinion or other Member States to provide comments.*

5. *The comments referred to in paragraph 2 and the opinions referred to in paragraph 3 shall be duly justified.*

6. *No later than 15 calendar days following the receipt of the information referred to in paragraph 1, other Member States and the Commission shall notify the Member State undertaking screening of their intention to provide comments pursuant to paragraph 2 or an opinion pursuant to paragraph 3. The notification may include a request for additional information to the information referred to in paragraph 1.*

Any request for additional information shall be duly justified, limited to information necessary to provide comments pursuant to paragraph 2 or to issue an opinion pursuant to paragraph 3, proportionate to the purpose of the request and not unduly burdensome for the Member State undertaking screening. Requests for information and replies provided by the Member States shall be forwarded to the Commission in parallel.

7. Comments pursuant to paragraph 2 or opinions pursuant to paragraph 3 shall be addressed to the Member State *undertaking the screening* within a reasonable period of time, and in any case no later than *35 calendar* days following receipt of the information referred to in paragraph 1.

Notwithstanding the foregoing, if additional information was requested pursuant to paragraph 6, such comments or opinions shall be issued no later than 20 calendar days following receipt of the additional information or the notification pursuant to Article 9(5).

Notwithstanding paragraph 6, the Commission may issue an opinion following comments from other Member States where possible within the deadline of 35 calendar days, and in any case no later than 5 calendar days after this deadline expires.

- 8.** *In the exceptional case where the Member State undertaking screening considers that its security or public order requires immediate action, it shall notify other Member States and the Commission of its intention to issue a screening decision before the timeframes referred to in paragraph 7 and duly justify the need for immediate action. The other Member States and the Commission shall endeavour to provide comments or to issue an opinion expeditiously.*
- 9.** The Member State **█** *undertaking screening* **█** 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 *without prejudice to the provisions of Article 8. The final screening decision shall be taken by the Member State undertaking screening.*
- 10.** Cooperation **█** pursuant to this Article shall take place through the contact points referred to in Article **█** *11.*

Article 7

Cooperation mechanism *in relation to foreign direct investments not undergoing screening*

1. Where a Member State considers that a foreign direct investment planned or completed in another Member State *which is not undergoing screening in that Member State*, is likely to affect its security or public order, *or has relevant information in relation to that foreign direct investment*, 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.

The Commission shall notify other Member States that comments were provided or an opinion was issued.

2. Where the Commission considers that a foreign direct investment *planned or completed in a Member State which is not undergoing screening in that Member State*, is likely to affect security or public order in **■** *more than one Member State***■**, *or has relevant information in relation to that foreign direct investment*, 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 may issue an opinion following comments from other Member States. The Commission shall issue such opinion where justified, after at least one third of Member States consider that a foreign direct investment is likely to affect their security or public order.*

3. *A Member State which duly considers that a foreign direct investment in its territory is likely to affect its security or public order may request the Commission to issue an opinion, or other Member States to provide comments.*
4. *The [] comments referred to in paragraph 1 and the opinions referred to in paragraph 2 shall be duly justified.*
5. *Where [] the Commission or a Member State [] consider [] that a foreign direct investment which is not undergoing screening [] is likely to affect [] security or public order as referred to in paragraphs 1 and 2, it may request from the Member State where the foreign direct investment is planned or has been completed [] the information referred to in Article 9.*

Any request for information shall be duly justified, limited to information necessary to provide comments [] pursuant to [] paragraph 1 [] , or to issue an opinion [] pursuant to [] paragraph 2 [] , proportionate to the purpose of the request and not unduly burdensome for the Member State where the foreign direct investment is planned or has been completed.

Requests for information and replies provided by the Member States shall be forwarded to the Commission in parallel.

6. Comments pursuant to *paragraph 1* or opinions pursuant to paragraph 2 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 35 calendar days following receipt of the information referred to in paragraph 5 or of the notification pursuant to Article 9(5). In cases where the opinion of the Commission follows comments from other Member States, the Commission shall have 15 additional calendar days for issuing that opinion.
7. The Member State where the foreign direct investment is planned or has been completed shall give due consideration to the comments of the other Member States and to the opinion of the Commission *without prejudice to the provisions of Article 8*.
8. *Member States may provide comments pursuant to paragraph 1 and the Commission may provide an opinion pursuant to paragraph 2 no later than 15 months after the foreign direct investment has been completed. This article shall not apply to foreign direct investments completed before the entry into force of this Regulation.*
9. Cooperation pursuant to this Article shall take place through the contact points referred to in Article 11.

Article 8

Foreign direct investments likely to affect projects or programmes of Union interest

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.
2. *The procedures set out in Articles 6 and 7 shall apply mutatis mutandis, subject to the following modifications:*
 - (a) *as part of the notification referred to in Article 6(1) or the comments referred to in Articles 6(2) and 7(1), a Member State may indicate whether it considers that a foreign direct investment is likely to affect projects and programmes of Union interest;*
 - █
 - (b) █ *the* opinion of the Commission shall be communicated to the other Member States;
 - (c) █ *the* Member State █ 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.

3. ***For the purpose of this Article,*** [] projects or programmes of Union interest shall include [] 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 ***which are essential for security or public order. The*** [] list of projects or programmes of Union interest is included in ***the Annex*** [] .
4. ***The Commission shall adopt delegated acts in accordance with Article 16 to amend the list of projects and programmes of Union interest in the Annex.***

Article 9

Information requirements

1. Member States shall ensure that the information ***notified pursuant to Article 6(1) or requested by the Commission and other Member States pursuant to Articles 6(6) and 7(5)*** [] is made available to the Commission and the requesting Member States without undue delay.
2. The information referred to in paragraph 1 of this Article shall include [] :
 - (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 ***investor and participation in the capital*** [] ;
 - (b) [] ***the approximate*** value of the foreign direct investment;

- (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;
- (d) **the** Member States in which the foreign investor and the undertaking in which the foreign direct investment is planned or has been completed conduct *relevant* business operations;
- (e) **the** funding of the investment *and its source*, on the basis of *the best* information available to the Member State**;**
- (f) **the date when the foreign direct investment is planned to be completed or has been completed.**

3. *Member States shall endeavour to provide any information additional to that referred to in paragraphs 1 and 2, if available, to requesting Member States and to the Commission without undue delay.*

4. *The Member State where the foreign direct investment is planned or has been completed may request the foreign investor or the undertaking in which the foreign direct investment is planned or has been completed to provide the information referred to in paragraph 2. The foreign investor or the undertaking concerned shall provide the information requested without undue delay.*

5. *A Member State shall notify the Commission and the other Member States concerned without delay, if, in exceptional circumstances, it is unable, despite its best efforts, to obtain the information referred to in paragraph 1. The Member State shall duly justify the reasons for not providing such information and explain the best efforts undertaken to obtain the requested information, including a request pursuant to paragraph 4.*

In such case, any comment issued by another Member State or any opinion issued by the Commission may be based on the information available to them.

Article 10

Confidentiality *of information transmitted*

1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.
2. Member States and the Commission shall ensure the protection of confidential information acquired in application of this Regulation *in accordance with Union law and their national law.*
3. *Member States and the Commission shall ensure that classified information provided or exchanged under this Regulation is not downgraded or declassified without the prior written consent of the originator.*

Article 11
Contact points

1. Each Member State *and the Commission* shall appoint a contact point *for the implementation of this Regulation*. The Commission and Member States shall involve these contact points on all issues related to *the* implementation of this Regulation.
2. *A secure and encrypted system shall be provided by the Commission to support direct cooperation and exchange of information between the contact points.*

Article 12
Expert group on the screening of foreign direct investments

1. *The Commission is provided advice and expertise by the expert group on the screening of foreign direct investments into the European Union¹.*
2. *The group shall continue to discuss issues related to the screening of foreign direct investments, share best practices and lessons learned, exchange views on trends and issues of common concern related to foreign direct investments. The Commission shall also consider seeking advice of the group on systemic issues relating to the implementation of this Regulation.*
3. *The discussions in the group shall be kept confidential.*

¹ *Commission Decision of 29.11.2017 setting up the group of experts on the screening of foreign direct investments into the European Union, C(2017) 7866 final.*

Article 13
International Cooperation

Member States and the Commission may cooperate with the responsible authorities of third countries on issues related to screening of foreign direct investment on grounds of security and public order.

Article 14
Processing of personal data

- 1. Any processing of personal data pursuant to this Regulation shall be carried out in accordance with Regulation (EU) 2016/679 and [revised Regulation (EC) No 45/2001] and only in so far as it is necessary for screening of foreign direct investment by the Member States and for ensuring the effectiveness of the cooperation provided for in this Regulation.*
- 2. Personal data related to the implementation of this Regulation shall be kept only for the time necessary to achieve the purposes for which they were collected.*

Article 15
Evaluation

- 1. By (INSERT A DATE: three years of the start of application of this Regulation) and every five years thereafter, the Commission shall evaluate the functioning and effectiveness of this Regulation and present a report to the European Parliament and the Council. Member States shall be involved in this exercise and if necessary provide the Commission with additional information for the preparation of that report.*
- 2. Where the report recommends modifying the provisions of the regulation, it may be accompanied by an appropriate legislative proposal.*

Article 16

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 8(4) shall be conferred on the Commission for an indeterminate period of time from [INSERT A DATE: date of entry into force of the basic legislative act].*
3. *The delegation of power referred to in Article 8(4) 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 on Better Law-Making of 13 April 2016.*
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 8(4) 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.*

Article 17

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. ***It shall apply from (INSERT A DATE: 18 months of entry into force).***
2. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

ANNEX

List of projects or programmes of Union interest referred to in Article 8(3)

1. European GNSS programmes (Galileo & EGNOS):

Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of the European satellite navigation systems and repealing the Council Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council.

2. Copernicus:

Regulation (EU) No 377/2014 of the European Parliament and of the Council of 3 April 2014 establishing the Copernicus Programme: OJ L 122/44, 24.4.2014.

3. Horizon 2020:

Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC, including actions therein relating to Key Enabling Technologies such as artificial intelligence, robotics, semiconductors and cybersecurity.

4. Trans-European Networks for Transport (TEN-T):

Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010; OJ L 348, 20.12.2013, p. 1–128.

5. Trans-European Networks for Energy (TEN-E):

Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009; OJ L 115, 25.4.2013, p. 39.

6. Trans-European Networks for Telecommunications:

Regulation (EU) No 283/2014 of the European Parliament and of the Council of 11 March 2014 on guidelines for trans-European networks in the area of telecommunications infrastructure and repealing Decision No 1336/97/EC.

7. ***European Defence Industrial Development Programme:***

Regulation (EU) 2018/1092 of the European Parliament and of the Council of 18 July 2018 establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovation capacity of the Union's defence industry.

8. ***Permanent structured cooperation (PESCO):***

COUNCIL DECISION of 6 March 2018 establishing the list of projects to be developed under PESCO.



Commission Statement

Following the request of the European Parliament, the European Commission undertakes to:

- share with the European Parliament the standardised forms which the European Commission will prepare to facilitate compliance of Member States with the annual reporting obligations under Article 5 of the Regulation once they are finalised, and
 - share with the European Parliament such standardised forms each year, in parallel to presenting the annual report to the European Parliament and to the Council, in accordance with Article 5(3) of the Regulation.
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