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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**

{SWD(2017) 297 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Being an important source of growth, jobs and innovation, foreign direct investment has always been essential for the economic and social development of the European Union. It has brought significant benefits to the Union and its citizens, supporting the objectives of the Commission's Investment Plan for Europe and contributing to other Union projects and programmes. This is why the EU maintains an open investment environment and welcomes foreign investment.

In its recent Reflection Paper on 'Harnessing Globalisation' issued on 10 May 2017, the Commission confirmed that *openness to foreign investment remains a key principle for the EU and a major source of growth*, but at the same time it recognised that there have been some *concerns about foreign investors, notably state-owned enterprises, taking over European companies with key technologies for strategic reasons*, and that *EU investors often do not enjoy the same rights to invest in the country from which the investment originates*. The Commission confirmed that *these concerns need careful analysis and appropriate action*.

While the Union's openness to foreign direct investment will not change, it has to be accompanied by vigorous and effective policies to, on the one hand, open up other economies and ensure that everyone plays by the same rules, and, on the other hand, to protect critical European assets against investment that would be detrimental to legitimate interests of the Union or its Member States. The Commission Communication accompanying this proposal provides a broad overview of the policy responses to the globalisation challenges in the area of foreign direct investment. This proposal provides a policy response to protect legitimate interests with regard to foreign direct investments that raise concerns for security or public order of the Union or its Member States.

The objective of the draft Regulation is to establish a framework for the Member States, and in certain cases the Commission, to screen foreign direct investments in the European Union, while allowing Member States to take into account of their individual situations and national circumstances.

The proposed Regulation provides legal certainty for Member States that maintain a screening mechanism<sup>1</sup> for foreign direct investment or that wish to adopt such mechanism, in view of the Union's exclusive competence in the area of the common commercial policy, which includes foreign direct investment, pursuant to Articles 3(1)(e) and 207(1) of Treaty on the Functioning of the European Union ('TFEU').

The proposed enabling framework takes into account the existing diversity between Member States in relation to screening of foreign direct investments. Today, nearly half of the Member States have screening mechanisms in place, whereas the remaining Member States do not have such mechanisms. Moreover, the existing screening mechanisms are characterised by differences in scope and procedure: ex-ante/ex-post; voluntary/mandatory notification;

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<sup>1</sup> A mechanism allowing the State to monitor foreign investments in companies/sectors considered of strategic importance and to oppose them under certain conditions.

general/sectoral coverage; companies/assets; applicable to investments from other Member States and third countries or third countries only, etc.<sup>2</sup>

The proposed Regulation does not require Member States to adopt or maintain a screening mechanism for foreign direct investment. Its objective is to create an enabling framework for Member States that already have or wish to put a screening mechanism in place, and to ensure that any such screening mechanism meets some basic requirements, such as the possibility of a judicial redress of decisions, non-discrimination between different third countries and transparency.

Its aim is further to establish a cooperation mechanism between the Member States and the Commission to inform each other of foreign direct investment that may threaten security or public order and to exchange information in this regard. This cooperation mechanism should also allow for an in-depth discussion between Member States and the Commission and a better coordination of any screening decision taken by the Member State or Member States concerned. Moreover, the cooperation mechanism should increase the awareness of Member States and the Commission about planned or completed foreign direct investments that may affect security or public order.

The proposed Regulation also provides that the Commission may carry out a screening on grounds of security and public order, in case where a foreign direct investment may affect projects or programmes of Union interest. Thus, the proposed Regulation provides for a complementary tool to protect such projects and programmes alongside existing sectorial Union legislation.

To achieve the envisaged cooperation among Member States and the Commission and to allow for a meaningful screening either by another Member State concerned or by the Commission in case projects or programmes of Union interest may be affected, the proposed Regulation requires Member States to inform other Member States and the Commission about any foreign direct investment that is undergoing screening within the framework of their national screening mechanisms. The proposed cooperation mechanisms will allow a Member State to raise concerns as regards a foreign direct investment in another Member State and to provide comments. The Commission may also issue a non-binding opinion on such foreign direct investment. Finally, it is proposed that Member States and the Commission may request on a case-by-case basis some basic information in relation to a specific foreign direct investment to be able to further assess whether such investment affects or threatens to affect security or public order.

This proposal shall not be considered an initiative within the Regulatory Fitness Programme (REFIT).

- **Consistency with existing policy provisions in the policy area**

The objective of the proposal is to support the overall policy objectives of the Union as laid out in Article 3 of the Treaty on European Union, notably as regards its relations with the wider world to uphold the Union's values and interests, and to contribute to the protection of its citizens, peace, security and free and fair trade.

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<sup>2</sup> These considerations are without prejudice to the question of the full compatibility of all screening mechanisms with EU law.

The proposal is fully in line with the 2015 "Trade for All" Communication<sup>3</sup> to create a rules-based regime inter alia for investment as well as with the Commission "Reflection Paper on Harnessing Globalisation" issued on 10 May 2017.

The proposed Regulation strikes the appropriate balance between, on the one hand, the objective of addressing legitimate concerns raised with regard to certain foreign direct investments and, on the other hand, the need to maintain an open and welcoming regime for such investment into the Union, while being fully compatible with EU law and international commitments. This proposal is accompanied by a Communication which sets out the wider context of this proposal.

- **Consistency with other Union policies**

The proposed Regulation will complement, is consistent with, and does not affect other Union policies and initiatives, which include in particular the following:

Free movement of capital and freedom of establishment

Foreign direct investment is a capital movement under Article 63 TFEU. Article 63 TFEU prohibits any restriction to capital movements between Member States and between Member States and third countries. Investment screening mechanisms may represent a restriction on the free movement of capital which, however, may be justified when necessary and proportionate for the achievement of the objectives defined in the Treaty, including on public security and public policy grounds (Article 65 TFEU) or for overriding reasons in the general interest, as defined by the Court of Justice of the European Union.

As clarified in the case law of the Court of Justice, whereas Member States enjoy discretion in determining public policy and public security requirements in the light of their national needs,<sup>4</sup> those public interests cannot be determined unilaterally by the Member States without any control by the institutions of the EU and must be interpreted strictly: they may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society.<sup>5</sup> Restrictions to the fundamental freedoms must not be misapplied so as to, in fact, serve purely economic ends. Furthermore, investment screening mechanisms should comply with the general principles of EU law, in particular the principles of proportionality and legal certainty. These principles require that the procedure and the criteria for the investment screening are defined in a non-discriminatory and sufficiently precise manner. Potential investors must be able to know such mechanisms in advance and to seek judicial review.

The proposed Regulation is consistent with these requirements. It confirms that Member States may screen foreign direct investments on grounds of security or public order and sets out basic procedural requirements for Member State's screening mechanisms, such as transparency, non-discrimination between different third countries and judicial review.

Foreign direct investment may lead to the establishment of a third country investor in the EU, e.g. when such an investment acquires a controlling stake in an EU-based undertaking. Article 49 TFEU prohibits restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State. Whereas Article 63 TFEU also applies to capital movements from third countries, Article 49 TFEU does not apply to the establishment

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<sup>3</sup> COM(2015)497, 14.10.2015.

<sup>4</sup> Case C-265/95, Commission v France ("strawberries"), paragraph 33.

<sup>5</sup> Case C-463/00, Commission v Spain, paragraph 34; Case C-212/09 Commission v Portugal, paragraph 83 and Case C-244/11 Commission v Greece, paragraph 67.

of third country nationals in the EU. Thus the proposed Regulation does not affect the Treaty provisions on freedom of establishment.

### EU Merger Regulation

Foreign direct investments may take the form of mergers, acquisitions or joint ventures that constitute concentrations falling within the scope of the EU Merger Regulation<sup>6</sup>. In relation to such concentrations, Article 21(4) of the EU Merger Regulation allows Member States to take appropriate measures to protect legitimate interests provided they are compatible with the general principles and other provisions of Union law. To that effect, Article 21(4), second paragraph, explicitly recognises the protection of public security, plurality of the media and prudential rules as legitimate interests. Screening decisions taken under the proposed Regulation to protect these interests do not need be communicated to the Commission under Article 21(4), third paragraph, provided they are compatible with the general principles and other provisions of Union law. By contrast, when a Member State intends to take a screening decision under the proposed Regulation to protect other public interests, it will need to communicate this to the Commission under Article 21(4), third paragraph, if the decision concerns a concentration that falls within the scope of the EU Merger Regulation. The Commission will ensure consistency in the application of the proposed Regulation and of Article 21(4).<sup>7</sup> To the extent that the respective scope of application of the two regulations overlap, the grounds for screening set out in Article 1 of the proposed Regulation and the notion of legitimate interests within the meaning of Article 21(4), third paragraph, of the EU Merger Regulation 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.

### Energy

Over the years, the Union has adopted legislation to improve the security of supply in the field of energy of the Union and its Member States. The Critical Infrastructure Directive<sup>8</sup> requires Member States to identify European Critical Infrastructure and prepare security plans. The Electricity and Gas Directives of the so-called Third Energy Package (Directive 2009/72/EC concerning common rules for the internal market in electricity;<sup>9</sup> Directive 2009/73/EC concerning common rules for the internal market in natural gas<sup>10</sup>) contain provisions requiring the assessment of security of supply implications for the Member State concerned but also the EU as a whole where the gas or the electricity transmission system of a Member State is

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<sup>6</sup> 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).

<sup>7</sup> In order to ensure a smooth handling of the foreign direct investment screening mechanism at national level and the procedure pursuant to Article 21(4) of the EU Merger Regulation, it could be useful that Member States indicate whether a transaction is likely to fall within the scope of the EU Merger Regulation when they inform the Commission and other Member States that they have started a screening procedure pursuant to Article 8(1) of the proposed Regulation.

<sup>8</sup> Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 345, 23.12.2008, p. 75).

<sup>9</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

<sup>10</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

controlled by a third country operator. Moreover, the Regulation on Security of Gas Supply<sup>11</sup> focuses specifically on security of supply concerns and requires Member States to carry out Risk Assessments, at national and regional level, assessing all possible risks for the gas system, including the risks associated to the control of infrastructure relevant for security of supply by third country entities, and to prepare comprehensive Preventive Action Plans and Emergency Plans with measures to mitigate those risks. In the same vein, the proposal for Risk Preparedness<sup>12</sup> contains similar provisions for the electricity sector. Energy entities are also expressly included in the Directive on network infrastructure security<sup>13</sup> as essential services.

### Raw materials

To address the growing concern of securing valuable raw materials for the Union economy, the Commission launched the European Raw Materials Initiative in 2008. It is an integrated strategy that establishes targeted measures to secure and improve access to raw materials for the EU. One of the priority actions of the Initiative was to establish a list of Critical Raw Materials at the EU level. This list contains raw materials which reach or exceed thresholds for both Economic Importance and Supply Risk. The Commission established the first list in 2011 and has kept to the commitment to update it at least every three years to reflect market, production and technological developments<sup>14</sup>. A second list was published in 2014 and a new list is published in parallel to this Regulation.

The list of Critical Raw Materials should help to incentivise the European production of Critical Raw Materials and facilitate the launching of new mining and recycling activities. The Commission has in recent years taken account of the list of Critical Raw Materials through a wide range of actions in the areas of trade, international relations, research and innovation, knowledge base and circular economy. The EU supports complementary policy initiatives by Member States who are also involved in the preparation of the list of Critical Raw Materials.

### Cybersecurity and electronic communications

The proposed Regulation will be complementary to EU policies in the fields of electronic communications, cybersecurity, critical infrastructure protection, and industrial competitiveness in cybersecurity products and services. The Joint Communication by the Commission and the High Representative of the EU for Foreign Affairs and Security Policy on a Cybersecurity Strategy for the European Union laid out a vision for an open, safe, and secure cyberspace.<sup>15</sup> This was followed by Regulation No 283/2014<sup>16</sup>, which identifies projects of common interest in the field of trans-European networks in the area of telecommunications infrastructure. In addition, Directive 2016/1148 places obligations of

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<sup>11</sup> The new Regulation repealing Regulation (EU) No 994/2010 is currently in the adoption process and is expected to enter into force in autumn 2017.

<sup>12</sup> COM (2016) 318, Proposal for a Regulation of the European Parliament and of the Council on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC

<sup>13</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union, OJ L 194, 19.7.2016, p. 1.

<sup>14</sup> Communication "Tackling the challenges in commodity markets and on raw materials", COM(2011)25 JOIN(2013) 1 final, 7.2.2013.

<sup>16</sup> 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, OJ L 86, 21.3.2014, p. 14.

cybersecurity preparedness on Member States and introduces preparedness and notification requirements for operators of essential services and for digital service providers.<sup>17</sup> In July 2016, the Commission announced the launch of a public-private partnership on cybersecurity and additional market-oriented policy measures to boost industrial capabilities in Europe.<sup>18</sup> EU funds from Horizon 2020 and the Connecting Europe Facility are also used for the above purposes.<sup>19</sup> In September 2017 the Commission has also put forward a Communication setting out a comprehensive EU approach to cybersecurity, including at global level; it also proposed a Regulation setting up an EU security certification framework for cybersecurity in order to prevent market fragmentation and to make it easier for users to know whether ICT products and services, including connected objects, are cyber-secure.

### Air transport

The proposed Regulation will not affect Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community<sup>20</sup>, since the latter does not set up an investment screening mechanism. Regulation (EC) No 1008/2008 provides as one of the conditions for granting an operating licence to an undertaking permitted to carry by air passengers, mail or cargo for remuneration or hire that Member States or nationals of Member States own more than 50% of the undertaking and effectively control it (Article 4).

### Prudential assessment of acquisitions in the financial sector

EU legislation in the financial sector provides for the power of competent authorities to carry out a prudential assessment of acquisitions and increases of holdings in financial institutions (i.e. credit institutions, investment firms, and insurance and reinsurance undertakings). It sets out notification requirements, procedural rules and evaluation criteria for such assessments. The objective of these provisions is to ensure the sound and prudent management of the financial institutions. These rules are set out in Directive 2007/44/EC concerning procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector, Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) and Directive 2014/65/EU on markets in financial instruments<sup>21</sup>.

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<sup>17</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union

<sup>18</sup> Commission Communication COM(2016) 410 on Strengthening Europe's Cyber Resilience System and Fostering a Competitive and Innovative Cybersecurity Industry.

<sup>19</sup> 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

<sup>20</sup> OJ L 293, 31.10.2008, p. 3.

<sup>21</sup> 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. 1–16), 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. 338–436), 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. 1–155), 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. 349–496).

The proposed Regulation will not affect EU rules for the prudential review of acquisitions of qualifying holdings in the financial sector, which will remain a distinct procedure with a specific objective.

#### Dual-use export control

The proposed Regulation will not affect the dual-use export control governed by Regulation (EC) No 428/2009<sup>22</sup>. Trade in dual-use items is subject to controls to prevent the risks that these items may pose for international security. Controls derive from international obligations and are in line with commitments agreed upon in multilateral export control regimes. The EU export control regime is governed by Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, which provides for common control rules, a common list of dual-use items as well as coordination and cooperation to support consistent implementation and enforcement throughout the Union. The Regulation is binding and directly applicable throughout the EU.

#### European space policy

In the Commission Communication on the space strategy for Europe, the Commission underlined the importance of addressing the vulnerability of European supply chains. The establishment of a framework for screening of foreign direct investment supports this objective.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

Foreign direct investment is included in the list of matters falling under the common commercial policy pursuant to Article 207(1) TFEU. In accordance with Article 3(1)(e) of TFEU, the European Union has exclusive competence with respect to the common commercial policy. Accordingly, only the Union may legislate and adopt legally binding acts within that area.

### **• Subsidiarity (for non-exclusive competence)**

Not applicable. The European Union has exclusive competence with respect to foreign direct investment, which is included in the list of matters falling under the common commercial policy pursuant to Article 207(1) TFEU.

### **• Proportionality**

The provisions in this proposal are limited to what is necessary in order to attain the objectives of the Regulation and therefore comply with the principles of proportionality.

The proposal creates an enabling framework for Member States to screen foreign direct investments on grounds of security and public order. The proposed regulation does not require Member States to adopt a screening mechanism for foreign direct investment, nor does it exhaustively mandate the substantive or procedural features for screening mechanisms. It only sets out basic requirements that should be common to Member States' screening mechanisms.

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<sup>22</sup> Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, OJ L 134, 29.5.2009, p.1.

The proposal creates a cooperation mechanism between Member States to share information about foreign direct investment planned or completed on the territory of one or several Member States. It also provides the possibility for other Member States and the Commission to comment on such investment, but leaves the final decision on the appropriate response to the Member States in which the investment is planned or completed.

Moreover, the proposal introduces the possibility for the Commission to screen foreign direct investments which are likely to affect projects or programmes of Union interest on security and public order grounds. Projects or programmes of union interest include in particular those involving a substantial EU funding, or established by Union legislation regarding critical infrastructure, critical technology or critical inputs. In order to ensure transparency and legal certainty, an indicative list of projects or programmes of Union interest is included in the annex to the Regulation. The scope of the screening remains limited to likely threats to security and public order. The Commission will be able to provide an opinion to the Member States in which the investment is planned or completed, while entrusting the final decision on the appropriate response to those Member States.

Finally, although a number of requirements already exist at EU and Member State level on the disclosure of major shareholdings<sup>23</sup>, these requirements essentially concern listed companies and do not contain an obligation to provide the information necessary to conduct a full assessment of planned or completed foreign direct investments. The proposed Regulation therefore introduces the means for Member States and the Commission to request information for the purposes of implementing the proposed Regulation, whilst limiting the burden on Member States, investors and EU companies by not requiring them to provide this information upfront.

- **Choice of the instrument**

Article 207(2) TFEU provides that the European Parliament and the Council shall adopt the measures defining the framework for implementing the common commercial policy by means of regulations in accordance with the ordinary legislative procedure.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

This proposed Regulation is a new policy initiative, which is linked to the exclusive competence on foreign direct investment being part of the common commercial policy, conferred upon the Union by the Lisbon Treaty. There has been no existing legislation on foreign investment screening at EU level so far.

- **Stakeholder consultations**

Given the substantive scope of the Commission's Proposal for a Regulation and in particular its objective of, inter alia, ensuring EU coordination for screening foreign direct investment into the European Union on grounds of security or public order, the Commission has conducted consultations with Member States that have been actively seeking an EU

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<sup>23</sup> See in particular Directive 2004/109/EC of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ, L390, 31.12.2004, p. 38); Directive 2004/25/EC on takeover bids (OJ, L142, 30.4.2004, p. 12).

intervention in this policy area, and also some other Member States, irrespective whether they maintain or not a national investment screening mechanisms.

- **Collection and use of expertise**

When designing its proposal for a Regulation, the Commission used in the first place expertise and experience of the Member States that maintain in place and operate investment screening mechanisms. The proposal also takes into account third countries' experience in screening foreign direct investment. In this respect, the Commission relied on the information made available by its major trading partners in the process of informal consultations or acquired through trade negotiations, as well as on information which is widely available to the public.

When making its proposal, the Commission ensured that it is in line with the best practices of the OECD as enshrined in its Guidelines for Recipient Country Investment Policies Relating to National Security.

- **Impact assessment**

The Union is one of the most open economies to incoming foreign direct investment. Inward investments to the EU are constantly growing. They increasingly focus on particular sectors, on larger than average enterprises, and increasingly emanate from state owned enterprises or investors with strong links to governments. In contrast to this, since 2016, at global level, restrictions to foreign direct investment are increasing.

Recently, a series of take-overs of European companies involved foreign investors with strong ties to their home governments which strategy focus on the purchase of European companies that develop technologies or maintain infrastructures that are essential to perform critical functions in society and the economy. The ultimate risk is that such investment could be detrimental to security and public order of the Union or its Member States. The combination of these developments triggered concerns of European citizens, companies and Member States. These concerns need careful analysis and appropriate action, as announced in the Commission Reflection paper on Harnessing Globalisation, issued on 10 May 2017.

In view of the rapidly changing economic reality, growing concerns of citizens and Member States, the proposal is exceptionally presented without an accompanying impact assessment. The proposal targets specifically the main issues identified at this stage in a proportionate manner. Other elements will be further assessed in the study announced in the Communication accompanying this Regulation. In the meantime the Commission proposal for Regulation is accompanied by a Staff working document providing a factual description of foreign takeovers in the EU on the basis of the available data, as well as a brief analysis of the issue at stake.

The Commission Communication accompanying the Proposal for a Regulation announces an in-depth analysis of investment flows into the EU in particular those in strategic sectors or assets which may raise security or public order concerns. The analysis will include data collection, analysis of trends, and assessment of impact, including through case studies. Its results will feed into the decision-making process.

- **Regulatory fitness and simplification**

The proposed Regulation introduces the means for Member States and the Commission to request information to screen foreign direct investments that raise concerns for security or

public order. The information obligations are designed to limit the burden on Member States, investors and EU companies, e.g. by not requiring them to provide certain information upfront, but only at request. Wherever the proposed Regulation envisages the possibility for Member States to provide comments, or the Commission to issue an opinion, very strict deadlines are established to minimise burden for Member States that operate screening mechanisms, and ultimately for investors that are subject to screening.

- **Fundamental rights**

This proposed Regulation will not affect the protection of fundamental rights.

#### **4. BUDGETARY IMPLICATIONS**

There are no other budgetary implications than administrative costs (see Financial Statement annexed to this proposal).

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Monitoring of implementation will be carried out in cooperation with Member States in order to ensure that competent authorities implement the requirements of the proposed Regulation effectively and consistently. To this end, the proposal requires Member States to establish Contact Points, and the accompanying Communication mentions the establishment of a Coordination Group consisting of Member States' representatives, who will meet regularly to consider, *inter alia*, any question relating to implementation of the Regulation.

The Commission will undertake an evaluation of this Regulation no later than three years after its entry into force in order to assess the actual impacts and evaluate its efficiency and effectiveness and the extent to which its results are consistent with the objectives. The Commission will communicate the results of this evaluation to the European Parliament and the Council.

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

#### **Subject matter, scope and definitions (Articles 1 and 2)**

This Regulation aims to establish a comprehensive enabling framework for the screening of foreign direct investments within the Union. Article 1 confirms that foreign direct investment may be screened by the Member States and the Commission on the grounds of security or public order. The grounds for investment screening are defined in compliance with the relevant requirements for the imposition of restrictive measures based on grounds of security or public order stipulated in the WTO Agreement (including in particular Article XIV(a) and Article XIV *bis* of the GATS), and in other trade and investment agreements or arrangements to which the Union or its Member States are parties.

For the purpose of this Regulation, Article 2 lays down a number of applicable definitions. In particular it clarifies that foreign direct investment covers 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 Member States. It does not cover portfolio investments.

#### **Union framework for investment screening (Articles 3 and 4)**

Several Member States have national mechanisms in place, according to which the movement of capital, *inter alia*, between Member States and third countries on grounds of public policy or public security, can be restrained. At the same time, foreign direct investment falls within the common commercial policy, and in accordance with Article 3(1)(e) of the TFEU, the Union has exclusive competence with respect to the common commercial policy. In order to provide legal certainty, Article 3(1) confirms that Member States may continue maintaining and amending existing or adopting new measures to screen investment on the grounds of security or public order, taking into account their national circumstances and in accordance with the proposed Regulation.

In addition, the Commission should have the possibility to screen foreign direct investments that are likely to affect projects or programmes of Union interest on the grounds of security or public order, which is provided for in Article 3(2). Projects and programmes of Union interest serve the Union as whole and represent an important contribution to economic growth, jobs and competitiveness for the Union economy and industry. Projects and programmes of Union interest may either involve a substantial EU funding or are established by Union legislation regarding critical infrastructure, critical technologies or critical inputs. To ensure transparency, an indicative list of projects and programmes of Union interest is included in Annex 1.

In order to guide Member States and the Commission in the application of the Regulation, Article 4 provides a non-exhaustive list of factors that may be taken into consideration when screening foreign direct investment on the grounds of security or public order. This list of factors also intends to provide clarity to investors considering making or having made foreign direct investments in the Union. In determining whether a foreign direct investment may affect security or public order, Member States and the Commission should consider all relevant factors, including the effects on critical infrastructure, technologies, including key enabling technologies, and inputs which are essential for security or the maintenance of public order. 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 by the government of a third country, including through significant funding.

#### **Anti-circumvention (Article 5)**

In order to ensure the effectiveness of their screening mechanisms and decisions, Member States should be able to maintain, amend or adopt measures necessary to prevent their circumvention. Such measures may include the screening, in compliance with EU law, of direct investments carried out by an undertaking formed in accordance with the law of a Member State and owned or controlled by a foreign investor, when the investment is made through artificial arrangements within the EU that do not reflect economic reality and circumvent the screening mechanisms. They should however not affect the fundamental freedoms established under the TFEU.

#### **Procedural framework for Member States' screening (Article 6)**

Article 6 lays down the essential elements of the procedural framework for the screening of foreign direct investment by Member States. Such a procedural framework will allow

investors, the Commission and other Member States to better understand how investments are likely to be screened and to ensure that these investments are screened in a transparent manner and that there will be no discrimination between different third countries. Those elements include in particular the establishment of timeframes for the screening, which have to take into account the timelines for the screening at EU level. The procedural framework for Member States' screening mechanisms should also establish a possibility for investors to seek judicial redress of screening decisions.

### **Cooperation mechanism (Article 8)**

The Regulation provides for a mechanism allowing Member States to cooperate and assist each other when foreign direct investment is likely to affect their security or public order. Potentially affected Member States should have the possibility to provide comments to the Member States in which an investment is planned or completed, whether or not any of the Member States concerned maintains a screening mechanism or is conducting a screening of the investment. This cooperation should allow Member States to exchange information and coordinate, where possible, their response, as the case may be, to the foreign direct investment.

The Member States conducting a screening of a foreign direct investment should inform the other Member States of the ongoing screening. This should permit those Member States to receive comments from other Member States at an early stage and to usefully take them into consideration in their screening process. Furthermore, it will allow other Member States to consider whether a related foreign direct investment which is also planned or completed on their territory may warrant a screening under their own screening mechanism.

The screening Member State should allow other Member States to provide comments within a reasonable timeframe of 25 working days. The screening Member States should allow for sufficient time in their screening mechanism for the comments of other Member States to be given due consideration, but shall retain the ultimate decision-making power with respect to the foreign direct investment subject to screening.

The Commission should also be informed of foreign direct investments undergoing screening under a Member State's screening mechanism on the grounds of security or public order. The Commission should also have the possibility to provide comments (in the form of an opinion) to the Member State in which the screening is ongoing or in which the investment is planned or completed, within a reasonable timeframe. In order to take account of the comments made by Member States, the Commission should have an additional period of 25 working days to determine whether to issue such an opinion to the Member States in which the investment is planned or has taken place.

Affected Member States may provide comments and the Commission may address comments to a Member State in which a foreign direct investment is planned or is completed, even if that Member State does not maintain a screening mechanism or does not conduct a screening of that investment. In such a case, that Member State may consider these comments and opinion in its broader policy making.

### **Commission screening concerning projects or programmes of Union interest (Articles 3 and 9)**

The proposed Regulation introduces in Article 3(2) the possibility for the Commission to screen foreign direct investments that are likely to affect projects or programmes of Union

interest on grounds of security or public order. An Annex to the proposed Regulation provides for an illustrative list of such projects or programmes of Union interest in order to ensure the necessary transparency for investors and for Member States.

In those specific cases, the Commission may address an opinion to the Member States in which the investment is planned or completed where it considers that the investment is likely to threaten security or public order. The screening grounds shall always be security and public order and the Commission should be able to consider a number of factors, including those enumerated in Article 4. In its screening, the Commission should also consider the existence of specific legislation at EU level.<sup>24</sup>

The Member States concerned shall take utmost account of the Commission's opinion and provide an explanation to the Commission in case its opinion is not followed. Those Member States to which an opinion is addressed and that are conducting a screening of the foreign direct investment under their screening mechanisms, shall integrate the Commission's opinion in their screening process. Those Member States to which an opinion is addressed and that are not conducting a screening should consider ways of taking it into account whether through their screening mechanism or, in the absence of such screening mechanism, in their broader policy making.

### **Notification and information requirements (Articles 7 and 10)**

Article 7 requires Member States to notify to the Commission their screening mechanisms as well as any amendments to such mechanisms within a certain timeframe. In addition, Member States will have to provide the Commission with annual reports on the application of their screening mechanisms, which shall include as a minimum: information on investments subject to screening, including indication of sector, origin and value of investment subject to screening, as well as information on screening decisions either prohibiting an investment or subjecting such investment to conditions. Member States that do not maintain a screening mechanism should also report covering foreign direct investments that took place in their territory, on the basis of information available to them.

In order to facilitate the cooperation with other Member States and the screening of foreign direct investment by the Commission, Article 10 establishes an obligation on all Member States, irrespective of whether they have a screening mechanism, to ensure a minimum level of information on foreign direct investments falling under the scope of the Regulation. Such minimum level of information on a foreign direct investment should be made available by a Member State upon request of another Member State, or 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.

### **Confidentiality (Article 11)**

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<sup>24</sup> See, for example, Regulation 2008/114 on the identification of European critical infrastructure, Directive 2009/73 on common rules for the internal market in natural gas and Directive 2009/72 on common rules for the internal market in electricity, Regulation 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, Directive 2016/1148 on network infrastructure security, new Regulation on safeguards to the security of gas supply, repealing Regulation 994/2010.

Article 11 ensures that information acquired in the application of the Regulation is used only for the purpose for which it was requested, and that any confidential information is protected.

### **Contact Points (Article 12)**

In order to ensure a smooth and efficient implementation of the Regulation, and in particular to reinforce the communication and cooperation between Member States, and between Member States and the Commission, Article 12 requires Member States to establish within their administrations contact points for the screening of foreign direct investments, which could be contacted on all issues relating to the implementation of the Regulation.

In addition, as referred to in the Commission Communication accompanying this proposal, the Commission will set up a coordination group with regard to the screening of foreign direct investment consisting of Member States' representatives and the Commission. The Group would meet regularly to consider issues relating to foreign direct investment into the EU, including those arising from the implementation of the Regulation. This group could provide a forum for exchanging information between Member States on, *inter alia*, foreign direct investments flows and trends, as well as best practices for screening foreign direct investments.

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**

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 Commission's Investment Plan for Europe and contributes to other Union projects and programmes.
- (2) The Union and the Member States have an open investment environment, which is enshrined in the Treaty on the Functioning of the European Union ('TFEU') and embedded in the international commitments undertaken by the Union and its Member States with respect to foreign direct investment.
- (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 Member States may adopt restrictive measures relating to foreign direct investment on the grounds of security or public order, subject to certain requirements.
- (4) Several Member States have put in place measures according to which they may restrict the movement of capital between Member States and between Member States and third countries on grounds of public policy or public security. Those measures reflect Member States' objectives and concerns with respect to foreign direct investment, and result in a number of different measures in terms of scope and procedure. Other Member States do not have such mechanisms.
- (5) There is currently no comprehensive framework at EU-level for the screening of foreign direct investments on the grounds of security or public order.
- (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 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.

- (8) The framework for the screening of foreign direct investment should provide the Member States and the Commission with the means to address risks to security or public order in a comprehensive manner, and to adapt to changing circumstances, whilst maintaining the necessary flexibility for Member States to screen foreign direct investments on grounds of security and public order taking into account their individual situations and national circumstances.
- (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.
- (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) 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.
- (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.
- (13) It is appropriate to lay down the essential elements of the procedural framework for the screening of foreign direct investment by Member States to allow investors, the Commission and other Member States to understand how such investments are likely to be screened and to ensure that these investments are screened in a transparent manner and that they are non-discriminatory between third countries. Those elements should at least include the establishment of timeframes for the screening and the possibility for foreign investors to seek judicial redress of screening decisions.
- (14) A mechanism which enables Member States to cooperate and assist each other where a foreign direct investment in one Member State may affect the security or public order of other Member States should be set up. Member States should be able to provide comments to a Member State in which the investment is planned or has been completed, irrespective of whether the Member States providing comments or the Member States in which the investment is planned or has been completed maintain a

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

- (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.
- (16) Where the Commission considers that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission should have the possibility to address an opinion to the Member States in which such investment is planned or completed within a reasonable timeframe. The Member States should take utmost account of the opinion and provide an explanation to the Commission if they do not follow this opinion, in compliance with their duty of sincere cooperation under Article 4(3) TEU. The Commission should also have the possibility to request from those Member States the information necessary for its screening of such investment.
- (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.
- (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.
- (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.
- (20) Member States and the Commission should take all necessary measures to ensure the protection of confidential and other sensitive information.
- (21) No later than three years after the entry into force of this Regulation, the Commission should present to the European Parliament and the Council a report on the application

of this Regulation. Where the report proposes modifying the provisions of this Regulation, it may be accompanied, where appropriate, by a legislative proposal.

- (22) The implementation of this Regulation by the Union and the Member States should comply with the relevant requirements for the imposition of restrictive measures based on grounds of security or public order stipulated in EU law, in the Agreement on the European Economic Area (EEA Agreement), in the WTO Agreement (including in particular Article XIV(a) and Article XIV bis of the GATS) and in other trade and investment agreements or arrangements to which the Union or Member States are parties.
- (23) When a foreign direct investment constitutes a concentration falling within the scope of Council Regulation (EC) No 139/2004<sup>25</sup>, 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.
- (24) This Regulation is consistent with and without prejudice to other notification and screening procedures set out in sectoral Union law,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

##### **Subject matter and scope**

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

#### *Article 2*

##### **Definition**

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 of a third country or an undertaking of a third country intending to make or having made a foreign direct investment;

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<sup>25</sup> 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).

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 for the screening of foreign direct investments on grounds of security or public order;
5. 'screening decision' means a measure adopted in application of a screening mechanism;
6. 'undertaking of a third country' means an undertaking constituted or otherwise organised under the laws of a third country.

### *Article 3*

#### **Screening of foreign direct investments**

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

### *Article 4*

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

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:

- critical infrastructure, including energy, transport, communications, 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; or
- access to sensitive information or the ability to control sensitive information.

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.

### *Article 5*

#### **Anti-circumvention**

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

## Article 6

### Framework for Member States' screening

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.
2. Member States shall establish timeframes for issuing screening decisions. Such timeframes shall allow them to take into account the comments of Member States referred to in Article 8 and the opinion of the Commission referred to in Articles 8 and 9.
3. Confidential information, including commercially-sensitive information, made available by foreign investors and undertaking concerned shall be protected.
4. Foreign investors and undertakings concerned shall have the possibility to seek judicial redress against screening decisions of the national authorities.

## Article 7

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

1. Member States shall notify to the Commission their existing screening mechanisms by [...] (*30 days of the entry into force of this Regulation*) at the latest. Member States shall notify to the Commission any amendment to an existing screening mechanism or any newly adopted screening mechanism within 30 days of entry into force of the screening mechanism at the latest.
2. Member States that maintain screening mechanisms shall provide the Commission with an annual report on the application of their screening mechanisms. For each reporting period, the report shall include in particular information on:
  - (a) foreign direct investments screened and undergoing screening;
  - (b) screening decisions prohibiting foreign direct investments;
  - (c) screening decisions subjecting foreign direct investments to conditions or mitigating measures;
  - (d) the sectors, origin, and value of foreign direct investment screened and undergoing screening.
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.

## Article 8

### Cooperation mechanism

1. Member States shall inform the Commission and the other Member States of any foreign direct investments that are undergoing screening within the framework of their screening mechanisms, within 5 working days from the start of the screening. As part of the information, and when applicable, the screening Member States shall endeavour to indicate whether it considers that the foreign direct investment

undergoing screening is likely to fall within the scope of Regulation (EC) No 139/2004.

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.
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.
4. The Commission or a Member State which duly considers that a foreign direct investment is likely to affect its security or public order may request from the Member State where the foreign direct investment is planned or has been completed, any information necessary to provide comments referred to in paragraph 2, or to issue the opinion referred to in paragraph 3.
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.
6. The Member States where the foreign direct investment is planned or has been completed shall give due consideration to the comments of the other Member States referred to in paragraph 2 and to the opinion of the Commission referred to in paragraph 3.
7. Cooperation between Member States pursuant to this Article shall take place through the contact points referred to in Article 12.

#### *Article 9*

##### **Framework for Commission screening**

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 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.
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.

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

#### *Article 10*

##### **Information requirements**

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.
2. The information referred to in paragraph 1 of this Article shall include in particular:
  - (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;
  - (b) The 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 business operations;
  - (e) The funding of the investment, on the basis of information available to the Member State.

#### *Article 11*

##### **Confidentiality**

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.

#### *Article 12*

##### **Contact points**

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.

*Article 13*

**Evaluation**

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

*Article 14*

**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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*

## **LEGISLATIVE FINANCIAL STATEMENT**

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management mode(s) planned

### **2. MANAGEMENT MEASURES**

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

### **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
  - 3.2.1. *Summary of estimated impact on expenditure*
  - 3.2.2. *Estimated impact on operational appropriations*
  - 3.2.3. *Estimated impact on appropriations of an administrative nature*
  - 3.2.4. *Compatibility with the current multiannual financial framework*
  - 3.2.5. *Third-party contributions*
- 3.3. Estimated impact on revenue

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

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

#### 1.2. Policy area(s) concerned

Common commercial policy, Article 207 TFEU

#### 1.3. Nature of the proposal/initiative

The proposal/initiative relates to **a new action**

The proposal/initiative relates to **a new action following a pilot project/preparatory action**<sup>26</sup>

The proposal/initiative relates to **the extension of an existing action**

The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objective(s)

1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

Not applicable

1.4.2. *Specific objective(s) and Specific objective No [ ]*

Specific objective(s)

Not applicable

Specific objective No

Not applicable

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<sup>26</sup> As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The proposal aims at supporting the overall policy objectives of the Union as laid out in Article 3 of the Treaty on European Union, notably in its relations with the wider world to uphold its values and interests, and to contribute to the protection of its citizens, to peace, security and free and fair trade. The proposal is fully in line with the 2015 "Trade for All" Communication to create a rules-based regime for trade and investment. The proposed Regulation follows up on the Commission's reflection paper of 10 May 2017 on "Harnessing Globalisation" highlighting the benefits and the challenges of globalisation. The paper underlined the steadfast commitment of the European Union to build an open, sustainable, fair, and rules-based order through international cooperation. These principles apply fully to foreign direct investments (FDI) which forms part of the EU's common commercial policy, see Article 207(1) TFEU. FDI is an important source of growth, jobs and innovation. It has brought significant benefits to the EU as to the rest of the world. This is why the EU wants to maintain an open investment environment. However, the paper also clarified that the EU would not hesitate to act when foreign countries or companies engage in unfair practices or raise concerns for security and public order. The reflection paper recognised that there were increasing concerns about strategic acquisitions of key European assets by foreign investors. Against this backdrop, the Commission considers it appropriate to establish a framework for Member States and, in certain cases, the Commission to screen foreign direct investments (FDI) into the Union.

Furthermore, the proposed Regulation provides for legal certainty for Member States that have a screening mechanism for FDI in place or that wish to adopt such mechanism as the Union has exclusive competence to act in the area of the common commercial policy, including FDI, pursuant to Articles 3(1)(e) and 207 (1) TFEU.

### 1.4.4. *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

The proposed Regulation provides for a report to the European Parliament and the Council on the application of the Regulation to be prepared by the Commission no later than three years after its entry into force. Should the Commission consider that the Regulation does not contribute sufficiently to the policy objectives set out, it may accompany the report with a proposal to modify the Regulation.

## 1.5. **Grounds for the proposal/initiative**

### 1.5.1. *Requirement(s) to be met in the short or long term*

In order to address the potential impact of international cross-border take-overs on security and public order, 13 EU Member States currently maintain FDI screening mechanisms, and reserve the power to restrict foreign investments that pose a threat to their vital interests. The Union has exclusive competence to act in the area of the common commercial policy based on Articles 3(1)(e) and 207 TFEU; FDI is an integral part of the common commercial policy. Therefore, it is appropriate for the Union to provide for a framework in which Member States can maintain a screening mechanism or to adopt such mechanism.

In addition, the proposed Regulation aims at establishing a framework for Member States and, where relevant, the Commission, when screening certain FDI into the EU with the view to protecting security and public order.

The proposed Regulation establishes a systematic cooperation mechanism between Member States and the Commission concerning FDI through contact points.

- 1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

Reasons for action at European level (ex-ante)

A number of Member States maintain screening mechanisms for FDI, while others do not have any screening mechanism. The Union has exclusive competence to act in the area of the common commercial policy based on Articles 3(1)(e) and 207 TFEU; FDI is an integral part of the common commercial policy. Therefore, it is appropriate for the Union to provide for a framework in which Member States can maintain a screening mechanism or to adopt such mechanism.

In addition, the Commission should be able to issue an advisory opinion to the Member States concerned if it considers that a FDI may affect security or public order in relation to projects or programmes of Union interest, such as Galileo, Horizon 2020, Ten-T or Ten-E. The Commission should also be able to issue an advisory opinion in case it considers that a FDI in one Member State affects the security or public order in another Member State.

Expected generated EU added value (ex-post)

There is so far neither a structured coordination nor cooperation between Member States and the Commission on these issues. The proposed Regulation and the accompanying Commission communication aim at establishing contact points and announce the set-up up of a cooperation group for an enhanced coordination and cooperation, exchange of information and best practices. The proposed Regulation sets up a clear obligation for Member States to share information with each other and with the Commission through a network of contact points. This is expected to lead to coordination gains in the assessment of risk related to security and public order and raise awareness in all Member States concerning those sensitive issues without obliging Member States to set up a system of FDI screening.

- 1.5.3. *Lessons learned from similar experiences in the past*

This is a new initiative, there is no previous experience. The Commission will need to build up the relevant expertise.

- 1.5.4. *Compatibility and possible synergy with other appropriate instruments*

The proposed Regulation will complement, is consistent with, and does not affect other Union policies and initiatives, which include in particular the following:

Free movement of capital and freedom of establishment

Foreign direct investment is a capital movement under Article 63 TFEU. Article 63 TFEU prohibits any restriction to capital movements between Member States and between Member States and third countries. Investment screening mechanisms may represent a restriction on the free movement of capital which, however, may be justified when necessary and proportionate for the achievement of the objectives defined in the Treaty, including on public security and public policy grounds (Article

65 TFEU) or for overriding reasons in the general interest, as defined by the Court of Justice of the European Union.

As clarified in the case law of the Court of Justice, whereas Member States enjoy discretion in determining public policy and public security requirements in the light of their national needs, those public interests cannot be determined unilaterally by the Member States without any control by the institutions of the EU and must be interpreted strictly: they may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society. Restrictions to the fundamental freedoms must not be misapplied so as, in fact, to serve purely economic ends. Furthermore, investment screening mechanisms should comply with the general principles of EU law, in particular the principles of proportionality and legal certainty. These principles require that the procedure and the criteria for the investment screening are defined in a non-discriminatory and sufficiently precise manner. Potential investors must be able to know such mechanisms in advance and to seek judicial review.

The proposed Regulation is consistent with these requirements. It confirms that Member States may screen foreign direct investments on grounds of security or public order and sets out basic procedural requirements for Member State's screening mechanisms, such as transparency, non-discrimination between different third countries and judicial review.

Foreign direct investment may lead to the establishment of a third country investor in the EU, e.g. when such an investment acquires a controlling stake in an EU-based undertaking. Article 49 TFEU prohibits restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State.

Whereas Article 63 TFEU also applies to capital movements from third countries, Article 49 TFEU does not apply to the establishment of third country nationals in the EU. Thus the proposed Regulation does not affect the Treaty provisions on freedom of establishment.

#### EU Merger Regulation

Foreign direct investments may take the form of mergers, acquisitions or joint ventures that constitute concentrations falling within the scope of the EU Merger Regulation. In relation to such concentrations, Article 21(4) of the EU Merger Regulation allows Member States to take appropriate measures to protect legitimate interests and compatible with the general principles and other provisions of Union law. To that effect, Article 21(4), second paragraph, explicitly recognises the protection of public security, plurality of the media and prudential rules as legitimate interests. Screening decisions taken under the proposed Regulation to protect these interests do not need be communicated to the Commission under Article 21(4), third paragraph, of the EU Merger Regulation, provided they are compatible with the general principles and other provisions of Union law. By contrast, when a Member State intends to take a screening decision under the proposed Regulation to protect other public interests, it will need to communicate this to the Commission under Article 21(4), third paragraph, of the EU Merger Regulation if the decision concerns a concentration that falls within the scope of the EU Merger Regulation. The Commission will ensure consistency in the application of the proposed Regulation and of Article 21(4) of the EU Merger Regulation. To the extent that the respective scope of application of the two regulations overlap, the grounds for screening set out in Article 1 of the proposed Regulation and the notion of legitimate interests within

the meaning of Article 21(4), third paragraph, of the EU Merger Regulation 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.

#### Energy

Over the years, the Union has adopted legislation to improve the security of supply in the field of energy of the Union and its Member States. The Critical Infrastructure Directive (Council Directive 2008/114/EC) requires Member States to identify European Critical Infrastructure and prepare security plans. The Electricity and Gas Directives of the so-called Third Energy Package (Directive 2009/72/EC concerning common rules for the internal market in electricity; Directive 2009/73/EC concerning common rules for the internal market in natural gas) contain provisions requiring the assessment of security of supply implications for the Member State concerned but also the EU as a whole where the gas or the electricity transmission system of a Member State is controlled by a third country operator. Moreover, the Regulation on Security of Gas Supply focuses specifically on security of supply concerns and requires Member States to carry out Risk Assessments, at national and regional level, assessing all possible risks for the gas system, including the risks associated to the control of infrastructure relevant for security of supply by third country entities, and to prepare comprehensive Preventive Action Plans and Emergency Plans with measures to mitigate those risks. In the same vein, the proposal for Risk Preparedness contains similar provisions for the electricity sector. Energy entities are also expressly included in the NIS Directive (Directive 2016/1148 on network infrastructure security) as essential services.

#### Raw materials

To address the growing concern of securing valuable raw materials for the Union economy, the Commission launched the European Raw Materials Initiative in 2008. It is an integrated strategy that establishes targeted measures to secure and improve access to raw materials for the EU. One of the priority actions of the Initiative was to establish a list of Critical Raw Materials at the EU level. This list contains raw materials which reach or exceed thresholds for both Economic Importance and Supply Risk. The Commission established the first list in 2011 and has kept to the commitment to update it at least every three years to reflect market, production and technological developments. A second list was published in 2014 and a new list is published in parallel to this Regulation.

The list of Critical Raw Materials should help to incentivise the European production of Critical Raw Materials and facilitate the launching of new mining and recycling activities. The Commission has in recent years taken account of the list of Critical Raw Materials through a wide range of actions in the areas of trade, international relations, research and innovation, knowledge base and circular economy. The EU supports complementary policy initiatives by Member States who are also involved in the preparation of the list of Critical Raw Materials.

#### Cybersecurity and electronic communications

The proposed Regulation will be complementary to EU policies in the fields of electronic communications, cybersecurity, critical infrastructure protection, and industrial competitiveness in cybersecurity products and services. The Joint Communication by the Commission and the High Representative of the EU for

Foreign Affairs and Security Policy on a Cybersecurity Strategy for the European Union laid out a vision for an open, safe, and secure cyberspace. This was followed by Regulation No 283/2014, which identifies projects of common interest in the field of trans-European networks in the area of telecommunications infrastructure. In addition, Directive 2016/1148 places obligations of cybersecurity preparedness on Member States and introduces preparedness and notification requirements for operators of essential services and for digital service providers. In July 2016, the Commission announced the launch of a public-private partnership on cybersecurity and additional market-oriented policy measures to boost industrial capabilities in Europe. EU funds from Horizon 2020 and the Connecting Europe Facility are also used for the above purposes. In September 2017 the Commission has also put forward a Communication setting out a comprehensive EU approach to cybersecurity, including at global level; it also proposed a Regulation setting up an EU security certification framework for information and communication technologies, in order to prevent market fragmentation and to make it easier for users to know whether ICT products and services, including connected objects, are cyber-secure.

#### Air transport

The proposed Regulation will not affect Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community, since it is not an investment screening mechanism. Regulation (EC) No 1008/2008 provides as one of the conditions for granting an operating licence to an undertaking permitted to carry by air passengers, mail and/or cargo for remuneration and/or hire that Member States and/or nationals of Member States own more than 50% of the undertaking and effectively control it (Article 4).

#### Prudential assessment of acquisitions in the financial sector

EU legislation in the financial sector provides for the power of competent authorities to carry out a prudential assessment of acquisitions and increases of holdings in financial institutions (i.e. credit institutions, investment firms, and insurance and reinsurance undertakings). It sets out notification requirements, procedural rules and evaluation criteria for such assessments. The objective of these provisions is to ensure the sound and prudent management of the financial institutions. These rules are set out in Directive 2007/44/EC concerning procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector, Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) and Directive 2014/65/EU on markets in financial instruments .

The proposed Regulation will empower Member States to maintain or put in place a mechanism to screen foreign direct investment on security and public order grounds. This will not affect EU rules for the prudential review of acquisitions of qualifying holdings in the financial sector, which will remain a distinct procedure with a specific objective.

#### Dual-use export control

The proposed Regulation will not affect the dual-use export control governed by Regulation (EC) No 428/2009. Trade in dual-use items is subject to controls to

prevent the risks that these items may pose for international security. Controls derive from international obligations and are in line with commitments agreed upon in multilateral export control regimes. The EU export control regime is governed by Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, which provides for common control rules, a common list of dual-use items as well as coordination and cooperation to support consistent implementation and enforcement throughout the Union. The Regulation is binding and directly applicable throughout the EU.

#### European space policy

In the Commission Communication on the space strategy for Europe, the Commission underlined the importance of addressing the vulnerability of European supply chains. The establishment of a framework for screening of foreign direct investment supports this objective.

Duration and financial impact
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Proposal/initiative of **limited duration**

–  Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

–  Financial impact from YYYY to YYYY

Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from YYYY to YYYY,

– followed by full-scale operation.

**1.6. Management mode(s) planned<sup>27</sup>**

**Direct management** by the Commission

–  by its departments, including by its staff in the Union delegations;

–  by the executive agencies

**Shared management** with the Member States

**Indirect management** by entrusting budget implementation tasks to:

–  third countries or the bodies they have designated;

–  international organisations and their agencies (to be specified);

–  the EIB and the European Investment Fund;

–  bodies referred to in Articles 208 and 209 of the Financial Regulation;

–  public law bodies;

–  bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

–  bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

–  persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

Not applicable
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<sup>27</sup>

Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:

<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

**2. MANAGEMENT MEASURES**

**2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

**2.2. Management and control system**

**2.2.1. Risk(s) identified**

Not applicable

**2.2.2. Information concerning the internal control system set up**

Not applicable

**2.2.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error**

Not applicable

**2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....]	Diff./Non-diff. <sup>28</sup>	from EFTA countries <sup>29</sup>	from candidate countries <sup>30</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]	Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....]	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

<sup>28</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>29</sup> EFTA: European Free Trade Association.

<sup>30</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated impact on expenditure

[This section should be filled in using the [spreadsheet on budget data of an administrative nature](#) (second document in annex to this financial statement) and uploaded to DECIDE for interservice consultation purposes.]

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	Number	[Heading.....]
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DG: <.....>			Year N <sup>31</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
• Operational appropriations										
Number of budget line	Commitments	(1)								
	Payments	(2)								
Number of budget line	Commitments	(1a)								
	Payments	(2a)								
Appropriations of an administrative nature financed from the envelope of specific programmes <sup>32</sup>										
Number of budget line		(3)								
<b>TOTAL appropriations for DG &lt;.....&gt;</b>	Commitments	=1+1a +3								
	Payments	=2+2a +3								

<sup>31</sup> Year N is the year in which implementation of the proposal/initiative starts.

<sup>32</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
<b>TOTAL appropriations under HEADING &lt;...&gt; of the multiannual financial framework</b>	Commitments	=4+ 6								
	Payments	=5+ 6								

**If more than one heading is affected by the proposal / initiative:**

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
<b>TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)</b>	Commitments	=4+ 6								
	Payments	=5+ 6								

<b>Heading of multiannual financial framework</b>	<b>5</b>	‘Administrative expenditure’
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EUR million (to three decimal places)

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
<b>DG: TRADE</b>									
• Human resources		0.828	0.828	0.828	0.828				<b>0.828</b>
• Other administrative expenditure		<b>0.088</b>	<b>0.088</b>	<b>0.088</b>	<b>0.088</b>				<b>0.088</b>
<b>TOTAL DG TRADE</b>	Appropriations	0.916	0.916	0.916	0.916				<b>0.916</b>
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
<b>DG: COMP</b>									
• Human resources		0.276	0.276	0.276	0.276				0.276
• Other administrative expenditure									
<b>TOTAL DG COMP</b>	Appropriations	0.276	0.276	0.276	0.276				<b>0.276</b>
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
<b>DG: CNCT</b>									
• Human resources		0.276	0.276	0.276	0.276				0.276
• Other administrative expenditure									
<b>TOTAL DG CNCT</b>	Appropriations	0.276	0.276	0.276	0.276				0.276
		Year	Year	Year	Year	Enter as many years as necessary to show the duration			TOTAL

		N	N+1	N+2	N+3	of the impact (see point 1.6)			
<b>DG: ENER</b>									
• Human resources		0.276	0.276	0.276	0.276				<b>0.276</b>
• Other administrative expenditure									
<b>TOTAL DG ENER</b>	Appropriations	0.276	0.276	0.276	0.276				<b>0.276</b>
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			<b>TOTAL</b>
<b>DG: FISMA</b>									
• Human resources		0.276	0.276	0.276	0.276				<b>0.276</b>
• Other administrative expenditure									
<b>TOTAL DG FISMA</b>	Appropriations	0.276	0.276	0.276	0.276				<b>0.276</b>
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			<b>TOTAL</b>
<b>DG: GROW</b>									
• Human resources		0.276	0.276	0.276	0.276				<b>0.276</b>
• Other administrative expenditure									
<b>TOTAL DG GROW</b>	Appropriations	0.276	0.276	0.276	0.276				<b>0.276</b>
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			<b>TOTAL</b>
<b>DG: MOVE</b>									
• Human resources		0.276	0.276	0.276	0.276				<b>0.276</b>
• Other administrative expenditure									

<b>TOTAL DG MOVE</b>	Appropriations	0.276	0.276	0.276	0.276				<b>0.276</b>
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			<b>TOTAL</b>
<b>DG: RTD</b>									
• Human resources		0.276	0.276	0.276	0.276				<b>0.276</b>
• Other administrative expenditure									
<b>TOTAL DG RTD</b>	Appropriations	0.276	0.276	0.276	0.276				<b>0.276</b>
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			<b>TOTAL</b>
<b>DG: TRADE-DEL</b>									
• Human resources		0.238	0.238	0.238	0.238				<b>0.238</b>
• Other administrative expenditure									
<b>TOTAL DG TRADE-DEL</b>	Appropriations	0.238	0.238	0.238	0.238				<b>0.238</b>
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			<b>TOTAL</b>
<b>Legal Service</b>									
• Human resources		0.138	0.138	0.138	0.138				<b>0.138</b>
• Other administrative expenditure									
<b>TOTAL Legal Service</b>	Appropriations	0.138	0.138	0.138	0.138				<b>0.138</b>
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			<b>TOTAL</b>
<b>TOTAL appropriations under HEADING 5</b>	(Total commitments = Total payments)	3.224	3.224	3.224	3.224				<b>3.224</b>

of the multiannual financial framework									
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EUR million (to three decimal places)

		Year N <sup>33</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework</b>	Commitments	3.224	3.224	3.224	3.224				<b>3.224</b>
	Payments	3.224	3.224	3.224	3.224				<b>3.224</b>

<sup>33</sup> Year N is the year in which implementation of the proposal/initiative starts.

3.2.2. *Estimated impact on operational appropriations*

- x The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs  ↓			Year N		Year N+1		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL	
	OUTPUTS																	
	Type <sup>34</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 <sup>35</sup> ...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
<b>TOTAL COST</b>																		

<sup>34</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>35</sup> As described in point 1.4.2. ‘Specific objective(s)...’

### 3.2.3. Estimated impact on appropriations of an administrative nature

#### 3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year N <sup>36</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
--	-------------------------	-------------	-------------	-------------	---	--	--	-------

<b>HEADING 5 of the multiannual financial framework</b>								
Human resources	3.136	3.136	3.136	3.136				<b>3.224</b>
Other administrative expenditure	0.088	0.088	0.088	0.088				<b>0.088</b>
<b>Subtotal HEADING 5 of the multiannual financial framework</b>	<b>3.224</b>	<b>3.224</b>	<b>3.224</b>	<b>3.224</b>				<b>3.362</b>

<b>Outside HEADING 5<sup>37</sup> of the multiannual financial framework</b>								
Human resources								
Other expenditure of an administrative nature								
<b>Subtotal outside HEADING 5 of the multiannual financial framework</b>								

<b>TOTAL</b>	<b>3.224</b>	<b>3.224</b>	<b>3.224</b>	<b>3.224</b>				<b>3.362</b>
--------------	--------------	--------------	--------------	--------------	--	--	--	--------------

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>36</sup> Year N is the year in which implementation of the proposal/initiative starts.

<sup>37</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

### 3.2.3.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
<b>• Establishment plan posts (officials and temporary staff)</b>							
02 01 01 01 (Headquarters and Commission's Representation Offices)	2	2	2	2			
03 01 01 01 (Headquarters and Commission's Representation Offices)	2	2	2	2			
06 01 01 01 (Headquarters and Commission's Representation Offices)	2	2	2	2			
08 01 01 01 (Headquarters and Commission's Representation Offices)	2	2	2	2			
09 01 01 01 (Headquarters and Commission's Representation Offices)	2	2	2	2			
12 01 01 01 (Headquarters and Commission's Representation Offices)	2	2	2	2			
20 01 01 01 (Headquarters and Commission's Representation Offices)	6	6	6	6			
25 01 01 01 (Headquarters and Commission's Representation Offices)	1	1	1	1			
32 01 01 01 (Headquarters and Commission's Representation Offices)	2	2	2	2			
20 01 01 02 (Delegations)	1	1	1	1			
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>38</sup></b>							
XX 01 02 01 (AC, END, INT from the 'global envelope')							
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)							
XX 01 04 yy <sup>39</sup>	- at Headquarters						
	- in Delegations						
XX 01 05 02 (AC, END, INT - Indirect research)							

<sup>38</sup> AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

<sup>39</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

10 01 05 02 (AC, END, INT - Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>	<b>22</b>	<b>22</b>	<b>22</b>	<b>22</b>			

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	<p>Officials will have to:</p> <ul style="list-style-type: none"> <li>-to act as contact points and to process incoming notifications from Member States under Article 8, to prepare meetings of the contact points and to ensure consistency in relation to Commission advisory opinions;</li> <li>-screening foreign direct investement based on security and public order in relation to projects and programmes of Union interest; this expertise has to be build up</li> <li>-ensure consistency with other EU policies, notably the EU acquis in relation to the free movement of capital, the Merger Regulation and the EU energy acquis.</li> </ul>
External staff	

3.2.4. *Compatibility with the current multiannual financial framework*

- The proposal/initiative is compatible the current multiannual financial framework.
- The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

### 3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>40</sup>					Enter as many years as necessary to show the duration of the impact (see point 1.6)		
		Year N	Year N+1	Year N+2	Year N+3				
Article .....									

For miscellaneous ‘assigned’ revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

<sup>40</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.