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studio legale

# **The International Trade Committee of the European Parliament has proposed a new mechanism to screen foreign direct investments in sensitive fields of the EU**

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On 28 May 2018, the International Trade Committee (INTA) of the European Parliament approved the Proposal for a Regulation establishing a framework for the screening of foreign direct investments (FDI) into the European Union<sup>1</sup> in a transparent, predictable and non-discriminatory manner.

FDIs are an important resource for the European Union's economic and social development. However, they may raise concerns if the investor is a state-owned enterprise, or the investment is one made in critical infrastructures in fields such as energy or communications, or in enterprises working with key technologies, such as robotics or nuclear technology. As the European Commission noted in its Reflection Paper on "Harnessing Globalisation" of May 2017<sup>2</sup>, '*... concerns have recently been voiced about foreign investors, notably state-owned enterprises, taking over European companies with key technologies for strategic reasons. EU investors often do not enjoy the same rights to invest in the country from which the investment originates...*'.

The new rules aim at establishing a framework for the Member States, and in certain cases the Commission itself, to screen foreign direct investments in the European Union, while allowing Member States to take into account of their individual situations and national circumstances. Currently, only 12 of the 28 Member States have a screening mechanism in place that reviews FDIs on grounds of security or public order, which are characterised by differences in scope and procedure. The proposed Regulation will establish a permanent cooperation mechanism between the Member States and the Commission to inform each other of foreign direct investment that may impact on security or public order and to exchange information in these regards. Moreover, the new rules will enable the Commission itself to carry out a screening on grounds of security and public order, in cases where a foreign direct investment may affect projects or programmes of Union interest.

To achieve such cooperation, the proposed Regulation requires Member States to inform other Member States and the Commission of any foreign direct investment that is undergoing screening within the framework of their national screening mechanisms. The cooperation mechanism will also allow a Member State to raise concerns as regards a foreign direct investment under way in another Member State and to provide comments.

The INTA vote has strengthened the proposal's scope to enable Member States and the Commission to consider whether, *inter alia*

- a foreign investment might affect media independence or the EU's strategic autonomy;
- the investor has a track-record of investing in projects that might threaten security or public order; or

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<sup>1</sup> COM(2017) 487 final, available at the following [LINK](#).

<sup>2</sup> See the following [LINK](#).

- the investment could lead to the creation of a monopoly.

*Bernd Lange*, Member of the Group of the Progressive Alliance of Socialists and Democrats in the European Parliament and Chair of the Committee on International Trade, stated that ‘... *Next to the reform of the dual use export control system, FDI screening is one of the main priorities of the International Trade Committee. We hope to finalize new rules before the end of Parliament’s term and look forward to fruitful negotiations with the Council under the leadership of the Austrian Presidency...*’.

The Proposal is part of the trade and investment package announced by the Commission in September 2017<sup>3</sup>. The Regulation will now have to be approved by the European Parliament at its 11-14 June plenary session and will then be examined by the Council.

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<sup>3</sup> Besides the creation of a European screening framework to ensure that foreign direct investment does not compromise the EU's strategic interests with respect to security and public order, the proposals include draft mandates to open trade negotiations with Australia and New Zealand, a draft mandate to start negotiations towards the creation of a multilateral investment court and the creation of an Advisory Group on EU trade agreements. See the following [LINK](#).