



# SCREENING OF FOREIGN DIRECT INVESTMENT - AN EU FRAMEWORK



*'Europe must always defend its strategic interests and that is precisely what this new framework will help us to do. This is what I mean when I say that we are not naïve free traders. We need scrutiny over purchases by foreign companies that target Europe's strategic assets.'*

European Commission President Jean-Claude Juncker, 2018

*'This Regulation shows the willingness of Europe to deliver on a strong demand from our citizens and stakeholders. In an increasingly interconnected and interdependent world, we need means to protect our collective security while keeping Europe open for business.'*

EU Trade Commissioner Cecilia Malmström, 2018

## Welcoming foreign direct investment while protecting essential interests

Foreign direct investment from third countries is a source of growth and jobs.

The **EU has one of the world's most open investment regimes**, as acknowledged by the OECD.

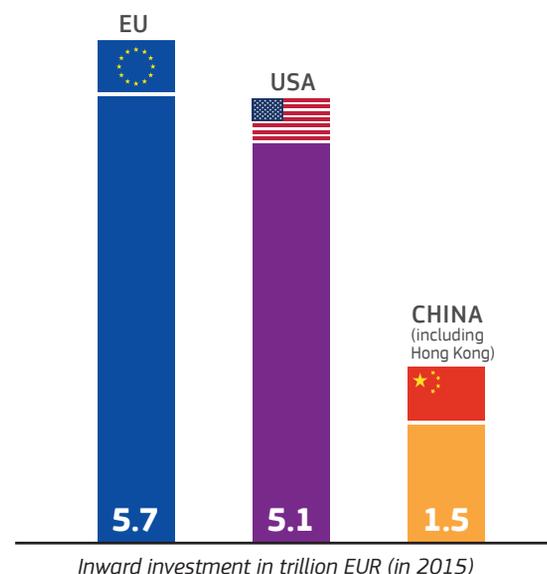
The EU wants to and will remain the most attractive destination for foreign direct investment in the world. However, in exceptional cases, foreign investments may represent a risk for security or public order in Member States or in the whole Union. This could be the case for example when a foreign investor seeks to acquire control of European businesses whose activities affect critical technologies, infrastructure, inputs or sensitive information. In some cases, the risk may be exacerbated by the fact that investors are owned or controlled by the state of a third country.

## THE EU IS THE WORLD'S LEADING SOURCE AND DESTINATION OF FOREIGN DIRECT INVESTMENT

The companies controlled by third country investors are still small in number in the EU, but they have a significant economic impact because of their larger than average size and their focus on high-technology sectors.

New investment trends are appearing with **some emerging economies, playing an increasing role as providers of foreign direct investment.**

There are growing concerns in Europe about the impact that certain foreign acquisitions may have on security and public order.

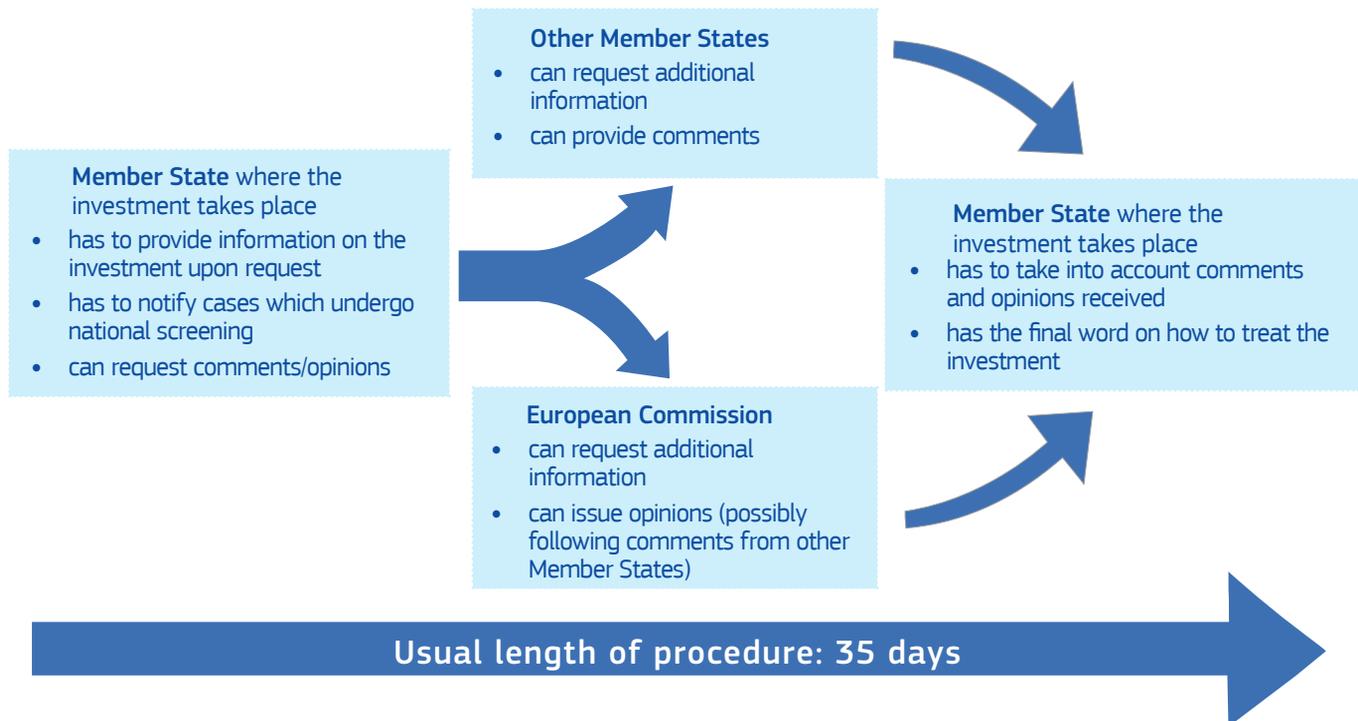




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## EU FRAMEWORK FOR SCREENING INVESTMENTS

Member States and the Commission will, for the first time, have the possibility to cooperate on incoming foreign direct investment affecting security and public order.



### WHAT INFORMATION WILL BE EXCHANGED?

- Who is the investor and the target company?
- In which sectors do they operate and where?
- What is the value of the investment and where the funding is coming from?
- When does the transaction take place?

### PROJECTS & PROGRAMMES OF UNION INTEREST

- The Regulation lists several EU funded projects and programmes which may be relevant for security and public order, and which will deserve a particular attention from the Commission.
- That list includes for instance Galileo, Horizon 2020, Trans-European Networks and the European Defence Industrial Development Programme. The list will be updated as necessary.

### CRITERIA THAT MAY BE TAKEN INTO CONSIDERATION

• The Regulation sets an indicative list of factors to help Member States and the Commission determine whether an investment is likely to affect security or public order. That list includes the effects of the investment on:

- critical infrastructure,
- critical technologies,
- the supply of critical inputs, such as energy or raw materials
- access to sensitive information or the ability to control information, or
- the freedom and pluralism of the media.

• Member States and the Commission may also consider whether the investor is controlled by the government of a third country, whether the investor has previously been involved in activities affecting security or public order, or whether there are serious risks that the investor engages in criminal or illegal activities.



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## OTHER FEATURES

### COORDINATION GROUP

The Commission expert group on FDI screening set up in 2017 will provide a forum for considering policy developments among Member States as well as discussing the implementation of this Regulation

### TRANSITION PHASE

A transitional period of 18 months will ensure that Member States and the Commission put the necessary resources and tools in place to implement the Regulation. Some Member States may also use this time to adapt national frameworks, where needed.

### INTERNATIONAL COOPERATION

The Regulation also encourages cooperation with third countries on policies and practices related to investment screening.

### ANNUAL REPORTING

The Commission will publish a yearly report on the implementation of the Regulation.

## FRAMEWORK FOR THE SCREENING BY MEMBER STATES

• The Regulation does not require Member States to introduce investment screening mechanisms. Member States may maintain their existing screening mechanisms, adopt new ones or remain without such national mechanisms.

• 14 EU Member States currently have national investment screening mechanisms. Several are in the course of reforming them, or adopting new ones.

• The Regulation does provide for some key requirements for national screening mechanisms:

- transparency of rules and procedures,
- non-discrimination among foreign investors,
- confidentiality of information exchanged,
- the possibility of recourse against screening decisions, and
- measures to identify and prevent circumvention by foreign investors.

• The Commission will publish and keep up-to-date a list of screening laws in the EU.

List of Member States with investment screening rules:

Austria	Hungary	Poland
Denmark	Italy	Portugal
Finland	Latvia	Spain
France	Lithuania	United Kingdom
Germany	Netherlands	

