

EU FOREIGN DIRECT INVESTMENT REGULATION APPROVED

On 14 February 2019, the final text of the Regulation establishing a framework for screening of foreign direct investments into the EU was approved by the European Parliament. The Regulation aims to strike a balance between protecting critical infrastructures, technology and knowhow of the EU and its Member States and welcoming foreign investments as major source of economic growth.

The Regulation provides for a multinational screening process of foreign investments involving the European Commission. This process does not replace national foreign investment control and there will be no one-stop shop solution for foreign investors either. However, the views of the Member States and the Commission will have to be taken into account by the national authorities reviewing the investment. Screening may thus add substantial political weight to the national decision-making process and could emerge as an important control instrument for EU inbound investments from security sensitive third countries.

A summary of the main provisions of the Regulation are set out below:

- The Regulation establishes certain minimum requirements for those Member States that decide to establish a foreign direct investment screening mechanism or those that already have one in place. However, it does not oblige Member States to establish a foreign direct investment screening mechanism if they do not wish to do so.
- The multinational screening process will be strictly limited to the grounds of security and public order. Potential effects on the following fields, amongst others, may be considered: critical infrastructure, critical technologies and certain dual use items, the security of supply of critical inputs, including energy, raw materials or food, access to sensitive information, including personal data and the freedom and plurality of the media.
- Member States and the Commission may also take into account whether the foreign investor is directly or indirectly controlled by the government of a third country, whether the foreign investor has already been involved in activities affecting security or public order of a Member State and whether there is a serious risk that the foreign investor engages in illegal or criminal activities.
- Member States can comment upon, and the Commission can issue an opinion on, foreign investments undergoing screening in three different scenarios:
 - When a Member State: (i) considers that a foreign direct investment undergoing screening in another Member State is likely to affect its security or public order, or (ii) has information relevant for such screening in relation to that foreign direct investment, it may provide

comments to the Member State in which the foreign direct investment will take place. The latter is obliged to give utmost consideration to the comments, but will not be bound by them.

- The Commission *may* issue an opinion addressed to the Member State in which the foreign direct investment undergoes screening, if: (i) it considers that a particular foreign direct investment is likely to affect security or public order in more than one Member State; or (ii) it has relevant information in relation to that foreign direct investment, or (iii) a Member State where a foreign direct investment is taking place requests the Commission to issue an opinion. The Commission is *obliged* to issue an opinion after at least one third of Member States consider that a foreign direct investment is likely to affect their security or public order. The Member State is obliged to give due consideration to opinions of the Commission, but is not bound by it.
- Member States which consider that a foreign investment undergoing screening on their territory is likely to affect its security or public order, may request the Commission to issue an opinion or other Member States to provide comments upon such investment.
- The Regulation sets new transparency and information requirements for Member States to address the current low level of information exchange on foreign direct investments, including time limits for providing comments and opinions.
- If a foreign direct investment in a Member State has not undergone screening, the Regulation still allows other Member States and the Commission to provide comments or issue an opinion. Member States and the Commission can do this up to 15 months after that foreign direct investment has completed. However, final decision-making power will remain with the relevant Member State(s).

The Council is expected to formally endorse the Regulation on 5 March 2019 and the Regulation will enter into force on the twentieth day following its publication in the Official Journal of the European Union. The Regulation, however, will only apply fully 18 months later. As a result, foreign direct investments which are completed up to 15 months prior to the date of full application, are within the scope of the cooperation mechanism and may be commented upon or receive opinions once the Regulation is fully applicable.

Further details on the Regulation and the national regimes in France, Germany, Italy, the Netherlands, Portugal, Spain and the United Kingdom are covered in the [Best Friends Foreign Direct Investment Guide](#).