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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for screening of foreign direct investments into the European Union
- Outcome of the European Parliament's first reading,
(Strasbourg, 11 to 14 February 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Franck PROUST (EPP, FR), presented two compromise amendments (amendments 89 and 90) to the proposal for a Regulation on behalf of the Committee on International Trade. These amendments had been agreed during the informal contacts referred to above. No other amendments were tabled.

II. VOTE

When it voted on 13 February 2019, the plenary adopted the compromise amendments (amendments 89 and 90) to the proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Framework for screening of foreign direct investments into the European Union ***I

European Parliament legislative resolution of 14 February 2019 on the proposal for a regulation of the European Parliament and of the Council establishing a framework for screening of foreign direct investments into the European Union (COM(2017)0487 – C8-0309/2017 – 2017/0224(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0487),
 - having regard to Article 294(2) and Article 207(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0309/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 19 April 2018³,
 - having regard to the opinion of the Committee of the Regions of 23 March 2018⁴,
 - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 5 December 2018 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade and the opinions of the Committee on Industry, Research and Energy, the Committee on Foreign Affairs and the Committee on Economic and Monetary Affairs (A8-0198/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Takes note of the statement by the Commission annexed to this resolution, which will be published in the L series of the *Official Journal of the European Union* together with the final legislative act;
 3. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially

³ OJ C 262, 25.7.2018, p. 94.

⁴ OJ C 247, 13.7.2018, p. 28.

amends or intends to substantially amend its proposal;

4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 14 February 2019 with a view to the adoption of Regulation (EU) 2019/... of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the 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,

Having regard to the opinion of the European Economic and Social Committee⁵,

Having regard to the opinion of the Committee of the Regions⁶,

Acting in accordance with the ordinary legislative procedure⁷,

⁵ OJ C 262, 25.7.2018, p. 94.

⁶ OJ C 247, 13.7.2018, p. 28.

⁷ Position of the European Parliament of 14. February 2019.

Whereas:

- (1) Foreign direct investment contributes to the Union's growth by enhancing its competitiveness, creating jobs and economies of scale, bringing in capital, technologies, innovation, expertise, and by opening new markets for the Union's exports. It supports the objectives of the Investment Plan for Europe and contributes to other Union projects and programmes.
- (2) *Article 3(5) of the Treaty on European Union (TEU) specifies that the Union, in its relations with the wider world, shall uphold and promote its values and interests and contribute to the protection of its citizens. Moreover, the Union and the Member States have an open investment environment, which is enshrined in the Treaty on the Functioning of the European Union (TFEU) and embedded in the international commitments of the Union and its Member States with respect to foreign direct investment.*
- (3) Pursuant to the international commitments undertaken in the World Trade Organization (WTO), in the Organisation for Economic Cooperation and Development, and in the trade and investment agreements concluded with third countries, *it is possible for the Union and the Member States to adopt restrictive measures relating to foreign direct investment on the grounds of security or public order, subject to certain requirements. The framework established by this Regulation relates to foreign direct investments into the Union. Outward investment and access to third country markets are dealt with under other trade and investment policy instruments.*

- (4) *This Regulation is without prejudice to the right of Member States to derogate from the free movement of capital as provided for in point b of Article 65(1) TFEU. Several Member States have put in place measures according to which they may restrict **such movement** on grounds of public policy or public security. Those measures reflect **the objectives and concerns of Member States** with respect to foreign direct investment, and might result in a number of mechanisms which are different in terms of scope and procedure. *Member States wanting to put in place such mechanisms in the future could take into account the functioning, experiences and best practices of existing mechanisms.**
- (5) There is currently no comprehensive framework at **Union** level for the screening of foreign direct investments on the grounds of security or public order, *while the major trading partners of the Union have already developed such frameworks.*
- (6) Foreign direct investment falls within the field of the common commercial policy. In accordance with point e of Article 3(1) TFEU, the Union has exclusive competence with respect to the common commercial policy.

- (7) It is important to provide legal certainty *for Member States' screening mechanisms on the grounds of security and public order, and* to ensure Union-wide coordination and cooperation *on the screening of foreign direct investments likely to affect security or public order. That common framework is without prejudice to sole responsibility of Member States for safeguarding their national security, as provided for in Article 4(2) TEU. It is also without prejudice to the protection of their essential security interests in accordance with Article 346 TFEU.*
- (8) The framework for the screening of foreign direct investments *and for cooperation* should provide 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 specificities. *The decision on whether to set up a screening mechanism or to screen a particular foreign direct investment remains the sole responsibility of the Member State concerned.*
- (9) A broad range of investments which establish or maintain lasting and direct links between investors from third countries *including State entities*, and undertakings carrying out an economic activity in a Member State should be covered by this Regulation. *It should however not cover portfolio investment.*

- (10) Member States that have a screening mechanism in place should provide for the necessary measures, in compliance with Union law, to prevent circumvention of their screening mechanisms and screening decisions. This should cover investments from 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 the free movement of capital enshrined in the TFEU.
- (11) *It should be possible for Member States to assess risks to security or public order arising from significant changes to the ownership structure or key characteristics of a foreign investor.*
- (12) To guide Member States and the Commission in the application of this Regulation, it is appropriate to provide a list of factors that could be taken into consideration when **determining whether a** foreign direct investment **is likely to affect** security or public order. That list will also improve the transparency of **Member States' screening mechanisms** for investors considering making or having made foreign direct investments in the Union. The list of factors that might affect security or public order should remain non-exhaustive.

- (13) In determining whether a foreign direct investment may affect security or public order, it should be possible for Member States and the Commission 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, the disruption, *failure*, loss or destruction of which would have a significant impact in a Member State or in the Union. In that regard, it should also be possible for Member States and the Commission to take into account *the context and circumstances of the foreign direct investment, in particular* whether a foreign investor is controlled directly or indirectly, for example through significant funding, including subsidies, by the government of a third country *or is pursuing State-led outward projects or programmes*.
- (14) *Member States or the Commission, as appropriate, might consider relevant information received from economic operators, civil society organisations, or social partners such as trade unions, in relation to a foreign direct investment likely to affect security or public order.*
- (15) It is appropriate to lay down the essential elements of the framework for the screening of foreign direct investments by a Member State to allow investors, the Commission and other Member States to understand how such investments are likely to be screened. Those elements should at least include ■ timeframes for the screening and the possibility for foreign investors to seek ■ *recourse against* screening decisions. ■ *Rules and procedures relating to screening mechanisms should be* transparent ■ *and* ■ *should not discriminate* between third countries.

- (16) A mechanism which enables Member States to cooperate and assist each other where a foreign direct investment in one Member State **■ could** affect security or public order in other Member States should be set up. It should be possible for Member States to provide comments to a Member State in which such investment is planned or has been completed, irrespective of whether *that Member State has a screening mechanism in place, or such an investment is undergoing screening.* **■ Requests for information, replies and** comments of Member States should also be forwarded to the Commission. It should be possible for the Commission, where appropriate, to issue an opinion *within the meaning of Article 288 TFEU* to the Member State in which the investment is planned or has been completed. **■ It should also be possible for a Member State to request the Commission to issue an opinion or other Member States to provide comments on a foreign direct investment taking place in its territory.**
- (17) *When a Member State receives comments from other Member States or an opinion from the Commission, it should give such comments or opinion due consideration through, where appropriate, measures available under its national law, or in its broader policy-making, in line with its duty of sincere cooperation laid down in Article 4(3) TEU.*

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

- (18) *The cooperation mechanism should only be used for the purpose of protecting security or public order. For that reason, Member States should duly justify any request for information regarding a specific foreign direct investment in another Member State, as well as any comment they address to that Member State. The same requirements should apply when the Commission requests information on a particular foreign direct investment or issues an opinion to a Member State. Compliance with those requirements is also important in situations where an investor of a Member State competes with investors of third countries for making an investment in another Member State such as acquiring assets.*
- (19) Furthermore, it should be possible for the Commission to **provide an opinion within the meaning of Article 288 TFEU with regard to** foreign direct investments likely to affect projects and programmes of Union interest on grounds of security or public order. This would give the Commission a tool to protect projects and programmes which serve the Union as *a* whole and represent an important contribution to its economic growth, jobs and competitiveness. This should include in particular projects and programmes involving substantial Union funding or established by Union law regarding critical infrastructure, critical technologies or critical inputs. *Those* projects or programmes of Union interest **should be listed in this Regulation. An opinion** which is addressed to a Member State *should also be* simultaneously *sent to the other Member States.*

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

- (20) **█** *In order to take into account developments relating to projects and programmes of Union interest, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to amend the list of projects and programmes of Union interest set out in the Annex to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁸. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.*

⁸ OJ L 123, 12.5.2016, p. 1..

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

- (23) ***In order to ensure the effectiveness of the cooperation mechanism***, it is also important to ensure a minimum level of information and coordination with regard to foreign direct investments falling under the scope of this Regulation in all Member States. That information should be made available by Member States ***for*** ***foreign direct investments undergoing screening as well as, upon request, for other foreign direct investments***. Relevant information should include 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. ***Member States should seek to provide accurate, comprehensive and reliable information.***
- (24) ***Upon request by a Member State where a foreign direct investment is planned or has been completed, the foreign investor or the undertaking concerned should provide the information requested. In exceptional circumstances, when, despite its best efforts, a Member State is unable to obtain such information, it should notify the Member States concerned or the Commission without delay. In such a case, it should be possible that any comment issued by another Member State or any opinion issued by the Commission in the framework of the cooperation mechanism be made on the basis of the information available to them.***
- (25) ***When making available the information requested, Member States are to comply with Union law and national law that complies with Union law.***

- (26) The communication and cooperation at Member State and Union level should be enhanced through the establishment of *a contact point* for the *implementation of this Regulation* in each Member State *and the Commission*.
- (27) *The contact points established by the Member States and the Commission should be appropriately placed within the respective administration, and should have the qualified staff and the powers necessary to perform their functions under the coordination mechanism and to ensure a proper handling of confidential information.*
- (28) *The development and implementation of comprehensive and effective policies should be supported by the Commission group of experts on the screening of foreign direct investments into the European Union, set up by Commission Decision of 29.11.2017⁹, composed of representatives of the Member States. That group should discuss, in particular, issues related to the screening of foreign direct investments, share best practices and lessons learned and exchange views on trends and issues of common concern related to foreign direct investments. The Commission should consider seeking the advice of the group on systemic issues relating to the implementation of this Regulation. The Commission should consult the expert group on draft delegated acts in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.*

⁹ Commission Decision of 29.11.2017 setting up the group of experts on the screening of foreign direct investments into the European Union (not published in the Official Journal), C(2017) 7866 final.

- (29) *Member States and the Commission should be encouraged to cooperate with the responsible authorities of like-minded third countries on issues related to screening of foreign direct investments likely to affect security or public order. Such administrative cooperation should aim to strengthen the effectiveness of the framework for screening of foreign direct investments by Member States and the cooperation between Member States and the Commission pursuant to this Regulation. It should also be possible for the Commission to monitor developments with regard to screening mechanisms in third countries.*
- (30) Member States and the Commission should take all necessary measures to ensure the protection of confidential information *in compliance with, in particular, Commission Decision (EU, Euratom) 2015/443¹⁰, Commission Decision (EU, Euratom) 2015/444¹¹ and the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union¹². This includes, in particular, the obligation not to downgrade or declassify classified information without the prior written consent of the originator¹³. Any non-classified sensitive information or information which is provided on a confidential basis should be handled as such by the authorities.*

¹⁰ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on security in the Commission (*OJ L 72, 17.3.2015, p. 41*).

¹¹ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (*OJ L 72, 17.3.2015, p. 53*).

¹² *OJ C 202, 8.7.2011, p. 13*.

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

- (31) *Any processing of personal data pursuant to this Regulation should comply with the applicable rules on the protection of personal data. Processing of personal data by the contact points and other entities within Member States should be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁴. Processing of personal data by the Commission should be carried out in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁵.*
- (32) *On the basis of, inter alia, the annual reports submitted by all Member States, and with due respect to the confidential nature of certain information included in those reports, the Commission should draw up an annual report on the implementation of this Regulation and submit it to the European Parliament and to the Council. For greater transparency, the report should be made public.*
- (33) *The European Parliament should have the possibility to invite the Commission to a meeting of its committee responsible to present and explain systemic issues related to the implementation of this Regulation.*

¹⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

¹⁵ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- (34) **By ... (three years after the date of application of this Regulation) and every five years thereafter,** the Commission should **evaluate the functioning and effectiveness of this Regulation and present a report to the European Parliament and to the Council. That report should include an assessment of whether or not this Regulation requires an amendment.** Where the report proposes amending this Regulation, it may be accompanied by a legislative proposal.
- (35) The implementation of this Regulation by the Union and the Member States should comply with the relevant requirements for the imposition of restrictive measures **on grounds of security and public order in the WTO agreements,** including, in particular, Article XIV (a) and Article XIV bis of the General Agreement on Trade in Services¹⁶ (GATS). **It should also comply with Union law and be consistent with commitments made under other trade and investment agreements to which the Union or Member States are parties and trade and investment arrangements to which the Union or Member States are adherents.**

¹⁶ OJ L 336, 23.12.1994, p. 191.

- (36) When a foreign direct investment constitutes a concentration falling within the scope of Council Regulation (EC) No 139/2004¹⁷, the application 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 those 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 the third paragraph of Article 21(4) 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 those interests with the general principles and other provisions of Union law.
- (37) *This Regulation does not affect Union rules for the prudential assessment of acquisitions of qualifying holdings in the financial sector, which is a distinct procedure with a specific objective¹⁸.*
- (38) This Regulation is consistent with and without prejudice to other notification and screening procedures set out in sectoral Union law,

HAVE ADOPTED THIS REGULATION:

¹⁷ 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).

¹⁸ As introduced by ***Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176 27.6.2013, p. 338);***
Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1);
Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

Article 1

Subject matter and scope

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

Article 2

Definitions

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

- (1) 'foreign direct investment' means ***an*** investment 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;
- (3) 'screening' means a procedure allowing to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments;
- (4) 'screening mechanism' means an instrument of general application, such as a law or regulation, and accompanying administrative requirements, implementing rules or guidelines, setting out the terms, conditions and procedures ***to assess, investigate, authorise, condition, prohibit or unwind*** foreign direct investments on grounds of security or public order;

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

Article 3

Screening *mechanisms of Member States*

1. ***In accordance with this Regulation***, Member States may maintain, amend or adopt mechanisms to screen foreign direct investments ***in their territory*** on the grounds of security or public order.
2. ***Rules and procedures related to*** screening mechanisms, ***including relevant timeframes***, shall be transparent and not discriminate between third countries. In particular, Member States shall set out the circumstances triggering the screening, the grounds for screening and the applicable detailed procedural rules.
3. Member States shall ***apply*** timeframes ***under their*** screening ***mechanisms***. ***The screening mechanisms*** shall allow ***Member States*** to take into account the comments of ***other*** Member States referred to in Article ***6 and 7*** and the opinions of the Commission referred to in Articles ***6, 7 and 8***.

4. **█ Confidential information, including commercially-sensitive information, made available to the Member State undertaking the screening █ shall be protected.**
5. **█ Foreign investors and the undertakings concerned shall have the possibility to seek █ recourse against screening decisions of the national authorities.**
- █**
6. Member States ***which have a screening mechanism █ in place shall*** maintain, amend or adopt measures necessary to ***identify and*** prevent circumvention of the screening mechanisms and screening decisions.
7. **█ Member States shall notify the Commission of their existing screening mechanisms by ... [30 days after the entry into force of this Regulation]. Member States shall notify the Commission of any newly adopted screening mechanism or any amendment to an existing screening mechanism within 30 days of the entry into force of the newly adopted screening mechanism or of any amendment to an existing screening mechanism.**
8. ***No later than three months after having received the notifications referred to in paragraph 7, the Commission shall make publicly available a list of Member States' screening mechanisms. The Commission shall keep that list up to date.***

Article 4

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

1. In **■** *determining whether* a foreign direct investment *is likely to affect* **■** security or public order, Member States and the Commission may consider *its* potential effects on, inter alia:
 - (a) critical infrastructure, *whether physical or virtual*, including energy, transport, *water, health*, communications, *media*, data *processing or* storage, *aerospace, defence, electoral* or financial infrastructure, and sensitive facilities, as well as *land and real estate crucial for the use of such infrastructure*;
 - (b) critical technologies *and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No 428/2009*¹⁹, including artificial intelligence, robotics, semiconductors, **■** cybersecurity, *aerospace***■**, *defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies*;
 - (c) supply of critical inputs, **■** *including energy or raw materials, as well as food security*;
 - (d) access to sensitive information, *including personal data*, or the ability to control **■** *such* information; *or*
 - (e) *the freedom and pluralism of the media*.

¹⁹ 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).

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

Article 5
Annual reporting

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

2. ***For each reporting period***, Member States that maintain screening mechanisms shall, in addition to the information referred to in paragraph 1, provide **aggregated information** on the application of their screening mechanisms.
3. ***The Commission shall provide an annual report on the implementation of this Regulation to the European Parliament and to the Council. That report shall be made public.***
4. ***The European Parliament may invite the Commission to a meeting of its committee responsible to present and explain systemic issues related to the implementation of this Regulation.***

Article 6

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

1. Member States shall **notify** the Commission and the other Member States of any foreign direct **investment** **in their territory** that **is** undergoing screening **by providing the information referred to in Article 9(2) of this Regulation as soon as possible**. **The notification may include a list of Member States whose security or public order is deemed likely to be affected.** As part of the **notification**, and where applicable, the Member State undertaking the screening 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 **is undergoing screening** in another Member State is likely to affect its security or public order, **or has information relevant for such screening**, it may provide comments to the Member State **undertaking the screening**. *The Member State providing comments shall send those comments to the Commission simultaneously.*
The Commission shall notify the other Member States that comments were provided.
3. Where the Commission considers that a foreign direct investment **undergoing screening** is likely to affect security or public order in **more than one** Member State, **or has relevant information in relation to that foreign direct investment**, it may issue an opinion addressed to the Member State **undertaking the screening**. The Commission may issue an opinion irrespective of whether other Member States have provided comments. *The Commission may issue an opinion following comments from other Member States. The Commission shall issue such opinion where justified, after at least one third of Member States consider that a foreign direct investment is likely to affect their security or public order.*
The Commission shall notify the other Member States that an opinion was issued.
4. *A Member State which duly considers that a foreign direct investment in its territory is likely to affect its security or public order may request the Commission to issue an opinion or other Member States to provide comments.*

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

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

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

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

Notwithstanding paragraph 6, the Commission may issue an opinion following comments from other Member States where possible within the deadlines referred to in this paragraph, and in any case no later than five calendar days after those deadlines have expired.

- 8. In the exceptional case where the Member State undertaking the screening considers that its security or public order requires immediate action, it shall notify the other Member States and the Commission of its intention to issue a screening decision before the timeframes referred to in paragraph 7 and duly justify the need for immediate action. The other Member States and the Commission shall endeavour to provide comments or to issue an opinion expeditiously.*
9. The Member State **█** *undertaking the screening* **█** shall give due consideration to the comments of the other Member States referred to in paragraph 2 and to the opinion of the Commission referred to in paragraph 3. *The final screening decision shall be taken by the Member State undertaking the screening.*
10. Cooperation **█** pursuant to this Article shall take place through the contact points established in accordance with Article **█** 11.

Article 7

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

1. Where a Member State considers that a foreign direct investment planned or completed in another Member State *which is not undergoing screening in that Member State* is likely to affect its security or public order, *or has relevant information in relation to that foreign direct investment*, it may provide comments to that other Member State. The Member State providing comments shall send those comments to the Commission simultaneously.

The Commission shall notify the other Member States that comments were provided.

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

The Commission shall notify the other Member States that an opinion was issued.

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

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

Requests for information and replies provided by Member States shall be sent to the Commission simultaneously.

6. Comments pursuant to *paragraph 1* or opinions pursuant to paragraph 2 shall be addressed to the Member State where the foreign direct investment is planned or has been completed and shall be sent to it within a reasonable period of time, and in any case no later than **35** *calendar* days following receipt of the information referred to in paragraph **5** *or of the notification pursuant to Article 9(5)*. In cases where the opinion of the Commission follows comments from other Member States, the Commission shall have **15** additional *calendar* days for issuing *that* opinion.
7. A Member *State* where a foreign direct investment is planned or has been completed shall give due consideration to the comments of the other Member States and to the opinion of the Commission.
8. *Member States may provide comments pursuant to paragraph 1 and the Commission may provide an opinion pursuant to paragraph 2 no later than 15 months after the foreign direct investment has been completed.*
9. Cooperation pursuant to this Article shall take place through the contact points established in accordance with Article 11.
10. *This Article shall not apply to foreign direct investments completed before ... [date of entry into force of this Regulation].*

Article 8

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

1. Where the Commission considers that a foreign direct investment is likely to affect projects or programmes of Union interest on grounds of security or public order, the Commission may issue an opinion addressed to the Member State where the foreign direct investment is planned or has been completed.
2. *The procedures set out in Articles 6 and 7 shall apply mutatis mutandis, subject to the following modifications:*
 - (a) *as part of the notification referred to in Article 6(1) or the comments referred to in Articles 6(2) and 7(1), a Member State may indicate whether it considers that a foreign direct investment is likely to affect projects and programmes of Union interest;*
 -
 - (b) ■ *the* opinion of the Commission shall be sent to the other Member States;
 - (c) ■ *the* Member State ■ where the foreign direct investment is planned or has been completed ■ shall take utmost account of the Commission's opinion and provide an explanation to the Commission if its opinion is not followed.

3. ***For the purpose of this Article,*** [] projects or programmes of Union interest shall include [] those projects and programmes which involve a substantial amount or a significant share of Union funding, or which are covered by Union law regarding critical infrastructure, critical technologies or critical inputs ***which are essential for security or public order. The*** [] list of projects or programmes of Union interest is set out in ***the Annex*** [] .
4. ***The Commission shall adopt delegated acts in accordance with Article 16 to amend the list of projects and programmes of Union interest.***

Article 9

Information requirements

1. Member States shall ensure that the information ***notified pursuant to Article 6(1) or*** requested by the Commission and other Member States pursuant to ***Articles 6(6) and 7(5)*** [] is made available to the Commission and the requesting Member States without undue delay.
2. The information referred to in paragraph 1 shall include [] :
 - (a) [] ***the*** ownership structure of the foreign investor and of the undertaking in which the foreign direct investment is planned or has been completed, including information on the ultimate ***investor and participation in the capital*** [] ;
 - (b) [] ***the approximate*** value of the foreign direct investment;

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

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

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

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

If no information is provided, any comment issued by another Member State or any opinion issued by the Commission may be based on the information available to them.

Article 10

Confidentiality *of information transmitted*

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

Article 11

Contact points

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

Article 12

Group of experts on the screening of foreign direct investments into the European Union

The group of experts on the screening of foreign direct investments into the European Union providing advice and expertise to the Commission shall continue to discuss issues relating to the screening of foreign direct investments, share best practices and lessons learned, and exchange views on trends and issues of common concern relating to foreign direct investments. The Commission shall also consider seeking the advice of that group on systemic issues relating to the implementation of this Regulation.

The discussions in that group shall be kept confidential.

Article 13

International Cooperation

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

Article 14

Processing of personal data

- 1. Any processing of personal data pursuant to this Regulation shall be carried out in accordance with Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 and only in so far as it is necessary for the screening of foreign direct investments by Member States and for ensuring the effectiveness of the cooperation provided for in this Regulation.*
- 2. Personal data related to the implementation of this Regulation shall be kept only for the time necessary to achieve the purposes for which they were collected.*

Article 15

Evaluation

- 1. By ... [three years after the date of application of this Regulation] and every five years thereafter, the Commission shall evaluate the functioning and effectiveness of this Regulation and present a report to the European Parliament and to the Council. Member States shall be involved in this exercise and if necessary provide the Commission with additional information for the preparation of that report.*
- 2. Where the report recommends amendments to this Regulation, it may be accompanied by an appropriate legislative proposal.*

Article 16
Exercise of the delegation

1. *The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*
2. *The power to adopt delegated acts referred to in Article 8(4) shall be conferred on the Commission for an indeterminate period of time from ... [the date of entry into force of this Regulation].*
3. *The delegation of power referred to in Article 8(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*
4. *Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.*
5. *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*

6. *A delegated act adopted pursuant to Article 8(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.*

Article 17

Entry into force

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 apply from ... [18 months after entry into force of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament

For the Council

The President

The President

ANNEX

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

1. European GNSS programmes (Galileo & EGNOS):

Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of the European satellite navigation systems and repealing the Council Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council (OJ L 347, 20.12.2013, p. 1).

2. Copernicus:

Regulation (EU) No 377/2014 of the European Parliament and of the Council of 3 April 2014 establishing the Copernicus Programme and repealing Regulation (EU) No 911/2010 (OJ L 122/44, 24.4.2014, p. 44).

3. Horizon 2020:

Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104), including actions therein relating to Key Enabling Technologies such as artificial intelligence, robotics, semiconductors and cybersecurity.

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

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

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

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

6. Trans-European Networks for Telecommunications:

Regulation (EU) No 283/2014 of the European Parliament and of the Council of 11 March 2014 on guidelines for trans-European networks in the area of telecommunications infrastructure and repealing Decision No 1336/97/EC (OJ L 86, 21.3.2014, p. 14).

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

Regulation (EU) 2018/1092 of the European Parliament and of the Council of 18 July 2018 establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovation capacity of the Union's defence industry (OJ L 200, 7.8.2018, p. 30).

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

Council Decision (CFSP) 2018/340 of 6 March 2018 establishing the list of projects to be developed under PESCO (OJ L 65, 8.3.2018, p. 24).

ANNEX TO THE LEGISLATIVE RESOLUTION

COMMISSION STATEMENT

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

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