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2017/0224 (COD)**

NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	12137/17 + ADD 1 COMER 92 FDI 23 COMPET 601 IND 212 CODEC 1390
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 (First reading) - Mandate for negotiations with the European Parliament

1. On 13 September 2017, the Commission submitted to the Council the above-mentioned 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 (doc. 12137/17 + ADD1), as well as the related Communication (doc. 12217/17) and Commission Staff Working Document (doc. 12137/17 ADD 2). On 16 October 2017, all linguistic versions of the Commission proposal for a Regulation were transmitted to the Council.
2. On 11 October 2017, the European Parliament appointed Franck PROUST (EPP, FR) as rapporteur for the file. On 28 May 2018, the lead International Trade Committee (INTA) adopted its draft report. The decision to enter into inter-institutional negotiations is expected to be announced in the European Parliament plenary session of 11 to 14 June 2018, after which the European Parliament should be in a position to negotiate on the basis of the report. Delegations will be informed as soon as the European Parliament plenary decision is known.

3. On 19 April 2018, the European Economic and Social Committee, following a consultation by the Council, adopted its opinion on the draft Regulation (doc. 8456/18). On 23 March 2018, the European Committee of the Regions, on its own initiative, also adopted its opinion.
4. In the Council, the Commission's proposal has been discussed on a number of occasions. Following the initial presentation of the proposal at the lead Working Party on Trade Questions on 18 October 2017, the Chair of the Working Party decided to refer the matter to and seek further guidance from the Permanent Representatives' Committee, given the concern expressed by several delegations related to the fact that the proposal was exceptionally presented without an impact assessment. On 8 November 2017, the Permanent Representatives' Committee discussed the issue and mandated the Working Party on Trade Questions to identify additional information that the Commission should provide, while continuing work on the proposal. It also took note of the Commission's request for relevant information to be provided by the Member States. In reply to the questions identified by the Working Party on Trade Questions, the Commission Services (DG Trade) presented written information and analysis on four clusters of issues (problem definition, legal aspects, impact of the proposed regulation and issues pertaining to the trade and investment policy domain) to the Working Party on Trade Questions, as well as to the Trade Policy Committee (Services & Investment) for matters related to the Committee's competence. At the meeting of the Trade Questions Working Party on 7 March 2018, the Presidency concluded that the Commission had fulfilled its obligation in relation to the Permanent Representatives' Committee request. Delegations were invited to request any further explanations they might deem necessary, in the process of the article-by-article examination of the proposal.
5. The European Council, at its meeting of 22-23 March 2018, called on the co-legislators "*to make progress on the pending legislative proposals in the fields of investment [...]*". Furthermore, the Investment Screening Regulation proposal has been included in the Joint Declaration on the EU's Legislative Priorities for 2018-2019 agreed by the Presidents of the Commission, the Council and the European Parliament.

6. Based on the latest discussions at the Working Party on Trade Questions, the Presidency has prepared a compromise proposal, the consolidated version of which is attached in ANNEX.
7. Overall, the Presidency has gone a long way to accommodate the concerns of Member States and on most provisions there is broad support by delegations. Nevertheless, there are a few issues on which the Presidency considers that the discussion at technical level has reached its limits and on which political guidance is required. Therefore, the Presidency invites the Permanent Representatives' Committee to examine these issues as set out below:

- **On entry into force (Article 15)**

The Presidency has opted for an immediate entry into force of the Regulation (on the 20th day following the publication in the Official Journal of the European Union), but proposes to **postpone the application** of the Regulation in its entirety by **15 months**, contrary to the immediate application that was proposed by the Commission. This period should be sufficient for Member States to take the necessary steps to prepare for application of the Regulation.

- **On timelines related to the cooperation mechanism in relation to foreign direct investments undergoing screening (Articles 6.6 and 6.7)**

The timelines regarding the foreign direct investments undergoing screening are the provisions where a good balance would need to be struck between allowing sufficient time for Member States and the Commission to cooperate, and the need to avoid any delays in relation to the investment decisions concerned. In its compromise proposal, the Presidency has already streamlined the procedures significantly, reducing the timelines from more than 80 working days in the Commission proposal to **35 calendar days (15 calendar days** for Member States and/or the Commission to **notify their intention** to provide comments or an opinion respectively + **20 calendar days** for Member States and/or the Commission **to provide actual comments and/or the opinion itself**). In accordance with the Presidency compromise proposal, **additional information** can also be sought by the other Member States and /or the Commission and an **emergency procedure** has been provided.

- **On the Commission's opinion regarding foreign direct investments likely to affect projects and programmes of Union interest (Article 8.3 and recital 16)**

To maintain the overall balance, the Presidency advocates keeping the text as it stands. With respect to projects and programmes of Union interest, 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 in case its opinion is not followed"**. Opting for "due consideration" language that is used for all other foreign direct investments under the cooperation mechanism, or discarding the requirement to provide an explanation to the Commission in case its opinion is not followed, would not reflect the higher relevance commonly attached to projects and programmes of Union interest.

8. The Permanent Representatives' Committee is invited to consider this compromise proposal with a view to reaching agreement on a mandate for the Presidency to enter into informal negotiations with the European Parliament.

Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for screening of foreign direct investments into the European Union

(COM (2017) 487 final – 2017/0224 (COD))

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
1	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	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	Accept COM proposal
2	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	Accept COM proposal
3	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,	Accept COM proposal
4	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Accept COM proposal
5	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	Accept COM proposal
6	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Accept COM proposal
7	Whereas:	Whereas:	Accept COM proposal
8	(1) Foreign direct investment contributes to the Union's growth, by enhancing its	(1) Foreign direct investment contributes to the Union's growth, by enhancing its	Accept COM proposal

¹ All modifications in respect of the Commission proposal are presented in **bold and underlined** for additions, and in ~~**bold and strikethrough**~~ for deletions.

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	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.	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.	
9	(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.	(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.	Accept COM proposal
10	(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 Members States may adopt restrictive measures relating to foreign direct investment on the grounds of security or public order, subject to certain requirements.	(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 Members States may adopt restrictive measures relating to foreign direct investment on the grounds of security or public order, subject to certain requirements. <u>The framework established by this Regulation relates to foreign direct investment into the European Union. Outward investment and market access to third countries are dealt with under other</u>	

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		<u>trade and investment policy instruments.</u>	
11	(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.	(4) <u>This Regulation is without prejudice to the right of Member States to derogate to the free movement of capital as laid down in Article 65(1)(b) TFEU.</u> Several Member States have put in place measures according to which they may restrict the those <u>movements of capital between Member States and between Member States and third countries</u> 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.	
12	(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.	(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.	Accept COM proposal
13	(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.	(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.	Accept COM proposal
14	(7) It is important to provide legal certainty and to ensure EU wide coordination and	(7) It is important to provide legal certainty <u>for Member States' screening mechanisms</u>	

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	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.	<u>on the grounds of security and public order</u> , and to ensure EU wide coordination and cooperation by establishing a framework for the screening <u>on the screening</u> of foreign direct investment in the Union on grounds of likely to affect security or public order. This <u>common framework</u> is without prejudice to the sole responsibility of the Member States for the maintenance of national security, <u>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.</u>	
15	(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.	(8) The framework for the screening of foreign direct investment <u>and cooperation</u> 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. <u>The decision whether to set up a screening mechanism, or to screen a particular foreign direct investment remains the sole responsibility of the Member State</u>	

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		<u>concerned.</u>	
16	(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.	(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. <u>For greater certainty, this Regulation does not apply to portfolio investment.</u>	
17	(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.	(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.	Accept COM proposal
18	(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	(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 <u>screening determining whether a</u> foreign direct investment on the grounds of is	

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	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.	<u>likely to affect</u> security or public order. This list will also improve transparency of the screening process <u>Member States' screening mechanisms</u> 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.	
19	(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.	(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.	Accept COM proposal
20	(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	(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	

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	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.	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 <u>Member States' screening mechanisms do not discriminate</u> 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 <u>recourse against</u> screening decisions.	
21	(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	(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 <u>this Member State maintains a screening mechanism, or such investment is undergoing screening</u> 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	

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	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.	forwarded to the Commission. The Commission should also have the possibility, where appropriate, to issue an <u>non-binding</u> 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. <u>The Member State should give due consideration to the comments it receives from other Member States and to the opinion from the Commission through, where appropriate, measures available under its national legislation, or in its broader policy-making, 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.</u>	
22		<u>(15) The cooperation mechanism should only be used for the purpose of protecting security or public order. For that reason, a Member State should duly justify any</u>	

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		<u>request for information as regards a specific foreign direct investment in another Member State, as well as any comment it may 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 these requirements is also important in situations where an investor of a Member States competes with investors of third countries for acquiring assets or making an investment in another Member State.</u>	
23	(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	(15) Furthermore, the Commission should have the possibility to screen <u>provide a non-binding opinion with regard to</u> 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 <u>a</u> 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	

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	in relation to which foreign direct investment can be subject to a screening by the Commission should be listed in an Annex.	list of those 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. <u>The Member State should take utmost account of the opinion received from the Commission through, where appropriate, measures available under its national legislation, or in its broader policy-making, and provide an explanation to the Commission if it does not follow this 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.</u>	
24	(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	(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.	

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	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.	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.	
25		<u>(17) In order to ensure the proper functioning of the cooperation mechanism in relation to projects and programmes of Union interest, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend the list of projects and programmes of Union interest annexed 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 on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament</u>	

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		<u>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.</u>	
26		<u>(18) 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 limited period of 18 months after the completion of the foreign direct investment. The cooperation mechanism should apply only to foreign direct investments completed after the entry into force of this Regulation.</u>	
27	(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	(1719) 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, All Member States that do not have a screening mechanism should also report on the foreign direct investments that	

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	the basis of the information available to them.	took place in their territory, on the basis of the information available to them. <u>The Commission should facilitate compliance with the notification and reporting obligations by providing standardised forms considering, inter alia, relevant forms applied for the purpose of reporting to Eurostat when appropriate.</u>	
28	(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.	<u>(1820) To that end, In order to ensure the effectiveness of the cooperation mechanism,</u> 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 <u>for foreign direct investment undergoing screening as well as, upon request, for other foreign direct investment in which the foreign direct investment is planned or has been completed upon request of the Member States or of the Commission.</u> 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 <u>funding of the investment, including</u> subsidies granted by third countries.	

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29		<u>(21) Upon request by a Member State where the foreign 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 provide such information, it should notify the Member States concerned or the Commission without delay. In such case any comment issued by another Member State or any opinion issued by the Commission in the framework of the cooperation mechanism may be made on the basis of the information available to them.</u>	
30		<u>(22) When making available the information requested, Member States shall comply with Union law and national legislation that complies with Union law. In accordance with Article 346 TFEU, no Member State is obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.</u>	
31	(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.	(1923) The communication and cooperation at Member State and Union level should be enhanced through the establishment of <u>a</u> contact points for the screening of foreign direct investments implementation of the	

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		Regulation in each Member State.	
32	(20) Member States and the Commission should take all necessary measures to ensure the protection of confidential and other sensitive information.	(2024) Member States and the Commission should take all necessary measures to ensure the protection of confidential and other sensitive information <u>in compliance with in particular the Commission Decision (EU, Euratom) 2015/443² of 13 March 2015, on security in the Commission, Commission Decision (EU, Euratom) 2015/444³ of 13 March 2015, on the security rules for protecting EU classified information 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 Union⁴. Any information which is by nature sensitive (but not classified) or which is provided on a confidential basis shall be treated as such by the authorities.</u>	
33		[(25) Placeholder: Recital on personal data protection]	
34	(21) No later than three years after the entry into force of this Regulation, the Commission should present to the European Parliament and	(2126) No later than three years after the entry into force of this Regulation, By <u>(INSERT A DATE: 3 years of the start of</u>	

² OJ L 72, 17.3.2015, p. 41

³ OJ L 72, 17.3.2015, p. 53

⁴ OJ C 202, 7.7.2011, p. 13.

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
	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.	<u>application of this Regulation</u> 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.	
35	(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.	(2227) 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 stipulated in EU law, in the Agreement on the European Economic Area (EEA Agreement) and, in the WTO Agreement (including in particular Article XIV (a) and Article XIV bis of the GATS) <u>and in. It should also comply with EU law and be consistent with commitments made under</u> other trade and investment agreements or and arrangements to which the Union or Member States are <u>adherents or</u> parties.	
36	(23) When a foreign direct investment constitutes a concentration falling within the scope of Council Regulation (EC) No 139/2004 ⁵ , the implementation of this	(2328) When a foreign direct investment constitutes a concentration falling within the scope of Council Regulation (EC) No 139/2004 ⁶ , the implementation of this	Accept COM proposal

⁵ 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).

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	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.	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.	
37		<u>(29) This Regulation does not affect EU rules for the prudential assessment of acquisitions of qualifying holdings in the financial sector, which is a distinct procedure with a specific objective.</u>	
38	(24) This Regulation is consistent with and without prejudice to other notification and screening procedures set out in sectoral Union law,	<u>(2430)</u> This Regulation is consistent with and without prejudice to other notification and screening procedures set out in sectoral Union law,	Accept COM proposal
39	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	Accept COM proposal

⁶ 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).

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
40	Article 1 Subject matter and scope	Article 1 Subject matter and scope	
41	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.	<p><u>1. This Regulation establishes a framework for the screening by the Member States and the Commission of foreign direct investments into the Union on the grounds of security or public order <u>by setting certain procedural requirements, and for a cooperation mechanism between Member States and between them and the Commission with regard to foreign direct investments likely to affect security or public order.</u></u></p> <p><u>2. This Regulation is without prejudice to the sole responsibility of the Member States for the maintenance of national security, as provided for in Article 4(2) TEU, and to the right of the Member States to protect their essential security interests in accordance with Article 346 TFEU.</u></p> <p><u>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.</u></p>	
42			

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
43	Article 2 Definition	Article 2 Definitions	
44	For the purposes of this Regulation, the following definitions apply:	For the purposes of this Regulation, the following definitions apply:	Accept COM proposal
45	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;	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;	Accept COM proposal
46	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;	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;	
47	3. 'screening' means a procedure allowing to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments;	3. 'screening' means a procedure allowing to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments;	
48	4. 'screening mechanism' means an instrument of general application, such as a law or regulation, and accompanying administrative requirements, implementing rules or guidelines,	43. 'screening mechanism' means an instrument of general application, such as a law or regulation, and accompanying administrative requirements, implementing rules or guidelines,	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
	setting out the terms, conditions and procedures for the screening of foreign direct investments on grounds of security or public order;	setting out the terms, conditions and procedures for the screening of <u>to assess, investigate, authorise, condition, prohibit or unwind</u> foreign direct investments on grounds of security or public order;	
49		<u>4. 'foreign direct investment undergoing screening' means a foreign direct investment undergoing a formal assessment or investigation pursuant to a screening mechanism;</u>	
50	5. 'screening decision' means a measure adopted in application of a screening mechanism;	5. 'screening decision' means a measure adopted in application of a screening mechanism;	Accept COM proposal
51	6. 'undertaking of a third country' means an undertaking constituted or otherwise organised under the laws of a third country.	6. 'undertaking of a third country' means an undertaking constituted or otherwise organised under the laws of a third country.	Accept COM proposal
52			
53	Article 3 Screening of foreign direct investments	Article 3 Screening <u>mechanisms of Member States of</u> foreign direct investments	
54	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.	1. Member States may maintain, amend or adopt mechanisms to screen foreign direct investments <u>in their territory</u> on the grounds of security or public order, under the conditions and in accordance with the terms set out in this <u>Article Regulation.</u>	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
55	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.	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.	
56	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.	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.	Moved to Article 8.
57		2. Rules and procedures related to Member States' screening mechanisms shall be transparent and not <u>be applied in a discriminatory manner</u> 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.	Moved from Article 6 of COM proposal.
58		3. Member States shall <u>establish</u> <u>apply</u> timeframes <u>for issuing under their</u> screening <u>decisions mechanisms</u>. Such <u>timeframes mechanisms</u> shall allow them to take into account the comments of Member States referred to in Article <u>6, and 7</u> and the opinion	Moved from Article 6 of COM proposal.

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
		of the Commission referred to in Articles <u>6 and 8-and-9.</u>	
59		<u>4.</u> Confidential information, including commercially-sensitive information, made available <u>to the Member State undertaking screening by foreign investors and undertaking concerned</u> shall be protected.	Moved from Article 6 of COM proposal.
60		<u>5.</u> Foreign investors and undertakings concerned shall have the possibility to seek <u>judicial redress recourse</u> against screening decisions of the national authorities.	Moved from Article 6 of COM proposal.
61		<u>6.</u> Member States may maintain, amend or adopt measures necessary to prevent circumvention of the screening mechanisms and screening decisions.	Moved from Article 5 of COM proposal.
62		<u>7.</u> Member States shall notify to the Commission their existing screening mechanisms by [...] (INSERT DATE: <i>30 days of the entry into force of this Regulation</i>) 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 <u>or its amendments</u> at the latest.	Moved from Article 7 of COM proposal.
63		<u>8.</u> <u>Every 12 months the Commission shall publish in the Official Journal of the</u>	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
		<u>European Union a list of the Member States' screening mechanisms notified pursuant to paragraph 7. The first publication of the list shall take place no later than three months after the deadline for notifications made pursuant to paragraph 7.</u>	
64			
65	Article 4 Factors that may be taken into consideration in the screening	Article 4 Factors that may be taken into consideration <u>by the Member States or the Commission</u> in the screening	
66	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:	In screening <u>determining whether</u> a foreign direct investment <u>is likely to affect</u> on the grounds of security or public order, Member States and the Commission may consider the <u>its</u> potential effects on, inter alia:	
67	– critical infrastructure, including energy, transport, communications, data storage, space or financial infrastructure, as well as sensitive facilities;	– critical infrastructure, including energy, transport, communications, <u>media</u> , data storage, <u>aerospace</u> , <u>defence</u> , financial infrastructure, as well as sensitive facilities <u>and investments in land and real estate, crucial for the use of such infrastructure;</u>	
68	– critical technologies, including artificial intelligence, robotics, semiconductors, technologies with potential dual use	– critical technologies <u>and dual use items, as defined in Article 2.1 of Regulation (EC) No 428/2009</u> , including artificial intelligence,	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
	applications, cybersecurity, space or nuclear technology;	robotics, semiconductors, technologies with potential dual use applications , cybersecurity, <u>aerospace</u> , <u>defence</u> , <u>nanotechnologies</u> , <u>biotechnologies</u> or nuclear technologies;	
69	– the security of supply of critical inputs; or	– the security of supply of critical inputs, or <u>including energy, raw materials, components and semi-finished products</u> ;	
70	– access to sensitive information or the ability to control sensitive information.	– access to sensitive information or the ability to control sensitive <u>such</u> information; or	
71		– the plurality of the media.	
72	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.	In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission may <u>also</u> take into account whether the foreign investor is <u>directly or indirectly</u> controlled by the government of a third country, including through significant funding.	
73			
74	Article 5 Anti-circumvention	Article 5 Anti-circumvention	Moved to Article 3
75	Member States may maintain, amend or adopt measures necessary to prevent circumvention of the screening mechanisms and screening	Member States may maintain, amend or adopt measures necessary to prevent circumvention of the screening mechanisms and screening	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
	decisions.	decisions.	
76			
77	Article 6	Article 6	Moved to Article 3
78	Framework for Member States' screening	Framework for Member States' screening	
79	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.	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.	
80	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.	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.	
81	3. Confidential information, including commercially-sensitive information, made available by foreign investors and undertaking concerned shall be protected.	3. Confidential information, including commercially-sensitive information, made available by foreign investors and undertaking concerned shall be protected.	
82	4. Foreign investors and undertakings concerned shall have the possibility to seek judicial redress against screening decisions of the national authorities.	4. Foreign investors and undertakings concerned shall have the possibility to seek judicial redress against screening decisions of the national authorities.	
83			
84	Article 7 Notification by Member States of screening	Article 7 <u>5</u> Notification by Member States of screening	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
	mechanisms and annual reporting	mechanisms and <u>A</u>annual reporting	
85	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.	1. Member States shall notify to the Commission their existing screening mechanisms by [...] (INSERT DATE: 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.	Moved to Article 3.
86		1. Member States that do not maintain screening mechanisms shall provide the Commission with an annual report covering <u>aggregated information on</u> foreign direct investments that took place in their territory, on the basis of information available to them, <u>and aggregated information on the requests received from other Member States pursuant to Articles 6(6) and 7(5).</u>	Moved from Article 7.3.
87	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:	2. Member States that maintain screening mechanisms shall provide <u>in addition</u> the Commission with an annual report on the application of their screening mechanisms aggregated information on the application of their screening mechanisms <u>F</u> for each reporting period, the report shall include in particular information on:	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
88	(a) foreign direct investments screened and undergoing screening;	(a) foreign direct investments screened and undergoing screening;	
89	(b) screening decisions prohibiting foreign direct investments;	(b) screening decisions prohibiting foreign direct investments;	
90	(c) screening decisions subjecting foreign direct investments to conditions or mitigating measures;	(c) screening decisions subjecting foreign direct investments to conditions or mitigating measures;	
91	(d) the sectors, origin, and value of foreign direct investment screened and undergoing screening.	(d) the sectors, origin, and value of foreign direct investment screened and undergoing screening.	
92	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.	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.	
93			
94	Article 8 Cooperation mechanism	Article 8 <u>Cooperation mechanism in relation to foreign direct investments undergoing screening</u>	
95	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	1. A Member States shall <u>notify inform</u> the Commission and the other Member States of any foreign direct investments <u>in its territory</u> that is are undergoing screening within the framework of their screening mechanisms. <u>by providing the information referred to in</u>	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
	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.	Article 9(2) as soon as possible, within 5 working days from the start of the screening. As part of the information, and when applicable, the screening Member State 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. This notification may include a list of Member States whose security or public order is deemed likely to be affected.	
96	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.	2. Where a Member State considers that a foreign direct investment planned or completed <u>undergoing screening</u> in another Member State is likely to affect its security or public order, <u>or has information relevant for such screening</u> , it may provide comments to the Member State <u>undertaking the screening</u> where the foreign direct investment is planned or has been completed . The comments shall be forwarded to the Commission in parallel.	
97	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.	3. Where the Commission considers that a foreign direct investment <u>undergoing screening</u> is likely to affect security or public order in one or more than one Member States, <u>or has relevant information in relation to that foreign direct investment</u> , it may issue an	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
	The Commission may issue an opinion irrespective of whether other Member States have provided comments.	opinion addressed to the Member State undertaking the screening 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.	
98		<u>4. A Member State which duly considers that a foreign direct investment on its territory is likely to affect its security or public order may request the Commission to issue an opinion.</u>	
99		<u>5. The comments referred to in paragraph (2) and the opinions referred to in paragraph (3) shall be duly justified.</u>	
100		<u>6. No later than 15 calendar days following the receipt of the information referred to in paragraph 1, other Members States and the Commission shall notify the Member State undertaking 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.</u> <u>Any request for additional information shall be duly justified, limited to information</u>	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
		<u>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 screening.</u>	
101	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.	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.	
102	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.	5. Comments pursuant to paragraphs 2 or opinions pursuant to paragraph 3 shall be addressed to the Member State <u>undertaking the screening</u> where the foreign direct investment is planned or has been completed within a reasonable period of time, and in any case no later than <u>35 calendar</u> 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.	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
		<p><u>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).</u></p> <p><u>Notwithstanding paragraph 6, the Commission may issue an opinion following comments from other Member States within the deadlines of this paragraph.</u></p>	
103		<p><u>8. In the exceptional case where the Member State undertaking screening considers that its security or public order requires immediate action, it shall notify other Member States and the Commission of its intention to issue a screening decision before the timeframes referred to in paragraph 7. The other Member States and the Commission shall endeavour to provide comments or to issue an opinion expeditiously.</u></p>	
104	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.	<p><u>96. The Member State <u>undertaking screening</u> 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</u></p>	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
		Commission referred to in paragraph 3 <u>without prejudice to the provisions of Article 8. The final screening decision shall be taken by the Member State undertaking screening.</u>	
105	7. Cooperation between Member States pursuant to this Article shall take place through the contact points referred to in Article 12.	10.7. Cooperation between Member States pursuant to this Article shall take place through the contact points referred to in Article 12 11.	
106			
107		<u>Article 7</u> <u>Cooperation mechanism in relation to foreign direct investments not undergoing screening</u>	
108		<u>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 the Member State where the foreign direct investment is planned or has been completed. The comments shall be forwarded to the Commission in parallel.</u>	
109		<u>2. Where the Commission considers that a foreign direct investment planned or completed in a Member State which is not</u>	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
		<u>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.</u>	
110		<u>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.</u>	
111		<u>4. The comments referred to in paragraph 1 and the opinions referred to in paragraph 2 shall be duly justified.</u>	
112		<u>5. Where the Commission or a Member State consider that a foreign direct investment which is not undergoing screening is likely to affect security or public order as referred to in paragraphs 1 and 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.</u>	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
		<u>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.</u>	
113		<u>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 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 10 additional calendar days for issuing the opinion.</u>	
114		<u>7. The Member State where the 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 without</u>	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
		<u>prejudice to the provisions of Article 8.</u>	
115		<u>8. Member States may provide comments pursuant to paragraph 1 and the Commission may provide an opinion pursuant to paragraph 2 no later than 18 months after the foreign direct investment has been completed. This article shall not apply to foreign direct investments completed before the entry into force of this Regulation.</u>	
116		<u>9. Cooperation between Member States pursuant to this Article shall take place through the contact points referred to in Article 11.</u>	
117			
118	Article 9 Framework for Commission screening	Article 9 Framework for Commission screening <u>Foreign direct investments likely to affect projects or programmes of Union interest</u>	
119	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.	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. <u>The procedures set out in Articles 6 and 7</u>	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
		<u>shall apply accordingly.</u>	
120	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.	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.	
121	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.	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.	
122	4. The opinion of the Commission shall be communicated to the other Member States.	24. The opinion of the Commission shall be communicated to the other Member States.	
123	5. The Member States where the foreign	35. The Member States where the foreign	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
	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.	direct investment is planned or has been completed shall take utmost account of the Commission's opinion <u>and provide an explanation to the Commission in case its opinion is not followed.</u>	
124		<u>4. For the purpose of this Article,</u> 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. The An indicative list of projects or programmes of Union interest is included in Annex 1.	Moved from Article 3 of COM proposal.
125		<u>5. The Commission shall adopt delegated acts in accordance with Article 14 to amend the list of projects and programmes of Union interest in Annex I.</u>	
126			
127	Article 10 Information requirements	Article 40 Information requirements	
128	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	1. Member States shall ensure that the information <u>notified pursuant to Article 6(1)</u> or requested by the Commission and other Member States pursuant to Articles <u>6(6) and 7(5)</u> 8(4) and 9(2) is made available to the	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
	undue delay.	Commission and the requesting Member States without undue delay.	
129	2. The information referred to in paragraph 1 of this Article shall include in particular:	2. The information referred to in paragraph 1 of this Article shall include in particular :	
130	(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;	(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;	
131	(b) The value of the foreign direct investment;	(b) The <u>approximate</u> value of the foreign direct investment;	
132	(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 ;	(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 ;	
133	(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;	(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 <u>relevant</u> business operations;	
134	(e) The funding of the investment, on the basis of information available to the Member State.	(e) The funding of the investment, on the basis of information available to the Member State.	
135		<u>3. Member States shall endeavour to provide any information additional to that referred to in paragraphs 1 and 2, if</u>	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
		<u>available, to requesting Member States and to the Commission without undue delay.</u>	
136		<u>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.</u>	
137		<u>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 provide the information referred to in paragraph 1. The Member State shall duly justify the reasons for not providing such information and explain the best efforts undertaken to obtain the requested information, including a request pursuant to paragraph 4.</u> <u>In such case, any comment issued by another Member State or any opinion issued by the Commission may be based on the information available to them.</u>	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
138			
139	Article 11 Confidentiality	Article 11 10 <u>Confidentiality of information transmitted</u>	
140	1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.	1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.	Accept COM proposal
141	2. Member States and the Commission shall ensure the protection of confidential information acquired in application of this Regulation.	2. Member States and the Commission shall ensure the protection of confidential information acquired in application of this Regulation <u>in accordance with Union law and their national legislation.</u>	
142		<u>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.</u>	
143			
144	Article 12 Contact points	Article 12 11 Contact points	
145	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.	1. Each Member State shall appoint a foreign direct investment screening contact point ('FDI screening contact point') for the screening of foreign direct investment <u>implementation of this Regulation.</u> The Commission and other Member States shall involve these FDI screening contact points on all issues related to implementation of this	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
		Regulation.	
146		2. <u>A secure and encrypted system shall be provided by the Commission to support direct cooperation and exchange of information between the contact points and between them and the Commission.</u>	
147			
148		[Placeholder: new Article 12 <u>Processing of personal data</u>]	
149			
150	Article 13 Evaluation	Article 13 Evaluation	
151	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.	1. <u>By (INSERT A DATE: 3 years of the start of application of this Regulation)</u> 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 <u>if necessary shall</u> provide the Commission with necessary <u>additional</u> information for the preparation of that report.	
152	2. Where the report recommends modifying the provisions of the Regulation, the report may be accompanied by an appropriate legislative proposal.	2. Where the report recommends modifying the provisions of the Regulation, the report may be accompanied by an appropriate legislative proposal.	Accept COM proposal
153			

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
154		Article 14 <u>Exercise of the delegation</u>	
155		<u>1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.</u>	
156		<u>2. The power to adopt delegated acts referred to in Article 8(5) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of the basic legislative act].</u>	
157		<u>3. The delegation of power referred to in Article 8(5) 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 <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</u>	
158		<u>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 on Better Law-Making of 13 April 2016.</u>	

Line	Original Commission proposal (COM (2017) 487 final)	Final Presidency compromise proposal of 8 June 2018 ¹	Comments
159		<u>5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</u>	
160		<u>6. A delegated act adopted pursuant to Article 8(5) shall enter into force only if no objection has been expressed either by the European Parliament or by 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.</u>	
161			
162	Article 14 Entry into force	Article 14 15 Entry into force	
163	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	<u>1.</u> This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> . <u>It shall apply from (INSERT A DATE: 15 months of entry into force).</u>	
164	This Regulation shall be binding in its entirety and directly applicable in all Member States.	<u>2.</u> This Regulation shall be binding in its entirety and directly applicable in all Member States.	

Line	Original Commission proposal (COM (2017) 487 final)		Final Presidency compromise proposal of 8 June 2018 ¹		Comments
165					
166	Done at Brussels,		Done at Brussels,		Accept COM proposal
	<i>For the European Parliament</i>	<i>For the Council</i>	<i>For the European Parliament</i>	<i>For the Council</i>	
	<i>The President</i>	<i>The President</i>	<i>The President</i>	<i>The President</i>	