European Commission proposes framework for screening of foreign direct investments in the EU

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The European Commission has proposed new initiatives for the screening of investments in European companies and protection of significant social and economic interests in order to manage foreign state-owned or private companies’ control of strategic European assets.

Background

From a global perspective, the EU is an attractive area for foreign investors, and according to OECD figures EU member states have the fewest restrictions in the world on foreign investments. Among the reasons for this are the EU treaties which are characterised by a fundamental principle of openness to other states that are seen as an important source of growth and jobs. But this openness also gives foreign investors a relatively easy access to make investments that may be detrimental to European strategic interests.

Proposed regulation by the European Commission

Now, the European Commission has therefore proposed a number of initiatives to prevent foreign investors from gaining control or influence over vital areas such as:
In order to ensure that these essential interests will continue to be controlled by parties based in EU member states, the European Commission has proposed the following initiatives:

- A European framework allowing member states to screen foreign direct investments on grounds of security or public order (similar to the screenings made by national competition authorities in merger control cases).
- A cooperation mechanism between the member states and the European Commission that can be activated when a specific foreign investment may affect the security or public order in a member state.
- A screening process undertaken by the European Commission on grounds of security and public order when foreign direct investments may affect projects or programmes of Union interest. This includes projects in the areas of research, space, transport, energy and telecommunications.

It is proposed to allow member states to block investments if they put the above interests at risk and to use screening systems that are similar to those already used for merger control purposes.

In that way, the Commission’s proposal seeks, in particular, to prevent foreign state-owned or controlled companies from making investments in the EU whereby they will gain control or influence over European firms whose activities are critical for the security and public order of the Union.

The proposed screening framework is largely identical to the foreign investment screening procedure which has been applied for many years by the Committee on Foreign Investments in the United States (CFIUS). The CFIUS procedure has
become increasingly relevant, and the number of CFIUS investigations reached record levels in 2016 and 2017. Thus, CFIUS investigated more than 170 transactions in 2016. It was also in 2016 that an acquisition of a US company was first blocked by a presidential order.

Next step?

The Commission’s three proposals must be adopted by the European Parliament and the Council as part of the general legislative procedure. To ensure prompt protection of EU interests, the Commission has taken two additional measures that can be implemented right away:

- The Commission will set up a coordination group with representatives of all member states to focus on inward foreign direct investments. The group will deal with all issues within the scope of the proposed regulation and will also be a forum for wider discussions. The group is to identify sectors that have strategic implications for the EU from a security and public order point of view.
- At the end of 2018, the Commission will make an analysis of foreign direct investment flows into the EU, focusing on strategic sectors such as energy, space and transport, and on assets such as key technologies, critical infrastructure, and sensitive data. The focus will be on investments made by investors that are ultimately owned or controlled by third countries.

Read more

Read the European Commission’s proposal
See fact sheet on the European Commission’s proposal
Read more about the CFIUS mechanism