



European Commission Proposes Screening Mechanism for Foreign Direct Investment into the European Union

The European Commission ("Commission") has published a legislative proposal that seeks to establish a screening framework across the European Union ("EU") for foreign direct investment ("FDI") that may affect security or public order in EU Member States. In addition to laying down the framework for reviews carried out by the Member States, the proposal includes the possibility for the Commission to review specific investments.

Whereas nearly half of the EU Member States currently have an FDI screening mechanism in place, the rest do not. Importantly, the proposal does not require Member States to adopt or maintain a screening mechanism for FDI.

Its objective is to create an enabling framework for Member States that already have or wish to put a screening mechanism in place, and to ensure that any such screening mechanism meets certain basic requirements.

EU Member States would be required to inform other Member States and the Commission about any FDI that they are screening. The Commission could issue a nonbinding opinion on such FDI. Other Member States can also raise concerns and provide comments.

The Commission could also screen FDI that is likely to affect projects or programs of EU interest on the grounds of security or public order. In this context, the Commission could issue a nonbinding opinion addressed to the Member State where the FDI is planned or has been completed. The Member States in question would have to "take utmost account" of the Commission's opinion and provide it with explanations in case the opinion is not followed.

Finally, there is an anti-circumvention clause targeting situations in which an investment takes place by an EU investor who is owned or controlled by a foreign investor, through artificial arrangements that do not reflect economic reality and are intended to circumvent screening mechanisms.

The proposal has been sent to the Council of the European Union and the European Parliament for adoption. Jones Day will carefully follow the legislative process and any amendments that may be made to the proposal by either the Council or the European Parliament.

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