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Screening of foreign investment in strategic sectors

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On September 25, the European Parliament Committee on International Trade (INTA) held a first exchange of views on the European Commission's proposal for an EU screening mechanism of foreign investment in strategic sectors.

The majority of the MEPs welcomed the Commission's suggestions for more transparency and exchange of information among member states, but there were also some reservations related to the need for a regulation on the matter, the broad scope of the proposal, and the lack of ambition as regards reciprocity. A number of MEPs were also concerned that the Commission is interfering with the decision-making processes of member states. Please find more details below.

Rapporteur Franck Proust (EPP, FR) stated that the European Commission has met the expectations of the MEPs and Council in coming forward with this proposal. He recognised the need to act quickly and understood that the impact assessment was not conducted for this proposal and against this background. The EU should remain open to investment, but there are concerns that certain third countries – like China and Brazil – are targeting strategic sectors at an increasing rate. At the same time, all EU trading partners have screening mechanisms, which already exist in member states. In this respect, he called on the European Commission to come forward with a clear figure of the member states that already have these mechanisms in place.

Since 2015, EU investments in China have fallen significantly. This shows that EU companies face significant constraints when trying to invest in that country. Against this background, the European Commission needs to ensure some reciprocity. The surveillance mechanism is not to prevent investment from third countries; it aims to ensure that big investments and investments that would transform the entire sector are properly monitored. The EU should discover too late that all its assets are gone, he argued.

Finally, he criticised the proposal for lacking ideas on how to boost EU investments abroad and asked his colleagues to come forward with suggestions on this.

Maria Martin-Prat, Directorate B, Services and Investment, Intellectual Property and Public Procurement, DG TRADE, presented the main objectives of the European Commission proposal. She stated that the importance of Foreign Direct Investment (FDI) in the economy and the creation of wealth and employment in the European Union must be kept in mind. The aim of the European Commission was to strike a balance between ensuring that the EU remains open to investment but also has the means to control foreign take-overs when they invade public interest or threaten the safety of an EU member state. The screening would therefore take place on the grounds of security and public order.

The draft regulation is there to enable member states to adopt or maintain screening mechanisms on these grounds and change them as they seem fit. It also aims to provide guidance for factors that member states should take into account during the screening process. The European Commission has also set out those basic procedural elements that screening mechanisms in member states should have, i.e. non-discrimination, transparency, and judicial review. The Commission also proposes the establishment of a cooperation mechanism among member states as well as between member states and the EU executive. This is because an investment can have a cross border effect or may affect projects of common European interest. The draft regulation also foresees that the European Commission will be able to adopt opinions in the case the FDI under screening is constituting a threat to public order or security or to projects of common interest. The proposal also attempts to improve transparency of FDI; it proposes the establishment of a framework for member states to be more transparent and to report on an annual basis on the FDI but also provide information on request.

Mrs Prat then explained that the proposal builds upon the understanding that this is an area where national sensitivities are different. There are twelve member states that currently have such a mechanism; some have broader grounds than others. The landscape is quite divergent, therefore there is the need to enhance cooperation on the matter. She finally recalled that this is an important tool, but not the only one that the EU has in its possession for its attempts to create a level playing field. The screening mechanism would definitely improve reciprocity, but all bilateral investment agreements aim to enhance the EU access to the market.

Maria Arena (S&D, BE) wondered what is the purpose of the screening mechanism, arguing that the exchange of information is a means without an end. If the EU shows that there are sensitive sectors that a third country invests in, then it should be able to ask for reciprocity in negotiations with that country. She then asked whether the mechanism would be a control mechanism through which the EU would be able to get its hands on ill-gotten gains. “Would the mechanism allow for the EU to not need ISDS for sensitive sectors in investment agreements?" she asked. Furthermore, she asked the Commission to clarify whether state aid to third country companies that operate in Europe is being taken into account. She then wondered how to define sensitive sectors and whether the steel sector could be considered one. Finally, she asked the European Commission to comment on the alternatives that could fill the gap such investments would leave behind if they do not pass the screening test.

Alessia Maria Mosca (S&D, IT) spoke on behalf of shadow rapporteur Emmanuel Maurel (S&D, FR). MEP Maurel welcomes the European Commission proposal, although he is of the opinion that it came very late. To his view, all member states should already have a screening mechanism in play, if one compares the EU to third countries. Not all investments are well intentioned and therefore it makes sense to enable member states to protect their strategic assets from assertive competition. Cooperation is important, as a company can make use of its dominant position in a member state in order to extend its influence over others. A common European framework is a more effective tool for the EU to become more powerful in trade negotiations, compared to the current fragmented system. The scope of the screening framework seems broad enough. The creation of the cooperation mechanisms reinforces information sharing among several member states and therefore it is a step in the right direction. However, the fact that this mechanism does not seek to require member states to adopt a screening mechanism undermines the effectiveness of the measure. A proper European mechanism would be more efficient. The possibility for the Commission to screen investments is also welcomed, but there seems to be elements that prevent the draft regulation from reaching its full potential. There is no IP like reciprocity instrument when it comes to investment or no blocking grounds for the European Commission.

Inmaculada Rodríguez-Piñero Fernández (S&D, ES) wondered what was the reaction by third countries before the announcement was made by President Juncker. She then asked the Commission to clarify how any conflict between member states could be resolved and who will be responsible for defining the sensitivity of this sector.

Hannu Takkula (EPP, FI) feared that the draft regulation would increase red tape and allow member coordination of some sort, but stressed that decision making power must remain fully with member states. There is currently competition among member states in attracting FDI; it should therefore be up to them to decide whether a project is in line with their strategic goals. The EU should also seek the conclusion of investment agreements with third countries. He finally highlighted that the exchange of information is needed, and therefore welcomed the establishment of a coordination group to this end. A comprehensive analysis should have been conducted before bringing forward the proposal, he concluded.

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