

**Proposal for a regulation establishing a framework for the screening of foreign direct investment into the European Union
(COM(2017) 487)**

**Communication from the Commission "Welcoming Foreign Direct Investment while Protecting Essential Interests"
(COM(2017) 494)**

APPROVED FINAL DOCUMENT

The Committee on Economic Activities, Trade and Tourism of Italy's Chamber of Deputies, having examined, pursuant to Rule 127 of the Chamber's Rules of Procedure, the proposal for a Regulation establishing a framework for the screening of foreign direct investment into the European Union (COM (2017) 487) and the Communication "Welcoming Foreign Direct Investment while Protecting Essential Interests "(COM (2017) 494);

taking note of the information and analyses gained over the course of the hearings on the document;

Whereas:

- The European Union is still both the main source and the main destination of foreign direct investment (FDI) in the world. According to the OECD, FDI into the European Union in 2016 totalled USD 538 billion, while investments from China have been increasing significantly in recent years;
- Thanks to the quality and high added value of its systems of production, Europe is a particularly attractive destination for “sovereign funds”, most of whose financial resources are concentrated in Asia and the Middle East, but several EU Member States, including Italy, are beginning to voice concerns at the far-reaching political and strategic implications of FDI;
- Moreover, several countries, such as Australia, Canada, China, India, Japan, Russia and the United States, have put in place and are now deploying mechanisms to screen FDI. Meanwhile, several international institutions, such as the International Monetary Fund (IMF) and the Organisation for Economic Cooperation and Development (OECD), have developed measures to regulate the activities of sovereign wealth funds. The measures are “soft” in as much as they consist of codes of conduct or best practices, are non-mandatory, and are based on the voluntary compliance of the interested parties;
- According to the European Commission, legislative action is urgently needed to regulate the question at a European level in view of the considerable increase in the number of cases in which foreign investors, especially sovereign funds, have sought to acquire strategic activities through which they can control or influence European companies whose activities are crucial for security and public order. The activities of the companies in question concern,

among other things, critical technologies, infrastructure and manufacturing inputs and sensitive information;

- Several Member States, including Italy, already have laws that circumscribe FDI activities. The EU as a whole, however, lacks a comprehensive legal framework to address the question in all its aspects, which is why the European Commission, acting also at the request of Italy, has proposed a regulation;
- Foreign direct investment is an integral part of the common commercial policy, over which the European Union has exclusive competence as decreed by articles 3 and 207 of the Treaty on the Functioning of the European Union (TFEU). However, as established by the case law of the Court of Justice, the EU may not prevent a Member State from screening FDI activities for reasons of security or public order. The proposed Regulation does not require Member States to adopt FDI controls, nor does it exhaustively dictate the substantive and procedural characteristics of the control mechanisms to which it refers. Rather, it lays out a set of essential features that the FDI control mechanisms of Member States should share, though without specifying what strict control might entail;
- The most noteworthy precedent in the proposed Regulation is that it would endow the European Commission with the power to screen FDIs that risk impinging upon projects or programmes that are of interest to the Union for reasons of security or public order. In particular, the proposal would empower the European Commission to issue an opinion to Member States that are planning to accept, or have already accepted an FDI;

Mindful that the present final document needs to be forwarded without delay to the European Commission as part of the political dialogue, as well as to the European Parliament and the Council;

expresses a

FAVOURABLE OPINION

with the following remarks:

- a) While the commitment of the European Commission to tackling a rapidly growing phenomenon that is capable of upsetting the international economic and financial order is to be commended, it nonetheless needs to be asked whether it might not be appropriate, in light of the broad scope of the European Union's powers in this area, to take a more incisive approach than envisaged in this proposal, which may well be too cautious;
- b) Given that proper transparency is a prerequisite for the sound evaluation of the potential impact of foreign investments on security and public order, it is to be hoped that the EU will act to ensure that the ultimate identity of investors can be fully ascertained;
- c) Given that the notion of "control" as proposed is too broad and generic in as much as it refers to a variety of different situations and essentially replicates the contingencies already covered in the national laws of various Member States, consideration should be given to the possibility of scaling the actions according to the levels of control allowed;

- d)* With regard to the European Commission's right, set forth in article 9 of the proposal for a Regulation, to issue an opinion addressed to the Member State where the foreign direct investment is planned or has been completed, it might very well be better to allow the European Commission to intervene not only as a matter of standard procedure, but also at the specific request of a Member State;
- e)* With a view to strengthening the powers of the European Commission and enforcing greater uniformity and consistency of approach, consideration should be given to the possibility of increasing the executive force of the European Commission's opinions, which Member States are currently free to ignore, provided that they simply fulfil the obligation to explain their reasons for not conforming. In fact, once it has expressed its opinion, the European Commission has little further scope for action;
- f)* Following the same line of reasoning, no countenance should be given to the demand made by some Member States in the course of the negotiations on this proposal that the European Commission should submit a full impact study on its proposals before continuing with the negotiations, as this would constitute an excessively burdensome requirement that might handicap the actions that the European Commission needs to take;
- g)* With regard to the obligation of Member States to submit an annual report apprising the European Commission of the FDI screening mechanisms they use, it might be appropriate to ensure that this information is forwarded also to the European Parliament and to the Council so that they might acquire intelligence that will be helpful for deciding on possible changes to the relevant European legislation;
- h)* In recognition of the desirability of adopting a common international regulation that is shared also by third countries rather than by European states alone, genuine reciprocity needs to be assured by taking action against those countries that currently set barriers to direct investment from the EU.