

Debate: A Common European Law on Investment Screening?

Hindelang, Steffen; Moberg, Andreas

Published in:
VerfBlog

DOI:
10.17176/20190211-214203-0

Publication date:
2019

Document version:
Final published version

Document license:
CC BY-NC-ND

Citation for pulished version (APA):
Hindelang, S., & Moberg, A. (2019). Debate: A Common European Law on Investment Screening? *VerfBlog*, 2(04). <https://doi.org/10.17176/20190211-214203-0>

Go to publication entry in University of Southern Denmark's Research Portal

Terms of use

This work is brought to you by the University of Southern Denmark.
Unless otherwise specified it has been shared according to the terms for self-archiving.
If no other license is stated, these terms apply:

- You may download this work for personal use only.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying this open access version

If you believe that this document breaches copyright please contact us providing details and we will investigate your claim.
Please direct all enquiries to puresupport@bib.sdu.dk

Debate: A Common European Law on Investment Screening?

VB verfassungsblog.de/debate-a-common-european-law-on-investment-screening/

A Common EU Law on Investment Screening Debate: A Common European Law on Investment Screening? Steffen Hindelang ,
Andreas Moberg Mo 4 Feb 2019

Mo 4 Feb 2019

Volvo Personvagnar AB, Kuka, Aixtron, OSRAM Licht, Daimler, Saxo Bank, the harbour terminal in Zeebrugge, Spain's Noatum Port, Italy's Vado Ligure Port or the Port of Piraeus – the list of discussed controversial company takeovers and acquisitions of major stakes in Europe is getting longer and longer. The political will in the European Union (EU) and its Member States is growing to more actively screen, control, or even prevent investments flowing into Europe.

Third country investments stirring controversies archetypically share three common characteristics. The target companies typically operate in “politically sensitive areas”, the owner structure of the immediate buyer is typically hard to identify, and not very clear, and the foreign purchaser may well attempt to circumvent rules for non-EU investors through an intermediary company resident in the EU.

Even though more or less controversial takeovers occur on a regular basis, opinion varies amongst the EU member states on whether or not investment screening is a priority. Only 13 out of 28 Member States have an investment screening mechanism in place, signalling that the majority of member states do not consider screening important. On the other hand, some of the member states have recently tightened their grip on foreign investment. The instruments vary greatly in scope and function and the EU as a whole – in contrast to all G7 countries and China – is still without any common mechanism to review foreign investment.

Responding to a political proposal by France, Germany, and Italy, and after the European Parliament requested a legislative initiative, the European Commission tabled a *Proposal for a Regulation establishing a framework for screening of foreign direct investments into the European Union* in September 2017. In 2018, the proposal was negotiated and an EU institutional triologue was conducted in late 2018. EP vote in plenary is scheduled for 14 February 2019.

The regulatory proposal has received rather mixed responses. From cautious embraces or indifference by some Member States to outright rejection by others. The apprehension of alienating foreign investment with an all too strict review mechanism is palpable. Among other stakeholders, such as businesses and trade unions, reception of the EU's proposal also varies. Some fear a gradual renunciation of a liberal, open-door economic policy and turn to protectionism. Others, in contrast, draw the picture of a slowly exsanguinating European economy, know-how and innovative power silently flowing to other parts of the world.

Indeed, the list of concerns is long. Irrespective of political preferences, a screening mechanism potentially blocking or restricting investment pose a challenge to EU business. Considering the political dimension, foreign investment is not seldom viewed sceptically as it may allow foreign governments to wield political influence in Europe. Moreover, a sense of inherent unfairness is in the air since there is often a lack of reciprocity in foreign direct investment (FDI) policy for EU companies investing abroad. In a nutshell, EU-harmonization of FDI-screening is a multi-faceted challenge, with consequences in political strategical level as well as on the level of multinational business.

From 07 to 8 March 2019, thirty international experts from Europe and its mayor trading partners will come together and debate this multi-faceted challenge in an international conference on "A Common European Law on Investment Screening" in Gothenburg/Sweden.

Prior this event we have invited conference speakers and, additionally, some eminent scholars to take sides in this controversy in an online symposium.

The logo for CELIS, consisting of the word "CELIS" in a bold, red, sans-serif font.

SUGGESTED CITATION Hindelang, Steffen; Moberg, Andreas: *Debate: A Common European Law on Investment Screening?*, *VerfBlog*, 2019/2/04, <https://verfassungsblog.de/debate-a-common-european-law-on-investment-screening/>, DOI: <https://doi.org/10.17176/20190211-214203-0>.