



Latest trends in EU investment policy:

- modernisation of the Energy Charter Treaty
- the new EU framework for screening of foreign direct investment

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I. Modernisation of the Energy Charter Treaty (ECT)

1. History of the ECT

History

Objectives when negotiated in early 90's

- create a forum for East-West cooperation*
- to facilitate investments in the energy sector by offering protection against key commercial risks and investor to state dispute settlement (ISDS)*
- to ensure non-discriminatory transit of energy goods through pipelines and grids*

2. What is the situation today?

Situation in 2019

- *from transit of fossil fuels to production of renewable energy- climate goals*
- *investment protection: major reforms to re-balance and clarify investment protection provisions and minimise shortcomings of ISDS*
- *transit: in the EU there are liberalised, integrated markets with third party access*

3. What do we need? Timeline?

- *Reinforce the sustainable development angle*
- *On investment protection: bring the outdated ECT provisions in line with a modern approach*
- *On transit: adapt the ECT to the requirements of integrated energy markets with third party access rights*
- *Timeline: process in started 2018; negotiations to be launched in autumn 2019?*

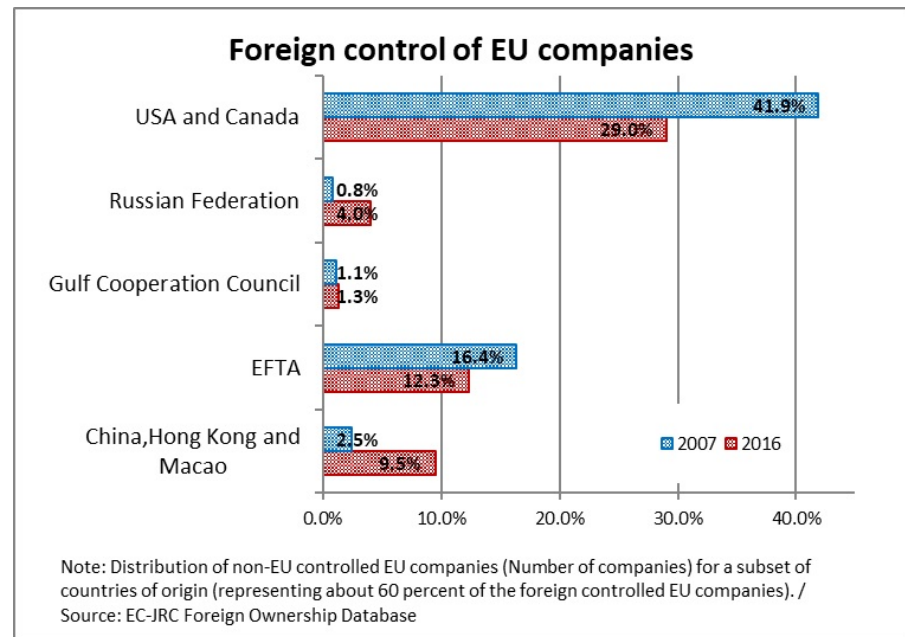
II. New EU framework on FDI screening (entry into force in April 2019)

Why?



Changing patterns for investments into the Union

- New players
- New strategies
- New risks



Interconnection & interdependence

- Single market / openness
- Connected Member States
(e.g. pipelines, grids)

➤ *Raising awareness of EU security challenges*



Re-shaping screening policies

- Most foreign partners
- ½ of EU Member States (including UK)
- *No EU cooperation, no EU action*



What does the regulation do and what it doesn't?



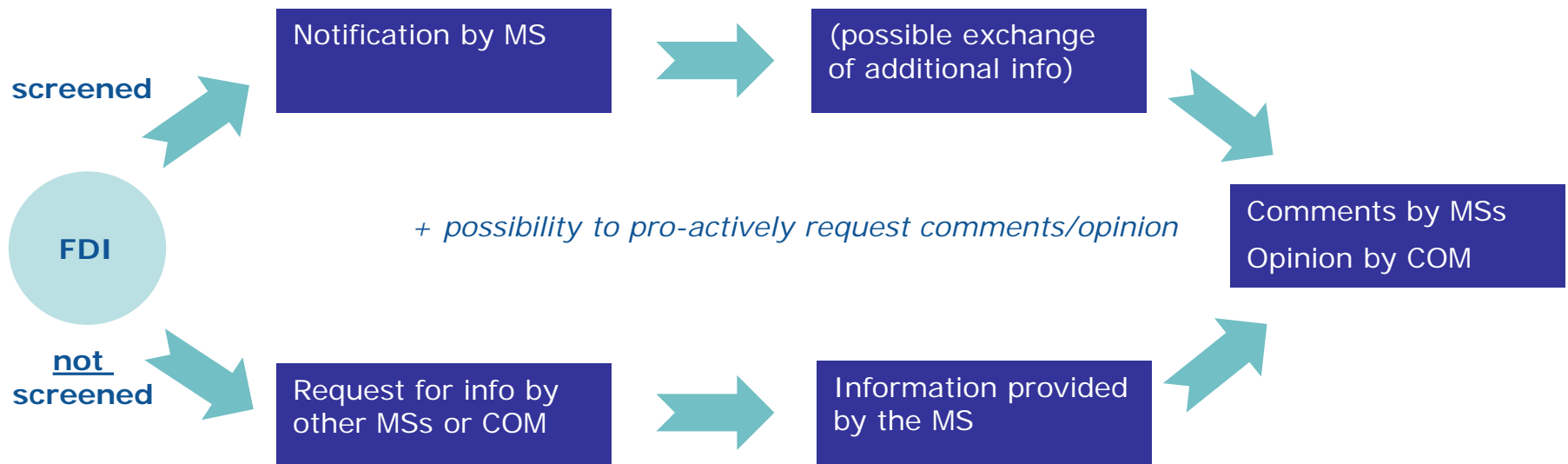
Main elements of the Regulation

- 1. Some rules for screening by Member States*
- 2. setting up a cooperation mechanism between Member States and the European Commission*

Some rules for MS' screening law

- Member States are authorised to set up or maintain a screening mechanism (no obligation)
- If they decide so:
 - some key requirements apply: e.g. transparency of rules, non-discrimination between third country investors, anti-circumvention rules

Cooperation mechanism for individual FDI transactions (as of 10/2020)



What will be looked at?

Security and Public order risks

- MS and COM may consider the potential effect of the FDI on, inter alia:
 - critical infrastructure,
 - critical technologies,
 - the supply of critical inputs
 - access to/ control of sensitive information
 - the freedom and pluralism of the media
- certain additional factors related to the characteristics of the investor



Implication for businesses?

- No notification requirement to the COM: MS are contact points
- A Member State may request information to investors (e.g. ultimate investor)
- Limited impact on timelines of national screening mechanisms (in principle 35 calendar days)
- Opinions & comments are non-binding: final decision taken by Member State where the FDI takes place
- Protection of confidential business information throughout the process

For more information:

<http://ec.europa.eu/trade/policy/accessing-markets/investment/>