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# Proposals for ensuring an improved level playing field in trade and investment

The European economy is one of the most open in the world. Open markets, free flows of capital, and trade foster growth and prosperity in Europe and around the world. Foreign direct investments are a major driver of growth and added value, and help safeguard jobs, especially in industrial countries like Germany, France and Italy. Freedom of contract is a central pillar of competition-based economies.

However, European companies do not find this kind of openness everywhere in the world.

In the field of public procurement, the EU shows a significant higher level of openness compared to other countries. Germany, France and Italy strive for symmetry in openness of market access and therefore support appropriate instruments to safeguard a level playing field, especially achieving ambitious Free Trade Agreements and agreeing as soon as possible on an appropriate EU instrument to adopt a symmetric level of openness.

In the field of investment, when other countries put up hurdles to direct investment by European companies or only allow such investment under certain discriminatory conditions whilst, at the same time, European companies are being acquired as part of other countries' strategic industrial policies, there is no level playing-field. The playing-field is even less level if such investment is subsidised by state bodies.

The right of private-sector actors to decide when to invest or sell (shares in) companies is extremely important and merits full protection. At the same time, however, it is also important to prevent any damage to the economy through one-sided, strategic direct investment made by foreign buyers in areas sensitive to security or industrial policy, and to ensure reciprocity. The state instruments that are currently available at the level of EU Member States are not sufficient to guarantee protection of this kind. What is needed is a European solution, which would then similarly ensure fair competitive conditions across the EU. Foreign investment regimes in Member States as already allowed by the EU treaty would remain in place.

EU law gives the right to Member States to prohibit foreign investments which threatens public security and public order.

What is needed is an additional protection based on economic criteria taking into account and with reference to the Commission's expertise.

**Key points for a proposal**
**for investment reviews at EU level**

(1) Non-EU investors in principle have the right to make direct investments within the EU. However, the principle of reciprocity applies in cases where a foreign investor has only limited market access in the country of origin of the acquisition (e.g. by being forced to set up a joint venture or through the exclusion of foreign investors in certain sectors).

(2) With reference to the expertise of the EU Commission, in individual cases a Member State can either completely prohibit a direct/indirect investment or make it subject to compliance with an order.

(3) An intervention may only be made if the investor acquires a significant part of a company that leads to economic influence .

(4) An intervention is particularly justified where

(a) the decision for the envisaged direct investment by the third country does not comply with market rules (e.g. through investment instructions; through state-funded takeovers based on political programmes; through the requirement for state approval of investments) <u>or</u>

(b) the envisaged direct investment is made possible or is facilitated by state subsidies and this results in a market disturbance (e.g. through government loans which do not reflect market conditions).

(5) The right of intervention shall be without prejudice to existing bilateral and multilateral agreements.