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The Hidden European Investment Screening Mechanism Already in Place

**– Existing EU Secondary Legislation on
(Discriminatory) Treatment
of Third Country Investors:**

Telecommunications and IT Infrastructure Sector

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- I. Introduction: Huawei „ante portas“
- II. Initial findings
 1. No directly applicable rules or judicial precedents
 2. Reasons: Different objectives
- III. Utilising general rules for hidden investment screening
- IV. Conclusion



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III. Utilising general rules for hidden investment screening

1. Telecommunication networks and services in general

- a) Reinterpreting prohibitions of discrimination?
- b) Lack of specific authorization of a screening mechanism
- c) Possible conditions linked to the general autorisation
- d) No direct action against mere suppliers of technology

2. In particular: Auction of frequencies

- a) Conditions linked to individual rights of use
- b) Eligibility requirements in the competitive selection procedure



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IV. Conclusion

IT and telecommunications sectors do not allow for hidden investment screening:

- Usually no legal basis for refusing individuals a general authorization
- Conditions to such an authorization are rarely suitable to investment screening
- When allocating mobile frequencies the legal possibilities are not as big as they had seemed at first glance
- The IT Security Directive has so far not been interlinked with the telecommunications market access regime

