Antitrust Advisory

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New EU FDI Screening Regulation: What Dealmakers Need to Know

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On 16 July 2026, Regulation (EU) 2026/1386, known as the FDI Screening Regulation, reforming the EU framework for screening foreign direct investments (FDI) entered into force. The regulation must be implemented by Member States into national law by 17 January 2028.

How FDI Screening Works in the EU

FDI screening has become a core workstream in M&A. Broadly, the rules apply when a foreign investor acquires, directly or indirectly, a relevant shareholding in a domestic company active in a sensitive sector. Every EU Member State now operates an FDI screening regime. However, unlike in merger control, there is no one-stop shop on the EU level for large cross-border deals. FDI screening always takes place at the national level, and a single transaction may require clearances in several Member States, each assessing national security or public order risks under its own regime.

The previous FDI Screening Regulation (Regulation (EU) 2019/452) set out minimum procedural standards for the domestic review and established a cooperation mechanism under which Member States and the European Commission (EC) issue comments and opinions on transactions involving FDI in any Member State. However, significant differences in scope, thresholds, timelines, and procedures remain among Member States. The new regulation strengthens intra-EU cooperation and advances the harmonisation of minimum standards, but it allows national regimes to go beyond these requirements, which many already do.

Investments National Regimes Should Catch

Clarification on the notion of foreign investor

The new FDI Screening Regulation sets forth that national regimes cannot discriminate between third countries, e.g. by offering investors from certain countries filing exemptions or more lenient treatment. Most regimes already do not discriminate between non-EU countries. However, some countries like Poland or Bulgaria that exempt or treat more favourably investors from 'lower risk' jurisdictions (such as the United States and other OECD countries) will have to amend their regimes.

The new regulation also clarifies that investments by EU companies which are ultimately controlled by a non-EU entity also qualify as 'foreign' investments. While this removes legal uncertainty, the practical implications are limited since many regimes already look through to the ultimate controller.

Investments covered

The FDI Screening Regulation covers investments giving a foreign investor 'effective participation in the management or control' of an EU target. Control is defined broadly and may arise when the investor can materially influence the target's commercial policy through shareholding, voting rights, contracts, or board representation. Purely passive portfolio investments fall outside the regulation. The new rules also do not require Member States to screen (1) internal restructurings, unless a new non-EU entity is inserted into the ownership chain; (2) acquisitions through resolution tools in the banking and insurance sectors; and (3) greenfield investments, although Member States may still choose to screen them.

Member States, however, remain free to adopt more specific rules (for example, by specifying the thresholds of voting rights that trigger a filing) or to go beyond the minimum standards set by the FDI Screening Regulation (for example, to capture minority investments). Most already do so and, depending on the industry affected, require notifications as of a direct or indirect acquisition of 10% of the voting rights of a domestic company.

Minimum sectoral scope

The new rules oblige Member States to conduct ex ante FDI screenings if a covered foreign investment relates to one of these sensitive sectors: (1) defence and dual-use items; (2) semiconductors, quantum technologies, and certain sensitive AI applications (aligned with the EU AI Act definitions); (3) designated critical entities in transport, energy, and digital infrastructure; (4) critical raw materials; (5) electoral infrastructure; and (6) systemically important financial market infrastructure. Critical raw materials, renewable energy technologies, and electric vehicles are also covered by the proposed Industrial Accelerator Act (IAA). Though still at the preliminary stages of the EU legislative process, the IAA might add another layer of FDI scrutiny for investors from certain countries.

While some regimes already reach this minimum scope, several Member States – including the Netherlands, Portugal, Poland, Hungary, Czechia, and Slovakia – will have to align their regimes. Member States can (and many already do) extend the scope of their FDI regimes beyond the common minimum.

How Authorities Should Assess Foreign Investments

Mandatory notification, standstill obligation, and retroactive call-in powers

For investments within the minimum sectoral scope, the FDI Screening Regulation requires prior authorisation and a standstill obligation. Member States must also have rules to address non-compliance and circumvention, including by imposing penalties and by calling in non-notified notifiable transactions for at least 24 months after closing. For investments that fall outside the minimum scope but within broader national regimes, and where national rules do not require prior authorisation, Member States must be able to call in non-notified transactions on security or public order grounds for at least 15 months and up to five years after closing.

While most national regimes already impose mandatory notification requirements with standstill obligations (the main exceptions are Portugal, with a voluntary non-suspensory regime, and Slovenia, with a mandatory regime with no standstill obligation), several Member States (including France, Italy, the Netherlands, Austria, and Poland) will have to introduce or amend their existing call-in powers to comply with the FDI Screening Regulation.

Substantial risk assessment

The FDI Screening Regulation prescribes a standard minimum list of risk factors that authorities must weigh when reviewing any deal, including:

- **The investment**, such as its effect on critical infrastructure and technologies, the continuity of supply of critical inputs, the protection of sensitive information and personal data, the freedom and pluralism of the media, the protection of public health, food security and electoral processes, or the security of military or sensitive public facilities.
- **The investor or related persons**, such as its opaque ownership structure, compliance record with prior FDI-related conditions or sanctions exposure, its links to a foreign government, or it being subject to laws requiring it to share information with a foreign government.

The EC will make available a 'risk evaluation form' for Member States to assess these elements, which should help enforcement practice gradually converge. However, Member States can also consider other risk factors.

Minimum procedural standards

The new rules aim to harmonise minimum procedural standards, including the following elements:

- **Timelines.** All screening mechanisms should include an initial (Phase I) review lasting no more than 45 calendar days from the date the filing is deemed complete by the authority, followed by an in-depth (Phase II) review of issues that have been identified in Phase I. This change will trigger amendments in many FDI regimes with longer (or no) statutory deadlines, like Finland, or with a one-phase regime, like Spain. However, the FDI Screening Regulation does not limit the time to accept a filing as complete (other than saying it should happen 'without undue delay') or the duration of the in-depth review.
- **Investors' procedural rights.** Investors' confidential information shall be protected and they shall have the right to seek effective judicial recourse against a screening decision and, more importantly, the right to be heard before mitigating measures or a prohibition or unwind decision is imposed by the authority. Screening should adhere to the principle of proportionality, and investments should only be prohibited or unwound as a last resort, when mitigating or other measures (a sample list is provided) are not sufficient. These are all welcome procedural safeguards, which might require amendments in many Member States, including Sweden, where screening decisions are appealed to the government rather than the national courts.
- **Increased transparency.** Member States are required to publish guidance on the scope, triggers, timelines, and procedure of their national regimes, alongside an annual report including aggregate and anonymised data on the transactions screened.

Enhanced Cooperation Between Member States and with the EC

The FDI Screening Regulation amends the existing cooperation mechanism to make it more effective and structured by introducing:

- **Filtering criteria**, to ensure that only transactions likely to affect the security or public order of other Member

States or 'projects or programmes of Union interest' are forwarded to the cooperation mechanism (currently all screened investments must be shared).

- **New timelines** for the EC and other Member States to issue non-binding opinions and comments and request additional information. However, these deadlines may be extended at the request of the EC or the Member State, and information requests stop the clock for issuing opinions and comments. Given that the deciding Member State cannot adopt a decision until it receives and considers such opinions and comments, the cooperation mechanism might in some cases exceed the 45-calendar-day Phase I limit and make a Phase II review inevitable.
- **Accountability obligations for the deciding Member State**, including a duty to convene a meeting at the request of another Member State or the EC and to take their non-binding opinions and comments into account in its decision and state reasons for disagreement, if any.
- **An expanded role for the EC**, which can now propose specific remedies and flag 'systemic' risks posed by two or more foreign investments and can assist Member States in gathering information.
- **A non-public shared EU database** of national FDI screening decisions, which the EC will create and pre-populate with notified decisions going back to 2020.

Multi-jurisdictional Filings

For deals triggering FDI filings in more than one Member State, applicants must 'endeavour' to file on the same day and cross-reference the parallel filings. Member States should also endeavour to coordinate review timelines, decision dates, and any remedies. In practice, this makes filing strategy and sequencing more important: parties should identify all potential filings early, align notification narratives, and build sufficient flexibility into signing-to-closing timetables and long-stop dates.

Key Takeaways

National security will remain the responsibility of each Member State, so material divergence in procedure, scope, and substantive assessment is likely to persist after the FDI Screening Regulation is fully implemented from 17 January 2028, at the latest. Nevertheless, the new framework represents an important step towards a more coordinated and harmonised EU FDI screening regime over time.

The practical implication for dealmakers is clear: FDI screening should be treated as an early-stage transaction risk. Parties should map filing requirements at the outset, coordinate and ensure consistency in multi-country submissions, reflect realistic review periods in long-stop dates and conditionality, and consider whether ownership structure, governance rights, sensitive assets, or customer relationships could trigger substantive security concerns.

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