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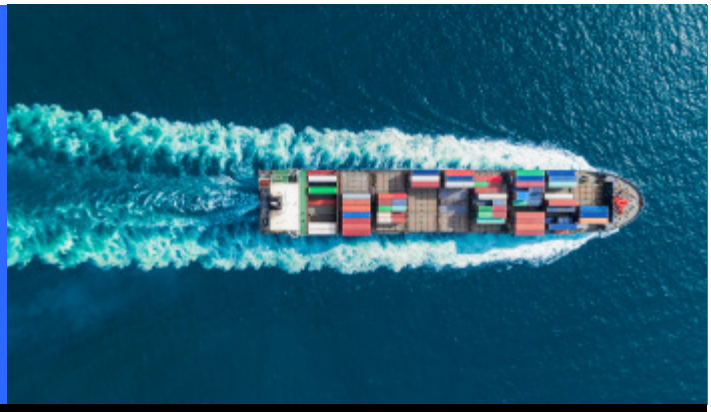

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New EU FDI Screening Regulation – The Good, the Bad and the Not-so-Pretty

The EU's newly adopted FDI Screening Regulation reshapes how foreign investments into Europe will be reviewed – harmonizing timelines and procedures, but also expanding mandatory screening, eliminating preferential treatment for U.S. and other allied-country investors, and introducing a post-closing call-in right of up to five years. Our alert walks through what's improved, what's not, and which provisions may have the most pronounced negative impact on non-EU investors' investment in the EU.

On June 8, 2026, the Council of the European Union (***EU***) adopted a new Regulation on the screening of foreign investments (***FDI Screening Regulation***), which is expected to enter into force before the end of August. The new rules will apply 18 months after entry into force (likely around the start of 2028), and EU Member States must use that window to amend their national screening laws accordingly.

The reform lands amid a changing stance vis-à-vis U.S. investors and mounting European sensitivity around foreign influence over the digital infrastructure underpinning core governmental functions. A case in point: On May 25, 2026, the Dutch government prohibited U.S.-based Kyndryl's acquisition of Solvinity, the cloud provider hosting the Netherlands' digital identity platform for accessing government services – the Netherlands' first FDI prohibition of a U.S. acquirer. The message is unambiguous: U.S. investments in Europe enjoy no safe harbor, and that message is now being reinforced in the new EU FDI Screening Regulation.

One theme that runs throughout the reform: The new Regulation provides a floor, not a ceiling – it harmonizes a minimum standard but allows Member States to go further. Therefore, significant divergence between national FDI regimes in Europe is expected to persist.

The Good

The FDI Screening Regulation brings several welcome improvements – including better structure, more process discipline, and additional guidance.

Exemption for internal restructurings: Intra-group reorganizations that do not change an EU target's beneficial owner will not need to be notified. This exemption will be lost only if the reorganization introduces a new legal entity from a non-EU jurisdiction that is not already represented in the holding chain above the EU target. This will keep many routine internal restructurings out of unnecessary screening.

(Some) guidance on the EU Cooperation Mechanism: The Regulation provides some clarity on when a case must be referred through the EU cooperation mechanism. Broadly: sensitive-sector deals involving state-owned, sanctioned or previously non-compliant investors, or cases where a Member State opens an in-depth (Phase 2) investigation or intends a pre-emptive mitigation, prohibition or unwinding. That said, the residual catch-all for factors which any Member State considers could affect security or public order still leaves some space for arbitrary referrals.

Consistent phases and cap on Phase 1 duration: All Member States will need to divide the substantive review process into two stages: an initial Phase 1 review capped at 45 calendar days (non-extendable), then, where necessary, an in-depth Phase 2 review. While the fixed Phase 1 deadline will offer welcome certainty for most deals, the lack of a Phase 2 deadline and the inability to extend Phase 1 means that more complex transactions will continue to face considerable uncertainty on timing. In addition, Member States will continue to be able to open Phase 2 reviews for no other reason than running out of time in Phase 1.

Member States to publish guidance: Member States will have to publish guidance on their respective FDI regimes' scope, thresholds, timelines and procedures, and publish an annual report with screening statistics. This is a clear predictability win that drags some more opaque national FDI regimes into the open and gives investors a documented basis for assessing filing obligations and risk.

The Bad

Notwithstanding the above benefits, the new regime is not without challenges that will complicate deal-making in the EU. It contemplates a wider filing universe and strengthens the European Commission's (***EC***) influence on national review processes.

End of Member States' freedom to apply exemptions for "safe-country" investors: The Regulation ends Member States' discretion to grant blanket exemptions to investors from safe / allied countries of origin – including, e.g., the United States and other OECD jurisdictions. Several Member States currently apply such exemptions or lighter-touch treatment to investors from

certain non-EU jurisdictions. Such exemptions will now need to be removed, notwithstanding the low national security risk profile of investors from the jurisdictions in question.

Mandatory (and partly ambiguous) risk factors: Member States will be under an obligation to consider a long, prescribed list of risk factors when reviewing any deal – including, e.g., impact on programs of EU interest; critical technologies and IP; critical entities and infrastructure; continuity of supply of critical inputs; sensitive information; media freedom and pluralism; electoral processes; public health and critical medicines; food security and large farmland holdings; and proximity to military or other sensitive public facilities. For many jurisdictions, the list broadens what must be weighed in every review, and several factors are vaguely described, making outcomes harder to predict.

Same-day filings across Member States: Where a deal triggers FDI filings in several Member States, applicants must "*endeavour*" to file on the same day in each, and each filing must cross-refer to the others. This restricts the freedom to sequence filings in line with particular deal considerations and can put increased pressure on drafting timelines, since multiple submissions must be readied in parallel. The only silver lining is that the requirement is now a soft "*endeavour*", not the hard same-day mandate envisaged in earlier drafts of the Regulation.

Mandatory minimum list of screened sectors: Member States must require prior authorization for foreign investments in a defined minimum list of sectors – including, e.g., targets with activities related to: dual-use items and EU Common Military List goods; semiconductors, quantum and AI technologies; critical transport, energy and digital infrastructure; strategic raw materials; certain financial institutions; and voter-registration databases and voting systems. The practical bite falls on jurisdictions that previously had a voluntary regime or treated a narrower set of sectors as sufficient to protect national security – they must now widen their mandatory screening scope.

EC database of notified cases and outcomes: The EC will run a central database accessible to all Member States, recording cases notified through the EU Cooperation Mechanism as well as their outcomes. Cases notified since 2020 will be added to the database retrospectively. While it is helpful that this measure reduces information asymmetry, it also raises concerns – a shared record of how peers handled comparable deals may nudge authorities toward the majority view and diminish the careful case-by-case assessment of individual transactions based on their merits (and their true local sensitivities). It may also lead to commitments more commonly being required across the EU with Member States following the example of, e.g., France, a Member State that regularly requires commitments as a condition to authorize transactions.

The Not-so-Pretty

Lastly, several further unwelcome changes may significantly jeopardize deal certainty by introducing broad discretion and post-closing call-in risks.

Foreign-controlled EU entities deemed foreign investors: Investments through EU entities "*controlled*" by non-EU investors are now always treated as foreign investments. This legislative change deliberately narrows the ruling of the European Court of Justice in *Xella Magyarország*, which held that the acquisition of an EU target by an EU-incorporated buyer fell outside the EU FDI Regulation even where that buyer was ultimately controlled from a third country (except for,

e.g., deliberate attempts at screening circumvention). The change is a clear, if unwelcome, expansion of scope, and Member States may go even further – with several jurisdictions likely to continue capturing indirect minority non-EU investments.

Sector-agnostic call-in right of up to five years: Member States' legislation must provide for the right to call in foreign investments on the respective authority's own initiative, independent of sector, for a period between 15 months and five years post-closing. This injects lasting uncertainty into deal-making at the discretion of national governments. Unnotified deals can be reopened long after closing, and the Regulation does not require Member States to offer investors the option of a voluntary filing to obtain ex-ante clearance or otherwise lock in certainty. However, this provision will not apply retroactively to investments completed before the new rules take effect.

EU cooperation deadlines may constrain 45-day Phase 1 clearance: The Regulation preserves the EC's and Member States' ability to provide comments or opinions on cases notified through the EU Cooperation Mechanism. Although such comments remain non-binding, the reviewing Member State must "*give due consideration*" to them and may adopt its decision only after the relevant EU cooperation deadlines have expired. This creates new pressure on timing: If the EC or another Member State requests additional information, or if substantial new information or circumstances trigger a limited extension of the cooperation mechanism period, the resulting deadlines for comments may remain open beyond the 45-day Phase 1 period. This would prevent the reviewing Member State from adopting a Phase 1 clearance, thus effectively forcing the case to proceed to Phase 2. Furthermore, the prospect of peer and EC comments, however non-binding, may risk coloring the relevant Member State's independent assessment, particularly since the reviewing Member State must now also explain in the summary of reasons for its decision the extent to which it has considered such comments and any reasons for disagreement with them.

Key Takeaways

For investors who value predictability, the new FDI Screening Regulation is a mixed bag:

- the codified notification rules, the capped Phase 1 timetable and the new guidance duties are genuine gains;
- the wider mandatory sector net, broader set of risk factors and end of Member States' freedom to apply exemptions for "safe-country" investors are expansive (even if mostly clear); and
- the discretionary ex-post call-in, the absolute look-through for EU entities controlled from a third country and the pressure that cross-border comments place on independent national reviews and timelines are unwelcome changes making European FDI regimes harder to navigate.

As most of the new regime hinges on national implementation over the next 18 months, the practical contours, including the application of risk factors and the call-in power, will emerge only after this. Investors active in the covered sectors in the EU should map their filing footprint and closely monitor national implementation over the coming months.

The following Gibson Dunn lawyers prepared this update: Attila Borsos, Philipp Baschenhof, Alana Tinkler, Claire Shepherd, Adam Dawson, and Valeri Bozhikov.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. For further information, please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's Antitrust & Competition, International Trade Advisory & Enforcement, Mergers & Acquisitions, or Private Equity practice groups:

Attila Borsos – Head of Cross-Border Merger Control and Foreign Investment, Brussels
(+32 2 554 72 10, aborsos@gibsondunn.com)

Alana Tinkler – Antitrust and Competition, London
(+44 20 7071 4906, atinkler@gibsondunn.com)

Claire Shepherd – Antitrust and Competition, London
(+44 20 7071 4155, cshepherd@gibsondunn.com)

Adam Dawson – Antitrust and Competition, Brussels
(+32 2 554 72 02, adawson@gibsondunn.com)

Valeri Bozhikov – Antitrust and Competition, London
(+44 20 7131 0326, vbozhikov@gibsondunn.com)

Antitrust & Competition:
Rachel S. Brass – San Francisco (+1 415.393.8293, rbrass@gibsondunn.com)
Kristen C. Limarzi – Washington, D.C. (+1 202.887.3518, klimarzi@gibsondunn.com)
Samuel G. Liversidge – Los Angeles (+1 213.229.7420, sliversidge@gibsondunn.com)
Ali Nikpay – London (+44 20 7071 4273, anikpay@gibsondunn.com)
Cynthia Richman – Washington, D.C. (+1 202.955.8234, crichman@gibsondunn.com)
Christian Riis-Madsen – Brussels (+32 2 554 72 05, criis@gibsondunn.com)

International Trade Advisory & Enforcement:
Ronald Kirk – Dallas (+1 214.698.3295, rkirk@gibsondunn.com)
Adam M. Smith – Washington, D.C. (+1 202.887.3547, asmith@gibsondunn.com)

Mergers & Acquisitions:
Robert B. Little – Dallas (+1 214.698.3260, rlittle@gibsondunn.com)
Saee Muzumdar – New York (+1 212.351.3966, smuzumdar@gibsondunn.com)
George Sampas – Head of Cross-Border M&A, New York
(+1 212.351.6300, gsampas@gibsondunn.com)

Private Equity:
Richard J. Birns – New York (+1 212.351.4032, rbirns@gibsondunn.com)
Wim De Vlieger – London (+44 20 7071 4279, wdevlieger@gibsondunn.com)
Federico Fruhbeck – London (+44 20 7071 4230, ffruhbeck@gibsondunn.com)

Ari Lanin – Los Angeles (+1 310.552.8581, alanin@gibsondunn.com)
Michael Piazza – Houston (+1 346.718.6670, mpiazza@gibsondunn.com)
John M. Pollack – New York (+1 212.351.3903, jpollack@gibsondunn.com)