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Foreign investment monitor

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Welcome to our eighth Foreign investment monitor

In this edition, we delve into the evolving landscape of foreign direct investment (FDI) and national security regulations worldwide.

As nations strive to balance economic growth with dynamic security concerns, new regulatory measures present both challenges and opportunities for investors and businesses.

Our analysis begins with a write-up of the recent UC Berkeley Law webinar, CFIUS' Impact on Cross-Border Deals, in which the speakers, including Freshfields' [Aimen Mir](#), [Brian Reissaus](#) and [Andrea Merediz Basham](#) discussed the US government's evolving view of national security and practical strategies for evaluating deal opportunities, mitigating deal execution risk and managing the CFIUS process.

We then turn our attention to Singapore's newly introduced Significant Investments Review Act (SIRA). This legislation aims to harmonize the influx of foreign investment with national security

imperatives by introducing a stringent notification and approval process for ownership changes in critical sectors. SIRA endeavors to protect vital industries while maintaining Singapore's business-friendly reputation.

We also explore the role of legal challenges to FDI decisions. Despite increasing government interventions, such challenges remain rare due to the confidential nature of national security issues, the broad discretion afforded to governments, and the complexities of legal recourse.

Next, we shift our focus to Europe, where the European Commission has proposed significant changes to the EU's FDI screening process. This proposed regulation aims to streamline and coordinate FDI procedures across Member States, especially for multi-country transactions. It expands the scope to include post-closing screenings of sensitive sectors and strives to harmonize procedures while acknowledging persistent differences in Member States' practices.

Further, we examine the active enforcement of the new EU Foreign Subsidies Regulation (FSR). The European Commission has initiated numerous investigations, particularly targeting Chinese companies and state-owned enterprises, to ensure compliance with the FSR.

Lastly, we cover the UK government's forthcoming reforms to its National Security and Investment regime. These reforms aim to enhance clarity and predictability for businesses by updating sector definitions and reviewing the notification process. Despite calls for more significant changes, the UK government remains cautious, maintaining flexibility in its national security assessments.

As you navigate this edition, we hope these insights deepen your understanding of the complex and dynamic interplay between foreign investment and national security. Should you wish to discuss any FDI issues in more detail, we would be delighted to arrange a meeting.

Ex-CFIUS chair analyzes the Committee's current impact on cross-border deals

In April, [Brian Reissaus](#), former head of the Committee on Foreign Investment in the United States (CFIUS, the Committee) and a [recent addition to Freshfields' Washington office](#), sat down for a [panel discussion hosted by UC Berkeley Law](#) on the current state of CFIUS. Prior to leading CFIUS, Brian led the negotiation and implementation of the 2018 Foreign Investment Risk Review Modernization Act, the most significant expansion of CFIUS in 30 years. The discussion was moderated by another former CFIUS chair, Freshfields partner [Aimen Mir](#). They were joined by [Andrea Basham](#), a partner in Freshfields' Corporate and M&A group.

We have summarized five key takeaways on the present and future of CFIUS:

1. CFIUS continues to expand its understanding of sensitive technology risk. Historically, the most sensitive technologies were developed through government and defense funding specifically for national security or defense-related purposes. However, this once easily definable basket of technologies has expanded in recent years in response to rapid innovation led by private industry. These cutting-edge technologies, such as quantum computing and artificial intelligence, will likely underpin important civilian and military/intelligence functions alike, making it increasingly difficult for CFIUS

to cleanly separate national security-sensitive activity from ordinary commercial activity. Compounding the matter for transaction parties, CFIUS increasingly requires them to demonstrate that their transaction does not pose a security risk. This stands in contrast to the previously longstanding US open investment policy, where the burden lay with the Committee to demonstrate transaction-specific risk. This change in posture presents significant challenges for parties engaging in a transaction involving an emerging technology that may have speculative future relevance to national security. In such cases, it is often the investor, not CFIUS, that is compelled to prove a negative.



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2. **Skepticism isn't limited to Chinese investment anymore. Under the Biden administration, even non-Chinese investments face increased scrutiny, leading to more rigorous mitigation measures.** From a CFIUS perspective, there are numerous points of continuity between the Trump and Biden administrations. CFIUS during the Trump administration embraced a staunchly critical view of Chinese investment but fundamentally approached CFIUS cases consistently with the longstanding US policy of open investment, focusing on articulable national security concerns arising from a specific transaction and pressing to clear transactions efficiently if there were no concerns or the concerns were resolved. In the Biden years, CFIUS has retained the concerns over China but has taken a broader view of CFIUS's national security authority in ways that have broadened the range of transactions affected by the process, resulting in an overall more challenging process. For instance, the Biden administration has been more inclined to view mitigation agreements as a tool to advance general national security policy rather than as an instrument to address only risks arising from a specific transaction. Consequently, there has been an increase in the number of transactions being mitigated, including from US allies and partners not traditionally subject

to mitigation agreements. It also imposes on them onerous terms once largely reserved only for foreign investors perceived to carry heightened national security risk, such as those in China. This shift in approach is driven by two main factors: the reduction in investments from China, which allows for increased scrutiny of investors from elsewhere, and a broader shift in how CFIUS now assigns the burden of proof when assessing national security risks.

3. **Increasing politicization of the CFIUS process.** CFIUS faces mounting pressure from all angles, including Washington think tanks, political commentators, the popular press, state governments, Congress, and segments of the executive branch. Some within these groups would have CFIUS treat certain types of transactions and foreign investors categorically, even if the facts of the particular transaction do not justify such treatment. There has also been a push from politicians and some political officials to use CFIUS as an instrument to address non-national security-related policy goals, such as commercial trade imbalances, and labor and environmental concerns. This may pose a greater risk to CFIUS moving forward. When CFIUS bases its decisions on a thorough analysis of the facts, it operates more predictably and effectively in addressing national security risks.

Increasing top-down demands to make decisions driven by political objectives rather than factual evidence result in inconsistent outcomes, diverging from the Committee's established practices. Politicization of the process could compromise its ability to address national security concerns effectively and consistently.

4. **Companies benefit from transparency, promptness, and a unified front.** Companies that have open conversations with the Committee about the commercial needs of the parties and the commercial viability of mitigation and who engage the Committee in an attempt to explore options to address the Committee's concerns often have more productive negotiations and improved outcomes. Being prompt and responsive to Committee mitigation proposals is important to maintaining a positive dynamic with the Committee, as underscored in [proposed changes to the CFIUS regulations](#). That said, such positive engagement is more difficult when there are starkly divergent views between the buyer and seller. Thus, it is important for the buyer and seller to think through the mitigation scenarios jointly as early in the process as possible, if not before filing, so there is a common base for discussion with CFIUS, in case CFIUS determines that mitigation is necessary.



Early engagement allows parties to pre-emptively resolve issues or devise solutions, improving their odds of clearance and sometimes eliminating the need for mitigation.

5. **Proactive engagement with CFIUS is critical.** Today, proactive engagement with the Committee ahead of filing is a key part of clearing a complex transaction. In Brian's experience, transaction parties and counsel who engaged the Committee early and addressed potential issues upfront significantly increased their chances of success compared to those that simply filed and "hoped for the best." Early engagement allows parties to pre-emptively resolve issues or devise solutions, improving their odds of clearance and sometimes eliminating the need for mitigation. Such proactive approaches have resulted in transactions clearing without going to investigation, saving 45 days on the transaction timeline. In other cases, even when the Committee initially expected that a transaction could not be mitigated, extensive engagements with CFIUS enabled parties to propose novel mitigation that effectively addressed CFIUS's concerns.

There are many ways to engage CFIUS. Taking a combative stance, dismissing concerns or withholding material information is counterproductive. An adversarial approach tends to hinder the possibility of a timely, positive response. By contrast, a conciliatory and collaborative approach is more likely to succeed. Investors should recognize that CFIUS is often not monolithic on a given issue. The member agencies frequently grapple internally with whether something constitutes a potential risk, the severity of that risk, and whether it can be mitigated. While lack of engagement with parties can be frustrating, it often occurs because the Committee is simply not yet in a position to offer a unified view on a specific issue. The potential for internal division within CFIUS underscores the importance of early engagement. Parties should take the initiative to drive the conversation as much as possible and proactively address potential concerns raised by the Committee.

With thanks to Freshfields' Aimen Mir, Brian Reissaus, Andrew Gabel and Tim Swartz for contributing this update.

Can Singapore's Significant Investments Review Act balance investment and national security?

Contributed by [Ameera Ashraf](#) at WongPartnership LLP, which is part of the Freshfields StrongerTogether network.

Renowned for its dynamic, business-friendly environment and strategic positioning as a global economic hub, Singapore attracts foreign investors from around the world. As with many other jurisdictions in recent years, investment regulation has become an increasingly relevant consideration in M&A deals and investments, especially as countries seek to protect their critical infrastructure, industries and national resources.

Aligned with this trend, Singapore introduced the Significant Investments Review Act (SIRA), setting out a new investment screening regime to ensure the continuity of critical entities that are not currently adequately covered under other existing sectoral

legislation. SIRA reflects a measured approach to national security screening and strikes a balance between the government's interest in regulating ownership and control of critical entities and maintaining Singapore's position as an open and investor-friendly jurisdiction.

Mitigating global challenges and safeguarding business

Singapore's existing FDI landscape consists largely of standalone and sector-specific regulations. Industries such as telecommunications, broadcasting, financial services and energy have long been subject to regulatory scrutiny, often accompanied by restrictions on foreign ownership, especially in entities involved in media and telecommunications.

The SIRA was passed in Parliament on January 9, 2024 following its [announcement by the Ministry of Trade and Industry in November 2023](#).

Gan Kim Yong, the Minister for Trade and Industry (Minister), indicated at

that announcement that Singapore faced "significant challenges" in the global economy and therefore needed "new tools" to "manage significant investments into critical entities." In this spirit, while existing sectoral regulations remain in force and remain the primary method of addressing national security interests, SIRA fills critical gaps by covering vital entities not adequately regulated by sectoral regulations. In this regard, the Minister has also indicated that the SIRA aims to strike a careful balance between protecting Singapore's national security interests and minimizing any potentially adverse impact on businesses and investors.

SIRA's key features

At its core, SIRA applies in two main scenarios: (i) to entities designated as critical to Singapore's national security interests (Designated Entity); and (ii) to transactions in which an entity is seen to have acted against national security interests (regardless of whether it involves a Designated Entity or not).

Designated Entities

Under SIRA, certain entities deemed critical to Singapore's national security may be designated by the government as a "Designated Entity." Once designated, these entities, along with their owners and potential investors or acquirers, become subject to notification or approval requirements, which are tied to reaching certain specified ownership or control thresholds in a designated entity. These requirements aim to ensure transparency, accountability and strategic oversight while mitigating risks associated with unfriendly influence in sensitive sectors.

An entity may be designated as a Designated Entity so long as the Minister considers the designation necessary in the interests of Singapore's national security and:

- a. it was incorporated, formed or established in Singapore;
- b. it carries out any activity in Singapore; or
- c. it provides goods or services to any person in Singapore.

SIRA covers both local and foreign investments in Designated Entities by individuals, corporations, and unincorporated bodies. Minister Gan Kim Yong, speaking in Parliament on January 9, 2024, emphasized that "national security" under SIRA encompasses critical areas for Singapore, including economic security, resilience, and the uninterrupted delivery of essential services. This broad definition allows Singapore to respond promptly to unforeseen circumstances as national security concerns evolve over time.

Before designating an entity as a Designated Entity, the Minister must notify the entity and allow at least 14 days for the entity to provide written representations. Once designated, the Minister must promptly notify the entity.

Designation subjects the entity, its owners and potential acquirers or investors to various notification and approval obligations. For example, prospective investors must:

- notify the Minister within seven days of becoming a 5 percent controller; and
- obtain Ministerial approval before reaching 12 percent, 25 percent, or 50 percent control, becoming an indirect controller, or acquiring part or all of the business of a designated entity as a going concern.

Existing investors must obtain Ministerial approval before dropping below 50 percent or 75 percent control.

Transactions lacking the requisite approval will be automatically rendered void, though the Minister may retrospectively validate them upon application by materially affected persons. Non-compliance with approval conditions could lead to measures such as an order to divest a stake in a Designated Entity.

Designated Entities are also subject to:

- ministerial approval for key officer appointments – unauthorized appointments may lead to removal in the interest of national security;
- ministerial approval for voluntary dissolution; and
- special administrative orders

allowing Minister-appointed management if deemed necessary for Singapore's or the entity's security and reliability.

This is likely to be used only in exceptional circumstances.

Speaking in January 2024, Minister Gan Kim Yong assured that entities under consideration for designation had been contacted, clarifying that entities not approached are not currently considered for designation.

Transaction Review

Beyond designated entities, SIRA grants the Minister the authority to review any transaction involving entities deemed to have acted against Singapore's national security interests (not merely pose potential threats to Singapore's national security). This broad mandate allows for the proactive assessment of potential threats, irrespective of specific sectoral regulations. During the review of the transaction, the Minister may at any time issue directions to either the person or entity concerned, which can include, for example, directions to transfer or dispose of any equity interests in the entity or directions directing the entity to restrict disclosure of confidential information to any person.

In determining if an entity has acted against national security, a certificate issued by the Minister charged with the responsibility for internal security, stating that that Minister is satisfied that the entity mentioned in the certificate has acted against the national security interests of Singapore, is conclusive evidence.



Foreign investors looking to invest in entities in Singapore should take note of whether such entity has been designated by the government and if so, ensure that the relevant approval or notification requirements are satisfied.

Implications and considerations

To facilitate the implementation of SIRA, the [Office of Significant Investments Review \(OSIR\)](#) has been established under the purview of the Ministry of Trade and Industry. Tasked with administering and operationalizing SIRA, OSIR serves as a dedicated touchpoint for stakeholders, providing guidance, oversight and support in navigating the regulatory landscape.

SIRA is expected to impact only a handful of entities operating in Singapore that provide a critical function in Singapore's national security interests and have not already been covered by existing sectoral legislation. For these entities, if they have been designated by the government, prospective acquirers and sellers of such entities and the entities themselves will be subject to various ownership and control related notification/approval requirements. These entities may also be subject to additional laws which may prevent them from being voluntarily wound up or dissolved without approval.

Foreign investors looking to invest in entities in Singapore should take note of whether such entity has been

designated by the government and if so, ensure that the relevant approval or notification requirements are satisfied. However, given that the SIRA will only impact a handful of entities operating in specific sectors in Singapore, it is unlikely that foreign investment into Singapore entities will be significantly affected by the implementation of the SIRA.

While SIRA represents a significant milestone in Singapore's investment regulation, ongoing discussions and potential amendments may refine its scope and implementation. Complementary regulations, such as the Transport Sector (Critical Firms) Act (Transport Act), passed on May 8, 2024, further underscore Singapore's commitment to safeguarding essential services and critical infrastructure. The Transport Act seeks to strengthen the resilience of key firms in the air, sea and land transport sectors in Singapore and safeguard their provision of essential transport services by amending existing transport-related legislation.

Similar to SIRA, the Transport Act aims to establish a designated entities regime where the relevant authorities can designate key entities involved in the provision of essential transport services

in Singapore. Under this regime, acquirers and sellers of the designated entities, as well as the designated entities themselves, will be subject to notification or approval requirements for specified changes in ownership or control of these entities. These designated entities will also be required to notify the relevant authorities of changes in key operational and resourcing arrangements.

In anticipation of SIRA implementation, clients are advised to conduct comprehensive reviews of their investment portfolios, particularly focusing on entities potentially subject to designation. During transactional engagements involving Singapore entities, meticulous due diligence should include assessments of SIRA compliance and adherence to regulatory requirements.

Singapore's adoption of SIRA reflects its proactive stance in managing investment while safeguarding national security interests. As stakeholders navigate this evolving regulatory landscape, proactive engagement, regulatory compliance and strategic risk management will be essential for fostering a resilient and secure investment environment in Singapore.

Court challenges to FDI decisions

Governments and agencies increasingly intervene in transactions on FDI grounds, either by prohibiting them outright or imposing mitigating measures. This trend is global and significant, with potentially heavy financial and strategic implications for all parties involved. Surprisingly, very few of these decisions face legal challenges, which may suggest either satisfaction with the outcomes or an absence of grounds for challenge. However, the reality is much more nuanced.

Several factors contribute to the scarcity of legal challenges to FDI decisions. One key factor is the inherent confidentiality or sensitivity surrounding the concerns that prompt government intervention. Additionally, governments often serve as the ultimate arbiters, particularly in safeguarding national security interests. These dynamics create

a complex environment where legal recourse is limited despite the potentially profound impact of FDI decisions.

The lack of judicial oversight and the limited publication of cases present significant challenges. Many of the laws governing FDI are relatively new and require interpretation. In most legal regimes, courts play a vital role in interpreting laws and establishing a body of case law that fosters a common understanding of how authorities should wield their powers. This accumulation of legal precedents enhances predictability and legal certainty for investors and businesses alike. However, a lack of judicial oversight and transparency can undermine legal certainty and, if unchecked, confer too much discretion on an authority when exercising its powers.

This contribution highlights the reasons behind the scarcity of legal challenges in FDI matters and proposes several proactive steps that parties

can take to safeguard their rights. By doing so, they can position themselves favorably for potential legal challenges, should the need arise.

Exploring the lack of legal challenges

Legal uncertainty is both a consequence and a contributing cause of the lack of court cases. Investors, without a clear understanding of their prospects in court, often hesitate to challenge negative decisions. Instead, they may opt to abandon deals altogether or reluctantly accept conditions to secure transaction approval. This problem is compounded by the time constraints inherent in many transactions. Often, the viability of acquiring another business hinges on completing the deal within a relatively short timeframe. Waiting – potentially years – for court proceedings to conclude before executing an agreement is often impractical, especially when it exceeds contractual termination deadlines (the so-called “long stop date”).

While seeking interim injunctions to expedite transactions may seem like a solution, it is fraught with difficulties. European courts typically set a high threshold for demonstrating urgency, even when national security concerns are invoked. Experiences with merger control challenges also suggest that obtaining interim measures is exceedingly rare. This is illustrated by Siltronic's attempted acquisition of Global Wafers, adjudicated by the Administrative Court of Berlin in January 2022 (Verwaltungsgericht Berlin, Decision of 27 January 2022, Case Number 4 L 111.22). Despite the German Ministry for Economic Affairs' lengthy review of almost 14 months without reaching a decision, the court refused to grant injunctive relief as the parties approached the long stop date. The Court deemed that there was no urgency, suggesting that the parties could simply extend the long stop date or conclude a new contract. Moreover, the potential consequences of wrongfully granting relief were deemed more severe than those of wrongfully denying it, given the national security implications versus the private financial interests involved.

The observed scarcity of court cases can also be a consequence of limited public information. In many jurisdictions, court challenges against FDI decisions will be litigated behind closed doors as they often concern matters of public security. For example, in the UK, the government can apply for a so-called "closed material procedure" shielding court proceedings from public scrutiny. At least two decisions under the UK regime have been challenged in court, but very few details are publicly known.

Trends in existing case law

If we look at the court cases that have been made public, we identify two key patterns.

- Challenging FDI decisions on substantive grounds is difficult as courts often defer to governmental discretion on the types of transaction that may pose a risk to national security.
- Most challenges, therefore, focus on procedural grounds such as failure to respect a party's rights of defense or follow due process.

Limited substantive review

The Italian Verisem case is an example of the limited scope of substantive review in FDI cases. Verisem, a distributor (but not producer) in the Italian plant seeds market, faced the prospect of the Italian government prohibiting its acquisition by Chinese state-owned company Syngenta due to perceived risks to food security in Italy. Despite Verisem's challenge, the Italian Supreme Court (Consiglio di Stato, Judgment of 9 January 2023, Case Number 289/2023) upheld the government's decision, emphasizing the "very broad discretion" vested in governmental assessments of national interest. While it did find that the government's decisions must be founded on "coherent reasoning, based on the criteria laid down by law," it ultimately upheld the prohibition on the basis of potential harm to the national interest. Similarly, in the Global Wafers/Siltronic case, the court echoed this sentiment, highlighting the wide margin of discretion accorded to governments. It stressed that governmental concerns would need to be "extraneous from the outside and/or not relevant at all" to be deemed illegal. In the US context, the insulation of Presidential decisions using CFIUS authority from substantive review is enshrined in statute, which provides that the President's determinations are not subject to judicial review.

However, questions arise regarding the compatibility of such broad discretion with obligations to protect the

fundamental rights of investors and companies. For instance, the European Charter of Human Rights safeguards property rights, including the freedom to sell property. Moreover, the EU Treaties' provisions on freedom of establishment and capital protect the rights to buy and sell shares, extending even to third-country investors. The consistent jurisprudence of the EU Court of Justice underscores that national governments cannot restrict these fundamental freedoms solely for economic reasons. Additionally, governments should not possess such broad discretion that prevents courts from exercising proper judicial oversight and striking down discriminatory exercises of power (see most recently the Xella judgment). In light of these concerns, the European Commission's draft for a new FDI Screening Regulation, published in January, underscores the importance of respecting fundamental freedoms in the application of FDI regimes. It emphasizes both the principle of non-discrimination and the Commission's role in ensuring Member States' compliance with these fundamental freedoms.

Challenging decisions on procedural grounds

While courts may be hesitant to scrutinize FDI decisions intensely on substantive grounds, they often compensate by ensuring fair procedures and due process. Recent cases in Germany exemplify this approach.

In one instance, the Administrative Court of Berlin quashed an FDI prohibition by the German government on procedural grounds. The court found that the acquirer's right to be heard was infringed because they were not given the chance to respond to accusations after all relevant facts were collected. It also held that the government had missed the statutory



As government interventions in transactions citing national security concerns increase, we expect to see a rise in judicial challenges of FDI decisions.

deadline for a prohibition and refused attempts by the government to give itself more leeway when calculating deadlines (Verwaltungsgericht Berlin, Judgment of 15 November 2023, Case Number 4 K 253/22, Aeonmed/Heyer Medical).

Another case concerned the German government closing proceedings without deciding on the substance, citing a belief that the acquirer had no valid contract (there were arbitration proceedings ongoing on the valid exercise of pre-emptive rights). On appeal, the Administrative Court ruled that the government had no right to intervene in the private dispute between the parties or to close the proceedings without deciding on the acquirer's application. Tacit clearance was deemed to have been granted after the expiration of the statutory deadline (Verwaltungsgericht Berlin, Judgment of 7 November 2023, Case Number 4 K 536/22, Alcmene). Notably, in both cases, the court explicitly avoided deciding on the substance of the cases and focused purely on procedural aspects where it applied a strict approach.

The focus on procedural questions is even more pronounced in the United States. Though the President's substantive decision may be immune from review, that immunity may not extend to constitutional claims. In the 2014 case *Ralls Corporation v CFIUS*, the courts ruled that the President's decision violated *Ralls Corporation's* due process rights by not providing a reasoning for its decision. However, questions remain unanswered regarding due process, such as whether

CFIUS can unilaterally impose mitigation measures without providing the parties first with notice of the action, the basis for the action, and opportunity to comment.

Conclusion

As government interventions in transactions citing national security concerns increase, we expect to see a rise in judicial challenges of FDI decisions. This trend is likely to be fueled by the evolving case law that confirms the availability and potential for successful appeals and establishes clear judicial review. While developments will vary by jurisdiction, procedural issues are expected to initially dominate as grounds for challenges.

However, depending on the latitude afforded by the courts to government agencies in developing case law, parties may also gain confidence in challenging the evidence and substantive reasoning behind negative FDI decisions in some jurisdictions. This confidence could grow, especially if courts are able to strike an appropriate balance between safeguarding confidentiality interests (related to national security) and parties' rights to access information ("equality of arms").

Another area ripe for challenges is the necessity and proportionality of mandated remedies, particularly in Europe (whereas consented remedies can usually not be challenged). Consequently, although seeking judicial protection against negative FDI decisions remains challenging, parties involved in transactions subject to

(potential) FDI review processes should be aware of the avenues available for judicial redress.

Despite the significant discretion afforded to FDI authorities, they remain bound by obligations to ensure procedural fairness, protect parties' rights of defense and act within their statutory powers. Parties can hold authorities accountable to these duties by understanding applicable laws and regulations, including:

- the authority's power to gather evidence from parties and third parties;
- the obligations on the authority to conduct reviews with due process, such as providing access to evidence, maintaining confidentiality of sensitive information, allowing reasonable time scales for responses to information requests, and enabling parties to respond to allegations and provide adequate input on the remedies; and
- any requirements for the authority to impose remedies that are necessary and proportionate to mitigate identified concerns.

Understanding the checks and balances inherent in an authority's powers and the rights afforded to parties throughout the process will help to ensure the review is carried out within the rules and, in the worst-case scenario, enhance the prospects of a successful challenge in court.

With thanks to Freshfields' Sarah Jensen, Alvaro Pliego Selie, Uwe Salaschek and Matthias Wahls for contributing this update.

EU Commission's Draft Regulation to revamp Europe's FDI screening landscape

One of the European Commission's (Commission) five new initiatives presented on January 24, 2024, to advance "European economic security" was a draft new regulation on the screening of foreign direct investments (Draft FDI Regulation).

If the Draft FDI Regulation becomes law soon (as the Commission hopes it will), FDI proceedings in Europe should become more coordinated and efficient, especially in cases spanning multiple countries. But the Draft FDI Regulation would also make FDI proceedings much more far-reaching. In particular, the planned introduction of an EU-wide post-closing screening regime could lead to more legal uncertainty.

The EU's current FDI Screening Regulation (FDI Screening Regulation) entered into force in 2019 and is mainly aimed at establishing cooperation between the Member States reviewing

an investment. However, the pandemic and the Russian invasion of Ukraine elevated the importance and prevalence of FDI screening as a tool of public policy leading to significant changes in many EU Member States' FDI laws.

In addition, the FDI Screening Regulation has significant practical shortcomings, particularly a limited scope, a lack of harmonization and unclear procedures. The Draft FDI Regulation aims at remedying those issues. However, it only defines minimum standards, and each Member State will remain free to extend its regime beyond those standards. True harmonization across EU Member States will therefore remain elusive.

Scrutinizing foreign influence and greenfield investments

Under the Draft FDI Regulation, acquisitions by EU entities will be reviewable if the EU acquirer is controlled by a foreign investor. This is a marked shift from the

current FDI Screening Regulation, which only applies to direct investments by foreign investors and not to indirect investments by EU-based subsidiaries of foreign investors (as was recently [confirmed by the European Court of Justice](#)).

While this is an expansion on the European framework, the approach proposed in the Draft Regulation is still more limited than that of several Member States, which subject even EU companies with minority shareholders from outside the EU to FDI screening or which do not require any element of foreign ownership at all.

Ideally, these Member States will reflect on the guidance provided by the Commission to align their national regimes with this clear-cut approach. However, given the current geopolitical climate, it seems unlikely that Member States will voluntarily materially scale back the scope of existing national regimes.



While almost all EU Member States have adopted some form of FDI screening, the current FDI Screening Regulation does not contain any obligation to do so, nor does it define a minimum scope for FDI screening regimes.

Greenfield investments are also in the scope of the Draft FDI Regulation. While the wording seems unclear, it has been indicated by Commission officials that Member States would not be obliged to capture greenfield investment in their national regimes, but if they do so, the Draft FDI Regulation should apply to them.

Guarding Europe's gates: mandatory, suspensory FDI screening

The Draft FDI Regulation contains, in its Annex 2, a list of sensitive sectors that must be covered by a mandatory, suspensory FDI screening regime in all EU Member States. The list is expansive and includes military and dual-use items, critical technology, critical medicines and critical entities in the financial sector. The Draft FDI Regulation foresees that the Commission can change the list of sectors.

While almost all EU Member States have adopted some form of FDI screening, the current FDI Screening Regulation does not contain any obligation to do so, nor does it define a minimum scope for FDI screening regimes. This has long been a point of lament for the Commission – based on the concern that foreign investors could take advantage of “loopholes” in the FDI screening coverage in the EU.

This had been by far the most critically discussed point of the Draft FDI

Regulation. While the concept as such is in little dispute, the Commission has come under heavy criticism, including by Member States, for the vagueness of the list in Annex 2. It seems certain that the list in Annex 2 will be subject to significant redrafting in cooperation with the relevant authorities in the Member States.

In addition, all Member States will be obliged to introduce post-closing screening regimes for all foreign investments that are not subject to an authorization requirement independent of sectors. Member States will be able to screen and prohibit investments for at least 15 months after closing (the Draft FDI Regulation does not provide for a maximum deadline – this will be up to the Member States). Such post-closing regimes will be a source of significant deal uncertainty, particularly as the Draft FDI Regulation does not provide for a voluntary notification scheme (which Member States can, however, introduce themselves). Technically, this provision would even allow the re-opening of cases that were already approved, although the Commission confirmed that this is not the intention. It seems likely that this point will be clarified in the legislative procedure.

“Soft pressure” through targeted cooperation mechanism

Under both the current FDI Screening Regulation and the Draft FDI

Regulation, Member States remain the ultimate decision-makers on FDI screening.

The Draft FDI Regulation does, however, provide the Commission with some tools to subtly nudge the Member States: they have to submit information about their current cases and invite comments from other Member States and the Commission, which they have to take into account when making their decisions – the so-called “cooperation mechanism.”

This mechanism will become more sophisticated. The Draft FDI Regulation requires notification by the Member States to the Cooperation Mechanism in three cases: when a target participates in a project or program of Union interest; the target is economically active in a defined sensitive sector; and the investor:

- a. is controlled by a foreign state; or
- b. is sanctioned; or
- c. has previously been subject to a prohibition or mitigating measure; or the Member State wants to open an in-depth investigation (“Phase II”).

The deadline for the Member States to notify is 15 calendar days after they received the FDI filing in the first two cases, and 60 calendar days in the third case. This forces Member States to divide their proceedings in Phase I and Phase II and sets a de facto time limit of 60 days for Phase I.

This is a lot more targeted and clearer than the previous rules that required Member States to notify all cases undergoing “formal screening” – a term that Member States interpreted quite differently. A recent evaluation of the current FDI Screening Regulation criticized the fact that too many unimportant cases were notified to the cooperation mechanism. With the Draft FDI Regulation, the Commission wants to focus its resources on cases that may pose a real risk. This could reduce the length of procedures in no-issue cases, as a notification to the cooperation mechanism will no longer be necessary. However, criticism persists, particularly concerning the notification duty in case of investors that previously have been subject to a prohibition or mitigating measures. Critics argue that such mitigating measures are rarely a result of the investor’s identity but rather the sensitivity of the target company. Moreover, there is considerable disparity among Member States’ practices in this regard, with France notably imposing mitigating measures in 54 percent of screened cases.

The Draft FDI Regulation provides for a number of mandatory procedural rules, including the right to be heard; obligation to provide reasons; possibility to seek judicial recourse against screening decision (until now, the FDI Screening Regulation does not require judicial recourse); and protection of confidential information.

In each case, the screening Member State must provide ample information to the other Member States and to the Commission. Following their decision, Member States will now also have to justify why they did not follow the recommendations of their fellow Member States or the Commission.

Moreover, Member States and the Commission can now start the cooperation mechanism on their own initiative – even in cases where the Member State in which the investment

takes place did not submit to the cooperation mechanism. Essentially, comments and recommendations about potentially problematic investments can also be given uninvited and must be taken into account by the receiving Member States. Notably, this includes investments not subject to a mandatory notification; any Member State can, therefore, recommend the commencement of post-closing proceedings against any foreign investment.

Multi-country transactions

A most welcome change is made for cross-border transactions. Now, Member States must endeavor to coordinate on procedure and decision-making in cases that are notified to multiple Member States (although this doesn’t necessarily mean that they must agree on the assessment and the outcome).

To facilitate this, the Draft FDI Regulation foresees that the notifying investors will have to submit all FDI filings on the same day (and reference each of them). Obviously, this would lead only to a partial harmonization as review timelines currently vary widely among Member States.

Overall, it is expected that the necessary coordination, as well as the extended possibility for information requests and the minimum waiting periods required to allow other Member States and the Commission to provide comments, will lead to an extension of the applicable timelines.

No changes foreseen for standard of substantive review

While the Draft FDI Regulation extensively addresses procedural aspects, it provides limited guidance on the substantive criteria for determining which types of investments should be prohibited.

The Draft FDI Regulation delegates the determination of prohibited

investments primarily to the discretion of Member States, offering only a few general criteria. Despite the Commission’s assertions of significant progress, the regulation falls short of providing substantive guidance, resembling the current Regulation in many respects. Its vagueness may limit its potential to harmonize practices across Member States effectively.

The Commission is conscious of allegations of overreach, similar to those that were raised against some Member States’ activities in investment control. The Draft FDI Regulation reminds Member States to observe the fundamental freedoms (as seen in the [aforementioned recent ECJ judgment](#)) and refers to the principle of proportionality; in particular, it obliges the Member States to use “other measures pursuant to Union or national law” instead of prohibitions or conditions if those are sufficient to address security concerns.

The Draft FDI Regulation would oblige Member States to publish annual reports containing certain minimum information, which could enhance uniformity and predictability of FDI regimes (although the information that needs to be published is rather general).

The Draft FDI Regulation also explicitly tasks the Commission with observing proceedings in Member States and initiating infringement proceedings when necessary (as the Commission is already empowered to do as the guardian of the treaties). The Commission has only used this power once in recent years, but there are indications that it is planning to perform a broader review of the Member States’ application of their FDI regimes to intra-Union transactions. It will remain to be seen whether this is an expression of a more serious commitment on the part of the Commission towards preventing arbitrary or discriminatory use of FDI regimes for political purposes.



Some stakeholders have expressed concerns about the potential burden on smaller Member States with limited-capacity authorities.

When will the Draft FDI Regulation become law?

The Draft FDI Regulation is subject to approval by the European Parliament and the Council. Prior to its drafting, discussions were held with the Member States, indicating broad alignment on the underlying principles. The Commission's approach, focusing on procedural aspects rather than extensive harmonization of FDI screening rules, has garnered support, as procedural matters are typically easier to agree upon. However, significant discussions are anticipated, particularly concerning Annex 2, its list of sensitive sectors and the operational details of the screening mechanism. Some stakeholders have expressed concerns about the potential burden on smaller Member States with limited-capacity authorities.

The legislative process will resume after the [European Parliament elections](#) and after the selection of the chairs of the committees, which is unlikely before October/November 2024. Once promulgated, the Draft FDI Regulation will only start applying 15 months after it is published in the Official Journal of the European Union, giving Member States sufficient time to

adapt their national screening mechanisms. Accordingly, it is unlikely that the regulation will apply before 2026. However, many Member States might also implement the changes proposed before the implementation deadline expires.

One of five new initiatives

The Draft FDI Regulation is but one of five new initiatives the Commission presented to advance European economic security. In particular, the Commission is also interested in outbound investment control, meaning the control of investments by EU investors in foreign countries.

The United States recently announced a narrow Outbound Investment Control (see [our story in the last issue of FI monitor](#)). However, there appears to be a lack of consensus within the Commission and among Member States whether this would be useful or not for the EU. Therefore, the Commission will launch a process to gather data and evidence on potential risks before deciding on specific steps.

With thanks to Freshfields' Uwe Salaschek and Matthias Wahls for contributing this update.

Updating the UK's national security and investment regime

Reforms aimed at “fine-tuning” the system will offer stakeholders opportunities to help shape the regime to be as pro-business as possible.

A little over two years since it came into force, the UK government has announced its [next steps](#) for the UK's national security and investment (NSI) regime. The reforms taking place over the next few months are a response to feedback received following the government's recent [call for evidence](#) as well as major shifts in the geopolitical environment over the last two years.

The government has committed to a number of reforms that will help improve certainty for business

regarding whether a transaction falls within scope and how national security assessments are carried out. However, it has so far resisted some more significant changes in areas where stakeholders had raised concerns.

In fact, the reforms are described as “fine-tuning,” as the government is confident that the regime is already flexible enough to allow it to review emerging risks such as cyber security, supply chain resilience, critical imports and data security. The UK regime is more expansive than other regimes in several respects, including its application to UK investors and a broad range of transaction types, such as asset deals, IP licenses, strategic relationships and internal restructurings. However, flexibility

comes with the potential cost of less certainty – so continued engagement with government on these issues is vital to ensure the right balance is struck.

These reforms, according to the Deputy Prime Minister (and NSI decision maker) Oliver Dowden, are part of a broader initiative within government to hone and boost the UK's economic defenses in a time of [“geopolitical competition – and tension – at levels not seen since the Cold War,”](#) while also maintaining the open markets and free trade needed to stimulate economic growth and investment, as well as providing the financial strength needed for investment in the UK's defenses.

For instance, the government is also undertaking a review of potential risks from Outward Direct Investment, where investment may fuel “technological advances that enhance the military and intelligence capabilities of countries of concern.” This is likely to result in enhancements to the UK’s export controls regime following consultation with business.

The next few months provide valuable opportunities for businesses to feed in and help make sure the government achieves its declared aims of:

- a “small garden, high fence” approach – safeguarding the UK against the small number of investments that could be harmful while leaving the vast majority of deals unaffected, and the UK as a business- and investor-friendly environment; and
- tightening the UK’s “controls over the routes by which the UK plugs into the global economy ... but in a way that allows investment and trade to flow as freely as possible.”

NSI reforms ahead

Four key areas of NSI reform (or continued debate) are of particular interest to businesses and investors:

1. Increased transparency and predictability regarding national security assessments

- The government’s Investment and Security Unit (ISU) has faced criticism for operating as a “black box” due to opacity during reviews. Feedback submitted during the call for evidence illustrates that stakeholders are still demanding more transparency and predictability in decision-making.
- In response, the government has:
 - a. published an updated “Section 3 statement,” which provides more detail on how the government assesses national security risks. The update is welcome, given

the many geopolitical and technological developments that have taken place since the last statement was published in November 2021. There are inherent constraints on guidance the government can provide on how it carries out national security reviews, so it may not provide the level of transparency that businesses desire, but the additional factors included in the new statement will help businesses assess with more clarity the risk of a transaction being called in for detailed review; and

- b. committed to considering further improvements to the ISU’s operational processes, including considering additional touchpoints with the assessment team, changes to notification forms and technical improvements to the notification portal.

- However, the government continues to resist calls, including from the UK Parliament’s Business and Trade Committee, to define “national security” in a way that is well-communicated and understood by business. The government’s consistent view since the legislation was debated in Parliament is that a clear definition would be excessively restrictive and due to the multifaceted and constantly evolving nature of national security risks, could result in risks being missed.

2. Clarifying mandatory notification sectors for evolving security threats

- Notification obligations are triggered if a target entity carries out specified activities within one of 17 sensitive sectors in the UK. These specified activities are set out in detailed regulations known as the notifiable acquisition regulations (NARs). However, applying the NARs in practice can be challenging, with some definitions open to interpretation and exposure to high penalties for missed filings.

- The government will launch a formal public consultation on updating the NARs and associated guidance by summer 2024, covering:

- a. clearer definitions for “Advanced Materials” and “Artificial Intelligence;”
- b. standalone definitions for “semiconductors” and “critical minerals”, aligning with the UK’s latest strategies for those sectors;
- c. the potential addition of water as a new sector. This would be a departure from the government’s previous position that the existing regulatory regime provides adequate controls, despite the fact that other regulated utilities and critical infrastructure (e.g. electricity and gas transmission and distribution) fall within scope, but is perhaps a response to the challenges currently facing the sector; and
- d. additional/clarified guidance for defense and critical suppliers to government areas.

- Stakeholders will be invited to provide feedback on whether the regulations are sufficiently narrow (to capture only those activities that could raise concerns) and clearly defined (to enable investors to understand whether a transaction is notifiable). The UK government is under a statutory obligation to review the NARs and publish a report by 4 January 2025, so we should expect to see its conclusions, possibly in the form of updated draft regulations, by the end of the year.

3. Limits to more efficient reviews of lower-risk deals:

- There will be no “whitelisting” for “safe” investors in the foreseeable future, with the government continuing to reject calls for fast-tracking deals that involve acquirers who are well known or who have had past transactions cleared.

- The government confirmed its long-standing position that risks arising from the target alone could merit review and remedy and that the regime is nationality agnostic. This position is supported by data published in the government’s first full-year annual report (when almost a third of call-ins were associated with UK acquirers and a fifth with US acquirers) and the 20 final orders made so far (at least nine of which concern investors from the UK, US, Canada or Europe).
- 4. Limited exemptions for specific insolvency transactions while the future of internal reorganizations remains uncertain:**
- In a welcome move, the government has responded to stakeholder concerns regarding the impact of the

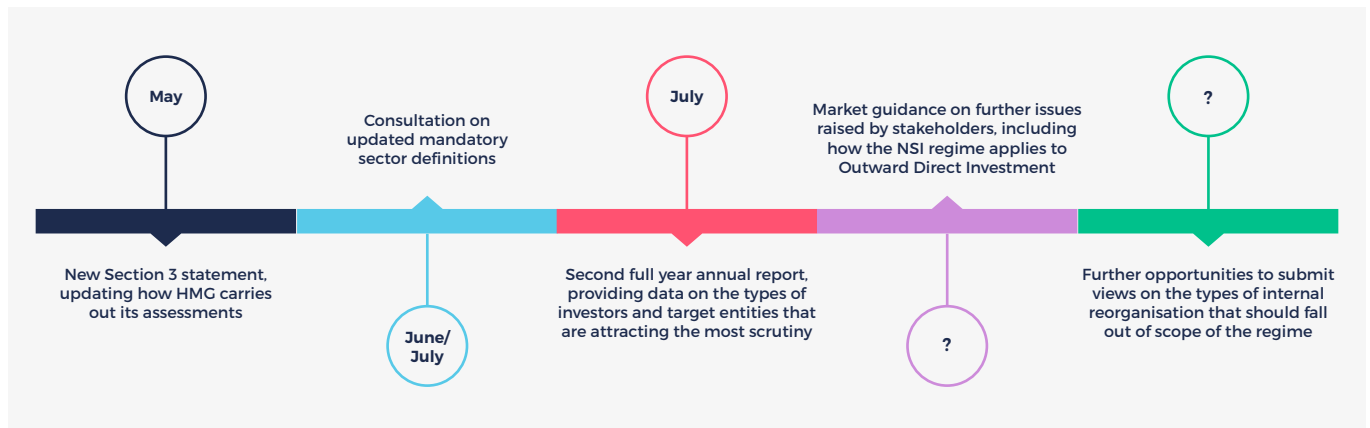
mandatory NSI regimes on entities in financial distress by committing to introduce an exemption for more types of insolvencies covering the appointment of liquidators, official receivers and special administrators, aligning with the existing carveout for administrators. The government will publish draft secondary legislation on this point.

- However, exemption for other types of transaction – notably internal reorganizations – is still under consideration. This will disappoint many companies and investors who have argued that internal reorganizations should fall out of scope given the very limited risk of national security concerns arising where there is no external party or new investors involved and often no ultimate change in control.

- Recognizing feedback that pre-notifying internal reorganizations can impact investment or restructuring timelines, the government has committed to undertake a thorough national security risk assessment to understand whether exemptions are feasible and, if so, how they could be designed. This will be another important opportunity for businesses to submit their views.

With thanks to Freshfields’ Alastair Mordaunt, Sarah Jensen and Iona Crawford for contributing this update.

Next steps - indicative timeline



Not a paper tiger: enforcement trends in the new EU Foreign Subsidies Regulation

The European Commission (Commission) is actively wielding its expanded authority granted by the EU Foreign Subsidies Regulation (FSR). This regulation brings forth a host of new obligations, including mandatory notifications for certain transactions and public procurement procedures, along with empowering the Commission to launch investigations *ex officio*.

In practice, this has translated into significant action. The Commission has opened three in-depth investigations into public procurement proceedings and launched an *ex officio* investigation. Moreover, the Commission has demonstrated its willingness to thoroughly scrutinize

M&A transactions, often demanding disclosures that extend beyond the scope of notification requirements.

In the span of around ten months since the FSR entered into force, case teams were allocated to more than 77 M&A notifications, while more than 100 public procurement notifications were made. Additionally, several stakeholders raised concerns by submitting complaints regarding potentially subsidized conduct within the EU.

Chinese investment under the spotlight

Chinese companies, and state-owned enterprises in particular, have emerged as the Commission's current key focus of enforcement under the FSR with several notable actions taken.

- **CRRC investigation in Bulgaria.** On February 16, 2024, the Commission launched its first in-depth investigation in relation to a bid by CRRC, a Chinese state-owned train manufacturer, in a procurement procedure led by Bulgaria's Ministry of Transport and Communications for the provision of several electric push-pull trains. Before the Commission could conclude its investigation, CRRC abandoned the bid.
- **Photovoltaic park projects in Romania.** Subsequently, on April 3, 2024, the Commission announced two in-depth investigations involving Chinese companies, this time in relation to bids for the design, construction and operation of a photovoltaic park in Romania.

The companies under scrutiny include Shanghai Electric, a Chinese state-owned enterprise and a consortium composed of Romania's Enevo Group and a German subsidiary of LONGi Green Energy Technology, a publicly listed Chinese photovoltaic company. Similar to the investigation into CRRC's bid, both Shanghai Electric and the German subsidiary of LONGi Green Energy Technology withdrew their bids before the Commission could conclude its investigation.

- **Ex officio investigation into Chinese wind turbines.** On April 9, 2024, the Commission initiated its first ex officio investigation under the FSR, targeting Chinese wind turbines in Spain, Greece, France, Romania and Bulgaria. It does not come as a surprise that the Commission initiated its first ex officio investigation in the wind turbines sector, as the Commission has pledged to closely monitor possible unfair trade practices that benefit non-EU wind turbine manufacturers in its European Wind Energy Action Plan published in October 2023. Notably, ex officio investigations can be launched independently of any public procurement or M&A activities.
- **Dawn raid on security equipment company.** Additionally, on April 24, 2024, the Commission confirmed reports of the first dawn raid under its FSR powers. The unnamed company, operating in the security equipment sector, is suspected of benefitting from distortive foreign subsidies.

These investigations reflect a broader strategy articulated by EU Commissioner Vestager in April 2024, emphasizing the Commission's pursuit of a "systemic approach" to address perceived unfair Chinese subsidization. Shortly after the initiation of the investigations described above, the Commission published an updated

report on state-induced distortions in China's economy under EU Trade Defense rules. This comprehensive 712-page document identified, from the Commission's perspective, "significant" distortions in sectors including telecom equipment, semiconductors, rail, renewable energy and electric vehicles, supplementing previous findings of "state-induced distortions" in the steel, aluminum, chemical and ceramic sectors. While primarily intended to aid trade remedies investigations, this report also signals the Commission's assessment of areas of risk for Chinese firms within the FSR framework.

Chinese companies operating within these perceived "distorted" sectors in the EU should be proactive in gathering FSR-related information and developing defense strategies in anticipation of potential investigations, particularly given broad scope of questions posed and the stringent timeframes for responding to requests for information (RFIs) in FSR investigations. Chinese companies will also need to consider data transfer issues when disclosing information to overseas regulators.

M&A: thorough scrutiny of foreign financial contributions

Following the initial 100 days of FSR M&A notifications, the Commission shared an update of case numbers and practical insights in their "FSR brief." Our observations closely align with the Commission's update, yet we offer nuanced perspectives from the vantage point of clients navigating the new FSR notification regime.

In our experience, the Commission acknowledges the novelty of the regime, with limited guidance available, and recognizes the administrative challenges businesses face in gathering information on foreign financial contributions (FFCs). While pre-notification RFIs to M&A parties may entail extensive information requests beyond the notification form's requirements,

Commission case teams have, in some cases, demonstrated flexibility in accommodating modifications to streamline the scope of responses. We anticipate smoother processes as case teams accumulate more experience in handling FSR matters.

Below are our five key observations from FSR M&A procedures.

First, pre-notification timelines depend on case complexity. In straightforward cases without disclosable FFCs, pre-notification typically concludes within four weeks or even faster after draft notification submission, with a maximum of one or two pre-notification RFIs. Conversely, cases of low to medium complexity (involving some reportable FFCs but no "most likely distortive" FFCs) require at least two to three months for pre-notification, often with several RFIs. Timely responses to RFIs significantly influence the overall timing. Cases with FFCs potentially falling into the "most likely distortive" category, especially when related to the financing of the transaction, typically result in intense scrutiny by the Commission, leading to lengthy pre-notification discussions of several months.

Second, the Commission usually issues its first RFI approximately one week after parties submit the initial draft notification. This suggests the use of template RFIs, evidenced by consistent questioning across multiple RFIs and cases. Following formal notification submission (provided no pre-notification issues arise), the Commission typically refrains from further inquiries. The suspension obligation lapses after a 25-working-day waiting period without the Commission initiating an in-depth review. Unlike EUMR proceedings, parties only receive an administrative letter confirming the Commission's decision not to launch an in-depth investigation but not a formal decision.



A significant number of notifications involve private equity funds or financial sponsors, prompting detailed inquiries from the Commission, including into limited partners (LPs).

Third, initial hopes for a lighter touch approach in unproblematic cases to minimize administrative burdens have largely not materialized. Case teams often pose highly detailed questions, particularly regarding transaction financing, reportable FFCs and the M&A auction process. Notably, the Commission frequently requests information beyond notification form obligations, such as details on FFCs below the €1m reporting threshold, which may seem disproportionate, especially in cases lacking “most likely distortive” FFCs. However, in some instances, a general summary of FFCs received is sufficient, representing a welcome approach for uncontroversial cases from an FSR perspective.

Fourth, private equity deals are in the Commission’s spotlight. A significant number of notifications involve private equity funds or financial sponsors, prompting detailed inquiries from the Commission, including into limited partners (LPs). This includes requests for comprehensive breakdowns of all LP commitments, regardless of any state links, and an assessment of whether any LPs possess special rights capable of influencing the fund’s investment decisions. The underlying rationale for these inquiries lies in the Commission’s consideration that in fund deals, LP commitments by state-linked entities inherently facilitate transactions and thus fall within the ambit of “most likely distortive” FFCs. Should parties

rely on the fund exemption, which limits reporting obligations to the involved funds, the Commission typically poses detailed questions to ascertain compliance with exemption requirements. This includes scrutiny of inter-fund transactions and arrangements between funds and, in certain cases, even between portfolio companies of funds. Such intense scrutiny of financial sponsor-type investments may appear disproportionate given the nature of these investments, necessitating careful management to streamline the process.

Fifth, the involvement of state-owned investors or co-investors heightens notification complexity, often leading to extended pre-notification periods and more granular questioning. While the Commission has not yet opened an in-depth investigation in the M&A context, indications suggest this is imminent. Commission officials have indicated close consideration of opening in-depth investigations in several cases.

Practical tips

We recommend businesses take the following steps to prepare for compliance with the FSR.

- **Preliminary assessments.** Evaluate whether FSR notifications will be necessary for upcoming deals or public procurement procedures in the pipeline.

- **Internal screening.** Conduct an internal screening to identify financial contributions received, recognizing the potential difficulty in identifying these in some cases.
- **Establishing internal registers.** Set up internal registers to track future, reportable financial contributions, ensuring comprehensive and timely compliance.
- **FSR risk assessment.** Perform FSR risk assessments for specific transactions or public procurement procedures to identify potential compliance risks and mitigation strategies.
- **Transactional terms.** For M&A deals, consider incorporating additional terms into transaction documents to address FSR compliance requirements effectively.

By proactively addressing these steps, businesses can navigate the complexities of the FSR landscape and ensure compliance with regulatory obligations.

With thanks to Freshfields’ Ninette Dodoo, Vanessa van Weelden, Fabian Bickel and Hazel Yin Antitrust Partner, RuiMin Law Firm, China*

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