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Insights

UPDATE TO THE EU FDI SCREENING REGULATION – WHAT IS CHANGING?

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BACKGROUND

More than five years ago, the EU's Foreign Direct Investment ("**FDI**") Screening Regulation (Regulation (EU) 2019/452) (the "**Regulation**") came into force, creating for the first time a cooperation mechanism for Member States and the European Commission (the "**Commission**") to exchange information on specific investments in the Union, whilst respecting the sovereignty of Member States to make final determinations regarding investments in their own territories.

The mechanism was intended to increase transparency, enable early warning of potentially problematic investments, and foster a more coordinated approach to FDI screening across the EU given that an investment in one Member State could affect security and public order in another or potentially across the EU. Despite its important objectives, several significant challenges and gaps emerged following the implementation of the Regulation, prompting calls for reform. These included:

- **No mandatory requirement for Member States to set up an FDI screening regime**. The Regulation did not require Member States to adopt a national screening regime. Rather, it was a voluntary mechanism. At the time of entry into force of the Regulation in April 2019, 14 Member States had no FDI screening mechanism, meaning that foreign investors could potentially target Member States without screening regimes to gain access to the Union, effectively circumventing the protective measures in place.
- **Significant divergences in scope, thresholds, timelines, and procedures within established FDI screening mechanisms**. Even in jurisdictions with established FDI frameworks, screening mechanisms varied significantly, including differences between ex ante and ex post reviews, the use of mandatory versus voluntary screening processes as well as the divergent treatment of investments originating from the EU and third countries.
- **The definition of "foreign investor" did not extend to investments made by an EU company which is ultimately owned by a non-EU investor**. There were concerns that the definition of "foreign investor" in the Regulation enabled third country entities to establish an EU entity in a

Member State with lax or no screening mechanism, and subsequently trade within other Member States, taking advantage of the internal market through this gap in the Regulation.

Since the Regulation entered into force in April 2019, the global geopolitical and technological landscape has changed dramatically. This has included threats to critical infrastructure, supply chain dependencies and the rapid development of dual-use technologies. These new challenges have also exposed gaps in the current regime.

On 24 January 2024, the Commission adopted five initiatives to strengthen the EU's economic security amid the growing geopolitical tensions and rapid technological shifts. One of the initiatives proposed included an upgraded framework for screening foreign investments to better protect the EU's security and public order. Over the past year, the proposal has been the subject of interinstitutional negotiations between the Commission, the Council of the European Union and the European Parliament, which concluded on 11 December 2025, with a provisional political agreement on a revised FDI Screening Regulation (the "**Revised Regulation**").

REVISED REGULATION – KEY ASPECTS

While the text of the Revised Regulation has yet to be published, press releases from the Commission (see here and here) note the following key changes:

- **Mandatory screening mechanisms in all Member States**. All Member States will be required to put in place FDI screening regimes. This is unlikely to lead to much change in practice given 26 of the 27 Member States currently have FDI screening regimes in force, with the last remaining screening regime (in Cyprus) coming into force in April 2026.
- **A common minimum sectoral scope**, ensuring that all Member States screen foreign investments in sensitive and strategic areas. Notably, all Member States should at least cover the below mission-critical sectors:

  I. dual-use items and military equipment;

  II. hyper-critical technologies, such as artificial intelligence (aligned with the EU AI Act definitions and focused on general-purpose AI with relevance to space or defence), quantum technologies and semiconductors;

  III. critical raw materials;

  IV. critical entities in energy, transport and digital infrastructure, based on a risk-based assessment by the Member State where the EU target is established;

  V. electoral infrastructures (e.g. voter databases, voting systems, electoral management systems); and

VI. a limited list of financial system entities, narrowed to include only central counterparties, central securities depositories, operators of regulated markets, operators of payment systems (excluding central banks) and systemically important institutions.

- **Expanded scope to cover indirect foreign control**, extending EU screening to investments made by EU-based investors that are controlled, directly or indirectly, by individuals or entities from non-EU countries.
- **Strengthened national procedures**, including a two-phase review process, and the power to screen unnotified transactions retroactively.
- **Improved cooperation mechanisms**, including where comments from other Member States or an opinion from the Commission have been issued, the screening Member State will explain how these were considered, including **reasons for any disagreement**, without prejudice to sensitive national security considerations.
- **New EU-level digital tools**, including an online filing portal (on request of at least nine Member States) and an EU-level database accessible to national screening authorities with information on previously notified cases and screening outcomes.
- **Filtering criteria** to ensure that the network of national authorities and the Commission only review potentially sensitive cases.
- **Transparency improvements**, such as requiring Member States to publish guidance on the scope of their screening mechanisms.
- **Harmonisation** of key procedural and substantive elements that should facilitate investments in corporate groups present in several Member States, as noted in the 2024 Draghi Report.

CONCLUSION

The provisional political agreement marks an important step in the EU's efforts to strengthen its economic security, particularly in the current geopolitical environment, while seeking to remain open to foreign investment. Formal adoption of the Revised Regulation will follow once the co-legislators complete their internal procedures, and once the final text has been translated into all EU official languages. Once the Revised Regulation enters into force (which is likely to be in Q1 2026), Member States will have an 18-month transition period to update their national rules in line with the Revised Regulation.

The BCLP FDI team is monitoring the situation closely and will provide a further update once the final text of the Revised Regulation is published.

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