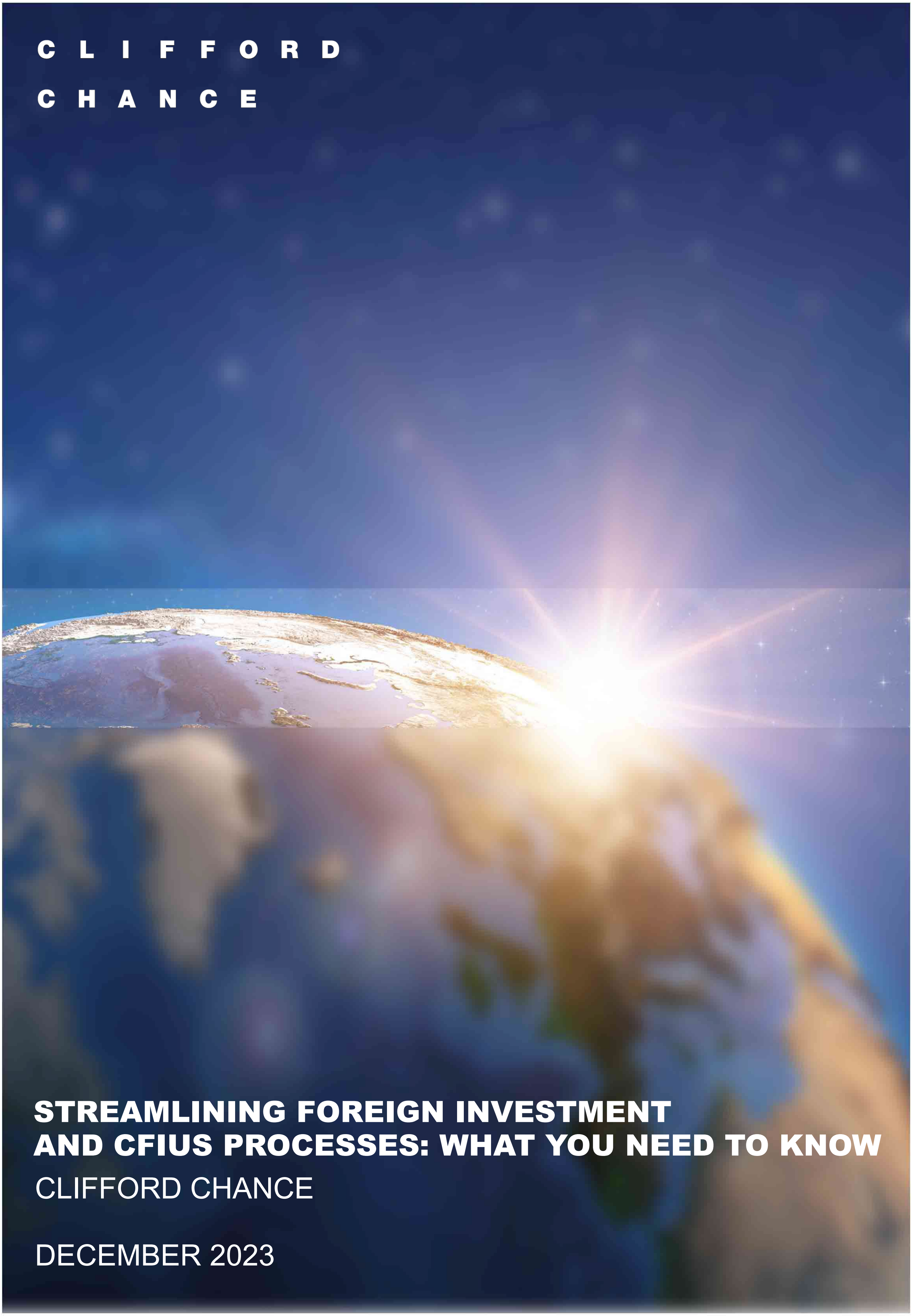


CLIFFORD CHANCE

STREAMLINING FOREIGN INVESTMENT AND CFIUS PROCESSES: WHAT YOU NEED TO KNOW

CLIFFORD CHANCE

DECEMBER 2023

CONTENTS

SUPPORTING YOU ON ALL FUTURE INVESTMENTS

Navigating foreign investment regimes can be critical to the success of a transaction

Foreign investment scrutiny is increasingly being applied to global M&A transactions. The global trend towards protectionism has led to more restrictive government measures. This requires a more strategic and co-ordinated approach towards foreign investment rules.

Foreign direct investment (FDI) is a category of cross-border investment in which an investor resident in one economy establishes a lasting interest in and a significant degree of influence over an enterprise resident in another economy. In practice, foreign investment regimes often also apply to indirect acquisitions of shares or assets, e.g., the acquisition of a foreign parent company with a subsidiary or assets located in the jurisdiction in question.

We can provide the following services:

1 Identifying where foreign investment filings are triggered for each transaction, and carrying out an initial multi-jurisdictional foreign investment filing analysis.

2 Preparing any required foreign investment filings and engaging in any discussions with the authorities (pre- and post-notification), making any supplemental submissions and, to the extent required, agreeing remedies with the relevant authorities.

3 Identifying and addressing other related issues such as political and other stakeholder engagement.

4 Assisting you with navigating the foreign investment clearance process across all jurisdictions (working with our international network and local counsel when required). Clifford Chance would act as a “central hub” and co-ordinate each of the processes.

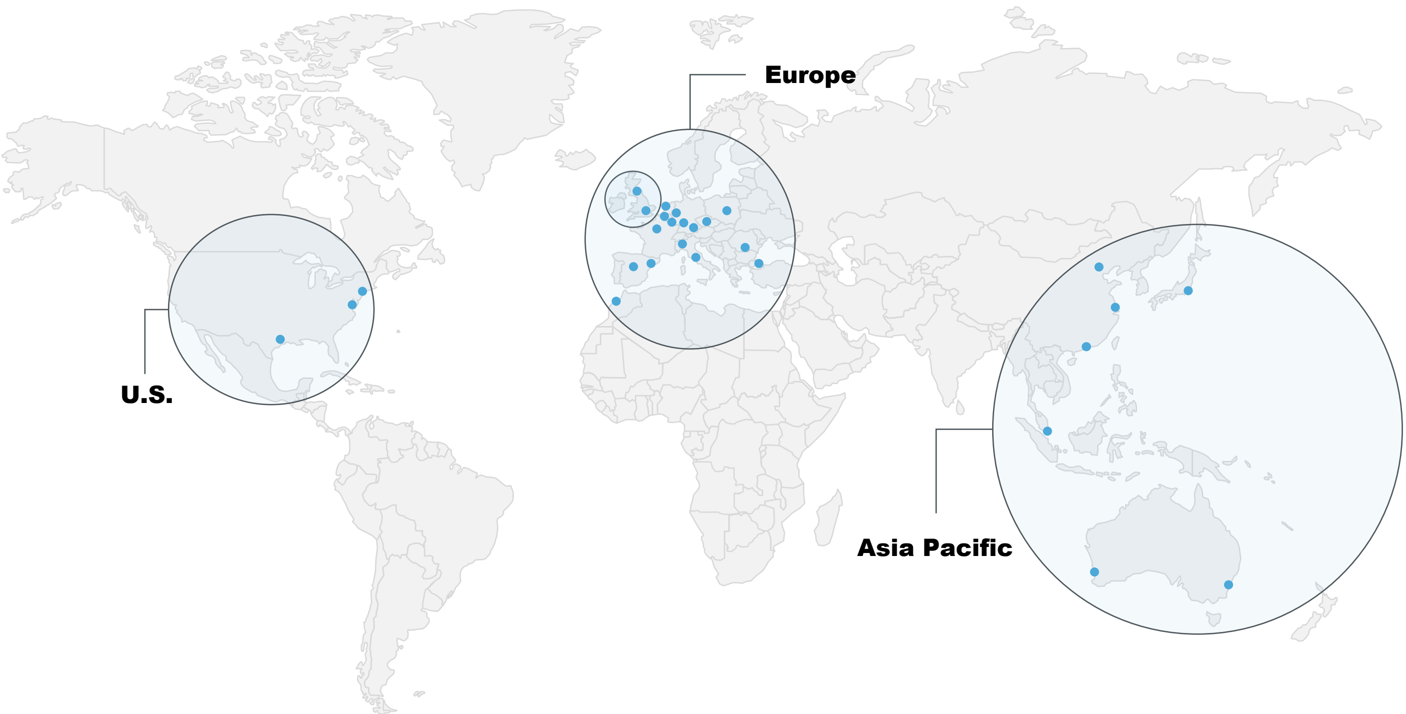
5 Assisting your in-house legal function with setting up standard protocols to help streamline the process for gathering and maintaining the information necessary for conducting future foreign investment filings.

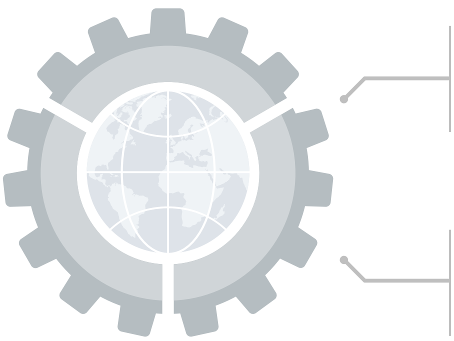
OUR GLOBAL TEAM

We offer consistent high-quality advice with coverage in all key jurisdictions

With a large team of lawyers across the key hubs of Europe, Asia-Pacific and the U.S., we support our clients on their most complex and strategically important transactions where and when they need us.

This guide provides an overview of some of the key foreign investment regulations, including jurisdictions outside of the Clifford Chance network. We have a broad network of excellent relationships with local counsel that are experts in foreign investment issues and can assist with additional jurisdictions where required.





Having one firm appointed to advise on all foreign investment filings ensures that you will receive a cost-effective, co-ordinated, high-quality and seamless service.

Our experienced team, which also comprises former regulators, will build up a deep understanding of your business and the preferences of your legal function to deliver efficiencies and ensure that no "learning curve" is required for each new transaction.

WHAT SETS US APART

An extensive track record and global coverage

We advise on

Filings

- Co-ordination of multi-jurisdictional foreign investment filings.
- Advising throughout the whole foreign investment filing process (Phase I and Phase II proceedings).
- Advising on information requests.
- Negotiations with the respective regulatory authorities, including in relation to undertakings and remedies.

Policies and compliance

- Developing policies for dealing with challenging jurisdictions.
- Sophisticated and pragmatic approach to foreign investments, balancing commercial and risk management considerations.
- Setting up and/or maintaining foreign investment filings database.

Managing risks

- Identifying and managing regulatory risks.
- Involvement of communication and PR agencies to address the political aspects.
- Political lobbying and stakeholder engagement.

Training

- Regular training on best practice, trends and regulatory developments for legal and deal teams.
- Document production.
- Transaction rationale.
- Market practice/trends on risk sharing.

GOING BEYOND PURE LEGAL ADVICE

Our specialists have a wealth of experience in advising clients on the development of foreign investment frameworks in several established and emerging markets and jurisdictions. We are at the forefront of developments, and regularly participate in consultations and interest groups concerning regulatory and competition developments. We have advised on some of the largest and most complex foreign investment matters in recent years, and have helped clients overcome major regulatory hurdles in Europe, Asia-Pacific and the U.S. We have long-standing experience of handling Phase I and II investigations, and regularly act as global counsel to co-ordinate multi-jurisdictional foreign investment and merger control filings. We seek innovative solutions to protect our clients' strategic interests and to best achieve our clients' commercial objectives.

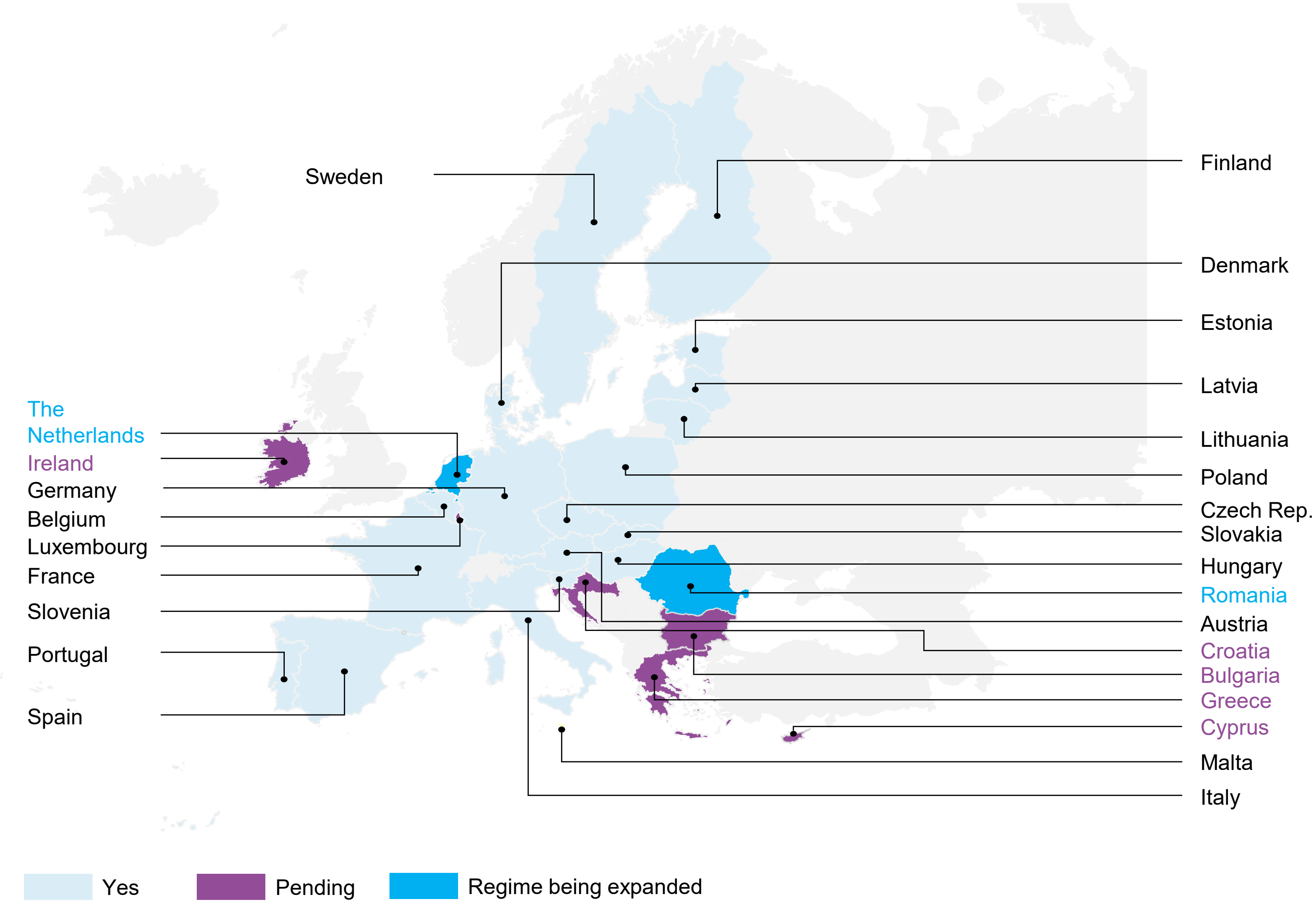
Several lawyers from our international team have experience as former regulators, including the EU Commission, U.S. Department of Justice and U.S. Federal Trade Commission, amongst others. Our strong relationships with government departments enable us to find commercially acceptable solutions for our clients even when remedies are required. Our excellent reputation amongst regulators combined with prior senior experience allows us to provide clients with unique insights into the mindset and workings of regulatory authorities.

EUROPEAN UNION

An overview of Member States with FDI regimes in place or pending

The map below offers a snapshot of which countries in Europe have FDI screening regimes in place.

22 Member States are reported to have screening mechanisms in place, with a further 5 Member States with initiatives or consultative / legislative process underway.



EUROPEAN UNION
(CONTINUED)

Purpose of the Regulation

The EU Screening Regulation 2019/452 established a framework for the EU Commission and the Member States to **exchange information** regarding foreign investment filings which are notified on a national level to the authorities of the Member States.

Member States were required to implement the co-operation mechanism established under the FDI Regulation by 11 October 2020.

The FDI Regulation does not create a new FDI regime but seeks to regulate the screening of FDI transactions across the EU.

Powers of the EU Commission

The EU Commission **does not have any power to block or impose remedies**. Instead, the EU Commission can issue a non-binding opinion to the Member State which undertakes the screening. The opinion of the EU Commission has to be taken into "due consideration". The same also applies to the non-binding comments from the other Member States. The final decision is always taken by the Member State which conducts the foreign investment screening.

Timeline

The EU Commission and other Member States have **35 calendar days** following receipt of complete information to submit the opinion and comments to the Member State which conducts the screening.

This **deadline can be extended** if the EU Commission and/or other Member States request further information.

Scope of the Regulation

The EU Screening Regulation applies to **critical infrastructure** including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure.

The scope of application also comprises critical technologies and dual-use items including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies. Further sectors caught by the EU Screening Regulation include supply of critical inputs, including energy or raw materials, food security, access to sensitive information, including personal data, or the ability to control such information and the freedom and pluralism of the media.

Finally, the EU Screening Regulation also applies to projects or programmes of EU interest as listed in an annex to the EU Screening Regulation (including Governmental Satellite Communications, known as Govsatcom, and the EU4Health Programme, one of the EU's responses to the COVID-19 pandemic).

The FDI Regulation has been subject to a consultation process in June / July 2023. The EU Commission is expected to present a report to the European Parliament and European Council evaluating the functioning and effectiveness of the FDI Regulation and a legislative proposal for revision in due course.

Annual Report by the EU Commission

On 19 October 2023, the EU Commission published its third Annual Report on the screening of FDI into the Union. Its key findings were:

i. A total of 423 cases were screened under the FDI screening mechanisms with Austria, Denmark, France, Germany, Italy and Spain being responsible for >90% of those cases;

ii. 81% of the cases screened by the EU Commission in 2022 were closed in Phase I, 11% in Phase II (rest ongoing);

iii. the 4 sectors with the highest number of transactions in 2022 were manufacturing, information and communication technologies (ICT), professional activities, and wholesale / retail;

iv. the 6 most common countries of origin of the ultimate investor, in the cases notified, were the USA, the UK, China, Japan, the Cayman Islands, and Canada.

AUSTRIA

Type of filing requirement

Mandatory. According to the current legislation, foreign investment filings are **suspensory**. Thus, the approval of the Federal Minister for Labor and Economy (**BMAW**) will have to be obtained prior to closing. **Criminal sanctions**, including imprisonment, will be possible in cases of gun-jumping.

Nature of the review

The **BMAW** can prohibit the acquisition of an Austrian target if the acquisition poses a risk to security or public order in Austria (or another EU Member State). If such risk can be mitigated by commitments/remedies (*Auflagen*), the transaction must be cleared with commitments/remedies. The BMAW may impose commitments/remedies unilaterally. In practice, there is an exchange on the nature and scope of commitments/remedies between the BMAW and the acquirer.

In order to establish whether an investment poses a risk to security or public order, the BMAW considers the following factors:

- Investor-related factors (e.g. direct or indirect control of the acquirer by the government of a third state; previous of potential future involvement in illegal activities; previous or potential future involvement in activities which may affect security or public order in another EU Member State)
- How the investment affects the (highly) critical sectors listed in the Annex to the ICA.

Highly critical sectors are: Defense equipment and technologies; operation of critical energy infrastructure; operation of critical digital infrastructure, in particular 5G infrastructure; water; operating systems that guarantee the data sovereignty of the Republic of Austria; research and development in the fields of medicines, vaccines, medical devices and personal protective equipment.

"Normal" critical sectors are in particular: critical infrastructures (e.g., in energy, IT, transport, telecoms); critical technologies and dual-use items (e.g., artificial intelligence, semiconductors, defense technologies); security of supply of critical inputs (e.g., energy, raw materials, food, medicines and vaccines); access to or ability to control sensitive information; freedom and pluralism of the media.

Timetable

- EU Screening mechanism (introductory phase): **35 calendar days (or longer)**.
- Phase I: **additional one month (no extension possible)**.
- Phase II: **additional two months (no extension possible)**.

Austrian FDI proceedings formally start with the kick-off of the EU cooperation mechanism (EUCM). The BMAW does not kick off the EUCM if it deems the submitted information to be incomplete.

Triggering events

Direct or indirect acquisition by a **non-EU/non-EEA/ non-Swiss investor** of:

- an Austrian business or legal entity;
- material parts of an Austrian business resulting in the acquisition of a controlling influence over such parts of a business;
- a controlling influence over an Austrian business or legal entity; or
- voting rights of at least 10% (if the Austrian target is active in a highly critical sector) or 25% (if the Austrian target is active in a "normal" critical sector).

Under Austrian legislation, it is unclear whether a filing obligation is triggered if the foreign acquirer acquires non-controlling voting shares of at least 10% (or 25%) in a non-Austrian entity which itself holds a non-controlling voting interest of at least 10% (or 25%) in the Austrian target. By contrast, a filing obligation is triggered, if a foreign acquirer acquires a controlling influence over a non-Austrian entity which itself holds a non-controlling voting interest of at least 10% (or 25%) in the Austrian target (or vice versa).

If the Austrian target is a microenterprise or a mere branch office, the acquisition is exempted from the mandatory filing obligation.

The ICA does not exempt internal restructurings. Internal restructurings may therefore come within the ambit of the ICA and notifiability has to be assessed on a case-by-case basis.

Good to know

In RFIs, the BMAW regularly requests information on

- the Austrian target's customers, in particular public sector customers.
- the acquiror's investment behavior over the past years (e.g., how soon entities (or assets) were sold on).

In the course of 2023, no changes were made to the ICA.

BELGIUM

Type of filing requirement

Mandatory and suspensory. Notification of the foreign investment must take place between signing and closing, and the duty to notify rests on the foreign investor. The parties to the foreign investment are subject to a standstill obligation, meaning that the approval of the Inter-Federal Screening Committee ("**ISC**") must be obtained prior to implementing the foreign investment.

Administrative fines. In case of failure to notify or gun-jumping, the ISC has the power to impose an administrative fine on the foreign investor of up to 30% of the value of the foreign investment.

***Ex officio* investigation.** In case of failure to notify, the ISC has the power to initiate an *ex officio* investigation and, if needed, can impose corrective measures up to two years after the unnotified foreign investment was implemented. This term can be extended to five years if there are indications of bad faith.

Nature of the review

The ISC will assess whether there are specific indications of a possible threat to Belgium's public order, national security, and/or strategic interests that could arise from the implementation of the foreign investment. The ISC may impose corrective measures aimed at addressing the potential impact of the foreign investment on Belgium's public order, national security, and/or strategic interests.

Timetable

The review process chiefly includes a pre-notification phase, a Phase I verification procedure, and potentially a Phase II screening procedure.

- **Pre-notification phase:** No formal or informal time limits.
- **Phase I:** 30 calendar days, but requests for information stop the clock until the requested information is provided.
- **Phase II:** 28 calendar day, but several stop-the-clock events could potentially add months to the duration of the review process.

Triggering events

Filing thresholds. A foreign investment is notifiable to the ISC where the following cumulative conditions are met:

- the investment is made by a (non-EU) foreign investor;
- the target is established in Belgium (through a subsidiary, branch, or significant economic presence);
- the activities of the target's Belgian entity "touch upon" one or more sectors that are crucial to Belgium's public order, national security, and/or strategic interests; and
- the investment entails the acquisition of either control (within the meaning of the EUMR), or 10% or 25% (depending on the sector) of the voting rights of the target.

Category I sectors (25% or control): (i) critical physical or virtual infrastructure for energy, transport, water, health, electronic communications and digital infrastructures, media, data processing or storage, aerospace, space and defence, election infrastructure, or financial infrastructure; (ii) technologies or resources that are of essential importance to security, defence or maintaining the public order, military equipment, dual use items, or technologies of strategic importance (and related IP), such as artificial intelligence, robotics, semiconductors, cybersecurity, aerospace and space, defence, energy storage, quantum and nuclear technologies, or nano technologies; (iii) supply of critical inputs, including energy or resources, as well as food security; (iv) access to, or the possibility to control, sensitive information or personal data; (v) the private security sector; (vi) freedom and pluralism of the media; and (vii) technologies of strategic importance in the biotech sector, provided the target's turnover in the last fiscal year exceeded EUR 25 million.

Category II sectors (10% or control): (i) defence, including dual use items; (ii) energy; and (iii) cybersecurity, electronic communication or digital infrastructures, provided – for all these sectors – the target's turnover in the last fiscal year exceeded EUR 100 million.

Belgian complexity:

The ISC acts as a platform on which up to six governments – the Federal government and five decentralised governments – will intervene whenever a matter is dealt with for which they have substantive powers or where there is a territorial connection.

Each competent ISC representative conducts its own investigation and separately reviews the notification from the perspective of the powers of its government, with the federal level coordinating through the ISC's Secretariat.

CZECH REPUBLIC

Type of filing requirement

Mandatory. The Czech FI Act requires that approval of the Ministry of Industry and Trade (the "**Ministry**") must be requested prior to making an investment into a number of strategic sectors. **Financial penalties**. Failure to comply with statutory obligations may result in administrative fines up to the amount of **2%** of net annual turnover (or up to approximately EUR 4.1 million, if the turnover cannot be determined) of the foreign investor.

Nature of the review

The Czech FI Act applies to investors whose residence (or nationality, if an investor is a natural person) is located outside the EU; or investors directly or indirectly controlled by persons whose residence (or nationality, if an investor is a natural person) is located outside the EU.

Sector-specific scrutiny relates to (i) manufacturing, research, development, innovation or ensuring the life cycle of arms and military equipment; (ii) operating a critical infrastructure identified by a relevant Czech administrative authority; (iii) administrating a critical cybersecurity or information infrastructure, and (iv) manufacturing or development of dual-use items (including software and technology, which can be used for both civil and military purposes).

Timetable

In general, the Ministry has 90 days to issue its approval. This time period may be extended by up to 30 days in particularly complex cases. Any foreign investor may request consultation with the Ministry before completing the transaction. Such consultation would be advisable especially in cases when it is not certain whether the Czech FI Act will be applicable, or if the risk that the transaction may compromise the security of the Czech Republic or its internal or public order cannot be conclusively excluded.

Triggering events

Under the Czech FI Act, a relevant transaction is one that results in a non-EU investor, directly or indirectly acquiring:

- a stake equal to or greater than 10% of voting rights in the target;
- a membership of the foreign investor (or its related party) in corporate bodies of the target;
- the asset through which the target's business activity is carried out by the investor; or
- any other type of control resulting in the foreign investor gaining access to information, systems or technology which are important in connection with the protection of the security of the Czech Republic, or its internal or public order.

Update on the FDI regime

On 19 January 2021, the Czech Parliament passed a new act that aims to strengthen the control of foreign direct investments in the Czech Republic (the "**Czech FI Act**"). It became effective on 1 May 2021.

The Czech FI Act has a significant impact on many strategic investments from non-EU countries.

DENMARK

Type of filing requirement

The Danish Act on Screening of Certain Foreign Direct Investments, etc. in Denmark contains two screening mechanisms:

- A **mandatory and suspensory** authorisation regime for foreign investments in Danish companies, which are active within particularly sensitive sectors. If an investment subject to the mandatory regime is completed without prior approval, and approval is subsequently denied because the investment is found to constitute a threat to national security or public order, the Danish Business Authority may order the investment to be divested. If the investment is not divested within a certain deadline, the Danish Business Authority may suspend the voting rights of the investor in the Danish entity.
- A **voluntary and non-suspensory** notification regime for foreign investments in Danish companies within all sectors other than the particularly sensitive sectors. For such investments, it is possible for the Danish Business Authority to initiate an investigation as to whether the investment may constitute a threat to national security or public order for a period of up to 5 years after the completion of the investment. If this is found to be the case, the Danish Business Authority may order the investment to be divested (in which case the above similarly applies).

Nature of the review

Approval is subject to the Danish Business Authority finding that the investment does not constitute a **threat to national security or public order.**

When assessing whether an investment may constitute a threat to national security or public order, the Danish Business Authority will take into account, *inter alia*, whether:

- the foreign investor is directly or indirectly controlled by a foreign government, including foreign government agencies or foreign armed forces of a third country, including through ownership or substantial financing;
- the foreign investor is or has been involved in activities affecting security or public order in an EU Member State or in other friendly and allied countries;
- there is a serious risk that the foreign investor is engaged in or has relationships to illegal or criminal activities significant to national security or public order;
- there are indications that the foreign investor is deliberately trying to circumvent the screening rules, e.g. through the use of front company constructions.

Timetable

The review under both regimes is divided into two phases.

- Phase 1: Phase 1 will start when the Danish Business Authority has declared the filing complete. Phase 1 must be completed no later than 45 calendar days after the filing has been declared complete. Phase 1 can result in the Danish Business Authority approving the investment or initiating Phase 2 if further investigation is deemed necessary.
- Phase 2: The Danish Business Authority may request additional information. Phase 2 must be completed no later than 125 calendar days after the additional information has been declared complete. Phase 2 can result in the Danish Business Authority approving the investment, a statement from the Danish Business Authority that conditions for obtaining an approval must be negotiated or a referral to the Minister of Industry, Business and Financial Affairs.

The investment must be referred to the Danish Minister of Industry, Business and Financial Affairs if the Danish Business Authority finds that the investment may constitute a threat to national security or public order, which cannot be alleviated conditions. No statutory deadlines apply to the Minister of Industry, Business and Financial Affairs' review.

DENMARK
(CONTINUED)

Triggering event(s)

Under the **mandatory and suspensory** authorisation regime, a filing to the Danish Business Authority is required in the following cases:

- A foreign investor's direct or indirect acquisition of a qualified stake (i.e. **10% or more** of the shares or the voting rights or similar control by other means) in a Danish company active within a particularly sensitive sector.
- A foreign investor's increase of its stake to **20% or more, 1/3 or more, 50% or more, 2/3 or more, or 100%** in a Danish company active within a particularly sensitive sector.
- A foreign investor's **greenfield investment** in (i.e. establishment of or capital injection up to certain monetary thresholds into) a Danish company, which is going to be active within in a particularly sensitive sector.
- Certain **internal restructurings**, including where a new foreign company is included in the ownership structure.

For the purpose of the mandatory and suspensory authorisation regime, foreign investors are considered to be non-Danish citizens, non-Danish companies, and Danish companies subject to control or significant influence by non-Danish citizens or non-Danish companies (i.e. the non-Danish citizens or companies directly or indirectly have at least 25% of the shares or voting rights or similar control by other.

The **voluntary and non-suspensory** notification regime applies to investments in a Danish company active within any other sector than the particularly sensitive sectors, provided that the foreign investor directly or indirectly acquires at least 25% of the shares or voting rights or similar control by other means of the Danish company and the investment may constitute a threat to national security or public order.

In this context, foreign investors are considered to be non-EU/EFTA citizens, non-EU/EFTA companies, and EU/EFTA companies subject to control or significant influence by non-EU/EFTA citizens or non-EU/EFTA companies (i.e. the non-EU/EFTA citizens or companies directly or indirectly have at least 25% of the shares or voting rights or similar control by other means in the EU/EFTA company).

Proposal for an amendment to the Danish FDI Act

On 3 May 2023, a proposal for an amendment of the Danish Act on Screening of Certain Foreign Direct Investments was introduced. The proposal suggests an expansion of the scope of the mandatory and suspensory authorisation regime to contracts relating to the upcoming energy island project in the North Sea, i.e., before entering into a contract relating to the establishment, co-ownership or operation of the future energy island, the future contracting party (regardless of domicile) must obtain pre-approval by the Danish Business Authority. The proposal also suggests lessening the administrative burdens for applicants as well new deadlines for the Danish Business Authority's review of investments, i.e., up to 45 business days in phase 1 and up to 125 business days in phase 2. The proposal has been discussed at first reading in the Parliament on 11 May 2023 and is expected to come into force on 1 July 2023.

ESTONIA

Type of filing requirement

Mandatory and suspensory. The approval of the Consumer Protection and Technical Regulatory Authority must be obtained before implementing the transaction.

Financial penalties. The Consumer Protection and Technical Regulatory Authority may use coercive measures in case a transaction is implemented without clearance. These include a potential to issue a fine up to EUR 100,000. This can be applied repeatedly (once per day) to both the Foreign Investor as well as any other participant to the transaction.

Structural penalties. The Consumer Protection and Technical Regulatory Authority may issue a prescript obliging the parties to unwind the transaction implemented without clearance and oblige the parties to the transaction to undertake other steps to revert the situation as it was prior to implementing the transaction.

Nature of the review

The Consumer Protection and Technical Regulatory Authority may block the transaction in case it is capable of endangering the national security or public order of Estonia or other EU Member States.

The Consumer Protection and Technical Regulatory Authority will in respect to the foreign investor assess:

- The countries and economic sectors in which the foreign investor is active in;
- The ownership structure of the foreign investor;
- Source of financing used for the transaction;
- Potential influence of a third country over the foreign investor;
- The involvement of the foreign investor or its ultimate beneficiary owner in any previous or potential future illegal activity activities and whether the foreign investor or its ultimate beneficial owner has previously endangered the national security of Estonia or any other EU Member State.

In respect to the target entity, the Consumer Protection and Technical Regulatory Authority will assess:

- The general competitive environment in the economic sector in which the target is active and the importance of the target entity in that sector;
- To which extent is the target entity subject to EU or public funding;
- The impact of the foreign investment on the activities of the target undertaking, its customers and suppliers, as well as on the economic sector in which the target is active in general; and
- The R&D activities of the target entity and the intellectual property rights belonging to the target.

Timetable

The proceedings can be separated into two phases, depending on whether the transaction requires an in-depth assessment or not.

Under phase 1, a decision can be expected in 30 calendar days from a complete filing.

Under phase 2, a decision up to 90 calendar days in addition to the 30-day timetable of phase 1. This can further be extended by 60 calendar days for negotiations between the Consumer Protection and Technical Regulatory Authority and the foreign investor.

The Estonian Foreign Investment regime will apply to transactions implemented on or after 1 September 2023.

ESTONIA
(CONTINUED)

Triggering event(s)

- Prior authorisation will be required where an investor (i) registered under the laws of a third country (non-EU), or (ii) with an ultimate beneficiary owner with a third country citizenship, acquires directly or indirectly (i) a 10% shareholding or equivalent voting rights, or (ii) a 50% shareholding or control (within the meaning of EU competition law), in a target entity protected under the Estonian Law on Assessing the Reliability of Foreign Investment.
- According to the Law on Assessing the Reliability of Foreign Investment, Target entities active in Estonia, in the following economic activates or meeting the below criteria are considered protected entities:
  - a vital service provider (e.g. central heating, fuel, electricity, public telecommunications providers etc);
  - a state-owned company (at least 10% ownership by the state);
  - an enterprise that manufactures and/or supplies to a state institution goods specified in the list of military goods or dual-use goods specified in the Estonian Strategic Goods Act, or an enterprise that provides technical assistance for such goods;
  - a nationwide television or radio service provider or an on-demand audiovisual media service provider within the meaning of the Media Services Act, as well as a publisher of news, newspapers and magazines in print media and on the Internet, whose turnover related to their respective activities in Estonia in the previous calendar year was at least three million euros;
  - an enterprise that has a geological survey or mining permit for the exploration or mining of oil shale or commodities included in the list of critical raw materials of the European Union drawn up by the European Commission;
  - an entrepreneur with whom a state operating reserve storage agreement or a delegated reserve agreement has been concluded;
  - an entrepreneur who owns a permanent national defense facility within the meaning of the National Defense Act;
  - an enterprise that owns certain infrastructure masts necessary for the operation of state communication or for the transmission of broadcasting programs;
  - a railway infrastructure company that manages a public railway within the meaning of the Railway Act;
  - a certified airport or helipad operator, whose operated airport or helipad is open to international regular air traffic, or an air navigation service provider providing air traffic services in the Tallinn flight information area within the meaning of the Aviation Act; and
  - an operator of an Estonian seaport belonging to the pan-European transport network in accordance with certain EU laws.

Prior authorisation will also be required where a foreign investor acquires assets or a business unit of the target entity used for the provision of the aforementioned business activities, provided that such assets or business unit forms a standalone business, to which turnover can be attributed.

FRANCE

Type of filing requirement

Mandatory and suspensory. The approval of the Minister for the Economy must be obtained prior to making an investment in a number of sensitive or strategic sectors.

Penalties. The Minister for the Economy may order the unwinding of the investment and/or impose fines. Maximum fine is the highest of: (i) twice the amount of the investment, (ii) **10%** of the annual turnover (excluding taxes) of the target company and (iii) EUR 5 million for legal entities and EUR 1 million for individuals – and **criminal fines**.

Nature of the review

The Minister for the Economy may review investments in the following sensitive or strategic sectors:

- **Defense**: activities relating to (1) military equipment, (2) dual-use goods and technologies, (3) national defense secrets, (4) cryptology, (5) agreements with the French Ministry of Defense, relating to (1)-(4), (6) information systems used by critical facilities and operators, (7) the interception, remote detection, and capture of correspondence/conversations/IT data, (8) IT systems auditing/certification, (9) the gambling industry (except casinos), and (10) counteragents of pathogens or toxic substances.
- **Essential infrastructure, goods, or services**: activities relating to (1) energy supply, (2) water supply, (3) transport networks and services, (4) space operations, (5) electronic communications, (6) police, civil protection, customs, and private security services, (7) facilities and operators of vital importance, (8) public health, (9) food supply, and (10) print and online press services.
- **R&D** relating to (1) dual-use goods and technologies, (2) cybersecurity, (3) artificial intelligence, (4) robotics, (5) additive manufacturing, (6) semiconductors, (7) quantum technologies, (8) energy storage, (9) biotechnologies, and (10) renewable energy production.
- **Data processing, transfer, or storage** relating to the activities mentioned above.

Timetable

A decision can be expected within **30 business days** from submission of a request for clearance in **Phase 1**. RFIs from the Ministry will nevertheless stop the clock for review. This review period can be **extended by a further 45 business days** in complex matters in **Phase 2** with no stops-the-clock. If no decision is issued in this time, the application is deemed to have been rejected.

A target can seek an opinion from the Minister at any time, to establish whether it falls within the scope of the regime; the Minister must reply within **two months**.

Triggering event(s)

- Prior authorisation will be required where there is:
  - an **acquisition of control**, as defined in article L. 233-3 of the French Commercial Code (broadly similar but not identical to the EUMR), of any French law entity;
  - an **acquisition, in part or in full, of any business division operated by a French law entity (including asset sale)**; or
  - for non-EU/EEA investors only, an acquisition, directly or indirectly, solely or in concert, of more than **25% of the voting rights in a French law entity**. This threshold has been lowered to 10% in 2020, only for listed companies in France, and will become permanent in 2024.
- **A foreign investor** in a chain of control will be subject to a filing requirement even if the foreign investor is ultimately controlled by a French entity.
- The regime extends to all **target entities governed by French law** carrying out activities in **a sensitive or strategic sector**, but the French FDI regime will also expand in 2024 to investments in **French branches of <u>foreign companies</u>**.
- The French Minister of the Economy has also announced the list of strategic sectors is to expand in 2024 to include the **extraction and processing of critical raw materials**.

Latest statistics and recent prohibition

- **325 requests** were submitted in 2022 to the Ministry, a stable number compared to 2021, with 131 transactions being approved, **53% of which were subject to commitments**.
- **24% of the reviewed transactions were linked to the defense sector**, 52% were related to essential infrastructure, goods, or services, and the remaining 24% were a mix of both sectors. 76% of investment in the defense sector were approved subject to commitments.
- Investors mostly remained **non-EU/EEA** based (especially from the UK, the US, and Canada). EEA-based investors are primarily from Germany, Luxembourg, and Italy.
- France ranks **amongst the most active members** of the European network within the first three year.
- On 6 October 2023, the French Minister for the Economy **vetoed its second transaction** by prohibiting the acquisition by American Flowserve of **Segault** and **Velan**, French component suppliers for nuclear power plants and nuclear-propelled submarines as well as manufacturers of industrial valves used in the Charles de Gaulle aircraft carrier.

GERMANY

Type of filing requirement

Mandatory. According to the current legislation, foreign investment filings are **suspensory**. Thus, the approval of the Federal Ministry for Economic Affairs and Climate Action will have to be obtained prior to closing. **Criminal sanctions**, including imprisonment, will be possible in cases of gun-jumping.

Nature of the review

The **Federal Ministry for Economic Affairs and Climate Action** can prohibit the acquisition of a German target if the transaction leads to a "probable adverse effect" to the public order or security of Germany or of another EU Member State or in relation to certain EU programmes/projects.

Cross-sectoral scrutiny includes, amongst others, the following industries:

- critical infrastructure (energy, water, telecommunications, finance and insurance, healthcare, transportation and food), media, certain cloud and telematics services, and certain telecommunications surveillance measures;
- essential pharmaceuticals, medical products and in-vitro diagnostics, in particular for the treatment of highly infectious diseases, and medical personal protective equipment;
- certain areas of earth remote sensing systems, artificial intelligence, autonomous driving or flying, industrial robots, semiconductors, cybersecurity, aeronautical/aerospace, nuclear technology, smart meter gateways, information and communication technology, critical raw materials, secret patents, and agricultural real estate.

Sector-specific scrutiny relates to the defence sector, in particular weapons, and certain cryptographic products, as well as specific dual-use products.

It is expected that the German FDI regime will be substantially revised in 2024.

Timetable

Cross-sectoral and sector-specific scrutiny:

- Phase I: **two months**
- Phase II: **additional four months**.

In complex cases, Phase II proceedings can be further extended by a **further four months**. An additional deadline extension (Phase I and Phase II) is possible upon the parties' consent. The timeline is **stopped** if the Federal Ministry for Economic Affairs and Climate Action deems the submitted information to be incomplete or if the parties enter into remedy negotiations with the German government.

Triggering event(s)

Cross-sectoral scrutiny: Indirect or direct acquisition by non-EU investors of at least **10%** of the voting rights in a German target active in critical infrastructure, IT services, or the media, or **20%** of the voting rights in a German target active in any of the other industries, listed in the second and third bullet points in the left column. For the industries which are not listed in the left-hand column, a **25%** threshold applies.

The **filing obligation** exists only regarding the industries in relation to which the 10% or 20% thresholds apply. The 25% threshold does not lead to a filing requirement. However, the Federal Ministry of Economic Affairs and Climate Action has the discretion to call in such transactions. The same also applies in relation to certain acquisitions of "**control**" even if the 10% or 20% thresholds are not met (e.g., right to nominate board members).

Sector-specific scrutiny: Indirect or direct acquisition of at least 10% of the voting rights in a German target by **non-German** investors.

A foreign investor in a continuous **10%** (or **20%/25%**) chain will be subject to a filing requirement even if the foreign investor is ultimately controlled by a German entity.

Case study: Heyer Medical/ Aeonmed

Heyer Medical AG, a relatively small German manufacturer of medical products with a focus on ventilation and anesthesia devices, which had filed for insolvency in 2018, was acquired by the Chinese undertaking Aeonmed Group in 2019. The concentration was closed early 2020. At that time, the transaction was not subject to a mandatory filing requirement. However, the BMWK initiated proceedings after closing in mid 2020 and prohibited the acquisition retroactively two years later in view of possible serious risks for public order and security with regard to the supply of essential medical products for the healthcare sector. The prohibition was appealed by Aeonmed to the Administrative Court in Berlin. In November 2023, the Court set aside the contested prohibition decision *inter alia* because (i) the plaintiff was not properly heard and (ii) the respective proceeding was not initiated within the applicable deadlines.

HUNGARY

Type of filing requirement – two different regimes

Mandatory and suspensory. Currently there are two different FDI regimes in Hungary, both of which are **mandatory** and require prior notification to and acknowledgement by the competent Ministers (Minister leading the Prime Minister's Cabinet Office and the Minister of the Economic Development) before implementing transactions. The first regime mainly concerns activities that are closely related to national security (e.g., production of weapons, providing public services and financial services) and was introduced in 2018 following the EU regulations ("**General FDI Regime**"). The second regime, introduced in 2020 due to the COVID-19 epidemic, has a much wider scope including most sectors of the economy ("**Special FDI Regime**") ("***strategic activities and sectors***").

Sanctions for non-compliance include fines up to approx. EUR 25,000 (General FDI Regime) or double the transaction value (Special FDI Regime). Besides fines the transaction will be also considered null and void under both regimes.

Nature of the review

The competent Ministries for both regimes will basically examine whether the contemplated transaction "harms the security interests of Hungary". The Ministers evaluate:

a) whether the proposed transaction endangers or threatens to endanger the national interest, public order or public security of Hungary (General and Special FDI Regime);

b) whether the applicant is directly or indirectly under the control of any administrative agency of any non-EU state (Special FDI Regime);

c) whether the applicant was involved in any activity relating to a public security or public order issue in any other Member State (Special FDI Regime);

d) whether there is substantial risk that the applicant will commit any crime or illegal activity (Special FDI Regime).

If the Minister finds that any of the foregoing conditions apply, it shall issue a decision which forbids completion of the contemplated transaction, otherwise the Minister shall acknowledge the notification.

Timetable

The notification shall be made **under both regimes** within **10 days** from signing the relevant agreement (i.e., SPA in most cases) and the competent minister has **60 days** (General FDI Regime) or **30 business days** (Special FDI Regime) to decide on the transaction. These deadlines may be extended by an additional **60 or 15 days**. The procurement of the approval of the relevant Ministry should be treated as a condition precedent in the transaction documents.

HUNGARY
(CONTINUED)

Triggering event(s)

Different triggering events apply under the different regimes but both regimes concentrates primarily on the activities of Hungarian target companies, the type of the transaction and the origin/residence of the foreign investor. Both regimes apply to both share and asset transactions.

Triggering events under the General FDI Regime:

a) a foreign investor establishes a new Hungarian company or acquires a stake in an existing Hungarian company, solely or together with other foreign investor(s), exceeding 25% (for privately held companies) or 10% (in publicly listed companies), or acquires a 'dominant influence'; or

b) foreign investor(s) acquire(s) a stake of less than 25% in a privately held company registered in Hungary, but the total stake thus held by foreign investor(s) as a result exceeds 25%; or

c) a foreign investor registers a branch office in Hungary for the purpose of carrying out strategic activities; or

d) a foreign investor acquires assets or a right to operate or use infrastructure or assets that are used for carrying out strategic activities; or

e) a company registered in Hungary, in which foreign investor(s) hold a stake equivalent to that in point a) or b) above, takes up a strategic activity.

Foreign investor definition under the General FDI Regime:

Under the General FDI Regime any natural person or legal entity qualifies as a foreign investor, if it is (i) citizen of/registered in a country outside of the EU, EEA or Switzerland or (ii) a legal entity registered in the EU, EEA or Switzerland if controlled by a non-EU/EEA/Swiss person/entity (EU entity controlled by non-EU investor).

Triggering events under the Special FDI Regime:

Acquisition of ownership interest; capital increase; mergers, demergers, transformations to another company form; issuance of bonds which are convertible or convert to equity or provide preferential subscription rights; establishing usufruct over equity, provided that as a result the foreign investor would acquire :

a) majority control (by way of ownership, voting rights, appointing management or otherwise) if the investment reaches or exceeds HUF 350 million (approx. EUR 930,000) – in case of EU/EEA/Swiss entities; or

b) at least 5% ownership interest (or 3% ownership interest in case of public companies), if the investment reaches or exceeds HUF 350 million (approx. EUR 930,000) – in case of investors that are citizens of/registered in a country which is outside of the EU, EEA or Switzerland; or

c) an ownership interest reaching 10%, 20% or 50% in a strategic company or any level of interest which, if computed together with any other foreign investors' interest, exceeds 25% – in case of investors that are citizens of/registered in a country which is outside of the EU, EEA or Switzerland.

In addition, irrespective of ownership thresholds or transaction sizes, the transfer of using/operational rights of infrastructures and assets that are 'indispensable for the operation of strategic companies' (including the pledging of these assets and infrastructures) require both notification to and acknowledgement by the competent minister.

Foreign investor definition under the Special FDI Regime

According to the Special FDI Regime foreign investors are those (natural or legal) persons or organisations which are (i) citizens of/registered in a country which is outside of the EU, EEA or Switzerland; or (ii) legal entities registered in the EU, EEA or Switzerland, if they are under the majority control of (natural or legal) persons or organisations citizens of/registered in a country which is outside of the EU, EEA or Switzerland (EU entity controlled by non-EU investor). The Special FDI Regime also applies to EU/EEA/Swiss investors (natural and legal persons) if they acquire majority control and the investment exceeds HUF 350,000,000 (i.e. approx. EUR 930,000.

Case study: Blocking Aegon's business sale

On 7 April 2021, the competent Hungarian Minister refused to approve the previously announced sale of Aegon's Central and Eastern European operations to Vienna Insurance Group (VIG). Under the EUR 830 million deal, VIG had agreed to acquire Aegon's insurance, pension, and asset management business in Hungary, Poland, Romania and Turkey. The decision of the Ministry stated that the intended acquisition by a foreign investor of the Aegon companies in Hungary is denied and the transaction was not closed in its original form as a result of that decision. The decision triggered the procedure of the European Court of Justice, which investigated the case and found that the Hungarian veto decision violated the EU Merger Regulation and ordered Hungary to withdraw the decision. This did not happen as thereafter it was agreed between VIG and the Hungarian State that the Hungarian State will acquire 45 % interests in Aegon Hungary and the other subsidiaries of VIG in Hungary as the result of which the transaction could be closed on 25 March 2022.

ITALY

Type of filing requirement

Mandatory and suspensory. The transaction can be implemented only when the approval of the Presidency of the Council of Ministers has been obtained (or the time limit for it to exercise its powers has passed).

The parties may submit a joint notification of the transaction.

Where no notification is made, review proceedings may be commenced by the Presidency. In addition to the acquisition being void (and any potential criminal liability arising outside the FDI regime), the Presidency can impose a pecuniary fine up to double the value of the transaction and, in any case, not less than **1%** of the cumulative turnover of the companies involved and, for the 5G sector, up to **3%** of the turnover of the acquirer.

Nature of the review

The Presidency can (i) oppose the acquisition of the target, (ii) impose conditions or (iii) veto strategic companies' resolutions where there is a threat of serious prejudice to the following relevant strategic sectors:

- defence and national security;
- energy, transport and communications;
- water and health;
- raw materials and food;
- data and sensitive information processing/storage/access, or control of access to sensitive information (e.g., personal data, or the ability to control such information);
- the freedom and pluralism of the media;
- financial, including credit and insurance, sectors and financial market infrastructure;
- artificial intelligence, robotics, semiconductors, cybersecurity, nanotechnologies, biotechnologies;
- 5G and cloud technologies;
- non-military aerospace infrastructure and technologies;
- critical technologies and dual-use items; and
- electoral infrastructure.

Any transactions that involve the transfer of assets (including technologies and IP rights) in these sectors – subject to the fulfillment of the conditions listed under the section "Triggering events" – must be notified. For the 5G and cloud technology sector, special provisions apply.

Timetable

The review proceedings can last up to 45 calendar days (30 calendar days for the 5G sector). This time limit can be extended (by up to 10 calendar days, if additional information is required from the parties, and by up to 20 calendar days if additional information is required from third parties). A simplified procedure may apply in case of straightforward transactions.

The parties may submit a pre-notification.

Triggering event(s)

Acquisition of strategic targets.

- For a target that is strategically important to **defence and national security**, notification is required for acquisitions of more than **3%, 5%, 10%, 15%, 20%, 25% and 50%**.
- **For energy, transport, communication, healthcare, agri-food, financial, credit, and insurance sectors,** notification is required for acquisition of **control** by all EU acquirers, including those **resident in Italy.**
- **All other sectors** (except for 5G). Notification is required:
  - if EU acquirer(s), for acquisitions of direct or indirect **control**; and
  - if non-EU acquirer(s), (i) for acquisitions of direct or indirect **control**; (ii) for direct or indirect acquisitions of a stake (or voting rights) equal to at least **10%** of the target's capital (or voting rights) AND where the investment's value is at least EUR 1 million; or (iii) for direct or indirect acquisitions of a stake equal to **15%, 20%, 25% or 50%**.

Adoption of board resolutions, acts or transactions (*e.g.*, those resulting in the loss of ownership, control and availability of strategic assets) → for all sectors.

Incorporation of a company carrying out **strategic activities** or **holding strategic assets** in Italy.

Case study: Acquisition of a significant stake in TIM S.p.A. by Vivendi S.A.

Vivendi S.A. acquired a stake in the share capital of TIM S.p.A. – a leading Italian communications company – sufficient to trigger notification to the Presidency. However, notification was not filed. The Presidency opened *ex officio* review proceedings and imposed (1) certain conditions concerning TIM S.p.A.'s governance and (2) a fine of EUR 74.3 million on TIM S.p.A. for failure to notify the Presidency of the acquisition of control of TIM S.p.A.'s strategic assets by Vivendi S.A.

LUXEMBOURG

Type of filing requirement

Mandatory and suspensory. Luxembourg FDI screening law requires that approval of the Ministry of Economy be requested prior to making an investment in a Luxembourg entity carrying activity in one of the strategic sectors. If the screening procedure (phase 2) is triggered, the investment may not be completed until the authorisation decision has been rendered.

Financial penalties. If the investor does not comply with the administrative measures, the Ministry may impose penalties of up to EUR 1,000,000 for individuals and up to EUR 5,000,000 for legal entities.

Nature of the review

The Minister of Economy will assess the potential effects of the investment on security and public order in the following critical sectors (together with any research and production activities in relation thereto):

- **Dual-use goods**: development, operation, and trade of dual-use goods (i.e., goods which can be used for both civil and military purposes)
- **Energy**: electricity production and distribution, gas conditioning and distribution, oil storage and trade, quantum and nuclear technologies
- **Transportation**: land, water, and air transportation
- **Water**: water collection, treatment, and distribution
- **Healthcare**: healthcare-related activities and medical analysis laboratories; nanotechnologies and biotechnologies
- **Communications**: wired and wireless telecommunications, satellite communications, postal and courier services
- **Data processing and storage**: data processing facilities, information service hosting, internet portals
- **Aerospace**: space operations and space resource exploitation
- **Defence**: activities related to national defence
- **Financial**: activities of the central bank, financial infrastructure, payment, and settlement systems
- **Media**: publishing, audio-visual, and broadcasting activities
- **Agri-food**: activities related to food safety

Factors such as, amongst others, the integrity, security and continuity of the provision of critical infrastructures, access to sensitive information, including personal data, or the ability to control such information may be considered.

As a result of the review, the investment will be authorised either unconditionally, with mitigating conditions or prohibited.

Timetable

The Minister of the Economy will first acknowledge receipt of any FDI notification and then decide (phase 1) as to whether or not to trigger the screening procedure within 2 months as from the date of acknowledgement of receipt of the notification.

If the screening procedure is decided (phase 2), it will not exceed 60 calendar days from the date when it is triggered.

So-called "stop the clock" questions may suspend the phases 1 & 2 timing, until receipt of additional information.

An event that caused the reallocation of the capital of the entity to a foreign investor above 25% of the voting rights in the Luxembourg company, has to be notified to the Minister of Economy within 15 calendar days of its occurrence.

Triggering event(s)

Investments of any kind made by non-EU/EEA investors, which are intended to establish or to maintain lasting and direct links between the foreign investor and a Luxembourg company, enabling the investor to control directly or indirectly or in concert, a Luxembourg company i.e.:

- have a majority of the voting rights of the shareholders of that company;
- have the power to appoint the majority of the management or supervision body while being shareholder of that company;
- have control over a majority of the voting rights via participation or via agreement made with other shareholders; or
- exceeding the threshold of 25% of ownership of the capital conferring voting rights, as a result of a new investment or any events modifying the allocation of the share capital.

THE NETHERLANDS

Cross-sector regime

The cross-sector 'foreign' direct investment regime (Wet veiligheidstoets investeringen, fusies en overnames) entered into force on 1 June 2023. There are two ministerial decrees that supplement the regime: one decree clarifies the scope of sensitive technology and the other introduces rules mostly of an administrative/technical nature. Transactions that fall within the scope of the regime must be reported to the Investment Assessment Office (Bureau Toetsing Investeringen, BTI), part of the Ministry of Economic Affairs and Climate Policy. These are transactions in which the legal entity acquiring influence over a Dutch company could potentially have consequences for the national security of the Netherlands.

Type of filing requirement

Mandatory. The Act requires that approval by the Minister of Economic Affairs and Climate must be obtained prior to making an investment. **Financial penalties**. Failure to comply with the notification requirements, implementation without authorisation and other breaches of the Act may be subject to a fine up to 10% of the turnover of the relevant undertaking.

Nature of the review

The regime captures companies that are active in *vital processes* or *sensitive technologies* and *managers of high-tech campuses* in the Netherlands.

Vital processes can be described as services that are essential to Dutch society. Some sectors have already been classified as such but more can be identified by ministerial decree. Current examples include: banking, gas storage, nuclear energy, designated activities at Schiphol airport and the port of Rotterdam, etc. Sensitive technologies are currently understood to include dual use goods that fall under EU export control regulations and other technology. A proposed ministerial decree has been published where a limited number of dual-use items are excluded and certain technologies are classified as *highly sensitive*. In that same decree, four new additional technologies are designated as highly sensitive: quantum technology, photonics technology, semi-conductor technology and so-called High Assurance products.

The Minister of Economic Affairs and Climate will assess whether the investment could pose a **threat to national security,** in particular from the creation of undesirable strategic dependencies, threats to the continuity and resilience of vital processes and the possible impairment of the integrity and exclusivity of knowledge and information. It attempts to do so by taking into account various factors including, for example:

- the identity, nationality, financial situation and track record of the investor(s);
- (a lack of transparency in) the ownership structure of the investor;
- any restrictive sanction measures or obligations imposed on the investor; and
- the level of security or safety in the country of origin of the investor.

The investment will be allowed either unconditionally or with conditions to the effect that certain mitigating measures are met, such as additional security requirements or the appointment of a security officer. The investment will be prohibited if the national security risks cannot be remedied through mitigating measures.

Timetable

The Minister of Economic Affairs and Climate will initially have **eight weeks** after notification to take a decision. If **further investigation** is required, a second phase of another eight weeks will apply. Either phase may be extended, although the (potentially combined) extension can only be for six months in total. Finally, if the EU FDI screening regulation applies, an additional three months' extension is possible. So-called "stop the clock" questions may suspend the statutory review period at any time.

Triggering events

A mandatory notification is triggered when there is a *change of control*, the concept widely used in both Dutch and EU competition law. In essence, that is a change in the capacity to exercise decisive influence over an undertaking. In addition, a lower threshold may apply to *highly sensitive* technologies, for example the acquisition/increase of 10%, 20% or 25% of voting rights.

THE NETHERLANDS
(CONTINUED)

Telecoms specific regime

The act on undesired control in telecommunications (Wet ongewenste zeggenschap telecommunicatie) entered into force on 1 October 2020 (with retroactive effect to 1 March 2020).

Type of filing requirement

Mandatory. The act requires that approval of the Minister of Economic Affairs and Climate must be requested prior to making an investment. **Financial penalties**. Failure to comply with the notification requirements and other violations of the obligations in relation to the draft act may be penalised by a fine up to EUR 900,000.

Nature of the review

The act enables the Minister of Economic Affairs and Climate to review and **block an acquisition** leading to **predominant control** over a Dutch telecommunications party and to **intervene in the existing ownership** of such control, where predominant control is acquired or held by an **undesired person** if this would lead to a **threat to public interest,** including **national security** and **public order**.

The act relates to the control of **telecommunications parties in a broad sense**, as it comprises not only providers of electronic communications networks and services, but also providers of hosting services, data centres, trust services and internet exchange points.

Timetable

The Minister of Economic Affairs and Climate will have **eight weeks** after notification to decide whether it will prohibit the proposed acquisition. As this is also subject to so-called “stop the clock” questions, it may in practice take longer than eight weeks. If the Minister is of the opinion that **further investigation** is required, the review period may be **extended by six months**.

Triggering events

The act provides that predominant control (*overwegende zeggenschap*) in any event concerns: (i) the possession (solely or jointly) of at least **30%** of the (direct or indirect) voting rights; (ii) the ability to name **more than half the board members**; or (iii) the ability to exercise control through **special governance rights**.

POLAND

Type of filing requirement

Mandatory foreign investment regime: In 2020, the Polish foreign investment regime introduced a procedure for clearance before the Polish Competition Authority (the "**PCA**") for non-EU/EEA/OECD investors.

Mandatory specific companies regime: The acquisition of **strategic Polish companies**, regardless of the investor's country of origin, requires notification to, and may be blocked by, the relevant government authority in Poland, if they are listed by name in the Regulation of the Council of Ministers.

Sanctions: (i) **criminal penalties** of imprisonment from 6 months to 5 years, under both regimes; (ii) fines of up to **PLN 50 million (~EUR 10.5 million)** in the case of the foreign investment regime and **PLN 100 million (~EUR 21 million)** in the case of the specific companies regime. Additional financial penalties apply to anyone managing the target or exercising voting rights on behalf of an infringing foreign investor. Furthermore, any transaction effected in breach of the Polish FDI Regime will be **null and void** and the investor will not be able to exercise its rights attached to the shares acquired.

Nature of the review

The Polish FDI Regime introduced a clearance procedure for the acquisition of control or a significant share/capital in certain Polish companies by **non-EU/EEA/OECD investors (citizenship/registered office for less than 2 years).**

This applies if a transaction concerns a Polish entity that is (i) a public company listed on the Warsaw Stock Exchange (WSE), or (ii) a company that owns "critical infrastructure", or (iii) a company that operates in any of the listed sectors.

Sector-specific scrutiny relates to: (i) energy, (ii) fuels, oil, and gas, (iii) chemicals, rhenium, fertilizers, (iv) weapons and military technologies, (v) trans-shipment in ports, (vi) telecommunications, (vii) medical equipment and pharmaceuticals, (viii) processing of food and (ix) development of software used in: (a) the supply of electricity, fuels, heat, (b) the supply of water and waste treatment, (c) data storage and transmission, (d) cash/card payments, securities and derivatives transactions, and insurance services, (e) hospitals, laboratories and sale of prescription drugs, (f) transportation, (g) supply of food, (h) data gathering or processing in cloud computing.

De minimis exemption applies if the target's Polish turnover was below EUR 10 million in each of the 2 years preceding the transaction.

POLAND (CONTINUED)

Timetable

Deadline for filing. In general, the approval of the PCA must be obtained prior to completion of a transaction. The notification procedure should be commenced prior to (i) entering into any agreement resulting in an obligation to acquire or achieve a significant participation/dominance, (ii) announcement of the tender offer in the case of an acquisition of a WSE-listed company, (iii) any other event resulting in the acquisition or achievement of significant participation/domination. In the case of a multi-stage transaction, before the signing of the last agreement resulting in the acquisition or achievement of significant participation /domination, the PCA accepts notifications on the basis of, for example, a conditional/preliminary agreement or a letter of intent. There are specific situations of filings post closing.

Time for clearance.

Under the foreign investment regime, following the notification, the PCA will have 30 business days to complete the initial proceedings and approve the FDI transaction or initiate additional control proceedings, which may last up to 120 calendar days.

Under the specific companies regime, the relevant government body will have 90 calendar days to decide.

Triggering events

Under the foreign investment regime, a relevant transaction will be one that results in a foreign (i.e. non-EU/EEA/OECD) inwestor's acquiring or achieving **a significant participation in or a dominant position over the target, including:** (i) a **20% or 40%** shareholding or voting rights or profit participation, post-transaction, or (ii) **the majority** of the shares/votes/profit, or (iii) the power to **decide on the directions** of the activities of the target, including control/management and/or a profit transfer agreement over a Polish entity, or (iv) **the acquisition or lease of an organised part of an enterprise** from a Polish entity, or acquisition of the majority of the votes in a Polish entity.

Under the specific companies regime, the thresholds are **20%, 25%, 33%, 50%** and of the shares/votes/profit.

Very few decisions from the PCA so far

2022 – The PCA initiated proceedings in three cases and issued one non-opposition decision.

November 2021 – The first phase II FDI case, concerning the acquisition of Odlewnia Zawiercie S.A. (a manufacturer of malleable cast iron fittings and machine castings) by Meide Group (a Chinese investor). As manufacture and sale of weapons-related products represents a small percentage of Odlewnia Zawiercie's operations, phase II proceedings were instituted as it was essential to investigate whether there was a threat to public order, safety or health. The PCA issued no objection to the transaction.

November 2021 – The acquisition by Raya Holding For Financial Investments S.A.E. (Egypt) of Makarony Polskie S.A. (a manufacturer of a variety of pastas, produced with or without eggs).

February 2021 – The acquisition by Chinese investor Changjiu Logistics of a significant participation in Adampol S.A. (an intermodal terminal crucial for container transport between China and Europe).

October 2020 – The first transaction notified under the new Polish FDI Regime concerned the acquisition of Centrum Rozliczeń Elektronicznych Polskie ePłatności (a company active in the processing of cashless transactions and sales/rentals of payment terminals) by H&F Corporate Investors VIII, a Cayman Islands-based investment fund specialising in online services, business software and financial services.

ROMANIA

Type of filing requirement

Mandatory. The new Romanian FDI regime enacted on 18 April 2022 is applicable to FDIs, as defined below, made or intended to be made by *any investor* (EU or non-EU).

The types of transactions which fall under the new FDI regime **("FDIs")** are those meeting one of the following criteria:

- an investment of any kind aiming to establish or to maintain lasting and direct links between the investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in Romania, including investments which enable effective participation in the management or control of a company carrying out an economic activit; or
- represent a change in the shareholding chain which pertains to control over the investor; or
- represent new investments, defined as (a) an investment in assets for establishment of a new independent undertaking, (b) extension of an existing undertaking; (c) diversification of production activity of an undertaking, or (d) fundamental change to the general production process of an undertaking.

Specific transparency provisions relevant for media enterprises. A specific preliminary procedure of public consultation for a 30-day period must be observed in case of FDIs related to certain categories of media outlets or online platforms.

Standstill obligation and sanctions. The implementation of an FDI without FDI authorization is forbidden. CSFDI may review any transaction *ex officio* or upon notice from another Romanian authority.

Failure to notify CSFDI and breaching the standstill obligation could result in fines of up to **10% of the foreign investor's total global turnover** achieved in the previous year. Also, incomplete, inaccurate or misleading information may be fined with the same amount. Annulment of the transaction may also apply.

In case of new investments which have not achieved a turnover during the previous year, the applicable fine would amount between **RON 10-50 million (approximately, EUR 2-10 million)**.

Nature of the review

The **Commission for Screening of Foreign Direct Investments (CSFDI)** reviews FDIs carried out in one or more of certain areas of interest from a national security perspective. CSFDI replaced the Supreme Council of National Defense (CSAT) as the authority in charge with the review of FDIs, however, CSAT remains competent to issue binding opinions in case of FDIs which require a detailed analysis.

The CSFDI is subordinated to the Government and its secretariat is managed by the Romanian Competition Council (RCC). The RCC also acts as the contact authority for the cooperation mechanism set up between the European Commission and various Member States examining FDIs under the FDI Regulation.

Connection with merger control procedures

The FDI authorization requirement is triggered irrespective of whether the FDI represents or not an economic concentration from a merger control perspective.

If an FDI also triggers a merger control notification, both an FDI authorization request and a merger control notification will be submitted; however, the timeline of the merger control procedure may be delayed and will be finalized subject to the solution under the FDI procedure.

ROMANIA
(CONTINUED)

Timetable

The FDI authorization request becomes effective (i) after the complete submission by the notifying parties of any additional information requested by CSFDI and (ii) after the issuance by all competent authorities of any relevant opinions requested by CSFDI. Generally, such opinions must be issued within 20 days from CSFDI's request; however, in case of a detailed analysis, CSAT may issue its binding opinion within 90 days from CSFDI's request.

Within 60 days after the date when the FDI authorization request becomes effective, CSFDI shall issue mandatory endorsements for the authorization of an FDI or a consultative endorsement for the conditional authorization (i.e. subject to commitments) or prohibition of an FDI.

Based on a mandatory FDI endorsement, the RCC shall issue an **authorization decision** within 30 days, which shall be communicated to the parties within 45 days.

In case of a consultative endorsement for the **conditional authorization** or **prohibition** of the FDI, the final decision rests upon the Government.

Triggering event(s)

Authorization is required for FDIs of a ***value exceeding the RON equivalent of EUR 2,000,000***** and **concerning target companies the activities of which relate to national security strategies in one of the following sectors (which must be interpreted very broadly)**: security of financial, fiscal, banking and insurance activities; energy; critical infrastructure; IT and communication systems; transport; industry; systems of supply of essential resources; trade and production of weapons, ammunition, explosives or toxic substances; citizens and collectivities; borders; protection of agriculture and environment; privatizations of state-owned enterprises or the management thereof; protection against disasters.

FDIs not reaching the EUR 2,000,000 threshold may still be subject to examination if they are deemed as likely affecting or representing risks to national security or public order, by reference to the criteria set out in Article 4 of the FDI Regulation.

*** Until further legal updates or guidance is issued by the legislator, it remains unclear how the investment value should be calculated (e.g. by reference to the transaction price, equity contribution, value or turnover of the Romanian target company).*

Authorisation fee

A filing fee of EUR 10,000 must be paid upon submission of the filing.

SLOVAK REPUBLIC

Type of filing requirement

Mandatory. The Act on Screening of Foreign Direct Investments (the FDI Act) requires a governmental approval prior to making a critical foreign investment in a target (any person with a seat in the Slovak Republic).

Voluntary. In cases of non-critical foreign investments, the acquirer can decide whether to submit an application. The Ministry of Economy is also entitled to initiate ex officio screenings up to 2 years after the date of the transaction and can potentially impose an obligation on the foreign investor to reverse the transaction.

A foreign investor is any person (legal or natural) outside the EU i.e., persons that are not EU citizens or do not have their registered seat or place of business in the EU.

However, even EU citizens or persons with their registered seat or place of business in the EU will be considered foreign investors if they are controlled by a person outside the EU or by a public authority of a third country, such person is their ultimate beneficial owner or such person finances the transaction.

Financial penalties. The amount of the fine ranges for a foreign investor from 1% to 2% of the aggregate total net turnover in the previous FY (legal person) or from EUR 100,000 to EUR 1 million (natural person). Fine is capped with the value of the investment.

Fines may be imposed also repeatedly and both for serious breaches (making a critical foreign investment without approval), and for less serious (breach of the obligation to notify).

Timetable

Screening procedure has two phases:

- Phase I: **Assessing negative impact risk**
- Phase II: **Screening the foreign investment**

Phase I applies only in the case of a non-critical foreign investment and takes up to 30 days, the Phase II follows if a negative impact risk is identified. All critical foreign investments will undergo Phase II, which takes up to 130+ days. Decisions are subject to appeal.

Nature of the review

The FDI Act distinguishes between two types of investments:

a) critical foreign investment in the target person in the following sectors: (i) specific products (in particular weapons, explosives, pyrotechnic products), defense industry products, dual-use items (software and technology for both civilian and military purposes), biotechnology, (ii) critical infrastructure, (iii) essential services cybersecurity, digital service provider (cloud computing), providers of national-level information security encryption, (iv) media services, content sharing platforms (annual turnover >€2M), periodicals publishers, operators of news web portals and press agencies; and

b) non-critical foreign investment.

Triggering events

Under the FDI Act, a foreign investment allows a foreign investor to directly or indirectly:

- acquire a target or a part of a target;
- exercise an effective interest in a target (at least 25% of ownership interest or voting rights in a non-critical target and at least 10% in a critical target);
- increase an effective interest in a target (increase of an already existing foreign investor's effective interest of a non-critical target to at least 50% and in a critical target to at least 20%, and always when at least a 33% or 50% threshold is achieved);
- iv. exercise control of a target (the definition of control according to the Protection of Competition Act);
- v. receive ownership title or other right to material assets of a critical target (other right means any right to use or make disposition of the material assets of a target and material assets mean assets of a target that are strictly necessary to conduct the business).

Investments between related parties, the establishment of a pledge and transactions in the ordinary course of business are not considered to be foreign investments.

New Slovak FDI regime

On 1 March 2023, the FDI Act entered into force. It introduces a comprehensive screening mechanism for foreign investments in the Slovak Republic. Therefore, there have been no relevant case studies yet.

The new Act does not aim to reduce the number of foreign investments in Slovakia. The main objective is merely to ensure protection of security and public order of the Slovak Republic and the EU. Whether this objective will be met will be determined in practice.

SPAIN

Type of filing requirement

Mandatory and suspensory. Approval of the Government must be obtained prior to closing of a subject investment. A **financial penalty** as high as the amount of the investment can be imposed in cases of non-compliance, and the transaction will not have any effects for corporate purposes until the situation is regularized (e.g. voting rights will not be enforceable, etc).

Nature of the review

The Government intervenes either on grounds of (i) the strategic nature of the sector invested in ("**objective review**"), or (ii) the characteristics of the investor ("**subjective review**").

- As regards the **objective review**, the following sectors are deemed strategic (i.e., affecting public safety, public order or public health): (i) critical infrastructure (e.g., energy, transportation, water, health, media, data processing and storage, communications, aerospace, defence and electoral or financial), as well as land and real estate vital to the use of such critical infrastructure; (ii) critical and dual-use technologies (including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technology, nanotechnology, biotechnology, key technologies for industrial leadership and skills, and technology developed via programmes and projects of particular interest for Spain, including telecommunications); (iii) supply of essential produce (in particular, energy, raw materials, strategic connectivity services and food safety); (iv) access to sensitive information; and (v) media. There are certain exemptions depending on the global turnover of the target (or, in the case of investments in the energy sector, if certain thresholds -e.g. generation capacity, clients, etc.- are not exceeded).
- As regards the **subjective review**, the following investors are affected irrespective of the sector: (i) state-owned or controlled companies (whether directly or indirectly); (ii) those having already invested or participated in the sectors deemed strategic in other EU Member States; and (iii) if there is a serious risk of the foreign investor undertaking criminal or illegal activities that affect public safety, public order or public health in Spain.

Timetable

A decision shall be issued within three months from filing. Requests from the Government for further information or documentation stop the clock for these purposes.

Conditions may be imposed, and lack of response is deemed a tacit denial. Once granted, authorisations have a general validity of six months.

Triggering event(s)

A foreign investment requires prior governmental approval whenever the investor, as a consequence thereof, (i) holds **10%** or more of the share capital of a Spanish company (if this threshold is already exceeded, approval will only be required if the transaction entails a change of control), and/or (ii) acquires control of all or part of it (under the definition of control established in the antitrust legislation), provided that:

- either the investor is a non-EU/EFTA resident; or
- even if the investor is an EU/EFTA resident, its ultimate beneficial ownership corresponds to a non-EU/EFTA resident, such beneficial ownership being defined as (i) holding directly or indirectly in excess of **25%** of the share capital or voting rights of the investor, or (ii) when control of the investor is exercised directly or indirectly by any other means.
- transitorily until 31 December 2024, even if the investor is an EU/EFTA resident with its ultimate beneficial ownership also in the EU/EFTA, when (i) the target is a listed company or when (ii) the target is not a listed company but the investment is worth more than EUR 500 million. In this case, though, only the objective review applies (i.e., the Government intervenes solely on grounds of the nature of the sector invested in).
- In certain specific sectors (e.g., National Defence, Weapons and Explosives) the share capital percentage acquisition thresholds vary, being stricter.

Although investments in assets are not expressly captured by FDI rules, they also need to be analyzed from an FDI perspective if they fall within the strategic sectors; or

Case study: Acquisition of VIAMED by Macquarie

VIAMED SALUD, SL ("VIAMED") a health services provider that is the owner of 18 private hospitals throughout Spain, was recently acquired by a Spanish company ultimately owned by Macquarie Infrastructure and Real Assets (Europe) Limited ("MIRA"), which at its turn is an investment vehicle of Macquarie Group Limited ("Macquarie"), an Australian resident.

VIAMED, although holding only 2% of the market share, was considered to be of strategic nature under the "public health" notion, and consequently prior governmental approval had to be requested, which was granted by the Council of Ministers in its session of 6 October 2020.

SWEDEN

Type of filing requirement

Mandatory and suspensory. There are two sets of legislation in force to screen investments for national security reasons. The Screening of Foreign Direct Investments Act ("SFDI") and the Protective Security Act (PSA). Filings under both are mandatory and suspensory, meaning that approval is required before the investment can be implemented.

Financial penalties. Failure to notify a transaction falling under the SFDI and PSA may be sanctioned with an administrative fine. The fine may not exceed 100 resp. 50 million Swedish krona (around EUR 8.8 resp. 4.4 million).

> ***NB****: An investment made in an entity carrying out security sensitive activities within the meaning of the Protective Security Act will require two filings, i.e., under the SFDI and the PSA.*

Nature of the review

Review under the SFDI: The Inspectorate for Strategic Products (ISP) may review investments made in Swedish entities or assets carrying out certain protected activities where the investor, through the investment, acquires a certain level of influence. The notification obligation applies to investors from third countries and EU member states (incl. Swedish investors). The protected areas include:

- Essential services listed in the Swedish Civil Contingencies Agency's Regulation 2023:4.
- Security-sensitive activities falling under the Swedish Protective Security Act.
- The exploration, extraction, enrichment or sale of critical raw materials, metals or minerals that are strategically important for Sweden. A list of the relevant raw materials, metals or minerals is included in Annex 1 to the Swedish Government's ordinance 2023:624.
- The processing on a large-scale of (i) sensitive personal data as defined in Article 9(1) of the General Data Protection Regulation or (ii) location data as defined in the Swedish Electronic Communication Act.
- The manufacturing, development, R&D or provision of military equipment and technical assistance as defined in the Military Equipment Act (1992:1300).
- The manufacturing, development, R&D or provision of dual use products as defined in Annex I of Regulation (EU) 2021/821,
- The research on and the provision of products or technology within emerging technologies or other strategically protected technologies or businesses with the ability to manufacture or develop such products or technology. A list of the relevant products is included in Annex 2 to the Swedish Government's ordinance 2023:624.

Review under the PSA: The relevant authority may review the transfer of activities that are of importance to Sweden's security, as well as other activities covered by a binding international commitment.

This includes activities in many areas, such as the protection of water, electricity and heating plants, IT facilities, healthcare, transport infrastructure and the surveillance of important buildings.

Intervention under the SFDI: ISP is required to assess whether the investor

- Is directly or indirectly, in whole or in part, controlled by the government of a country outside of the EU through its ownership structure or substantial financing or in some other way,
- Has previously been involved in activities that have or could have adversely affected Sweden's security or public order or security in Sweden, and
- if there are other circumstances surrounding the investor that could pose a risk to Sweden's security or public order or security in Sweden.

Intervention under the PSA: The relevant authority may intervene in situations where, *inter alia*,

- The transferred activities could be used to damage Sweden's security,
- the transferred activities have such significance to Sweden' security that a transfer would not be appropriate,
- where the acquirer is not considered loyal and reliable for security reasons, or
- where the acquirer represents the interests of a foreign power or other antagonistic interests.

Timetable

SFDI: The legislation includes a two-stage procedure. ISP will have an initial 25 working days after receiving a complete notification to examine an investment and decide either to take no further action on the notification or to initiate an examination. An examination of the investment must be terminated within three months. There is a possibility to extend the deadline to six months if there are particular reasons.

PSA: The legislation does not currently contain a timeline for the authority's examination.

SWEDEN

Triggering event(s)

SFDI: Prior authorization is required for investments with (i) Swedish nexus, where (ii) certain influence requirements are fulfilled, and (iii) within an area covered by the law.

- **Swedish nexus.** This includes direct or indirect investments in (i) an existing Swedish legal entity, (ii) a newly established Swedish legal entity, or (iii) Swedish assets.

  The Swedish legal entities include Limited Liability companies, European companies, Economic associations, Trading Partnerships, Non-registered Partnerships, Foundations / trusts, and Sole traders.
- **Influence requirement.** The influence requirements differ depending on the type of legal entity.
  - **Limited Liability companies, European companies, Economic associations:** (i) each time the investment results in the acquisition of a 10, 20, 30, 50, 65, or 90 percent of the voting rights in the legal entity; or (ii) when the investment results in the acquisition of a 10 percent of the voting rights in a newly created legal entity; or (iii) when the investment results in control over the legal entity in other manners. The latter is a fact-specific assessment.
  - **Trading Partnerships, Non-registered Partnerships:** (i) when the investor becomes a partner in the legal entity through the investment; or (ii) when an investment is made in a legal entity where the investor already is a partner; or (iii) when the investment results in control over the legal entity in other manners. The latter is a fact-specific assessment.
  - **Foundations / trusts:** By the creation of the Foundation / Trust.
  - **Sole traders:** When the investment results in control over the legal entity. This is a fact-specific assessment.
- **Areas covered.** See under the *Nature of the Review*.

PSA: Prior authorization is required for:

- All transactions that involve the transfer of any security-sensitive activities that are of importance to Sweden's security, as well as other activities covered by a binding international commitment.
- There are no additional qualifying conditions or thresholds to determine the transactions covered by the legislation. All transfers, regardless of their structure or size must be notified. However, transfers of shares in listed undertakings or transfers of real estate are excluded at this stage.
- The company itself must determine whether it carries out security-sensitive activities and whether the relevant legislation applies to its business. To determine if this is the case, the company must undertake a 'Protective Security Assessment. The purpose of such an analysis is to determine whether the company has information, personnel or assets that require specific protection.
- Companies that have determined that they carry out security-sensitive activities have an obligation to report these activities to the relevant authority.

> ***NB**: The notification obligation under the SFDI falls under the Investor while the notification obligation under the PSA falls on the entity operating the security-sensitive activities (i.e., the seller/ target). The law also provides that shareholders of such entities have a duty to notify the transfer of their shares.*

Recent vetoes and new legislation

- There have been no prohibitions or conditional approvals under neither legislation so far. At least to the extent known.
- The Swedish Government is investigating if new legislation should be introduced or if changes should be made to current legislation to screen transfers of real property that are of essential importance for national defense reasons.

AUSTRALIA

Type of filing requirement

Mandatory and suspensory for foreign acquisitions that meet relevant monetary/control thresholds and where no exemptions apply.

An application must be made to the Foreign Investment Review Board ("**FIRB**") to obtain a letter of "no objections" from the Treasurer of Australia prior to completion of the transaction, if the transaction involves a "notifiable action" or "notifiable national security action" as defined under the Foreign Acquisitions and Takeovers Act 1975.

Failure to obtain such approval can result in **civil and criminal sanctions**.

Nature of the review

The Treasurer, advised by the FIRB, has the power to examine proposed foreign acquisitions and prohibit acquisitions determined to be contrary to the national interest, or impose conditions on the proposed acquisition to remove national interest concerns. The Treasurer also has a "call-in power" to review any decision not previously notified to the FIRB which is a "significant action" or a "reviewable national security action" which may pose a national security concern, for up to 10 years after the acquisition has completed.

Typically, matters that the Treasurer will take into consideration when making a decision include the impact of the acquisition on the Australian economy and community, national security and competition. Businesses, corporations or assets in certain sensitive sectors such as media, agriculture, telecommunications, defence and military, transport and encryption and security technologies are subject to stricter regulation.

The FIRB may consult with government agencies such as the Cyber and Infrastructure Security Centre and the Australian Tax Office as part of its decision-making process. It is common for the FIRB to impose standardised tax compliance conditions on any "no objections" approval.

Timetable

The Treasurer has **30 calendar days** from notification to make a decision plus **10 calendar days** to notify the applicant. This timing is subject to potential extension/FIRB issuing an "interim order" preventing the investment for a period of up to 90 days while it considers the proposed acquisition.

In practice, FIRB approval normally takes **two to three months**.

Triggering events

- Approval is required for "notifiable actions", which include direct or indirect acquisitions by a foreign investor of **>20%** in a target's securities if the target is an Australian corporation carrying on an Australian business, an Australian trust unit, or a holding entity of either of these, and the target is valued above certain monetary thresholds, subject to any applicable exemptions.
- Monetary thresholds are dependent on the type of asset and whether the acquiror is a foreign person or a "foreign government investor" (such as sovereign wealth, public sector pension, government agencies, SOEs).
- Stricter rules/lower thresholds apply in relation to **foreign government investors** (typically a >10% threshold, which can reduce to 5%) and sensitive sectors.
- Mandatory FIRB approval is also required for "notifiable national security actions". This includes starting a national security business, acquiring a direct interest in a national security business or acquiring an interest in national security land. National security businesses are endeavours that, if disrupted or carried out in a particular way, may create national security risks, such as critical infrastructure assets, telecommunications or defence. These actions have a $0 monetary screening threshold.

Case study: Withdrawal of China State Construction Engineering Corp acquisition of Probuild

On 12 January 2021, China State Construction Engineering Corporation withdrew a bid to acquire an 88% stake in Probuild, an Australian subsidiary of a South African-owned company, based on advice that the application would be rejected by the FIRB on the grounds of national security. While Probuild's focus is usually on residential towers and shopping malls, it is understood the existing development of a new headquarters for the Victoria police and a new headquarters for a biotech giant trigged national security concerns, resulting in the withdrawal of the application.

CANADA

Type of filing requirement

- For direct acquisitions of control of Canadian businesses by non-Canadians that exceed the applicable financial threshold under the Investment Canada Act (ICA), a mandatory pre-closing application for review must be made and an approval of the Minister of Innovation, Science and Industry Canada (the ISI Minister) (or, in the case of cultural businesses, the Minister of Canadian Heritage (the Heritage Minister)) must be obtained prior to implementation of the investment.
- For indirect acquisitions of cultural Canadian businesses by non-Canadians that exceed the applicable financial threshold, a mandatory application for review must be made, and an approval by the Minister of Canadian Heritage must be received, though the process can be completed before or after closing.
- For (a) acquisitions of control within the categories identified above that do not exceed the applicable financial thresholds, (b) indirect acquisitions of control of non-cultural Canadian businesses by non-Canadians WTO investors (which are exempt from a pre-closing approval requirement); and (c) the establishment of new Canadian businesses by a non-Canadian, a notification filing (which does not have an associated approval) is required and can be made either before or within 30 days after closing.
- Penalties may include an order to divest the Canadian business and a maximum financial penalty of C$10,000 per day for contravention of the ICA.
- As of 2 August 2022, certain non-controlling investments in a Canadian business may be notified voluntarily, either before or after closing. Where such transactions are voluntarily notified, the government has up to 45 days from a certified notification to initiate a national security process. Where such transactions are not voluntarily notified, the government may initiate a national security process up to five years after the transaction is implemented.

Nature of the review

Net benefit review: Investments that are subject to review must demonstrate to the ISI Minister (or Heritage Minister in the case of a cultural business) that the transaction is “likely to be of net benefit to Canada” in order to obtain the requisite approval, e.g., impact of the investment on economic activity, productivity and efficiency in Canada etc. In connection with obtaining approval, investors are typically expected to provide binding undertakings to the applicable Minister.

National security review: The ICA sets out a national security review regime that is separate from the general provisions noted above. For investments that are subject to either review or notification, as well as for acquisitions of Canadian entities by non-Canadians that fall below control, the ISI Minister can order a review to determine whether they are injurious to Canada’s national security. Under the national security review regime, the government is empowered to: (i) require the investor commit to undertakings, (ii) block the investment in the case of a pre-closing national security review, or (iii) order a divestiture in the case of a post-closing national security review.

CANADA (CONTINUED)

Timetable

Net benefit review: The statutory period for a "net benefit" review is 45 days from the date a complete application is received, which is extendable unilaterally by an additional 30 days by the government, and extendable further with consent of the investor.

National security review: If the ISI Minister intends to initiate the national security process, they can only do so during the period that starts when they become aware of the investment and ends 45 days after receipt of a complete application or notification (where a filing is required or made voluntarily) or 5 years after closing (where no filing is required and none is voluntarily made). At or before the expiration of the 45-day period, the ISI Minister can issue a notice indicating that they require an additional 45 days or Cabinet can order a national security review. Once a national security review has been triggered, the initial review period is 45 days, which the ISI Minister can extend for an additional 45 days, after which time, subject to the investor and ISI Minister agreeing to an extension, the ISI Minister can either determine that the investment does not raise national security concerns, or the ISI Minister can refer the matter to the Governor in Council (federal Cabinet) for a final decision, which must be made within 20 days following the ISI Minister's referral. The entire process can take up to 200 days subject to the Minister and investor agreeing to extensions.

Triggering event(s)

The filing obligations under the ICA apply to the following investments by a non-Canadian: (i) direct or indirect acquisition of control of a Canadian business, and (ii) establishment of a new Canadian business. Control is defined as (1) the acquisition of greater than 50% of the voting interests of an entity directly or indirectly carrying out a business in Canada (note that a lower threshold of 33.3% applies to corporations, although the presumption of control is rebuttable) or (2) an acquisition of all or substantially all of the assets used in carrying out a business in Canada. Investments that do not amount to an acquisition of control may be notified voluntarily (see prior page).

A "net benefit" review and approval is required only for a direct acquisition of control (or an indirect acquisition of control of a "cultural business") that exceeds certain relevant financial thresholds.

Investments injurious to national security: An acquisition of all or part of a Canadian business (whether or not it constitutes an acquisition of control) may be subject to a national security review where the ISI Minister determines that it may be injurious to Canada's national security. Investments involving sensitive sectors such as defence, critical infrastructure, critical goods and services, strategic materials, investments into businesses with proximity or access to sensitive government installations, investments by state-owned enterprises, and investments by investors from certain jurisdictions (notably the People's Republic of China, Russia and in the Middle East) often attract increased national security scrutiny.

Recent Developments

Over the course of 2023, Bill C-34 (An Act to amend the Investment Canada Act) continued to advance through the Canadian Parliament and is now likely to be enacted by early 2024. Bill C-34 would mark the first significant legislative changes to the ICA since 2009. The amendments encompass numerous changes designed to strengthen the national security review regime.

The three most significant changes under Bill C-34 are: (a) a mandatory pre-closing notification regime for investments of any size in an entity carrying on "prescribed business activities" in Canada (as yet undefined but likely to align closely with existing higher risk sectors such as defence, dual-use technology and critical infrastructure), where certain conditions are met; (b) interim measures powers allowing the government to require the target Canadian business be held separate pending completion of national security review; and (c) more flexible national security remedial powers that allow the Minister to obtain undertakings (rather than requiring an order of the Federal Cabinet).

Other key amendments include: the power for the Federal Cabinet to order a net benefit review of investments by state-owned enterprises that are subject to a mandatory filing obligation but do not exceed the relevant financial threshold; expanding the national security regime to explicitly capture partial asset acquisitions; and increases to the penalties available for non-compliance with the ICA.

CHINA

Type of filing requirement

Mandatory and suspensory. If national security issues are raised in the context of a foreign-domestic transaction, it would be mandatory to seek **National Security Review ("NSR") clearance**. A separate **Foreign Investment Review ("FIR")** is also mandatory for investments subject to restrictions in the Negative List (as prescribed in the current Special Administrative Measures on Access to Foreign Investment). Penalties for breach in the context of NSR clearance include an order to notify the transaction, make rectification and **unwind the deal**. Closing without FIR approval will also render the transaction invalid.

Nature of the review

NSR – The NSR process applies to the foreign investments (including greenfield investments, acquisition of equity or assets of a company in China and foreign investments in China in any other way) in China involving any of the following sectors:

- investments in military and related or adjacent activities; or
- investments in key agricultural products, key energy and resources, key equipment manufacturing, key infrastructure, key transportation services, key cultural products and services, key information technology and internet products and services, key financial services, key technologies or other key sectors that bear on national security; AND the foreign investor(s) will acquire *de facto* control over the invested enterprise in any of the foregoing sectors.

The above-mentioned investment must be notified to a newly established interministerial government body, the NSR working mechanism office. However, the rules do not specify what amounts to "key", which leaves the authority with discretion. The authority has been open to accept consultation requests.

FIR – All foreign investments in Chinese companies subject to restrictions in the Negative List have to be reviewed and approved by the central Ministry of Commerce (or its local counterparts) or certain other sector-specific regulators.

Timetable

NSR

- Preliminary review: 15 business days from the receipt of all the required materials;
- General review: 30 business days; and
- Special review: 60 business days (may be extended under certain special circumstances).

FIR – The approval time frame varies depending on the authority in question.

Triggering events

NSR – In relation to transactions involving the military sector, an NSR process may be triggered irrespective of the interest to be acquired in the target.

In the case of other sectors, an NSR process may be triggered only if the foreign investor intends to acquire *de facto* control (50% interests; significant influence over the shareholders' meeting or the board; or *de facto* control over business decisions, financial affairs, personnel and/or technology or other matters) of the Chinese target.

FIR – Foreign investment in restricted sectors will be subject to approval and certain restrictions such as a cap on foreign ownership percentage.

Case study: Yonghui Superstores/ Zhongbai Holdings

Yonghui Superstores intended to acquire a controlling interest in Zhongbai Holdings, a Chinese state-owned retailer. The National Development and Reform Commission ("**NDRC**") intervened as 19.99% of the shares in Yonghui were owned by a foreign entity, Dairy Farm International (which is ultimately controlled by Jardine). It is widely believed that the NDRC commenced its NSR process primarily out of national defence concerns due to Zhongbai's essential role as the major provider of warehousing and distribution to the 2019 Military World Games and Zhongbai's store network in certain military colleges in Wuhan. The retail sector is likely to be considered as a sensitive sector by the NDRC. Eventually, Yonghui withdrew its tender offer in December 2019 following the NDRC's commencement of a special review process.

JAPAN

Type of filing requirement

Mandatory and suspensory for acquisitions by foreign investors of shares in Japanese companies operating in **certain restricted sectors ("Inward Direct Investment")** and acquisitions by foreign investors from other foreign investors of shares in Japanese unlisted companies operating in **certain restricted sectors ("Specified Acquisitions")**, in the absence of exemptions. A pre-closing filing must be made with the Minister of Finance and other relevant ministers through the Bank of Japan.

Acquisitions by foreign investors of shares in Japanese companies in **non-restricted sectors** are subject to a post-acquisition report.

The government may pass an order to unwind, discontinue or alter a deal. Criminal sanctions, including imprisonment, are possible in case of a breach of such order.

Nature of the review

A pre-closing filing process regarding Inward Direct Investment applies if the deal involves certain restricted sectors such as businesses involving the manufacturing of weapons, aircraft, artificial satellites, nuclear reactors, and accessories or parts of the above, telecommunications, IT services, software, pharmaceuticals regarding infectious diseases, certain medical devices, certain protected domestic industries including agriculture and fishing, and critical minerals (including rare earth elements) whereas a post-acquisition report process applies to other sectors.

A pre-closing filing process regarding Specified Acquisitions applies if the deal involves certain businesses that may impair national security such as the manufacturing of weapons, aircraft, artificial satellites, nuclear reactors, and accessories or parts of the above, software, integrated circuits, critical minerals (including rare earth elements), etc.

During the pre-closing filing process, the government can review and prohibit an investment in a Japanese company if such investment may have an adverse effect on national security, public order, public safety or the Japanese economy.

Timetable

A **pre-closing filing** must be made 30 calendar days before such acquisition, and the parties cannot complete the investment before obtaining approval. The 30-day prohibition period may be shortened, and the relevant ministers typically make an effort to complete the assessment within 5 business days, to the extent possible. In certain cases, the relevant ministers may, however, extend the 30-day prohibition period to up to five months.

A **post-acquisition report** must be made 45 calendar days following the investment.

Triggering events

A **pre-closing filing** relating to share acquisitions for an **Inward Direct Investment** or equivalent action is required if a foreign investor (i) directly acquires a single share of a non-listed Japanese company or directly acquires **1%** or more of the issued shares or voting shares of a listed Japanese company AND (ii) such Japanese company operates in certain restricted sectors; provided that there are exemptions such as those for certain financial firms (e.g., securities firms, banks, insurance companies and asset managers). There are other types of Inward Direct Investments which may trigger a filing in Japan, such as a transfer of business by a Japanese company and appointment of a director of a Japanese company.

A pre-closing filing for a Specified Acquisition is required if a foreign investor (i) directly acquires a single share of a non-listed Japanese company from another foreign investor AND (ii) such Japanese company operates in certain restricted sectors. There are some exemptions; however, if the Japanese company operates in the core sectors designated by the government such as the manufacturing of weapons, aircraft, etc., these exemptions do not apply.

A post-acquisition report is required if a foreign investor directly acquires listed Japanese companies meeting the exemptions, and for most investments in non-listed Japanese companies that are not subject to a pre-closing filing requirement.

Case study:
TCI Transaction

The government issued an order of discontinuance for a proposed investment in The Electric Power Development Co. Ltd. (also known as J Power) by The Children's Investment Fund ("**TCI**") on the grounds that such investment might jeopardise public order. This is the only case where an order of discontinuance has been issued.

RUSSIA

Type of filing requirement

Mandatory and suspensory. Approval of the Governmental Commission for Control over Foreign Investments must be obtained prior to closing. Transactions closed in breach of the regime are null and void. In relation to transactions taking place offshore, the Russian courts may strip the voting rights from shares acquired by a foreign investor.

Nature of the review

Clearance is required in two scenarios: (i) a Russian Target company is active in so-called strategic activities, and/or (ii) the acquirer is a public foreign investor.

The law lists 50 types of strategic activities, however, there is a trend to construe this list broadly. Key sectors include aviation, airports, subsoil, natural monopolies, pharma, cryptography, telecommunications and media.

> ***NB**: Please refer to section "New FDI regime" below for information about the new FDI regime introduced by the Russian President on 8 September 2022. This regime applies to almost <u>all</u> transactions, including foreign-to-foreign and intra-group transactions, which involve direct or indirect transfers of shares in the Russian LLCs. In October 2022 this regime has been extended to also cover Russian JSCs.*

Timetable

Legally, the review process should be completed within **six months**. However, in practice, the process can take significantly longer, partially because the Governmental Commission only convenes three or four times a year.

Triggering events

Prior approval is required for the direct or indirect acquisition by a foreign investor of control over a Russian strategic entity, which includes:

- for private foreign investors: stakes above **50%** in a strategic company (or **25%** in the subsoil sector);
- for state-owned foreign investors: stakes above **25%** in a strategic company (or **5%** in the subsoil sector); or
- acquisition of equivalent rights or of assets from a strategic company.

In addition, public foreign investors are required to obtain approval for any direct or indirect acquisition of more than **25%** of the shares or equivalent rights in *any* (i.e., non-strategic) Russian company.

***Ad hoc* resolutions**. The chairman of the Governmental Commission is entitled to issue *ad hoc* resolutions at his/her discretion requiring that approval must be obtained for any other transaction that concerns a Russian entity, i.e., for any transaction that does not technically fall under the regime. Based on current practice, ad hoc resolutions may concern, inter alia, subsoil users, providers of services to strategic entities, high-tech companies, and manufacturers of products that have no local analogues.

New FDI regime:

On 8 September 2022, the Russian President has adopted Decree No. 618 (the "**Decree**") that requires that transactions involving the transfer of control over a stake in a Russian limited liability company (direct or indirect) must receive prior clearance by the Government FDI Commission. It is a special body that was established in March 2022 to review transactions between Russian residents and non-Russian entities from "unfriendly" jurisdictions.

According to the Decree, any direct or indirect transfer of shares or control rights in a Russian limited liability company (LLC) between (i) a foreign investor from an "unfriendly" jurisdiction and (ii) either another foreign investor (from any jurisdiction) or a Russian entity or individual, is subject to a prior clearance. There is no minimum threshold – any shareholding is caught, as well as contractual rights relating to the management or conduct of the business. No exemptions exist for intra-group transactions.

Since October 2022, the regime has been extended to cover transactions involving direct or indirect acquisitions of any stakes in Russian JSCs.

UK

Type of filing requirement

Under the National Security and Investment Act (**NSI Act**), the Government has powers to call in and review a very wide range of transactions, and a sub-set of these transactions are subject to a mandatory and suspensory filing regime.

Mandatory and suspensory for qualifying investments in targets with certain activities in any of 17 sensitive sectors listed below. Potential consequences of breach include criminal penalties (imprisonment for up to 5 years), fines of up to 5% of the group worldwide turnover of the investor or GBP 10 million (whichever is higher) and voidness of the transaction.

Voluntary and non-suspensory for all other qualifying investments.

Nature of the review

Transactions are reviewable by the Government under the **NSI Act** on national security grounds only. Transactions in any sector can be reviewed, but there is a higher risk of a national security intervention if the target has certain activities in, or closely linked to, any of the following 17 sensitive sectors: civil nuclear; communications; data infrastructure; defence; energy; transport; artificial intelligence; advanced robotics; computing hardware; cryptographic authentication; advanced materials; quantum technologies; synthetic biology; critical suppliers to government; suppliers to the emergency services; military or dual-use technologies; and satellite and space technologies.

Investments in real estate that is used for sensitive activities, critical infrastructure or Government buildings, or that is proximate to such a site, will also carry a higher risk of intervention.

In addition, under the **UK merger control regime**, the Government can intervene in transactions (if they meet the applicable merger control thresholds) on the basis of their impact on media plurality, stability of the UK financial system or the ability of the UK to combat a public health emergency.

Timetable

NSI Act reviews: the initial period is 30 working days from the date when the filing is accepted as complete (which is typically a few days after a filing is submitted). If the Government decides to carry out a detailed national security review, the period is extended by an additional 30-75 working days (the clock stops if the Government sends a formal information request to the parties to the transaction or to third parties).

For transactions that are reviewed by the Government under the **merger control regime**, on other public interest grounds (see “Nature of the Review”), the Government has until four months from closing to decide whether to initiate a detailed Phase II investigation, but it will typically do so anywhere between 20-80 working days from the date on which a deal is notified or called in for review. A Phase II review lasts a further six-eight months.

UK
(CONTINUED)

Triggering events

Under the **NSI Act**, filing is mandatory for investments in legal entities with certain UK activities in any of the 17 sensitive sectors listed on the previous page, if the investment causes the investor's shareholding or voting rights to exceed a threshold of 25%, 50% or 75%, or it allows the investor to veto or determine any class of resolution governing the target's affairs.

In addition, the government has powers under the voluntary filing regime to carry out a national security review (up to 5 years after closing) of:

- investments in legal entities (active in any sector), if they (i) cause the investor's shares or voting rights to exceed a 25%, 50% or 75% threshold; (ii) allow the investor to veto or determine any class of resolution governing the target's affairs; or (iii) confer material influence over the target (which can be as low as 15% with no board seat, or even result from purely contractual rights); and
- investments in assets (in any sector) that allow the investor to use the asset, to direct or control how the asset is used, or to do so to a greater extent than before the transaction. Assets for these purposes are land, tangible moveable property and certain intellectual property.

Intra-group transactions that meet the relevant thresholds for mandatory or voluntary filing are caught by the filing regime.

Investments can also be reviewed under the **merger control regime** on certain other public interest grounds (see "Nature of the Review") if they confer at least material influence over the target and either (i) the target has a UK turnover of GBP 70 million or more, or (ii) the target and investor both supply or purchase the same products or services (or one has certain media sector activities) and have a share of such supplies/purchases of 25% or more in the UK or a part of it.

Case study: Acquisition of Inmarsat by Viasat

The Government imposed conditions on the transaction on the basis of national security risks relating to the sensitive defence and security data held by Inmarsat (a provider of satellite communications services) and the maintenance of strategic capabilities of Inmarsat in the UK. To address these concerns, the Government required that controls be put in place to protect information from unauthorised access, and that strategic capabilities continue to be provided by Inmarsat and Viasat to the UK Government

USA

Type of filing requirement

Mandatory. The approval of the Committee on Foreign Investment in the United States ("CFIUS") must be obtained prior to closing certain investments in a US business, directly or indirectly, by non-US parties.

Voluntary. Even if a mandatory filing requirement does not apply, a voluntary notification may be advisable.

Non-notified transactions may be subject to post-closing review and can be, in extreme cases, unwound. The Committee has dedicated significant resources to identifying and intervening when it deems necessary in the form of directed inquiries into non-notified transactions. In its 2021 Annual Report, CFIUS disclosed various methods it uses to identify non-notified and non-declared transactions including tips from the public, interagency referrals, media reports, commercial databases, and congressional notifications. The Committee identified 135 non-notified transactions – of these, the parties in 8 transactions were directed to submit a post-closing filing. The identification of these transactions evidences CFIUS's increasingly proactive role in monitoring and investigating foreign investment into the United States.

Financial penalties. Civil fines of up to the entire value of the transaction for failure to make a mandatory filing or for negligence or material omissions to submissions. Fines may also be levied for noncompliance with mitigation agreements.

Nature of the review

CFIUS can impose mitigation measures or conditions to address any identified national security risks. In certain instances, the President, based on CFIUS's findings, can block pending or unwind completed non-US investments. The broad focus of recent CFIUS reviews has been on transactions in the defense, telecommunications, energy, high-tech and emerging technologies, and food and medical industries, as well as transactions dealing with specific areas of U.S. national infrastructure and those which involve access to and collection of sensitive personal information on individuals. These are not the only relevant industries, however, for CFIUS purposes.

Timetable

Short form declarations: An expedited filing reviewed within 30 days. The Committee may request a formal notification after its review of a declaration, elongating the timeline.

Notification: The traditional notice process, which can take three to five months total. The standard 45-day notification review may be followed by a national security investigation (45 days), and, rarely, by presidential review (15 days).

USA
(CONTINUED)

Triggering events

Mandatory Filing:

- *State-owned enterprises*: Direct or indirect investments by entities owned **49%** or more by a non-U.S. government that obtains a **25%** or more voting stake in a TID U.S. business (involved in "Critical [**T**]echnology", "Critical [**I**]nfrastructure" or "Sensitive Personal [**D**]ata").
- *Other foreign investors*: Direct or indirect investments in a TID U.S. business that produces, designs, tests, manufactures, fabricates or develops Critical Technologies where the Foreign Investor will obtain "control" (broadly defined as any "power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity") of the target. These technologies are defined by export control licensing requirements for "Defense Articles" and "Defense Services" controlled under the International Traffic in Arms Regulations ("**ITAR**"), and various dual-use and other commercial items subject to the Export Administration Regulations ("**EAR**"). Non-US items can be subject to these regulations (and therefore critical technologies) if they contain or incorporate certain US-origin content or technologies above certain thresholds.

Voluntary Filing:

- Recommended when the risk of a post-closing CFIUS intervention exceeds the burdens of filing. This depends on the U.S. target's sensitivity; the non-U.S. investor's ownership, activities and intentions; and the parties' tolerance for continued CFIUS risk to the deal.

Real Estate Transactions:

- CFIUS may review real estate transactions in certain sensitive locations that are within statutory proximity thresholds to certain airports, maritime ports, military installations and sensitive government facilities.

Case Studies:

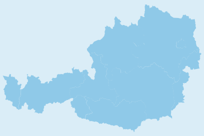
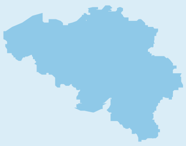
(i) Wise Road Capital and Magnachip Merger

(ii) Borqs Divestiture of HHE

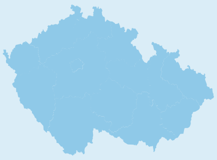
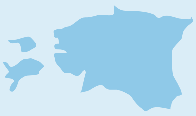
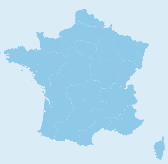
(i) In December 2021, Wise Road Capital, a Chinese private equity firm, and Magnachip Corp., a New York Stock Exchange (NYSE) listed company with operations primarily in South Korea, announced that they had abandoned a planned merger in the face of CFIUS opposition. The withdrawal marked the end of a tumultuous nine months for the parties. While Magnachip is listed on the NYSE and maintains a Delaware entity, the company indicated that it performs manufacturing, R&D, and sales activities in South Korea and maintains most employees, tangible assets, and IT systems outside of the United States, and that this limited US presence was insufficient for CFIUS to have jurisdiction to conduct a review. CFIUS, however, disagreed, directing the parties to file a formal notice (which was filed in June 2021), and blocked the parties from finalizing the transaction until CFIUS review had concluded, stating the deal posed "risks to national security," and that the parties failed to "adequately mitigate the identified risks". Despite the parties withdrawing and refiling their notice in September to provide additional time to obtain clearance, they were unable to reach an agreement that mitigated the CFIUS-identified US national security risks to the satisfaction of CFIUS. In the face of an all-but-certain US presidential blocking of the transaction, the parties voluntarily elected to abandon the merger.

(ii) In December 2022, Borqs Technologies Inc. ("Borqs"), the China-based IoT platform solution provider, announced that CFIUS reviewed its 2021 acquisition of majority ownership in Holu Hou Energy LLC ("HHE"), a U.S. energy storage company, and required it to fully divest its ownership interests and rights in HHE due to national security concerns including HHE's position as a top ten solar energy storage supplier in Hawaii with critical technology focused on multi-family dwelling units that are common in military housing.

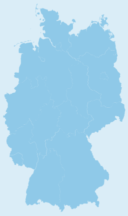
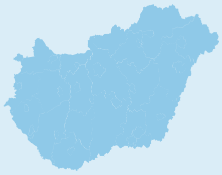
OVERVIEW OF FOREIGN INVESTMENT REGIMES

Jurisdiction	Thresholds	Timeline	Suspensory?	Civil sanctions?
EU 	No particular threshold at the EU level. The EU Screening Regulation applies if the national foreign investment regimes of the Member States are triggered.	35 calendar days to submit a non-binding opinion/comments; the deadline can be extended	✗	✗
Austria 	Direct or indirect acquisition by a **non-EU/non-EEA/non-Swiss investor** of: • an Austrian business or legal entity; • material parts of an Austrian business resulting in the acquisition of a controlling influence over such parts of a business; • a controlling influence over an Austrian business or legal entity; or • a shareholding with which at least 10% of the voting rights (if the Austrian target is active in a highly critical sector) or 25% of the voting rights (if the Austrian target is active in a "normal" critical sector) is reached or exceeded.	EU Screening Mechanism: 35 calendar days (or longer) starting once the BMAW has determined completeness of the filing and kicked off the EU Screening Mechanism Phase I: additional 1 month Phase II: additional 2 months	✓	✓ (also criminal)
Belgium 	The acquisition by a (non-EU) foreign investor of either control (within the meaning of the EUMR), or 10% or 25% (depending on the sector) of the voting rights of a target that is established in Belgium and whose activities "touch upon" one or more sectors that are crucial to Belgium's public order, national security, and/or strategic interests. In case of an acquisition of 10% of the voting rights, the target's turnover in the last fiscal year must exceed EUR 100 million. In case of an acquisition of 25% of the voting rights of a target whose activities "touch upon" technologies of strategic importance in the biotech sector, the target's turnover in the last fiscal year must exceed EUR 25 million.	Pre-notification phase: No formal or informal time limits. Phase I: 30 calendar days, but requests for information stop the clock. Phase II: 28 calendar day, but several stop-the-clock events could potentially add months to the duration of the review process.	✓	✓

OVERVIEW OF FOREIGN INVESTMENT REGIMES

Jurisdiction	Thresholds	Timeline	Suspensory?	Civil sanctions?
Czech Republic 	Acquisitions by non-EU investors of: 10% or more of voting rights; membership of the foreign investor (or its related party) in corporate bodies of the target; the asset through which target's business activity is carried out; or any other type of control resulting in the investor gaining access to information, systems or technology which are important in connection with the protection of the security of the Czech Republic, or its internal or public order.	90 calendar days; may be extended by up to 30 calendar days in particularly complex cases	✓	✓
Denmark 	Mandatory regime: Acquisition of least 10% of the shares or voting rights or similar control by other means in a Danish company active within a particularly sensitive sector. In addition, a new authorisation must be applied for where there is an increase in the ownership of the shares etc. to 20%, 1/3, 50%, 2/3 and 100%. Voluntary regime: Acquisition of at least 25% of the shares or voting rights or similar control by other means in a Danish company active within any other sector than a particularly sensitive sector, if the investment may pose a threat to national security or public order.	Phase 1 review period is up to 45 calendar days from the Danish Business Authority's declaration that the notification is complete. Possible extension for up to an additional 125 calendar days by initiating phase 2 under certain conditions. No consequences if the deadlines are exceeded. In case of referral to the Danish Minister of Industry, Business and Financial Affairs no deadlines apply to the Minister's review.	✓ (only under the mandatory regime)	✗
Estonia 	Direct or indirect acquisition by of 10% of the shares or equivalent rights in a target entity or its assets used in Estonia for within a particularly sensitive sector. New authorisation must be applied for in case there is an increase in ownership to 50% or acquisition of control (including joint control) in the target entity.	Phase 1: up to 30 calendar days from a complete filing. Phase 2: up to 90 calendar days in addition to phase 1, which can further be extended by 60 calendar days.	✓	✓
France 	Acquisition of control (or any business division) or (for non-EU/EEA investors only) 25% of voting rights (which 25% threshold has been to 10%, only for French targets listed on a regulated market).	Phase I: 30 business days Phase II: 45 business days	✓	✓ (also criminal)

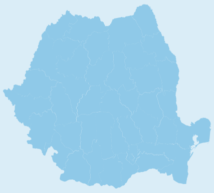
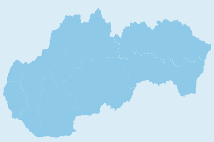
OVERVIEW OF FOREIGN INVESTMENT REGIMES (CONTINUED)

Jurisdiction	Thresholds	Timeline	Suspensory?	Civil sanctions?
Germany 	10%, 20% or 25% of voting rights in German targets by non-EU investors (cross-sectoral) or 10% by non-German investors (sector-specific). If an investor already holds 10%, 20% or 25%, the additional increase of the voting rights triggers a further application if certain voting rights thresholds are met.	Cross-sectoral and sector-specific: Phase I: 2 months, Phase II: an additional 4 months; can be extended by further 4 months in complex cases	✓	✓ (also criminal)
Hungary 	Mandatory General FDI Regime: investments which lead to total foreign investment exceeding 25% (private companies) or 10% (publicly listed companies). Non-percentage thresholds also apply. Mandatory Special FDI Regime: majority control; or 5% control where the investment exceeds EUR 1 million (3% in case of public companies); or investment where total foreign investment exceeds 25%; or increases in ownership to 10%, 20% or 50%. Non-percentage thresholds also apply.	Notification to be made within 10 days of signing. 60 days (General FDI Regime) and 30 business days (Special FDI Regime) to decide on the transaction, potentially extended by 60/15 days	✓	✓
Italy 	Defence and national security: acquisition exceeding 3%, 5%, 10%, 15%, 20%, 25% and 50% of the target's capital. Energy, transport, communication, healthcare, agri-food, financial, credit, and insurance sectors: acquisition of control by EU (including Italian) acquirers. Other sectors: (i) if EU acquirer(s), acquisition of control, (ii) if non-EU acquirer(s), (1) acquisition of control; (2) acquisition of 10% AND investment's value at least EUR 1 million; OR (3) acquisition of 15%, 20%, 25% or 50%.	45 days (30 days for the 5G sector)	✓	✓

OVERVIEW OF FOREIGN INVESTMENT REGIMES
(CONTINUED)

Jurisdiction	Thresholds	Timeline	Suspensory?	Civil sanctions?
Luxembourg 	Investments of any kind made by non-EU/EEA investors, enabling the investor to control directly or indirectly or in concert a Luxembourg company i.e.: • have a majority of the voting rights of the shareholders of that company; • have the power to appoint the majority of the management or supervision body while being shareholder of that company; • have control over a majority of the voting rights via participation or via agreement made with other shareholders; or • exceeding the threshold of 25% of ownership of the capital conferring voting rights.	Decision as to whether or not a notified investment will be subject to a screening procedure is taken within 2 months from the date of the acknowledgement of receipt of the notification. Thereafter, screening procedure may not exceed 60 calendar days from the date when it is triggered. Timing is suspended when additional information is required until receipt of such information. .	 Only if the screening procedure (phase 2) is triggered.	 Administrative measures & penalties in case of non-compliance.
The Netherlands 	Telecom sector: Telecommunications acquisition of predominant control, including, in any event:(1) the possession (solely or jointly) of at least 30% of the (direct or indirect) voting rights, (2) the ability to name more than half the board members, or (3) the ability to exercise control through special governance rights. Cross sector: A change in the capacity to exercise decisive influence over an undertaking that carries out *vital activities* or is active in *sensitive technologies*. A lower threshold applies to *highly sensitive technologies*: the acquisition/increase of 10%, 20% or 25% of voting rights.	8 weeks, potentially extended by 6 months	 Telecom: technically speaking non suspensory, in reality it amounts to a de facto suspensory regime Cross sector: Suspensory	
Poland 	Under the foreign investment regime, acquisitions by non-EU/EEA/OECD investors of 20% or 40% of shares/votes/profit, acquisition of dominance/control (including the power to decide on the directions of the activities of the target, management agreement) or lease of an organised part of the enterprise of a protected Polish company. Under specific companies regime: 20%, 25%, 33%, 50% shares/ votes/profit.	30 working days for initial proceedings; if no approval – an additional 120 calendar days to issue a decision.	 (technically speaking, although in reality it may amount to a de facto suspensory regime)	 (also criminal)

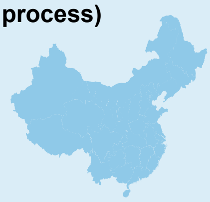
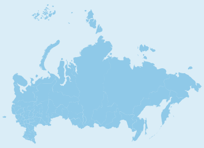
OVERVIEW OF FOREIGN INVESTMENT REGIMES
(CONTINUED)

Jurisdiction	Thresholds	Timeline	Suspensory?	Civil sanctions?
Romania 	The Romanian regimes concerns investments above EUR 2,000,000 carried out in a number of areas of interest from a national security perspective. However, even FDIs which do not meet this threshold may fall under the scope of the new FDI regime if they have a significant impact on, or represent a risk to, security or public order. Although only non-EU controlled investments are expressly concerned, for precautionary reasons a comfort letter may be sought for EU investments in certain cases.	The authorization is granted within up to 135 days after the authorization request becomes effective. However, the timeline may be extended in case a detailed analysis is required.	✓	✓
Slovak Republic 	Any (i) change of ownership in the critical infrastructure including by way of a sale of business (asset deal), or (ii) direct or indirect change in ownership (share deal) exceeding 10% of the registered capital or voting rights, or in the exercise of influence of a comparable magnitude.	60 days for evaluation by the Ministry of Economy.	✓	✓
Spain 	10% of share capital or acquisition of control of all or part of the company.	3 months	✓	✓
Sweden 	**SFDI:** Investments made in (i) Swedish entities or assets, (ii) carrying out certain protected activities, and (iii) where the investor, through the investment, acquires a certain level of influence. The notification obligation applies to investors from third countries and EU member states (incl. Swedish investors). **PSA:** All transactions that involve the transfer of security-sensitive activities that are of importance to Sweden's security. This includes activities in many areas, including the protection of water, electricity and heating plants, IT facilities, healthcare, transport infrastructure and surveillance of important buildings. There are no other qualifying conditions or thresholds to determine the transactions covered by the legislation. Instead, the relevant authority must be notified of all transfers, regardless of their structure or size.	**Investments falling under the SFDI:** An initial 25 working days after receiving a complete notification (Phase I). An in-depth examination of the investment must be terminated within three months (Phase II). There is a possibility to extend the deadline to six months if there are particular reasons. **Investments falling under the PSA:** The Act does not contain any timelines for the authority's examination.	✓	✓

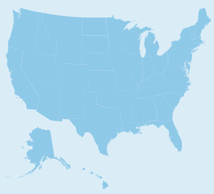
OVERVIEW OF FOREIGN INVESTMENT REGIMES
(CONTINUED)

Jurisdiction	Thresholds	Timeline	Suspensory?	Civil sanctions?
Australia 	Various. Generally, acquisitions of >20% in an Australian target and acquisitions of interests in Australian land will require FIRB approval. Thresholds for direct and indirect acquisitions of interests in Australian businesses are based on the higher of the total asset value or total issued securities value of any entity: • National security or Australian media businesses, or any FGI investment: A$0 • Free trade agreement partners: A$1.339 billion (non-sensitive businesses) and A$310 million (sensitive businesses) • Non-free trade agreement partners: A$310 million Offshore acquisitions with Australian subsidiaries will have the consideration paid apportioned based on the EBIT of the Target and its Australian subsidiaries.	Approximately 60-90 days.	✓	✓ (also criminal)
Canada 	Various thresholds, inter alia, acquisitions of control when exceeding certain financial thresholds; establishment of a new Canadian business; non-control investments injurious to national security. Voluntary filing possible for non-notifiable transactions. 2023 thresholds for direct acquisitions and indirect acquisitions of cultural Canadian businesses: • WTO investor: C$1.287 billion or greater enterprise value • Trade Agreement investor: C$1.931 billion or greater enterprise value • SOE: assets of C$512 million or greater • Direct acquisition of cultural business: assets of C$5 million or greater • Indirect acquisition of cultural business: assets of C$50 million or greater (unless more than 50% of the value of total assets are in Canada, in which case the above C$5 million test applies) • Investors that do not qualify for WTO investor status are subject to the same thresholds that apply to cultural investments	Net benefit review: 45 days from complete application; can be extended by additional 30 days or with consent of the investor. National security review: up to 155 days after initiating proceedings, subject to additional extensions on consent (200 days from date of complete application or notice, subject to extensions).	✓ (for direct acquisitions exceeding financial threshold or for national security reviews initiated pre-closing)	✓

OVERVIEW OF FOREIGN INVESTMENT REGIMES
(CONTINUED)

Jurisdiction	Thresholds	Timeline	Suspensory?	Civil sanctions?
China (National Security Review process) 	Acquisition of any stake (for targets in military or related industry), or acquisition of actual control (for targets in other sectors).	Preliminary review: 15 business days. General review phase: 45 business days (from application). Special review: 105 business days (from application).	✓	✓ (potential unwinding of the transaction
Japan 	Pre-closing filing: (i) acquisition of (a) a single share of a non-listed Japanese company, or (b) acquisition of 1% or more of the issued shares or voting shares of a listed Japanese company; AND (ii) such Japanese company is in certain restricted sectors. Various other thresholds, including the transfer of a Japanese business and the appointment of a director of a Japanese company. Post-acquisition report: certain investments in listed companies meeting the exemptions, and most investments in non-listed companies that are not subject to a pre-closing filing requirement.	Pre-closing filing review: 30 calendar days, although often shortened. Potentially extended to up to 5 months. Post-acquisition report: 45 calendar days following the investment.	✓	✗ (**only** criminal sanctions)
Russia 	Acquisitions of 25% or more in subsoil strategic entities or above 50% in all other strategic entities. Lower thresholds for state-owned foreign investors. **NB**: no minimum threshold under the new FDI regime concerning direct or indirect acquisition of shareholding or other rights with respect to Russian LLCs and JSCs.	3-6 months, but can also take longer.	✓	✓

OVERVIEW OF FOREIGN INVESTMENT REGIMES
(CONTINUED)

Jurisdiction	Thresholds	Timeline	Suspensory?	Civil sanctions?
UK 	Mandatory national security filing for investments in a target with sensitive activities which either exceed a threshold of 25%, 50% or 75% of shares or voting rights, or confers the ability to veto or determine any class of resolution governing the affairs of the target. Voluntary filing for other investments that (for investments in legal entities) meet the criteria above or confer material influence or (for investments in assets) allow the investor to use/direct/control the asset, or to do so to a greater extent. Deals can also be reviewed on media plurality, financial stability or public healthcare emergency grounds if the target has UK turnover of GBP 70 million or more, or if the target and buyer have overlapping activities with a share of supply in the UK (or part of it) of 25% or more.	National security filings: 30 working days, plus a further 30-75 working days if there is a detailed review. Merger control filings: No deadline in Phase I – can take anywhere between 20-80 working days. If a Phase II investigation is opened, an additional 6-8 months.	✓ (for mandatory filings)	✓ (also criminal)
USA 	Fact-intensive/No percentage threshold.	Short form declarations: an expedited filing reviewed within 30 days. The Committee may request a formal notification after its review of a declaration, elongating the timeline. Joint Voluntary Notification (JVN): the comprehensive notification process, which can take three to five months total. The standard 45-day notification review may be followed by a national security investigation (45 days), and, rarely, by presidential review (15 days).	✓ (for mandatory filings)	✓ (for mandatory filings)

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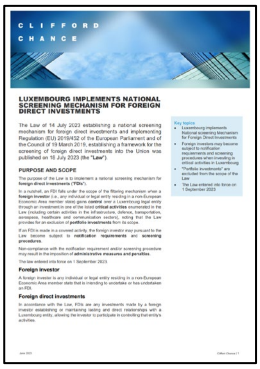
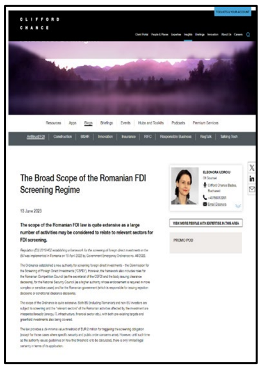


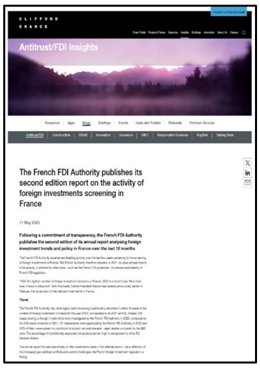
Luxembourg implements national screening mechanism for foreign direct investments

Spain: final consolidation of the screening regime on foreign direct investment in Spain

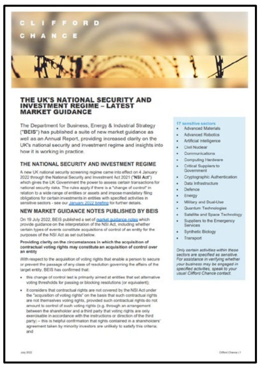
Belgium's new foreign direct investment notification requirement has potentially significant timing implications for international transactions



The Broad Scope of the Romanian FDI Screening Regime



The French FDI Authority publishes its second edition report on the activity of foreign investments screening in France



The UK's National Security and Investment Regime – Latest market guidance

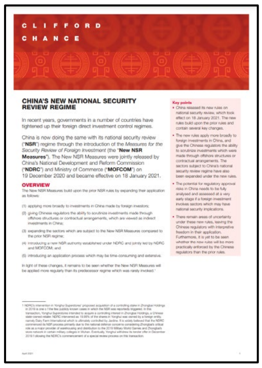
New Regulations regarding the foreign investment screening regime in Romania

Interplay of EU merger control and FDI review: implementation of national FDI screening regimes have to comply with EU law

The UK's new national security screening regime is now in full effect

The UK National Security and Investment Act: mark the date

The UK National Security and Investment Act: what is the impact?



China's new national security regime

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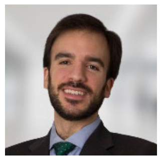

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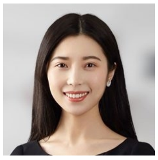

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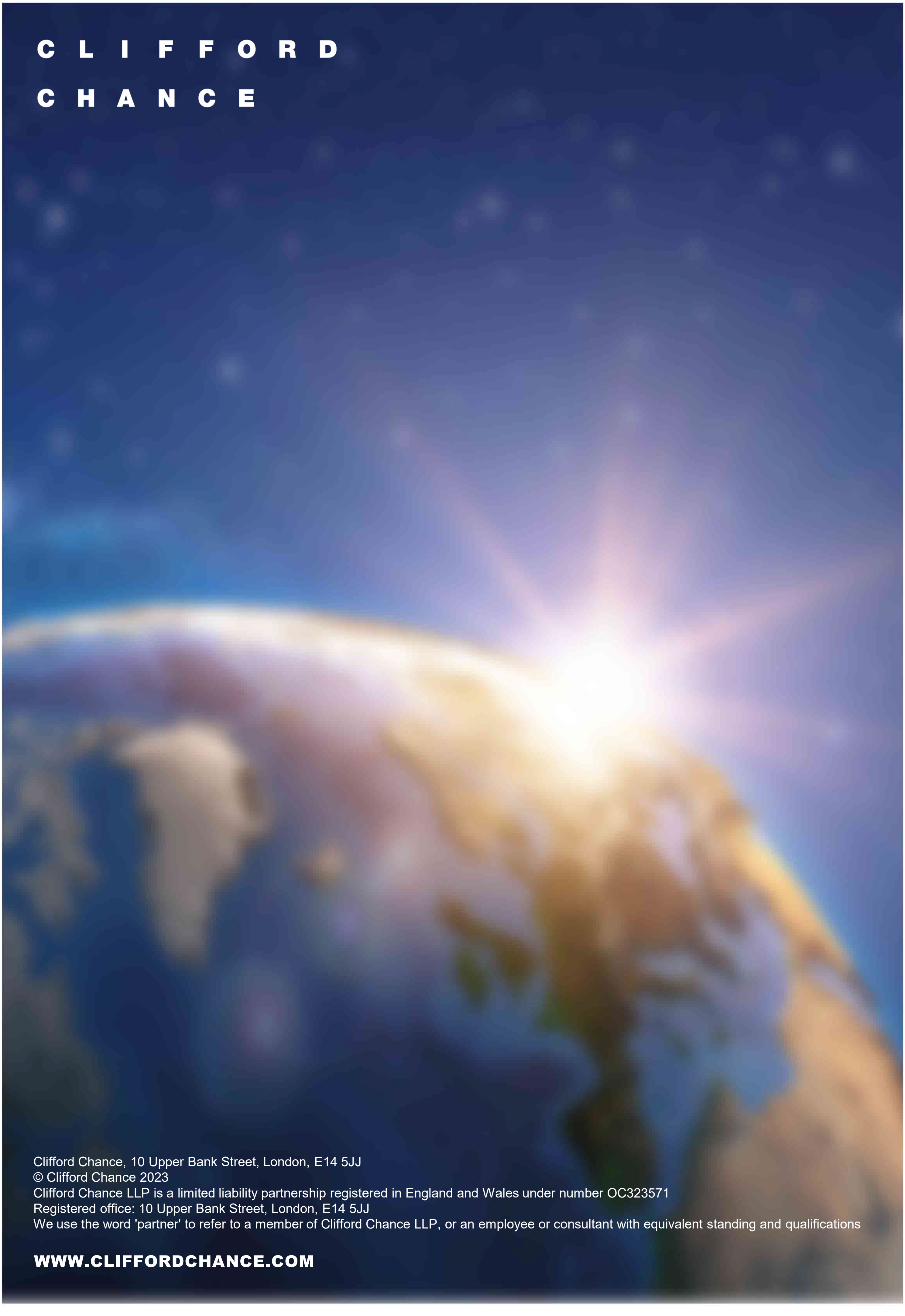

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