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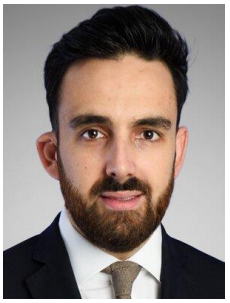
# New FDI Regs Signal Major Changes For M&A Deals In EU

By **Ben Land-Maycock, Romain Girard and Mathieu Coget** (June 8, 2026, 3:33 PM BST)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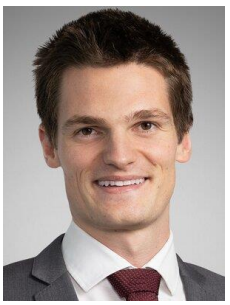
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On May 19, the European Parliament voted to adopt the agreed compromise text of the new regulation on the screening of foreign investments in the European Union, clearing the way for what will be the most significant overhaul of the EU's investment screening architecture since the original framework was introduced in 2019.[1]

The three EU institutions — the European Commission, Parliament and Council — reached a compromise on the text in December 2025, following several months of trilogues. The new foreign investments regulation, which will repeal and replace the 2019 Foreign Direct Investment Regulation,[2] is expected to be published in the official journal in June, followed by an 18-month transition period during which all member states will have to update their rulebook.

Currently, all member states have some form of foreign investment screening in place, and these regimes typically require preclose, mandatory and suspensory approval for investments in sensitive sectors. Getting these approvals can be complex and inevitably affects deal planning, timing and execution certainty.

This article examines the key features of the new foreign investments regulation, focusing on what is different from the existing regime, where uncertainty remains, and what the changes mean in practice for M&A deal planning and execution across the EU.

**From Optional Cooperation to Mandatory Screening**

The most consequential shift is structural. The 2019 regulation established a cooperation mechanism enabling member states and the commission to exchange information on foreign investments, but it did not require member states to operate a screening mechanism at all.

The result was an uneven patchwork: While all 27 member states eventually adopted some form of screening regime, there were substantial differences in scope, procedure, thresholds and timing. Some regimes were voluntary while others were postclosing, and call-in powers for below-threshold transactions were the exception rather than the norm.

The new regulation eliminates that optionality. All member states must now establish a screening mechanism that, at a minimum, covers the investments specified in the mandatory scope and imposes a

prior authorization requirement for those investments.

Member states must notify their mechanisms to the commission within 18 months of entry into force of the new regulation, and they must report any subsequent amendments within 30 days.

**Broader Concept of Foreign Investment**

The new foreign investments regulation significantly clarifies and widens the definition of "foreign investment." It covers any investment creating or maintaining lasting and direct links between a foreign investor and an EU target, where those links enable effective participation in the target's management or control.

Critically, this includes investments carried out through EU-established subsidiaries controlled, directly or indirectly, by a third-country investor, so-called intra-EU investments.

This closes a gap that generated considerable uncertainty following the EU Court of Justice judgment in Xella Magyarország in July 2023, which raised questions about the conditions under which member states could screen investments routed through EU-based intermediaries.[3]

The new regulation does not, however, define the relevant thresholds for "effective participation in management or control" in operational terms. It clarifies that decisive influence, i.e., the capacity to determine the commercial policy of the target, clearly qualifies, but it goes further: Effective participation may also exist where an investor can materially affect commercial policy through shareholding, voting rights, supplier relationships or board representation, even without majority ownership.

Because these concepts are not harmonized with specific numerical triggers, the application of screening thresholds will continue to vary between member states, and investors will need to conduct jurisdiction-by-jurisdiction analysis when structuring acquisitions.

Greenfield investments are within scope of the new regulation, but are explicitly excluded from the mandatory prior authorization requirement, leaving member states to decide whether to screen them. Internal restructurings are excluded, provided that they do not introduce a new third-country entity into the upstream ownership chain.

**Defined Mandatory Scope**

For the first time, the EU establishes a common minimum set of sectors and activities in which foreign investments must be subject to prior authorization.

These include:

- Undertakings active in dual-use items and military goods and technologies;
- Semiconductors, quantum technologies and certain artificial intelligence systems;
- Strategic raw materials — exploration through to stockpiling;
- Critical transport, energy and digital infrastructure, subject to a risk-based national assessment;

- Systemically important financial market infrastructure such as central counterparties, central securities depositories and payment system operators; and

- Electoral infrastructure, including voter registration databases and voting systems.

This list establishes a floor, not a ceiling. Member states retain full discretion to extend their screening mechanisms beyond this baseline, and many are expected to do so, particularly in sectors such as healthcare, media and real estate, where national sensitivities run high. The result is that deal teams will still need to map the specific scope of each relevant national regime, but can at least rely on a baseline of consistency across the EU for the listed sectors.

Two questions deserve attention. First, the treatment of critical infrastructure in transport, energy and digital sectors is not automatic. It depends on a risk-based, targeted assessment by each member state of which entities in those sectors are considered critical.

The new foreign investments regulation provides that entities should be able to ascertain, after contacting the screening authority if necessary, whether they fall within this designation. In practice, this introduces a layer of ambiguity for targets and acquirers until member states publish clear guidance.

Second, the financial market infrastructure category was a late addition, driven by the EU Parliament, and reflects a broadening of the screening perimeter into territory traditionally governed by prudential regulation. This raises questions about how screening and existing prudential assessment regimes will interact.

**Harmonized Timelines With Important Caveats**

The new regulation introduces procedural convergence by requiring all national mechanisms to include a two-phase structure. This is an initial review taking up to 45 calendar days from the date the filing is deemed complete, followed, where necessary, by an in-depth investigation. This is a welcome development for investors that have long-faced widely differing timetables across member states.

However, practitioners should note three important qualifications.

- First, the 45-day clock runs from the date the filing is deemed complete by the screening authority, not from the date of submission, leaving national authorities significant discretion over when the clock actually starts.

- Second, the new regulation proscribes no maximum timeline for the in-depth investigation phase, meaning that Phase 2 reviews could extend considerably in complex cases.

- Third, the new foreign investments regulation does not specify whether or to what extent member states may stop the clock during either phase, creating the risk of meaningful divergences in effective review periods.

For multicountry transactions, i.e., investments screened in more than one member state, the new regulation introduces coordination requirements. Investors are expected to endeavor to file in all concerned member states on the same day, and member states must endeavor to align their notification and decision-making timelines.

These are obligations of best efforts, not hard requirements, and their practical effectiveness will

depend on the willingness of national authorities to cooperate.

**Strengthened Cooperation Mechanism**

The new regulation retains and significantly reinforces the cooperation mechanism between member states and the commission. The commission may now issue opinions, including proposals for mitigating measures, in a broader range of circumstances. This includes where it considers that several investments, taken together, could negatively affect security or public order. Member states and the commission may also intervene on nonnotified investments for up to 15 months after completion.

The host member state must give due consideration to comments and opinions, and must provide the operative part and a summary of reasons for its screening decision — including, where it disagrees, an explanation of its reasons. This falls short of giving the commission a veto, but the transparency requirement creates meaningful accountability.

**Practical Takeaways**

The new regulation will reshape how cross-border M&A and strategic investments in the EU are planned and executed. Several practical implications stand out.

Transaction structuring and sequencing will become more complex. Routing investments through EU-based entities controlled by third-country investors will no longer avoid scrutiny. Signing-to-closing risk must be recalibrated across every affected jurisdiction, particularly given the absence of a fixed Phase 2 deadline and the potential for clock-stopping.

Due diligence should now systematically assess whether a target falls within the mandatory minimum scope, e.g., critical raw materials and financial market infrastructure, and whether it has been designated as critical by the host member state in the transport, energy or digital infrastructure sectors.

Conditions precedent in transaction documentation will need to reflect the full range of foreign direct investment filing obligations. The so-called endeavor requirement for simultaneous filings in multicountry transactions may prompt the wider use of springing conditions, i.e., provisions that elevate a particular jurisdiction's clearance to a condition precedent where a call-in or notification obligation materializes.

Timeline risk should be a central consideration in deal planning. While the 45-day Phase 1 review provides greater predictability, the absence of a Phase 2 cap and the potential for preacceptance information requests mean that worst-case scenarios should be modeled carefully.

Long-stop dates, ticking fees, interim covenants and termination rights should reflect realistic downside scenarios, and mitigation measures should be considered early. The new regulation sets out a nonexhaustive list, including governance changes, modifications to voting rights, conditions on access to sensitive technology, supply commitments, data localization requirements, and cybersecurity protocols. Early remedy planning and engagement may improve execution certainty.

Finally, investors linked to third-country governments, e.g., through ownership, funding or governance arrangements, sanctions exposure, prior foreign direct investment compliance issues or connections to higher-risk anti-money laundering, and countering the financing of terrorism jurisdictions should expect heightened scrutiny. These risk factors should inform bidder strategy and, where relevant,

prenotification engagement.

**Conclusion**

The new regulation represents a step change in the EU's approach to controlling foreign investment on security grounds. It replaces a voluntary, fragmented system with a mandatory baseline for screening, broadens the concept of foreign investment to capture intra-EU structures, and introduces procedural requirements that will bring greater — if imperfect — consistency across member states.

For deal lawyers, the message is clear: foreign direct investment screening must now be treated as a first-order regulatory consideration in European transactions, comparable in importance to merger control and foreign subsidies review. With application expected by early 2028, the window for adapting transaction planning, documentation and advisory processes is open.

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[1] Proposal for a Regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council, Letter to the Chair of the European Parliament Committee on International Trade (INTA), 10 February 2026.

[2] Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019R0452-20211223.

[3] CJEU, Xella Magyarország, Case C-106/22.