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December 11th, All Eyes on Brussels

The European Commission's Proposal to Further Broaden and Centralize the EU's FDI Controls

Europe – December 2025

The EU is on the verge of a significant reform of its foreign direct investment (FDI) screening framework. In January 2024, the European Commission (EC) put forward a proposal to revise the current FDI Regulation, which is progressing through the ordinary legislative procedure and is now approaching its final stages.

Both investors and targets, whether actual or potential, must therefore be aware of the nature and scope of these forthcoming measures, as well as adapt their strategies accordingly. Rising geopolitical tensions and several recent high-profile FDI cases have strengthened the determination of the EC and the member states to reinforce the existing screening mechanisms.

The reform responds to three key developments: increasing security and public-order concerns associated with certain foreign investors; vulnerabilities revealed during the COVID-19 pandemic and, subsequently, following Russia's invasion of Ukraine; as well as persistent divergences between national screening systems that create gaps within the internal market.

The proposal also aims to embed investment screening within the EU's broader "economic security" toolbox, alongside export controls, sanctions, the Foreign Subsidies Regulation, the anti-coercion instrument and other related measures.

That said, one of the key questions is whether the EC can push their proposal through the trilogue. The next meeting is on 11 December 2025, and we will see whether the EC's proposal will survive this legislative Bermuda triangle, with the European Parliament pushing for greater centralisation and the council carrying the flag of member state sovereignty.

The EC's Proposal

The core idea remains that member states should retain the authority to approve, impose conditions on or block individual transactions. The EC will not acquire US-style veto powers. However, all member states would be required to maintain a screening mechanism that complies with more stringent EU-wide minimum standards, and cooperation at the EU level would become significantly more structured and intensive, particularly in the case of transactions with cross-border or EU-wide implications.

From Optional to Mandatory National Screening Regimes

The current FDI Regulation sets up a framework for the screening of FDIs from third-country investors into the EU, but it does not oblige every member state to even operate a screening regime at all. It simply says that member states may maintain, amend or adopt national mechanisms if they wish. The proposed regulation turns that choice into an obligation: every member state would be obliged to establish a screening mechanism. The details of these national mechanisms are left up to the respective member state, but it must at least cover "foreign investments", as defined in the proposal (i.e. encompassing both classic FDI from third countries, as well as investments carried out through EU-incorporated subsidiaries which are controlled, directly or indirectly, by a foreign investor).

In practice, many national regimes already capture such indirect acquisitions; the new definition would align the EU framework more closely with the established practice of its member states and remove any residual doubt that investments routed through EU-incorporated vehicles fall within the scope of screening.

A Harmonised Minimum Sectoral Scope

The proposal also mandates that deals in specific sectors must receive prior authorisation. Under the current FDI Regulation, it remains up to the member states whether any sector is covered at all; it merely lists factors that member states may take into account (e.g. critical infrastructure, critical technologies, critical inputs, access to sensitive information and media freedom). By contrast, the proposal obliges each member state to impose an authorisation requirement whenever a foreign investor acquires control or effective participation in an EU target that either participates in EU "projects or programs of Union interest", or is economically active in sensitive technologies, infrastructure and activities (both listed and defined in the proposal).

Thus, the proposal establishes a mandatory minimum standard below which national regimes may no longer operate. Member states that already screen acquisitions of smaller minority stakes, (e.g. Germany, Italy and Spain), could continue to do so; the EU rules do not cap how broadly national regimes may be drafted. A further potential broadening of the scope of review lies in the proposal's reference to screening obligations where targets are "economically active" in a covered sector. For the harmonised minimum sectors, member states would have to ensure that their triggers capture at least this notion of economic activity, which may reach beyond a narrow focus on development or manufacturing. At the same time, member states would remain free to use broader or more stringent national concepts than those proposed by the EC.

Tightening the Procedural Design of National Mechanisms

The proposal would standardise how national FDI screening operates in practice. At present, EU law only lays down high-level requirements (i.e. transparency, non-discrimination between third countries, clear triggers and grounds, timeframes for comments, judicial recourse, protection of confidential information and anti-circumvention rules). Beyond this, each member state designs its own system.

Under the proposal, every regime would have to follow the same basic structure and respect harmonised minimum concepts of "foreign investor", "foreign investment" and "Union target", as well as a minimum sectoral scope. Member states would need to ensure that their national rules at least capture transactions that meet those EU-level notions, but they would not be required to copy the EU definitions verbatim, and could maintain or introduce broader national concepts. In practice, authorities would first decide whether a deal falls within the minimum EU framework by checking for a foreign investor, an EU target in their territory, a covered sector and a degree of influence or control that meets the EU floor as implemented in national law. Regimes that already go beyond classical control tests, such as those in Germany and Italy, or that apply specific lower shareholding thresholds, such as Spain with its 25 percent benchmark, would not need to narrow their existing approach.

If the transaction is in scope, the authority would then conduct an initial, lighter review using common criteria to clear manifestly harmless cases quickly. Where that first look suggests plausible risks to security or public order, the authority would open a detailed investigation, gather further information, consult other member states and the EC and then either approve the deal, approve it with conditions, or prohibit it.

Enforcement Toolkit and Ex Post Powers

Under the current EU FDI Regulation, there is no EU-wide standstill obligation. Whether a transaction can close before receiving FDI clearance depends entirely on national rules: some member states prohibit closing pending approval. At EU level, the only requirement is that national procedures allow sufficient time for the EC and the other member states to issue their comments.

As currently drafted, the new proposal would change this for the sensitive sectors and EU projects listed in Annexes I and II. For foreign investments that, in the final text, are made subject to authorisation in these areas, investors would in principle be required to notify before closing, screening would be expected to be completed before implementation and authorities would likely gain explicit powers to block or unwind transactions completed without a proper filing, including through divestment orders. The precise contours of these obligations may, however, still change during the legislative process.

In practice, and subject to the outcome of trilogue negotiations and subsequent national implementation, the reform could introduce the first EU-wide standstill obligation for harmonised sensitive sectors and EU-level projects, reducing the current patchwork of national approaches and moving towards a more consistent compliance environment for cross-border transactions. How far a genuinely uniform standstill obligation will emerge will ultimately depend on the final compromise text and the manner that member states transpose it into their domestic regimes.

Making the EU Cooperation Mechanism Binding

At present, the EU cooperation mechanism is light. When a member state reviews a foreign investment, it informs the EC and the other member states, which may send comments and the EC may issue an opinion. The deciding state must consider these views, but it does not have to explain in detail how it used them and in practice some governments pay more attention than others.

Under the proposal, cooperation would become more formal and binding. The proposal clearly defines "notifiable investments", including foreign investments in key EU projects and programs, in sensitive sectors with additional risk factors and any case that is referred to a full investigation. These must be notified by the member state carrying out the screening to the EC and to all other member states, within fixed deadlines and through a secure system. The other member states and the EC then have a set period in which to ask questions, request information and submit comments or opinions, during which the host state may not adopt a final decision. When the host state does decide, it must give those views "utmost consideration", provide a written explanation of how it took them into account or why it did not, and, if partners remain dissatisfied, convene a meeting to discuss the case and future practice. This would turn a loose political dialogue into a structured legal process, with concrete duties and greater pressure on the deciding State.

A Formal Ex Post Procedure

Today, *ex post* scrutiny is handled very differently in those member states where it exists. The proposal would formalise this process. If a completed but unnotified investment raises concerns, another member state or the EC could, within fifteen months, request information from the host state, which would be legally required to respond unless it has a legitimate reason not to. The case would then follow the same structured cooperation mechanism with deadlines, comments and a duty to provide written explanations. While final decisions would still rest with the host state, the reform would give other authorities a concrete legal right to force potentially risky, previously undisclosed transactions into the open.

Updating and Detailing the Substantive Risk Criteria

The current FDI Framework identifies broad areas of concern (i.e. critical infrastructure, sensitive technologies, dual-use items, access to sensitive data and investor links to foreign governments) but leaves wide discretion to member states. The proposal keeps these themes but ties them more closely to other EU security frameworks. Authorities would need to assess whether the investor or its owners are subject to EU sanctions, have a history of problematic transactions or may be acting in line with another country's strategic objectives.

In essence, the reform turns a broad list of risks into a more concrete, EU-aligned checklist.

Clearer and More Detailed Risk Criteria

The current reporting system is limited: member states provide confidential data once a year, and the EC publishes a single EU-wide report. The proposal would require each member state to issue an annual public report with anonymised statistics on screenings, outcomes, sectoral distribution, origins of investments and major legal changes. It also clarifies that personal data used in screening must comply with EU data-protection rules and be retained only as long as necessary. In addition, the EC would be required to review the framework every five years and could update the lists of key projects and sensitive sectors. Overall, the regime would become more transparent, more regularly updated and more disciplined in its use of data.

Where the Process Stands and What Businesses Should Expect

The revision of the EU's FDI Screening Regulation has taken up speed. After the European Parliament adopted its first-reading position in May 2025, and the Council of the EU agreed to its general approach in June, trilogue negotiations are now under way. The political goal in Brussels is to reach a final compromise by the end of 2025, adopt the new rules in 2026 and have them fully applied around 2027. We will see after the next scheduled Trilogue meeting if this timetable can be met.

If approved, the reform will require significant changes to national FDI regimes across the EU. Member states would also need to ensure prior authorisation for investments in certain EU-level projects and designated sensitive sectors, as well as introduce minimum procedural safeguards such as two-phase reviews, standstill obligations for sensitive deals and enhanced enforcement powers.

Cooperation between the EC and member states would likewise tighten, with mandatory notifications, strict timelines and requirements to explain how comments from other authorities were addressed. In practical terms, all 27 member states will need to update or rebuild their regimes to meet these new standards.

Businesses, both investors and targets, should therefore anticipate stricter scrutiny, longer timelines and greater coordination at EU level, as well as begin adapting their deal planning accordingly.

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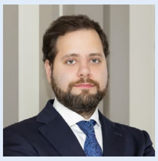

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