

The decisive result of the US elections has given President Trump a clear mandate to pursue the policies on the basis of which he was elected. Measures to reinvigorate the US manufacturing economy have been a feature of recent US Administrations, including the Biden Administration, but President Trump's campaign highlighted in particular the potential role of tariffs in rebalancing the US's trading relationships, as enacted also in the previous Trump Administration. Other major economies, such as the EU, China and India, may well respond to any imposition of tariffs by the US Administration, thus potentially triggering a round of disruption to international trade and negotiations to seek new settlements. National security considerations increasingly play a part in assessing trade measures and interventions, and therefore influence possible outcomes of negotiations. In any event, an era of 30 years of liberal globalisation, from the end of the cold war to the Covid-19 pandemic, during which businesses have known growth without frontiers, has ended and may not come back any time soon. Today, decisions about where investments are made, where supply chains are located, or where raw materials are purchased increasingly require assessment of geopolitical risk that needs to be factored in as potential regulatory hurdles when it comes to investment decisions and strategic M&A planning.

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In September 2024, **Mark T. Esper**, former US Secretary of Defence, has joined our policy practice as a senior advisor. Secretary Esper's addition follows other recent hires the firm has made to strengthen its capabilities in international trade, national security and international investis including DHS Assistant Secretary **Bridget McGovern** in February 2024. They have joined the premier team around **US Ambassador Paul Jones**, Deputy Assistant to the President for International Economic Affairs in the first Trump administration **Everett Eissenstat** and **UK Ambassador Matthew Kirk** and other former US government officials participating in our national security practice from Commerce, State, Treasury and Homeland Security.



Major Developments in The Committee on Foreign Investment in the US (CFIUS) Review

- In 2024, the Treasury Department proposed rules, which are pending implementation, that will expand CFIUS's investigation authorities and increase penalties for non-compliance with filing requirements and mitigation agreements. This follows the release of eight recent enforcement actions by CFIUS against parties for non-compliance with mitigation terms, including a US\$60 million fine to T-Mobile in relation to its mitigation compliance.
- CFIUS's 2024 annual report shows an increased trend of CFIUS cases resulting in mitigation requirements, showing that ~13% of all filings made in 2023 (the most current available data) ended in mitigation. The report also highlighted the increased efforts of CFIUS to track down transactions of potential interest that were not voluntarily notified. In the prior year, CFIUS reviewed "thousands" of cases, and reached out to parties in relation to 60 transactions that were not notified.
- Under a second Trump Administration, CFIUS is expected to continue to be an important tool to review national security concerns. It is speculated that a second Trump Administration may further expand the view of economic security as national security, especially in the case of politically sensitive transactions.



Major Developments in Foreign Direct Investment (FDI) Review

- The last year was dominated by discussions about the Commission's proposal for a new FDI screening regulation. The EU only has limited powers in relation to defence and national security measures. A situation that, as the influential Draghi Report of September 2024 has put it, is ill-suited to address the EU's geopolitical challenges. Despite this criticism FDI control in the EU is and will remain first and foremost a national competency.
- The proposed new regulation seeks to make an FDI screening mechanism mandatory for all EU member states, setting minimum procedural requirements, determining the minimum scope for compulsory screening of transactions subject to an authorisation requirement and extending the material scope to EU investors that are ultimately controlled by individuals or businesses from a non-EU country. The practical impact may be marginal, however, since most member states already have a screening process that covers key industries also by EU-buyers owned by non-EU entities.
- There is considerable debate about the procedural proposals to increasing the accountability of member states *vis-à-vis* each other and the Commission, for instance, the obligation for screening authorities to cooperate in cross-border investments, to collect the same types of information and alignment of some of the deadlines for multi-country notifications. Some level of harmonisation would probably be welcome news to investors, however, it could backfire in the sense that certain authorities will in fact be slowed down.

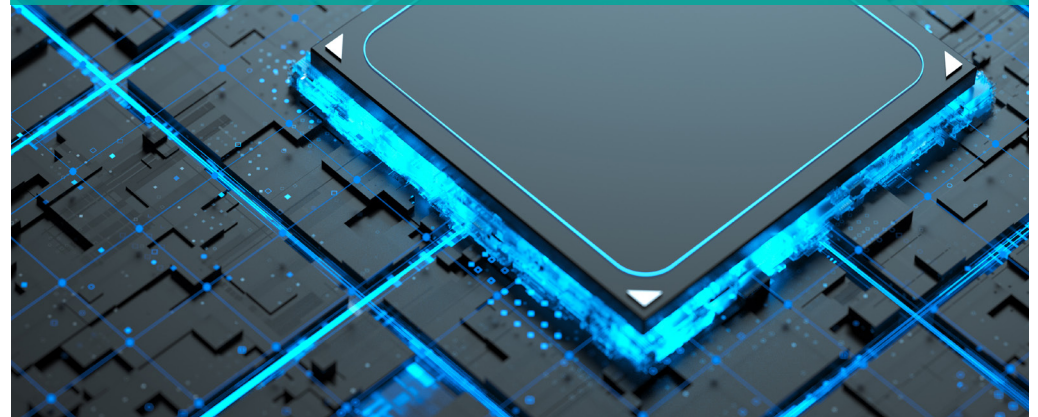


Major Developments in National Security and Investment Act (NSIA) Review

- The UK Government has published the third Annual Report on the National Security and Investment Act 2021 (NSIA). In the period from 1 April 2023 – 31 March 2024, the UK Government received 906 notifications (41 more than in the previous review period). Out of a total of 41 transactions that were called in by the Investment Screening Unit (ISU) for an in-depth review, 41% represented Chinese investments, followed by UK investors, accounting for 39% of the called-in transactions (bearing in mind that the regime applies equally to UK and non-UK investors), with the US a little further behind (22%).
- The UK therefore seems to be the jurisdiction experiencing the highest number of national security filings, followed by Italy. This is explained by the fact that both the UK and the Italian regimes are agnostic as to the nationality of the relevant investor and sales alone (without any physical presence) in these two jurisdictions can trigger mandatory notifications.

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Senior CFIUS practitioners **Shannon Reaves** and **Chris Griner** joined the firm at the end of 2023. Shannon focuses his practice in the areas of cross-border transaction reviews before CFIUS, industrial security, including Foreign Ownership, Control or Influence (FOCI) mitigation matters and export control. With decades of experience, Chris is widely recognised as a leader in this field and played a key role in the development of FOCI mitigation arrangements. Also in Washington, DC, well-known antitrust practitioner **Michael Wise** joined in November 2024 adding significant strength to the firm's antitrust regulatory practice and its offering of a first in class global one-stop shop.

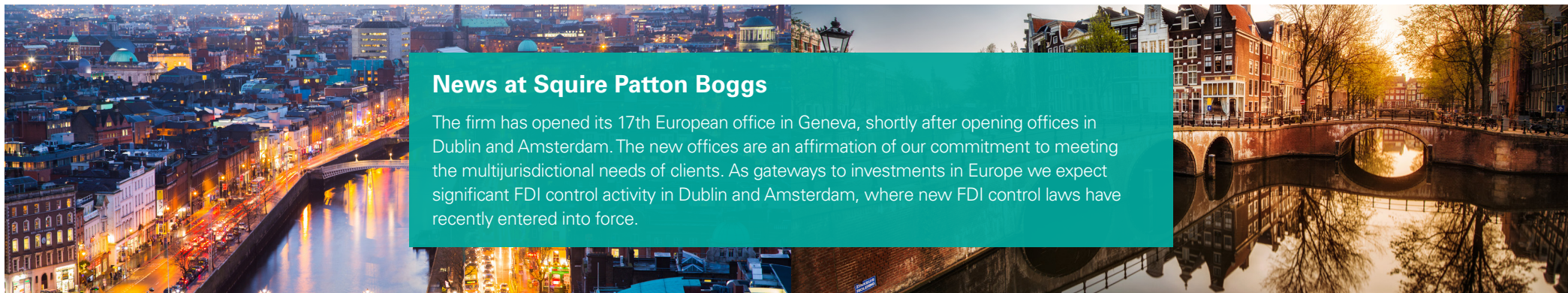


France made headlines again in 2024 for its opposition to high profile M&A deals (e.g., BC Partners/Biogen and CD&R/Sanofi) and continues to be the EU jurisdiction that imposes the most remedies on FDI transactions (44% of French FDI clearance decisions in 2023 contained remedial measures). French MPs can (and do) intervene in FDI reviews – such interventions are rarely experienced in other EU jurisdictions.

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Also, in **Germany** a large US private equity transaction has come under intense scrutiny. Following unsuccessful negotiations with the ministry on remedies, it is reported that Carlyle has abandoned its proposed acquisition of ThyssenKrupp Marine Systems. Germany is also in the process of overhauling its FDI law, but so far it is happening mostly behind closed doors as a draft is still not published. A new Investment Control Act would likely extend the scope of application of the German review mechanism to more sectors and more transactions, potentially including greenfield transactions and IP licensing.

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The firm has opened its 17th European office in Geneva, shortly after opening offices in Dublin and Amsterdam. The new offices are an affirmation of our commitment to meeting the multijurisdictional needs of clients. As gateways to investments in Europe we expect significant FDI control activity in Dublin and Amsterdam, where new FDI control laws have recently entered into force.

Finally, in **Ireland**, enforcement of the Irish Screening of Third Country Transactions Act 2023 is expected to commence after considerable delays. It provides for mandatory filing obligations in a variety of sectors which, given the country's importance as a gateway to investments in the EU, may lead to a considerable number of filings. Another hub for EU investments, the **Netherlands**, has seen its first cases in 2024 after a new law was introduced in mid-2023. There have been no publicly known prohibition decisions to date, however the Dutch ministry has investigated several closed transactions retroactively. Further obligations on companies in the defense sector are on the horizon.

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In **Italy**, depending on the type of deal, and strategic sector, even the acquisition by an EU buyer of supply contracts can trigger a filing obligation under its "Golden Power" regime. This means that for Italy, like for the UK, mandatory filing obligations need to be checked in any deal where the target has sales in Italy, even though it has no physical assets or a subsidiary there. This led to a high number of cases – 727 in 2023 – a stark contrast to the government exercising its veto power only on average three cases per year. A recent attempt to reduce red tape by allowing the pre-notification of unproblematic cases has not been very successful due to the potential negative timing implications for deals, if the government were ultimately to require a full notification.

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In late August 2024, the Council of Ministers of **Spain** blocked the acquisition of Spanish railway manufacturer Talgo S.A. by Hungarian competitor Ganz MaVag. Though the details remain undisclosed (FDI decisions are not published in Spain, like in most jurisdictions), speculation has linked the decision to several factors, including that Talgo possesses advanced engineering solutions that may allow seamless transitions between Ukrainian and European rail tracks, and potential Hungarian ties to Russia. Spain's FDI regulation allows for the review of intra-EU acquisitions until 31 December 2024 in relation to listed Spanish companies or in unlisted companies if the value of the investment exceeds €500 million.

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China has an FDI control regime that applies to foreign investment in critical industries, but very rarely used in practice. There are very few cases where foreign investment is reviewed or restricted for national security concern. Since 2023, there has been a significant drop of the net inflow of FDI (FDI into FDI flow out of China) which never fell below ¥150 billion in the last 15 years to close to zero. While this is mainly caused by more outflow of foreign investment, the inflow FDI in 2023 decreased by 8%, and for the first half of 2024, another nearly 30%.

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The **Belgian** Ministry of Economy released its first annual report on FDI screening. The report shows a smooth process for most cases, with 68 notifications processed, of which 53 (primarily from US and UK investors) were approved unconditionally. Notably, no investments faced blocking or conditions, and only five cases advanced to a second, in-depth screening. Key sectors including data, healthcare and digital infrastructure.

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What Is on the Horizon?

- **Greenfield investments** – These are not covered by any (at least: major) FDI law, with the slight exception that if the greenfield involves real property rights in the US, CFIUS could have authority depending on whether the location of the real property is on or near certain sensitive facilities. The lack of an ability to review greenfield investments has been identified as a particular issue for the EU since there are asymmetries arising from small member states negotiating with large foreign investors that could lead to unwelcome concessions being extracted by foreign countries. Already the draft FDI Regulation encourages the member states to include greenfield investments in the scope of transactions covered by their screening mechanisms.
- **Outbound investment screening** – Following an executive order by President Biden, a final rule was issued on 28 October 2024 to implement an outbound investment regulatory regime that will regulate certain investment activities by US persons, or under the control of US persons, in various sensitive sectors (AI, quantum computing and advanced semiconductors) with certain foreign persons connected to China, to be effective 2 January 2025. Outbound investment is also on the agenda in the EU. In January 2024, the Commission published a White Paper on Outbound investment starting a process to determine the scope of potential concerns, understand the extent and nature of EU outbound investments by collecting relevant data and evidence, as well as assess whether such investments create or aggravate clearly identifiable risks to security. It is not expected that the EU legislator will move quickly while the draft FDI regulation is still in the making.
- **IP licensing transactions** – Only a few FDI regimes today cover pure IP transactions, for instance France and the UK. The UK has already blocked the transfer of IP licenses. In most other jurisdictions, FDI laws apply if the technology transfer also leads to a transfer of a business. However, more and more stakeholders argue that technology transfers to foreign investors may equally lead to an outflow of security relevant know-how and information. This would have a significant effect on the pharmaceutical industry for instance. In the US, although CFIUS authority would not apply, regulations authorised under Executive Order 13873 could apply to the transfer of technology, as well as other commercial transactions, if connected to China or other countries of concern and related to connected vehicles (announced in 2024) or other information, communication technology and services (ICTS).

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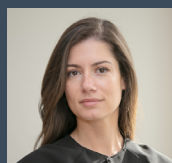
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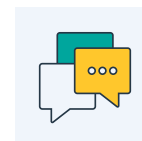
Our Firm at a Glance



More than 1,500
lawyers across four
continents



Practising in
more than 140
jurisdictions



More than 40
languages spoken



Top 20
global legal practice
based on number of
lawyers

Further information on investment laws and other relevant resources on CFIUS, FDI, NSIA and other international trade issues can be found at www.tradepractitioner.com.

This blog provides a wealth of information to help you strengthen organisational trade compliance, gain regulatory understanding and heighten awareness to the impact that national security concerns have on international trade. The blog also tracks important trade policy issues, sanctions and international trade agreement negotiations.

