

# OVERVIEW OF RECENT UPDATES



## IN EU FOREIGN INVESTMENT, FOREIGN SUBSIDIES AND MERGER CONTROL

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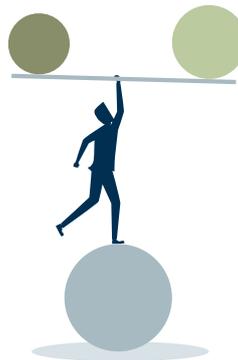
### Introduction

European Union's increasingly evolving regulatory approach at the intersection of competition, trade and national security has important practical implications for investors, international groups, and transaction planning across the EU and globally. There are three key EU developments to watch on the regulatory front in 2026 which can affect M&A transactions and public procurement in the EU:

- the political agreement reached in December 2025 on the revision of the EU Foreign Direct Investment (FDI) Screening Regulation;
- the European Commission's Guidelines of January 2026 clarifying the application of the EU Foreign Subsidies Regulation (FSR); and
- the ongoing revision of the EU merger control guidelines.

These initiatives illustrate the increased regulatory scrutiny of cross-border transactions and investments in the EU,

which are no longer limited to merger control but also include national security consideration (through FDI) and trade considerations (through the FSR).



### Reinforcement and Harmonisation of the EU FDI Screening Framework

Regulation (EU) 2019/452 of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (the EU FDI Screening Regulation) applies since 11 October

2020. Adopted against the backdrop of concerns that the COVID-19 crisis could trigger predatory acquisitions of strategically important but undervalued EU companies, the EU FDI Screening Regulation aimed to encourage EU Member States to establish national FDI screening mechanisms, to create a cooperation mechanism between the European Commission and the EU Member States, and to establish minimum requirements for national screening regimes in relation to security and public order.

On 11 December 2025, the European Parliament and the Council reached a political agreement on a set of substantial amendments to the EU FDI Screening Regulation. The objective of these amendments is to further harmonise the EU FDI screening framework and make it more effective, while at the same time increasing predictability for businesses. Final adoption of the revised EU FDI Screening Regulation is expected in the first half of 2026, with an entry into force that could be anticipated towards the end of 2027.

The key elements of the revised EU FDI framework are the following:

### Mandatory National Screening Mechanisms

EU Member States will be required to adopt and maintain national FDI screening mechanisms. The scope of such mechanisms will cover certain intra-EU investments where the EU investor is ultimately owned or controlled by a third-country person or entity.

### Harmonised Minimum Sectoral Scope

National screening regimes must, at a minimum, cover investments in the following sensitive areas:

- dual-use items and items listed on the EU Common Military List;
- entities involved in the manufacture, research, or development of semiconductors, quantum technologies, or artificial intelligence technologies;
- entities active in transport, energy, or digital infrastructure that are considered critical by the relevant Member State;
- entities engaged in the exploration, extraction, processing, recycling, recovery, or stockpiling of strategic critical raw materials; and
- specific categories of financial service providers, such as central counterparties, central securities depositories, regulated market operators, payment system operators (excluding central banks), other systemically important institutions.

### Minimum Procedural Standards

The revised Regulation introduces harmonised procedural requirements applicable to national screening regimes, including:

- a two-phase review process;
- the power to screen non-notified transactions retroactively;
- harmonised review timelines, notably a 45-calendar-day deadline for the initial (Phase I) review; and
- for transactions in several EU Member States, filings must be submitted on the same day in all relevant jurisdictions.

### Enhanced Cooperation Tools

The revised framework introduces the creation of an EU-level database (accessible to national screening authorities), containing information on investments notified under the cooperation mechanism and the outcomes of national screening procedures since October 2020. The revised framework allows for the possible establishment of a single EU online filing portal for notifications to national screening authorities, at the request of at least nine EU Member States.

### Commission Guidelines on the Application of the EU Foreign Subsidies Regulation

On 9 January 2026, the Commission published its Guidelines on the application of the EU Foreign Subsidies Regulation (FSR).

The FSR, according to which mandatory notification obligations started to apply on 12 October 2023, empowers the European Commission to address distortions of competition caused by foreign subsidies or other financial contributions granted by non-EU countries to companies operating in the EU to ensure a level playing field for all companies engaging in economic activities in the EU. Indeed, in the past, it appears that foreign subsidies might have distorted the EU's internal market by providing their recipients with an unfair advantage to acquire companies or obtain public procurement contracts.

These FSR Guidelines clarify several key concepts:

#### Assessment of Distortive Effects

Once the Commission has established that an undertaking active in the EU has benefited from a foreign subsidy, it will assess whether that subsidy actually or potentially distorts competition in the EU through a two-step analysis:

- First, the Commission will examine whether the subsidy strengthens the undertaking's competitive position in the EU. Where subsidies are granted at the group level and are not specifically targeted to the group's EU activities, the EC will assess whether the subsidy could be credibly used to cross-subsidize EU activities.

- Second, the Commission will assess whether the subsidy is liable to influence the undertaking's competitive behaviour and market dynamics to the detriment of other economic actors, such as outbidding in acquisitions, aggressive pricing or bidding strategies and broader value-chain distortions. The new guidance also introduces a safe harbor for subsidies of an aggregate amount of less than €4 million over the past three years and compensation for natural disasters or exceptional occurrences.

#### More Clarity Regarding Public Procurement

In the context of public procurement procedures, the Commission will focus on whether the foreign subsidy enabled the undertaking to submit an unduly advantageous offer. The Commission will assess whether it is "undue", namely by comparing the submitted bid with other submitted bids and whether the advantage stems to an appreciable extent from a foreign subsidy, or whether it can plausibly be justified by other factors. While the national contracting authorities apply EU procurement rules, the Commission has exclusive competence to assess the existence of an undue advantage under the FSR.

#### Balancing Test

The Guidelines provide further guidance on the balancing test, under which the Commission weighs the negative effects of a foreign subsidy against any potential positive effects. Such positive effects may include the development of the subsidised economic activity in the EU or broader benefits aligned with EU policy objectives, such as environmental protection, economic development in disadvantaged regions, energy security, innovation, competitiveness, resilience, or the Union's economic security and defence policy.

The guidance sets a rather high bar for a possible defense for distortive foreign subsidies, as the Commission will assess whether the distortion is unavoidable to achieve the claimed benefits.

#### Call-in Powers for Concentrations and Public Procurement Procedures

The Guidelines recall that the Commission may exercise its call-in power in respect of non-notifiable transactions or public procurement

procedures, particularly where it suspects that foreign subsidies were granted within the preceding three years. However, the Commission has now introduced a safeharbor where the foreign subsidies remain below EUR 4 million on an aggregated basis over the last three years, or relate to bids below EU procurement thresholds, or to subsidies granted to remedy damage caused by natural disasters or exceptional occurrences.



## Ongoing Review of the EU Merger Control Guidelines

In May 2025, the European Commission launched a public consultation on possible reforms to its horizontal and non-horizontal merger control guidelines. This is the most significant revision of the EU Merger Regulation (EUMR) framework in the last two decades.

The revision aims not only at codifying the Commission's practice over the past 20 years, but also considers whether the current EUMR framework should be amended to reflect significant market trends and geopolitical developments have led to transformational shifts in many markets —most notably digitalisation, globalisation, and decarbonisation— which have significantly transformed market dynamics and placed increasing strain on the existing EU merger control framework. The final merger guidelines are not expected to be published before late 2027.

### Review Process of the EU Merger Control Guidelines

A general consultation was organised to address high-level questions on merger assessment under the EU Merger Regulation and the principles underpinning the revised guidelines, while an in-depth consultation focused on technical issues across seven key themes, such as digitalisation, innovation, efficiencies, sustainability, defence, and labour considerations.

### Workshop

In parallel, the Commission commissioned an economic study on the dynamic effects of mergers and organised technical stakeholder workshops on 4 December 2025 and 20 January 2026.

## Conference

The next stage of the process will be a conference scheduled for 5 March 2026, bringing together experts and stakeholders to discuss key aspects of the review and the evolving challenges of EU merger control. At a later stage, the Commission is expected to publish a first draft of the revised merger control guidelines, which will be subject to further public consultation.

