

The Rise of the New EU FDI Screening Regulation

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On February 10, 2026, the provisional text¹ of the new EU FDI screening regulation was finally published (the “New Regulation”). This reflects the political agreement reached on December 11, 2025, between the European Parliament and the Council of the European Union (“Political Agreement”).²

Following the initial European Commission (“EC”)’s proposal in early 2024,³ negotiations with the Council and the Parliament were held on several points⁴ in the ensuing months (so-called trilogue),⁵ ultimately resulting in the mentioned Political Agreement.

After the formal adoption of the New Regulation (through endorsement by the Council and the Parliament), Member States will need to amend and update their own regimes, with an impact on the scope and timing of future foreign direct investments (“FDI”) across the EU. Notifying parties will also need to take the New Regulation into account in their FDI notification strategy.

This memorandum provides an overview of the New Regulation.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

BRUSSELS

François-Charles Lapr votte
+32 22872184
fc laprevotte@cgsh.com

Vladimir Novak
+32 22872173
vnovak@cgsh.com

ROME

Francesco Iodice
+39 06 6952 2697
fiiodice@cgsh.com

Camilla Cozzani
+39 06 6952 2257
ccozzani@cgsh.com

COLOGNE

Mirko von Bieberstein
+49 69 97103 204
mvonbieberstein@cgsh.com

LONDON

John Messent
+44 20 7614 2377
jmessent@cgsh.com

WASHINGTON.

Chase D. Kaniecki
+1 202 974 1792
ckaniecki@cgsh.com

¹ See the text on the Council’s [webpage](#).

² See the Council’s [Press Release](#), the Parliament’s [Press Release](#) and Commission’s [Press Release](#) of December 11, 2025.

³ For an overview of the EC’s initial proposal, see our [Alert Memo](#) of March 12, 2024.

⁴ See [Council’s mandate](#) for negotiations with the European parliament of 6 June 2025.

⁵ See [Cleary Blog Post, The Draft New EU FDI Regulation – The EU Institutional ‘Game Of Thrones’ Continues](#).



1. Compulsory FDI Screening across the EU

The Political Agreement has confirmed the fundamental paradigm currently in force, with Member States remaining responsible for the review of foreign investments under their own national regime.

However, the New Regulation will render it mandatory for all EU Member States to establish a national FDI screening mechanism within an 18-month transition period after its entry into force. This represents a significant shift from the current framework, where Member States are encouraged but not required to adopt a screening regime.

The practical impact of this requirement will however be limited: as of today, 26 of the 27 Member States have already established a screening regime. FDI regimes were recently enacted in the few lagging countries, such as in Croatia in November 2025. Cyprus, the sole exception, is currently in the process of adopting its own mechanism, expected for April 2026.

2. Minimum Scope

The New Regulation will provide for a minimum scope of sectors for which an *ex ante* review of a foreign investment becomes mandatory.

The list covers targets established in the EU active in any of the following areas: (i) dual use items subject to export controls;⁶ (ii) defence-related products and technology;⁷ (iii) advanced technology such as semiconductors, quantum technology and artificial intelligence technology, even limited to research; (iv) critical transport, energy or digital infrastructures;⁸ (v) specific activities⁹ as regards strategic raw

materials;¹⁰ (vi) specific financial entities;¹¹ and (vii) electoral operations management.¹²

On the other hand, the Political Agreement has confirmed that greenfield investments are not included in the minimum scope of the New Regulation.

It will however be for the Member States' own legislation to determine whether such sectors should be further detailed by a list of assets and operations (as in many national regimes) and what is the local nexus that would trigger a filing (*e.g.*, whether the mere establishment of a local entity is sufficient, or substantive assets or operations also need to be located in the country).

Member States will remain free to impose investment screening to a wider list of sectors than those covered in the New Regulation, but in that case the New Regulation clarifies that it will apply to investments notified in those sectors too, including for purposes of the "cooperation mechanism".

3. The foreign investor's subsidiary in the EU

The Political Agreement has also confirmed that the relevant foreign investments extend to investments made through a "foreign investor's subsidiary in the EU", *i.e.*, undertakings established in the EU but ultimately controlled (directly or indirectly) by non-EU nationals or entities not established under the laws of a Member State.

This provision, which was strongly promoted by a number of Member States, aims at covering a situation envisaged by the Court of Justice in the *Xella* case¹³ and allows these transactions to be covered by the cooperation mechanism.

⁶ As identified in Annex I to Regulation (EU) 2021/821.

⁷ Annex to Directive 2009/43/EC.

⁸ Considered critical based on a risk assessment performed by the host Member State.

⁹ Notably, exploration, extraction, recycling or recovery.

¹⁰ As identified in Section I, Annex I to Critical Raw Materials Act.

¹¹ Central counterparties, central securities depositories, operators of regulated markets, operators of payment systems (excluding central banks), other systematically important institutions (as defined in Article 131(3) of the Directive 98/26/EC), and global providers of specialized financial messaging services.

¹² Like voter registration databases and voting systems.

¹³ Judgment of the Court of 13 July 2023, *Xella Magyarország*, C-106/22, ECLI:EU:C:2023:568.

4. Reinforced cooperation mechanism

With a view to promoting a prompter attitude of host Member States to notify foreign investments to the EC and other Member States pursuant to the cooperation mechanism, the New Regulation will specify in which cases the activation of the cooperation mechanism is mandatory.

In particular, host Member States will have to share an FDI filing through the cooperation mechanism within 15 calendar days of the filing, if (i) the investment concerns a target active in the minimum scope of sectors and (ii) one of the following alternative criteria is met:

- The foreign investor is directly or indirectly controlled by a third-country government.
- The foreign investor or any related party thereof (i) is subject to EU sanctions, or (ii) was previously involved in a foreign investment that was either vetoed by a Member State or approved with mitigating measures that were significantly or repeatedly violated.

In addition, irrespective of whether the investment concerns a target active in the minimum scope of sectors, the host Member State must share the FDI filing through the cooperation mechanism when (i) it decides to open an in-depth investigation under its own regime, or (ii) imposes mitigating measures or prohibits the investment without an in-depth investigation, in each case provided that the target is (a) active in a project of Union interest;¹⁴ or (b) has subsidiaries or is part of a group with multiple subsidiaries in other Member States.¹⁵

Finally, the New Regulation requires Member States to use the cooperation mechanism on a discretionary basis and without undue delay, whenever they consider that another Member State might be

affected by the transaction, because it may jeopardize its security or public order.¹⁶

Overall, the New Regulation appears to have opted for a more detailed indication of the specific cases in which the cooperation mechanism applies, compared to the current regime where it is generally triggered by the mere circumstance that a foreign investor submits a filing in a Member State pursuant to the applicable national regime. The practice will show whether this will result in an increased cooperation (with a larger number of transaction being reviewed at EU level) or rather an enhanced cooperation (where instead fewer but arguably more sensitive transactions are screened at EU level).

5. Risk factors

The EU FDI Regulation has never been intended to dictate to Member States how to make screening decisions, as they remain the ultimate arbiters of whether a foreign investment must be authorized, with or without conditions, or vetoed. However, it seeks to establish common risk factors, determining when foreign investments are “likely to negatively affect security and public order”.

The existing EU FDI Regulation lists a series of factors, distinguishing between: (i) impact-based criteria, such as the supply of critical inputs and access to sensitive information, as well as (ii) investor-based criteria, essentially whether the foreign investor is indirectly controlled by a third-country government.

The Political Agreement results in the New Regulation expanding both types of criteria further.

First, the New Regulation includes new impact-based criteria, such as the protection of electoral processes and the protection of public health, including the provision and availability of “critical medicines”¹⁷ and other critical technologies,¹⁸

¹⁴ These include GOVSATCOM, the Union Space Program, the Union Secure Connectivity Program, Horizon, and TEN-T.

¹⁵ In these circumstances, the host Member State has 45 calendar days – and not 60 nor 5 days as previously envisaged by the EC and Parliament, respectively – from the filing to notify it to the cooperation mechanism.

¹⁶ The New Regulation clarifies that this would be the case when the target has significant operations in other Member States or belongs to a corporate group with entities established in several Member States.

¹⁷ As identified in a specific list annexed to the New Regulation.

¹⁸ As identified in a specific list annexed to the New Regulation, which includes various biotechnologies,

security and functioning of critical infrastructures, and the security of military and other public facilities.

Second, the New Regulation will extend the investor-based risk assessment to the influence that could be exerted on the target by a broad network of related parties, including:

- controlling persons and entities,
- beneficial owners,¹⁹
- any subsidiaries,
- and any controlled or owned entity acting on their behalf.

The New Regulation will require Member States to assess new risk factors related to any of the persons or entities listed above, including:

- Whether the investor is likely to (i) pursue a third country's policy objectives through the investment;²⁰ (ii) facilitate the development of a third country's military capabilities; (iii) use the investment to support internal repression in a third country or the commission of serious violations of human rights or international humanitarian law.²¹
- Whether it has previously made an FDI that was screened by a Member State but not authorised, or was only authorised subject to mitigating conditions which were significantly or repeatedly not complied with.

- Whether it is subject to EU sanctions and the reasons therefor.
- Whether it is established in a jurisdiction identified as a third country with significant strategic deficiencies in its AML/CFT regime.
- Whether it is subject to legislation of a third country that imposes obligations on natural or legal persons to share information for intelligence purposes.

Finally, the New Regulation introduces the notion of “*opaque ownership structure*” of the foreign investor as a risk factor, covering cases where the investor has a complex corporate structure obscuring the true ownership and control, associated with potential problematic connections.

6. Stronger procedural coordination

In terms of procedure, the New Regulation reinforces Member State coordination, with key elements that merit close attention.

First, the New Regulation confirms the introduction of a right to be heard for investors. In particular, prior to adopting a decision to impose remedies or prohibit an investment, the screening authority will have to provide the “parties” (presumably the investor and the target or seller) with an opportunity to present their views. While this does not go as far as expressly contemplating a negotiation of remedies, it represents a significant improvement as many national regimes are currently unclear on this

advanced connectivity, navigation and digital technologies, submarine fiber-optic cables, advanced sensing technologies, space and propulsion technologies, aerospace technologies, energy technologies, robotics, and advanced materials and manufacturing technologies. As happened when the existing FDI Regulation entered into force, it is also likely that Member States will reflect this list in their own FDI regime, requiring a filing when the target owns any such technology, even if not required under the New Regulation.

¹⁹ Defined to capture natural persons on whose behalf the foreign investment is made or on whose behalf the control over that foreign investment is exercised.

When it is not possible to identify the natural person, including in the case of publicly traded companies, the legal person, entity or trust at the highest identifiable level in the upstream ownership or control chain of the foreign investor or Union target should be considered as the beneficial owner.

²⁰ Such as using the investment to coerce a Member State or the Union into preventing, ceasing, modifying, or adopting a particular act.

²¹ Particularly where the Union target develops or produces items listed in Annex I of Regulation (EU) 2021/821 (dual-use goods) or Annex I of Directive 2009/43/EC (defence-related products).

aspect, often resulting in untransparent decision-making processes for the parties.

Second, host Member States will have the authority to review *ex officio* investments that were not notified, in two scenarios:

- the investment falls within the scope of the national regime but is not subject to an *ex ante* authorization requirement thereunder. In such case, the host Member State may conduct its review for at least 15 months and up to a maximum of five years following the completion of the transaction; or
- the investment was subject to an *ex ante* authorization requirement, but the investor either failed to file a notification or filed it only after completion of the transaction. In such case, the host Member State may conduct its review for a period of at least two years following completion.

With a view to increasing certainty for investors, the New Regulation will also:

- harmonize the duration of “phase 1” reviews to 45 calendar days from filing submission (whereas the duration of “phase 2” (*i.e.*, in-depth investigations) will be left to the national regimes); and
- require Member States to publish guidelines on their own regimes.

The New Regulation does not provide binding common deadlines for notifications of transactions in several Member State (as initially proposed by the EC). In these cases, however, investors will be required to “endeavor” to submit their filings on the same date. And Member States shall endeavor to align the timing of their procedures, including as regards the clearance, and shall discuss whether their decisions are compatible with each other.

Similarly, where the cooperation mechanism applies, Member States will be required to endeavor to share the relevant filings on the same day. Depending on how these requirements are enforced in practice, this may have a significant impact on notifying parties’ filing calendars, as it would make it more difficult to stagger FDI notifications across Member States.

7. Balance of powers

The New Regulation preserves Member States’ responsibility to screen investments, subject to compliance with the procedural requirements, which seek to ensure that the EC and other Member States are suitably and timely involved within the cooperation mechanism framework.

The New Regulation will allow the notifying Member State itself to request the EC to issue an opinion or other Member States to provide comments.

Interestingly, the trilogue negotiations between the EC, the Council and the Parliament also covered the possibility to give the EC decisional power to resolve disagreements between Member States on the treatment of a particular foreign investment (as the EC had initially envisaged in its original proposal). The compromise reflected in the New Agreement is to expressly enable the EC to:

- propose mitigating measures, by means of its opinion addressed to the notifying Member State, strengthening the EC’s practical role beyond mere assessment;
- issue a duly justified opinion addressed to all Member States where it considers that several foreign investments, taken together and in light of their characteristics, are likely to negatively affect security or public order, following which it shall engage in discussions with Member States on how to address the identified risks.

Notably, in case of non-notified foreign investments, the New Regulation introduces a mandatory meeting mechanism: following the receipt of comments or an opinion, and at the request of a Member State having issued comments or of the EC, the host Member State will be now obliged to organise a meeting to discuss how best to address the risks identified. In cases of a transaction notified in multiple Member States, all such notifying Member States are invited to that meeting, to ensure compatibility between clearance decisions of different national authorities.

As a result, the New Regulation contains mechanisms resulting in “peer pressure” and accountability for the host Member State. While the

obligation to take “due consideration” of a comment or opinion remains unchanged the notifying Member State will be required to communicate to other Member States and the EC the extent to which it gave due consideration to their comments or opinion, as well as, where applicable, the reasons for its disagreement.

8. Next steps

The provisional text of the New Regulation will need to be finalized, and thereafter will need to be formally endorsed by both the Parliament and the Council, which is expected to occur in the first half of 2026.

Once formally adopted and published in the Official Journal of the European Union, the New Regulation will enter into force 20 days thereafter. A transitional period of 18 months will then follow, during which Member States will be required to adapt (or adopt) their national laws accordingly.

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