FRESHFIELDS

November 2025

Foreign Investment Monitor

ISSUE 11

Contents

Executive summary

National security has become the dominant lens for global investment. Sectors that governments once actively courted for foreign investment due to its economic benefits – from data and infrastructure to minerals, energy, advanced technology, and consumer electronics – are now subject to intensive screening on the basis of national security.

This edition of *Foreign Investment Monitor* examines how FDI policy is adapting as industrial strategy, geopolitics and economic resilience converge.

Freshfields also co-edited Lexology's *In Depth: Foreign Investment Regulation*, which explores the same global shift toward security-driven investment policy.

Across jurisdictions, a pattern is clear: investment policy is no longer only about market access but about strategic influence. Governments are learning to act like investors; investors, in turn, must learn to think like governments.

The full circuit: FDI and national security in the electric-vehicle era

In brief

Electric vehicles (EVs) – including driverless models – bring together rare earth materials, advanced engineering and connected software in systems that governments now view as critical to both competitiveness and security. Every stage of the EV value chain, from materials through production to data-rich operation, is viewed as carrying potential national security risk. For investors, understanding these vulnerabilities – and how foreign direct investment (FDI) authorities interpret them – is essential to avoid regulatory pitfalls and protect deal certainty.

> Every stage of the EV value chain, from materials through production to data-rich operation, is viewed as carrying potential national security risk.

Critical minerals: Supply chains under pressure

EVs begin with geology and chemistry. Lithium, nickel, cobalt, graphite and rare earths not only determine prices, they expose supply vulnerabilities. FDI authorities focus on control and denial of access. Concentration of mining and refining capacity in a handful of jurisdictions generates classic leverage risks – export restrictions, price manipulation or discriminatory supply cuts to advance foreign-policy goals. Refineries, precursor plants and long-term take-or-pay contracts can all become single points of failure, even for downstream facilities in friendly markets.

China recently wielded its dominance in rare earth materials – and their critical role across defense, semiconductor, auto, and "clean" energy sectors – as a geopolitical instrument against the United States. Throughout 2025, there has been a complex interplay between escalating Western restrictions on China and retaliation by China in the form of progressively tightening export controls on rare earth minerals. Most recently in October 2025, China tightened controls on rare earth materials ahead of high-level trade negotiations with the United States, subsequently suspending the controls as part of such negotiations. These moves underscore the fragility of global supply chains and the continued importance of critical-minerals security in FDI assessments.

This importance has been institutionalized by governments in investment policy through multiple mechanisms. President Biden's 2022 Executive Order on the Committee on Foreign Investment in the United States (CFIUS) directed CFIUS to scrutinize critical mineral transactions. The Trump administration has directly acquired equity stakes in rare earth producers. Meanwhile, Canada and Australia have blocked or forced divestment of Chinese investments in lithium and rare earth mining, signaling that critical mineral security now overrides traditional open-investment policies.

Production: Where clean tech meets hard power

The middle of the EV value chain – from R&D and component manufacturing to final assembly – brings dual-use technology concerns to the fore. Wide-bandgap silicon-carbide power modules used in EV inverters can also harden radar and directed-energy systems against thermal stress. High-density battery-management algorithms developed for passenger vehicles can manage silent-running submarines or forward-operating microgrids. Compact LIDAR and vision-fusion systems that guide autonomous vehicles can provide terrain-following and target-acquisition capability for unmanned ground vehicles and precision-guided munitions.

In the US, a 2024 battery plant project in Michigan backed by Chinese company Gotion drew congressional attention after CFIUS determined it lacked jurisdiction to review because the project was a greenfield investment outside its real-estate authority. The controversy prompted the addition of the nearby Camp Grayling military installation to the list of "extended range" facilities that can trigger review, and renewed discussion of whether CFIUS's remit should expand to certain greenfield projects. Investors should use diligence not only to understand what a target's technology does today but what it could do tomorrow; even potential dual-use applications can shape regulatory perceptions of risk.

In China, the EV sector has been a strategic pillar of national economic policy for years. A foreign investor's acquisition of control of a Chinese business active anywhere along this chain – from batteries to microcontrollers or power semiconductors – could trigger review. With global competition intensifying, transactions in the EV space are becoming enforcement priorities for FIR authorities worldwide. The Dutch government's intervention in the management of Nexperia, a Chinese-owned producer of chips widely used in the auto sector, illustrates that intervention risk can persist long after closing.

Operation: Smart cars, smart grids, soft targets

Once EVs reach consumers, national security focus shifts to data access and infrastructure integrity. EVs are mobile sensor platforms transmitting location, usage and diagnostics data, along with continuous over-the-air updates. Such data has intelligence value: it can reveal movement patterns or enrich other datasets through AI-enabled analytics.

A consortium that included Chinese investors reportedly abandoned a planned minority investment in automotive-mapping company after encountering CFIUS concerns – an example of how data exposures alone can derail a deal. Across other jurisdictions, including EU member states and China, questions around the access, collection, processing and cross-border transfer of geolocation information and/or personal data remain central to FDI scrutiny.

Authorities also view the interface between EVs and the power grid as a potential high-impact, low-probability risk. Each EV is both a load and, with vehicle-to-grid or vehicle-to-home capability, a potential storage node. If an adversary were to embed backdoors or other supply-chain compromises into charging-network backends, over-the-air (OTA) update servers, or widely-deployed telematics and Electric Vehicle Supply Equipment components, they could issue coordinated commands to disable or simultaneously charge cohorts of vehicles and chargers under that vendor's control. Such an attack could overload distribution equipment and protection systems, trigger localized outages and even contribute to wider frequency excursions across already stressed power systems.

Remote-disable or authentication-corruption attacks targeting vehicle powertrains or charging authentication systems are also technically feasible where vehicles share a common vulnerable supplier or platform. Concentrated in dense urban areas with high EV adoption, such attacks could disrupt transportation, logistics and emergency response within affected regions.

> "The EV value chain touches nearly every category of national security risk that FDI authorities monitor – from critical mineral chokepoints to dual-use technologies and cyber-physical infrastructure.

Looking ahead

The EV value chain touches nearly every category of national security risk that FDI authorities monitor – from critical mineral chokepoints to dual-use technologies and cyber-physical infrastructure. To mitigate exposure and preserve deal certainty, investors should:

- **Map the value chain**: Identify where the target sources, refines or processes critical minerals, and whether any upstream dependency could trigger control or denial-of-supply concerns.
- **Assess dual-use potential**: Determine whether component technologies, algorithms or design know-how could be repurposed for defense, aerospace or energy-resilience applications. FDI authorities focus less on what technology does today than on what it could do tomorrow.
- **Scrutinize co-investors**: Assess whether any consortium partner's ties to high-risk jurisdictions or state ownership could heighten regulatory scrutiny or expand the scope of review.
- **Examine the data environment**: Understand what vehicle, user and operational data the business collects, where it is stored and who can access it, including cross-border analytics partners or cloud providers.
- **Stress-test cyber-physical dependencies**: Review charging-network software, OTA update systems and telematics supply chains for single-vendor reliance or shared-platform vulnerabilities that could amplify s ystemic risk.
- **Time your deal carefully**: Anticipate regulatory or policy changes when structuring transactions, including carve-outs, that can reduce execution risk.
- **Gauge stakeholder sentiment**: Consider how political leaders, regulators, customers, suppliers, and competitors might react, given the wider geopolitical context.

With thanks to Freshfields Ninette Dodoo, Aimen Mir, Colin Costello, Tracy Lu, Andrew Gabel and Ziqi Zhou for their contributions to this update.

The rise of golden shares: A new layer to FDI screening?

In brief

"Golden shares" are emerging as a tool for safeguarding national interests in foreign direct investment (FDI). While not yet commonplace, their use in recent US and European cases highlight how states are testing new ways to preserve control over strategic assets. For dealmakers, this trend adds a layer of political and transactional complexity that could reshape FDI negotiations.

What are golden shares?

Golden shares are governance instruments that allow governments to retain strategic rights in sensitive entities through minimal shareholdings with disproportionate access to information and influence rights. The governance rights may include the power to veto strategic decisions, such as asset disposals or the relocation of headquarters or production abroad.

> "In recent years, golden shares have been used to secure commitments, maintain oversight after closing and enable state participation in companies of national interest.

In recent years, golden shares have been used to secure commitments, maintain oversight after closing and enable state participation in companies of national interest . They can operate as a condition of FDI clearance or as a parallel measure outside the formal review process – but in either case, they serve the same purpose: to protect perceived core national interests.

Although not yet widespread in FDI reviews, golden shares have featured in several notable transactions. In the United States, the government obtained such rights in the Nippon Steel-US Steel deal. In Europe, the UK and France have each deployed golden shares as part of – or alongside – national security measures.

US: Nippon Steel and a CFIUS first

The Committee on Foreign Investment in the United States (CFIUS) has historically avoided using golden shares to manage transaction-specific national security risks, preferring negotiated mitigation agreements instead.

Its decision to adopt a golden share in the Nippon-US Steel transaction marked the first publicly disclosed use of this mechanism. By doing so, CFIUS both crossed a Rubicon and set a precedent for its use in the future. The arrangement reportedly gave the US government control over matters not traditionally viewed as national security concerns, including preventing US Steel from changing its name.

Yet it may be premature to declare a golden age for golden shares. The Nippon Steel case was highly specific: US Steel is an icon of American industry, in a highly political industry, and a prime political target first for President Biden (who prohibited the transaction) and then for President Trump (who reversed President Biden's prohibition and conditioned clearance on obtaining a golden share). It was in many ways a perfect storm, leading to – thus far – anomalous results. There have been no public indications of CFIUS imposing a golden share since. That said, the Trump administration has broken from the norm by demanding revenue share from companies in return for regulatory approvals (see Nvidia) or equity in return for government grants (see Intel and multiple rare earth companies).

Filing parties pursuing especially sensitive or politically charged transactions should nonetheless consider the possibility of a golden share when planning and drafting deal documents. For now, however, such measures remain a high-impact but low-probability risk.

UK: Royal Mail and the protection of a national champion

The UK government has used golden shares to protect national champions, complementing national security reviews while extending obligations beyond traditional defense concerns.

In April 2025, during the acquisition of Royal Mail by Czech investor Daniel Křetínský's EP Group, a golden share was negotiated between the Department for Business and Trade and the investor before approval was granted under the National Security and Investment Act (NSIA). The NSIA final order contained only a general requirement for Royal Mail to continue providing services that support UK national security, with no further specific remedies imposed.

The golden share gives the government veto rights over certain strategic decisions, most notably the relocation of headquarters or tax residence abroad. Its purpose is to safeguard not only Royal Mail's financial and operational viability – as an "iconic and important national institution" – but also its customers, employees and brand integrity.

France: Doliprane, politics and a golden share twist

In France, the use of golden shares has taken on an overtly political dimension. When the US investor CD&R acquired 50% of the shares of Sanofi's subsidiary Opella in April 2025, French development bank Bpifrance took a 1.8% stake in Opella. The golden share granted the French state a board seat and ensured that production of certain medicines would remain in France.

French pharma again: Will the golden share trigger be pulled again?

After an initial takeover attempt failed in 2023, French pharmaceutical company Biogaran and UK-based investor BC Partners have resumed negotiations. Discussion reportedly includes the possible use of a golden share as a tool for receiving approval by the French government. It remains to be seen whether this would become a formal condition of FDI approval or take place as a separate condition.

Here too, the authorities' focus appears to be supply-chain security for essential medicines. The outcome could shape how France applies golden shares in the health and life sciences sectors going forward.

Golden shares are here to stay – but what next?

The concept of a golden share is clearly gaining traction. As the recent cases show, its rationale now extends beyond traditional defense and national security interests to encompass broader industrial and economic policy goals – including supply security and strategic autonomy.

In Europe, these arrangements have so far emerged largely outside the formal FDI process, sometimes even in advance of it. Given how new and varied these cases are, it remains too early to say whether golden shares will evolve into an alternative to formal FDI screening or become a more integrated tool within it.

It is also to be expected that golden shares will gain relevance in jurisdictions outside of the US and Europe.
For instance, according to very recent reports, Indonesia's government may request a golden share in the merger of ride-hailing and food delivery firms Grab and GoTo

> "For potential investors and sellers, the key is to assess not only whether a golden share might be required, but also how this risk should be allocated contractually.

For potential investors and sellers, the key is to assess not only whether a golden share might be required, but also how this risk should be allocated contractually. Given the inherently political – and often unpredictable – nature of FDI remedies, the scope of what a buyer is prepared to accept as a condition to closing can materially affect deal certainty.

With thanks to Freshfields Lasse Petersen, Andrew Gabel and Maximilian Pohl for their contributions to this update

Looking ahead

- Golden shares may emerge as a condition for FDI approval in transactions concerning target companies of national interest.
- Recent US and European cases show that national interests now extend beyond traditional defense or national security concerns.
- Transaction documents should address golden share risk allocation to preserve deal certainty.

Balancing security and growth: Investment screening under the UK's Modern Industrial Strategy

In brief

The UK government's modern industrial strategy seeks to make regulation more efficient while strengthening national security. Recent consultations propose reforms to the National Security and Investment Act 2021 (NSIA) regime that would redefine key sectors and expand oversight to new areas such as water, while the government also announced plans to exempt certain low-risk transactions. The goal is a regime that supports innovation and investment without compromising security – though some proposals will increase risk of regulatory intervention for certain deals

Growth ambitions meet security realities

Almost four years after the NSIA came into force, the government is re-examining how to balance openness with protection. On 21 October, UK Chancellor Rachel Reeves announced plans to get rid of "needless form filling" to boost growth and attract foreign investment. Her statement follows June's Modern Industrial Strategy when the government pledged to cut the administrative costs of regulation for business by 25%. Yet the Modern Industrial Strategy also stresses the need to protect the UK from "new threats" to security.

Caught between a complex global environment and an ambition to make the UK "the best country to invest in anywhere," the government recently consulted on a package of reforms to the NSIA regime designed to make investment screening more pro-business, pro-innovation and fit for purpose. As implementation approaches what should businesses look out for in the next six to twelve months?

Notifications for internal reorganizations – finally on the way out

In a welcome move to carve-out low risk transactions from mandatory screening, the government plans to exempt some internal reorganizations – widely seen as an unnecessary burden on corporate restructures. The extension of the exemption for appointment of administrators to other types of insolvency practitioners will also be welcomed.

Businesses can expect the government to bring secondary legislation to Parliament for consultation soon and should look for opportunities to comment on the scope of the exemptions at this stage.

Mandatory notification sectors – new target activities brought in scope and others removed

Proposed changes to the Notifiable Acquisition Regulations (NARs) – which define the sectors and activities that trigger mandatory notification – will bring new businesses into scope and remove others. Key changes include:

- **Critical Minerals and Semiconductors**: the government proposes new standalone sectors for Critical Minerals and Semiconductors (currently part of the broader "Advanced Materials" sector) and a wider range of activities to be brought into scope in each case. This reflects the recognition that these inputs are essential to several of the Modern Industrial Strategy's growth-driving "IS-8" sectors, including Advanced Manufacturing, Clean Energy Industries and Digital and Technologies, and are therefore strategically important for UK strength and resilience.
- **Data Infrastructure**: to mitigate heightened threats to critical digital infrastructure, the government proposes bringing investments in all third-party operated data centers within the scope of mandatory notification. This would bring more investments under scrutiny, including data centers operated by certain cloud service providers that manage data infrastructure on behalf of other entities. The lack of a proposed materiality threshold means the definition could encompass an overly broad range of entities, including those engaged only in limited data processing or storage.
- **Artificial Intelligence**: proposed changes would remove certain low-risk activities, such as the use of consumer AI as a tool within internal processes. This reflects the reality of widespread AI use and aligns with Business Secretary Peter Kyle's recent suggestions to minimize regulatory burdens for AI development. However, the proposed drafting remains broad, and there is a risk that businesses could still fall within scope simply for using

enterprise AI rather than consumer-facing AI in low-risk internal processes.

- **Water**: the most headline-grabbing proposal is to bring the water sector into the mandatory notification regime. If adopted, any investment of more than 25% in the licensed water and/or sewerage companies across England and Wales would be reviewed on national security grounds. At a time when the water sector urgently needs investment and the government is promoting lower administrative costs, the move could amount to triple regulation of water mergers. The Independent Water Commission's Report in July recommended a new super regulator to replace Ofwat and other water regulators, empowered to block changes of control where an investor is deemed undesirable. Assuming the government's proposals are implemented, the NSIA regime would join this super regulator and the CMA in reviewing water-sector investments. The regulatory burden could therefore increase significantly without clearer guidance and coordination between authorities.

> At a time when the water sector urgently needs investment and the government is promoting lower administrative costs, the move could amount to triple regulation of water mergers.

Investors and businesses should stay alert. Even if the government does not expect a major rise in mandatory notifications, broadly drafted proposals could produce one.

Low-hanging fruit for greater transparency

The government also invited stakeholders, including investors, to share views on increasing transparency under the NSIA, particularly to inform new guidance. Investors continue to cite a lack of predictability and transparency in how the government assesses risk where trusted foreign investors acquire interests in sensitive sectors – understandable given confidentiality surrounding case decisions. The government's intention to publish additional guidance is therefore likely to be welcomed by investors.

So far, the government has consistently declined to introduce a "whitelist" for trusted investors that would be exempted from close NSIA scrutiny. In our feedback, Freshfields proposed several more measured ways the government could still enable trusted investors to make more informed decisions. These low-hanging fruit could include:

a. Introducing a fast-track process for low-risk investments, based on factors such as investor profile, target sector, and transaction structure to determine transaction eligibility. Australia's Foreign Investment Review Board has set a good example here.

b. Updating published guidance for investors with strong track records to highlight positive factors used to determine whether a transaction is lower risk. Such factors could include being a known investor to the Investment Security Unit; having a good compliance record under the NSIA regime; or having a long-standing positive track record as an owner of UK critical infrastructure or supplier to the UK government and/or UK defense sector.

c. The government offering more informal guidance and non-binding comfort to trusted investors who are considering investing in a sensitive sector.

Now is an important time to contribute views on reforms that could increase deal certainty for investors in strategic sectors. Please get in touch to learn more about the changes investors could push for.

National and economic security are converging

Enforcement under the NSIA has tested the boundary between national security and economic growth.

In September, for example, the government imposed behavioral conditions on the acquisition of Oxford University spin-out Oxford Ionics by US-headquartered IonQ, Inc. The decision required Oxford Ionics' science, engineering and infrastructure functions – along with suitably qualified personnel – to remain in the UK, highlighting growing emphasis on protecting domestic quantum computing capabilities along with other frontier technologies that underpin the government's Modern Industrial Strategy goals for "IS-8" sectors such as "Digital and Technologies."

> Now is an important time to contribute views on reforms that could increase deal certainty for investors in strategic sectors.

While outright blocks remain rare and so far confined to investors linked to high-risk jurisdictions such as China and Russia, remedies are frequently imposed on UK, EU and US investors to ensure strategic activities stay in the UK or that key asset transfers are pre-notified and approved.

Across both merger control and national security reviews, the government's growth mission and Modern Industrial Strategy is proving all-pervasive. Investors and businesses should keep these broader priorities in mind when navigating the UK's regulatory landscape – but do not assume that pro-growth will necessarily mean less scrutiny.

With thanks to Freshfields Sarah Jensen, Nick English and Joschka Nakata for their contributions to this update.

Looking ahead

- Secondary legislation will introduce exemptions for certain internal reorganizations.
- Updated and expanded sector definitions will heighten scrutiny of investments in certain strategic sectors, including water, data centers, semiconductors and critical minerals.
- Guidance to improve transparency for trusted-investor processes may improve deal certainty for repeat acquirers.
- For investments in the UK water sector, alignment between the NSIA, the CMA and any future "super regulator" will be key to avoiding overlapping reviews and uncertainty.

Navigating the new landscape: The EU's Foreign Subsidies Regulation and its merger tool

In brief

The EU's Foreign Subsidies Regulation (FSR), fully applicable since July 2023, has quickly become a defining feature of the European M&A landscape. Designed to curb distortions caused by foreign subsidies, the regime has already generated around 200 filings – far exceeding expectations. While most transactions clear smoothly, the FSR's broad reach and extensive reporting demands are testing deal timelines and investor patience.

A powerful new tool for the EU

The FSR became fully applicable on 12 July 2023, giving the Commission a new mechanism to address potential market distortions caused by foreign subsidies. Conceived as a complement to merger control, foreign direct investment screening and state aid rules, the FSR is intended to ensure a level playing field in the single market. In just over two years, it has become a key part of the EU's economic security architecture – while at the same time a tension with industrial and investment policies has become obvious.

The FSR's merger tool has reached further than many expected . As of mid-October 2025, more than 200 transactions have been notified to the Commission – well above the 30 per year initially forecast. Most cases have been cleared swiftly in Phase I, with no prohibitions to date, although five notifications have been withdrawn and two have been resolved with remedies in Phase II.

A wider net than expected

A striking trend is the number of EU-based acquirers caught by the regime. Data from January 2025 reveals that nearly half (47%) involve EU investors – many with no apparent links to non-EU jurisdictions.

This reflects the FSR's deliberately broad design. Jurisdiction arises when the parties have received more than €50m in "foreign financial contributions" – a term far wider than "foreign subsidies." The result is a tool that captures far more than its original policy rationale suggested, compelling even EU buyers to conduct global due diligence on all forms of state-linked support.

Financial sponsors, including private equity, sovereign wealth funds and pension funds, account for about one-third of all notifications. The Commission is reportedly exploring a simplified procedure for such investors, though no formal proposal has yet emerged. Looking at the target's business activities, companies active in manufacturing have triggered the largest proportion of FSR filings so far (25%), followed by wholesale and retail trade (17%), financial and insurance activities, including private equity (14%) and electricity and gas (8%).

> The FSR's merger tool has reached further than many expected.

Foreign subsidies or strategic investment?

At a time when the EU is seeking greater private investment, the Commission has yet to offer the clarity businesses were hoping for in its draft Guidelines. The text, published in July 2025 and due for final release in early 2026, sets out how the Commission intends to apply key provisions of the FSR – including when a foreign subsidy is considered distortive, how the balancing test will operate and in what circumstances the Commission can require prior notification of transactions or bids that fall below the thresholds. After reviewing stakeholder feedback, the Commission is expected to finalize the Guidelines next year.

One area where the draft Guidelines offer little reassurance is the Commission's broad discretion to "call in" transactions that fall below the notification thresholds. This power, combined with subjective criteria such as "impact in the Union" or "strategic importance," creates a moving target for investors. For companies considering EU expansion, that uncertainty translates into real risk: a deal that appears clear today could be pulled into an FSR review tomorrow, with all the associated cost and delay. In competitive processes, such unpredictability can deter bidders or distort valuations – undermining the EU's own ambition to attract capital for the modernization of strategic sectors. Until clearer guardrails emerge, businesses will need to factor this regulatory gray zone into their investment planning.

Another unresolved issue is how the Commission will treat transactions that generate positive effects for the EU market. The EU has long recognized the need for modernization across key industries – particularly through private investment – yet the draft Guidelines do not acknowledge efficiency arguments as potential mitigating factors.

Under EU merger control rules, efficiencies and synergies can offset competition concerns. By contrast, the Commission maintains that such benefits arise from the transaction itself, not from the foreign subsidies under examination. In doing so, the Commission draws a strict line between the effects of investment and the effects of subsidy: only positive impacts stemming directly from the foreign subsidies may be considered in the balancing test. That stance appears at odds with the EU's broader policy objective of attracting fresh capital flows into strategic sectors – a tension that that is likely to persist as the FSR framework matures.

Administrative burden and transaction timelines

Even where transactions pose no substantive concerns, the FSR's procedural demands are considerable. Companies must gather detailed data on all foreign financial contributions received over the last three years – a process that can involve multiple functions (sales, procurement and tax) across numerous jurisdictions. Some large companies have reported mobilizing more than 100 employees to compile the necessary information.

Typical proceedings, including pre-notification discussions, last three to five months, but complex cases – such as Haier/Carrer, the first FSR clearance involving a Chinese buyer – can extend to nine months or more. The Commission also tends to use multiple rounds of information requests, often demanding granular, data-heavy submissions. In some cases, repeated delays due to "incomplete information" show how easily procedural burdens can prolong timelines.

FSR under review: what's on the horizon?

The Commission is taking stock of the FSR after two years of application. Until now, feedback from businesses, trade organizations and other stakeholders has been loud and clear: the current system is heavy on paperwork and slows down deals. In response, the Commission is exploring ways to make the process leaner and more predictable – without losing sight of its goal to keep competition fair within the EU.

This review could be a game-changer. In the context of the current legislative appraisal, the Commission could enact a simplified procedure for certain companies, such as private equity firms. A simplified procedure would mean fewer data-gathering headaches, faster timelines, and lower compliance costs for cross-border M&A and public tenders. While nothing is final yet, the direction is toward reducing friction for routine cases – good news for dealmakers who have been navigating a complex and resource-intensive regime.

Awaiting reform amidst ongoing challenges

The FSR has reshaped how cross-border M&A is assessed in the EU, embedding subsidy scrutiny within the broader competition and security agenda. Recognizing industry challenges, the Commission has launched a consultation to evaluate the FSR's impact and explore potential areas for improvement.

> "The FSR has reshaped how cross-border M&A is assessed in the EU, embedding subsidy scrutiny within the broader competition and security agenda.

Until then, dealmakers must treat the FSR as a central pillar of the regulatory landscape. For cross-border transactions with complex ownership structures or state links, early analysis, robust documentation and close coordination with counsel are now prerequisites for timely execution.

With thanks to Freshfields Maria Dreher-Lorjé, Florian Reiter-Werzin and Justyna Smela for their contributions to this update.

Looking ahead

- **Compliance intensity remains high**. Even routine M&A requires substantial internal coordination to track foreign financial contributions and manage disclosures.
- **Simplified procedures may emerge**. The Commission is considering streamlining reviews for financial sponsors, but timelines will remain unpredictable.
- **Strategic planning is essential**. Integrating FSR analysis early in deal structuring can mitigate the risk of delay or unexpected disclosure hurdles

After the mitigation boom: The case for ending zombie CFIUS agreements

In brief

The Committee on Foreign Investment in the United States (CFIUS) has accumulated hundreds of long-running national security agreements (NSAs) imposed as conditions for transaction approvals. Many of these agreements now persist long after their original purpose has faded. These "zombie NSAs" impose unnecessary compliance costs on investors and stretch government monitoring capacity. Originally designed as targeted tools to manage specific national security risks, they have multiplied over time, often persisting long after their rationale has faded. With new US regulatory authorities now addressing many of the same risks, investors have a rare window to engage with CFIUS Monitoring Agencies (CMAs) to amend or terminate outdated obligations.

A bigger hammer: The proliferation of CFIUS mitigation agreements

The surge of Chinese investment in the US beginning around 2013 – peaking in 2016 and collapsing soon after – both spiked CFIUS's workload and reshaped its worldview. The government's primary response was the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which expanded the Committee's authority, staffing and enforcement capacity.

By 2020-21, however, Chinese FDI in the US had largely dried up – yet the Committee's expanded toolkit remained. Its attention shifted to third-party or indirect China risk, resulting in a paradox: between 2021 and 2023, the number of unique Chinese filings decreased, but the percentage of cases cleared with mitigation increased from 10% to 15%. By the end of 2024, CFIUS was monitoring 242 mitigation agreements (including a small number linked to voluntary abandonments and divestments) up from 166 in 2020.

> ...investors have a rare window to engage with CFIUS Monitoring Agencies (CMAs) to amend or terminate outdated obligations.

CFIUS has generally operated on the view that Chinese parties cannot be relied upon to comply with mitigation obligations, meaning that most active CFIUS mitigation agreements are with investors from the Unites States' longstanding partners and allies.

The costs of inertia: Investors and CFIUS under strain

Zombie NSAs impose a double burden. For investors, they add recurring compliance costs – reporting, audits, access controls, segregation measures and operational pre-clearances. For government, they consume finite monitoring resources.

Reflecting a policy shift toward stricter oversight, CMA site visits rose from 29 in 2021 to 79 in 2024, covering roughly 32% of active agreements (based on the number in place at the start of each year), compared to 17% in 2021. With bipartisan support for stronger monitoring and enforcement by the two most recent Assistant Secretaries of the Treasury, the Committee now faced a practical question: how best to direct its limited capacity toward agreements that actually mitigate risk. Terminating or consolidating outdated NSAs aligns investor and government interests – improving both efficiency and focus.

Reckoning with the mitigation boom: Why the time to act is now

CFIUS's latest annual data suggests it has begun pruning legacy NSAs. 2024 marked the first year since CFIUS began reporting such data that the total number of active mitigation agreements fell – to 242 from 246 in 2023 – and the year with the most terminations on record (25, or 10% of the total, based on agreements in place at the start of the year).

Several factors have emerged that not only provide grounds for CFIUS to impose mitigation less frequently, but also for CFIUS and parties to existing agreements to consider whether some agreements can be terminated.

Presidential direction

The White House has signaled broad support for fewer long-term NSAs and more effective enforcement of those that remain. President Trump's America First Investment Policy directs agencies to "cease the use of overly bureaucratic, complex and open-ended 'mitigation' agreements" and favor concrete time-bound measures. Although originally framed around Chinese investors, this logic applies more widely: perpetual behavioral NSAs are disfavored where finite steps or other authorities can address the risk.

New government authorities

CFIUS was conceived as a regulator of last resort – intervening only when other agencies lacked jurisdiction or capability. Over time, new authorities have emerged that now cover many risks historically addressed through mitigation. These include:

- **Department of Justice's (DOJ)** Data Security Program (DSP): Implementing Executive Order 14117, the DSP prohibits or restricts certain "bulk sensitive personal data" and government-related data transactions with countries of concern. Effective April 2025, these rules give DOJ a direct mechanism to manage cross-border data risks once handled through CFIUS mitigation.
- **Team Telecom modernization**: In August 2024, the Federal Communications Commission (FCC) issued rules regarding standardized national security and law enforcement questions for telecommunications applications. The formalization of the Team Telecom process and its new certification regime reduces the need for overlapping CFIUS mitigation in telecom deals.
- **Commerce's ICTS Supply Chain rule**: Redesigned at 15 C.F.R. Part 791, this rule authorizes the Commerce Department to restrict ICTS transactions involving foreign-adversary-linked suppliers posing undue risk. The Department's new Office of Information and Communications Technology and Services now reviews these transactions directly, addressing risks – such as use of Huawei equipment – once handled through CFIUS vendor controls.
- **Expanded export controls**: Commerce's September 2024 interim final rule, for example, added controls on quantum computing and other advanced technologies, tightening licensing and technology transfer requirements. These updates often replicate what legacy NSAs sought to achieve through access controls or network segregation.

Changing risk perceptions

While the Committee's core risk framework remains largely stable, its enforcement intensity often reflects the policy priorities of individual agencies and political appointees. DOJ's National Security Division (NSD), for instance, reported that in FY 2023-24 it co-led 21% of all mitigated CFIUS cases, compared with 8% the previous year – a dramatic shift in posture.

As leadership changes, so too can the appetite for mitigation. The departure of key officials may prompt agencies to reassess agreements that reflect personal rather than institutional risk judgments. This fluidity creates opportunities for investors to revisit legacy NSAs through dialogue grounded in evidence and timing.

Amending or terminating: substance before paperwork

Most NSAs contain a change-in-circumstances clause allowing amendment or termination when obligations are "no longer necessary" to address national security concerns. Success depends on demonstrating that the original risk has been mitigated through new regulation or has simply disappeared over time.

Before submitting a formal termination proposal, investors should prepare a concise memorandum mapping each NSA obligation to its original risk and showing how that risk is now addressed or the extent to which the assumptions behind the original risk assessment have not borne out.

Tone is critical. Approach CMAs in good faith, with intellectual humility, and recognize they may have information you do not. Simply asserting that "the risk no longer exists" is unlikely to succeed. Instead, articulate how your proposal supports the Committee's own goals – focusing its resources on higher-priority risks.

> "Approach CMAs in good faith, with intellectual humility, and recognize they may have information you do not.

If full termination is not yet feasible, identify the most burdensome provisions and collaborate with the CMAs to propose targeted amendments that improve efficiency without undermining security. Treat the amendment process as part of a longer conversation that could lead to eventual termination, not a one-off request. Where CMAs are receptive, use successful amendment proposals as a foundation for a structured wind-down with measurable milestones.

With thanks to Freshfields Brian Reissaus and Colin Costello for their contributions to this update.

Looking ahead

- CFIUS is actively reducing its portfolio of legacy NSAs, with a record number of terminations in 2024.
- New regulatory regimes, including DOJ's Data Security Program and Commerce's ICTS rule, now cover risks once handled by CFIUS mitigation.
- Investors should map each NSA obligation to current regulations and mitigating factors and prepare evidence-based proposals for amendment or termination.
- he opportunity to wind down zombie NSAs may be short-lived; early, well-reasoned engagement with CFIUS Monitoring Agencies is key.

Europe oversees the tightening of its FDI net, but unity remains elusive

In brief

Europe's foreign direct investment screening regime is maturing fast. All but two of the Member States now operate FDI controls, with more than 3,000 filings reviewed in 2024. The European Commission's latest report shows a system that is increasingly coordinated but still fragmented. New proposals aim to harmonize screening rules and extend oversight to outbound investment, signaling a broader shift toward a more defensive, security-focused approach to cross-border capital.

Europe's screening regime enters a new phase

Five years after the EU's foreign direct investment (FDI) screening regulation came into force, Europe's experiment in monitoring cross-border capital has matured into a permanent fixture of the regulatory landscape. What began as a cautious coordination mechanism is now a cornerstone of the EU's economic security strategy – and one that is expanding rapidly but unevenly.

The European Commission's fifth annual report (Report) on the application of Regulation (EU) 2019/452 (FDI Regulation) offers a telling snapshot of this evolution. Twenty-five Member states now operate national FDI regimes, with more than 3,100 filings reviewed in 2024 – almost double the number recorded two years earlier (1,444 in 2022 and 1,808 in 2023). Yet despite this consolidation, the system remains fragmented, with divergent national procedures, thresholds and timelines still complicating dealmaking across the bloc.

A maturing system with uneven depth

The Report confirms that Europe continues to attract capital. The total stock of foreign investment rose by 7.5% in 2024, underlining the EU's enduring appeal as a destination for international business. But annual inflows – the value of new investments – fell by 8.4%, a sign of geopolitical caution and a slowdown in greenfield projects.

M&A activity by non-EU investors told a different story, rising modestly by 2.7%. The United States remains the largest investor (30% of all M&A transactions and 37% of greenfield projects), followed by the United Kingdom and China/Hong Kong – the latter showing a sharp rebound after a subdued 2023. Among Member States, Germany accounted for the largest share of acquisitions (21%), while Spain attracted nearly a quarter of all new greenfield projects.

Manufacturing, information and communications technology, trade and financial services remained the most active sectors. These patterns reveal a dual trend: steady interest from global investors coupled with mounting scrutiny from national authorities.

Divergence beneath the surface

Despite the existence of an EU cooperation mechanism, FDI screening remains far from harmonized. Each Member State retains discretion over which sectors are deemed sensitive, what thresholds trigger review and how filings are processed.

> Despite the existence of an EU cooperation mechanism, FDI screening remains far from harmonized.

France, for instance, expanded its list of strategic R&D activities to include photonics and clean energy in 2024, while the Netherlands and Denmark introduced early screening procedures for offshore energy projects. Ireland and Bulgaria launched new regimes, whereas Italy's "golden power" rules remained stable.

This diversity means investors must still navigate a patchwork of filings, often duplicating effort across jurisdictions. The Commission's report notes that 29% of filings in 2024 were ultimately ruled non-reportable – a sign of both legal uncertainty and caution among dealmakers. Around 41% proceeded to formal review, 86% were cleared unconditionally and only 1% were blocked.

At the EU level, 477 transactions were notified under the cooperation mechanism. Most were closed at the preliminary stage, with just 8% requiring a detailed review. Manufacturing and ICT accounted for the majority, reflecting a focus on critical technologies such as defense, semiconductors, aerospace, AI and robotics.

Brussels pushes toward harmonization

The European Commission has made clear that it sees greater uniformity as essential to Europe's economic resilience. A proposed revision of the FDI Regulation, now in trilogue negotiations between the Commission, the Council and the Parliament, would make screening mandatory in all Member States and introduce more consistent criteria and thresholds.
It would also bring within scope EU investors controlled by non-European entities – extending the reach of the regime to complex ownership structures.

Alongside this proposal, the Commission issued a recommendation in January 2025 on outbound investment screening. This non-binding measure encourages Member States to monitor investments in strategically sensitive sectors such as semiconductors, quantum computing and AI, to prevent the transfer of critical know-how to third countries.
Together, these initiatives reflect a broader policy shift: from openness qualified by caution to a more defensive industrial posture.

The tension with competition law

The Commission insists that FDI control complements, rather than conflicts with, EU competition policy. In principle, both aim to preserve market integrity – one by preventing distortive mergers, the other by scrutinizing investments that could compromise security or infrastructure.

In practice, the relationship is more complex. Some national FDI interventions have clashed with the Commission's merger assessments, particularly where security rationales have been used to justify blocking otherwise unproblematic transactions. These cases test the boundary between legitimate protection and economic nationalism – and will determine whether the primacy of EU law can be reconciled with Member State sovereignty.

For global investors, this interplay between competition and security policy adds another layer of uncertainty. The risk is not just delay, but unpredictability – where approval depends less on economic substance than on political context.

What it means for dealmakers

For businesses and their advisers, the message is clear: FDI screening is now a central part of the European transaction landscape.
Any cross-border deal – particularly in technology, energy or infrastructure – requires early FDI analysis alongside merger control.

While the direction of travel points toward harmonization, the near-term reality remains fragmented. National regimes will continue to evolve in response to domestic politics and strategic priorities, and filings are likely to increase before they simplify.

> Dealmakers must therefore integrate FDI risk assessment into due diligence from the outset, ensuring transaction timelines, disclosure obligations and communication strategies account for both EU and national processes.

Dealmakers must therefore integrate FDI risk assessment into due diligence from the outset, ensuring transaction timelines, disclosure obligations and communication strategies account for both EU and national processes. The cost of overlooking this dimension is no longer theoretical – it can derail or reshape a deal

With thanks to Freshfields Thomas Lübbig for his contribution to this update.

Looking ahead

- The EU's revised FDI Regulation is likely to make screening mandatory across all Member States.
- Divergent national procedures will continue to create uncertainty for cross-border deals.
- Critical technologies will remain under close scrutiny, especially in defense, semiconductors and AI.
- Early FDI analysis will be essential to preserve deal certainty and avoid regulatory delay.

New *Foreign Investment Regulation*: Navigating the era of strategic and economic security

In today's complex global economy, foreign investment regulation plays a crucial role in safeguarding national security, economic interests and industrial resilience. The 13th edition of *Lexology's In Depth: Foreign Investment Regulation* arrives at a pivotal moment, capturing sweeping changes as governments worldwide recalibrate their investment screening frameworks to address mounting geopolitical, economic and strategic challenges.

This edition brings expert analysis from seasoned practitioners across multiple jurisdictions, examining key developments and trends across major economies. Together, they reflect a global shift toward more defensive investment policies and regulatory complexity. Notably:

- North America has seen a formal convergence of economic and national security objectives, with the United States and Canada extending scrutiny to investments of all sizes – including minority stakes in sensitive technologies, critical minerals, infrastructure and extra-territorial transactions.
- Europe's regulatory landscape continues to evolve amid a debate over the balance between strengthening EU-wide foreign direct investment controls and preserving Member States autonomy. The European Commission's White Paper on European Defense underscores efforts to reinforce the EU's defense industrial base, signaling potential regulatory moves toward consolidation in strategic sectors while balancing competition concerns.
- The UK's National Security and Investment Act – now in its third year – continues to evolve, with ongoing consultations expanding mandatory notification sectors to critical areas such as water, data infrastructure and energy. The changes reflect a proactive approach to national security within the UK's foreign investment framework.

For businesses and legal counsel, this volume serves as a timely guide to an investment environment defined by strategic alignment, geopolitical risks and sectoral vulnerability. It highlights the growing convergence of foreign investment, competition and trade regulation – marking a new era of heightened government intervention and strategic industrial policy.

READ MORE HERE

FRESHFIELDS

www.freshfields.com.

November 2025