

Table of Changes to Key FDI Regimes over the Last Year

JURISDICTION	EXISTING REGIME IN PLACE BEFORE THE AMENDMENTS	AMENDMENTS TO EXISTING REGIMES / NEW MEASURES ADOPTED	TYPE OF AMENDMENT / MEASURE AND TIMING	INDUSTRIES CONCERNED	TEMPORARY OR PERMANENT	IMPACT ON FOREIGN INVESTORS
Australia	<ul style="list-style-type: none"> Well-established foreign investment control regime in place and a very experienced regulator (Foreign Investment Review Board or FIRB) Approval requirement for acquisitions of 20% or more of the shares in Australian companies, where their asset value exceeds certain thresholds Lower thresholds apply in the case of government investors and investments in sensitive sectors 	<ul style="list-style-type: none"> Elimination of threshold values for the review of foreign investments Acquisitions for which "0" thresholds applied previously, including acquisitions by government investors remain unaffected Extension of review period from 30 days to six months 	Amendments in response to COVID-19 (<i>applies as of 30 March</i>)	All industries	Temporary (for the duration of the COVID-19 crisis)	<p>Due to the high asset value thresholds, many foreign-to-foreign acquisitions were previously not subject to filing requirements</p> <p>Acquisitions of companies that have any subsidiary in Australia will now be subject to a filing requirement</p> <p>While FIRB is efficient, more transactions will now be subject to scrutiny and be subject to extended review periods of up to six months – long stop dates etc. will have to be adjusted accordingly</p>

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Canada	<ul style="list-style-type: none"> Well-established foreign investment control regime in place and a very experienced regulator (Minister of Innovation, Science, and Industry) Approval requirement for direct acquisitions of control in Canadian companies, where their asset value exceeds certain thresholds Transactions can be subject to an additional national security review, where they are considered to be potentially injurious to Canada's national security 	<ul style="list-style-type: none"> The Canadian government (Minister of Innovation, Science, and Industry) will review the following types of foreign direct investment regardless of the value of the businesses involved: <ul style="list-style-type: none"> Controlling and non-controlling investments in any Canadian business involved in public health or the provision of critical goods and services; and Controlling and non-controlling investments in any Canadian business by state-owned or controlled investors (as well as by private investors with strong ties to government) Potential for additional information requests and extended review periods. Filings have to be submitted at least 45 days prior to closing 	Policy statement in response to COVID-19 (<i>applies from 18 April 2020 until the end of the COVID-19 crisis</i>)	Healthcare sector and all industries in the case of state-controlled investors	Temporary (for the duration of the COVID-19 crisis)	<p>Due to the high asset value thresholds, many foreign-to-foreign acquisitions were previously not subject to filing requirements</p> <p>While indirect acquisitions of Canadian businesses are subject only to post-closing notifications, such acquisitions can still be blocked via a national security review</p> <p>Investors planning to invest in the healthcare sector or in other critical businesses will be subject to additional scrutiny and should seek to engage the authorities at an early stage</p>

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EU	<ul style="list-style-type: none"> Foreign investment regulation establishes framework for foreign investment control regimes by Member States Sets standards for Member States that have chosen to have a foreign investment control regime Not a one-stop-shop review mechanism Possibility for the European Commission and Member States to comment on foreign investments in other Member States 	<ul style="list-style-type: none"> In the context of COVID-19, the openness to foreign investment to be balanced against public interest, particularly in the healthcare sector EU Member States requested to make full use of their existing FDI review mechanisms or adopt new regimes, if none are in place yet (14 Member States have regimes in place to date) Acquisitions of as little as a 5% stake in companies can be considered relevant EU Member States to make use of other mechanisms as well, including (i) restrictions on capital movements or (ii) taking golden shares in companies to prevent foreign investments 	Guidance by the European Commission (<i>not binding</i>)	All industries – particular focus on healthcare	Temporary (for the duration of the COVID-19 crisis, but potential effects thereafter)	<p>No review mechanism exists at EU level, i.e., there is no separate filing requirement</p> <p>It remains the responsibility of Member States to adopt screening mechanisms and review transactions</p> <p>While some Member States have amended their review mechanisms following the Commission’s guidance, others have not</p> <p>Therefore, investors have to carefully check the filing requirements in each Member State</p> <p>In particular, more transactions may be subject to review, if Member States adopt a 5% share acquisition threshold</p>

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France	<ul style="list-style-type: none"> Well-established foreign investment control regime in place, applying to a broad range of sectors, including healthcare Approval requirement for acquisitions of control over French businesses (or business lines) active in specified sectors (applies to all investors) Approval requirement for acquisitions of at least 33.3% in French businesses active in specified sectors (only applies to non-EU investors) Limited information requirements and 	<ul style="list-style-type: none"> Reduction of the review period to 30 working days (plus 45 working days, in the case of a further review) Filing threshold for non-EU investors reduced from 33% of a French company's shares to 25% New obligation to declare ties with a foreign Government or public body Concept of control and foreign investor clarified Sectors subject to review broadened (now also includes: agricultural products, press publications of political and general information, and quantum and energy storage technologies) Increase of the sanctioning powers of the Ministry 	Amendment of the FDI law to implement the EU FDI Regulation (<i>applies as of 1 April 2020</i>)	All industries subject to review (enumerated sectors)	Permanent	<p>Aim for a business-friendly review mechanism (quick and simple filing procedure)</p> <p>However: (i) broader scope of industries / activities are subject to mandatory review, and (ii) lower jurisdictional threshold apply, which will mean more transactions are subject to review</p> <p>Increased enforcement powers for the Ministry will lead to fewer companies deciding against filing notifications</p>

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	usually pragmatic regulator	<ul style="list-style-type: none"> Inclusion of biotechnologies in the list of critical technologies subject to screening Lowering of the filing threshold from 25% to 10% only for acquisitions in listed companies by non-EU investors until the end of 2020. A dedicated separate procedure may be implemented to review such acquisitions (a shorter initial review potentially followed by an in-depth review where necessary) 	<p>Complementary measures adopted in the context of the COVID-19 crisis</p> <p><i>(biotechnologies were included as of 30 April 2020 and lower filing threshold should apply as of the second half of 2020)</i></p>	All industries subject to review (now including biotechnologies)	Partly permanent, partly temporary	<p>The sectors subject to review (particularly with regard to the healthcare sector) have been broadened again</p> <p>Financial investors will have to carefully analyze the type of companies they acquire due to the different filing thresholds that apply (10% and 25%)</p>
		<ul style="list-style-type: none"> Public statements by the government that it would potentially block foreign acquisitions of French start-ups in strategic sectors, such as in tech (especially where they had received state aid) E.g., the French Minister of Economy orally notified US defense manufacturer Teledyne on March 31 2020 that its proposed acquisition of night-vision 	Statement re application of existing rules (<i>no force of law</i>)	Potentially all, but particular focus is on tech companies	Permanent	<p>The French foreign investment control regime already imposes filing requirements on acquisitions in a broad range of industry sectors</p> <p>However, the review process has so far not been burdensome and not many transactions have been blocked. This could now change at least for acquisitions of French start-ups and also</p>

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		startup Photonis would be blocked				<p>other companies that are considered strategically critical (e.g., in the healthcare sector)</p> <p>Investors will have to take this into account and early on, offer appropriate remedies, such as assurances re production and R&D</p>
Germany	<ul style="list-style-type: none"> Well-established regime in place Any acquisition of at least 25% of the shares in German companies by non-EEA (EEA = EU + Iceland, Liechtenstein and Norway) can be prohibited (Notifications can be submitted to receive legal certainty) Mandatory filing requirement in the case of acquisitions by non-EEA of at least 	<ul style="list-style-type: none"> The Ministry will not only consider Germany's interests, but also (i) the security and public interest of other EU Member States, and (ii) projects of EU interest All companies that not only produce, but also use, modify or used in the past defense or IT security products are subject to review Potential effects on national security and public order are sufficient to block a transaction 	Legislative proposal to implement EU FDI Regulation (<i>likely to be adopted in the course of summer 2020</i>)	<p>All industries subject to review</p> <p>Defense and IT security products</p> <p>All industries subject to review</p>	Permanent	<p>The scope of review for the Ministry has been expanded</p> <p>Review periods may become longer, as other Member States and the EU Commission can comment on national proceedings</p> <p>Companies may have to offer remedies earlier, as transactions can be blocked, based even on potential effects</p>

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	<p>10% in companies active in specified sectors (including defense-related businesses and critical infrastructure)</p> <ul style="list-style-type: none"> Increasing number of reviewed transactions and remedies imposed 	<ul style="list-style-type: none"> Expansion of the definition of "critical infrastructure" subject to filing requirements to (i) certain telecommunication services, and (ii) a number of healthcare and protective gear products and services Expands the application of the review to asset deals Clarifies that acquisitions by state-owned entities are subject to additional scrutiny 	Legislative proposal (<i>likely to be adopted in the course of summer 2020</i>)	Healthcare and telecommunications	Permanent	<p>The scope of notifiable transactions will be expanded</p> <p>The current exception for asset deals will be closed</p> <p>In appropriate cases it may be advisable for foreign investors to engage with the Ministry at an early stage and consider commitments, such as guarantees regarding the retention and even expansion of jobs, production and R&D in Germany</p>
Italy	<ul style="list-style-type: none"> To date, the Italian foreign investment filing requirements applied to a limited set of activities and assets, in particular transport, energy and communications infrastructure, as well as military and defense-related activities 	<ul style="list-style-type: none"> Extension of the sectors subject to a mandatory filing requirement The notification obligation is extended to (i) all non-Italian investors (including EU investors) acquiring control over Italian companies, (ii) non-EU investors acquiring at least 10% in Italian companies (where the investment is 	Decree amending the Italian Golden Powers Regulation (foreign investment regime) (<i>applies as of 8 April</i>)	Finance, credit, insurance, supply of critical inputs in the area of energy and food security, access to sensitive information, and media	Permanent (however, it is unclear whether the extension to EU investors applies only for the time COVID-19 is active)	<p>While the regime to date was limited mainly to specified infrastructure and activities relating to national security, the amendment constitutes a significant broadening of the regime</p> <p>While filings were seldom required in Italy, investors will now have to carefully consider Italy</p>

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	<ul style="list-style-type: none"> • So far, only the acquisition of control triggered filing requirements • Despite the regime having been established in 2012, foreign-to-foreign transactions did not often trigger filing requirements 	worth at least €1 million) or 15%, 20%, 25% and 50%				<p>Given that Italy is one of the supporters of the EU FDI Regulation, investors have to anticipate close collaboration between the Italian, German and French authorities in relation to notifiable transactions</p> <p>In particular during COVID-19, review periods will likely be longer</p>
Poland	<ul style="list-style-type: none"> • Very limited scope of review, as it only applies to acquisitions of specifically listed companies (protected entities) and direct acquisitions of real estate in Poland 	<ul style="list-style-type: none"> • Poland's Minister of Development, Jadwiga Emilewicz, has signalled that the Polish anti-crisis shield legislation will be updated and its amendments will include protection against takeovers 	Public statement (<i>no force of law</i>)	To be announced	To be announced	The announced amendment will expand the scope of transactions subject to review, given the current very limited scope
Spain	<ul style="list-style-type: none"> • Sector-specific filing requirements. Mandatory approval requirement applied only in relation to acquisitions of Spanish companies 	<ul style="list-style-type: none"> • Acquisitions by foreign investors of at least 10% in Spanish companies, active in sectors affecting public order, safety and health now require pre-closing approval 	Legislation establishing a new FDI review mechanism (<i>adopted on 2 April 2020</i>)	All industries subject to review, e.g.: (i) critical infrastructure; (ii) critical technologies and dual-use items; (iii) sectors with access to	Permanent	So far, only acquisitions in the area of defense were subject to prior approval by the government – now a full review mechanism

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	<p>active in the defense and military sector</p> <ul style="list-style-type: none"> In all other cases, investors are only subject to notification (no approval) requirements – either <i>ex ante</i> or <i>ex post</i>, depending on the sector in which the target is active Otherwise, to date very liberal FDI regime 	<ul style="list-style-type: none"> Law provides an illustrative list of business sectors that are subject to the approval requirement, including critical infrastructure, critical technology and dual-use goods, as well as communication media. Other sectors / businesses that could affect public order, safety and health are also subject to the approval requirement Unless the transaction value is below €5 million or was signed prior to the coming into force of this law, the review period is six months 		sensitive data; and (iv) communication media		<p>applies in a broad range of industries</p> <p>Guidelines regarding the review process not yet available</p> <p>Very long review period of six months may delay transactions</p>
United Kingdom	<ul style="list-style-type: none"> No specific foreign investment regime but transactions in certain sensitive sectors can be subject to review under additional powers related to the merger control regime Acquisitions of companies producing 	<ul style="list-style-type: none"> The proposed legislation includes the establishment of a notification system similar to the CFIUS regime So far, details are still lacking, but there is likely to be a list of sectors subject to the filing requirement The regime will allow for mitigation to be 	Draft law establishing a new FDI regime	To be announced	Permanent	<p>The new law has been discussed for a long time and is based on a 2018 White Paper</p> <p>There is no clear indication yet, when the law will be passed</p> <p>Investors are still subject to the limited review powers in place now</p>

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	<p>military or dual-use goods or certain technology products are subject to lower thresholds for (voluntary) notification under the merger control rules</p> <ul style="list-style-type: none"> • Transactions can be reviewed by the Secretary of State, where they raise national security concerns, affect the plurality of the media or relate to the stability of the financial system 	<p>negotiated and for an appeal mechanism</p> <ul style="list-style-type: none"> • Parliament is considering legislation that would give the Foreign and Commonwealth Office (FCO) a key role in reviewing, intervening and potentially blocking foreign acquisitions of UK assets 				
			Public statement (<i>no force of law</i>)	Digital sector likely to be a key focus together with other sensitive sectors	Permanent	
United States	<ul style="list-style-type: none"> • Most established and best-known foreign investment control regime • Any transaction resulting in control of a US business by a foreign person is 	<ul style="list-style-type: none"> • Recent reforms (FIRRMA: the Foreign Investment Risk Review Modernization Act) expanded CFIUS' jurisdiction to cover certain real-estate transactions near sensitive government/military 	Foreign Investment Risk Review Modernization Act of 2018 and implementing regulations	<p>Transactions involving all industries subject to CFIUS jurisdiction</p> <p>Expanded jurisdiction focused in particular on TID US businesses</p>	Permanent	<p>Significantly expanded the transactions subject to review; made filing mandatory in certain circumstances</p> <p>Additional scrutiny of investments into the telecommunications</p>

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	<p>subject to voluntary filing with the Committee on Foreign Investment for the US (CFIUS). Though filings were technically voluntary, CFIUS could review transactions after-the-fact and require changes or divestment.</p> <ul style="list-style-type: none"> • CFIUS regularly blocked transactions or required remedies; there are a number of examples including for Chinese investors 	<p>facilities and non-controlling investments in which the foreign person gains specified rights in certain US businesses dealing in Critical Technology, Critical Infrastructure, and Sensitive Personal Data (TID US businesses)</p> <ul style="list-style-type: none"> • Filings also mandatory for certain transactions involving critical technologies or involving foreign government ownership • Introduction of new, short-form filing mechanism. 	<p><i>(regulations implemented February 2020)</i></p>			<p>sector (in addition to CFIUS review). Broader mechanism, as existing licenses can also be reviewed and revoked</p>

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