

Making Deals Once EU Merger, Investment Screenings Overlap

By **Jean-Maxime Blutel, Marie Filippi and Mark Hills** (July 14, 2026)

With the European Commission's draft merger guidelines published on April 30 and consultation closed on June 26, dealmakers are watching what could be the most significant recalibration of EU merger policy in two decades.

The final guidelines are expected in the last quarter of this year, following stakeholder feedback. While the legal test under the European Union Merger Regulation, or EUMR, remains unchanged, the draft signals a shift towards greater openness to broader policy objectives, such as resilience, security and competitiveness, alongside traditional competition analysis. This underscores the growing role of merger control within a wider economic security toolkit.

Foreign direct investment, or FDI, screening regimes have long been the primary mechanism for protecting national security and strategic interests. As enforcement priorities shift toward safeguarding Europe's economic security, reducing dependencies and boosting competitiveness, merger control is increasingly being recalibrated to serve complementary objectives.

Where FDI regimes screen foreign investors for security risks, merger control is evolving to support investment, resilience and industrial competitiveness. Yet the regimes remain fundamentally different in purpose and process, raising questions about whether economic security considerations risk distorting competition assessments, and whether competition tools can serve industrial policy goals.

Against this backdrop, merger control, FDI screening and the Foreign Subsidies Regulation, or FSR, are becoming an increasingly interconnected toolkit. This article explores their growing intersections, key differences and practical implications for dealmakers.

Intersection of Foreign Investment and Merger Control Regimes

FDI screening has traditionally focused on preventing hostile foreign actors from acquiring strategic assets, while merger control has historically centered on regulating market power to protect consumers.

The FSR adds a further dimension, targeting distortions arising from foreign subsidies that may confer unfair advantages on recipients seeking to acquire EU businesses or win public contracts. Yet these regimes are intersecting more than ever before, reflecting a recognition that economic security and market protection can increasingly be two sides of the same coin.

This connection of policy objectives was very clear in the Draghi report on EU Competitiveness, which called for a regulatory environment supporting European champions



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and saw this as key to improving Europe's competitiveness.[1]

Key reforms proposed by Mario Draghi in September 2024 and already beginning to surface include the new draft EU merger guidelines, which on paper are the most significant overhaul of EU merger analysis in 20 years.[2] These place greater emphasis on efficiency claims, which have so far been underemployed, as well as broader policy objectives, including security and resilience considerations.

Another reform is the revised EU-FDI Screening Regulation, which establishes an extended common minimum scope and enhances coordination between member states.[3] It will come into force in late 2027.

There is also the proposed Industrial Accelerator Act, which would introduce additional measures to protect strategic clean-tech sectors, including strict conditions on foreign investments in such sectors, such as a 49% ownership cap.[4]

The EU's draft merger guidelines expressly acknowledge the procompetitive advantages of mergers that enhance scale and bolster the resilience of the internal market. The guidelines list as examples of factors particularly relevant for resilience "the security and diversity of supply chains, the security and cyber security of physical and digital critical infrastructure, defense readiness and the ability and incentives of companies to invest in critical technologies."

Thus, EU merger control now factors in strategic considerations typically associated with FDI regimes such as security and defense readiness, with a view to allowing parties to raise efficiency and scale-based arguments that lean on broader policy objectives.

That said, the legal test for merger clearance under the EUMR has not been amended, and the commission has made clear that, while it is open to considering a broader range of factors in favor of deals, this is not a carte blanche: All claimed efficiencies must be substantiated with robust evidence. It remains to be seen how these policy signals will translate into decisional practice.

FDI authorities increasingly examine factors typically associated with merger control, such as market shares, barriers to entry and foreclosure of access, such as intellectual property rights, while the new draft merger guidelines refer to several concepts previously heard only in FDI contexts.

The FSR takes a different but complementary approach, examining whether foreign subsidies distort the internal market using concepts of unfair competition. These regimes increasingly address different facets of the same underlying concern: protecting the integrity and competitiveness of European markets, businesses and consumers.

Other areas where alignment and consistency across the merger control, FDI and FSR regimes are emerging include the treatment of minority and below-threshold transactions, which are increasingly likely to attract scrutiny under both merger and FDI regimes.

FDI regimes often have very low shareholding thresholds for jurisdiction, generally without turnover thresholds. Merger authorities are now adopting a similar approach, as many are using, for example, new call-in powers, particularly for technology, digital and pharmaceutical transactions where so-called killer acquisitions are a concern, such as an incumbent that acquires a nascent challenger to eliminate the threat of entry or expansion, even though they do not meet traditional turnover-based thresholds.

Similarly, the first ex officio investigations have been opened by the EU Commission under the FSR. These shifts create a much more complex environment to navigate in terms of risk allocation, predictability and legal certainty. In terms of procedure, prenotification requirements, different phases of review and standstill obligations are now standard across regimes.

The revised EU FDI Screening Regulation will further harmonize FDI rules and mandate cooperation, including potentially through a unique voluntary e-filing portal, alongside new information-sharing tools, drawing on cooperation models such as the European Competition Network.

Real Differences to Navigate

Despite growing alignment, important differences remain and must be factored into deal planning.

The historical objectives of merger control, FDI screening and the FSR fundamentally differ. Merger control focuses on whether a reduction in competition negatively affects consumer welfare. FDI screening, on the other hand, protects national security and strategic interests, and the FSR examines whether state support gives recipients an unfair competitive advantage.

These different objectives can drive very different outcomes and, more importantly for dealmakers, can result in conflicting or more complex results.

Key differences include the following.

Broader Transactions

Certain FDI regimes can apply to foreign investments irrespective of whether they result in a change of control, by reference to binary shareholding/voting thresholds, which are sometimes set at very low levels, and even to the acquisition of bare assets or contracts with, or mere import sales to, locally sensitive customers.

This contrasts with the turnover thresholds often used in merger control, which act as a materiality requirement. This means that minority investments, internal reorganizations and domestic deals with very limited local nexus in foreign countries may be captured by FDI, yet escape merger control review altogether.

Further expansion of European FDI regimes is likely. While the recent EU FDI Regulation only set a common minimum baseline, it leaves member states significant latitude to maintain broader national regimes, including to screen minority investments.

Divergent Remedy Approaches

Merger control authorities tend to prefer structural remedies such as divestitures, reflecting a focus on restoring the competitive market structure. FDI authorities, by contrast, generally favor behavioral remedies, such as maintaining operations under national control, preserving local employment or restricting access to sensitive information.

FDI Screening Remains National Prerogative

Merger control operates through the EU one-stop-shop for concentrations with an EU dimension, while FDI screening remains a national prerogative. Consequently, a transaction cleared by the commission may still face review by multiple national FDI authorities.

Member states also retain post-Phase II powers to impose or remove additional conditions on grounds of general interest objectives beyond competition.

Transparency and Predictability

Published decisions, guidelines and developed case law benefit merger control, whereas FDI screening often remains opaque.

FDI decisions tend to be taken at ministerial level under broad discretion, using key concepts like "public order" or "national security" that lack precise definitions. This opacity makes it difficult for dealmakers to draw on precedents or predict regulatory outcomes. It also makes navigating reviews more challenging, with limited visibility into the decision-making process within authorities.

The recent introduction by the revised EU FDI Regulation of a requirement that authorities provide the parties with an opportunity to make their views known effectively prior to adopting certain decisions is a very welcome addition in this respect.[5]

In light of the above, the potential risk of conflicting or compounding outcomes should not be understated. The commission's decision in UniCredit's **proposed takeover** of Banco BPM case last year illustrates this: While the deal was cleared at the EU level under merger control, Italy's exercise of golden power led UniCredit to withdraw from the deal.[6]

The commission subsequently opened an infringement procedure against Italy under Article 21 of the EUMR, signaling its willingness to challenge national FDI measures that may be incompatible with EU merger control rules, policy objectives and fundamental principles, such as free movement of capital.

The commission's willingness to control potential conflicting outcomes is also echoed in the draft EU Merger Guidelines, which require member states claiming that public security would be affected by a transaction involving companies from another member state to "adequately substantiate such claims upon request by the Commission" as "member states or their nationals [are] prima facie not a threat to the public security of another member state."

Key Takeaways

For dealmakers, this evolving regulatory landscape presents both opportunity and challenge. The increasingly complementary nature of these regimes means that transactions may benefit from a more holistic assessment of their competitive and strategic merits.

That said, important differences remain and proactive regulatory planning is more essential than ever to navigate this web of requirements. The following practical guidance should inform deal strategy.

Map and Sequence Regulatory Filings Early

Deal teams should conduct a comprehensive regulatory mapping exercise to identify all

applicable merger control, FDI and FSR filing obligations as early as possible in due diligence. Where a transaction appears to trigger obligations under multiple regimes — and potentially separate filing obligations at several stages of the process — the order and timing of filings can materially affect outcomes.

Early identification of sequencing issues allows parties to shape flexible plans and remedy proposals that work across multiple regimes.

Tailor Documentation

Sale and purchase agreements should be carefully drafted to address the challenges of parallel and less predictable regulatory review. Conditions precedent should cover FDI and FSR clearances alongside merger control. Risk allocation provisions should address who bears responsibility for offering and implementing conditions, if at all.

Conditions precedent mechanics and long stop dates should cater for the potential use of call-in powers, as well as the different types of conditions that may be imposed across regimes.

Prepare Early and Maintain Consistent Narrative

Because FDI authorities increasingly examine competition-related factors, and merger authorities consider strategic and resilience factors more and more, parties must ensure that submissions are consistent across all filings to avoid contradictions.

Given the opacity of many FDI regimes, early informal engagement with FDI authorities where possible can help build key arguments that work across all regulatory streams.

Internal documents can also be expected to play a more important role than ever in assessing potential efficiency gains or security and resilience arguments in merger control reviews. Companies should ensure that they document, and where possible, quantify, these factors properly.

Anticipate Divergent Outcomes and Friction Points

Given the distinct objectives and remedy preferences of merger control, FDI and FSR regimes, and because deals may be subject to multiple parallel reviews, parties should stress-test their deal structures against potential divergent or compounding outcomes. War-gaming potential outcomes to calibrate the provisions of transaction documents and the overarching commercial terms is essential in complex cases.

Conclusion

These regimes, once operating in largely separate spheres, are converging in scope, assessment criteria and procedural approach. At the same time, they retain real differences rooted in their distinct objectives.

This is neither surprising nor cause for alarm. For dealmakers, the practical implication is clear: These differences must be understood and planned for, but they are manageable. By mapping the regulatory landscape early, sequencing notifications strategically and building flexibility into transaction documentation, parties can navigate this evolving environment effectively and close deals successfully.

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[1] https://commission.europa.eu/topics/competitiveness/draghi-report_en#paragraph_47059.

[2] https://competition-policy.ec.europa.eu/document/download/46dde10f-85c1-4590-a3f4-2b71f85685ef_en?filename=Merger%20Guidelines%20-%20final%20for%20public%20consultation.pdf; <https://www.mayerbrown.com/en/insights/publications/2026/03/shaping-investments-into-eu-strategic-sectors-the-fdi-screening-reform-and-the-industrial-accelerator-act>.

[3] <https://www.mayerbrown.com/en/insights/publications/2026/03/shaping-investments-into-eu-strategic-sectors-the-fdi-screening-reform-and-the-industrial-accelerator-act>.

[4] <https://www.mayerbrown.com/en/insights/publications/2026/03/european-commission-proposes-industrial-accelerator-act>.

[5] <https://www.mayerbrown.com/en/insights/events/2025/12/fdi-screening-in-2025-2026-a-360-degree-eu-france-us-outlook-on-the-latest-fdi-developments-impacting-global-manda>.

[6] UniCredit/Banco BPM (Case M.11830) Commission Decision C (2025) 4072 final [2025]; and Case M.12052 (ongoing investigation/decision to be published).