

How is COVID-19 impacting FDI policies and enforcement?

National Responses and Key Developments



EU

The European Commission ("EC") has issued guidance calling on EU Member States to protect European assets (particularly in the healthcare sector, critical infrastructure and technologies) from foreign acquisition during the pandemic; EC ready to assist EC/Member State cooperation in FDI screening (in advance of the new EU FDI screening regime in October 2020). EC has also published a White Paper proposing a new legal regime to address distortive foreign subsidies (separate from new FDI rules).



United Kingdom

The government has announced that a public health emergency is now a ground for Government intervention on public interest grounds, and that thresholds for review of transactions in artificial intelligence, cryptographic technology and advanced materials are to be lowered.



The Netherlands

The Dutch government has proposed a reference date (2 June 2020) from which to retrospectively apply upcoming FDI screening legislation in order to prevent unwanted foreign acquisitions during the pandemic.



Austria

A new Investment Control Act has come into force which tightens existing rules. Scope of highly sensitive sectors expanded (defence, energy infrastructure, digital infrastructure, water, data, pharma), thresholds lowered to 10% voting rights, asset deals included.



France

Shareholding acquisition threshold for FDI review lowered from 25% to 10% for listed companies; Sector scope of FDI screening has been extended to include the biotech sector (in addition to existing sectors e.g. defence, energy, transportation, public health, cybersecurity, AI, telecoms, quantum tech, food safety, energy storage etc.).



Germany

COVID-19 has influenced amendments to existing FDI legislation. Changes include: (1) Government intervention if "probable impairment" of security/public order (lower than current threshold); (2) notification threshold for mandatory FDI notification remains at acquisition of 10% of voting rights, but suspensory effect in mandatory filings extended to more industry sectors (e.g., "critical infrastructure" which includes biotech and healthcare).



Poland

Amendments to FDI legislation to allow for enhanced scrutiny will come into force on 24 July for two years.



Hungary

A temporary decree has extended the list of sectors subject to FDI review to include healthcare, telecoms, defence, IT, energy, finance, agriculture, construction, and food. Authorisation now required if <10% share capital and <€1m; <15% irrespective of value.



Australia

The Government has reduced the existing monetary screening thresholds for all foreign investments under the FDI legislation to \$0 - therefore all FDI into Australia will now require approval.



New Zealand

FDI legislation has been amended by way of introduction of a new 'national interest' test to be applied to foreign investments, regardless of dollar value, that result in >25% share ownership. **31 August 2020**



Canada

The Government has announced that it is concerned about "opportunistic investment behaviour" and will subject FDI to increased scrutiny. Parliament is considering a bill which would authorise reviewing authorities to extend timelines by up to six months.



Spain

The Government has prohibited the acquisition by foreign investors of ≥10% of the share capital of companies active in these industries: healthcare, energy, water, transport, media, aerospace, defence, finance, food, personal data. Authorisation required if <10% share capital but effective participation in control/management. Investments <€1m exempted.



Italy

The Government has extended the sectoral scope of its FDI powers to include finance, infrastructure and critical tech, energy, transport, water, food security, personal data, AI, robotics, semiconductors, cybersecurity, nanotech and biotech; incl. some intra-EU investments.



India

The Government has amended FDI rules so that any investments from neighbouring countries can only be made following approval; lowering of approval thresholds also being considered.