

# Update: New EU Foreign Direct Investment Regulation goes live

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The European Council (“**Council**”) greenlighted the regulation on the screening of foreign direct investments into the EU (“**Regulation**”) at the beginning of March. Following its publication in the Official Journal expected on 21 March 2019, the Regulation will go live 20 days thereafter. The new rules will ultimately become applicable following a transition period of 18 months, i.e., in October 2020.

## Main impact of the FDI Regulation for non-EU investors

- The Regulation (please see the final adopted version [here](#)) sets a framework for foreign direct investment (“**FDI**”) rules in Europe. Given only about half of the Member States have investment control laws in place, it is likely that additional states will implement FDI legislation, as for example, Hungary did in January 2019. Nevertheless, pursuant to the Regulation there is still no obligation for Member States to adopt an investment screening process or introduce specific substantive standards for review.
- Most notably, while the Regulation does not introduce an FDI screening process at EU level, it establishes a cooperation mechanism between the European Commission (“**Commission**”) and Member States such that, going forward, a Member State will be required to inform the Commission and other Member States of any FDI review that has been initiated. Other Member States may then provide comments where they consider such FDI is likely to affect their national security or public order, or where they have information relevant for the review. The Commission may issue opinions following comments from other Member States or on any FDI where justified. The ultimate decision whether or not a Member State will permit the FDI in its territory remains exclusively with each Member State.
- The new role of the Commission and other Member States will add another layer of complexity to the review process and must be taken into account when planning an FDI in the EU.
- The only amendments introduced by the adopted text against the draft Regulation published in December 2018 relate to the timeframe for the evaluation by the Commission, which will review the effectiveness and application of the Regulation after three years, and subsequently every five years thereafter. Regarding the cooperation mechanism, the Council also clarified that the Commission should notify the other Member States when issuing an opinion to the Member State undertaking the FDI screening.
- For additional detail on the Regulation, please see our [Client Alert](#) published in January 2019, which provides for summary of the key takeaways and remaining changes of the Regulation that has now gone effective.

## Next steps by the EU

On the political stage, there are still ongoing discussions regarding FDI and its impact on policy-making, in particular, in relation to China. In preparation for the EU-China Summit in April 2019, the EU Commission and the High Representative for Foreign Affairs and Security Policy published a paper on 12 March 2019 titled “[EU-China – A strategic outlook](#)”. While articulating its willingness to deepen its engagement with China, and to promote common interests at a global level, the Commission emphasized its focus on fostering more balanced and reciprocal conditions for the economic relationship between the two economic regions. In addition, the Commission underlined the need for the EU to adapt to changing economic realities and to strengthen its own domestic policies and industrial base.

Further, on 13 March 2019, the Commission published a [Commission Staff Working Document on Foreign Direct Investment](#) in the EU. The analysis is based on a new economic data analyzing foreign ownership of EU firms in various industries. The data clearly underpins the emergence of “new investors” in Europe, with China standing out in terms of number of recent transactions.

It remains to be seen if and when these strategic considerations could lead to further revisions of the European FDI rules. But it is becoming increasingly clear that the topic will stay in the political spotlight.

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