Futureproofing: M&A Deals

Key regulatory changes in 2026 that should be on your radar

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Navigating expanding regulatory frontiers

The deal-making landscape is changing fast and not in ways that make life easier for businesses and their advisors. In merger control, regulators are actively exploring ways to move beyond the traditional revenue thresholds that have long defined their jurisdiction. Across Europe, the concept of call-in regimes and post-closing reviews is gaining traction. This means that even transactions involving targets without significant market presence could, in future, be drawn into review where strategic concerns arise.

Meanwhile, recent enforcement trends and policy debates at both EU and national level point to a shift in how competitive harm is assessed. Price and market share are no longer the whole story. Regulators are increasingly looking beyond simple metrics and towards more complex dynamics and long-term strategic effects, which adds a new layer of uncertainty for dealmakers.

At the same time, foreign direct investment screening continues to tighten, with more sectors labeled "strategic" and thresholds dropping. This is creating a patchwork of national regimes that can add weeks or even months to timelines. Layered on top, the Foreign Subsidies Regulation (*FSR*) is starting to have real impact, with enforcement activity picking up and notifications becoming part of the new normal for large deals.

The bottom line? The boundaries of what can be reviewed and how it is done are expanding. For businesses and investors, this means transaction planning needs to account for greater complexity and uncertainty, with early regulatory analysis becoming an essential part of securing deal timelines.

Merger Control & Competition

The trend toward expanding merger control beyond traditional thresholds is set to accelerate in 2026. Following the wave of national initiatives in 2024 and 2025, several Member States are expected to finalize legislative proposals introducing call-in powers or refining transaction value thresholds. France, the Czech Republic and the Netherlands are likely to move forward with ex ante mechanisms, while Belgium is debating the introduction of a call-in power. Many jurisdictions, such as Cyprus, Denmark, Hungary, Ireland, Italy, Lithuania and Sweden, already have discretionary call-in powers in place. In Denmark, for example, a call-in power is triggered if the combined aggregate turnover in Denmark is at least DKK 50 million and "*there is a risk that the merger will significantly impede effective competition, in particular due to the creation or strengthening of a* *dominant position*". Germany, despite its long-standing reliance on the transaction value threshold, is entering a critical phase of debate: the Federal Cartel Office has signaled openness to replacing the current regime with a call-in power, a discussion fueled by the Federal Court of Justice's Meta/Kustomer ruling in June 2025, which significantly broadened the interpretation of "substantial operations in Germany".

At EU level, the European Commission (***Commission***) is expected to clarify its approach to below-threshold deals and the scope of its call-in powers in the revised Merger Guidelines, anticipated in late 2026. Updated guidance may outline criteria for encouraging referrals or even propose legislative changes to formalize a broader jurisdictional reach. While the Court of Justice curtailed the Commission's expansive interpretation of Article 22 EUMR in Illumina/Grail, Brussels remains committed to finding mechanisms that allow review of transactions with significant competitive impact. It succeeded in Luxembourg's referral in Brasserie Nationale/Boissons Heintz which was upheld by the General Court in July 2025. However, the referral in this case was in line with the original purpose of Article 22 EUMR as Luxembourg lacks a national merger control regime. A more controversial case is still pending: Nvidia is seeking annulment of Italy's referral of Nvidia's acquisition of Run:ai based on Italy's broad discretionary call-in powers. A ruling against Nvidia would further solidify the Commission's powers.

Meanwhile, enforcement practice under the Towercast doctrine is likely to deepen. National authorities have already demonstrated willingness to pursue ex post scrutiny of non-notifiable mergers under abuse of dominance rules, as seen in the French Doctolib/Mon Docteur case and Belgium's investigations into Proximus/EDPnet and Dossche Mills/Ceres. Further applications are expected in sectors with strong network effects and data-driven business models, where authorities perceive heightened risks of killer or roll-up acquisitions.

More generally, regulators are exploring ways to conduct a broader assessment extending beyond the more rigid traditional metrics such as price and market shares. In future, additional structural metrics that could form part of an assessment include profit margins, diversion ratios (i.e. the share of customers that would switch to a competitor if a company were to raise its prices) and scale (e.g. user numbers, reach, financial capacity; as opposed to market share alone). Regulators will likely also take into account more dynamic effects based on recurring patterns, such as a transaction's impact on innovation, investment, resilience, the ability and incentives of SMEs to scale up and tipping dynamics (i.e. small competitive advantages snowballing into a winner-takes-most or winner-takes-all market). Therefore, case-by-case forward-looking assessments will likely become increasingly challenging for dealmakers.

Foreign Investment Screening

On 11 December 2025, the Council of the European Union and the European Parliament reached a provisional political agreement to revise Regulation (EU) 2019/452 (the Foreign

Direct Investment Screening Regulation). Formal adoption by both Parliament and Council is expected in the first half of 2026, with the revised rules likely to take effect in 2027.

The proposed reform represents a shift from the current voluntary Foreign Direct Investment (*FDI*) screening procedure, as it will require all EU Member States to establish a mandatory national FDI screening regime. It also introduces a minimum screening scope, obliging Member States to assess transactions in specified sensitive sectors, including advanced technologies (such as semiconductors, quantum technology, and artificial intelligence), critical infrastructure, dual-use items, military equipment, and critical raw materials. Member States may, however, extend the scope to additional sectors at national level. To prevent circumvention through intra-EU corporate structures, the definition of FDI will be broadened to include transactions carried out by EU subsidiaries that are ultimately owned or controlled by non-EU investors. Furthermore, the EU's existing cooperation mechanism will be strengthened by introducing greater procedural accountability from Member States conducting investment screenings. In particular, when other Member States submit comments or the European Commission issues an opinion on a specific investment, the screening Member State will be required to explain how this input has been considered and, where it chooses not to follow it, to provide the reasons for its position. However, the authority to authorise, condition, or prohibit an investment will remain exclusively with the Member State concerned.

While the EU continues to position itself as open to foreign investment, the proposed reform clearly signals a shift towards a more security-driven approach to strategic assets and technologies. The revised framework significantly expands the range of transactions that may fall within scope and reinforces the EU cooperation mechanism through enhanced information-sharing and reason-giving obligations, thereby increasing procedural complexity and execution risk for M&A transactions in sensitive sectors. Consequently, early FDI risk assessment and careful transaction structuring will become critical to safeguarding deal certainty and timelines. At the same time, the introduction of clearer minimum standards and more structured procedures should enhance predictability for investors that engage early, although national differences will persist and further tightening at Member State level is likely.

Foreign Subsidies Screening

The European Commission has demonstrated a clear willingness to use the full scope of its powers under the FSR, including extensive information requests, dawn raids, and in-depth reviews. This enforcement stance is expected to continue in 2026, with transactions involving state-owned acquirers (especially from China or UAE) facing an increased risk of prolonged review timelines, procedural complexity and, in certain cases, the need to offer commitments to obtain clearance.

The Commission is expected to issue FSR guidelines in early 2026, providing greater clarity on its assessment framework. While this should improve predictability, it will also allow the Commission to articulate more clearly the circumstances under which it considers foreign financial contributions to create distortive effects, thereby sharpening the focus of its substantive review and its expectations in commitment discussions.

By mid-2026, the Commission must publish a report on the application of the FSR, potentially accompanied by legislative proposals. Given the volume of notifications so far, adjustments such as higher notification thresholds or narrower notification obligations are anticipated. Until any such changes take effect, however, FSR-related filing obligations and review risks should be factored into transaction planning, long-stop dates and allocation of regulatory risk in deal documentation.

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