

Competition Outlook 2026

EU Competition Law Briefing – part 2

Agenda

	Review of the EU Merger Guidelines Björn Herbers
	State of play of below-threshold mergers and call-in rights Annabelle Lepièce
	Information exchange in transactions Jacqueline Vallat
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Review of the EU Merger Guidelines

Björn Herbers

Review of the EU Merger Guidelines



Source: Website European Commission, DG Competition: https://competition-policy.ec.europa.eu/mergers/review-merger-guidelines_en

Review of the EU Merger Guidelines

What is it about?

- 1 The EU Merger Guidelines (horizontal +non-horizontal guidelines) provide guidance on the Commission's practice when reviewing mergers under the EU Merger Regulation.
- 2 Review:
 - Update to reflect developments in market reality and case law + Commission practice
 - Reorientation of EU merger control?

Current state of play

- 1 Public consultation summer 25
 - General Consultation
 - In-depth consultation
- 2 Economic study on the dynamic effects of mergers
- 3 Stakeholder workshops December 25/January 26
- 4 Conference: Shaping the Future of EU Merger Control March 26

Review of the EU Merger Guidelines

Core elements of revised Guidelines

- 1 Competitiveness
 - **"Positive scale"**
 - Dynamic effects
- 2 Market Power
 - Indicators and market features
- 3 **Innovation**
 - Innovation shield?
- 4 Sustainability
 - Positive/negative effects
 - **Climate change**
- 5 Digital Markets
- 6 **Efficiencies**
- 7 Public policy, security, labor markets

Next Steps

- 1 Draft Guidelines "in the coming weeks"
- 2 Adoption of the Guidelines by the end of **2026**

Below-threshold mergers and call-in rights – The new merger control landscape after Illumina and Towercast

Annabelle Lepièce

Below-threshold mergers and call-in rights – The new merger control landscape after Illumina and Towercast

What is it about?

- 1 Control of killer and roll-up acquisitions**
- 2 Illumina/Grail judgment: Art. 22 referral mechanism applicable for**
 - MS that do not have merger control rules : LUX; or
 - Extension of ‘one stop shop’ principle, to allow EC to examine concentration notified/notifiable in several MS
- 3 Towercast judgment:**
 - MS may apply Art. 102 TFEU to non notifiable transactions

Current state of play

- 1 Art. 22: Brasserie Nationale/Boissons Heintz (LUX)**
- 2 Review of EUMR**
- 3 Call-in rights for NCA: 8 EU MS; Norway, Iceland**

GE and AU : value-based notification thresholds
- 4 Antitrust investigations**
 - BE : Proximus/EDPnet, Dossche Mills/Ceres, Live Nation/Pukkelpop
 - FR : DoctoLib
 - NE : application of 24 (1) of DCA to below notification thresholds

Below-threshold mergers and call-in rights – The new merger control landscape after Illumina and Towercast

Potential Outcome 2026

- 1 EUMR :**
 - Public consultation on draft before summer 2026 and adoption at the end of 2026
- 2 Art. 22 EUMR :** Nvidia/Run:ai appeal
- 3 National initiatives**
 - FR-BE-GE: NCA pushing for call-in rights
 - CZ, FI, GR and SL also considering call-in rights
 - NE : Ziemann/Brink's case (art. 102 TFEU) and project on call-in power to be submitted to the Parliament
 - LUX : project of law on merger control
 - UK : Government's proposal for a reform of the UK merger control

Outlook

- 1 Increased legal uncertainty and fragmentation of national merger control ?**
 - Multiple call-in powers ex ante and Art. 101/102 ex post
 - Potential sanctions : unwinding v. behavioral remedies, fines, orders under penalties
- 2 In an ideal world :**
 - Safe harbor thresholds
 - Focus on certain sectors
 - Harmonization of call-in powers and alignment of procedures
 - In case of call-in, no ex post application of Art. 101/102

Information exchange in transactions

Jacqueline Vallat

Information exchange in transactions

Delivery Hero / Glovo

“Anti-competitive use” of a minority stake

- Formal SHAs
- Board representation and access to information
- Ability to influence (inc. through voting rights)
- Ties between staff

Three-fold infringement:

- No poach
- Information exchange
- Market sharing

Some important takeaways:

- All no poach restrictions in this case treated as ‘by object’
- Fiduciary duties and existence of minority stake no defence

Risk areas and pitfalls

- Risk areas (antitrust and gun-jumping):
 - Due diligence
 - Integration planning
 - Joint staff events
 - Shareholder representation / board meetings – and the exercise of influence direct or indirect
- **Careless wording**

Information exchange in transactions

Mitigation measures?

- Careful documentation of rationale
 - Legal review
 - Relevant to assessment
- Clean teams / info barriers and ring fencing
 - DD
 - Board representation and influence
 - Fiduciary duties?
- Protocols
- Regular training / reminders
 - M&A teams
 - Board representatives
 - HR / PR

Next Steps

- Earnings calls
- More labour
- Common ownership?

Review of the EU FDI Screening Regulation

Kai Neuhaus

Review EU FDI Screening Regulation

What is it about?

- 1 Original EU FDI Screening Regulation (EU) 2019/452 applicable since November 2020
- 2 Created **framework** for investment screening to assess impact of foreign investments on public security and order and EU projects and programs
 - **No mandatory system** – Member States free to enact screening laws
 - **No one-stop-shop** at EU level
 - **Only cooperation mechanism** between Member States – information exchange between Member States

Current state of play

- 1 **All EU Member States have now FDI regimes** in place – regimes in Croatia and Cyprus expected to enter fully into force in April/May
- 2 Review of FDI Screening Regulation central element of Commission's 2024 package on strengthening the **EU's economic security**
- 3 Commission draft of January 2024, then lengthy trilogue (Commission, Council, Parliament) discussions
- 4 "Political agreement" on 11 December 2025

Review of the EU FDI Screening Regulation

Potential Outcome 2026

- 1 Final text of revised EU Screening Regulation expected in **May 2026**
- 2 Main **anticipated changes** to current regime
 - EU-wide minimum scope of mandatory screenings (military & dual use; critical raw materials; infrastructures in energy, transport, digital, financial system, electoral)
 - EU-wide minimum requirements (call-in right, 2-phase proceedings, harmonised deadlines)
- 3 What will **not change**
 - National regimes will differ in scope and decisions remain exclusive responsibility of Member States
 - No one-stop-shop

Next Steps

- 1 Parliament and Council to formally adopt final text (expected April or May 2026)
- 2 New Screening Regulation will be applicable 18 months after publication in Official Journal
→ **Applicable as of end 2027/early 2028**
- 3 All EU **Member States will need to revise / update their national FDI regimes** by then
 - Major overhaul (e.g. Germany plans to enact a new investment screening law)
 - Or only update?

Update on the EU Foreign Subsidies Regulation

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EU Foreign Subsidies Regulation (FSR)

What is it about?

1 The FSR shall close a regulatory gap

- Strict EU State Aid rules for subsidies by EU Member States
- No comparable controls for subsidies granted by third countries

2 EC has three powerful tools

- **M&A tool**
 - Around 300 proceedings so far (vs 30 per year), 90% of the notifications by companies from the EU, UK and US
 - Do the thresholds "work"?
 - Far-reaching "call-in" right for EC in Article 21(5) FSR (not used yet)
- **Public Procurement tool**
 - Around 800 notifications so far, several in-depths reviews were started, but (Chinese) companies withdrew from the procurement proceedings
- **Ex-officio tool**
 - Wind energy sector and threat detection systems
 - Dawn raid carried out by EC

EU Foreign Subsidies Regulation (FSR)

Current state of play

1 Currently three in-depth investigations ongoing

- Goldwind (China) [Commission opens in-depth foreign subsidies investigation into Goldwind's activities](#)
- Nuctech (China) [Commission opens in-depth foreign subsidies investigation into Nuctech's activities](#)
- CRRC (China) [Commission opens in-depth investigation into construction of Lisbon railway line under the Foreign Subsidies Regulation - Internal Market, Industry, Entrepreneurship and SMEs](#)

2 Two in-depth investigations carried out and remedies imposed

- e&/PPF Telecoms (United Arab Emirates) [FS_100011_1044.pdf](#)
- ADNOC/Covestro (United Arab Emirates) [FS_100156_2550.pdf](#)

3 EC issued Guidelines on 9 January 2026 [Commission publishes Foreign Subsidies Regulation Guidelines](#)

- Distortion of competition
- Balancing test
- Call-in right for the EC

EU Foreign Subsidies Regulation (FSR)

Spotlight

1 Guidelines

- Provide a conceptual framework
- Reduce the legal uncertainty (at least to some extent)
 - "Guidelines do not constitute a 'checklist' to be applied mechanically"
- "Potential for cross-subsidisation" as a major topic (balance of probabilities)
- "White list" of Foreign Subsidies (with probably little practical value ...)
 - Is the Foreign Subsidy "*insignificant in relation to the extent of the actual or potential economic activities*" of the recipient?

2 EC practice so far

- Focus on "black list" of Foreign Subsidies in Article 5 FSR
- Distortion of competition "for" the target and "by" the target
- Internal documents play an important role
- Use of Article 16 FSR
- "Development" of remedies?

Next Steps

1 Staff Working Document (SWD)

- Within the next weeks

2 FSR Review Report by 13 July 2026

- Factual summary of the feedback in the public consultation [Foreign subsidies – review report](#)
- What (if anything) will the EC propose to the EP and the Council?

3 Article 47(1) FSR

- Will the EC introduce a "simplified procedure"?

4 Forthcoming EC decisions (in 2027?)

- Article 11(5) FSR for ex-officio cases, EC "*shall endeavour to adopt a decision within a period of 18 months from the opening of the in-depth investigation*".