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2026 EU Antitrust, FSR and FDI Update

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This update summarises recent developments and trends in 2025 in the different areas of EU competition law, foreign direct investment control (FDI), and the EU Foreign Subsidies Regulation (FSR) and gives an update on what can be expected in 2026.

1. Changes to EU Competition Policy

In line with other antitrust authorities globally, the European Commission (Commission) has faced increasing political pressure to be more business friendly, supporting wider policy goals of fostering EU growth and productivity and ensuring resilience and opportunities for scaling up throughout the value chain.

Commissioner Teresa Ribera has a mandate to modernise the EU competition enforcement toolkit, consistent with the recommendations set out in the Draghi and Letta reports. She has made clear her commitment to reshaping the Commission's approach to reflect the reality of fast-moving, innovation-driven markets and to ensure robust and predictable antitrust enforcement "even in times of weaponization of trade", as well as to use antitrust laws to drive forward sustainability goals as part of the EU's green transition.

At the same time, Ribera has made many public statements that, while EU competition policy and enforcement should support the global competitiveness of European firms especially against U.S. and Chinese rivals, they should not be loosened to "shield" those firms from competition to create European champions. Instead, the Commission is focused on deepening the EU Single Market and enabling European firms to scale up, invest and innovate.

2. Merger Control

Merger Statistics

The number of mergers notified to the Commission in 2025 remained stable (384, compared to 392 in 2024) and was in line with the five-year average of 382. The vast majority of the cases (~85%) were notified under the Commission's simplified procedure.

In 2025, the Commission approved nine cases in Phase 1 subject to commitments and saw five withdrawn during this phase. Only two Phase 2 decisions were adopted, *Liberty Media/Dorna Sports* and *Mars/Kellanova*, which were unconditionally cleared without the issuance of a Statement of Objections. At the end of the year, three Phase 2 proceedings were still ongoing.

Merger Review Guidelines

In 2025, the Commission started its public consultation and review of the Horizontal and Non-Horizontal Merger Guidelines. The revision of the guidelines will reflect the Commission's experience in applying the current EU Merger Regulation that entered into force in 2004, as well as the recommendations set out in Mario Draghi's 2024 report on The Future of European Competitiveness. The review will focus on issues such as competitiveness, resilience, market power, dynamic competition, sustainability, digitalisation and efficiencies. A draft of the revised guidelines is expected to be published in spring 2026, with the adoption expected in Q4 2027.

Reinforcing Member State Call-In Powers

EU Member States and the Commission continued to explore ways of exerting jurisdiction over deals that do not meet jurisdictional filing thresholds. First, in July 2025, the EU General Court (GC) confirmed the Luxembourg Competition Authority's ability to refer to the European Commission, under Article 22 of the EU Merger Regulation, a deal that was not notifiable in the EU or in any EU Member State. The court emphasised that Luxembourg as the only Member State without a national merger control regime may use Article 22 as a mechanism for reviewing mergers that are not reportable but may significantly restrict competition. This judgment followed the 2024 judgment of the European Court of Justice (ECJ) in *Illumina/Grail* ruling that EU Member States that have national merger control regimes (i.e., all EU Member States except for Luxembourg) may not refer to the European Commission transactions that do not meet jurisdictional thresholds of their national merger control laws.

Second, EU competition authorities are increasingly focused on ensuring that national merger control regimes of EU Member States can capture competitively significant deals. As a result, more EU authorities have been granted powers to call in non-notifiable deals under national merger rules, with Bulgaria introducing such powers in 2025 (in addition to Cyprus, Denmark, Hungary, Ireland, Italy, Latvia, Lithuania, Slovenia and Sweden, which already had call-in powers). And several other Member States have signalled plans to introduce call-in powers in the near future. It also means that, if a deal is called in under the national merger control regime, a Member State may review it itself or refer it to the Commission. However, the latter possibility is currently being challenged by Nvidia, which brought an appeal before the GC against the Commission's decision to accept an Article 22 referral to review its acquisition of Run:AI, following the Italian competition authority's exercise of its national call-in powers.

3. Abuse of Dominance and DMA

Digital platform markets remained the primary focus of the Commission's enforcement activities in 2025. In September, the Commission fined Google €2.95 billion for favouring its own ad exchange (AdX) within its ad tech services for advertisers and publishers. Just one week later, the Commission concluded two cases against Microsoft concerning the alleged tying of the team collaboration platform Teams with the Office365 and Microsoft365 software suites. After more than five years of investigation, the Commission accepted commitments from Microsoft, including offering versions of Office365 and Microsoft365 without Teams at a significantly lower price, and ensuring that Teams' competitors have effective interoperability and product integration with certain Microsoft productivity applications.

In another significant decision relating to tech markets, the ECJ further developed its case law on exclusionary abuses involving refusal to supply. In *Android Auto*, the ECJ ruled that if a dominant company refuses third-party access to a digital platform that is not indispensable, this will likely be unlawful. However, if the asset was created solely for the company's own use, refusal will be unlawful only if the asset is "indispensable" for competitors' activity in the downstream market.

The Commission also launched investigations into Red Bull, SAP, Google and Meta. The cases against Google and Meta highlight the Commission's enforcement interest in the AI space, investigating Google's alleged use of web content to train its generative AI models, and Meta's restrictions on services that can be offered through WhatsApp by third-party AI providers. They also show that, although enforcement of the Digital Markets Act (DMA) has gained traction, the Commission still views Art 102 TFEU (the

EU treaty provision prohibiting the abuse of a dominant market position) as a relevant tool to keep digital platform and ecosystem markets contestable.

In 2025, the Commission also concluded its first noncompliance proceedings under the DMA. One gatekeeper was fined €500 million for allegedly failing to inform users about, and steer them to, alternative app stores. Another gatekeeper received a €200 million fine for alleged violations related to its "consent or pay" advertising model. Both companies have appealed these decisions. In November, the Commission also launched market investigations to assess whether Amazon's AWS and Microsoft's Azure cloud services should be designated as important gateways for business users to reach end users. The Commission has approximately 12 months to complete these investigations, after which the DMA's provisions may be applied to AWS and Azure.

4. Cartels

In 2025, the Commission concluded several high-profile cartel cases with total fines reaching €859 million, more than double the combined total of the previous three years. Fifteen car manufacturers were fined over €458 million for concerted practices related to end-of-life vehicle recycling. Manufacturers of automotive starter batteries were fined €72 million for calculating and publishing price premiums on their purchasing price of raw materials and for agreeing to use these premiums in price negotiations with car original equipment manufacturers. Two online food delivery companies received fines of €329 million for entering into a no-poach agreement, exchanging competitively sensitive information and allocating geographic markets. This case marks the Commission's first labour market cartels decision.

For the first time ever, the Commission imposed fines of €172,000 for providing incomplete responses to a request for information in a cartel investigation. The Commission found that a synthetic turf manufacturer and its parent company had provided information in response to a 'simple' request for information that appeared incomplete based on documents seized during a dawn raid. The Commission then issued a second, formal request for information (which compelled the company to provide complete information) and found that the companies had again provided incomplete answers to this second request. The decision highlights the importance that the Commission attaches to holding companies liable for submitting "incomplete, incorrect or misleading" information in response to the Commission's requests.

Meanwhile, the ECJ issued another judgment that further facilitates claimants' ability to bring follow-on damages actions. In a September 2025 ruling, the court held that national statutes of limitations based on the claimant's knowledge begin once the competition authority's infringement decision becomes final. Given the lengthy judicial review process in cartel cases, this means claimants may pursue damages long after the initial infringement decision. In the case at hand, the claimant sued more than seven years after the prohibition decision was published.

5. FSR

In 2025, the Commission continued to establish its enforcement practice under the FSR, which gives the Commission far-reaching powers to intervene in and prohibit M&A transactions and public tender bids involving companies that have received distortive foreign subsidies from non-EU governments.

While its intentionally broad thresholds mean that the FSR's M&A tool captures many transactions each year, it remains the case that the Commission considers most deals to be unproblematic. Of the 213 deals notified to date, only two have been subject to in-depth review: e&/PPF (September 2024) and Abu Dhabi-based ADNOC's acquisition of German chemicals producer Covestro, which the Commission conditionally cleared in December 2025. As with e&/PPF, the deal involved a Middle Eastern state-owned investor, as well as Commission concerns around the potentially distortive effect of acquisition financing arrangements (principally unlimited state guarantees) on the acquisition process itself and on EU competition post-transaction.

The decision shows that the Commission continues to be targeted and flexible in its approach, including by accepting behavioural remedies (as opposed to divestments) to address concerns. It is also a reminder of the central role the FSR can play in M&A deal execution and timing, including the practical challenges of complying with multiple rounds of information requests relating to highly sensitive commercial arrangements. In September, the Commission "stopped the clock", pausing its investigation until 24 October pending receipt of information requested from the parties. At the time, ADNOC publicly criticised the Commission's decision to use this power, which ultimately extended the review period to six months. This can be compared with the FSR review of e&/PPF (five months) and ADNOC's parallel merger review (two months).

At the same time, the Commission continues to increase the regime's transparency, publishing details of notified deals and regularly updating its dedicated Q&A document. More detailed substantive guidance was recently released, following various public consultations last year. However, the German government continues to urge a fundamental overhaul of the guidelines, aiming to increase the thresholds and reduce the administrative burden. The Commission is also refining its disclosure requirements to focus on potentially problematic deals. For example, it no longer requires detailed information on LP investors as part of the notification, on the basis that they do not "directly facilitate" the transaction. Additionally, the Commission is exploring what more can be done to streamline the process, including potentially introducing a simplified procedure, as is long-established for EU merger control reviews, and as is envisaged by the FSR itself.

6. FDI

Coverage of FDI regimes across the EU is now effectively universal. Following the entry into force of Bulgaria and Ireland's regimes in 2024/early 2025, Greece's mechanism became operational in 2025, and both Croatia and Cyprus have moved from "no regime" to having legislation or detailed frameworks in preparation, with Cyprus scheduled to apply its regime from April 2026. For deals signed in 2026, we therefore assume that every EU jurisdiction either already screens FDI or will do so shortly.

Existing regimes also continue to be expanded. The Netherlands has implemented a broadened Vifo Act capturing a wide set of "new" sensitive technologies — AI, biotech, advanced materials, nanotechnology, sensor/navigation technologies and certain nuclear-medical technologies — at thresholds as low as 10%. Comparable "technology creep" is visible across the EU as Member States increasingly pull critical medicines, photonics, advanced semiconductors, quantum technologies, defence supply chains and financial infrastructure into mandatory scope.

Screening volumes and intensity remain elevated. The Commission's fifth annual FDI report (October 2025) records approximately 3,100 cases in 2024 — up from c. 1,800 in 2023 — driven partly by the first full year of activity in Sweden, Belgium, the Netherlands and Luxembourg. Formal screening outcomes remain largely permissive: 86% unconditional clearances, 9% conditional, 1% prohibitions and 4% withdrawals.

Interventions, however, can be far-reaching. Spain's prohibition of Ganz-Mavag's takeover of Talgo remains the key intra-EU example. In 2025, Italy's "golden power" regime tested EU-law boundaries: the government imposed extensive conditions on UniCredit's €10 billion bid for Banco BPM, prompting withdrawal, and in November 2025 the Commission formally warned Italy that these conditions encroached on the European Central Bank's prudential remit and restricted capital movements. An additional Italian golden-power decision in a banking-IT case was annulled by the courts in December 2025.

EU-level reform has now reached political agreement. The Commission's 2024 proposal to revise the FDI Screening Regulation secured political alignment in

December 2025 between the European Parliament and the European Council, clearing the way for formal adoption. The new framework is expected to apply from late 2027 or early 2028 and will require mandatory national FDI screening mechanisms in all Member States, introduce a minimum EU-wide sectoral scope aligned with critical technologies and programmes of Union interest, and harmonise key procedural standards and timelines.

Finally, outbound investment is emerging as the next policy frontier. In early 2025, the Commission adopted a nonbinding recommendation encouraging Member States to monitor and, where necessary, restrict outbound investments in three technology clusters of strategic importance — semiconductors, AI and quantum technologies. Member States were instructed to report on their progress by July 2025 and are slated to provide comprehensive risk-assessment reports in mid-2026. This move reflects similar policy concerns to those underpinning the recently established U.S. Outbound Investment Security regime.

7. Outlook — What to Expect in 2026

This year will possibly mark the culmination of competing political pressures in Europe to drive productivity, investment and efficiency on the one hand and, on the other, to heavily scrutinise transactions in sensitive and innovative sectors. This includes using merger control, FDI and possibly abuse of dominance to review transactions which fall below (predictable) bright line jurisdictional thresholds.

In merger control, the changes to the Commission's merger guidance is expected to be an evolution rather than a revolution and will potentially signal the Commission's intention to consider wider public policy and security considerations as part of merger assessments. Against this more dynamic framework, the Commission will likely continue its focus on perceived "killer acquisitions" of nascent competitors, relying on national call-in powers to review otherwise non-reportable transactions that it considers may be harmful to competition and innovation. At the same time, pro-competitive start-up acquisitions will likely benefit from an "innovation shield".

FSR procedures will continue to be mostly technical in nature, with the Commission exploring ways to focus on the few problematic cases and to increase predictability and reduce administrative burdens for notifying parties, especially private equity buyers. With the publication of new guidance, we expect the Commission to flex its powers to "call in" its first below-threshold transactions preclosing where it believes they potentially involve distortive foreign subsidies.

In the FDI space, transaction parties will face a full house of Member State regimes in 2026. As new and established Member State regimes continue to bed in and evolve, we expect screening volumes and intensive reviews to remain high, with governments pushing the limits of their broad powers to review transactions which are perceived as sensitive, especially those relating to critical inputs and infrastructure, including in the digital space, and against the background of evolving geopolitical tensions with other world regions.

Heightened enforcement risks for novel harms to competition are likely to continue, including non-price practices such as labour market restraints, and unlawful information exchange. The risk of dawn raids (especially electronic and hybrid raids) will also remain high following several dawn raids in recent months, as the Commission and national competition authorities continue to gather information on potential antitrust infringements, especially in consumer-facing industries where the increased cost of living bites most. At the same time, focus on market power in digital markets and innovative technologies such as GenAI will continue, with the Commission using its more traditional investigatory tools under Article 102 TFEU as a complement to its sweeping regulatory powers under the DMA.

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Suggested Reading

- 11 December 2025 Press Release Kirkland Advises Kellanova on Gaining Approval from European Commission and Close of $36 Billion Sale to Mars
- 16 January 2025 Kirkland Alert 2025 EU Antitrust, FSR and FDI Update
- 17 January 2024 Kirkland Alert 2024 EU Antitrust and FDI Update