



EU, COMPETITION AND REGULATED MARKETS

Foreign Direct Investment Screening of Third Country Transactions Act 2023 Signed into Law

by **Marco Hickey**

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The Screening of Third Country Transactions Act 2023 (implementing into Irish law Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union) was signed into law by the President on 31 October 2023.

It is expected to come into force in the second quarter of 2024. It will require notification of a proposed transaction to, and clearance by, the Minister for Enterprise, Trade and Employment (Minister) involving third country businesses (a third country for this purpose is defined as any country that is not a member of the EU, EEA or Switzerland so it would include the UK and the US) that meet certain thresholds including that the value of the transaction is equal to or greater than such amount specified by the Minister or in the absence of specification €2m, and that relates to, or impacts upon, one or more of the following matters:

- **Critical infrastructure**, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure;
- **Critical technologies** and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No 428/2009 including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies;
- **Supply of critical inputs**, including energy or raw materials, as well as food security;
- **Access to sensitive information**, including personal data, or the ability to control such information;
or
- **The freedom and pluralism of the media (this regime will apply in parallel to the existing mergers regime for media mergers in Ireland).**

The substantive test to be applied is whether the transaction will affect the security or public order of the State.

The Minister will have a broad power to call in transactions for review, regardless of whether or not they are notifiable or notified, if the Minister has reasonable grounds for believing that they would affect, or would be likely to affect, the security or public order of Ireland.

The Minister will have the power to review transactions that do not meet the thresholds including those which have completed in certain circumstances.

The 2023 Act contains a retrospective look back provision by empowering the Minister to review completed transactions up to 15 months prior to the coming into force of the Act regardless of whether they are notified or notifiable.

The scope of application of this regime is potentially wide.

For more information, please contact [Dr Marco Hickey](#), he is the Head of the EU, Competition and Regulated Markets team at LK Shields. He is the author of Merger Control, published by Round Hall (part of the Thomson Reuters group), which is the only book exclusively devoted to merger control in Ireland.

About the Author



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Marco is a highly experienced competition and M&A/corporate lawyer having practiced in both areas for many years.

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