

Global FDI Update

July – September 2024

17 October 2024

- **United States:** CFIUS releases 2023 Annual Report; expanded scope for CFIUS jurisdiction and filing requirements; new export controls on quantum computing and other advanced technologies.
- **United Kingdom:** Annual Report published; remedies imposed on four transactions.
- **European Union:** First merger commitments adopted under EU Foreign Subsidies Regulation.
- **Belgium:** First Annual Report on Belgian FDI Screening; revised notification forms and guidelines.
- **France:** Close scrutiny for foreign investment in pharmaceutical sector (Biogaran and Doliprane).
- **Germany:** Prohibition of Chinese investment in gas turbine sector.
- **Italy:** Annual Report shows that volume of filings remain high but majority deemed out-of-scope and intervention rates low (22 out of 563 filings).
- **Netherlands:** Proposal for new sectoral investment control regime for defense industry.
- **Spain:** Government prohibits €619 million acquisition of Spanish train manufacturer Talgo by Hungarian consortium

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United States

CFIUS releases 2023 Annual Report

According to the most recent CFIUS annual report, during 2023 there was a decline in both short-form declarations and full-notice filings compared to 2022.

CFIUS reviewed 109 declarations, down from 154 in 2022, and 233 notices, down from 286 in 2022. CFIUS also cleared declarations at a higher rate in 2023 than in 2022, clearing around 75% of the declarations it reviewed compared to around 58% in 2022. The percentage of notices proceeding to the additional 45-day investigation period remained stable at around 55%.

In 2023, fewer parties withdrew notices (24%) than in 2022 (31%), and most of the withdrawn notices were later refiled in 2023 or 2024. Only nine notices were abandoned after either CFIUS informed the parties it was unable to identify mitigation measures to resolve its national security concerns or the parties would not accept proposed mitigation measures.

On that note, CFIUS imposed mitigation measures and conditions in connection with around 18% of cases, which was unchanged from 2022. In 2023, CFIUS opened inquiries into 60 non-notified transactions compared to 84 in 2022 and ultimately requested filings for 21% of those cases, up from 13% in 2022. There were no presidential decisions in 2023.

Investors from the following countries filed the most CFIUS notices in 2023: China (33), United Arab Emirates (22), UK (19), Singapore (19), Canada (16), Japan (15), and Germany (14). Please see our [blog](#) for further discussion of the takeaways from the report.

Treasury issues proposed rule to expand CFIUS jurisdiction over real estate transactions near military installations

On July 8, 2024, the U.S. Department of the Treasury published a Notice of Proposed Rulemaking (NPRM) that, if implemented, will expand CFIUS jurisdiction over certain real estate transactions. The NPRM adds 59 additional military installations across 30 states to the list of designated installations, giving CFIUS jurisdiction to review transactions involving real estate within a specified range of the facilities. For 40 of the installations added to the list, CFIUS would have jurisdiction to review transactions involving real estate located within a one-mile radius of the facility. For the other 19 installations, CFIUS jurisdiction would extend further to a 100-mile radius. If the NPRM were implemented, CFIUS would have jurisdiction to review real estate transactions in proximity to over 200 military installations. Treasury proposed these changes following a comprehensive review by the Department of Defense (DoD) assessing the national security risks of real estate transactions near all U.S. military facilities. For additional details, please see our [blog](#).

Commerce imposes export controls on quantum computing and other advanced technologies, expands scope of CFIUS mandatory filing requirement

On September 6, 2024, the U.S. Department of Commerce, Bureau of Industry and Security published an interim rule implementing new export controls on certain advanced technologies, expanding the scope of the mandatory CFIUS filing requirement. The rule covered quantum computing items, advanced semiconductor manufacturing equipment, Gate All-Around Field-Effect Transistor (GAAFET) Technology, and certain additive manufacturing items. Items controlled under the Export Administration

Regulations for national security and regional stability reasons, now including these technologies, are considered “critical technologies” for CFIUS purposes. Any foreign investment in a U.S. business that engages in covered activities involving such technologies that would require a license for export to the foreign investor, or any foreign person that holds (directly or indirectly) 25% or more of the foreign investor, generally must be notified to CFIUS. For more information, please see our [blog](#).

United Kingdom

Annual Report published; remedies imposed on four transactions

On September 10, 2024, the UK Government published its third Annual Report on the enforcement of the National Security and Investment Act 2021, covering the period from April 2023 to March 2024. For more information on the Annual Report and our observations on recent decisions under the UK national security regime, please see our [Alert Memorandum](#).

In Q3 2024, the UK Government issued three Final Orders approving transactions subject to remedies.

Exosens/Centronic. On July 25, 2024, the UK Government [conditionally approved](#) the acquisition of Centronic Limited, a UK-based specialist developer and manufacturer of radiation detectors and devices, by Exosens, a French photonics technology company.

The Final Order requires that “*Centronic’s site and its capability pertaining to current and future UK Defence contracts remain in the UK,*” to mitigate the risk to the UK’s defence capabilities if Centronic’s facility were to be relocated outside of the UK.

BASF/Harbour Energy. On July 30, 2024, the UK Government [conditionally cleared](#) the acquisition by BASF of 46.5% of Harbour Energy plc, a London-listed oil and gas company, as part of a broader transaction involving the transfer of Wintershall DEA assets to Harbour Energy.

As a result of the transaction, LetterOne (subject in December 2022 to a [prohibition](#) under the national security regime in relation to its acquisition of broadband provider Upp, currently under appeal) acquired c. 15% of the financial interest in Harbour Energy but no voting rights.

The Final Order requires Harbour Energy to give the UK Government advanced notice of “*any share conversion after which LetterOne would own 10% or more of the Ordinary Shares in Harbour Energy plc*” (i.e., with voting rights) or “*the appointment of a Harbour Energy plc board member by LetterOne.*” The conditions also enable the Government to “*consider further the exercise of [its] powers under the Act at that time.*”

The Government considers these measures “*mitigate any risks to national security in relation to interruption of Harbour’s UK continental shelf operations, by Russia or affiliated entities, which would impact the gas supply to UK customers.*”

KXP Immingham. On August 28, 2024, the UK Government [granted](#) conditional approval for a joint venture between BlackRock and KX Power, an asset management firm specialising in renewable energy and power generation assets, to acquire control of an 80 megawatt battery energy storage system in Immingham through the granting of an Ofgem electricity generation licence.

The conditions provide that:

- (i) “*KXP Immingham Limited must notify and receive approval*

from the Chancellor of the Duchy of Lancaster in advance of making changes to the power offtaker and provider of ancillary services;” and

- (ii) *“the sharing of information by the third-party power offtaker and provider of ancillary services of the site is restricted to a list of permitted information.”*

The conditions are intended to protect “a future United Kingdom electricity asset” and prevent “the disruption of services provided to the Electricity System Operator.”

Trina Solar/AGR Power. On October 10, 2024, the UK Government [conditionally approved](#) the acquisition by Trina Solar, a photovoltaics company headquartered in China, of a 50% interest in a UK solar and battery storage project, Bicker Fen, developed by AGR Renewables. The rationale in the Final Order for imposing conditions and the description of the conditions is similar to the *KXP Immingham* Order.

European Union

First Merger Commitments adopted under EU Foreign Subsidies Regulation

On September 24, 2024, the European Commission (EC) conditionally approved, under the Foreign Subsidies Regulation (FSR), the acquisition of PPF Telecom Group (PPF) by Emirates Telecommunications Group Company PJSC (e&). The EC’s clearance is subject to commitments valid for 10 years, which may be extended by another 5 years. This is the EC’s first Phase II conditional

clearance decision under the FSR, which came into force on July 12, 2023. It is also the only FSR Phase II merger investigation opened to date.

e& is based in the UAE and owned by the Emirates Investment Authority (EIA). PPF is headquartered in the Netherlands and has telecom operations across Europe.

According to the EC, e& received potential foreign subsidies from the UAE in the form of (i) an unlimited state guarantee via exemption from the applicable bankruptcy laws, and (ii) a term loan to e& used to finance the transaction from five banks whose actions could be attributed to the UAE, with indications it was not obtained at market conditions. The EC found that there was a risk of potential distortions in the EU internal market post-transaction, as the potential subsidies – and the unlimited guarantee in particular – would give the merged entity the capacity to engage in investments or acquisitions without the same constraints as a market operator. Under the FSR, unlimited state guarantees are among the forms of subsidies deemed “most likely to distort the internal market” and thus “will normally be considered distortive” unless there are specific facts indicating otherwise.¹

The EC accepted the following commitments to address its concerns:

- (i) The removal of the unlimited state guarantee, by ensuring e&’s articles of association do not deviate from ordinary UAE bankruptcy law.
- (ii) The prohibition of financing by e& and EIA of PPF’s activities in the EU, subject to exceptions (e.g., emergency funding), and a

¹ Commission Staff Working Document, Initial clarifications on the application of Article 4(1), Article 6 and Article 27(1) of Regulation (EU)

2022/2560 on foreign subsidies distorting the internal market, p.3.

requirement that other transactions should also be on market terms.

- (iii) The obligation for e& to inform the EC of any future acquisitions that are not notifiable under the FSR.

How these behavioral measures will be implemented and monitored remains to be seen in the full decision yet to be published. For a more detailed analysis of this case, please see our [Alert Memorandum](#).

Belgium

First Annual Report on FDI Screening and revised notification forms/guidelines

On September 30, 2024, the FPS Economy, which manages the secretariat of the Interfederal Screening Committee (“ISC”), published its first [annual report](#) on Belgian FDI Screening, covering the period from July 1, 2023 until June 30, 2024.

During this period, the ISC received 68 notifications. One case started through a retroactive *ex officio* procedure.

In only five cases (7%) was a screening procedure (phase 2) opened. One of those five cases closed after 52 days (including time to start the file and phase one). Four other cases were ongoing.

No investments have been blocked and 53 investments were authorized. 15 cases were still pending.

13 notifications were considered incomplete. In four cases, additional information was requested. This resulted in an average duration of six days for the start of the verification procedure and an average processing time of 31 days from notification to the end of the verification procedure (phase 1).

The top five most impacted sectors were data and health (each accounting for 13 notifications or 15.1%), digital infrastructure (nine notifications or 11.6%), transport (eight notifications or 10.5%) and electronic communication (seven notifications or 8.1%).

Most of the foreign investors ultimately originated from the US (43.4%), followed by the UK (29%), Switzerland (5.3%) and India (4%). The ISC also received notifications from foreign investors originating from other countries such as Canada, China, Singapore and Turkey (2 notifications each).

In 11 cases (16.2%) internal restructurings were notified, of which 81.8% did not result in a new ultimate beneficiary.

The Annual Report also provides an outlook for the second year of Belgian screening mechanism. A slight rise in the number of notified investment cases is expected.

It is also not ruled out that authorities will initiate talks to amend the existing legal framework, since several potential areas for improvement were identified.

The primary focus is on the ongoing negotiations for a new EU FDI Regulation. The European Commission’s proposal of January 2024 was discussed in a Council working party (the Working Party on Trade Questions) under the Belgian presidency from March 2024 until July 1, 2024. Once the new EU regulation is finalized, the Belgian cooperation agreement of November 30, 2022 establishing a FDI screening mechanism will be reviewed.

Finally, the Belgian authorities are determined to make every effort to continue making the Belgian screening mechanism more user-friendly, smooth and transparent wherever possible.

In her concluding remarks, the President of the ISC referred to the updated guidelines and the notification forms.

In September 2024, revised versions of the Belgian notification form and summary were published (version August 29, 2024), following an open consultation organized earlier this year, during which various law firms (including Cleary Gottlieb) provided input.

In April 2024, the ISC Secretariat published updated guidelines in the form of 81 Q&As. These guidelines aim to clarify some aspects of the scope and procedure of the Belgian FDI mechanism.

The guidelines exclude, for example, the possibility of a pre-notification ruling as well as the possibility to obtain an individual exemption from the notification requirement. In case of doubt, the ISC recommends to notify. The guidelines also confirm asset deals should be notified (if they result in change of control) and clarify the passive acquisition of control. In relation to the standstill obligation, the guidelines allow that parts of the investment not linked to the Belgian target may be implemented prior to the Belgian screening decision.

The guidelines are to be considered as a dynamic document, subject to continuous changes.

France

Close scrutiny for foreign investment in pharmaceutical sector (Biogaran and Doliprane)

Recent developments illustrate the highly sensitive nature of transactions targeting the French pharmaceutical industry (particularly since the Covid-19 crisis), with two notable examples being Biogaran and Opella. The two companies – Biogaran, a generics manufacturer, and

Opella the manufacturer of the paracetamol based product Doliprane brand owned by Sanofi – have both been coveted by foreign investors, against apparent opposition from the French authorities.

Not surprisingly, these two contemplated transactions were considered to fall in the scope of the French FDI control regime which notably covers “*activities relating to equipment, products and services*” considered as “*essential*” to the “*protection of public health*” (article R. 151-3 II 8° of the French Monetary and Financial Code). Biogaran is France’s largest generics brand, with a reported 32% market share on the generics market. Although Opella (some of whose medicines are considered strategic by the government) is less sensitive in terms of health and safety protection than Biogaran (whose entire product portfolio is considered strategic), its leading product, Doliprane is the most widely consumed drug in France in terms of volume.

The French Ministry of the Economy has been particularly active in publicizing his concerns and demands regarding these operations at the very beginning of the sale process.

On 8 September 2024, Servier finally announced it would not be selling Biogaran, its wholly owned French subsidiary, in a context of strong and early pushback from the French government. Servier had received offers in mid-June 2024, from the British investment fund BC Partners, as well as two Indian pharmaceutical groups, Torrent Pharmaceuticals and Aurobindo. According to press reports, Servier internally stated that the offers did not fulfil the criteria the group had set itself for the

sale². However, this announcement came after clear public statements by the French authorities that they did not wish for Biogaran to be sold, and that any “non-European buyer should be ready for drastic conditions”³.

In October 2023, Sanofi announced its intention to sell part of its stake in Opella, its French subsidiary in charge of manufacturing – amongst others – the Doliprane product. The French Ministry for the Economy reportedly informed Sanofi of its concerns about such a sale shortly after the announcement, and outlined it would be “quite demanding” in ensuring the preservation of paracetamol’s production within the French territory⁴. After having initially publicly announced that a French offer would be preferred, the Ministry of the Economy appeared to return to a more nuanced position, stating that commitments could be requested to ensure security of supply for the French market, guarantee health sovereignty and maintenance of industrial facilities in France⁵. The two remaining contestants for acquisition – with Advent having ultimately dropped the race – were French investment fund PAI Partners and private equity firm Clayton, Dubilier & Rice (CD&R). Sanofi finally announced it will pursue exclusive discussion with CD&R. The French Ministry in charge of Industry, Marc Ferracci, “takes note of this decision”. In a press release sent to AFP, he “reminds both

parties of the government’s points of vigilance, both economically and health-wise.”⁶

Germany

Prohibition of Chinese investment in gas turbine sector

In June of 2023, MAN Energy Solutions, a subsidiary of Volkswagen, announced the sale of its gas turbine business to Chinese CSIC Longjiang GH Gas Turbine Co Ltd. (“CHGT”).⁷ Eventually, the German government has blocked the deal, because one of CHGT’s shareholders, Chinese shipbuilder China State Shipbuilding Corporation is deemed to be close to China’s military, and another shareholder is even on the US sanctions list.

Following signing of the transaction, the German Federal Ministry for Economic Affairs and Climate Action, the authority responsible for foreign investment reviews in Germany, launched an intensive review. Investigations revealed that the buyer is state-owned and has close ties to the Chinese defense industry. This raised significant concerns about the public order and security of the Federal Republic of Germany, in particular as experts warned that the gas turbine technology from MAN Energy Solutions could be used for military purposes.

² See notably press articles 6 September 2024 in [Le Figaro](#): “Le laboratoire Servier renonce à vendre Biogaran, le leader des médicaments génériques en France”; and [L’Usine Nouvelle](#): “Le laboratoire Servier renonce pour le moment à vendre Biogaran”.

³ See e.g. [La Tribune](#), press article of 29 May 2024: *Vente de Biogaran*: “Gabriel Attal promet une « vigilance exceptionnelle » en cas de repreneur non-européen”.

⁴ See [Le Monde](#) of 29 July 2024: “La vente du Doliprane crée des frictions entre Sanofi et Bercy”.

⁵ See [Les Echos](#) of 26 September 2024: “Le duel au sommet pour le rachat du Doliprane est lancé”.

⁶ See [La Tribune](#) of 11 October 2024: “Sanofi : Doliprane pourrait tomber dans l’escarcelle d’un fonds américain”.

⁷ See publication here: <https://www.man-es.com/company/press-releases/press-details/2023/06/20/man-energy-solutions-sells-gas-turbine-business>.

The German government ultimately prohibited the sale of MAN Energy Solutions' gas turbine business to the Chinese company GHGT on July 3, 2024, approving the prohibition proposed by the Federal Ministry for Economic Affairs and Climate Action under the rules of the German FDI law. As a result, VW has decided to wind down MAN Energy Solutions' gas turbine business.

While there have been no major changes in the FDI regulatory environment in 2024 so far, this decision by the German FDI authority is in line with the previous approach taken *vis-a-vis* Chinese investors.⁸ It also shows that when it comes to acquisitions by Chinese investors, the German FDI authority does not seem to deem undertakings and conditions to be proportionate measures that could effectively address concerns about public order and security. Rather, it sees prohibition of such transactions as the only feasible approach.

Italy

Annual Report shows that volume of filings remain high but majority deemed out-of-scope and intervention rates low (22 out of 563 filings)

On July 1, the Italian Government presented to Parliament its annual report on the application of the Italian FDI law over the period January – December 2023.

While certain statistics had already been disclosed by the Intelligence (see our [Q1 newsletter](#)), the report provides a more

comprehensive review, with some interesting highlights.⁹

- The number of filings has remained significant (563), substantially in line with 2022 (590).
- Pre-notifications (in fact more similar to consultation, as available in other jurisdictions) materially increased from 43 in 2022 to 150 in 2023. This increase may show that investors and target companies have deemed helpful to seek clarity in advance of signing, but this data should in fact not be overestimated, given that the 2023 records considers a longer period (12 months, as opposed to about 3 months in 2022, when this possibility was introduced).
- The main sectors to which filings have referred are defense and national security (17.6%), healthcare (14.9%), finance (13%) communications (11%), data (8.2%), and energy (each 7.1%).
- 70% of filings concerned acquisition of shares, whereas 8% regarded corporate resolutions and 12% intra-group transactions / reorganizations.
- Conditional clearances have increased from 8 (2022) to 20, whereas, vetoes have decreased from 4 (2022) to 2 cases (Safran-Microtecnica, subsequently reversed – see our [Q2 newsletter](#);

⁸ See our article on current trends here: <https://www.clearytradewatch.com/2023/01/german-fdi-reviews-of-chinese-investments-in-2022-confirm-the-current-trend-strict-scrutiny-and-political-dimension-in-decision-making/>. Another prohibition that received extensive media coverage was the prohibition on the sale of Heyer Medical to a Chinese company, which we examined in more

detail here: <https://www.clearytradewatch.com/2022/05/germany-prohibits-acquisition-of-heyer-medical-by-chinese-investor/>.

⁹ Data reported herein exclude numbers concerning the 5G sector, whose rules apply to procurement transactions as opposed to M&A transactions.

and Petro Mat FZco / FBM Hudson).

- Unconditional clearances have been 171, substantially in line with the 2022 data (173).
- The majority of filings (314) were deemed out-of-scope, consistently with the earlier year's record (312), arguably showing that investors continue to take a very conservative approach and file on a precautionary basis in all such cases where there is a certain degree of uncertainty as to the application of the law, and this notwithstanding the possibility of pre-notifications, whereby investors are given the chance to check in advance with the Government whether the transaction is in-scope or out of scope.

Netherlands

Proposal for new sectoral investment control regime for defense industry

The Dutch government recently [published](#) a legislative proposal for its Defense and Security Related Industry Resilience Act. The proposal contains a chapter on investment control, which introduces a new sectoral investment control regime for the defense industry, supplementing the existing Dutch foreign investment framework. Within this framework, sector-specific laws (such as existing laws on telecommunications and electricity, and, if adopted, the defense regime) supplement and in certain areas supersede the general Act on Security Screening of Investments, Mergers and Acquisitions (Vifo Act).

The goal of the new defense tool is to prevent acquisitions and investments into suppliers from leading to risks to national security, hereby protecting the Dutch defense industry. The regime is set to apply to investments and acquisitions involving

(i) military goods or transportation suppliers and (ii) substantial armed forces suppliers. Transactions falling within the scope of the regime create a notification requirement. Upon analysis of that notification, the competent Minister will decide whether the parties must submit a further request for a review decision due to potential risks to national security, or whether the transaction can be implemented.

The Minister's analysis of whether such a request is needed is performed based on several risk assessment factors set out in the proposal. This includes both the general factors in the Vifo Act (including insufficient transparency of the investor, the investor being subject to sanctions, the national security situation in the investor's country of origin, and more) and defense-specific factors. The defense-specific risk assessment factors in the proposal include:

- (i) The investor's track record in performing substantial defense assignments;
- (ii) The investor's country of origin's compliance with international treaties;
- (iii) The potential degradation of the integrity and exclusivity of classified information and knowledge;
- (iv) The absence of an export control policy or the absence of a good export control record;
- (v) The investor's willingness to participate in NATO or EU defense programs; and
- (vi) The investor's involvement in the defense industry in its country of origin.

In the assessment of the review decision, the Minister will decide whether the transaction can be approved subject to requirements and further regulations to address previously identified risks to national security. As a last resort, if, after

the Minister's assessment, it appears that the transaction poses risks that cannot be controlled such requirements and regulations, the Minister can choose to prohibit the transaction.

The legislative proposal was open to reactions from the public until September 1. Where deemed necessary, input from this public consultation will be implemented into an updated proposal, which will then be subject to approval from the Council of Ministers and will be submitted to the Council of State for its opinion.

Spain

Prohibition of €619 million acquisition of Spanish train manufacturer Talgo by Hungarian consortium

On August 27, 2024, the Spanish government prohibited the acquisition of Talgo, a Spanish train manufacturer, by Ganz MaVag Europe Private Limited, a Hungarian consortium.

Talgo is a Spanish-listed company active in the manufacture of intercity, standard, and high-speed passenger trains, as well as in the development of new railway technologies (including to allow high speed trains to automatically adapt to railway tracks that have different gauges, which facilitates cross-border rail transport). It has operations in Spain, Germany, Kazakhstan, the United States and Russia. The Ganz-Mavag consortium comprised a Hungarian investment fund and the Hungarian train maker Magyar-Vagon.

In March 2024, Ganz-Mavag announced a takeover bid for 100% of the shares of Talgo at €5 per share¹⁰ and requested approval under the Spanish FDI regime.

In principle the Spanish FDI regime only applies to non-EU/EFTA investors, but the Spain government asserted jurisdiction to review the bid by virtue of a transitory provision extending the application of the FDI regime to EU/EFTA investors if the transaction value exceeds EUR 500 million or the investment concerns Spanish-listed companies, such as Talgo. This transitory provision extending the FDI regime to EU/EFTA investors is, in principle, only applicable until December 31, 2024, although such deadline has been extended in three occasions since its entry into force in 2020.

On August 27, 2024, six months after the notification of the takeover bid, the Spanish Council of Ministers announced its decision to prohibit the investment. The Council of Minister's official communication states that the rationale for the decision was "*the protection of strategic interest and national security*".¹¹ In particular, it states that the FDI agency concluded that the transaction "*would entail risks to guarantee national security and public order*" and Talgo is "*a strategic company in a key sector for Spain's economic security, territorial cohesion and industrial development.*"¹² The full decision is not public and the Council of Ministers has stated that all information contained in the file is classified.

¹⁰ See <https://www.talgo.com/inversores/en/takeover-ganz-mavag-europe-zrt>.

¹¹ See Council of Ministers communication: <https://www.lamoncloa.gob.es/consejodeministros/>

[referencias/Paginas/2024/20240827-referencia-rueda-de-prensa-ministros.aspx](https://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2024/20240827-referencia-rueda-de-prensa-ministros.aspx)

¹² See Council of Ministers communication: <https://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2024/20240827-referencia-rueda-de-prensa-ministros.aspx>

The Hungarian consortium has declared its intention to challenge the veto both at national and European level.

Prohibition decisions are rare under the Spanish FDI regime: as reported in our preceding newsletter, out of 244 transactions subject to authorization between 2020 and 2023, 24 were cleared with conditions and only one was prohibited due to the impossibility of finding effective mitigation measures, according to the Government's official report. The veto imposed on the takeover bid of Talgo by the Hungarian consortium is the second ban since the entry into force of the updated Spanish FDI regime in 2020.

Cleary Foreign Investment and International Trade Watch

Please visit the [Cleary Foreign Investment and International Trade Watch](#) for regular updates on FDI and related matters.