

**The Spanish Government amends the FDI screening regime and temporarily extends the FDI screening regime to investments made by EU/EEA investors above given thresholds.**

Royal Decree-Law 34/2020, of 17 November, on urgent measures supporting business solvency and others (**RDL 34/2020**), has been published today introducing (i) a new amendment to the foreign direct investment (FDI) screening regime applicable to critical infrastructures, supplies, technologies and industries and (ii) temporarily extending the existing FDI screening regime to EU/EFTA investments above given thresholds. The FDI regime was introduced in Spain last March,<sup>1</sup> by means of an amendment to Law 19/2003, of 4 July, on capital movements (**Law 19/2003**) (click [here](#) and [here](#) to view our initial alerts on the initial regime and its first modification).

Critical innovations include:

- (a) *Transactions subject to FDI screening*: the regime is now almost fully aligned with the notion of change of control under competition law. Henceforward, transactions involving either an acquisition of control within the meaning of the Competition Act and transactions leading to acquisition of 10 percent or more of the share capital of a Spanish company, are covered.
- (b) *Regarding the nationality of the investors*. Hitherto the FDI screening regime applied to non-EU/EFTA investors only. Now RDL 34/2020 introduces a temporary regime until 30 June 2021, making the need for FDI authorization mandatory for all foreign investments, including those stemming from EU/EEA countries, whenever the investment targets (i) Spanish companies wholly or partially listed in the Spanish stock exchange and with domicile in Spain; and (ii) non-listed companies, if the investment is above € 500 million.
- (c) *Industries subject to FDI screening*. In summary of the amendments:
  - Regarding critical technologies, (i) the reference to de definition of critical technology in Council Regulation (EC) No 428/2009, on dual use technology, is eliminated; (ii) the FDI screening regime now covers technologies that are *key to business leadership and capability* as well as *those technologies developed under programs and projects of particular interest to Spain*; and (iii) express reference is made to telecommunications, advanced materials and advanced manufacturing systems are added to the technologies already mentioned in the provision (e.g., robotics, nuclear energy or biotech, amongst many others).
  - On the supply of essential inputs, strategic connectivity services are now expressly covered as a result of the amendment.
  - Concerning the media sector, it is now mentioned that application of the FDI screening regime is without prejudice of the application of the Media Act (which includes rules on ownership restrictions to safeguard media plurality).
- (d) The trigger of FDI screening regarding investors involved in administrative or judicial investigations is narrowed to investors posing a risk of criminal or illegal activities affecting public security, public order and public health in Spain.

Finally, it is worth noting that the preamble of RDL 34/2020 the Government mentions an upcoming FDI screening regulation, of which a draft has not yet transpired.

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*The information contained in this bulletin does not constitute legal advice.*

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<sup>1</sup> Royal Decree-Law 8/2020, of 17 March, of urgent exceptional measures to face the social and economic impact of COVID-19.