FDI Screening in Spain: Recent Evolution and Insights

The Ministry of Economy has issued its report (**Report**) on foreign direct investment (**FDI**) in Spain (here); furthermore, on 19 March a seminar organized by the Spanish FDI Association (**AEFDI**) has taken place (here), gathering specialist lawyers and officials of the Spanish FDI screening Authority as well as the European Commission in a relaxed environment which has yielded some valuable outputs. This note provides selected insight on both.

I. *The Report provides detailed data on FDI into Spain for 2024*. The Report does not provide any segmented information on investment screened/not screened for FDI authorization. In summary:

- gross investment in Spain has amounted to €40.04 billion (no significant shift from 2023);
- 95% of FDI is directed towards privately held companies – only 5% to listed companies;
- greenfield and brownfield investments amount to approx. 25% of gross investment;
- main nationality of investors is (in that order): USA, UK, France, Germany, Norway, The Netherlands, Sweden, Mexico, Italy, Japan;
- main industries targeted are (in that order): energy generation, telecommunications, IT, financial services, real estate, food;
- The region of Madrid is, with over 50% of the total, by far the largest recipient of FDI, followed by Catalonia, Valencia.

II. *The AEFDI seminar* has included presentations on the geopolitical context; the application of the FDI screening regime since the Covid-19 pandemic; legal interpretation of the FDI Act and implementing Regulation; prospective law, including a discussion on outbound investment screening. Insights of relevance include:

II.1 *Duration of proceedings, prohibitions, gun-jumping.*

- 2024 has seen an improvement in the average duration of FDI screening (72 days down from 85 days in 2023);
- predictability has substantially improved (substantial reduction in the number of consultations);
- a relatively high number of files are solved with a non-subjection decision (transactions not affecting the public interest), which may reflect persistent lack of clarity of the existing law;
- It is confirmed that only two transactions have been blocked under the existing FDI screening regime, both from EU investors (***Vivendi/Prisa*** and ***Ganz Mavag/Talgo***);
- though any details are confidential (publicity may be expected only for matters reaching litigation), officials have confirmed that gun-jumping is being actively prosecuted (and fines have already been levied).

II.2 *Prospective law & regulatory reform.*

- The existing FDI implementing Regulation has provided substantial clarity three years after the current FDI screening regime entered into force; yet interpretative doubts remain (*inter alia* in areas such as industries and types of transactions caught, exemptions); hence there is high demand for interpretative guidelines;
- upcoming regulatory reform in the near term can be expected to revolve around the insertion of a two-phased system (currently one single phase in FDI reviews in Spain); increased monitoring powers modelled on merger control law; guidelines to provide information on the FDI filing form and enable a reduction of information requests to parties;
- Spain is EU's fourth largest economy in terms of outbound investments, so the area of outbound investment screening is one of great interest. In terms of impact assessment, the relative number of companies affected by such a screening device would be low. Notwithstanding the foregoing, it is not realistic to expect an outbound investment screening regulation to be in force before 2027-28.
