UK Lawmakers Introduce National Security and Investment Bill to Establish CFIUS-Like Foreign Investment Regime

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Relevant Documents:
Release
National Security and Investment Bill
Statement of Policy Intent
Impact Assessment
Impact Assessment Regulatory Policy Committee Report
European Convention on Human Rights Memorandum
Delegated Powers and Regulatory Reform Committee Memorandum
Overview of NSI Bill Factsheet
NSI Regime Process for Businesses Factsheet
Process Flow Chart for Businesses
Consultation on Mandatory Notification Sectors

Takeaways

- The National Security and Investment Bill was introduced and given its first reading in the House of Commons today, Wednesday, Nov. 11. The bill, which was sponsored by Business Secretary Alok Sharma, will be considered by members of parliament at the second reading for which a date has not been announced.
- The bill aims to update the government's powers to investigate and intervene in investment to protect national security and envisages a foreign investment regime akin to CFIUS.
- If today's legislation is enacted, transactions between U.K. and U.S. businesses are likely to receive quicker reviews by both the U.K. and CFIUS, according to Nevena Simidjiyska, a partner at Fox Rothschild. While U.K. companies were already on CFIUS' "whitelist" of friendly foreign investors, today's legislation is likely to strengthen CFIUS' trust in investors based in the U.K., she said.

Today, Wednesday, Nov. 11, a draft version of the U.K.'s National Security and Investment Bill was introduced and given its first reading in the House of Commons.

The bill, which aims to "modernise the government's powers to investigate and intervene in potentially hostile foreign direct investment," calls for investment screening tools which bear several similarities to CFIUS in the United States.

"The new regime will update the UK's current powers - which are almost 20 years old and do not reflect the threats we face today - and bring them in line with those of our closest allies, without hindering the UK's world-leading reputation as an attractive place to invest," a press release accompanying the draft legislation stated.

According to Nevena Simidjiyska, a partner at Fox Rothschild who counsels clients on CFIUS matters, the bill calls for investment screening measures "very similar" to those implemented by CFIUS, including the length of the initial review timeline. "It looks like it's going to be a 30-day review process, as it is here in the U.S.," she said.

Simidjiyska noted that just like U.S. lawmakers, U.K. legislators likely had in mind certain Chinese investments when drafting the bill. For example, the bill allows for retroactive review and enforcement against transactions which were not notified to the U.K. government. "We're seeing that CFIUS here in the U.S. is going back retroactively to deals and forcing divestment," said Simidjiyska, noting that most of those retroactive actions involved Chinese acquirers that chose not to file notifications.

Because of these and other CFIUS-like features in the U.K. legislation, Simidjiyska anticipates working closely with their U.K. counterparts when drafting notifications for transactions that have both a U.S. and U.K. dimension. "We would expect to work closely with our UK colleagues on deals coming from Taiwan or China, for example, where both U.K. and U.S. operations are involved," Simidjiyska said.

However, much quicker reviews of U.K.-U.S. transactions are anticipated if today's bill becomes law. This may entail the use of short-form declarations, where parties provide a brief notification of a transaction in anticipation of an expedited review and decision. According to Simidjiyska, while U.K. companies were already on CFIUS' "whitelist" of friendly foreign investors, today's legislation is likely to strengthen CFIUS' trust in investors based in the United Kingdom. "If it's a UK company taking in U.S. investment, it would receive a fairly quick look, and vice versa," she said.

The NSI bill gives the secretary of state the ability to screen investments and address any national security risks of such transactions. The bill provides that following acceptance of the notification by the secretary of state, a 30-day screening period commences. Following the initial period, the secretary of state will determine whether to clear the transaction or issue a "call in" notice, which will start another 30-day review period, which is extendable by an additional 75 days should the government find a national security risk or a need for further investigation.

The NSI review is intended to occur in parallel with any antitrust investigation by the Competition and Markets Authority.

The U.K. government is consulting on the sectors and subsectors that should be included within the scope of the "mandatory regime" in the bill. The intent is to "ensure that the Government is informed of potential acquisitions of control or ownership in these particularly sensitive areas, and can take action accordingly to investigate and mitigate any national security risks."

The proposed sectors include: (1) advanced materials; (2) advanced robotics; (3) artificial intelligence; (4) civil nuclear; (5) communications; (6) computing hardware; (7) critical suppliers to government; (8) critical suppliers to the emergency services; (9) cryptographic authentication; (10) data infrastructure; (11) defense; (12) energy; (13) engineering biology; (14) military and dual use; (15) quantum technologies; (16) satellite and space technologies; and (17) transport.

The consultation period will close Jan. 6 at 6:45 p.m. ET.

The bill is subject to parliamentary debate and amendment before it becomes law. Between Nov. 12 and the legal effectuation of the NSI regime, businesses are able to seek advice from BEIS about a triggering event.

--Matt Tracy and Lucas Ballet