Irish FDI Screening: Key developments and implications

Dervla Broderick

Hello everyone and welcome to this podcast. I'm Dervla Broderick, a partner in A&L Goodbody's EU, Competition and Procurement team.

Peter Murphy

And I'm Peter Murphy, a solicitor on Dervla's team.

Dervla Broderick

Today we are tackling a topic that's increasingly important in cross-border M&A, Ireland's foreign direct investment screening regime. We'll be unpacking what we've learned from the first annual FDI screening report recently published by the Department for Enterprise Trade and Employment. The report covers transactions notified in 2025 and it gives us a long anticipated first glimpse of how the regime is operating in practice.

Peter, I know there's a lot that we could cover today. We've got the department statistics to go through and what they mean for our clients. We also want to zoom out and look at the EU reform agenda, and I'd really like to discuss the recent Dutch decision to block a US company from acquiring a secure cloud provider. But before we get into all of that, how about we step back for a moment and give our listeners a quick refresher on when the regime actually kicks in. Would you mind setting the scene for us?

Peter Murphy

Of course, Ireland's investment screening regime gives the Minister for Enterprise, Tourism and Employment the power to assess certain third country investments on security and public order grounds. It came into force on the 6th of January 2025 with the commencement of the Screening of Third Country Transactions Act 2023. And for in-scope transactions, the regime is mandatory and suspensory, meaning that relevant deals must be notified and can't be put into effect until they've been cleared by the Minister.

Dervla Broderick

And what actually triggers a potential notification?

Peter Murphy

Well, the regime applies to third country investors, which means investors from outside the EU, the EEA and Switzerland. They need to notify acquisitions of control of assets or undertakings in Ireland which are engaged in certain specified sectors or activities and where the transaction value is 2 million euro or more. You also need to notify changes in voting rights, so if you were to go from 25% or less to more than 25% or from 50% or less to more than 50%.

Dervla Broderick

Okay, you mentioned there that there needs to be activities in certain sectors. It's the activity of the target business that's a key determinant in whether a notification needs to be made, right?

Peter Murphy

Exactly. There are five sensitive sectors in the legislation, and it can take significant diligence to work out whether it targets activities fall within scope. Although the purpose of the regime is to protect security and public order, this isn't just about tanks and missiles. The sensitive areas cover critical infrastructure, critical technologies and dual-use items, critical inputs, access to sensitive information and the freedom and pluralism of the media.

Dervla Broderick

Got it. So that means deals involving anything from data centres to healthcare, financial infrastructure to cyber security could all be subject to screening. That said, Ireland has not suddenly become a closed market.

Peter Murphy

Definitely not. The regime was designed to sit alongside Ireland's open investment policy. The department's own guidance says the screening mechanism should be proportionate and tailored to security and public order risks without undermining Ireland's attractiveness to inward FDI. And the good news is we can actually see evidence of that in the first annual report.

Dervla Broderick

That seems like a really good point to turn to the report itself. Let's look at the numbers first off. In 2025, the department received 102 notifications. That's substantially fewer than we had predicted before the regime became operational.

Peter Murphy

It really is and it's far fewer than the numbers received under similar screening regimes, like Sweden for example, which saw over 1200 notifications in its first full year. But what's even more encouraging is that 66 of those 102 notifications didn't even proceed to formal screening because they didn't meet all of the criteria for mandatory notification. Essentially the minister decided that there was no jurisdiction to review them.

Dervla Broderick

I do find the number of out of scope notifications really surprising. It suggests a large proportion of precautionary filings.

Peter Murphy

It does. This actually accounted for a majority of notifications. Only 26 of the 102 notifications went into a full screening review. When we stripped out the notifications which were still subject to review at the end of the year and those which were withdrawn or rejected, the department screening rate was only around 28%.

Dervla Broderick

Okay I think we should come back to those 26 screened transactions in a little while but am I right in saying that we had no transactions called in and no transactions blocked in Ireland in 2025?

Peter Murphy

You are, we didn't have any at all. And conditional clearances were quite rare. Only two of the 26 screen transactions were cleared subject to conditions. And even then, those conditions only related to maintaining contractual arrangements for the provision of critical services by the target company, not divestments.

Dervla Broderick

So based on these numbers it does seem like the department is taking a pragmatic and measured approach but there's still some uncertainty around what the department will take forward for a full screening review. Peter, on review timelines I think we have some good news to report there?

Peter Murphy

We do indeed. Just to remind everyone, the statutory timelines give the Minister 90 calendar days from issuing a screening notice to making a decision, with the possibility of that being extended to 135 days in certain circumstances. But in practice the timelines have actually been much shorter.

Dervla Broderick

Okay, that's great. First up, how long does it usually take to clear the first hurdle of the initial assessment of the notification, the step before the issuing of a screening notice?

Peter Murphy

Well, the department targets completion of its initial assessment within 10 calendar days and in 2025 the average was actually only 9.76 days although the report does mention one case that stretched to 47 days. We know that around two-thirds of initial assessments were concluded within the 10-day target so we can only assume that the longer periods are outliers.

Dervla Broderick

Yeah that makes sense. But looking at the screening review itself what can we expect based on 2025 figures?

Peter Murphy

Well, the shortest screening review period in 2025 was just 27 calendar days and two-thirds of the 26 screen transactions were cleared in under 40 calendar days.

Dervla Broderick

27 days, that's really encouraging for deal teams. You could potentially be looking at clearance within 40 to 50 days of notification for cases that go to a full screening review.

Peter Murphy

I should add though that we can't use that as our working assumption. The range for clearance decisions extends all the way up to 85 days, which is almost the statutory limit.

Dervla Broderick

So from a deal planning perspective, our practical advice is still to build an Irish FDI condition into the timetable where the regime is engaged and to think carefully about long stop dates, interim covenants and risk allocation.

Peter Murphy

And just from our own experience, a quick review is less likely if the target holds Irish government contracts or if it's involved in providing critical digital or communications infrastructure, including providing services to critical infrastructure.

Dervla Broderick

Let's stay on the sensitive sectors for a minute. The report reveals that critical infrastructure was by far the most common trigger for a review. I think it accounted for almost 70% of all screen transactions. That's a large concentration.

Peter Murphy

It certainly is, although that probably tells us more about Ireland's economy than it does about FDI screening priorities. Remember that the department's guidance expressly treats data processing, data storage, communications and digital infrastructure as potentially relevant forms of critical infrastructure, and that the proportion of global cloud infrastructure hosted in Ireland is out of all proportion to Ireland's size.

Just to give you some context, data centres accounted for 22 percent of all metered electricity consumption in Ireland in 2024. There's also a lot of telecoms infrastructure here because of our geographical position between Europe and North America, and on the flip side industries like advanced manufacturing and defence which might attract FDI, and other jurisdictions aren't as well developed in Ireland. These numbers aren't necessarily an indication of the department's priorities; they're just a reflection of the notifications that the department is receiving.

Dervla Broderick

Yeah, I think those are really interesting insights. What about after critical infrastructure?

Peter Murphy

After critical infrastructure, we had critical technologies and dual-use items, then critical inputs and access to sensitive information. There were no screenings related to media plurality.

Dervla Broderick

I do find it interesting that transactions involving critical tech and dual use items didn't feature more prominently. I guess that may well change over time as we see more inward investment in Irish defence technology start-ups.

Peter Murphy

We also have some stats on investor origin. Of the 26 transactions that were screened, 21 involved ultimate investors from the US or the UK. The remaining investments originated in the UAE, Japan, Monaco, and China. Do you have any thoughts on that, Dervla?

Dervla Broderick

So, I wouldn't read that as particular jurisdictions being targeted. To me, this just reflects the reality that US and UK investment is highly significant in the Irish economy. The Irish regime is framed around risk to security and public order rather than nationality as such. Moving to the cross-border picture, another point I wanted to call out is the extent of EU cooperation in 2025. From what I understand from the report, Ireland shared 23 notifications with other member states and with the European Commission through the EU cooperation mechanism. It received 74 notifications shared by other member states because there was an Irish element like where the target had a subsidiary or substantial business here.

Peter Murphy

And were there any actions taken on foot of those referrals?

Dervla Broderick

So far, the cooperation seems to happen relatively light touch. No formal comments or commission opinions were issued in relation to those cases, although there were a small number, maybe two I think, additional information requests. But the practical point is still important. FDI filings are not siloed by jurisdiction when a transaction is notified in one member state, other member states and the European Commission may become aware of it through the cooperation mechanism. That can be an important factor where the target group has subsidiaries, assets or material activities across the EU.

Peter Murphy

So, if a target has some kind of subsidiary or activity in Ireland but you don't think that a filing is necessary, the department might still hear about your transaction if you were to make an FDI filing in another jurisdiction like in, say, Belgium.

Dervla Broderick

Exactly, so it's helpful to engage with local council in order to establish a proper paper trail setting out the rationale for filing decisions. While no transactions were called in in Ireland in 2025, we know that other countries are actively contacting parties to request information on why notifications have not been made.

Peter Murphy

And I suppose if you are notifying across multiple jurisdictions, it would be very important to be consistent in terms of investor descriptions, ownership structures, financing sources, target activities and the deal rationale.

Dervla Broderick

Exactly. We should always act on the basis that the regulators will be talking to each other. Peter, before we look beyond Ireland, there's one more domestic development to mention. The annual report didn't come alone. The department also published updated inward investment screening guidance with some helpful clarifications. I think you've been looking at this point more closely.

Peter Murphy

I have. One clarification that stands out to me is on internal restructuring. The screening of Third Country Transactions Act specifies that internal restructurings are not within scope, but the updated guidance clarifies that a restructuring will be notifiable if it introduces a new Third Country party into the ownership structure.

Another point is on value. The updated guidance clarifies that the 2-million-euro value threshold relates to the transaction, including any international dimension, and that related transactions between the parties must be taken into account.

Lastly, there is a practical point on timing. The guidance makes clear that notification may be made on the basis of a good faith intention to complete, which is helpful for transaction planning where parties want to start the review before signing or before all of the closing mechanics are finalised.

Dervla Broderick

Yeah, I agree. These are all really helpful points. I would have been interested, and I don't think I'm alone in this, to see some more in-depth clarifications on the scope of the sensitive sectors. I guess we'll have to see over the next few months if the department plans to develop more guidance to assist with these types of assessments.

And that takes us, I think, somewhat seamlessly to the EU reform agenda, which may impact on the department's plans for additional guidance. The current EU FDI regulation has been in place since October 2020 and that created the cooperation mechanism between member states and the Commission. But it didn't require every member state to operate its own national screening regime.

Peter Murphy

That's now changing. The European Parliament approved a revised EU FDI regulation on the 19th of May which the council formally adopted in June. The headline change is that screening will now be mandatory in all member states.

Dervla Broderick

And another big change relates to indirect control. The revised framework extends screening to investments made by EU companies that are ultimately owned or controlled by non-EU investors. This responds to concerns that foreign control could be rooted through EU-incorporated vehicles.

Peter Murphy

The regulation also sets a common floor across the EU. Prior authorization will be required in a minimum set of sensitive sectors, including dual use and defence items, semiconductors, quantum technologies, certain AI systems and certain types of financial infrastructure. There are also strengthened national procedures, improved cooperation mechanisms and new EU-level digital tools.

Dervla Broderick

For Ireland, I mean personally and I think you'd agree with this, we'd call this evolutionary rather than revolutionary. The Irish FDI screening regime already captures relevant direct and indirect third country investments, though the revised EU rules should increase harmonisation, coordination and the visibility of multi-jurisdictional transactions. The broader message is that FDI screening is now a standard workstream in cross-border M&A, just like we're used to with merger control.

Peter Murphy

That's right, and it's worth emphasising, too, that these are distinct workstreams and that outcomes can sometimes diverge. That's just what we saw in the recent prohibition of the Kyndryl/Solvinity transaction in the Netherlands, which attained competition clearance but was blocked on investment screening grounds.

Dervla Broderick

Exactly. For those unfamiliar with the transaction, this concerned a proposed acquisition of Solvinity, a Dutch company that operates a digital identification platform which is used by citizens in the Netherlands to access government services. The prospective buyer, Kyndryl, is a US IT infrastructure services provider, one that was spun off from IBM in 2021 as a separate and independent listed entity.

Peter Murphy

And the issue here was to do with data security, wasn't it?

Dervla Broderick

Yes, one of the big concerns seems to be that an acquisition by Kyndryl could bring Solvinity within reach of US legislation, like the CLOUD Act, which could potentially allow US authorities to access data held by European subsidiaries of US companies, even if it's stored on servers outside the US. Ultimately, most political parties in the Netherlands called on the government to block the transaction.

Peter Murphy

What I find really interesting about this decision is that the problem wasn't to do with the ownership of shares. This review focused on legal exposure, data access, operational continuity and whether sensitive public infrastructure could become subject to foreign legal compulsion.

Dervla Broderick

Yeah, I agree it's super interesting but I think we should be careful not to overstate its significance. The Dutch government has emphasised that its framework is country neutral, it's risk based, it's proportionate and that the Netherlands continues to value foreign technology companies including US companies.

Peter Murphy

And apparently the parties suggested that they could have found ways to mitigate the concerns if they just had more time.

Dervla Broderick

That said, it does feel like a marker, especially when you view it against the backdrop of the European drive for greater competitiveness. So Peter, let's think about how we bring all of this together and come back to Ireland. What should Irish and international deal teams make of all of this?

Peter Murphy

Well, for me, the overriding message is that the statistics from the first year of the Irish FDI regime are reassuring. 102 transactions were notified, only 26 went to full screening, no deals were prohibited and only two were cleared subject to conditions. That said, this is not a box-ticking exercise, and we can expect that the department will intervene wherever it thinks appropriate. The other point is that parties need to be thinking at an EU-wide level from the outset. The direction of travel is towards more coordination, so multi-jurisdictional filing strategies need to be coordinated from the outset and not treated as a series of separate local exercises.

Dervla Broderick

Yeah, I agree with all of that and I would just add that we shouldn't define national security too narrowly. The Dutch decision is really a reminder that investors in data-heavy and cloud-related assets should think about wider concerns. These can become potentially central screening issues.

Peter Murphy

Definitely.

Dervla Broderick

Thanks so much Peter for the discussion and thanks to those listening. If you would like to discuss Ireland's FDI screening regime, any EU level developments or how these issues may affect a live transaction, please do contact one of us or any member of our EU competition and procurement team.

Peter Murphy

And just before you go, in case anyone missed it, our podcast discussing below threshold transactions under Irish merger control is available on the ALG website.

Dervla Broderick

That is a great plug Peter, especially as the new increased thresholds are in effect from 1st July.