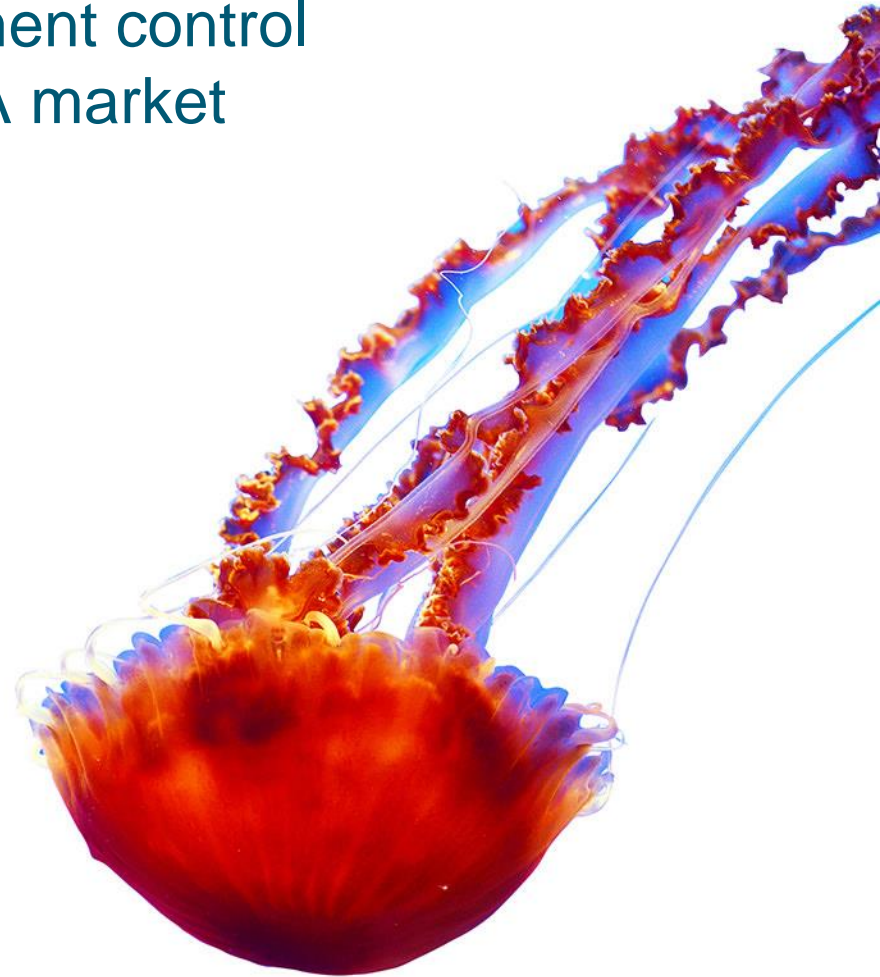


# Impact of growing foreign investment control regulations on the European M&A market

ECLA General Counsel Roundtable  
24 November 2020



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# Foreign investment control regulations on the rise

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Nothing new, but  
wider & wider in  
scope

Global trend  
towards  
protectionism



EU FDI Screening  
Regulation  
(EU) 2019/492

COVID-19  
accelerated  
development

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# Impact on M&A transactions: **Preparation**

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## Consider impact of FDI controls as early as possible

 **Target:** Active in sectors which require FDI controls?

 **Purchaser:** "Foreign" investor?

- Timing (FDI may well be the long pole in the tent)
- Expectation management
- As a seller: Select bidders early in the process
- As a purchaser: Does FDI increase / reduce your chances?
- Strategy if FDI controls are voluntary
- Develop mitigation strategy

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# Impact on M&A transactions: **Due Diligence**

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## **Seller**

Preparation of the dataroom:

- Potential requirement to protect sensitive information
- Separate datarooms for different bidders?
- Clean team approach?

## **Purchaser**

- Due diligence information request list needs to include FDI relevant questions (target and subsidiaries)
- Screen the dataroom also for relevant FDI information
- How to deal with information restrictions?

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# Impact on M&A transactions: **SPA negotiations**

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Long stop date

Responsibility  
for FDI filing and  
fees

FDI condition  
precedent

FDI mitigation /  
obligations to  
accept  
commitments

Conduct  
between signing  
& closing

Information  
restrictions and  
integration  
planning

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# Impact on M&A transactions: **FDI Filings**

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- Formalities and timing vary in the different jurisdictions
- Since 11 October 2020 : EU screening applicable
- Negotiating commitment letter and covenants



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# Thank you

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