

## Investment Screening in the European Union

- New EU framework for foreign investment control
- National security risks and the Capital Markets Union
- Critical technologies, infrastructure, inputs, data, media
- Strategic implications for FDI and cross-border M&A

Online Conference, 12-13 November 2020

**UP  
GRADE**  
YOUR LEGAL  
EXPERTISE

**Banking,  
Financial Markets  
and Company Law**



### Speakers and Chairs

**Sylvia Baule**, Deputy Head of Unit, DG TRADE, European Commission, Brussels

**Jacques Bourgeois**, Senior Advisor, Sidley Austin, Brussels

**Fabien Gehl**, Deputy Head of Unit, Technology and Security, FDI Screening, DG TRADE, European Commission, Brussels

**Steffen Hindelang**, Professor, University of Southern Denmark, Odense

**Sven De Knop**, Partner, Sidley Austin, Brussels

**Clémence Largé**, Deputy Head of Unit, Foreign Investment Office, French Treasury, Paris

**Damien Levie**, Head of Unit, Technology and Security, FDI Screening, DG TRADE, European Commission, Brussels

**Jens Hillebrand Pohl**, Course Director, ERA; Lecturer, Maastricht University

**Joachim Pohl**, Policy Analyst, OECD, Paris

**Bärbel Sachs**, Partner, Noerr, Berlin

**Sven Sattler**, Legal Officer, German Federal Ministry for Economic Affairs and Energy, Berlin

**Jukka Snell**, Professor, University of Turku

**Eva Storskubb**, Associate Professor, Uppsala University; Counsel, Roschier, Stockholm

**Alejandra Torres Camprubí**, Associate, Foley Hoag, Paris

**Naboth van den Broek**, Partner, WilmerHale, Washington DC

**Jaap van Etten**, CEO and Founder, Datenna, Eindhoven

### Key topics

- How to interpret and apply Regulation 2019/452 in practice
- How to identify and mitigate risks to EU and Member State security or public order
- Impact on EU foreign direct investments (FDI), takeovers and M&A transactions
- Ownership due diligence for purposes of foreign investment control
- Best practices for Member State authorities, foreign investors, legal counsel and financial intermediaries
- Legal or administrative recourse against screening decisions

Language  
English

Event number  
220SD92

Organiser  
Jens Hillebrand Pohl (ERA)



With the support of the Erasmus+ programme  
of the European Union

# Investment Screening in the European Union

## Thursday, 12 November 2020

13:45 Opening of the conference

### I. THE LAW AND POLICY OF INVESTMENT SCREENING

Chair: *Steffen Hindelang*

#### 14:00 The EU investment screening policy and framework

- Legislative background, principal policy considerations and design choices
- Key considerations and elements of the EU investment screening framework
- Challenges of implementation, first experiences and outlook

*Sylvia Baule, Damien Levie*

#### 14:45 Roundtable debate on Europe's investment screening policy and mechanisms

- Harmonising EU investment control regimes: cooperation and challenges
- Finding balance between strategic interests and free movement of capital
- Early lessons from the application of the new screening framework

*Clémence Largé, Damien Levie, Joachim Pohl, Sven Sattler, Steffen Hindelang (moderator)*

16:00 Break

### II. THE NEW FRAMEWORK FOR INVESTMENT SCREENING IN THE EU

Chair: *Jens Hillebrand Pohl*

#### 16:30 EU Screening Regulation 2019/452: an outline

- Legal basis, scope of application, key definitions and material provisions
- The five critical sectors: technology, infrastructure, inputs, data and media.

*Steffen Hindelang*

#### 17:15 Roundtable on screening criteria and security/public order threat assessments

- Review of EU jurisprudence on 'public policy' and 'public security' for purposes of the derogation from the free movement of capital.
- Concretizing 'security' and 'public order' in practice in the application of the Screening Regulation: executive autonomy vs legal certainty

*Sylvia Baule, Steffen Hindelang, Jukka Snell, Jaap van Etten, Jens Hillebrand Pohl (moderator)*

18:30 End of first conference day

## Friday, 13 November 2020

### III. INVESTMENT SCREENING IN THE EU MEMBER STATES

Chair: *Jukka Snell*

#### 09:00 Panel presentations on Member States investment screening and EU cooperation

- Overview of Member States investment screening mechanisms: key comparable variables of substantive law across major jurisdictions
  - Operational challenges encountered in practice at Member State level
  - The cooperation mechanisms and the role of the European Commission
- Fabien Gehl, Clémence Largé, Sven Sattler, Jukka Snell (moderator)*

10:30 Break

## Objective

This conference will help practitioners to understand the new investment screening framework introduced in 2019 and which will enter into force on 11 October 2020. It will explain how it will affect the free movement of capital, mergers and acquisitions (M&A) and other foreign direct investments into the EU.

Practical aspects for Member State screening authorities and for in-house and external legal counsel acting for foreign investors and target companies in European M&A will be addressed.

## Who should attend?

Staff of EU and national screening authorities, in-house lawyers at private-sector financial institutions, lawyers in private practice.

## You will learn about...

- how the new EU investment screening framework will be applied in practice
- to what types of investments and investors the new screening framework will apply
- from when the new investment screening framework will apply to affected investments
- what factors will determine whether an investment is screened
- what the steps are in the screening process at national and EU level
- what legal or administrative remedies are available to affected investors
- what factors are critical for the screening of investments in critical infrastructure, inputs, technologies
- best practices and advice for investors, target undertakings and screening authorities
- how capital allocation will be affected by screening in critical sectors
- how third-country investors and the funding of strategic investments are affected by investment screening

## Your contact persons



Jens Hillebrand Pohl  
Course Director  
E-Mail: [jpohl@era.int](mailto:jpohl@era.int)



Tatsiana Bras-Gonçalves  
Assistant  
E-Mail: [tbras@era.int](mailto:tbras@era.int)  
Tel.: +49 (0)651 937 37 221

---

#### IV. THE ROLE OF INVESTORS AND TARGETS IN THE SCREENING PROCESS

---

Chair: Jens Hillebrand Pohl

- 11:30 **Panel presentations on investment screening from a business perspective**
- Participation of affected businesses in national vs EU composite procedures
  - Procedural rights at the administrative stage: right to be heard, right of access to documents and other rights to good administration
  - Mitigation: concept, purpose, role in practice, effectiveness and best practices
- Sven De Knop, Bärbel Sachs, Naboth van den Broek,  
Jens Hillebrand Pohl (moderator)*

12:45 Break

---

#### V. RECOURSE AGAINST SCREENING DECISIONS, ACTIONS AND OMISSIONS

---

Chair: Steffen Hindelang

- 13:45 **Roundtable on adjudicative remedies in the context of screening**
- Overview of remedies and causes of action: legal vs. administrative, Member State vs. EU levels; ISDS
  - Deference to the executive: Justiciability/arbitrability, scope and standard of review
  - Contesting security threat assessments: concretizing security
- Jens Hillebrand Pohl, Eva Storskrubb, Alejandra Torres Camprubí,  
Steffen Hindelang (moderator)*

15:00 Break

---

#### VI. IMPLICATIONS FOR M&A AND FDI TRANSACTIONS

---

Chair: Jens Hillebrand Pohl

- 15:30 **Roundtable on investment screening and the future of capital mobility in the EU**
- Investment screening and merger control: towards a joint 'enhanced' review?
  - Covid-19, climate change and the expanding notion of 'security'
  - Managing the risk of blocked M&A and FDI transactions: industry insights
- Jacques Bourgeois, Bärbel Sachs, Naboth van den Broek,  
Jens Hillebrand Pohl (moderator)*

17:00 End of conference

---

For programme updates: [www.era.int](http://www.era.int)  
Programme may be subject to amendment.

#### CPD

ERA's programmes meet the standard requirements for recognition as Continuing Professional Development (CPD). This event corresponds to **8.5 CPD hours**.

#### Interactive online conference

The online conference will be hosted on ERA's own online platform. You will be able to interact immediately and directly with our top-level speakers and other participants. We will make the most of the technical tools available to deliver an intensive, interactive experience. As the platform is hosted on our own server, the highest security settings will be applied to ensure that you can participate safely in this high-quality online conference.

#### Save the date

**Annual Conference on Anti-Money Laundering and Financial Compliance in the EU 2020**  
Online Conference, 5-6 November 2020

**Annual Conference on Financial Regulation and Supervision in the EU 2020**  
Online Conference, 10-11 December 2020

#### e-Learning

**The New Investment Screening Framework: Impact on Financial Institutions**  
*Henning Berger*

**Regulating LIBRA – Supervisory Challenges of Facebook's Cryptocurrency**  
*Dirk A. Zetzsche*

[www.era.int/elearning](http://www.era.int/elearning)