

## Call-in powers under the Irish Screening Act

Insights - 12/11/2024

The Screening of Third Country Transactions Act 2023 (**the Act**), which we previously summarised in [this article](#), is expected to enter into force in Ireland in January 2025.

In addition to certain mandatory notification provisions, the Act provides a power for the Minister of Enterprise, Trade and Employment to call in and review transactions that involve so-called "third country undertakings." These may pose risks to the "security or public order" of Ireland. This article focuses on the key elements of the call-in power, which applies to transactions which are either not notifiable under the Act, or to ones which should have been notified, but were not.

### Scope of the Act

The Minister may review any transaction, regardless of whether it is notifiable, if there are reasonable grounds to believe that the transaction affects, or would be likely to affect, security or public order in Ireland. This applies in the case of a transaction involving a third country undertaking, or a person that relates to such an undertaking acquiring or changing the extent to which it has:

- control of an asset in the State
- control of or an interest in an undertaking in the State
- legal rights in relation to a person, asset, or undertaking in the State
- the ability to exercise effective participation in the management or control of an undertaking in the State
- the ability to exercise control over an undertaking in the State through a change in ownership or legal structure of that undertaking

For these purposes, "control" means acquiring or increasing an interest to above 25%, or acquiring

or increasing an interest to above 50%.

For the purposes of the Act, a "transaction" is very broadly defined, to include any acquisition, agreement or other economic activity which results in a change of control of an asset in Ireland or the acquisition of all, part of or any interest in an undertaking in Ireland. Thus, the acquisition of shares in a third country company which has Irish assets would fall within the scope of the Act, but only if the effect of such acquisition affects the security or public order in Ireland.

## **Time limits**

For non-notifiable transactions, the Minister can call-in a transaction for review up to 15 months after the transaction is completed. For transactions that are not notified but should have been, the Minister may review them within five years from the date of completion, or within six months from the date the Minister first becomes aware of the transaction, whichever is later.

## **Retrospective element**

The Minister has the authority to review transactions that have completed in the 15 months prior to the commencement of the Act. This retrospective element is designed to ensure that transactions completed before the Act came into effect are also scrutinised if they pose risks to security or public order in Ireland.

## **When is a transaction likely to affect security or public order in Ireland?**

The Irish Screening Act provides detailed criteria for the Minister to assess whether a transaction affects or is likely to affect the security or public order of the State. The specified criteria are as follows:

- Whether a party to the transaction is controlled, through ownership structures or funding, by a government of a third country, including state bodies or armed forces, and the extent to which such control is inconsistent with the policies and objectives of the Irish state.
- The extent to which a party to the transaction is already involved in activities relevant to the security or public order of Ireland at the time the transaction is being reviewed.
- Whether a party to the transaction has previously taken actions affecting the security or public order of Ireland.
- Whether there is a serious risk of a party to the transaction engaging in illegal or criminal activities.

- Whether the transaction presents, or is likely to present, a person with an opportunity to undertake actions that are disruptive or destructive to persons in Ireland, enhance the impact of such actions, or improve access to sensitive undertakings, assets, people, or data, or undertake espionage affecting or relevant to Irish interests.
- Whether the transaction is likely to have a negative impact on the stability, reliability, continuity, or safety of critical infrastructure, critical technologies, dual-use items, supply of critical inputs, or access to sensitive information.
- Whether the transaction would result in persons acquiring access to information, data, systems, technologies, or assets of general importance to the security or public order of the State.
- Where applicable, the Minister must consider comments from other Member States and the opinion of the European Commission.
- The extent to which the transaction affects the security or public order of another Member State or the European Union as a whole.
- The extent to which the transaction affects projects or programmes of EU interest.

## **Powers of the Minister when calling-in**

If the Minister decides to call-in a transaction, the Minister must issue a screening notice to the parties. The subsequent effect of this is the suspension of the implementation of the transaction or any steps towards it until a decision has been made. In exceptional circumstances (where a transaction has not been notified by the parties and it would manifestly be contrary to security or public order to issue a screening notice), the requirement to issue a screening notice will not apply, and the Minister can proceed to take a decision on the transaction without notice.

When taking a screening decision, the Minister may:

- prohibit the transaction from being completed
- allow the transaction to proceed subject to specified conditions aimed at protecting the security or public order of the State
- direct parties to take actions to mitigate the effects of the transaction on security or public order, even if the transaction has already been completed
- permit the transaction to proceed to completion

The screening decision must be conveyed to the transaction's parties (together with reasons, unless providing reasons would jeopardise security or public order) within 90 days from the screening notice (extendable by notice to 135 days). If no decision is taken within that period, the

transaction may complete.

## Similar UK legislation

The UK's National Security and Investment Act 2021, which has similar objectives to the Screening Act, has been in force since January 2022 and the approach taken by the UK government under this legislation may be instructive.

In the past two years, approximately 870 transactions have been reviewed under the UK legislation per year, with a clearing rate of approximately 95% for both years. The sectors most often subjected to final orders (unwinding or blocking) were the military, defence and advanced materials sectors. Critical suppliers to the UK government - particularly those in such sectors - feature prominently in the annual reports for both years. There has been a notable focus on the energy, communications, and advanced technologies sectors (e.g., computing hardware and quantum technologies). These sectors consistently show a high number of notifications and call-ins, reflecting their importance to UK national security.

The annual reports for the 2022 / 23 and 2023 / 24 periods maintain that the approach of the UK government is light-touch and proportionate, intervening only when necessary to protect national security. The UK government maintains that it is country-agnostic, while remaining vigilant about acquisitions from countries that pose higher national security risks. That said, investments associated with China have prominently featured in call-ins and final orders in the UK. In the period of 2022 to 2023, 42% of call-ins and 40% of final notifications involved Chinese acquirers.

## Conclusion

The scope of the Minister's powers to call-in transactions is likely to be determined by the Irish courts. In the meantime, parties who have undertaken a transaction within the past 15 months and which may fall within the scope of the Irish Screening Act should seek legal advice.

Ogier's Corporate team in Dublin can provide comprehensive guidance and support to navigate the legal complexities of the Screening Act, ensuring compliance and mitigating potential risks.

## How Ogier can help

Speak to our Irish Corporate law team about navigating the legal complexities of the Screening of Third Country Transactions Act 2023 to ensure compliance and mitigate potential risks. Their contact details are provided below.

### About Ogier

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