BRUSSELS REGULATORY BRIEF: JULY AND AUGUST 2025

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EU Policy and Regulatory Newsletter

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ANTITRUST AND COMPETITION

The General Court of the European Union Upholds the European Commission's Decision to Assess Boissons Heintz/Brasserie Nationale Acquisition Under Article 22 of the EU Merger Regulation

On 2 July 2025, the General Court of the European Union confirmed that transactions below the EU merger filing thresholds may be referred upward to the European Commission (Commission) by a Member State that has not adopted a merger-control regime, such as Luxembourg. It also clarified the substantive conditions of the upward referral under Article 22 of the EU Merger Regulation.

The Commission Launches a Public Consultation on the Draft FSR Guidelines and the Review of the FSR

On 18 July 2025, the Commission launched a public consultation on the draft Guidelines on the application of the Foreign Subsidiaries Regulation (FSR), inviting feedback by 12 September 2025. On 12 August 2025, the Commission also launched its first review of the FSR, inviting feedback by 18 November 2025.

The Commission Conditionally Clears Naspers' Just Eat Takeway.com Acquisition

On 11 August 2025, the Commission conditionally cleared Naspers' € 4.1 billion acquisition of Just Eat Takeway.com, requiring Naspers to divest its existing cross-shareholding into Delivery Hero, a direct competitor of the target. This condition seeks to address competition concerns in five EU markets.

FINANCIAL AFFAIRS

Commission Launches Consultation to Review Solvency II Delegated Act

The Commission has launched a consultation on draft amendments to the Solvency II Delegated Regulation, aiming to ease investment rules, embed climate risk, and simplify reporting.

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SANCTIONS

The Commission Takes Steps to Ensure National Transposition of EU Directive Harmonizing the Criminalization of Violations of EU Sanctions

The Commission has taken legal actions against several EU Member States that have failed to notify the Commission of measures they have adopted to transpose the EU directive into their national laws.

ANTITRUST AND COMPETITION

The General Court of the European Union Upholds the Commission's Decision to Assess Boissons Heintz/Brasserie Nationale Acquisition Under Article 22 of the EU Merger Regulation

On 2 July 2025, the General Court of the European Union (General Court) upheld the European Commission's (Commission) decision to assert jurisdiction over Brasserie Nationale's acquisition of Boissons Heintz following a referral request from the Competition Authority of the Grand Duchy of Luxembourg (ACL) under Article 22 of the EU Merger Regulation (EUMR). In its ruling, the General Court endorsed the Commission's broad discretion in accepting referral requests and clarified the applicable time limits for Member States to refer cases to the Commission. The judgment contributes to the evolving case law on the Commission's use of Article 22 EUMR to review below-threshold transactions.

On 22 December 2023 and 10 January 2024, Brasserie Nationale informed the ACL of its intention to acquire sole control of Boissons Heintz—a Luxembourg company engaged in the wholesale distribution of beverages—through Munhowen. On 7 February 2024, after a request by a third party, the ACL submitted a referral request to the Commission pursuant to Article 22(1) EUMR. On 14 March 2024, the Commission accepted the referral.

Brasserie Nationale and Munhowen appealed the Commission's decision before the General Court, arguing that the ACL had missed the 15 working-day deadline for making an Article 22 EUMR referral, contending that the clock should have started when the deal was first “made known” to the ACL as early as 10 January 2024. The merging parties also argued that the substantive requirements for an Article 22 EUMR referral—namely, the effect on trade between Member States and the threat of a significant effect on competition in the territory of Luxembourg—were not met.

On 2 July 2025, the General Court dismissed the action brought by Brasserie Nationale and Munhowen, finding that the “making known” of the transaction must consist of an active transmission of relevant and sufficient information to the competent authority of the Member State concerned. This may be done by the merging parties themselves, third parties, or any other source. That transmission must enable those authorities to conduct a preliminary assessment of whether the transaction affects trade between Member States and threatens to significantly affect competition within the territory of the Member State making the request. The General Court also clarified that national competition authorities are under no obligation to actively seek out the relevant information themselves. The General Court added that mere information relating simply to the existence of the transaction does not satisfy the conditions relating to making that transaction known. The General Court also

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stated that the Commission has a broad margin of discretion when assessing whether the substantive conditions of Article 22 EUMR are met.

This judgment represents a significant contribution to the evolving case law on the Commission's use of Article 22 EUMR to scrutinize below-threshold transactions. The merging parties need to proactively submit sufficient information to allow the authority to determine if the conditions for the referral are met. Failure to take such action leaves the transaction vulnerable to interference from third parties, as competitors or other stakeholders may present their own assessment to the national competition authority, thereby triggering the review period and potentially initiating a referral request. Finally, the authority's silence following awareness of a transaction should not necessarily be interpreted as tacit approval or a signal that the referral window has closed.

The Commission Launches a Public Consultation on the Draft FSR Guidelines and the Review of the FSR

On 12 July 2023, the Foreign Subsidies Regulation (FSR) started to apply. It allows the Commission to review third-country (non-EU) subsidies to determine whether they distort the internal market within the European Union. The FSR addresses situations where third-country subsidies could enhance a company's competitive position within the internal market, potentially distorting fair competition. The FSR introduces three procedures: (i) a notification-based procedure to investigate transactions that exceed the FSR thresholds;[1] (ii) a notification-based procedure to investigate bids in public procurement procedures;[2] and (iii) an *ex-officio* procedure to investigate all other market situations. The FSR can have a significant impact on the timeline for reportable transactions since: (i) it is suspensory—i.e., the transaction cannot close until the FSR clearance is obtained; and (ii) it requires a thorough prior notification and review process that may entail an in-depth review for problematic transactions. Since the beginning of its application, the number of mergers and acquisitions deals that have undergone FSR review is well above 200, and the number of notified public procurement bids exceeds 500.

On 18 July 2025, the Commission launched a public consultation on a draft of the Guidelines on the implementation of the FSR (FSR Guidelines). The FSR Guidelines draw on the Commission's experience applying the FSR in the past two years and aim at providing guidance on three main FSR concepts: (i) the notion of distortion of competition caused by a foreign subsidy; (ii) the balancing test, which considers whether positive effects could counterbalance the distortive effects from a foreign subsidy; and (iii) the Commission's competence to call in below-threshold transactions and public procurement bids. The final version of the FSR Guidelines is expected in 2026.

The Guidelines reflect the Commission's effort to share insights learned through its experience and practice, which are of the essence for businesses to understand the Commission's point of view when applying the FSR. However, it is important that the Commission takes note of the stakeholder's feedback received through this consultation to further clarify certain key concepts that remain unclear. Interested parties have until 12 September 2025 to comment on the draft FSR Guidelines.

In addition, on 12 August 2025, the Commission launched its first review of the FSR, which is a stocktaking exercise to assess how the FSR has been working so far. For this review, the Commission is seeking feedback from interested parties by 18 November 2025 through: (i) a public consultation to gather views on specific elements of the implementation and enforcement of the FSR; and (ii) a call for evidence seeking more general

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feedback. The objective is to learn from the first years of experience with the FSR and to get a better understanding of the FSR's impact and effectiveness.

The European Commission Conditionally Clears Naspers' Just Eat Takeway.com Acquisition

On 24 February 2025, Prosus, Naspers' investment company, announced its intention to acquire Just Eat Takeaway.com (JET), a global online food-delivery company. The transaction was presented as an opportunity to accelerate the platform's growth, leveraging Prosus' industry experience to innovate and drive efficiencies, as its portfolio included full ownership of iFood, Latin America's leading food-delivery platform, as well as a pre-existing 27.4% stake in Delivery Hero, a competing global online food-delivery company.

On 20 June 2025, Naspers notified the transaction to the Commission. JET and Delivery Hero both offer online food-delivery services in five Member States (Austria, Bulgaria, Italy, Poland, and Spain). The Commission expressed concerns that, post-transaction, the structural link between JET and Delivery Hero could have decreased JET's incentives to compete with Delivery Hero in the Member States where both companies are active and across the European Economic Area, as well as increased the likelihood of tacit coordination between the merging parties.

The Commission's concern is based on its horizontal merger guidelines and empirical economic literature highlighting the fact that cross-shareholding between competitors may reduce incentives to compete and alter firms' strategic decisions, as well as lead to sensitive information spillovers across firms. On a separate proceeding, the Commission has recently fined Delivery Hero for colluding with competitor Glovo through its minority noncontrolling stake in a separate behavioral investigation (see our comments here).

To address the Commission's concerns, Naspers agreed to significantly reduce its equity interest in Delivery Hero "below a specified very low percentage" within 12 months of closing of the transaction. Further, Naspers agreed for a "*specified considerable time*":

- Not to exercise voting rights attached to its remaining shareholding in Delivery Hero;
- Not to recommend, propose, nor approve any person to Delivery Hero's management or supervisory boards; and
- Not to increase its shareholding in Delivery Hero.

This is not the first time that remedies include the dilution of a minority stake. However, this transaction is of great significance since it took less than six months between when the deal was announced and the Commission's clearance, highlighting that a well-prepared filing strategy including clarity over potential remedies and proactive engagement with antitrust authorities—can significantly streamline the review process, avoid unnecessary delays, and secure timely clearance for companies.

Moreover, the remedies accepted in this transaction underscore a clear pattern in the Commission's approach in transactions involving cross-shareholdings where divestiture appears to increasingly be the only viable solution to secure approval. This implies that the merging parties will likely face a binary choice: divest or abandon the transaction. Proactive planning is therefore ever more a prerequisite for a timely successful clearance.

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FINANCIAL AFFAIRS

European Commission Launches Consultation to Review Solvency II Delegated Act

On 18 July 2025, the Commission published a draft delegated act amending the Solvency II Delegated Regulation and opened a consultation for stakeholders' feedback until 5 September 2025. The review forms part of the broader initiative to strengthen the Savings and Investments Union and to better align the prudential framework for insurers with Europe's long-term financing and competitiveness goals. Since its entry into force in 2015, Solvency II Directive has provided the prudential baseline for the EU insurance sector. However, evolving market realities and policy priorities have prompted the Commission to update the framework in order to enhance its risk sensitivity and reduce unnecessary burdens.

The draft proposal introduces targeted changes across several technical areas. On the investment side, the Commission seeks to adjust the capital treatment of equity and securitization exposures to encourage insurers to play a greater role in financing European businesses, including small and medium-sized enterprises and infrastructure projects. In parallel, updated calibrations for natural catastrophe risks are included to reflect recent advances in climate science and better capture the growing financial implications of climate change. The text also provides for simplified reporting and disclosure obligations for smaller insurers, with extended deadlines and proportionate templates designed to reduce administrative costs while safeguarding supervisory scrutiny.

Once the consultation closes, the Commission will review stakeholder input and proceed to adopt the delegated act during the third quarter of 2025. The amendments will automatically apply unless the European Parliament or the European Council object within a two-month scrutiny period.

SANCTIONS

The European Commission Takes Steps to Ensure National Transposition of EU Directive Harmonizing the Criminalization of Violations of EU Sanctions

According to the Commission's press release, formal notices have been sent to several Member States that have failed to transpose specific EU directives related to defense, energy, transport, justice, and health into national law by the required dates. In some cases, the Commission has also opened infringement proceedings against some Member States that have failed to communicate with the Commission about their transposition efforts.

Of particular note is the Commission's actions in connection with its Directive (EU) 2024/1226 intended to harmonize the criminalization of violations of EU restrictive measures, such as those enacted in response to the Russian aggression against Ukraine. By establishing common definitions of criminal offenses and penalties across the European Union, the directive aims to ensure that sanctions are consistently enforced and that offenders cannot exploit legal discrepancies between Member States. Despite the importance of the legislation, as many as 18 Member States have failed to notify the Commission of the status of their transposition efforts. In response, the Commission has sent letters of formal notice to each of the 18 Member States, giving them two months to complete their transposition of the directive and to notify the Commission of their actions. Failure to act could result in further legal action by the Commission.

The Commission's recent actions against numerous Member States for failing to transpose the directive highlight a critical issue: the gap between legislative action at the EU level and implementation at the national level. The

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failure to meet transposition deadlines undermines the effectiveness of EU law. This is particularly important in areas like sanctions enforcement, where coordinated action is essential for both the European Union's geopolitical stability and to ensure legal certainty for individuals and companies operating in the European Union.

FOOTNOTES

[1] A notification is triggered when the acquired company, one of the merging parties, or the joint venture generates an EU turnover of at least €500 million, and the parties were granted foreign financial contributions of more than €50 million in the last three years.

[2] A notification is triggered when the estimated contract value of the tender is at least €250 million and the bid involves a foreign financial contribution of at least €4 million per third country in the last three years.

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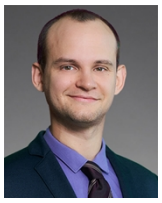

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