CBBC Special Update

UK Government Introduces National Security and Investment Bill

Correction: The previous update stated that the Bill's Second Reading will be held on Thursday, 12th November. However, CBBC has received advice that the Second Reading of the National Security & Investment Bill will NOT take place today. The misunderstanding is due to unusual Parliamentary convention. We apologise for the confusion caused and will, of course, update members as soon as there is further information.

The UK government has introduced a new National Security and Investment Bill (NSI Bill), which will grant the government new powers to restrict, and block, investment by malicious and potentially harmful foreign actors in 17 crucial sectors. The scope of 'potential harm' will be expanded to include assets - such as land and movable property -- as well as intellectual property.

The Bill will replace the 2002 Enterprise Act (EA), which remains effective until the NSI Bill has been signed into law. The EA limits government intervention to mergers involving target enterprises with an annual turnover of £70 million or a combined share of supply of at least 25%. The new Bill has no minimum threshold for turnover or market share but excludes certain transactions which lead only to minor changes in shareholdings.

According to the bill's official summary, foreign investors who wish to acquire or buy shares in a company in the listed sectors will have to inform the government of their planned transaction.

The Financial Times reports that officials expect around 1.000 transactions to be covered by the NSI Bill, although only a few will face actual restrictions. By way of comparison, there have been only 12 public interest interventions by the government on national security grounds under the previous law.

The Bill will be "actor-agnostic", not focusing on any particular country, and the clearance process will be 'clear targeted, and proportionate', according to the statement by the Department for Business, Energy & Industrial Strategy.

Key Sectors

According to the initial summary, the following sectors will be subject to the screening process:

1. Civil Nuclear
2. Communications
3. Data Infrastructure
4. Defence
5. Energy
6. Transport
7. Artificial Intelligence
8. Autonomous Robotics
9. Computing Hardware
10. Cryptographic Authentication
11. Advanced Materials
12. Quantum Technologies
13. Engineering Biology
14. Critical Suppliers to Government
15. Critical Suppliers to the Emergency Services
16. Military or Dual-Use Technologies
17. Satellite and Space Technologies

There are, however, ongoing consultations with industry experts as to which parts of the sectors will require mandatory notification. A more detailed definition of the type of transactions covered will be published by the government in due course.

The Bill will include a clause granting the government a five-year retrospective power to review any transaction in the wider economy which was not notified but may pose a danger to national security. Nonetheless, this will only apply to transactions which take place after the NSI Bill's introduction in Parliament. This means that any notifiable investment which takes place after 12th November, but before the official entry into force of the Bill, can become the subject of a review for up to five years.

Restrictions and sanctions

While the exact tool box for restricting investment remains to be defined, the summary mentions the three following measures:

- a limit on the amount of shares an investor is allowed to acquire
- restricted access to commercial information
- limited access to certain operational sites or works

Investors who fail to comply will be subject to fines of up to 5% of worldwide turnover or £10 million – whichever is greater – and imprisonment of up to five years. Any transaction subject to notification but lacking clearance will be legally void.

CBBC View

The introduction of the National Security and Investment Bill is mostly in line with current international legislation and follows the EU investment screening framework and related laws in EU member states. The government has also made clear that the Bill's powers will be used exclusively on national security grounds and will not interfere in any business transactions for purely economic reasons.

We welcome the assurances made by Business Secretary Alok Sharma that the bill will not hurt the UK's standing as one of the world's foremost destinations for foreign investment, which according official statistics, has created over 39.000 jobs in the UK over the last two years.

The government's commitment to support and attract foreign investors has been further emphasised by Prime Minister Boris Johnson's recent decision to establish an Office for Investment (OFI) which will be tasked with attracting foreign investment in infrastructure, clean technologies, and research and development.

Matthew Rous, Chief Executive of CBBC, giving testimony to the Foreign Affairs Committee in October, noted that it "is important to have a default position that is open, because this country has benefited hugely from the inflow of foreign capital over many centuries."

To guarantee the UK's openness, it will be crucial, to ensure that the planned new investment unit will be staffed by people familiar with UK business conditions and politically neutral experts. As Matthew Rous highlighted, UK businesses needs certainty and reliable rules which are based on "objective criteria and standards that can be applied fairly to investors from all countries".

He went on to note that this also requires transparent processes "and a cross-Whitehall system that provides collaboration between experts who know what they are talking about and provides a clear docking point for companies."

CBBC will monitor the legislative process and work together with other stakeholders and business associations.