



## Jan Vollkammer

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### **Where did you start your career and are there any mentors you would credit for helping you get to where you are now? If applicable, when did you make the move to your current firm?**

I started my career as an attorney at Latham & Watkins. I moved with my fellow partner Georg Weidenbach to Gibson Dunn & Crutcher in 2020. He is a true mentor and without him I would not be where I am. Attila Borsos from our Brussels office is also a mentor who has supported me. I'm also extremely grateful for the support from my colleagues at my previous law firm, in particular Max Hauser and Jana Dammann de Chapt. Finally, it should be mentioned that our strong Gibson Dunn platform and the coordination with our highly regarded Committee on Foreign Investment in the United States practice in Washington, DC have given me the opportunity to work on the largest and most important deals around the globe.

### **How long have you worked on foreign investment review issues? Did you make the transition from another area of law?**

My focus on foreign investment began when I started my career as an antitrust lawyer in 2019. At this time, FDI filings in Germany and in other EU member states became increasingly important for most transactions.

There was no formal transition. I'm still an attorney in the antitrust and competition practice group at Gibson Dunn, with a strong focus on German and European FDI matters. I also handle FDI matters for all ex-US jurisdictions with support from local counsel, often jointly with the Brussels and London team at Gibson Dunn. Although foreign trade and antitrust law technically belong to different legal areas, merger control and FDI filings are typically handled in parallel for efficiency purposes as both are administrative proceedings with federal authorities being in charge.

### **What are the key challenges and issues for navigating foreign investment reviews in your jurisdiction?**

One key challenge is the legal uncertainty and vagueness in some FDI regimes. Unlike some other jurisdictions, we have quite narrowly defined sectors in the German FDI regime which makes it easier to identify filing requirements. However, some of the regimes in other member states refer to the broad sectors mentioned in the EU Screening Regulation, such as artificial intelligence, robotics and semiconductors. Absent any further guidance, precautionary filings are on the rise.

It can also be difficult to anticipate the required review period and potential security concerns governments might have. Beyond certain standard aspects that are always relevant for the assessment, the current political atmosphere and government priorities must also be taken into account in the context of, for example, the impact of the covid-19 pandemic and the war in Ukraine.

Lastly, in contrast to other areas of law such as merger control, decisions are not made public by the ministry, so it is generally difficult or even impossible to refer to previous cases. Leaked decisions or court decisions are rare.

**Which governments and agencies are pushing the boundaries – rightly or wrongly – of foreign investment reviews the most and why?**

There is an overall trend – especially in the European Union and the United Kingdom – to increase FDI scrutiny, and my feeling is that there are some newer FDI regimes that are still in a rather unpredictable “testing phase”. We see more prohibition decisions than two years ago, but the main problems for deal planning are often unpredictable review periods and opaque procedures. Also, deals may receive a quick clearance or a certificate of non-objection in Germany, but the decision in Spain takes longer – or vice versa – without any substantial differences on the facts.

**What are the most important considerations for countries looking to implement a new foreign investment review regime – there seem to have been about 30 pop up in the past few years alone?**

Indeed, we are talking about an area of law that has developed extremely fast over the past few years. This reflects a fundamental policy shift in some economies from those who wanted to attract foreign capital towards a more cautious approach where there is a fear of losing valuable know-how and control over critical infrastructures and technologies. It shows the rising political scepticism towards state-driven investment activities and more uncertainties and decreasing trust in global supply chains.

**Are there concerns that foreign investment reviews can be used politically or to further other industrial policy objectives under the guise of national security?**

The threshold for governments in the European Union to block foreign direct investments has been lowered by the EU Screening Regulation. A “likely effect on public order or security” for the assessing EU member state, other EU member states or projects of European Union interest now suffices for governments to intervene. In most cases, it will hardly be possible for companies that have their deal blocked to show that a legal error occurred in the government’s assessment given its de facto discretion. Also, in light of the strong political dimension of this field of law, there is definitely a risk that enforcement priorities get adjusted quickly with new political majorities. FDI regimes can be used as political tools and are not just technical provisions with a clear-cut test. It is more “political law” than other areas of law. If robust checks and balances are in place, also with effective judicial reviews, I’m not deeply concerned. A bit more transparency would not hurt though.

**What do you hope to achieve in the next phase of your career?**

I’m currently working on a book together with Georg that focuses on FDI screenings in Germany and Europe, and I hope that we can finalise it in the course of this year.

**What are your hobbies away from work?**

I’m very interested in politics – I was an elected city councillor in my hometown a couple of years ago – and love to read newspapers, as well as philosophical and political magazines from various countries. Beyond this, I like to go for runs and to spend time with my wife and family. I also plan to get a sailing licence in the next couple of years.