

disarmament, demobilization, and reintegration programs and peacebuilding.”³⁴ In the other rule, OFAC “amend[ed] its regulations in multiple sanctions programs to add, amend, or update general licenses authorizing official business of the United States government and official business of certain international organizations and entities.”³⁵ For NGOs and IOs, the licenses generally do “not authorize funds transfers initiated or processed with knowledge or reason to know that the intended beneficiary of such transfers is a person blocked.”³⁶ To the extent that a general license does not apply, specific licenses may be issued. The two rules go beyond Resolution 2664’s provisions to cover many U.S. sanctions programs that operate outside of the Security Council framework.³⁷ The general licenses established by the new rules are similar to the humanitarian licenses OFAC previously established for specific sanctions programs, such as those for Crimea and Venezuela.³⁸ The new rules apply only to OFAC sanctions and have no effect on those administered by other agencies, such as the Department of Commerce.

NGOs welcomed the new rules. Kate Phillips-Barrasso, vice president of Global Policy and Advocacy for MercyCorps, said, “It literally almost feels surreal to me, as an advocate who’s been working on this for the better part of a decade. I keep having to almost pinch myself. It is a life-and-death issue in some cases and they have been told about the problem for years and they took a major step forward in trying to resolve it.”³⁹ Though the new general licenses provide reason for optimism, financial institutions will need to move away from their inclination toward sanctions “overcompliance” for the humanitarian carveout to have meaningful effect.⁴⁰

President Biden Issues Executive Order on Ensuring Robust Consideration of Evolving National Security Risks by the Committee on Foreign Investment in the United States

doi:10.1017/ajil.2023.9

On September 15, 2022, President Joseph R. Biden, Jr. issued Executive Order 14,083 on “Ensuring Robust Consideration of Evolving National Security Risks by the Committee on

³⁴ U.S. Dep’t of the Treasury, Supplemental Guidance for the Provision of Humanitarian Assistance 3 (Feb. 27, 2023), at https://home.treasury.gov/system/files/126/supplemental_ngo_humanitarian.pdf [<https://perma.cc/F6JP-4TYW>].

³⁵ USG and IOs Rule, *supra* note 1, at 78,470.

³⁶ See, e.g., NGOs and Other Transactions Rule, *supra* note 1, at 78,485 (adding 31 CFR 539.506(c)).

³⁷ For current U.S. sanctions programs, see U.S. Dep’t of the Treasury, Sanctions Programs and Country Information, at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information> [<https://perma.cc/P5KS-FMK3>].

³⁸ See, e.g., Certain Transactions in Support of Nongovernmental Organizations’ Activities in the Crimea Region of Ukraine, 31 CFR 589.520; Office of Foreign Assets Control, General License No. 29, Certain Transactions Involving the Government of Venezuela in Support of Certain Nongovernmental Organizations’ Activities Authorized (Aug. 5, 2019), at https://home.treasury.gov/system/files/126/venezuela_gl29.pdf [<https://perma.cc/8FC5-BQSK>].

³⁹ Kylie Atwood, *Treasury Department to Roll Out New Policy to Make Global Humanitarian Support Easier*, CNN (Dec. 20, 2022), at <https://www.cnn.com/2022/12/20/politics/treasury-department-humanitarian-support/index.html> [<https://perma.cc/MKY5-P5FG>].

⁴⁰ See Daniel Flatley, *Treasury Officials Warn Banks Over Sanctions Compliance Overkill*, BLOOMBERG (Jan. 6, 2023), at <https://www.bloomberg.com/news/articles/2023-01-06/treasury-officials-warn-banks-against-sanctions-overcompliance>.

Foreign Investment in the United States.”¹ The order provides the Committee on Foreign Investment in the United States (CFIUS), a Treasury Department-led interagency committee charged with reviewing foreign investment for national security concerns, with the first “formal Presidential direction on the risks that the Committee should consider when reviewing a covered transaction.”² It directs CFIUS to focus on five national security factors pertaining to “preserving U.S. technological leadership, protecting Americans’ sensitive data, and enhancing U.S. supply chain resilience.”³ The order in effect codifies the Committee’s recent practices. It does not extend the Committee’s jurisdiction or change its processes. Nor does it focus on specific countries by name. Still, together with the first CFIUS Enforcement and Penalty Guidelines, issued on October 20, 2022, the executive order signals an increased emphasis on CFIUS review and seeks to provide focus to that review.⁴ Despite its neutral appearance, the executive order is also part of a broad range of inbound and outbound trade and investment measures related to national security stemming from heightened geopolitical competition between the United States and China.⁵

President Gerald R. Ford established CFIUS by executive order in 1975 following an increase in investments in American securities, stocks, and bonds by members of the Organization of the Petroleum Exporting Countries (OPEC).⁶ The order sought to “dissuade Congress from enacting new restrictions on foreign investment” by providing “reassur[ance] . . . that we could anticipate and deal effectively with any threats in this area, and at the same time maintain our basically liberal [foreign investment] policy.”⁷ It gave the Committee the “primary continuing responsibility within the Executive Branch for monitoring the impact of foreign investment in the United States, both direct and portfolio, and for coordinating the implementation of United States policy on such investment.”⁸ Government officials soon questioned the Committee’s authority to collect data concerning foreign investment. The International Investment Survey Act of 1976 remedied these concerns by granting the president explicit authority to collect such information.⁹

The Committee’s first five years were not active, but in the early 1980s, at the request of the Department of Defense, CFIUS began reviewing the acquisition of American companies by Japanese firms, and concern over Japanese investment eventually led to congressional action.

¹ Exec. Order No. 14,083, 87 Fed. Reg. 57,369, 57,369 (Sept. 15, 2022) [hereinafter EO 14,083].

² White House Press Release, Fact Sheet: President Biden Signs Executive Order to Ensure Robust Reviews of Evolving National Security Risks by the Committee on Foreign Investment in the United States (Sept. 15, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/15/fact-sheet-president-biden-signs-executive-order-to-ensure-robust-reviews-of-evolving-national-security-risks-by-the-committee-on-foreign-investment-in-the-united-states> [<https://perma.cc/4YDR-QNM6>] [hereinafter Fact Sheet].

³ *Id.*

⁴ CFIUS Enforcement and Penalty Guidelines, at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-enforcement-and-penalty-guidelines> [<https://perma.cc/72MP-Y7XS>].

⁵ See, e.g., Jacob Katz Cogan, *Contemporary Practice of the United States*, 117 AJIL 128, 144 (2023).

⁶ Exec. Order No. 11,858, 40 Fed. Reg. 20,263 (May 7, 1975) [hereinafter EO 11,858].

⁷ C. Fred Bergsten, Memorandum for Deputy Secretary Carswell (May 12, 1978), in U.S. Congress, House Committee on Government Operations, Subcommittee on Commerce, Consumer, and Monetary Affairs, *The Operations of Federal Agencies in Monitoring, Reporting on, and Analyzing Foreign Investments in the United States*, Hearings, 96th Cong., 1st sess., Pt. 3, July 30, 1979, Washington: GPO, 1979, at 335.

⁸ EO 11,858, *supra* note 6, Sec. 1(b).

⁹ International Investment Survey Act of 1976, Pub. L. 94-472, 90 Stat. 2059 (Oct. 11, 1976) (codified at 22 USC §§ 3101–3108).

Because CFIUS was established pursuant to executive order, any measures by the president regarding foreign investment could only be taken pursuant to existing statutory authority, such as the International Emergency Economic Powers Act (IEEPA). Enactment of the Exon-Florio Amendment in 1988 gave the president for the first time the authority to “make an investigation to determine the effects on national security of mergers, acquisitions, and takeovers . . . by or with foreign persons which could result in foreign control” and to “suspend or prohibit any acquisition, merger, or takeover, of a person . . . by or with foreign persons so that such control will not threaten to impair the national security.”¹⁰ Such authority could be exercised, however, only if there was “credible evidence that . . . the foreign interest exercising control might take action that threatens to impair the national security” and also if “provisions of law” other than IEEPA did not provide the president with adequate and appropriate means to protect national security.¹¹

President Ronald Reagan delegated to CFIUS the authority to initiate and conduct investigations and to make recommendations regarding any actions regarding covered investments, transforming the committee from a monitoring and advisory body to one with power to review and (with presidential approval) impede transactions.¹² In 1992, the Byrd Amendment added a requirement that an investigation must be undertaken when “an entity controlled by or acting on behalf of a foreign government seeks to engage in any merger, acquisition, or takeover . . . that could affect the national security.”¹³ Fifteen years later, the Foreign Investment and National Security Act of 2007 (FINSAs) gave CFIUS a statutory foundation for the first time. FINSAs detailed the Committee’s review and investigation process¹⁴ and also provided the Committee the authority to “negotiate, enter into or impose, and enforce any agreement or condition with any party to the covered transaction in order to mitigate any threat to the national security of the United States that arises as a result of the covered transaction.”¹⁵ The statute included five factors for the president (and hence CFIUS) to consider when determining whether to “suspend or prohibit any covered transaction that threatens to impair the national security of the United States.”¹⁶ Earlier statutes had identified six such factors, thus bringing the total to eleven.¹⁷ In 2018, largely due to concerns over investments by Chinese entities, the Foreign Investment Risk Review Modernization Act (FIRRMA) expanded the foreign investments subject to the Committee’s jurisdiction from its previous focus on transactions resulting in foreign control to include a broader array of investments pertaining to “critical technologies,” “critical infrastructure,” and “sensitive

¹⁰ Omnibus Trade and Competitiveness Act of 1988, Sec. 5021, Pub. L. 100-418, 102 Stat. 1107, 1425 (Aug. 23, 1988) [hereinafter Exon-Florio Amendment] (adding Section 721 to the Defense Production Act of 1950).

¹¹ *Id.* at 1426.

¹² Implementing the Omnibus Trade and Competitiveness Act of 1988 and Related International Trade Matters, EO 12,661, Sec. 3-201 (Dec. 27, 1988), 54 Fed. Reg. 779, 780–81; *see also* Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons, 31 CFR 800, 56 Fed. Reg. 58774 (Nov. 21, 1991) (regulations implementing the Exon-Florio Amendment).

¹³ National Defense Authorization Act for Fiscal Year 1993, 106 Stat. 2315, 2464, Pub. L. 102-484 (Oct. 23, 1992) (amending Section 721 of the Defense Production Act).

¹⁴ Foreign Investment and National Security Act of 2007, Secs. 2–3, Pub. L. 110-49, 121 Stat. 246, 246–253 (July 26, 2007) [hereinafter FINSAs] (amending Section 721 of the Defense Production Act).

¹⁵ *Id.* at 254 (codified at 50 USC § 4565(l)(3)(A)(i)).

¹⁶ *Id.* at 253–54, 255.

¹⁷ The factors are codified at 50 USC § 4565(f).

personal data,” as well as those relating to “the purchase or lease by, or a concession to, a foreign person of private or public real estate that” created national security risks.¹⁸ The statute also required the submission to CFIUS of a declaration by the parties to a covered transaction “if the transaction involves an investment that results in the acquisition, directly or indirectly, of a substantial interest in . . . [U.S. critical technologies, critical infrastructure, or sensitive personal data] business[es] . . . by a foreign person in which a foreign government has, directly or indirectly, a substantial interest.”¹⁹ FIRRMA did not add to or update the list of national security factors.²⁰ CFIUS’s review of transactions intensified with the broadening of covered transactions, the introduction of mandatory declarations, the increase in its staffing and funding, and the continued sensitivity to Chinese investment.²¹

President Biden’s executive order specifies five factors that the committee must consider in light of “an evolving national security landscape,” expanding upon two of the eleven statutory factors and adding three.²² The first focuses on supply chains, elaborating on the statute’s concern with an investment’s “control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security.”²³ It directs the committee to consider “the covered transaction’s effect on supply chain resilience and security, both within and outside of the defense industrial base, in manufacturing capabilities, services, critical mineral resources, or technologies that are fundamental to national security.”²⁴ The order specifies here, and in the other factors, that the concern is not only with “a foreign person who is a party to the covered transaction . . . [but also a foreign person] who might have relevant third-party ties that might cause the transaction to pose . . . a threat” to national security.²⁵ Supply chain anxieties have previously led CFIUS to oppose some transactions. In 2017, for example, President Donald J. Trump prohibited the acquisition of Lattice Semiconductor Corp. by a Chinese company due in part to “the importance of semiconductor supply chain integrity.”²⁶

¹⁸ Foreign Investment Risk Review Modernization Act of 2018, Sec. 1703, Pub. L. 115-232, 132 Stat. 1636, 2177–78 (Aug. 13, 2018) [hereinafter FIRRMA] (amending Section 721(a) of the Defense Production Act); Alan Rappeport, *In New Slap at China, U.S. Expands Power to Block Foreign Investments*, N.Y. TIMES (Oct. 10, 2018), at <https://www.nytimes.com/2018/10/10/business/us-china-investment-cfius.html>.

¹⁹ FIRRMA, *supra* note 18, Sec. 1706 (codified at 50 USC § 4565(b)(1)(C)(v)). The statute permitted CFIUS, by regulation, to require declarations in critical technologies businesses. *See id.* For FIRRMA’s regulations, see Provisions Pertaining to Certain Investments in the United States by Foreign Persons, 85 Fed. Reg. 57,124 (Sept. 15, 2020).

²⁰ FIRRMA did, however, include a sense of Congress that identified six additional considerations. *See* FIRRMA, *supra* note 18, Sec. 1702(c).

²¹ Alex Leary & Katy Stech Ferek, *Biden Builds on Trump’s Use of Investment Review Panel to Take on China*, WALL ST. J. (July 7, 2021), at <https://www.wsj.com/articles/investment-review-panel-gets-wider-role-under-biden-in-rivalry-with-china-11625650200>; Committee on Foreign Investment in the United States, Annual Report to Congress – Report Period: CY 2021 (2022), at <https://home.treasury.gov/system/files/206/CFIUS-Public-AnnualReporttoCongressCY2021.pdf> [<https://perma.cc/55LX-THQE>].

²² EO 14,083, *supra* note 1, Sec. 1. The order’s three non-statutory factors were among the six considerations identified by Congress in FIRRMA. *See* note 20 *supra*.

²³ 50 USC § 4565(f)(3).

²⁴ EO 14,083, *supra* note 1, Sec. 2(a)(ii).

²⁵ *Id.*, Sec. 2(a)(ii)(A).

²⁶ Regarding the Proposed Acquisition of Lattice Semiconductor Corporation by China Venture Capital Fund Corporation Limited, 82 Fed. Reg. 43,665 (Sept. 13, 2017); U.S. Dep’t of the Treasury Press Release, Statement On the President’s Decision Regarding Lattice Semiconductor Corporation (Sept. 13, 2017), at <https://home.treasury.gov/news/press-releases/sm0157> [<https://perma.cc/W27R-X5T9>].

In December 2021, a Chinese company's merger with Magnachip Semiconductor Corp. was abandoned due to CFIUS's objections.²⁷

The second factor elaborates on the statute's focus on an investment's "potential effects . . . on United States international technological leadership in areas affecting United States national security."²⁸ The order directs the committee to consider whether a "covered transaction involves manufacturing capabilities, services, critical mineral resources, or technologies that are fundamental to United States technological leadership and therefore national security, such as microelectronics, artificial intelligence, biotechnology and biomanufacturing, quantum computing, advanced clean energy, and climate adaptation technologies."²⁹ CFIUS has taken a particular interest in the acquisition of semiconductor technologies,³⁰ but its concerns have extended to other industries as well, including telecommunications.³¹ In December 2022, for example, Borqs Technologies Inc., a China-based company, was notified that it would need to divest itself of Holu Hou Energy LLC, a Hawaiian solar energy storage supplier.³²

The third factor, the first of three that supplement those codified by statute, "relat[es] to aggregate industry investment trends that may have consequences for an individual covered transaction's impact on national security."³³ The order notes that "[i]ncremental investments over time in a sector or technology may cede, part-by-part, domestic development or control in that sector or technology" in a way that threatens national security.³⁴ The Committee is therefore directed to consider "the risks arising from the covered transaction in the context of multiple acquisitions or investments in a single sector or in related manufacturing capabilities, services, critical mineral resources, or technologies."³⁵

"[C]ybersecurity risk" is the order's fourth factor.³⁶ CFIUS must consider "whether a covered transaction may provide a foreign person . . . with direct or indirect access to capabilities or information databases and systems on which threat actors could engage in malicious cyber-enabled activities."³⁷ This includes: "activity designed to undermine the protection or integrity of data in storage or databases or systems housing sensitive data"; "activity designed to interfere with United States elections, United States critical infrastructure, the defense

²⁷ See Christian Davies & Song Jung-a, *Chipmakers Caught in Crossfire of Rising US-China Geopolitical Tensions*, FIN. TIMES (Aug. 20, 2022), at <https://www.ft.com/content/ffa21fd7-b8d9-4a15-be2b-cce21d12371d>.

²⁸ 50 USC § 4565(f)(5).

²⁹ EO 14,083, *supra* note 1, Sec. 2(b)(ii).

³⁰ See, e.g., Regarding the Proposed Acquisition of a Controlling Interest in Aixtron SE by Grand Chip Investment GmbH, 81 Fed. Reg. 88,607 (Dec. 2, 2016); U.S. Dep't of the Treasury Press Release, Statement on the President's Decision Regarding the U.S. Business of Aixtron SE (Dec. 2, 2016), at <https://home.treasury.gov/news/press-releases/jl0679> [<https://perma.cc/SFQ3-QVJF>].

³¹ See, e.g., Regarding the Proposed Takeover of Qualcomm Incorporated by Broadcom Limited, 83 Fed. Reg. 11,631 (Mar. 12, 2018).

³² See Borqs to Establish with the U.S. Government a Plan to Divest Its Ownership of Holu Hou Energy Due to Deemed Critical Technology, YAHOO! FIN. (Dec. 19, 2022), at <https://finance.yahoo.com/news/borqs-establish-u-government-plan-213000407.html> [<https://perma.cc/WEP4-9VBD>].

³³ EO 14,083, *supra* note 1, Sec. 3(a).

³⁴ *Id.*, Sec. 3(a)(i).

³⁵ *Id.*, Sec. 3(a)(ii).

³⁶ *Id.*, Sec. 3(b).

³⁷ *Id.*, Sec. 3(b)(ii).

industrial base, or other cybersecurity national security priorities”; and “the sabotage of critical energy infrastructure, including smart grids.”³⁸

The order’s fifth and final factor focuses on “sensitive data.”³⁹ It explains that “[d]ata is an increasingly powerful tool for the surveillance, tracing, tracking, and targeting of individuals or groups of individuals, with potential adverse impacts on national security.”⁴⁰ The Committee therefore is required consider whether a covered transaction involves a U.S. business that “has access to United States persons’ sensitive data, including United States persons’ health, digital identity, or other biological data and any data that could be identifiable or de-anonymized, that could be exploited to distinguish or trace an individual’s identity” or “has access to data on sub-populations in the United States that could be used by a foreign person to target individuals or groups of individuals.”⁴¹ Concerns about access to sensitive personal data has led CFIUS, for example, to order Beijing Kunlun Tech Co. Ltd. to sell its stake in Grindr, iCarbonX to sell its interest in PatientsLikeMe, and reportedly ByteDance Ltd. to divest itself of TikTok.⁴²

Five weeks following the issuance of the executive order, the Treasury Department released the first CFIUS Enforcement and Penalty Guidelines.⁴³ The Guidelines provide “three categories of conduct that may constitute a [v]iolation,” including “[f]ailure to timely submit a mandatory declaration or notice,” non-compliance with CFIUS mitigation agreements, conditions, or orders, and “[m]aterial misstatements in or omissions from information filed with CFIUS, and false or materially incomplete certifications [that are] filed.”⁴⁴ When determining a penalty, the Committee will consider as aggravating or mitigating factors: accountability and future compliance; harm (or threat to national security); negligence and intent; persistence and timing; response and remediation, including self-disclosure of noncompliance; and record of compliance.⁴⁵ Any penalties imposed by CFIUS are separate from civil or criminal penalties provided for by other authorities.⁴⁶ “Today’s announcement sends a clear message: Compliance with CFIUS mitigation agreements is not optional, and the Committee will not hesitate to use all of its tools and take enforcement action to ensure prompt compliance and remediation,” Assistant Secretary of the Treasury for Investment Security Paul Rosen said.⁴⁷

³⁸ *Id.*

³⁹ *Id.*, Sec. 3(c).

⁴⁰ *Id.*, Sec. 3(c)(i).

⁴¹ *Id.*, sec. 3(c)(ii).

⁴² See Georgia Wells & Kate O’Keeffe, *U.S. Orders Chinese Firm to Sell Dating App Grindr Over Blackmail Risk*, WALL ST. J. (Mar. 27, 2019), at <https://www.wsj.com/articles/u-s-orders-chinese-company-to-sell-grindr-app-11553717942>; Anna Wilde Mathews, *UnitedHealth Buys PatientsLikeMe After Startup Was Forced to Divest Chinese Investment*, WALL ST. J. (June 25, 2019), at <https://www.wsj.com/articles/unitedhealth-buys-patientslike-me-after-startup-was-forced-to-divest-chinese-investment-11561477214>; Kristen Eichensehr, *Contemporary Practice of the United States*, 115 AJIL 115, 124 (2021); John D. McKinnon, *U.S. Threatens Ban if TikTok’s Chinese Owners Don’t Sell Stakes*, WALL ST. J. (Mar. 15, 2023), at <https://www.wsj.com/articles/u-s-threatens-to-ban-tiktok-if-chinese-founder-doesnt-sell-ownership-stake-36d7295c>.

⁴³ CFIUS Enforcement and Penalty Guidelines, *supra* note 4.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ U.S. Dep’t of the Treasury Press Release, *Treasury Releases CFIUS Enforcement and Penalty Guidelines* (Oct. 20, 2022), at <https://home.treasury.gov/news/press-releases/jy1037> [<https://perma.cc/E3SS-VBKX>].

The executive order, Secretary of the Treasury Janet L. Yellen, chair of CFIUS, noted, “highlights CFIUS’s increasing attention to national security risks in several key areas and sharpens the Committee’s focus on protecting America’s national security, while maintaining the U.S. open investment policy.”⁴⁸ Together with the new enforcement and penalty guidelines, the order, according to the White House, “send[s] a very clear message, a public message, to the private sector . . . about what are some factors that we as an administration are very focused on.”⁴⁹ It also sends a message to “the public as a whole, as well as foreign governments, allies, and partners around the world.”⁵⁰ Part of a broader set of actions, the order “explicitly ties CFIUS’s role, actions, and capabilities with the Administration’s overall national security priorities.”⁵¹ It is a part, as well, of a transnational proliferation of heightened investment screening.⁵²

INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

The United States and the European Union Begin Implementation of the European Union-U.S. Data Privacy Framework
doi:10.1017/ajil.2023.17

On October 7, 2022, President Joseph R. Biden, Jr. signed Executive Order 14,086 on Enhancing Safeguards for United States Signals Intelligence Activities¹ to implement the EU-U.S. Data Privacy Framework (DPF) that was “agreed in principle” on March 27, 2022.² The DPF seeks to address issues identified by the Court of Justice of the European Union (CJEU) in *Schrems II* (2020), which struck down the European Commission’s adequacy decision approving the Privacy Shield, the prior legal framework for transferring EU personal data

⁴⁸ U.S. Dep’t of the Treasury Press Release, Statement by Secretary of the Treasury Janet L. Yellen on President Biden’s Executive Order on the Committee on Foreign Investment in the United States (Sept. 15, 2022), at <https://home.treasury.gov/news/press-releases/jy0951> [<https://perma.cc/AL6P-ZFZD>].

⁴⁹ White House Press Release, Background Press Call on President Biden’s Executive Order on Screening Inbound Foreign Investments (Sept. 14, 2022), at <https://www.whitehouse.gov/briefing-room/press-briefings/2022/09/15/background-press-call-on-president-bidens-executive-order-on-screening-inbound-foreign-investments> [<https://perma.cc/7RVG-QXRN>].

⁵⁰ *Id.*

⁵¹ Fact Sheet, *supra* note 2.

⁵² See, e.g., National Security and Investment Act 2021 (c. 25) (UK); Regulation 2019/452 Establishing a Framework for the Screening of Foreign Direct Investments into the Union, 2019 OJ (L 79) I; Foreign Investment Reform (Protecting Australia’s National Security) Act 2020 (Austl.).

¹ Enhancing Safeguards for United States Signals Intelligence Activities, Exec. Order No. 14,086, 87 Fed. Reg. 62,283 (Oct. 7, 2022) [hereinafter EO 14,086]. Separately, on December 14, 2022, the United States and other governments agreed to the OECD’s Declaration on Government Access to Personal Data Held by Private Sector Entities, at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0487> [<https://perma.cc/4AAR-54A4>].

² White House Press Release, Fact Sheet: President Biden Signs Executive Order to Implement the European Union-U.S. Data Privacy Framework (Oct. 7, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/07/fact-sheet-president-biden-signs-executive-order-to-implement-the-european-union-u-s-data-privacy-framework> [<https://perma.cc/B5LZ-RN3N>] [hereinafter Fact Sheet]. When the framework was first announced, it was called the Trans-Atlantic Data Privacy Framework. See note 3 *infra*.