Antitrust Alliance

GENERAL FOREIGN INVESTMENT CONTROL RULES

IN THE ATA MEMBER STATES

2024

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BELGIUM

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1.	Relevant legislation (foreign investment legislation in force)

Cooperation Agreement of 30 November 2022 between the Federal State, the Flemish Region, the Walloon Region, the Brussels-Capital Region, the Flemish Community, the French Community, the German-speaking Community, the French Community Commission and the Joint Community Commission on the establishment of a screening mechanism for foreign direct investments (the "Cooperation Agreement").

This Cooperation Agreement is a political compromise resulting from Belgium's constitutionally complex structure and remains ambiguous concerning many issues. Moreover, the screening mechanism only entered into force on 1 July 2023 and therefore no decisions have been issued to date.

Given these ambiguities, draft guidelines have been issued on 30 June 2023 by the ISC to clarify the interpretation of the Cooperation Agreement (the "Draft Guidelines" are available on the ISC's website and are regularly updated; Flemish and French only).

Cooperation Agreement in Flemish and French only: sceening-samenwerkingsakkoord-filtrage-accord-cooperation.pdf (fgov.be)

Draft Guidelines in Flemish and French only:

- Flemish version: Voorstel van richtlijnen voor buitenlandse directe investeringen - versie 30 juni 2023 (fgov.be)
- French version: Proposition de lignes directrices des investissements directs étrangers - version 30 juin 2023 (fgov.be)

2.	Relevant authority (foreign investment regulator)

Interfederal Screening Commission ("ISC")

Website: https://economie.fgov.be/nl/themas/handelsbeleid/interfederale

3.	Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)

It should be noted that the sectors are very widely described and that no guidance on their interpretation has yet been given. Moreover, it is only required that the Belgian undertaking's activities "touch upon/relate to" these sectors and so undertakings that are also not directly active in these sectors but, for example, are a key supplier to undertakings with activities in these sectors may also be caught.

The sectors covered include:

- defence (including dual use goods)
- healthcare,
- energy,
- telecoms,
- transport,
- critical technology and raw materials,
- critical infrastructure, whether physical or virtual, as well as land and real estate crucial for the use of such infrastructure,
- food security,
- private security,
- media,
- cybersecurity and access to sensitive information and personal data, and
- biotechnology.

4.	**Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold – e.g. % of votes in the target triggering the notification)**

Types of transactions to be notified:

- Acquisition of shares:
  - ✓ Direct or indirect acquisition of at least 10% of the voting rights in undertakings in Belgium active in the most sensitive sectors (defence, energy, cybersecurity, electronic communications or digital infrastructure) and whose annual turnover in the financial year preceding the acquisition of at least 10% of the voting rights exceeded EUR 100 million; or
  - ✓ Direct or indirect acquisition of at least 25% of the voting rights in undertakings in certain less-sensitive sectors. For foreign direct investments in the biotechnology sector only, an additional turnover threshold of EUR 25 million in the financial year preceding the investment is required.
- Acquisition of control by other means (e.g. a shareholders agreement).
- Although not explicit mentioned in the Cooperation Agreement, it can be deduced from the draft notification form that also the acquisition of assets of an entity active in these sectors will fall within the scope of the FDI screening.
- Intra-group restructurings.

Definition of a Foreign investor:

- Any natural person having his/her principal place of residence outside the European Union (hereafter referred to as "EU");
- Any undertaking from a third country, incorporated or organised under the laws of a non-EU jurisdiction, with a registered office or principal place of business outside the EU; or
- Any undertaking in which one of its ultimate beneficial owners ("UBO") has its/his/her principal place of residence outside the EU.
- Not only private institutions and undertakings, but also foreign governments and public institutions are covered.

5.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**

The parties to be included in the foreign investment assessment are all the entities that are part of the group of the investing entity and the protected entities.

Detailed information must be provided on the ownership structure and economic activities of the investors and on the target's activities.	
6.	**Exceptions**
Greenfield investments are excluded.	
7.	**Notification / review type (e.g. mandatory, pre-closing, suspensory)**
The notification obligation is **mandatory** and **suspensory** (with a standstill obligation pending review) until the ISC has approved the transaction.	
8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**
There is no procedure provided for third parties to intervene in the review process.	
9.	**Filing fee**
There is no filing fee.	
10.	**Submission deadline / stand-still obligation**
Submission deadlines: After the conclusion and before the completion of the agreement, the publication of the purchase or exchange offer, or the acquisition of a controlling interest. A notification can also be made based on a draft agreement provided the parties declare their intention to conclude an agreement that does not materially differ on any relevant aspect from the notified draft. **Standstill obligation:** The transaction cannot be implemented or closed until the FDI clearance has been obtained. Failure to respect this standstill obligation may give rise to an administrative fine of up to 30% of the investment's value.	
11.	**Availability of pre-notification / informal consultation**
To date, the ISC has not engaged in any informal consultation or pre-notification contacts. In case of doubt, the ISC recommends that the parties submit a precautionary filing. Upon notification, the ISC will analyse the filing to check the completeness and can request additional information. The statutory time limits for the decision only start running when the notification has been declared to be complete.	
12.	**Scope of information / documents required for filing**
The detailed information to be submitted with the notification includes: • the ownership structure of the foreign investor and of the undertaking(s) in which the foreign direct investment is being made, including information on the identity of the investor, the shareholding, and the ultimate beneficiary. • the approximate value of the foreign direct investment and how this value has been determined. • the products, services and business operations of the foreign investor and its controlling entities, including entities under the control of the latter, on the one hand, and the undertaking in which the foreign direct investment is made, on the other (including	

turnover, profit, market share data, IP, access to personal and sensitive data, workforce, customers and competitors, etc.); • member states of the EU and third countries in which, the foreign investor (and its controlling entities including entities under their control) and the undertaking in which the foreign direct investment is made have carried out relevant business activities; • the intended investment and the investor's strategy relating to the investment; • the financing of the investment and its source; • other conditions precedent and the date or expected date of the investment's completion.	
13.	**Proceedings timetable (timing for review)**
The timeline for the review is divided into two phases: • Phase 1: The Assessment phase lasts a maximum of 30 calendar days, which starts from the receipt of the full file. However, a "stop-the-clock" mechanism applies, for example, if an ISC member requests additional information; • Phase 2: The Screening phase lasts at least 28 calendar days and can be extended by several months in the case of written comments, oral hearings, RFIs remedies, and exceptional circumstances.	
14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**
The decision can result in an unconditional clearance, a conditional clearance, or a prohibition. Failure to take a decision within the statutory deadlines results in a tacit unconditional approval. The Cooperation Agreement contains an indicative non-exhaustive list of potential remedies, including the establishing of a code of conduct for the provision or exchange of sensitive information; the appointment of a compliance officer, the obligation to deposit technology or know-how with a third party, limiting the size of the foreign investment, prohibiting the acquisition of certain parts of an entity or certain entities, limiting the number of shares to be acquired, etc.	
15.	**Publicity of the decision and confidentiality of the information provided**
The decision is only notified to the notifying parties by registered mail, and if electronic, via an electronic registered mail service within two days of receipt of the provisional decisions from the ISC's ministers and members. According to the Guidelines, the provided information's treatment will comply with the GDPR, and will be disseminated exclusively in strict compliance with the "need-to-know" principle. An undertaking's data will only be processed to the extent necessary for the screening of foreign direct investment and to ensure the effectiveness of the international cooperation described in Article 13 of Regulation 2019/452. Moreover, during the screening process, no confidential information is available to the notifying parties or the public. Each year, the ISC publishes an annual report of the FDI notified and screened that may only contain non-confidential information. It is still unclear whether the decisions or a related press release will be published.	
16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**

A final decision allowing (whether or not subject to remedies) or prohibiting the foreign direct investment can be appealed by the foreign direct investor or the target to the Market Court (a part of the Brussels Court of Appeal) within 30 days of the notification of the challenged decision. The appeal has in principle no suspensory effect. The Market Court may only partially or fully annul the decisions and in the case of an annulment it will send the file back to the ISC, where a new Screening phase will be launched. The Market Court only has full jurisdiction for fines.	
17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**
Either a failure to notify in time or a breach of the standstill obligation may give rise to administrative fines of up to 30% of the investment's value.	
18.	**Other national security review distinct from FDI rules**
A Flemish Decree of 7 December 2018 on governance (Article III.60) has a more restricted scope. Belgian and EU merger control applies in parallel.	
19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**
The FDI screening regime only entered into force on 1 July 2023 and many ambiguities still remain. It is expected that the ISC's Guidelines will be updated regularly.	
20.	**Helpful links**
Interfederal Screening Commission: Comité de filtrage interfédéral | SPF Economie (fgov.be) FAQs: Voorstel van Richtlijnen - versie 30.06.2023 - Proposition de lignes directrices - version 30.056.2023 (fgov.be) Cooperation Agreement: sceening-samenwerkingsakkoord-filtrage-accord-cooperation.pdf (fgov.be) (Flemish and French only)	

CYPRUS

Chrysses Demetriades & Co http://www.demetriades.com/

Cyprus has not yet adopted any regulations of FDI

CZECH REPUBLIC

Pierstone http://pierstone.com/

1.	**Relevant legislation (foreign investment legislation in force)**
Act No. 34/2021 Coll., on Foreign Investment Screening	
2.	**Relevant authority (foreign investment regulator)**
Czech Ministry of Industry and Trade	
3.	**Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)**
• Manufacturing / research / development / innovation / lifecycle management of military equipment; • Critical infrastructure: energy, gas, heat, water, food, healthcare, transportation, emergency services, financial markets and public administration; • Critical information infrastructure / cybersecurity; and • Development and production of dual use (military / civilian) products (including software and technology).	
4.	**Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)**
• A foreign investor is any person or legal entity **from outside the EU** who makes an investment in the Czech Republic, or a person or legal entity who is established in the EU but who is directly or indirectly **controlled by a person / entity from outside the EU.** • The Act is aimed at foreign investments that provide the foreign investor with "effective control" over the Czech target, which includes: ✓ The possibility for the foreign investor to dispose of at least **10% of the voting rights** the target person; ✓ **Membership** of a foreign investor in the **statutory bodies** of the target person; ✓ **Ownership of assets** used by the target to perform its business activities; or ✓ Any other form of control which gives the foreign investor **access to information, systems or technology** important for the security of the Czech Republic and its public order.	
5.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**

The **foreign investor** is a participant to the screening process (the notifying party).

The target person and its owner may be asked to provide information as part of the screening process, however, they are not given any particular rights.

The screening process is conducted by the **Ministry of Industry and Trade**, which receives statements from a number of other institutions, namely the **Ministry of the Interior**, the **Ministry of Defence**, the **Ministry of Foreign Affai**rs, the **Ministry of Finance**, the **Police of the Czech Republic**, the **Financial Analytical Office**, the **National Security Office** and the **intelligence services** of the Czech Republic.

Other institutions (e.g. the Ministry of Transport, the Czech National Bank) may also appear in the screening process if their interest is concerned.

If there are indications that the investment may pose a threat to the security of the Czech Republic or its public order, the Ministry of Industry and Trade shall submit the matter to the **government** for consideration. The government then adopts a resolution on whether or not the investment poses a potential threat, which later serves as the necessary basis for the Ministry´s decision on the prohibition of a foreign investment.

6.	**Exceptions**

The exception to the need for the Ministry´s prior approval is where the foreign investment is:

- made as part of recovery procedures, early intervention measures or crisis resolution on the financial market, or
- urgently needed to advert the failure of a target person that is a financial service provider.

7.	**Notification / review type (e.g. mandatory, pre-closing, suspensory)**

- A foreign investor submits an application for a foreign investment screening where **prior approval** from the Ministry is required. Prior approval is required for investments into the following target persons:
  - ✓ a target person who performs manufacturing, research, development, innovation or organization of the life cycle of military material, or into a target object through which the said activity is performed;
  - ✓ a target person who operates a critical infrastructure element determined by the relevant central administrative authority;
  - ✓ a target person who is an administrator of an information system belonging to the critical information infrastructure, administrator of a communication system belonging to the critical information infrastructure, administrator of an information system belonging to an essential service, or operator of an essential service;
  - ✓ a target person who develops or manufactures the dual-use goods, or target object through which such goods are developed or manufactured.
- In other cases, the Ministry may also initiate a screening ex officio at its discretion if the foreign investment has the **potential to affect** the security of the Czech Republic or its public order.

8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**

The Ministry may ask the target company and its owner to provide information.

However, the Act does not establish any particular rights for third parties.

9.	**Filing fee**

The application is not subject to an administrative fee.	
10.	**Submission deadline / stand-still obligation**
The Act does not state any notification deadline. However, the foreign investor shall not initiate the transaction before obtaining Ministry´s prior approval **(stand-still obligation).**	
11.	**Availability of pre-notification / informal consultation**
Submitting a request for a consultation with the Ministry is either: • **mandatory** - the target person owns a nationwide radio or TV broadcast license, or is a publisher of a periodical that has an overall minimum average circulation of 100 000 prints per day in the past calendar year, or • **voluntary** - when the investor has an intention to carry out an investment that does not require prior approval, they may ask the Ministry for a consultation as to whether it might be considered as endangering security or public order of the Czech Republic, • if the consultation is negative, the Ministry will not screen this investment ex officio.	
12.	**Scope of information / documents required for filing**
To initiate a foreign investment screening, the foreign investor submits an **application** on a prescribed form together with a **questionnaire** containing the following information: • basic data of the foreign investor and target person: legal entity (company name, registered office, ID No., management data) / natural person (name, surname, date of birth etc.) • information on the ownership structure of the foreign investor and the target person, • information on the products or services and business activities of the foreign investor and the target person, • a list of the EU Member States in which the foreign investor and the target person operate, information about their subsidiaries and branches in the EU, • the source of financing of the foreign investment, • the amount of foreign investment, • the date of planned completion of the foreign investment, • information on the involvement of the target person in projects or programmes of interest to the EU, • information on foreign investor´s current shareholdings and voting rights in the target person.	
13.	**Proceedings timetable (timing for review)**
• Screening of a foreign investor that was not found to pose a risk: **90 days**; • Screening of a foreign investor that has been identified as risk-prone, including discussion time required by the Czech government: **135 days**; These deadlines can be extended by 30 days in complicated cases. • Timeline for the Ministry to provide a response if an investor were to submit a request for consultation: **45 days.**	
14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**

A) If a **potential threat is identified** in an investment, the Ministry shall issue either a decision on:

- conditional approval of the foreign investment,
- conditional admissibility of the foreign investment,
- non-issuance of the foreign investment approval,
- prohibition of the foreign investment, or
- prohibition of further continuation of the foreign investment (in case of ex officio screening);
- as already mentioned, the above decisions are conditional upon the adoption of a government resolution according to which such a decision is necessary for the protection of the security of the Czech Republic or its public order;

B) If **no threat is identified**, the Ministry issues a decision by itself on:

- approval of the foreign investment, or
- admissibility of the foreign investment with no conditions.

15.	**Publicity of the decision and confidentiality of the information provided**

Statements, decisions and related documents provided under the Act containing **confidential information pursuant to the Regulation (EU) 2019/452 are not made public.**

16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**

- A decision on the prohibition of a foreign investment, which is by law subject to a government resolution, **cannot be appealed or revised** in a revisory procedure.
- The foreign investor can file an **action against decision of an administrative authority**:
  - ✓ legal proceedings before the Czech regional courts,
  - ✓ can be filed within two months of receipt of the decision,
  - ✓ has no suspensive effect.

17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**

If a foreign investor fails to notify a transaction / request a mandatory consultation: a fine up to **1% of the total net turnover** achieved by the foreign investor for the preceding accounting period, or up to CZK 50 million of the turnover cannot be calculated.

If the foreign investor proceeds with a transaction irrespective of a decision on the prohibition of a foreign investment by the Ministry: a fine up to **2% of the total net turnover** achieved by the foreign investor for the preceding accounting period, or up to CZK 100 million of the turnover cannot be calculated.

18.	**Other national security review distinct from FDI rules**

There is no other national security review in the Czech Republic.

19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**

No changes have been implemented in the past year. In connection with the Regulation (EU) 2022/2560, an amendment to the Act is currently being worked on, which includes cooperation between the Ministry of Industry and Trade and the Czech Competition Authority to investigate potential foreign subsidies distorting the Czech internal market.	
20.	**Helpful links**
https://www.mpo.cz/en/foreign-trade/investment-screening/submitting-a-request-for-a-foreign-investment-approval-or-a-consultation-proposal--261351/	

ESTONIA

Walless Law firm WALLESS

1.	Relevant legislation (foreign investment legislation in force)

- Foreign Investment Reliability Assessment Act ("**FDI Act**"), adopted on 25.01.2023 and in force as from 01.09.2023 (https://www.riigiteataja.ee/en/eli/504042023002/consolide);
- Regulation of the Minister of Economy and Information Technology of 30.06.2023 "Procedure for submitting an application for a foreign investment" (https://www.riigiteataja.ee/akt/111072023004?leiaKehtiv – the act is only available in Estonian);
- Rules of Procedure of the Foreign Investment Commission (https://www.riigiteataja.ee/akt/115072023054 - the act is only available in Estonian);
- Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019R0452-20211223).

2.	Relevant authority (foreign investment regulator)

The Consumer Protection and Technical Regulatory Authority ("**CPTRA**") is competent to exercise state supervision of compliance with the requirements provided for in the FDI Act.

3.	Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)

The following target companies are within the scope of the FDI Act:

- providers of vital services;
- companies with the state's qualifying holding;
- undertakings which manufacture or, on the basis of a valid contract, supply military goods and/or dual-use items, or provide technical assistance related to such goods and/or items to state authorities (exception apply to undertakings which are already subject to investment restrictions under the Weapons Act).
- providers of national television or radio service and providers of on-demand audiovisual media services, as well as publishers of news, newspapers and magazines in the print media and on the internet whose turnover in Estonia in the previous calendar year in relation to the relevant activity was at least 3 million euros;
- undertakings holding a geological exploration or extraction permit for the exploration or extraction of oil shale or a raw material found in Estonia and included in the List of Critical Raw Materials for the European Union as prepared by the European Commission;
- undertakings with whom the state's operation stockpile contract or delegated stockpile contract has been concluded;
- undertakings that own a permanent national defence object;

- undertakings that own a piece of the mast infrastructure with a height of at least 200 meters necessary for the functioning of national communication or the transmission of broadcasting programmes;
- railway infrastructure managers who operate a public railway;
- certified aerodrome or heliport operators who operate an aerodrome or heliport which is open for international scheduled air traffic, and the air navigation service providers who ensure servicing air traffic in the Tallinn Flight Information Region;
- operators of Estonian maritime ports belonging to the trans-European transport network (as defined in Annex II to Regulation (EU) No 1315/2013).

4.	**Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)**

"Foreign investor" means:

- a natural person who holds: (i) the citizenship of a third country, or (ii) several citizenships, at least one of which is the citizenship of a third country, or (iii) who is a stateless person;
- an undertaking established on the basis of the law of a third country;
- an undertaking controlled by the natural person specified in clause 1 or by the undertaking specified in clause 2, regardless of their place of establishment.
- For the purposes of the FDI Act, **"third country"** means a country other than a Member State of the European Union.

Activities caught under the notification obligation and included in the scope of the FDI Act are the activities listed under question no. 3 above.

Transactions caught by the FDI Act: A notifiable transaction (a foreign investment) is a transaction or related transactions through which a Foreign investor:

- acquires direct or indirect qualifying holding in the target undertaking;
- achieves direct or indirect control over the target undertaking; or
- acquires a part of the target undertaking.

For the purposes of the FDI Act:

- **"qualifying holding"** means any direct or indirect holding in the share capital of a company which represents 10% or more of the share capital of the company, of all rights related thereto or of the voting rights in the company or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists;
- **"control"** and "a **controlled undertaking"-** a company controlled by a person is a company which meets at least one of the following conditions: (1) the person holds the majority of the votes represented by shares in the company or holds the majority of the votes as a general partner or limited partner; (2) the person who is a general partner or limited partner of the company has the right to appoint or remove the majority of members of the supervisory board or management board of the company; (3) the person who is a general partner, a limited partner, a partner or a shareholder of the company controls alone the majority of votes pursuant to the agreement entered into with other general partners, limited partners, partners or shareholders; (4) a person exercises or has the power to exercise dominant influence or control over a company;
- an **"undertaking"** is a company, sole proprietor, any other person engaged in economic or professional activities, an association which is not a legal person, or a person acting in the interests of an undertaking;

• **"turnover"**: there is no turnover threshold, except for providers of national television or radio service and providers of on-demand audiovisual media services, as well as publishers of news, newspapers and magazines in the print media and on the internet, for whom the FDI Act applies if the turnover in Estonia in the previous calendar year in relation to the relevant activity was at least 3 million euros.	
5.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**
In order to obtain a foreign investment authorisation, a foreign investor must submit an application to the CPTRA. If the target undertaking or another party to the foreign investment becomes aware that the foreign investor has not applied for a foreign investment authorisation, they have to notify the CPTRA thereof as soon as possible. A foreign investment authorisation from the CPTRA is granted by assessing the impact of the foreign investment on the security and public order of Estonia or another Member State of the European Union.	
6.	**Exceptions**
As a general rule, the completion of a foreign investment subject to a FDI authorisation is prohibited before the FDI authorisation is obtained. However, this does not prohibit the conduct of a transaction to offer securities to the public or the conduct of securities transactions as a series, including the conduct of transactions with securities to be converted into other securities listed on the stock exchange, if an application for obtaining a foreign investment authorisation is immediately submitted to the CPTRA and, until obtaining the foreign investment authorisation, the foreign investor does not exercise the rights, in particular the voting rights, that the qualifying holding to be acquired or the control to be achieved entails.	
7.	**Notification / review type (e.g. mandatory, pre-closing, suspensory)**
The notification is mandatory and must be filed prior to completion of the transaction. The completion of a foreign investment subject to a FDI authorisation is prohibited before the FDI authorisation is obtained.	
8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**
Another Member State of the European Union or the European Commission may provide comments or an opinion on the basis of Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, p. 1–14).	
9.	**Filing fee**
There is no filing or similar fee.	
10.	**Submission deadline / stand-still obligation**
If the transaction is notifiable, a foreign investor must submit the application after the entry into the contract or conduct of another transaction serving as a basis for the foreign investment but before completing the foreign investment. The completion of a foreign	

investment subject to a FDI authorisation is prohibited before the foreign investment authorisation is obtained.	
11.	**Availability of pre-notification / informal consultation**
A foreign investor, a target undertaking and another party to a foreign investment may, prior to applying for a FDI authorisation or in the authorisation procedure, seek clarification from the CPTRA, as well as seek advice from the Authority as to whether the foreign investment is subject to a FDI authorisation.	
12.	**Scope of information / documents required for filing**
An application must include a description of the foreign investment and the data of the foreign investor, the target undertaking, a part of the target undertaking, their ownership structure, beneficial owner, and economic activities as well as the value of the foreign investment, the source of financing and the time schedule. A more precise list of the scope of information is established by a regulation of the minister in charge of the policy sector (available here in Estonian: The procedure for submitting an application for a foreign investment permit). In addition, the CPTRA has the right to request that the applicant submit, in addition to the aforementioned, data and documents if these are necessary for assessing the reliability of the foreign investment.	
13.	**Proceedings timetable (timing for review)**
The CPTRA adopts an official decision within 30 calendar days of the submission of a complete application. The review period may be extended by up to 90 calendar days if more time is required for assessing the impact of the foreign investment or if other member states or the Commission have notified their intention to provide comments or an opinion on the basis of Regulation (EU) 2019/452. The review period may also be extended by up to 60 calendar days if CPTRA and the foreign investor engage in commitment negotiations.	
14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**
The CPTRA makes the decision either to (i) grant a foreign investment authorisation; (ii) refuse to grant a foreign investment authorisation; or (iii) notify the applicant that the foreign investment is not subject to a FDI authorisation. The FDI authorisation may contain a secondary condition which obliges a foreign investor or a target undertaking to take measures to avoid endangering the security or public order of Estonia or another Member State of the European Union, including to divest holding of a certain size in the target undertaking or continue effective contracts for the supply of products or provision of services.	
15.	**Publicity of the decision and confidentiality of the information provided**
The reasons for the refusal to grant a FDI authorisation, as well as the information and evidence collected in the course of the procedure are not disclosed, including to the applicant, to the extent in which it may endanger the security or the protection of public order of Estonia or another Member State of the European Union or in which it is subject to the restriction on access provided for in law.	

16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**

The decision may be challenged or appealed by the person who finds that his/her rights or freedoms are violated, either by filing a challenge against the CPTRA or filing an appeal with the administrative court. In either case, the challenge or appeal must be filed within 30 days as of the date the person becomes or should become aware of the decision.

An appeal may seek:

- the full or partial annulment of the administrative act (annulment complaint);
- the issue or an administrative act or the taking of an administrative measure (mandatory complaint);
- a prohibition to issue certain administrative act or take a certain administrative measure (prohibition complaint);
- compensation for harm caused in a public law relationship (compensation complaint);
- elimination of unlawful consequences of an administrative act or measure (reparation complaint);
- a declaration of nullity of an administrative act, a declaration of unlawfulness of an administrative act or measure, or a declaration ascertaining other facts of material importance in a public law relationship (declaratory complaint).

A challenge may seek:

- repeal of an administrative act;
- repeal of a part of an administrative act unless partial challenge of the administrative act is restricted by law;
- issue of a precept for the issue of an administrative act, new resolution of a matter or taking a measure.

17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**

If a foreign investment subject to a FDI authorisation has been made without FDI authorisation, the CPTRA may issue a precept to the foreign investor, the target undertaking and another party to the foreign investment, obliging them to divest the holding or a part of the target undertaking, reverse the transaction or perform other acts to restore the situation prior to the foreign investment. In the event of a failure to observe a precept, the CPTRA may impose non-compliance levy of up to EUR 100,000. The non-compliance levy can be imposed repeatedly until the precept is complied with.

In addition, closing a transaction without the authorisation may result in the transaction being void. Under Estonian law, transactions that violate prohibitions provided by law are void if the purpose of the prohibition is to render the transaction void in the event of non-compliance of the prohibition.

18.	**Other national security review distinct from FDI rules**

There are no other general national security review regimes distinct from the procedure set out in the FDI Act. There are certain specific regimes and limitations based on the national security considerations, applicable to acquisition of interest in companies engaged in handling of military weapons, acquisition of land in the vicinity of the Estonian national borders, etc.

19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**
The FDI Act was adopted on 25 January 2023, and it came into force on 1 September 2023. At this time, to our knowledge, no new amendments are foreseen.	
20.	**Helpful links**
Foreign Investment Reliability Assessment Act: https://www.riigiteataja.ee/en/eli/504042023002/consolide The regulation "Procedure for submitting an application for a foreign investment" (in Estonian): https://www.riigiteataja.ee/akt/111072023004?leiaKehtiv The CPTRA webpage: https://ttja.ee/en/business-client/entrepreneurship/foreign-direct-investment-screening Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union: https://eur-lex.europa.eu/legal-content/ET/TXT/?uri=CELEX:32019R0452	

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1.	**Relevant legislation (foreign investment legislation in force)**
Act on the Screening of Foreign Corporate Acquisitions (172/2012, as amended) (the "Foreign Corporate Acquisitions Act"). https://www.finlex.fi/fi/laki/kaannokset/2012/en20120172_20200682.pdf	
2.	**Relevant authority (foreign investment regulator)**
The Ministry of Economic Affairs and Employment.	
3.	**Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)**
The following business activities are monitored under the Foreign Corporate Acquisitions Act: • defence industry enterprises; • companies that produce or supply critical products or services related to the statutory duties of Finnish authorities essential to the security of society ("security sector enterprise"); • organisations or business undertakings that are considered, when assessed as a whole, critical in terms of securing functions vital to society on the basis of their field, business or commitments. The definitions are interpreted broadly, e.g. companies which use dual-use goods in operations in Finland are considered as defence industry enterprises.	
4.	**Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)**
"Foreign investor" means a foreign national, organisation or foundation not domiciled in the EU or European Free Trade Association ("EFTA") Member State. Indirect foreign owners are also covered; an organisation or foundation which is domiciled within EU or EFTA Member States but in which a foreign investor referred to above controls at least one tenth of the aggregate number of votes conferred by all shares in a limited liability company or has a corresponding actual influence in another organisation or business undertaking is considered as a foreign investor.	

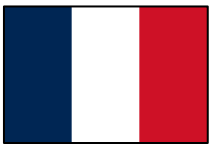
Further, regarding acquisitions of defence industry enterprises, the definition of a foreign investor includes nationals, organisations and foundations domiciled in a EU or EFTA Member State other than Finland. Transactions caught by the Foreign Corporate Acquisitions Act are acquisitions of at least one tenth, at least one third or at least one half of the total number of votes conferred by all shares in a limited liability company subject to screening or corresponding actual influence in a limited liability company or other entity subject to screening. Asset deals are also covered by the Foreign Corporate Acquisitions Act. There are no turnover thresholds. Therefore, even acquisitions of small companies may fall under the scope of application of the Foreign Corporate Acquisitions Act.	
5.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**
The obligation to notify the acquisition lies on the foreign investor, which is also responsible for providing sufficient information to the Ministry of Economic Affairs and Employment.	
6.	**Exceptions**
The following transactions are excluded from the screening of foreign investments: • the foreign investor subscribes new shares in proportion to existing shareholding in connection with an increase in a company's capital; • the foreign investor gains possession of property through inheritance, a will or marital right. In case of acquisition of a company critical in terms of securing functions vital to society, the transaction is also exempted, if • another foreign owner lawfully, whether by virtue of a procedure under the Foreign Corporate Acquisitions Act or otherwise, holds at least one tenth of the aggregate number of votes conferred by all shares in a limited liability company, or has a corresponding actual influence; or • a business subject to screening is acquired from another foreign owner whose ownership is based on a procedure pursuant to the Foreign Corporate Acquisitions Act.	
7.	**Notification / review type (e.g. mandatory, pre-closing, suspensory)**
In case of a defence industry or security sector enterprise, an advance application for confirmation is **mandatory.** The application is usually filed after the signing and the acquisition should not be completed before granting of approval (i.e. the filing is **suspensory**). The notification of an acquisition of a company critical in terms of securing functions vital to society is voluntary (see also point 10 below).	
8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**
Applications are not published, and third parties do not have any rights in the review process. During the investigation, the Ministry of Economic Affairs and Employment requests statements from relevant national authorities, such as the defence forces, the	

police or National Emergency Supply Agency. This internal consultation is confidential and made at the discretion of the Ministry of Economic Affairs and Employment.	
9.	**Filing fee**
The filing fee amounts to EUR 8,000 per decision (or EUR 1,500 in case the matter is not investigated). The current fee is valid between 1 April 2023 and 31 March 2025.	
10.	**Submission deadline / stand-still obligation**
An acquisition of a defence industry enterprise or security sector enterprise shall not be completed before granting of approval. An application can be filed after the signing or when the parties otherwise have made a binding preliminary agreement on the transaction. In practice, we recommend that also an acquisition of a company critical in terms of securing functions vital to society shall not be completed before granting of approval.	
11.	**Availability of pre-notification / informal consultation**
The Ministry of Economic Affairs and Employment may be contacted for informal consultations. The advance consultations are informative in nature and remain at a general level. Although such consultations may be helpful, the authorities do not generally take any conclusive positions in advance consultations. There is no separate pre-notification stage in the procedure.	
12.	**Scope of information / documents required for filing**
An application must contain information on the parties (foreign investor and the target company), such as the field of business, turnover, number of employees, detailed ownership structure and description of the products / services that trigger the notification obligation. Information is also needed on the transaction and the nature of the control to be acquired as well as strategy behind the acquisition and the effects of the transaction to the target company's business. Documents typically needed are the share purchase agreement, possible shareholder agreements and other contractual arrangements, structure charts and annual reports of the parties. The application is informal but a specific form must be annexed concerning information to be provided under Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union. The Ministry of Economic Affairs and Employment is entitled to request further information required for processing the matter until the information provided is considered sufficient for making a decision in the matter.	
13.	**Proceedings timetable (timing for review)**
In case of a company critical in terms of securing the functions vital to the society, the corporate acquisition will be considered confirmed if, within six weeks, the Ministry of Economic Affairs and Employment does not decide to undertake a further examination of the matter or, within three months of receiving the information necessary for considering the matter, does not propose that the matter be referred to a government plenary session for its consideration.	

In case of other companies subject to screening, there are no binding time-limits for the decision-making. However, in most cases also these decisions are made within three months.	
14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**
The Ministry of Economic Affairs and Employment must approve the acquisition unless it could endanger a key national interest. The Ministry may impose conditions necessary for the acquisition in order to safeguard a key national interest. Conditions may only be imposed if the parties to the transaction agree on the conditions and undertake to comply with them.	
15.	**Publicity of the decision and confidentiality of the information provided**
The application is treated as confidential, and no information is disclosed concerning pending applications. The decisions are not published but this practice may change as the Ministry of Economic Affairs and Employment is considering the possibility to publish the decisions in the future. However, pursuant to Act on the Openness of Government Activities (621/1999), everyone has the right of access to non-confidential version of the final decision. For this purpose, the Ministry of Economic Affairs and Employment requests, after having made the decision, the foreign investor's view of the business secrets possibly included in the decision.	
16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**
A person/entity whom a decision concerns, or whose right, obligation or interest is directly affected by the decision may request a judicial review of the decision by way of appeal. An authority may also request a judicial review by appeal if this is necessary because of a public interest overseen by the authority. The appeal shall be filed in writing within 30 days of receipt of the decision.	
17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**
Anyone who intentionally or through gross negligence fails to apply for the mandatory confirmation may be sentenced to a fine.	
18.	**Other national security review distinct from FDI rules**
Pursuant to Act on Transfers of Real Estate Requiring Special Permission (470/2019), a foreign investor (domiciled/seated outside the EU and the EFTA) needs a permit in order to purchase real estate in Finland. The permit is not needed in case of a share purchase even if the target company owns real estate. Permission for the transfer of a piece of real estate is not granted if the transfer is deemed to threaten national security, complicate the organisation of defence, the surveillance and safeguarding of territorial integrity or the assurance of border control, border security or the safeguarding of security of supply.	

19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**
The Foreign Corporate Acquisitions Act has been amended most recently in 2020. There are currently no new proposals pending.	
20.	**Helpful links**
FDI pages of the Ministry of Economic Affairs and Employment: • https://tem.fi/en/acquisitions Permits concerning the purchase of real estate: • https://www.defmin.fi/en/licences_and_services/authorisation_to_non-eu_and_non-eea_buyers_to_buy_real_estate	

FRANCE



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1.	Relevant legislation (foreign investment legislation in force)

The French foreign investment regime currently relies on Decree No. 2019-1590[1] and the Order of 31 December 2019[2], as modified by the Orders of 27 April 2020[3] and of 10 September 2021[4], relating to foreign investments in France, and notifications under these regulations have to be made to the French Minister of the Economy ("**FME**").

Furthermore, the FME issued in September 2022 guidelines on the control of foreign investments in France (the "**Guidelines**") which provide guidance on the scope of application of the regime as well as the procedural framework.

2.	Relevant authority (foreign investment regulator)

The foreign direct investment screening procedure is led by the FME through the Directorate General of the Treasury (*Direction Générale du Trésor* – "**French Treasury**") and includes the Interministerial Committee on Foreign Investment in France. The Interministerial Committee on Foreign Investment in France comprises officials from different administrative institutions (ministries or agencies) with specific expertise in the sectors that are subject to screening.

The procedure takes place in two phases (see Question 13) throughout which the Directorate General of the Treasury cooperates closely with the investor and/or its legal counsel.

3.	Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)

Article R. 151-3 of the French Monetary and Financial Code ("**MFC**") provides for a list of business activities falling within the scope of French foreign investment control.

There are three categories of sensitive sectors, based on the nature of the activity of the target investment entity:

(i) business sectors considered "sensitive" by nature (i.e., public order, public security and national defence activities);
(ii) activities related to infrastructure, goods and services that are essential to safeguard public order and public security, including, but not limited to, the integrity, security and continuity of energy supply, water supply, transport services, space operations, networks

[1] Décret No. 2019-1590 du 31 décembre 2019 relatif aux investissements étrangers en France.
[2] Arrêté du 31 décembre 2019 relatif aux investissements étrangers en France.
[3] Arrêté du 27 avril 2020 relatif aux investissements étrangers en France.
[4] Arrêté du 10 septembre 2021 relatif aux investissements étrangers en France.

and electronic communication services, public health, food safety, political or general press publication; and

(iii) research and development (R&D) activities involving critical technology (i.e., cybersecurity, AI, robotics, additive manufacturing, semiconductors, quantum technologies, energy storage, biotechnologies, and, as from 1 January 2022, technologies used in the production of renewable energy) or dual-use goods and technology that may be used in connection with any of the activities referred to in item (i) or (ii).

With respect to item (iii), the main objective is to cover early-stage R&D activities (i.e. before such activities reach the industrialization phase) on the basis of potential future applications.

The sensitivity of the sector is further reviewed on a case-by-case basis and, in case of doubt, the Guidelines highly recommend to submit an authorisation request or a ruling request to confirm whether the transaction is subject to authorisation.

4.	**Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)**

To assess whether a foreign direct investment in France is subject to prior approval, the FME considers factors relating to the involvement of foreign investors (Article R.151-1 of the MFC), the nature of the transaction and degree of resulting control over the target entity (Article R.151-2 of the MFC), and the degree of sensitivity of the target entity's activities (Article R.151-3 of the MFC).

More specifically, the following three cumulative conditions must be met:

(i) **A foreign entity is present in the ownership chain of the direct acquirer**. Non-French investors (whether or not European) and French investors domiciled outside of France for tax purposes are deemed foreign investors under the foreign direct investment screening regulation in France. The investor's nationality is determined by considering the entire ownership chain of the direct acquirer. If any link in the chain is foreign, the investor is deemed foreign.

(ii) **The nature of the transaction** is such that an investor (i) acquires control (as defined in Article L. 233-3 of the French Commercial Code) of a French legal entity, acquires all or part of a business line from a French legal entity, or (iii) crosses the 25% threshold of voting rights in a French legal entity (this threshold was temporarily lowered, until 31 December 2023, to 10% for French companies whose shares are listed on a regulated market). Note that the third scenario only applies to investors from outside the European Union or European Economic Area.

(iii) **Sensitive activities are carried out by the French target company** (see Question 3 above).

5.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**

The investors (the buyer or any other member of its chain of control) must file the request for prior authorisation. If it is not clear whether such a prior authorisation is required, the investor or the target company may both submit a written request to the FME to determine whether such an authorisation is required.

6.	**Exceptions**

Article R. 151-7 of the MFC provides three categories of exception to the prior authorisation under the FDI procedure.

- *Intra-group operation*

The investor is exempted from the authorisation requirement when the investment transaction is carried out between entities all belonging to the same group, *i.e.* being held more than 50% of the capital or voting rights, directly or indirectly, by the same shareholder (Article L. 233-1 of the French Commercial Code).

This rule is strictly interpreted, and further guidance is available in the Guidelines.

- *Threshold exceeded after a previously authorised acquisition of control*

The investor is exempted from filing an application for authorisation when it exceeds, directly or indirectly, solely or in concert, the 25% threshold of the voting rights in a French entity over which it has previously acquired control pursuant to an authorisation issued under the FDI regulation.

- *Acquisition of control after exceeding a threshold previously authorised*

The investor is exempted from the formal filing of an application for authorisation when it acquires control, within the meaning of Article L. 233-3 of the French Commercial Code, of an entity of which it has previously triggered, directly or indirectly, solely or in concert, the 25% threshold of the voting rights pursuant to a previous FDI authorisation.

However, these three exceptions will not apply in the following situations:

- ✓ When the investment has the effect of preventing an investor from complying with the conditions imposed by the FME in its prior approval;
- ✓ When the purpose of the investment is to transfer abroad all or part of a branch of activity listed in Article R. 151-3 of the Monetary and Financial Code (see Question 3)..

7.	**Notification / review type (e.g. mandatory, pre-closing, suspensory)**

If the conditions set out above are met, filling an application for an authorisation is mandatory and suspensory.

8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**

Third parties (such as competitors) cannot be involved as the procedure remains strictly confidential throughout the review process.

However, the FME generally copies the request to the other administrative authorities or ministries concerned in order to obtain their opinion.

9.	**Filing fee**

The FDI procedure in France is free of charge, which means no filing fees.

10.	**Submission deadline / stand-still obligation**

An investment falling within the FDI scope cannot be completed before obtaining an authorisation decision from the FME.

If an investment is carried out without prior authorisation, the FME may order injunction and/or impose sanctions as detailed below (see Question 17).

11.	**Availability of pre-notification / informal consultation**

A request for opinion is a streamlined procedure allowing investment stakeholders to better plan for a transaction. Both the foreign investor and the French company in which a foreign investment might take place can seek an opinion from the administration before initiating an investment transaction in order to confirm whether prior authorisation is required (Article R.151-4 of the MFC).

The purpose of this request for opinion is to provide more certainty and predictability for the transaction and for the stakeholders from the moment negotiations begin or as soon as the French entity considers raising capital.

The French company can take advantage of this procedure to more accurately value the financing it needs for development and more effectively pursue new investors. This also helps the French company, and the foreign investor, to better anticipate any conditions precedent to the transaction.

The file that must be submitted is more succinct than an application for authorisation given that the government only needs to review information pertaining to the French company's activities. A form is available on the Directorate General of the Treasury's website.

The FME will decide if the French company's business activities require formal screening within two calendar months.

12.	**Scope of information / documents required for filing**

An application for authorisation must be filed by the foreign investor with the French Treasury by (i) registered mail or (ii) email.

The list of information that foreign investors are legally required to provide as part of their filing is presented in the three notification forms available on the French Treasury's website for:

- the application for authorisation;
- the written request of the investor to find out whether a given transaction is subject to prior authorisation; and
- the written request of the target to find out whether a given transaction is subject to prior authorisation.

These forms must be completed in French, but supporting documents and information can be provided in a foreign language (possibly with a certified translation in French if requested by the French Treasury).

In practice, these forms generally require:

- Information relating to the foreign investor;
- Information relating to the target company;
- Information relating to the transaction.

13.	**Proceedings timetable (timing for review)**

According to article R.151-6 of the MFC the government must issue a decision within a maximum of 75 business days:

- a 30-business day phase I review,
- and, when necessary, a 45-business day phase II review.

It should be noted that the time limit begins to run on receipt of the request by the administration (and not on the day the administration acknowledges receipt).

Any request for information from the FDI office during the phase I review suspends the 30-business day deadline.

If a phase II review is launched, requests for information during this phase do not suspend the 45-business day deadline.

14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**

At the end of the phase I of the screening procedure, the investor will receive one of three possible answers from the administration:

- Prior approval by the FME is not required under FDI screening regulation;
- The FME authorises the transaction without conditions;
- A further investigation is needed to determine if conditions are required to safeguard national interests and the investor is noticed that a phase II review will begin.

At the end of the phase II, if any, there are three possible outcomes:

- The investment is authorised by the FME without conditions.
- The investment is authorised by the FME subject to conditions. Any such conditions must be justified by and proportionate to the need to protect public order, public security, and national defence interests.
- The investment is not authorised by the FME. Refusal may or may not be explicitly communicated (no response is given within the prescribed regulatory deadline of 75 business days). The grounds on which authorisation may be refused are strictly limited by regulations (Article R.151-10 of the MFC).

15.	**Publicity of the decision and confidentiality of the information provided**

The procedure is strictly confidential. Civil servants are under an obligation of professional secrecy prescribed by the law.

In addition, the final decision is not published, and third parties are not involved in the review process.

Consequently, there is no need to specifically request protection of business secrets.

16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**

As confirmed in the French foreign investment regime Guidelines, two options are available to parties wishing to challenge the outcome of a foreign investment decision, within two months of the notification of the decision:

- first, through an administrative challenge before the FME by asking for the challenged decision to be reconsidered. In the absence of any feedback within two months, the challenge is deemed rejected; and
- second, through a judicial appeal before the administrative court territorially competent (based on the location of the head office of the French entity subject to the French foreign investment regime).

The judge must verify that the FME complied with the applicable legal provisions.

If a foreign investment decision is subject to an administrative challenge, then the time limit for the administrative appeal is extended and starts only once the administrative challenge is – either explicitly or implicitly – rejected.

17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**

Any undertaking, agreement or contractual clause which directly or indirectly gives rise to a foreign direct investment without the prior authorisation required by foreign direct

investment screening regulations is deemed null and void (Article L.151-4 of the MFC).

If a foreign direct investment was made without prior authorisation, and following an

adversarial procedure initiated by a notice to the investor from the FME, the Minister may order the investor to implement one or more of the following measures (Article L. 151-3-1 of the MFC):

- Apply for authorisation to put the transaction in order. Screening is then performed following the same procedures that apply to investors who seek authorisation prior to making an investment;
- Amend the transaction;
- Return to the *status quo ante* at the investor's expense.

Enforcement orders may be cumulatively accompanied by a daily penalty payment (Article R.151-14 of the MFC) to encourage compliance, and/or precautionary measures to protect public order, public security and national defence (such as suspending the investor's voting rights tied to the transaction requiring authorisation; assigning an agent to safeguard national interests within the French company; suspending, restricting or temporarily prohibiting the investor from disposing of assets tied to sensitive activities; prohibiting or restricting the investor from receiving dividends or stock compensation tied to the transaction requiring authorisation).

The FME may also impose a fine (Article L.151-3-2 of the MFC) up to the greater of:

- twice the amount of the unauthorised investment,
- 10% of the target company's annual turnover,
- EUR 1 million for an individual and EUR 5 million for an entity.

Lastly, criminal measures may be imposed upon complaint by the FME.

18.	**Other national security review distinct from FDI rules.**

In France, there is no other national security review distinct from FDI rules (bearing in mind the possible application of other domestic rules governing acquisitions and M&A transactions, such as EU/French merger control provisions).

19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**

Foreign investment control has become an increasingly important and sensitive issue in France. Since 2019, the list of activities potentially falling within the scope of the French foreign investment regime has grown considerably.

Foreign investment control activity in France has remained stable in 2022, with 325 cases submitted to the French Treasury, compared with 328 in 2021.

In 2022, 131 foreign investment operations were authorised by the FME. 53% of these authorisations were subject to conditions to protect national interests. In the defence sector, this figure rises to 76% of the authorisations issued.

The FME published for the first time the FDI annual report as well as Guidelines on the French foreign investment regime on 2022.

It appears that a strengthening of the control system is expected, and in particular:

- the lowering of the trigger threshold temporarily reduced in spring 2020 (due to covid) from 25% to 10%, which could be maintained permanently;

the list of sectors covered by the FDI control regime would probably be extended (concerning, in particular, extraction and processing of critical raw materials).

20.	**Helpful links**

French Treasury website: https://www.tresor.economie.gouv.fr/services-aux-entreprises/investissements-etrangers-en-france

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1.	**Relevant legislation (foreign investment legislation in force)**
Foreign Trade and Payments Act (Außenwirtschaftsgesetz; "**AWG**") and Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung; "**AWV**"). Both laws can be accessed via: • https://www.gesetze-im-internet.de/englisch_awg/englisch_awg.pdfl • https://www.gesetze-im-internet.de/englisch_awv/englisch_awv.html	
2.	**Relevant authority (foreign investment regulator)**
The Federal Ministry for Economic Affairs and Climate Action (Bundesministerium für Wirtschaft und Klimaschutz)	
3.	**Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities).**
Companies in the area of critical infrastructures, which include energy, transport, water, health, communications, media and data processing, are particularly sensitive. Here, a shareholding of 10 % or more of the voting rights already falls within the scope of the investment review. Companies in the health sector, such as manufacturers or developers of personal protective equipment, of medicines essential for the supply of the population or of certain medical devices, also fall under the stricter scrutiny, but now from a shareholding of 20 percent of the voting rights. This threshold also applies to a large number of other economic sectors and technologies that were not previously covered separately (e.g. artificial intelligence, robotics, semiconductors, cyber security, aerospace, quantum and nuclear technology, automated or autonomous driving or flying, optoelectronics).	
4.	**Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)**
In principle, the cross-sectoral review covers all acquisition transactions through which a non-EU citizen directly or indirectly acquires control of at least 25% the voting rights in a domestic company. If the domestic company belongs to a particularly security-sensitive sectors (e.g. operator of critical infrastructures), the threshold is 10% of the voting rights. Intra-EU acquisitions are only covered to the extent that they serve to circumvent the investment test.	

The sector-specific review, on the other hand, only covers acquisition transactions through which a foreigner directly or indirectly acquires control over at least 10% of the voting rights in a domestic enterprise that produces certain goods listed exhaustively in Section 60 AWV.

According to Section 2 AWG an export consignment shall embrace the material goods which an exporter exports simultaneously via the same customs office at the point of exit to the same country of destination. Foreigners shall mean all persons and partnerships with legal personality which are not residents. Foreign assets shall mean:

- assets abroad,
- claims in euro against foreigners and
- instruments of payment denominated in currencies other than the euro, claims and securities.

5.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**

All companies / persons involved in the acquisition are to be included in the foreign investment assessment. In the case of the cross-sectoral and sector-specific tests, the reporting obligation lies solely with the purchaser.

6.	**Exceptions**

No subject areas are exempt from investment control. Every business activity may be covered by investment control.

7.	**Notification / review type (e.g. mandatory, pre-closing, suspensory)**

In the case of an atypical acquisition of control, there is no obligation to notify, but the BMWK has the right to review. The relevant thresholds are not those for voting rights, but the acquisition of control and management rights (investor or shareholder agreements). If a notification is required a filing is suspensory (please also see point 10 below).

8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**

Third parties are not involved in the assessment procedures. However, according to the Freedom of Information Act (IFG), third parties have the possibility to request insight into the administrative act.

9.	**Filing fee**

Neither fees nor attachments are charged.

10.	**Submission deadline / stand-still obligation**

The acquisition must be reported to the BMWK in writing or electronically without delay after the conclusion of the contract governed by the law of obligations. In the case of an offer within the meaning of the German Securities Acquisition and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz), the notification must be made immediately after publication of the decision to make the offer.

If notification is required, execution is prohibited; voting rights may not be exercised and no company-related information may be disclosed to the acquirer until the notification has been released.

If there is no obligation to notify, the transaction may be completed, but there is a risk of reversal in the event of a prohibition.	
11.	**Availability of pre-notification / informal consultation**
For informal consultation, the Federal Ministry of Economics and Technology can be contacted at investitionspruefung@bmwk.bund.de. There is no formal pre-notification.	
12.	**Scope of information / documents required for filing**
In case of an application for a certificate of non-objection, a cross-sectoral as well as sector-specific review, the acquisition, the acquirer, the domestic company to be acquired and the shareholding structures in the acquirer must be stated. Furthermore, the business areas of the acquirer and the domestic company to be acquired must be described in outline as well as the power of representation. More detailed requirements are set out in the general ruling on the information and documents to be submitted pursuant to Section 14a AWG and Sections 55a, 58 and 60 AWV.	
13.	**Proceedings timetable (timing for review)**
In the case of the cross-sectoral assessment, the BMWK decides at the preliminary assessment stage within two months of becoming aware of the conclusion of the contract under the law of obligations whether to open an assessment procedure. This then lasts up to four months after receipt of the complete. In the event of particular actual or legal difficulties, the procedure may be extended by three months. In addition, it is possible to extend the procedure by a further month if the acquisition particularly affects the defence interests of the Federal Republic of Germany. The same applies to the sector-specific review and the certificate of non-objection.	
14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**
The acquisition inspected within the scope of the cross-sectoral assessment is deemed to be released if no assessment procedure is initiated. The BMWK releases the acquisition if there are no concerns with regard to the public order or security of the Federal Republic of Germany or another EU member state and the issue of a clearance certificate is excluded. The release may be subject to the requirement that the BMWK must be notified of the acquisition of further voting rights, even below the thresholds. The acquisition may be prohibited if there are concerns for security and public order. Alternatively, orders may be issued against the companies involved in the acquisition in order to ensure public security and order. The acquisition inspected as part of the sector-specific review is deemed to be released if no inspection proceedings are initiated within two months. Likewise, it is released if there are no concerns with regard to essential security interests of the Federal Republic of Germany. In order to ensure these security interests, the acquisition may be prohibited or orders may be issued against the parties involved in the acquisition.	

The certificate of non-objection is deemed to have been issued if no examination procedure has been opened after two months. The clearance is also certified if there are no concerns with regard to public security or order.	
15.	**Publicity of the decision and confidentiality of the information provided**
The final decision is not published. However, under the Freedom of Information Act (IFG), third parties have the option of requesting to inspect the administrative act. If the decision is to be published on the basis of an application under the IFG, the parties concerned must be informed of this. In this case, all confidential information concerning shall be redacted in the decision in consultation with the parties concerned.	
16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**
As an administrative act, the decision may be challenged by means of the appeals provided for in the Administrative Court Order (VwGO). The addressed parties may contest the decision within one month.	
17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**
Fines of up to EUR 30,000 may be imposed. The prerequisite for this is that, contrary to Section 64 (1), Section 65 (1), Section 66 (1) or (4) Sentence 1, Section 67 (1) (in conjunction with Section 68 (1), Section 69 or Section 70 AWV), a report is not made, is not made correctly, is not made completely or is not made on time, either intentionally or negligently. In addition, if, contrary to Section 68 (2) AWV, a report is not made, is not made correctly, is not made completely or is not made in time, either intentionally or through negligence. In addition, fine proceedings may be initiated against the persons responsible for the company on account of a possible breach of supervisory duties. The maximum fine in this case is also EUR 30,000. In the case of negligent reporting errors, it may be possible to make a voluntary declaration, which may exempt the company from punishment.	
18.	**Other national security review distinct from FDI rules**
Apart from investment control, there are no other domestic security checks relating to investments of companies in Germany.	
19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**
The AWV was last amended in 2021. In the process, the voting thresholds were supplemented, and the investment review was expanded. The 20th amendment to the AWV is planned and is currently being prepared by the BMWK. Violations of EU sanctions, including bans on Russia, will be subject to fines unless they are already punishable under the AWG. These include investment restrictions in the mining sector, the extension of the ban on taking over management positions in Russian state-	

owned enterprises and the ban on Russian nationals holding management positions in EU critical infrastructure facilities.	
20.	**Helpful links**

- https://www.bmwk.de/Redaktion/DE/Artikel/Aussenwirtschaft/investitionspruefung.html
- https://www.bmwk.de/Redaktion/DE/Downloads/A/allgemeinverf%C3%BCgung-au%C3%9Fenwirtschaftsgesetz-270521.pdf?__blob=publicationFile&v=1
- https://www.gesetze-im-internet.de/englisch_awv/englisch_awv.html
- https://www.bmwk.de/Redaktion/EN/Downloads/F/faq-zur-aussenwirtschaftsrechtlichen-investitionspruefung.pdf?__blob=publicationFile&v=2

HUNGARY

SBGK Patent and Law Offices http://www.sbgk.hu/

1.	Relevant legislation (foreign investment legislation in force)

Hungary has currently two separate FDI regimes in force.

The first regime ("**General FDI Regime**") was introduced on January 1, 2019 to implement EU Regulation no. 2019/452. The regime was established by Act no. LVII of 2018 on the Control of Investments Detrimental to the Interests of Hungarian National Security.

The second FDI regime in effect is the "**Special FDI Regime**", which was introduced in connection with the COVID-19 pandemic. The relevant legislation is Act no. LVIII of 2020 on the Provisional Rules of State of Emergency, Government Decree no. 289/2020 and Government Decree no. 561/2022.

Hyperlink to Act no. LVIII of 2020 on the Provisional Rules of State of Emergency: https://njt.hu/jogszabaly/2020-58-00-00 (Hungarian only).

Hyperlink to Government Decree no. 289/2020 and Government Decree no. 561/2022: https://njt.hu/jogszabaly/2022-561-20-22 (Hungarian only).

2.	Relevant authority (foreign investment regulator)

The competent authorities are: (i) the Minister leading the Prime Minister's Cabinet Office for the General FDI Regime and (ii) the Minister of the Economic Development under the Special FDI Regime.

3.	Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)

Under the General FDI Regime those sectors are covered, which are deemed sensitive for national security. These activities include activities that:

- are traditionally considered sensitive, e.g. manufacturing of arms, dual-use items and secret service equipment;
- fall under the Hungarian Gas Act, Water Supply Act, Electricity Act, Credit Institutions Act or the Electronic Communications Services Act; and
- involve the creation, development or operation of communication systems of the Hungarian State and Hungarian municipalities.

The Special FDI Regime operates with a broader and more material scope, covering companies engaged in an activity listed in the Annex of the Government Decree, that falls within the energy, transport or communication sectors, or within one of the strategic sectors: the manufacturing of medicines, medical devices or other chemicals; fuel production;

telecommunications; retail and wholesale; manufacturing of electronic devices, machinery, steel and vehicles; defence industry; power generation and distribution; services connected to the state of emergency; financial services; processing of food (including meat, milk, grains, tobacco, fruits and vegetables); agriculture; transport and storage; construction (including the production of building materials); healthcare; hospitality and cafeteria services; and others.

4.	**Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)**

Transaction types under the General FDI Regime:

(i) a foreign investor establishes a new Hungarian company or acquires an existing Hungarian company (solely or together with other foreign investor(s)) equity exceeding 25 percent (for privately held companies) or 10 percent (in publicly listed companies); or acquires a "dominant influence" in such company,
(ii) foreign investor(s) acquire(s) equity of less than 25 percent in a privately held company registered in Hungary, but the total equity held by foreign investor(s) exceeds 25 percent as a result,
(iii) a foreign investor registers a branch office in Hungary for the purpose of carrying out listed strategic activities,
(iv) a foreign investor acquires a right to operate or use infrastructure or assets that are indispensable for carrying out listed strategic activities, or
(v) a company registered in Hungary in which foreign investor(s) hold equity equivalent to that in (i) or (ii) above takes up a listed strategic activity.

Transaction types under the Special FDI Regime:

- acquisition of ownership interest,
- capital increase,
- mergers, demergers, transformations to another company form,
- issuance of bonds that are convertible or convert to equity or provide preferential subscription rights,
- establishing usufruct right over equity provided that, as a result of such transaction, the foreign investor would acquire,
- majority control (by way of ownership, voting rights, appointing management or otherwise) if the investment reaches or exceeds HUF 350 million (approx. EUR 880,000), or
- at least 5 percent ownership interest (or 3 percent ownership interest in case of public companies), if the investment reaches or exceeds HUF 350 million (approx. EUR 880,000), or
- an ownership interest reaching 10 percent, 20 percent or 50 percent in a strategic company or any level of interest which, if computed together with any other foreign investors' interest, exceeds 25 percent.

In addition, irrespective of ownership thresholds or transaction sizes, the transfer of using/operational rights of infrastructures and assets that are "indispensable for the operation of strategic companies" (including the pledging of these assets and infrastructures) require both notification to and acknowledgement by the competent minister.

In relation to transactions caught by the Special FDI Regime, indirect acquisitions and higher level intragroup restructurings fall outside its scope provided that there is no direct ownership change in relation to the Hungarian target company.	
5.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**
In case of both regimes, the foreign investor shall make the FDI notification to the competent minister. The foreign investor definitions under the regimes differ as follows. General FDI Regime Under the General FDI Regime, any natural person or legal entity qualifies as a foreign investor if it is (i) a citizen of/registered in a country outside of the EU, EEA or Switzerland or (ii) a legal entity registered in the EU, EEA or Switzerland but controlled by a non-EU/EEA/Swiss person/entity (EU entity controlled by a non-EU investor). Special FDI Regime Foreign investors are those (natural or legal) persons or organisations which are (i) citizens of/registered in a country which is outside of the EU, EEA or Switzerland; or (ii) legal entities registered in the EU, EEA or Switzerland, if they are under the majority control of (natural or legal) persons or organisations citizens of/registered in a country which is outside of the EU, EEA or Switzerland (EU entity controlled by non-EU investor). The Special FDI Regime also applies to EU/EEA/Swiss investors (natural and legal persons) if they acquire majority control and the investment exceeds HUF 350,000,000.	
6.	**Exceptions**
N/A.	
7.	**Notification / review type (e.g. mandatory, pre-closing, suspensory)**
Filing is mandatory in all cases.	
8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**
Third parties may not be involved in the review process.	
9.	**Filing fee**
No filing fee is applicable.	
10.	**Submission deadline / stand-still obligation**
General FDI Regime The foreign investor must make a notification to the Minister leading the Prime Minister's Cabinet Office before implementation and within ten days of: • Signing the contract, in the event of equity acquisitions and operation right acquisitions • The registration of the newly subscribed strategic activity in the company registry, for strategic activities The deadline for review by the minister is 60 days (extendable by 60 days) from the	

date of filing.

Special FDI Regime

The foreign investor shall make a notification to the Minister of Economic within ten days from signing the transaction documents.
The minister has 30 business days to decide on the transaction, which deadline may be extended by 15 business days.
No standstill obligation.

11.	**Availability of pre-notification / informal consultation**

Pre-notification and informal consultation are unavailable.

12.	**Scope of information / documents required for filing**

The foreign investor must provide the following information in the FDI procedures:

- information regarding the foreign investor:
  - ✓ personal data of the foreign investor, e.g.: name; Hungarian or foreign address; nationality; and mailing address;
  - ✓ data of the legal person, e.g.: name; registered seat; registering country; and mailing address; and
  - ✓ data of the foreign investor's representative, e.g.: name; address; and mailing address;
- description of the foreign investor's existing business activities;
- description of the transaction/investment presenting its effects;
- description of the ownership structure of the foreign investor and its shareholders, and, in relation to this, any document which proves and demonstrates the ownership structure (which must be attached to the filing); and
- data of the ultimate beneficial owner of the foreign investor, and, in relation to this, any document which proves and demonstrates the ultimate beneficial owner (which must be attached to the filing).

The foreign investor must attach to the filing the original or certified copies of the required documents; e.g., a signed contract, agreement, preliminary agreement or any other undertakings for the conclusion of such agreements, and a certified translation of such documents if these documents were not issued in the Hungarian language

13.	**Proceedings timetable (timing for review)**

See point 10 above.

14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**

General FDI Regime

Under the General FDI Regime, the minister either issues a clearance decision or a veto decision, the latter if the triggering event "harms Hungary's security interests." In the case of an EU entity controlled by a non-EU investor, a veto decision can only be made in the case of circumvention, i.e., if it can be established that the EU entity's involvement in the transaction is for the purpose of circumventing the FDI screening rules. This could be the case, in particular, if the EU entity controlled by a non-EU investor does not carry out any actual economic activities or has no real presence in the EU Member States.

A veto decision can be challenged by the foreign investor or by the affected company only on a procedural basis (i.e., if the procedural rules of FDI screening have been materially breached). The only exception is that a veto decision can be challenged on a substantive legal basis concerning the ministry's opinion on whether or not the EU entity controlled by a non-EU investor carries out actual economic activities or has real presence in the EU Member States.

Special FDI Regime

If the minister finds that any of the conditions for a veto decision, it shall issue a decision that forbids the completion of the contemplated transaction; otherwise the Minister shall acknowledge the notification.

The minister is obliged to set out the reasons for any veto decision. In practice, the vagueness of the terms of relevant laws allows the minister to deliver decisions in a discretionary or arbitrary manner.

15.	**Publicity of the decision and confidentiality of the information provided**

The procedures are not public. There are no official publications during or after the screenings. Regarding commercial information, the relevant minister must ensure that business secrets are not disclosed. The relevant minister may process only the data that is necessary for its procedure.

16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**

Yes, the prohibition decisions are subject to limited judicial review.

In both cases, the foreign investor has only a limited right to appeal against the decision of the minister to the Metropolitan Court of Budapest (in Hungarian: Fővárosi Törvényszék), but not under the same kind of procedure.

Under the General FDI Regime, an appeal may be submitted against the qualification of the transaction as “harming the national interest of Hungary” and/or infringement of essential procedural requirements. In such cases, the Metropolitan Court of Budapest delivers a judgment in a simplified procedure.

Under the Special FDI Regime, an appeal may be submitted only against the reasoning of the prohibition decision, and the Metropolitan Court of Budapest will review it only in a non-contentious proceeding (i.e. there is no place for hearings in such case).

The Metropolitan Court of Budapest delivers its judgment within 30 days from the receipt of the appeal. If the Metropolitan Court of Budapest concludes that the screening procedure or the qualification was unlawful, it repeals the decision of the respective minister and orders for a new procedure before him.

Interim measures or immediate actions are not permitted in the above procedures. Furthermore, an appeal against the judgment of the court is also excluded.

17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**

In the case of a failure to notify, the foreign investor may not be registered as a shareholder in the list of shareholders or the book of shares, and the foreign investor may not exercise its rights in the company. The right to own, operate or use the infrastructure, equipment and facilities necessary for the company's activities may be granted only after obtaining the approval. Without the filing, the underlying agreement on: (i) the right to operate or use the sensitive infrastructure will be unenforceable; and (ii) the acquisition of the respective interest or right to own, operate or use the strategic infrastructure will be null and void. Under the General FDI Regime, the minister may also impose a maximum fine of EUR 2,900 on a natural person, and EUR 29,000 on a legal entity due to lack of filing. Similar fines also apply under the Special FDI Regime: the minister may impose a fine of up to twice the value of the proposed transaction but at least EUR 290 on a natural person; and 1% of the net turnover achieved by the affected strategic company in its last financial year. The transactions and investments may be reviewed ex officio and retroactively.	
18.	**Other national security review distinct from FDI rules**
N/A.	
19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**
The most recent legislative developments is Government Decree no. 561/2022, which decree slightly extended the scope of the notifiable transactions under the New FDI regime (already set out in this summary).	
20.	**Helpful links**
N/A.	

IRELAND

Beale & Co HOME | Beale & Co (beale-law.com)

Ireland has not yet adopted any regulations of FDI

LATVIA

Walless Law firm WALLESS

1.	Relevant legislation (foreign investment legislation in force)

Primarily, National Security Law and relevant government regulations issued based on the National Security Law.

National Security Law, translation into English available at https://likumi.lv/ta/en/en/id/14011

'The Procedure for Preventing Threats to Companies, Associations, and Foundations of Importance to National Security' (Cabinet of Ministers regulation No.311 of June 20, 2023, available only in Latvian at https://likumi.lv/ta/id/343004-nacionalajai-drosibai-nozimigu-komercsabiedribu-biedribu-un-nodibinajumuapdraudejuma-noversanas-kartiba

The Ministry of Economics is responsible for screening of foreign direct investments. National security authorities are involved in the process, whereas authorisation and other decisions with respect to foreign direct investments are taken by the government (the Cabinet of Ministers).

2.	Relevant authority (foreign investment regulator)

The Ministry of Economics is responsible for screening of foreign direct investments. National security authorities are involved in the process, whereas authorisation and other decisions with respect to foreign direct investments are taken by the government (the Cabinet of Ministers).

3.	Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)

The law does not provide a definition of a foreign investor. Authorization rules are generally applicable to any investor or investors contemplating transactions falling within the scope of transactions specified in the National Security Law, which require authorization for certain transactions on national security grounds. The only exception to this principle is with regards to loan transactions, which are caught only if the lender falls into either of the following categories: (i) a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD) or (ii) a legal entity with an ultimate beneficial owner who is a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD).

The following transactions/thresholds are caught:

with respect to companies:

- acquisition of a qualifying holding in the company ("qualifying holding" to be understood as direct or indirect holding of 10% or more of share capital or voting shares or such

holding that enables to exercise significant influence over the financial and operational policy of the company),

- acquisition of dominant influence over the company ("dominant influence" to be understood as arising out of corporate group agreement by which the company subordinates its management to another company and/or undertakes to transfer its profits to this other company or when a shareholder has either of the following rights or any of the following circumstances exist: (i) the majority of voting rights in the company; (ii) the right in the capacity of a shareholder to appoint or remove the majority of the members of the company's executive body or supervisory body; (iii) the shareholder in its capacity has appointed the majority of members of the company's executive body or supervisory body during the reporting year; (iv) as per agreement with other shareholders the shareholder alone controls the majority of voting rights in the company).
- transfer of an undertaking which encompasses assets used in the sectors covered by foreign direct investment rules;
- retaining the status of a shareholder or the right to exercise an indirect holding, if the ultimate beneficial owner changes or, if the ultimate beneficial owner cannot be ascertained when there is a change of the last legal person in the chain of control which can be identified as having an influence in a company (hereinafter – the acquirer of indirect influence);
- the receipt of loan funds in excess of 10% of assets, provided that the loan is granted either by (i) a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD) or (ii) a legal entity with an ultimate beneficial owner who is a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD);

<u>with respect to partnerships and associations</u>:

- the admission of a new partner or member;
- retention of a partnership or membership status in case of change of the ultimate beneficial owner or the acquirer of indirect influence;
- the receipt of loan funds in excess of 10% of assets, provided that the loan is granted by (i) a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD) or (ii) a legal entity with an ultimate beneficial owner who is a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD);
- acquisition of influence in a company registered in Latvia which is a partner in a partnership or member of an association;

<u>with respect to foundations:</u>

- receipt of loan funds in excess of 10% of assets, provided that the loan is granted either by (i) a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD) or (ii) a legal entity with an ultimate beneficial owner who is a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD).

4.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**

Foreign investment assessment may involve notifying parties and protected entities.

It is the obligation on the following parties to apply for the respective authorisation to the Ministry of Economics:

- the acquirer of critical infrastructure;
- the acquirer of qualifying holding;
- the acquirer of dominant influence;
- person exercising indirect influence;

- the prospective partner or member of the partnership or association

It is an obligation of protected entity to submit an application for the authorisation to the Ministry of Economics:

- in the event of the transfer of undertaking (which encompasses assets used in the sectors covered by foreign direct investment rules), or
- for receiving the loan funds.

5.	**Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)**

Foreign investment regime control is applicable with respect to companies, partnerships, associations, and foundations registered in the Republic of Latvia which own or possess critical infrastructure or satisfy at least one of the following criteria:

- it is an electronic communication merchant with significant market power, which is subject to tariff regulation and cost calculation obligations as per procedure provided for in the Law on Electronic Communications;
- it is an audio electronic media whose programme coverage area by technical means of terrestrial broadcasting is Latvia or at least 60 % of its territory according to the broadcasting licence issued by the National Electronic Media Council, or is an audiovisual electronic media whose programme coverage area by technical means of terrestrial broadcasting is Latvia or at least 95 % of its territory according to the broadcasting licence issued by the National Electronic Media Council;
- it has received a licence in the Republic of Latvia for the transmission, distribution, storage of natural gas or owns a liquefied natural gas facility connected to the transmission or distribution system;
- it is a producer of electric power or heat with an effective installed capacity exceeding 50 megawatts;
- it is a thermal energy transmission and distribution operator which owns thermal networks of at least 100 kilometres in length;
- it has received a licence for electric power transmission in the Republic of Latvia;
- it is the owner of at least 10 000 hectares of forest land in the Republic of Latvia;
- it is the owner of at least 4 000 hectares of agricultural land in the Republic of Latvia;
- it has received a special permit (licence) for commercial activities with goods of strategic importance or a military manufacturer's certificate issued by the Ministry of Defence and has existing strategic partnership agreement in force with the Ministry of Defence;
- it has been, within the last 2 years, a manufacturer and developer of goods listed in Annex I to Regulation (EU) 2021/821, exporting such dual-use items to countries other than Member States of the European Union, the United States, Canada, Australia, New Zealand, Norway, Switzerland, Japan, the United Kingdom, Iceland and Liechtenstein;
- it has access to personal data of voters, as well as to personal data of candidates for deputies, which are not to be published in accordance with the law;
- it processes datasets contained in the systems of national critical infrastructure, except when it is carried out by financial market participants;
- it is a company or partnership which produces or develops goods listed in Annex I to Regulation (EU) 2021/821 of 20 May 2021 establishing a Union regime for the control of exports, brokering, technical assistance, transit and transport of dual-use items or produces or develops technologies, such as in the field of artificial intelligence, robotics, intelligent and autonomous mobility, cyber security, energy storage, quantum technology, nuclear technology, nanotechnology, biotechnology and which has been designated by the Cabinet of Ministers as a commercial company of national security importance on the basis of an opinion of the national security authority.

6.	Exceptions

The authorization of the Cabinet of Ministers shall not be required in the following cases:

- when shares are acquired by the company itself, as provided for by law;
- when the company is wholly owned by the state or when shares are held by the state in accordance with the law regulating management of state-owned companies and holding of shares by the state;
- when an undertaking or shares transfer into the ownership of a public authority or a company wholly owned by the state, or a company in which all the shares or voting rights are held by more than one public authority;
- when shares are returned to the rightful holder pursuant to the Criminal Procedure Law;
- upon confiscation of shares pursuant to the Criminal Procedure Law;
- when loan funds are received by a company which is wholly owned by a public authority or a company in which all the shares or voting rights are held by more than one public authority.

7.	Notification / review type (e.g. mandatory, pre-closing, suspensory)

Notification to the Ministry of Economics is mandatory. The focus of the review is on evaluating the potential national security implications of a foreign investment. The review process involves preparation of reports on the proposed investment by national security authorities.

The review is generally pre-closing review, except in the following situations:

- in case of the change of the ultimate beneficial owner or change of the acquirer of indirect influence of: (a) shareholder of a company, (b) partner in a partnership or (c) member of an association;
- for loan agreement, the review is after the loan agreement has been entered into though before the disbursement and receipt of any loan funds

8.	Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)

No third parties are involved. The review is an administrative process between the applicant and the public authority.

9.	Filing fee

No filing fees exist.

10.	Submission deadline / stand-still obligation

The application for clearance shall be submitted before:

- acquisition of a qualifying holding;
- acquisition of dominant influence;
- the transfer of an undertaking;
- receipt of loan funds under the loan agreement;
- becoming a partner in a partnership or member in an association.

Stand-still obligation is expressed indirectly through legal invalidity of actions taken in the absence of authorisation.

11.	Availability of pre-notification/informal consultation

No formal or informal pre-notification procedure is available.	
12.	**Scope of information / documents required for filing**
Detailed rules regarding information to be submitted are specified in the Cabinet of Ministers regulations. The type of information to be submitted primarily concerns the identity, corporate structure, chain of control of the investor as well as ultimate beneficial owners or other persons exercising influence over the prospective investor.	
13.	**Proceedings timetable (timing for review)**
The decision of the Cabinet of Ministers shall be taken within one month from the date of receipt of the application. This time limit may be extended to four months.	
14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**
The outcome of the review process may result in unconditional clearance, conditional authorisation or denial of authorisation.	
15.	**Publicity of the decision and confidentiality of the information provided.**
The decisions are not published. Applicants may protect the confidentiality of the provided information based on the general provisions of the Trade Secrets Protection Law. According to these provisions, the holder of a trade secret may indicate that certain information constitutes a trade secret when providing it to a public authority and shall inform the authority of the need to ensure the protection of the trade secret.	
16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**
The addressee of the decision by the Cabinet of Ministers may appeal the decision to the Administrative Regional Court within one month from the day it enters into force. An appeal does not suspend the operation of the decision. The court shall hear the case as a court of first instance. The judgment of the Administrative Regional Court may be appealed by filing a cassation complaint. Any grounds that can serve as a basis for appealing administrative acts in principle may be the basis for an appeal. In deciding on granting or denying authorization for foreign investment, the Cabinet of Ministers shall consider the report of national security authorities, assess the restriction of a person's rights, its proportionality with the interests of national security, and compliance with the principle of legitimate expectations. Failure to make proper assessment of these aspects may potentially serve as the ground for an appeal.	
17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**
There are no specific administrative fines or criminal sanctions for failure to notify in violation of foreign investment control rules, however the failure to notify may attract administrative penalties under the legal norm of general applicability which sanctions failure to provide information, provision of inadequate information or provision of false information to a public authority.	

Pursuant to the National Security Law, in the event of unauthorised acquisitions, memberships in the partnerships or disbursements of loans the Cabinet of Ministers shall adopt decisions ordering:

- divestment of shares or discontinuation of indirect holdings and the prohibition on the exercise of voting rights until the fulfilment of these obligations.
- withdrawal from partnerships and the prohibition of representation and management of the partnerships until the fulfilment of these obligations.
- termination of loan agreement.

The civil law consequences for failure to receive authorization, generally result in the legal nullity of actions or transactions in the territory of Latvia made without authorization:

- the legal nullity in the territory of Latvia of transaction underlying acquisition of qualifying holding or dominant influence.
- the legal nullity of the transfer of undertaking.
- the legal nullity in the territory of Latvia of transaction underlying granting and receipt of the loan funds.
- the legal nullity of the resolutions of the general meeting of shareholders if they have been voted on by such shareholders whose participation (incl., in case of change of ultimate beneficial owner or the last legal person in the chain of control) have not been authorised by the Cabinet of Ministers.
- the legal nullity of any action of the partner of a partnership with respect to representation of the partnership and its management.

18.	**Other national security review distinct from FDI rules**

There are some industry specific national security reviews in electronic media, energy, and the strategic goods industries.

The ultimate beneficiaries of electronic media are vetted with respect to the threat to national security for the purposes of broadcasting authorization, retransmission authorization, or authorization to provide on-demand services under the Electronic Media Law.

Pursuant to the Energy Law, the identity of the ultimate beneficial owner of the buyer entity is vetted with respect to the threat to national security in transactions of acquisition of:

- more than 1% of shares of the owner of the unified natural gas transmission and storage system operator or the operator of the unified natural gas transmission and storage system operator, and
- the natural gas transmission system or any part thereof, or the land plots on which the buildings, structures, and technological equipment necessary for the operation of the underground natural gas storage, as well as the technological equipment supporting the operation of the underground natural gas storage or buffer gas, are located.

According to the Circulation of Strategic Goods Law, the granting of certain licenses for the handling of goods of Strategic Significance is subject to verification by national security authorities of the company, its employees, and managers.

19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**

In 2022, significant amendments to the National Security Law were enacted, impacting the foreign direct investment regime. These amendments became effective on 14 November 2022. Notable changes include the expansion of the foreign direct investment regime to encompass loan transactions. Moreover, partnerships and associations have been more comprehensively included as potential targets of foreign direct investments. The amendments also introduced specific rules for situations where the ultimate beneficial owner

cannot be determined. In cases involving a change in the last legal person in the chain of control, akin to a change in the ultimate beneficial owner, analogous treatment is prescribed. Additionally, the amendments specify that, for the purpose of safeguarding national security, authorization for the acquisition of a qualified holding or dominant influence can be conditional. Currently, there are no proposals for reform.	
20.	**Helpful links**
No links dedicated to the foreign investment control are available	

LITHUANIA

Walless Law firm WALLESS

1.	Relevant legislation (foreign investment legislation in force)

- Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.
- Law on the Protection of Objects of Importance to Ensuring National Security of the Republic of Lithuania (the "**Law on National Security**");
- The description of the procedure of the Coordinating Commission for the Protection of Objects of National Security Importance (the "**Commission's Rules of Procedure**").

2.	Relevant authority (foreign investment regulator)

The Government of the Republic of Lithuania (the "**Government**") is in charge of applying the FDI rules. The supervision of FDI review is assigned to the Commission for Coordination of Protection of Objects of Importance to Ensuring National Security (the "**Commission**"). The Commission is responsible for screening investors in Lithuania.

3.	Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)

The following economic sectors are considered to be strategically important for national security (Article 6 of the Law on National Security):

- energy;
- transport;
- information technology and telecommunications, other high technologies;
- finance and credit;
- military equipment.

4.	Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)

Investor definition

According to the Law on National Security, investors in Lithuania may be natural persons, private and public legal persons and other organizations not posing a threat to national security interests (Article 10(1) of the Law on National Security).

Non-Lithuanian investors are divided into two separate categories:

- **Foreign investor** – a citizen of a Member State of the European Union (EU), the North Atlantic Treaty Organization (NATO), the European Free Trade Association (EFTA) and / or the Organisation for Economic Co-operation and Development (OECD), or a legal person or organisation established in these states, except for the cases where 1/4 or more of the voting rights at the meeting of participants of such a legal person or another organisation are held by a third country, legal persons under its control, or its citizens (Article 2(13) of the Law on National Security);
- **Third country investor** – a third-country national or a legal person or another organisation established in a third country as well as a legal person or another organisation established in any EU Member State or in a member of NATO, the EFTA and/or the OECD in which 1/4 or more of the voting rights at the meeting of its participants are held by the third country, legal persons controlled by it or its citizens. Third country means a state other than any EU Member State or a member of NATO, the EFTA and/or the OECD.

Assets subject to assessment

The enterprises related to ensuring national security are categorized in:

- **Category I enterprises** – the state enterprises, municipal enterprises, public limited liability companies or private limited liability companies listed in the Annex of the Law on National Security which are of strategic importance to national security interests and whose shares carrying **all the votes** at the general meeting of shareholders are held by the State, a municipality or a state-owned company;
- **Category II enterprises** – the public limited liability companies or private limited liability companies listed in the Annex of the Law on National Security, which are of strategic importance to national security interests and whose **at least 2/3 of votes** at the general meeting of shareholders are held by the State, a municipality or a state-owned company;
- **Category III enterprises** – the public limited liability companies or private limited liability companies listed in the Annex of the Law on National Security are of strategic importance to national security interests and whose shares carrying **less than 2/3 of votes** at the general meeting of shareholders are held by the State, a municipality or a state-owned company or the shares whereof are not held by the legal persons mentioned.

Investment threshold

The categorization of the enterprises related to ensuring national security leads to different investment thresholds. An investor conforming to national security interests, acting independently or jointly with other persons acting in concert, may acquire shares which, together with the shareholding held by him or together with the shareholding held by other persons acting in concert, carry:

- **Investing in Category I enterprises** – 1/4 or more of votes or convertible debentures (upon converting them into shares).
- **Investing in Category II enterprises** –1/4 or more of votes or convertible debentures (upon converting them into shares).
- **Investing in Category III enterprises** – 1/3 or more of votes or convertible debentures (upon converting them into shares).

Therefore, the screening of investors is triggered by the acquisition of at least 25 per cent or 33.33 per cent of voting rights depending on the exact special category of enterprise to which the target company belongs.

Screening procedure

Investor screening must be carried out in the following cases (Article 12(1) of the Law on National Security):

- when the investor transfers facilities or property critical for national security or these facilities or property are pledged or mortgaged to secure the investor's claims;
- when the investor acquires the respective portions of shares in enterprises critical for national security or when the investor concludes agreements on the transfer of the voting right and acquires the right to exercise non-property rights of an investor attached to the respective portion of shares;
- when the investor acquires the respective portions of convertible debentures in enterprises critical for national security;
- when the investor transfers the property specified in the security plan of an enterprise critical for national security;
- when the property specified in the security plan of an enterprise critical for national security is pledged or mortgaged to secure the investor's claims.

Turnover threshold

There is an obligations for enterprises of importance to ensuring national security to notify the Commission of the transactions intended to be concluded or substantial changes in the transactions already concluded where the value of the transaction exceeds **10 per cent of the enterprise's annual income** for the preceding financial year.

Enterprises of importance to ensuring national security are also obliged to notify the Commission of intended transactions referred in the Law of the Republic of Lithuania on the Necessary Measures for Protection against Threats from Unsafe Nuclear Power Plants of Third Countries, or amendments to the already concluded transactions (with the exception of changes of a purely technical/editorial nature**), irrespective of the transaction's value.**

5.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**

Before performing the investment actions, investors or the owners of the shares and convertible debentures of enterprises of importance to ensuring national security must submit to the Commission the documents and relevant information needed for the transaction verification.

Respectively, the investment actions must not be performed until the Commissions gives a verification of such transaction. Additionally, the controlling person of the shareholder may not change, until a decision on the investor is adopted confirming his conformity to national security interests.

The screening additionally may be initiated by (Article 12(4) of the Law on National Security):

- the Government;
- a minister;
- the Commission;
- institutions in charge of ensuring national security;
- the Bank of Lithuania;
- the Radio and Television Commission of Lithuania;
- the National Energy Regulatory Council;
- a national or municipal executive body in charge of managing the state-owned or municipality-owned shares of a public or private limited liability company, where that body exercises the rights and duties of the owner of a state or municipal enterprise;
- an executive body of the municipality in the protection zone where the investor acquires or intends to acquire property and carries out or is about to carry out the activities;
- an enterprise critical for national security.

Where the specified entities apply to the Commission for launching an investor screening, the Commission shall notify the investor about the envisaged screening, and specify that the

investor must, within ten days from the receipt of such notification, submit to the Commission the documents and information specified in the Commission's Rules of Procedure. Enterprises explicitly listed in the Law on National Security that are deemed crucial to national security interests of Lithuania are divided into three categories, as outlined above. These categories include certain companies where the state or municipality has an ownership interest and several other companies where the state or municipality does not have an ownership interest, but which are nevertheless, for other reasons, deemed to be of strategic importance to the national security interests of Lithuania.	
6.	**Exceptions.**
Investors from the Republic of Lithuania or foreign investors who carry out long-term activities in an EU Member State, or in a member country of NATO, the OECD or the EFTA and who have experience in the relevant field shall be considered to conform to national security interests and **shall be free from screening, except** where an investor, the country in which the investor is established or by which the investor is controlled, or a third country with which such an investor is associated, acts in a way that produces risk factors and also except for the cases where the screening is carried out on the initiative of the entities which have evidence that investor poses a risk or fails to meet the national security interests (Article 10 of the Law on National Security).	
7.	**Notification / review type (e.g. mandatory, pre-closing, suspensory)**
The entities carry out a screening if it is found that the activities planned or carried out by such an investor, or the decisions taken by the organs of the established legal entity, may pose a risk or a threat to national security interests (Article 12(3) of the Law on National Security). Essentially: • all transactions are covered by the FDI regime if the legal person (target) meets the criteria of national importance described in the Law on National Security. • the threshold triggering the screening of the investor depends on the type of target company in question. • enterprises explicitly listed in the Law that are deemed of utmost importance to national security interests of Lithuania are divided into three categories provided earlier. In such cases the screening is mandatory and must be performed prior to the closing of the transaction.	
8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**
The procedure for third parties to intervene in the FDI process is not defined. Considering that the FDI process is not public, it is unlikely that third parties would be able to intervene. The Commission itself might request third parties to provide relevant information. However, the intervention of third parties is limited to the provision of such requested information.	
9.	**Filing fee**
No filling fees are applied.	
10.	**Submission deadline / stand-still obligation**
The submission must be performed before the investment and / or transaction is made. Respectively, the investment actions must not be performed until the Commissions gives a	

verification of such transaction. Additionally, the controlling person of the shareholder may not change, until a decision on the investor is adopted confirming his conformity to national security interests (Article 12(2) of the Law on National Security).

11.	**Availability of pre-notification / informal consultation**

Not defined formally, but it is always possible to apply to the Commission with a request for consultation / preliminary assessment whether the transaction falls within the FDI screening regime.

12.	**Scope of information / documents required for filing**

The following documents must be provided to the Commission:

- a list of the investor's shareholders;
- voting agreements and/or agreements for the transfer of voting rights (if any);
- data on all persons acting in concert (name of a legal person; name and surname of a natural person; and basis for contractual operation);
- copies of the documents of incorporation of the legal person (and, if necessary, also of persons acting in concert) certified by the general manager of the legal person, an extended extract from the Register of Legal Entities with history (if the investor is a legal person) and/or copies of identity documents (if the investor is a natural person);
- if the investor is a legal person, copies of the documents of incorporation (if the final owners are legal persons) and/or copies of identity documents (if those owners are natural persons) of its (if necessary, also persons acting in concert) final owners who directly and/or indirectly control the investor;
- if the application is submitted by the investor's representative, a document confirming the authorization of the representative; and
- notice containing additional required data (e.g., the details of the investor (name, surname, citizenship, place of residence or entity name, legal entity code, country of establishment and business address), planned/ongoing activities, etc.).

13.	**Proceedings timetable (timing for review)**

On receipt of the initial notice of the FDI together with all relevant information, the Commission shall contact the relevant authorities no later than the following working day which provides conclusions on the investor's compatibility with national security interests no later than in 15 working days after receipt of the request.

It should be noted that, with the agreement of the President of the Commission, this period may be extended by five days. If no conclusion is reached, the investor is deemed compliant with the interests of national security.

The Commission is required to reach a conclusion within 20 working days (the time limit can be extended up to 3 working days) of the start of the review.

If the Commission does not adopt a conclusion within the time limits, or if it adopts a conclusion stating that the investor is in the interest of or poses a risk to national security, such conclusion shall be deemed to be a final decision.

In case the Commission adopts the decision that the investor does not conform to the national security interests, the final decision is then adopted by the Government within 15 working days (Article 12 of the Law on National Security).

14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**

The Commission's decision can establish that the investor (Article 12 of the Law on National Security):

- meets the national security interests;
- poses a risk to national security interests, in which case the conclusion shall set out appropriate recommendations which must be followed in order for the transaction to proceed;
- fails to meet the national security interests. In such case, if further approved by the Government, the transaction is blocked.

15.	**Publicity of the decision and confidentiality of the information provided**

Decisions containing commercially secret information shall not be published in the Register of Legal Acts.

Additionally, when submitting the information and documents specified in the Commission's Rules of Procedure, the investor may specify in writing that this information constitutes a commercial/industrial secret or is confidential and that the Government and/or the Commission must ensure the confidentiality of this information.

16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**

Decisions taken by the Commission may be appealed to the Vilnius Regional Administrative Court within 30 days from the adoption of the decision following the procedure established by the Law on Administrative Proceedings of the Republic of Lithuania. Such an appeal shall be heard not later than 45 days from the date of receipt of the appeal.

17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**

If the parties choose to enter into the transaction without applying for the Commission's assessment, or if the transaction was entered into while the assessment was ongoing, the transaction is deemed null and void from the moment of entry into the transaction. The same applies if the parties proceed with the transaction that the Government assessed to be not in compliance with the interests of national security.

If the investor has acquired shares of an enterprise of importance to ensuring national security in violation of the requirements of this Law or the Government's decision has been adopted concerning the investor, such an investor shall not have the right to attend and vote at the general meeting of shareholders of the enterprise of importance to ensuring national security whose shares he has acquired and shall not be entitled to exercise other non-property rights (Article 14(1) of the Law on National Security).

Additionally, if the Commission notifies the investor of the review and it fails to provide the Commission with the documents and information referred to in the Commission's Rules of Procedure within 10 working days and the Commission's conclusion or the Government's decision that the investor is in compliance with the national security interests has not been adopted, it shall be deemed to be a risk or in non-compliance with national security interests (Article 11(7) of the Law on National Security).

18.	**Other national security review distinct from FDI rules**
Not applicable.	
19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**
Since Russia's war in Ukraine began in 2022, the Commission started to take a more conservative approach when deciding if FDI needs to undergo screening and the transactions involving Russia, Belarus or China will most likely be blocked.	
20.	**Helpful links**
• Official statistics portal e-publication about FDI (edition 2022)	

POLAND

Wardyński & Partners http://www.wardynski.com.pl/

1.	Relevant legislation (foreign investment legislation in force)

National regulation with regard to the review of foreign direct investments ("FDI") on national security and public order is contained in the Act of 24 July 2015 on the Control of Certain Investments ("**Act on control of certain investments**" or the "**Act**"; consolidated text: Journal of Laws of 2023, item 415; Polish only).

The Act provides the rules and procedures for the control of certain investments resulting in the acquisition or achievement of significant participations or the acquisition of a dominant position over Polish entities operating in strategic sectors.

The Act was amended in 2020 (by the Act on interest rate subsidies for bank loans granted to entrepreneurs affected by COVID-19 and on simplified proceedings for approval of an arrangement in connection with the occurrence of COVID-19, dated 19 June 2020, consolidated text: Journal of Laws of 2022, item 2141; the "**Amendment**"), citing the COVID-19 pandemic-related crisis as a reason. The Amendment has substantially extended the sectors of strategic companies covered by the FDI rules. The Amendment was initially planned to be temporal and remain in force for two years, i.e. until 2022. However, in July 2022, due to the "an international situation distorting the market or competition" the Amendment was prolonged for next three years, i.e. until July 2025 (the Act Amending the Law on Value Added Tax and Certain Other Laws, dated 12 May 2022, Journal of Laws of 2022, item 1137).

Therefore, there are two similar FDI regime options under the Act:

- regular, protecting key sectors and entities under the Act, supplemented with a list of certain entities set out in the Regulation of the Council of Ministers of 16 December 2022 on the list of protected entities and their competent control bodies ("**Regulation**"; Journal of Laws of 2022, item 2838, as amended by an amending Regulation of 17 March 2023, Journal of Laws of 2023, item 604; Polish only), and
- additional FDI protection under the Amendment.

The detailed requirements concerning FDI notification (applicable in both options) are set out in Regulation of the Council of Ministers of 25 February 2016 on documents to be enclosed with notifications of an intention to acquire, or achieve a significant participation in, or to acquire dominance in a protected entity ("**Notification Regulation**"; Journal of Laws 2016, item 324; Polish only).

2.	Relevant authority (foreign investment regulator)

In relation to the companies covered by the Amendment, the President of the Office for the Protection of Competition and Consumers (the "PCA") is the respective FDI control authority.

In the regular FDI control system based on the same Act and aimed at certain strategic companies listed in the Regulation, the minister responsible for state assets, the Minister of Defense and the minister responsible for maritime affairs are the control authorities (depending on a respective sector). Currently, the Regulation lists 17 protected Polish companies ("Baltchem" S.A., Centrum Rozwojowo-Wdrożeniowe "Telesystem-Mesko" Sp. z o.o., Emitel S.A., Gaspol S.A., Grupa Azoty S.A., Hawe Telekom S.A. w restrukturyzacji, KGHM Polska Miedź S.A., "Oktan Energy & V/L Service" Sp. z o.o., Orange Polska S.A., PKP Energetyka S.A., Polkomtel Sp. z o.o., PKN ORLEN S.A., Rafineria Gdańska Sp. z o.o., Stoen Operator Sp. z o.o., Tauron Polska Energia S.A., "TK Telekom" Sp. z o.o. and UNIMOT S.A.), active in energy, gas, fuel, telecommunication, chemical and copper mining sectors. In relation to these strategic companies, the respective FDI control authorities under the Regulation are: the minister responsible for state assets and, with respect to Centrum Rozwojowo-Wdrożeniowe "Telesystem-Mesko" Sp. z o.o., Minister of Defence.

3.	**Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)**

In relation to the companies covered by the Amendment, the provisions of the Act relate to any company incorporated in Poland, which fulfills one of the criteria mentioned below:

- is public company;
- holds property included in the consolidated list of facilities, installations, equipment and services deemed to be critical infrastructure (according to article 5b item 7 point 1 of the Act on Crisis management dated 26 April 2007 – uniform text: Journal of Laws 2023, item 122); this list is confidential;
- is active within the following business areas:
  - ✓ electric power generation,
  - ✓ production of motor gasoline or diesel fuel, or
  - ✓ pipeline transportation of crude oil, motor gasoline, or diesel fuel, or
  - ✓ storage and warehousing of motor gasoline, diesel fuel, or natural gas, or
  - ✓ underground storage of crude oil or natural gas, or
  - ✓ manufacture of chemicals, fertilisers, and chemical products, or
  - ✓ manufacture and trade in explosives, weapons and ammunition, as well as goods and technology for military or police use, or
  - ✓ regasification or liquefaction of natural gas, or
  - ✓ transhipment of crude oil and its products in sea ports, or
  - ✓ distribution of natural gas or electricity, or
  - ✓ trans-shipment in ports of primary importance to the national economy, or
  - ✓ telecommunications, or
  - ✓ transmission of gaseous fuels, or
  - ✓ production of rhenium, or
  - ✓ mining and processing of metals used in the manufacture of explosives, weapons and ammunition, as well as products and technology for military or police use, or
  - ✓ manufacture of medical equipment, instruments and products, or
  - ✓ manufacture of medicines and other pharmaceutical products, or
  - ✓ trading in gaseous fuels and gas abroad, or
  - ✓ generation or transmission or distribution of heat, or
  - ✓ transhipment in inland ports, or
  - ✓ processing of meat, milk, cereals and fruit and vegetables, or
  - ✓ developing or modifying software for:
    - controlling power plants, networks, operating facilities or systems supplying electricity, gas, fuel, fuel oil or heating, or
    - managing, controlling and automation of drinking water supplies or sewage treatment plants, or

- using equipment or systems used for transmitting voice or data, or for data storage and processing, or
- operating facilities or systems used for cash supply, card payments, conventional transactions, for settling or managing securities and derivative transactions, or for providing insurance services, or
- operating hospital information systems, facilities and systems used for the sale of prescription medication, and for operating laboratory information systems or conducting laboratory tests, or
- operating equipment or systems used in the transport of passengers and goods by air, rail, sea or inland waterway, road, public transport or in logistics, or
- operating equipment or systems used in the supply of food.

The regular FDI protection under the Act concerns entities active in:

- the electric power generation or
- the production of motor gasoline or diesel fuel, or
- the pipeline transportation of crude oil, motor gasoline, or diesel fuel, or
- storage and warehousing of motor gasoline, diesel fuel, natural gas, or
- underground storage of crude oil or natural gas, or
- manufacture of chemicals, fertilisers and chemical products, or
- manufacture of and trade in explosives, arms and ammunition, as well as goods and technology for military or police use, or
- regasification or liquefaction of natural gas, or
- transhipment of crude oil and its products in sea ports, or
- distribution of natural gas or electricity, or
- trans-shipment in ports of primary importance for the national economy within the meaning of Article 2 item 3 of the Act of 20 December 1996 on maritime ports and harbours (Journal of Laws of 2022, item 1624), or
- telecommunications, or
- transmission of gaseous fuels, or
- production of rhenium, or
- mining and processing of metal ores used in the manufacture of explosives, weapons and ammunition as well as products and technologies of military or police use

However, the Act and the implementing Regulation provide a specific list of strategic companies directly covered by the notification procedure, i.e. 17 Polish private and public companies active in the energy, gas, fuel, telecommunication, chemical and copper mining sectors (the detailed list of these strategic companies is presented in point 2 above), to which the protection under the regular FDI screening option is strictly limited.

4.	**Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)**

In relation to the companies covered by the Amendment, the FDI control rules apply only to foreign investors (natural persons or legal entities) domiciled (directly or indirectly) outside the EU/EEA/OECD. Additionally, the Amendment states that subsidiaries of foreign entities (i.e., of entities not having a domicile or registered address within the EU, EEA or OECD), even if seated in the EU, EEA or OECD, are qualified as foreign entities. The domicile/seat prerequisite applies to the ultimate beneficial owner of the investor. Therefore, if the ultimate indirect foreign investor is domiciled or has registered address in an EU/EEA/OECD state, and the transaction in question is carried out by its subsidiary seated outside the EU/EEA/OECD, it is considered to be carried out by the parent an therefore does not fall within the FDI control regime.

In relation to the companies covered by the Amendment, the Act on control of certain

investments applies to any of the following transactions:

- obtaining the dominant status over a Polish company - which means the ability to decide on the directions of activities of the protected entity;
- acquisition of significant participation in the target company - which means achieving or exceeding respectively the threshold of 20% or 40% of the total number of votes in the decision-making body of the protected entity, acquisition of right to 20% or 40% of profits of the protected entity, or 20% or 40% of the capital in a protected entity that is a partnership.

Dominant entity should be understood as an entity:

- holding, directly or indirectly through other entities, a majority of the total number of votes in the governing bodies of another entity, also under agreements with other persons; or
- having the power to appoint or dismiss the majority of members of management or supervisory bodies of another entity; or
- in the case of which more than half of the members of the management board of another entity are also members of the management board, proxies or persons holding managerial positions in the first entity or in another entity with which the first entity has a relationship of dependence; or
- having a capital interest in a partnership with a value of at least 50% of the value of all contributions made to the partnership; or
- otherwise having the power to determine the course of action of another entity, in particular pursuant to an agreement providing for the management of that entity or the distribution of profits by that entity.

In relation to the companies covered by the Amendment, the requirement of pre-merger FDI notification applies only to transactions in which the aggregate turnover generated by the target Polish company (the protected entity) in Poland exceeded EUR 10 million in either of the two financial years preceding notification.

In relation to the strategic companies as listed in the Regulation (see point 2 above), there is no concept of a foreign or domestic purchaser - transactions regarding any target company covered by the Regulation fall under the FDI screening procedure.

Moreover, the FDI screening applies only to Polish target entities, i.e. entrepreneurs having registered seat in Poland, i.e. only Polish targets are caught by the Act.

In relation to the strategic companies as listed in the Regulation (see point 2 above), the consent of the relevant Minister is required in the case of acquiring dominance, i.e. reaching or exceeding 50% of the total number of votes in the target company's shareholder meeting or in the target's share capital, and in the case of acquiring or achieving a significant participation – i.e. when the purchaser acquires shares or rights that reach to exceed 20%, 25% or 33% of the total number of votes at the shareholders' meeting or in the share capital, respectively, or when the purchaser buys the target's enterprise or the organised part thereof. No turnover threshold applies.

5.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**

In relation to the companies covered by the Amendment, obligation to notify the acquisition of significant participation or dominant status in the target company lies on the foreign investor, who/which is also responsible for providing respective information to the PCA.

Please note that indirect acquisitions are also covered by the Act on control of certain investments, including acquisitions concluded through the subsidiary or on a higher level of corporate structure. The protected entities are companies meeting the prerequisites listed in point 2 above, whose aggregate turnover generated by the target Polish company (the protected entity) in Poland exceeded EUR 10 million in either of the two financial years preceding notification. In relation to the strategic companies as listed in the Regulation (see point 2 above - only the companies listed in the Regulation are protected), there is no concept of a foreign or domestic purchaser - any transaction regarding any target company covered by the Regulation fall under the FDI screening procedure.	
6.	**Exceptions**
There is no exemptions applying to the strategic companies listed in the Regulation (see point 2 above), i.e. in the regular FDI screening option. Under the Amendment (i.e. in the additional FDI screening option), a transaction arising from the acquisition of significant participation or dominant status is exempted from the notification obligation if the turnover in Poland of the target did not exceed the equivalent of EUR 10 million in either of the two financial years preceding the planned transaction.	
7.	**Notification / review type (e.g. mandatory, pre-closing, suspensory)**
If the conditions / thresholds specified in the Act are fulfilled, the filing is mandatory, must be made before closing (as a rule) and is suspensory (see point 10 below).	
8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**
According to the Act, the only a party to the FDI review proceedings is the notifying party and is involved in the process. The Act on control of certain investments does not grant any specific rights to third parties. Such parties are not involved in the review procedure.	
9.	**Filing fee**
N/A. There is no filing fee for the FDI screening procedure.	
10.	**Submission deadline / stand-still obligation**
According to the FDI rules, there is no specific deadline for filing. In general, the intention of significant participation or dominant status' acquisition should be reported to the relevant authority (pre-transaction notification). The notification should be submitted by the purchaser before undertaking any legal act that leads to acquiring or achieving significant participation or acquiring dominance in a protected entity. The notification can be made on the basis of a letter of intent or of an agreement conditional upon the authority's clearance. Anyway, the clearance needs to be obtained prior to closing. There is a stand-still obligation under the Act. If a transaction is concluded without clearance from the authority, it is invalid by virtue of law. Additionally, other severe sanctions may apply as specified in point 17 below.	

In the case of some types of indirect acquisitions or follow-up acquisitions, the notification should be made after the acquisition (post-transaction notification), within 7 or 30 days (depending on situation).

11.	**Availability of pre-notification / informal consultation**

The Act on control of certain investments does not provide for any guidance procedure and pre-notification contacts. It is possible to apply for informal interpretations according to the general rules of administrative procedure.

The PCA published its procedural explanations in relation to the notifications and proceedings covered by the provisions of the Amendment to the Act on control of certain investments in July 2022. However, there is only Polish language version available (please see the link to these explanations in point 20 below).

12.	**Scope of information / documents required for filing**

There is no specific notification form for filing.

Investors are obliged to provide the authority with very detailed information and documents regarding all entities involved in the transaction, including the target company and investor itself, its capital group and its management board members.

The entire list of information and documents for the FDI filing is included in the Notification Regulation.

For example, the investor should provide the authority, inter alia, with the following information and documents:

- the investor's intentions towards the target company (long and short term),
- the scope of investor's business activity,
- the structure of the transaction covered by the filing,
- financial resources dedicated to the transaction,
- certified copy of the investor's deed of association or company's agreement,
- graphic structure of the entire capital group to which investor belongs, including names, addresses, scopes of business and information on corporate links between all the entities involved,
- copies of the approved financial statements of the investor together with the opinions and reports of the statutory auditor for the last 3 years preceding the notification (in addition the same documents, i.e. the consolidated financial statements and auditors reports of dominant entity for the investor),
- the investor economic and financial standing,
- any criminal convictions regarding the investor and any criminal, administrative, economic and tax proceedings in progress in relation to the investor.

The notification and all the documents must be submitted in Polish. Any documents in a foreign language must be submitted with a sworn translation into Polish.

13.	**Proceedings timetable (timing for review)**

In relation to the companies covered by the Amendment, the Act provides a two-stage approval procedure for investment control investigation. The procedure before the PCA is divided into a preliminary stage and a controlling stage. The preliminary stage should be finalised within 30 business days. If second-stage control proceedings are conducted, the deadline for an investment control decision is 120 days from initiation of this second stage proceedings.

In relation to the strategic companies as listed in the Regulation (see point 2 above), approval or prohibiting decision should be issued by the relevant Minister specified for each protected company within 90 days from initiation of proceedings (delivery of a notification or institution of the proceeding *ex officio*). If the PCA/relevant Minister requests the notifying party to supplement the notification or issues any request for information the abovementioned statutory deadlines are extended by the time from the receipt of the respective request by the notifying party until the delivery of all requested information and documents to the PCA/the Minister.	
14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**
As mentioned in point 13 above, the preliminary stage of the proceedings under the Amendment should be finalised within 30 business days. If a case does not require additional checking, the PCA will then issue a decision on the absence of objection regarding the intention to obtain dominant status or significant participation in a protected entity, or decision denying the procedure (if the transaction does not require investigation by FDI rules). If second-stage control proceedings are conducted, the PCA can approve or object to the intention to achieve the status of significant participation or dominance over the protected entity if there is at least a potential threat to public order, security or health. An objection may also be raised if the relevant legal acts are likely to have a negative impact on projects and programmes of European Union interest. In relation to the strategic companies as listed in the Regulation (see point 2 above), the respective Minister issued a decision on a refusal to institute the proceedings (if a case is not subject to the Act), a decision on approval of the transaction or a decision prohibiting the transaction. Neither the FDI screening under the Amendment nor under the Regulation includes a possibility of conditional clearance or of commitments.	
15.	**Publicity of the decision and confidentiality of the information provided**
The decision is published on the PCA's website. The confidential information included in the notification, documents and the decision is protected upon a respective motion by the notifying party.	
16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**
With respect to both the decision to refuse to initiate a control procedure and not to raise an objection, and the decision to raise an objection under the Amendment and the decision to object to the transaction under the regular FDI screening under the Act: • a party may, within **14 days from the date of delivery** of the decision, **apply** to the PCA **for reconsideration of the case**; • a party may file a **complaint against the decision** of the PCA to the Regional Administrative Court in Warsaw, through the PCA, **within 30 days from the date of delivery** of the decision; a party may file the aforementioned complaint without exercising its right to request the PCA to reconsider the case (see (i) above).	

17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**

Civil law sanctions

According to the Act on the control of certain investments, the acquisition or achievement of significant participation or the acquisition of dominance made without notification or despite the issuance of a decision of objection is null and void by virtue of law.

In case of some types of indirect acquisitions (eg. foreign-to-foreign transactions), the purchaser is obliged to not execute its voting or other rights resulting from the shares of the protected entity that was acquired indirectly, with the exception of the right to dispose of such shares.

Moreover, resolutions of the shareholders' or general meeting of the target company adopted in breach of the provisions of the Act on the control of certain investments are invalid null and void unless they meet the requirements of a quorum and a majority of the votes cast without taking into account the invalid votes. The relevant authority also has a right to appeal the resolution. Moreover, in some cases, the relevant authority may impose to the investor an obligation to dispose (sell) the shares within a specified deadline (such obligation is issued in the form of an administrative decision).

If the obliged entity fails to dispose of the shares of the protected entity within the time limit, the authority may appoint a share administrator who shall be obliged to take steps to dispose of the shares or to cancel them.

Fines and criminal sanctions

In addition to the above civil law sanctions, a person or entity that acquires or achieves significant participation or acquires dominance without notification is subject to a financial penalty of up to:

- PLN 100 million (approx. EUR 22 million – in relation to the strategic companies as listed in the Regulation (see point 2 above), or
- PLN 50 million (approx. EUR 11 million) – in relation to the companies covered by the Amendment.

Additionally, such person may be imprisonment for a period from six months up to five years. The same penalties may be imposed on a person representing the investor.

Additionally, a person obliged to represent the subsidiary, who knows about the transaction (indirect acquisition) that has already taken place and who does not notify the relevant authority about the transaction, may be subject to a financial penalty of up to:

- PLN 10 million (approx. EUR 2.2 million – in relation to the strategic companies as listed in the Regulation (see point 2 above), or
- PLN 5 million (approx. EUR 1.1 million) – in relation to the companies covered by the Amendment.

Such person may be also imprisoned for a period from six months up to five years.

The same penalties may be imposed on a person who represents the investor on a shareholders' meeting of the protected company and executes share rights on behalf of an entity that has not notified the transaction to the relevant authority, under condition that such person knew or might have known about such circumstances.

In each case, the financial penalty and the sentence of imprisonment can be imposed together.

18.	**Other national security review distinct from FDI rules**

In addition to the FDI regime(s), there are also other regulations limiting acquisition of companies by foreign entities in Poland.

Agricultural acquisitions

The most important is Act on the Structuring of the Agricultural System, dated 11 April 2003 (consolidated text Journal of Laws 2022, item 2569, as amended) setting forth a priority right of the State Treasury to purchase the shares in an entity holding the title to the agricultural lands and render such acquisition invalid independent of whether the acquirer is a Polish, EU or non/EU entity.

Acquisition of real estate

An acquisition of an entity owning a real estate in Poland by a purchaser domiciled/seated outside the EAA and Switzerland requires a consent of the Minister for Internal Affairs and Administration (under the Act on the Acquisition of Real Estate by Foreigners, dated 24 March 1920, consolidated text: Journal of Laws of 2017, item 2278).

Polish merger control rules

The rules are contained in the Act on the Protection of Competition and Consumers dated 16 February 2007 (uniform text Journal of Laws 2021, item 275). The PCA is also responsible for enforcing the Polish merger control rules. Under these rules there is an obligation to submit the pre-merger notifications to the PCA in relation to the significant concentrations between entrepreneurs (turnover test) even for foreign-to-foreign transactions.

EU Screening Regulation

In addition to the national (Polish) FDI rules, institutions of the EU (European Parliament and the Council) enacted Regulation (EU) 2019/452 of 19 March 2019 establishing a framework for screening of foreign direct investments into the Union (OJ L 79 I/1 dated 21.03.2019) ("**EU Screening Regulation**"). This Regulation came into force on 11 October 2020.

Pursuant to art. 1 of the EU Screening Regulation, it establishes a framework for the screening by Member States of foreign direct investments into the Union on the grounds of security or public order and for a mechanism for cooperation between Member States, and between Members States and the Commission, with regard to foreign direct investment likely to affect security or public order. It includes the possibility for the Commission to issue opinions on such investments.

According to the EU Screening Regulation – a foreign direct investment – means an investment of any kind by foreign investor (i.e. non-EU investor) aiming to establish or to maintain lasting and direct links between the foreign investor and the undertaking to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of any company carrying out an economic activity.

Screening means a procedure allowing to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments by the Member State in cooperation with the Commission. Based on the above definition the Transaction planned by the Purchaser in Poland will be covered by the provisions of the EU Screening Regulation.

19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**

The most significant legislative change in the past was the adoption of the Amendment to the Act in 2020 and a further amendment thereof in 2022 (please see point 1 and further

points above). The current provisions of the Act on control of certain investments are in force until July 2025.	
20.	**Helpful links**

https://uokik.gov.pl/wyjasnienia_i_wytyczne.php

(PCA's explanations in relation to the notifications and proceedings covered by the provisions of the Act on control of certain investments – *Wyjaśnienia proceduralne w sprawie składania Prezesopwi UOKiK zawiadomień orasz prowadzenia postępowań objętych zakresem ustawy o kontroli inwestycji* – only in Polish).

https://codozasady.pl/en/p/control-of-certain-investments-new-protective-provisions (an article on the first iteration of the FDI regime (under the Amendment) described above).

https://uokik.gov.pl/news.php?news_id=17989 (a PCA's press release regarding the 2021 decision to not object to the acquisition of Odlewnia Zawiercie by Meide Group).

More detailed information on investments in Poland may be found at the website of the Polish Information and Foreign Investments Agency (http://www.paiz.gov.pl/polish_law), also with respect to approval and restrictions on foreign investments in some specific sectors of the economy.

PORTUGAL

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1.	**Relevant legislation (foreign investment legislation in force)**
Foreign investment is most welcomed in Portugal and any possible exception is specifically ruled by law, shall be duly founded and reasoned by the Portuguese Government by means of a formal decision, which is subject to full jurisdictional control. The relevant legislation in force is the Decree-Law nº 138/2014, of 15 September ("DL n.º 138/2014" - https://diariodarepublica.pt/dr/detalhe/decreto-lei/138-2014-56819089). The specific sectors covered are the main infrastructures and other assets relating to the national security, the strategic assets in the sectors of energy, transport and communications. The foreign investment scrutiny stipulated by DL n.º 138/2014 shall comply with and respect the rules and obligations that bind Portugal internationally, contained in international conventions or in acts, agreements and decisions of the World Trade Organisation. Besides, the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing the framework for the screening of foreign direct investments into the EU shall apply accordingly.	
2.	**Relevant authority (foreign investment regulator)**
There is no specific foreign investment regulator. The relevant authority that shall conduct and decide upon the foreign investment scrutiny procedure is the Council of Ministers, which is the collegiate body of the Portuguese Government, following the proposal of the member of Government responsible for the sector in which the strategic asset is included.	
3.	**Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)**
The specific sectors covered are the main infrastructures and other assets relating to the national security, the strategic assets in the sectors of energy, transport and communications.	
4.	**Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)**
The transactions caught are those involving the acquisition of direct or indirectly control over strategic asset(s) or activities, regardless of their legal form, where the ultimate acquiror is a person or entity sited outside the European Union (EU) or the European Economic Area (EEA), that may jeopardise the national security or the security of the national supply of services that are fundamental to the national interest, in a real and sufficiently serious manner, to be determined according to the following criteria:	

- The physical security and integrity of strategic assets;
- The continuous availability and operability of strategic assets, as well as their capacity to punctually fulfil obligations, especially those of public service, imposed by law on the entities that control them;
- The continuity, regularity, and quality of general interest services provided by the entities controlling the strategic asset(s); and
- The preservation of the confidentiality, imposed by law or public contract, of the data and information obtained in the exercise of their activity by the persons who control the strategic assets and of the technological assets necessary for the management of the strategic asset(s).

In this context, "control" is the possibility of exercising a *decisive influence* over the strategic asset(s), under the terms of the Competition Act. It arises from any act, regardless of the form it takes, which implies the possibility of exercising, on a lasting basis, solely or jointly, and taking into account the circumstances of fact and law, a decisive influence over the activity of a company, including among others:

- The acquisition of all or part of the share capital; or
- The acquisition of ownership, use or enjoyment rights over all or part of a company's assets; or
- The acquisition of rights or conclusion of contracts that confer a decisive influence on the composition or deliberations or decisions of the bodies of a company.

An acquisition of control will be considered as possibly endangering national security or the security of the supply of essential services for national interest in the sectors of energy, transport and communications, when:

- There are serious indications, based on objective elements, of the existence of connections between the acquiring entity and third countries that do not recognize or respect the fundamental principles of the democratic rule of law, or which pose a risk to the international community due to the nature of their alliances or their relations with criminal or terrorist organizations or individuals associated with such organizations, taking into account the official positions of the European Union on these matters, if any;
- The acquiring entity:
  - ✓ Has in the past used the position of control held over other assets to create serious disruptions to the regular provision of essential public services in the country where they were located or in neighboring countries;
  - ✓ Does not ensure the primary allocation of assets, as well as their reversion at the end of the corresponding concessions, when applicable, especially considering the absence of suitable contractual provisions for this purpose.
- The referred operations result in a change in the purpose of strategic assets when they threaten the continuous availability and operability of assets for the punctual fulfillment of applicable obligations, especially those related to public service, as provided by law.

5.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**

The member of the Government responsible for the area in which the strategic asset is included may, at any time, request any administrative entities, including sector regulators, to provide information or take any steps deemed necessary to exercise the powers provided for in DL n.º 138/2014.

The administrative entities shall take the necessary measures to cooperate effectively with the member of the Government responsible for the area in which the strategic asset in question is included, in the exercise of the powers provided for DL n.º 138/2014, including by exchanging the necessary information and carrying out checks, inspections and enquiries

directed to any third entities, including companies or individuals, when they are justifiably requested to do so, ensuring the protection of personal, classified or national security data to which they have access, under the terms of the law. Please also see information presented in Q 11 and Q 13 below (re: entities responsible for the foreign investment scrutiny procedure).	
6.	**Exceptions**
N/A	
7.	**Notification / review type (e.g. mandatory, pre-closing, suspensory)**
No foreign investment voluntary notification is mandatory for the purposes of DL n.º 138/2014. However it will be recommendable to ensure legal certainty in cases where there might be any possible risk of foreign investment scrutiny procedure by the Government and, in this case, a consultation application will be mostly advisable (please see point 11. below).	
8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**
As mentioned in point 5. above, the member of the Government responsible for the area in which the strategic asset is included may, at any time, request any administrative entities, including sector regulators, to provide information or take any steps deemed necessary to exercise the powers provided for in DL n.º 138/2014. Besides, under the general administrative law, third parties may be endowed with procedural legitimacy to be involved in the review process, even with limitations and related constraints, given the special confidentially and exceptional nature of this foreign investment scrutiny procedure.	
9.	**Filing fee**
N/A	
10.	**Submission deadline / stand-still obligation**
There is no submission deadline or stand-still obligation for the purposes of DL n.º 138/2014. However, please see points 7, 11.	
11.	**Availability of pre-notification / informal consultation**
A potential acquiror aiming to enter into an acquisition that may lead to the application of DL n.º 138/2014 may submit a consultation application ("requerimento de confirmação") describing the terms of the proposed operation, henceforth requesting the Government member responsible for the sector in which the relevant strategic asset is integrated, a confirmation that an opposition decision will not be adopted. Such confirmation will be deemed granted (tacit approval) if, within 30 days from the receipt of the consultation application, the applicant is not notified of the commencement of the foreign investment scrutiny procedure.	
12.	**Scope of information / documents required for filing**

The applicant must submit all the relevant information and documents describing the operation, including those demonstrating the inexistence of any risk to the national security. Additionally, the Government member responsible for the sector in which the relevant strategic asset or essential service is integrated can establish and detail by decree ("portaria") the specific information and documents required in each case.	
13.	**Proceedings timetable (timing for review)**
Within 30 days from the conclusion of an operation resulting, directly or indirectly, in the acquisition of direct or indirect control by a person or entity from third countries outside the EU and the EEA over strategic assets, or afterwords from the date when such acquisition become publicly known, the Government member responsible for the sector in which the relevant strategic asset or essential service is integrated may initiate the foreign investment scrutiny procedure, by means of a reasoned decision, in order to determine the risk of such acquisition to national security or to the security of the national supply of essential services for national interest. If the foreign investment scrutiny procedure is initiated, the acquiror shall submit the relevant information and documents following as per any official requests, which can be listed and detailed by a decree ("portaria"). From the date of complete submission of the information and documents required, and within 60 days, the Council of Ministers, upon the proposal from the Government member responsible for the area in which the relevant strategic asset is included, may take a final decision. The absence of a final decision within this period of 60 days is considered as a decision of non-opposition (tacit approval).	
14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**
The outcome of the review process may be: • A decision of non-opposition (tacit or formal approval, i.e. clearance); • A conditional decision subject to possible commitments; or • An opposition decision (prohibition). If an opposition decision is adopted, the acts and agreements related to the transaction at stake are null and void, including those related to economic exploitation or the exercise of rights over the assets or entities controlling them. If a conditional decision is adopted, the validity and effectiveness of the acts and agreements related to the transaction at stake will be conditioned to the implementation of the imposed commitments, subject to inspection and additional review procedure.	
15.	**Publicity of the decision and confidentiality of the information provided**
The decisions taken by the Council of Ministers are obligatorily subject to publication in the Official Gazette ("Diário da República"). Besides, the general rules on access to administrative documents as ruled by Law n.º 26/2016, of 22 August, shall apply. Among others, any confidential information by nature or law, including business secrets, shall not be disclosed or accessed.	
16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**

A decision of the Council of Ministers can be challenged or appealed under the general terms of the administrative law, by the applicant with procedural legitimacy to appeal and on the basis of any formal or substantial unlawfulness (illegality).

According to the Code of Administrative Procedure (CPA), approved by Decree-Law n.º 4/2015, of 7 January, the time limit for complaints and appeals by interested parties to whom the administrative act must be notified only runs from the date of notification, even if the act has been subject to mandatory publication (article 188, n.º 1). The time limit for complaints and appeals by any other interested parties against acts that do not have to be compulsorily published begins to run from the earliest of the following events: notification, publication or knowledge of the act or its execution (article 188(2)).

According to the Code of Procedure in Administrative Courts (CPTA), approved by Law n.º 15/2002, of 22 February, the deadline for filing a (single) appeal is 15 days for urgent cases (articles 36 and 147), 15 days for other specific cases in the CPTA (article 48(5) and 30 days in general (article 144).

17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**

N/A

18.	**Other national security review distinct from FDI rules**

N/A

19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**

In accordance with the 2022 report of the European Commission on the first year of application of the mechanism for scrutinising foreign direct investments in the European Union, it has been established an inter-ministerial group at the technical level and Portuguese authorities were making efforts to update the current law.

However, the Commission's 2nd annual report only mentions Portugal as one of the Member States with a "national mechanism for analysing FDI in place".

Therefore, reforming the current mechanism remains an open possibility. Nevertheless, some considerations can be made in light of the Commission staff working document accompanying the first annual report and the European framework:

While Decree-Law 138/2014 seems aligned with the new European Regime, certain amendments might be made to focus on establishing procedural guidelines for information exchange and fostering collaboration with other Member States and the Commission, which might imply adjustments to the deadlines currently set for opening investigations and adopting decisions.

On the other hand, it is also possible that the national legislator will extend the scope of Decree-Law 138/2014 to other areas of economic activity, since the European regime also expressly mentions the following sectors: water, health, media, data processing and storage, aerospace, defence, electoral, finance and sensitive facilities.

20.	**Helpful links**

AICEP: https://www.portugalglobal.pt/EN/Pages/Index.aspx

Bank of Portugal: https://bpstat.bportugal.pt/dominios/161

Portuguese Government: https://www.portugal.gov.pt/pt/gc23

SPAIN

Lupicinio International Law Firm http://www.lupicinio.com/

1.	**Relevant legislation (foreign investment legislation in force)**

Royal Decree 571/2023, of July 4, on foreign investments (https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-15549) hereinafter referred as to "RD"), which came into force on September 1, 2023. Its objective is to develop, in relation to investments, Law 19/2003, of July 4, on legal regime for capital movements and economic transactions abroad (https://www.boe.es/buscar/act.php?id=BOE-A-2003-13471).

The RD of Foreign Investments regulates: (i) investment declaration obligations foreigners in Spain for statistical purposes, which must be carried out after the closing of the operations object of declaration; (ii) the obligations to declare Spanish investments in the exterior for these same purposes; and (iii) as a most relevant issue, the foreign direct investment control mechanisms (the "Control Mechanisms") under which the closing of certain investment operations requires administrative authorization prior, both the general provision in art. 7 bis of Law 19/2003 (the "Control Mechanism of 7 bis") and that relating to activities directly related to national defense (the 2 "Defense Control Mechanism"), the relating to acquisitions of property for diplomatic purposes from non-member states of the Union European Union (the "Diplomatic Property Control Mechanism"), as well as a new regime for investments in activities directly related to weapons, cartridges, pyrotechnic articles and explosives for civil use or other material for use by the State Security Forces and Corps (the "Arms Control Mechanism"). It should be remembered that the Control Mechanisms do not imply a prohibition on foreign investment in Spain but are mandatory processes prior to the closing of certain operations. They involve the subject to prior administrative authorization for the closure (not the signing) of certain investment operations in Spain. In particular, the most relevant from a practical point of view for Its frequency of application – the Control Mechanism of 7 bis – incorporates in Spain the framework of foreign investment control provided for in EU legislation; in particular, the Regulation (EU) 2019/452, which regulates the possibility for Member States to impose controls on foreign direct investments in the EU.

2.	**Relevant authority (foreign investment regulator)**

Ministry of Economy, Bank of Spain and Investment Registry of the Ministry of Industry, Commerce and Tourism.

3.	**Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)**

Not all foreign direct investments are subject to the Control Mechanism of 7 bis, but it depends:

- on the sector in which the company under investment develops its business and of
- the subjective characteristics of the foreign investor if it is a Non-European Investor, with independence of the business of the company in which it invests.

Due to their purpose, foreign direct investments in the following sectors are subject to the Control Mechanism of 7 bis:

- Critical infrastructures, whether physical or virtual, now expressly including the energy, transport, water, health, communications, means of transportation infrastructure communication, data processing or storage, aerospace, defence, electoral or financial, and sensitive facilities, as well as land and real estate that are keys for the use of said infrastructures, understood as those contemplated in the Law 8/2011.
- Critical and dual-use technologies, including telecommunications, intelligence artificial intelligence, robotics, semiconductors, cybersecurity, aerospace technologies, defense, energy storage, quantum and nuclear, nanotechnologies and biotechnologies.
- Key technologies for leadership and industrial training, including materials advanced and nanotechnology, photonics, microelectronics and nanoelectronics, life sciences, advanced manufacturing systems and transformation, intelligence artificial, digital security, and connectivity.
- Technologies developed under programs and projects of particular interest to Spain, which include those that involve a substantial amount or percentage of financing from the budget of the European Union or Spain.
- Supply of fundamental inputs, in particular (a) those provided by companies that develop and modify software used in the operation of critical infrastructures in the energy, water, telecommunications, financial and insurance, health, transportation and in the field of food safety; as well as (b) other inputs indispensable and non-substitutable to guarantee the integrity, security or continuity of activities that affect the previous sectors, among others.
- Sectors with access to sensitive information, in particular personal data or with ability to control such information, including access to specific data about critical infrastructures, to databases related to the provision of services essential or that are not publicly accessible, and activities subject to mandatory to an impact assessment on personal data.
- Media, without prejudice to the fact that audiovisual communication services, in the terms defined in the General Law of Audiovisual Communication will be governed by what provided in said Law.
- Other sectors whose liberalization of foreign direct investment is suspended by the Government, when they may affect public safety, public order, and public health (currently none).

By the subject that makes them, the direct foreign investments of the following Investors Not Europeans are also subject to the Control Mechanism of 7 bis, regardless of the sector what to invest in:

- Whether the foreign investor is controlled directly or indirectly by the Government, including public bodies or armed forces of a third country.
- If the foreign investor has made investments or participated in activities in the sectors that affect security, public order, and public health in another State member, and especially in the sectors subject to the Control Mechanism indicated previously.
- If there is a serious risk that the foreign investor will engage in criminal or illegal activities that affect public safety, public order, or public health in Spain.

4.	**Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g., % of votes in the target triggering the notification)**

Foreign investors are both Non-European Investors and Non-Spanish European Investors (the latter, temporarily, until December 31, 2024), in both cases as these terms are defined below.

- They are Non-European Investors: (i) residents outside the EU and EFTA; and 8 (ii) residents of the EU or EFTA whose beneficial ownership corresponds to residents outside the EU and EFTA. This is understood to occur when non-EU and EFTA residents ultimately own or control, directly or indirectly, more than 25% of the capital or voting rights of the investor, or when they exercise control by other means, direct or indirect, of the investor.
- They are non-Spanish Europeans: (i) residents of EU and EFTA countries other than Spain; and (ii) residents in Spain whose beneficial ownership corresponds to residents in EU and EFTA countries other than Spain. It is understood that this occurs when EU and EFTA residents outside Spain ultimately own or control, directly or indirectly, a percentage greater than 25% of the capital or voting rights of the investor, or when by other means they exercise the control, direct or indirect, of the investor.
- They are direct foreign investments: (i) investments as a result of which the foreign investor has a stake equal to or greater than 10% of the share capital of a Spanish company; (ii) the corporate operation, act or legal business as a consequence of which the foreign investor acquires control of a Spanish company or of all or part of it in accordance with the criteria established in article 7.2 of the Law of Defense of Competition; and (iii) additionally, and only in the event that the investor is a Non-Spanish European and until December 31, 2024, operations that have as their object a company listed in Spain, or if carried out on an unlisted one, those whose value exceeds 500 million euros.

5.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**

- Foreign investments in Spain and their disinvestment will be declared to the Investment Registry of the Ministry of Industry, Commerce and Tourism on a mandatory basis and after carrying them out, except as established in article 5.5 of

the RD. The form and deadline for making the declarations will be determined in the implementing regulations of the Royal Decree, with the regulations cited in the Second Transitional Provision being applicable until then.

- In general, the investment will be declared by the non-resident holder. When the declaration must be made by a third party, the non-resident holder must provide all the necessary data to carry it out.

- On a special basis: a) Investment operations carried out in collective investment institutions and closed collective investment entities will be declared by their management company.

6.	**Exceptions**

The RD delimits foreign direct investments that are not subject to prior control. In general: (i) Those that have no or little impact on the legal rights protected by this regulation. (ii) Internal restructuring in a group of companies. (iii) Increases in business participations by a shareholder who already has a participation greater than 10% and that do not imply a change of control. (iv) Those in which the turnover of the acquired companies does not exceed 5 million euros in the last closed accounting year, provided that their technologies have not been developed under programs and projects of particular interest to Spain.

Along with these general exemptions, the Royal Decree regulates specific exemptions for the energy sector, regardless of the amount and when the assumptions that justify control do not occur (direct or indirect control by a foreign government, with investments in energy sectors). security, public order or public health or risk of criminal or illegal activities): (i) When the companies or assets acquired do not carry out regulated activities. (ii) When as a result of the operation, the company does not acquire the status of dominant operator in the sectors of generation and supply of electrical energy, production, storage, transportation and distribution of fuels or biofuels, production and supply of liquefied petroleum gases. or production and supply of natural gas, under the terms established in the Royal Decree on urgent measures to intensify competition in goods and services markets. (iii) When the foreign investment involves the acquisition of electrical energy production assets, provided that the share of installed power by resulting technology is less than five percent. (iv) When the foreign investment involves the acquisition of companies that carry out the activity of marketing electric energy, in accordance with the provisions of the Electricity Sector Law, provided that the number of clients of the acquired company is less than twenty thousand. As regards the conditions of the investor, non-European investors and non-Spanish European investors are considered foreign investors and it will be monitored that they are not controlled directly or indirectly by the government of a third country, or it is found that there is a serious risk that engage in criminal or illegal activities.

Particularities of investments in activities directly related to National Defense or with weapons and explosives for civil use: (i) The condition of non-resident foreign investors includes resident foreign natural persons, regardless of their nationality. (ii) Included are those that affect the industrial capabilities and areas of knowledge necessary to provide the equipment, systems and services that provide the Armed Forces with the necessary military capabilities, as well as those that are intended for production, maintenance, or trade in defense material in general. (iii) Investments below 5% of the share capital are exempt from control when they do not allow the investor to be part, directly or indirectly, of its administrative body. (iv) Foreign investments that reach between 5% and 10% of the share capital are exempt from authorization, but subject to communication, as long as the investor undertakes in a public deed not to use, exercise or transfer their rights to third parties. to vote, nor to form part of administrative bodies. (iv) Foreign investments that, due to their

nature, characteristics, or amount, do not affect the essential interests of Defense, may be authorized by the head of the General Directorate of Armaments and Materials, following a report from the Foreign Investment Board.

7.	**Notification / review type (e.g., mandatory, pre-closing, suspensory)**

The most relevant innovations introduced by the RD of Foreign Investments in the Control Mechanisms are the following:

- Deadline to resolve. The period available to authorities to resolve authorization requests in all Control Mechanisms is reduced from six to three months. If no response is obtained after that period, it will be deemed rejected. However, the authorities may require additional information that suspends the calculation of this period to resolve and notify.

- Voluntary consultation procedure. The voluntary consultation system is formalized, which, without express legal coverage or a specific deadline to resolve, had been existing in practice. It is applicable to all Control Mechanisms. Through this procedure, which is voluntary, investors can receive, within a maximum period of 30 business days, a confidential and binding response regarding the need for a specific operation to be subject to authorization or not. The interested party may submit a request for authorization if they do not receive a response after that period or if the query is resolved in the sense that it is necessary. Although the RD of Foreign Investments does not expressly indicate it, it should be understood that, if this period elapses, the interested party may in any case wait for the express resolution of the consultation.

- Elimination of the simplified 30 business day procedure. The possibility of resorting to the simplified procedure of the Control Mechanism of 7 bis for operations is eliminated whose amount was less than 5 million euros. Since the entry into force of the RD on Foreign Investments, all applications submitted will have the same resolution period of 3 months, although the body competent to resolve will vary depending on the amount of the operation: it will be up to the head of the General Directorate of International Trade and Investment to decide on operations whose amount is equal to or less than 5 million euros, and to the Council of Ministers in the rest of the cases.

- Common authorization regime. Among other novelties, regarding the common authorization regime, the following stand out:

  ✓ the consequences of the violation of the obligation to submit to any Control Mechanism when required: the unauthorized investor will not be able to exercise economic and political rights in Spanish society until the mandatory authorization is obtained - if obtained -; (ii) the possibility of authorizations being subject to conditions is expressly contemplated – something that has already been happening in practice in some cases;

  ✓ it is indicated that, when two or more investment operations take place within a period of two years between the same buyers and sellers, "they will be considered as one carried out on the date of the last operation" - note that the provision it means expressly to the identity of buyers and sellers, and not of object, but if the company object of investment varies (that is, if the company in which the investment is invested is not the same),

✓ It is not reasonable to understand that this is a single investment operation for the purposes of applying the Control Mechanisms—; and (iv) it is clarified that a single application must be submitted per investment operation, provided that there is an agreement between the parties, and not per investor—that is, if in the same operation there is more than one foreign investor subject to the Control Mechanism and it's about a concerted operation (with investment agreements between all parties), the application must be unique for the operation and separate applications cannot be submitted per investor.	
8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**
The investigating authority shall be able to order the investor or the undertaking which is or has been the subject of the investment to provide the information or documents and to grant access.	
9.	**Filing fee**
The application is not subject to an administrative fee.	
10.	**Submission deadline / stand-still obligation**
See paragraph 7 above.	
11.	**Availability of pre-notification / informal consultation**
See paragraph 7.2 above.	
12.	**Scope of information /** documents **required for filing**
To initiate a foreign investment screening, the foreign investor applies on a prescribed form together with a questionnaire which will be approved in the corresponding regulation which develops the RD, but in general term such questionnaire will probably include the main following information: • basic data of the foreign investor and target person: legal entity (company name, registered office, ID No., management data) / natural person (name, surname, date of birth etc.) • information on the ownership structure of the foreign investor and the target person, • information on the products or services and business activities of the foreign investor and the target person, • a list of the EU Member States in which the foreign investor and the target person operate, information about their subsidiaries and branches in the EU, • the source of financing of the foreign investment, • the amount of foreign investment, • the date of planned completion of the foreign investment,	

- information on the involvement of the target person in projects or programmes of interest to the EU,
- information on foreign investor´s current shareholdings and voting rights in the target person.

13.	**Proceedings timetable (timing for review)**

The Control Mechanism of 7 bis is summarized in the following terms:

- Prior authorization from the Council of Ministers is necessary to complete the investments direct foreign companies subject to the Control Mechanism of 7 bis, although it will correspond to the head of the General Directorate of International Trade and Investments to resolve on those operations whose amount is less than five million euros.
- The maximum legal period to resolve the authorization request is three months. Fits the possibility of the deadline being suspended if additional information is required.
- Silence is negative: the investment is considered not to have been authorized if the competent authority does not issue a resolution within the corresponding legal period. However, this does not mean that authorization cannot be granted after that period. Authorization may be granted after that period has elapsed, so the rejection due to silence only has the effect of enabling the investor to go, where appropriate, to the contentious-administrative jurisdiction. The administration will continue to be obliged to issue an express resolution in the authorization procedure and may grant authorization. This will surely be the scenario in complex procedures or that require the adoption of commitments.

14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**

Article 7 and article 7 bis of Law 19/2003 do not expressly establish more than the possibility of an investment being authorized or denied, but Royal Decree 571/2023 has explicitly stated that administrative resolutions may consist of:

- Authorizations without conditions.
- Authorization denials.
- Authorizations subject to conditions imposed by the resolution body or to commitments presented by the investor and accepted by the resolution body; either
- The file due to withdrawal of the investor or considering that the operation is not subject to any regime of suspension of investment liberalization foreigners.

15.	**Publicity of the decision and confidentiality of the information provided**

The information received by the Spanish authorities in application of the RD of Foreign Investments will be confidential and can only be used for the purpose for which it has been requested.

16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**

As mentioned above, the confidential procedure for voluntary consultation with the General Directorate of International Trade and Investment will have a period of 30 business days to respond and will suspend the possibility of requesting authorization until the resolution is notified or the period passes without resolution. expresses. The response will be binding for the Administration in relation to the consultant. This procedure is regulated in article 9 of the RD.
The resolution of authorization requests will correspond, following a report from the Foreign Investment Board:

- to the person in charge of the General Directorate of Trade and Investment when the amount of the investment is equal to or less than 5 million euros (here the reference is to the amount of the investment, and not, as in the exemption or de minimis threshold, to the turnover of the acquired company); and
- to the Council of Ministers in the rest of the cases.

17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**

Foreign direct investments subject to a Control Mechanism carried out without the mandatory prior authorization will lack validity and legal effects as long as it does not occur its legalization, which now includes that the foreign investor will not be able to exercise the rights economic and political in the Spanish company that is the object of the investment until the authorization.

In addition, a fine will be imposed simultaneously, which may amount to the same amount of the content economics of the operation.

18.	**Other national security review distinct from FDI rules**

There is no other national security review.

19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**

No other relevant changes have been implemented in the past year.

20.	**Helpful links**

https://comercio.gob.es/InversionesExteriores/novedades/Paginas/entrada-vigor-rd-571-2023.aspx

https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-15549

https://www.boe.es/buscar/act.php?id=BOE-A-2003-13471

SWEDEN

TIME DANOWSKY Advokatbyrå AB http://www.danowsky.se/

1.	**Relevant legislation (foreign investment legislation in force)**
On 13 September 2023, the Swedish Parliament, following a report from the Committee on Justice, voted to enact new legislation relating to the FDI Regulation. The vote confirmed the Government Bill to the Parliament with no alternations. The new Act will enter into force on 1 December 2023 (the "Act"). Supplementary ordinances and various statutory provisions have not yet been enacted. See link (in Swedish): https://svenskforfattningssamling.se/sites/default/files/sfs/2023-09/SFS2023-560.pdf	
2.	**Relevant authority (foreign investment regulator)**
The Inspectorate for Strategic Products (the "**ISP**") is expected to be appointed as the supervisory authority.	
3.	**Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)**
Under the new Act the Government will have the authority to review and prohibit foreign investments in a broad range of sectors, including critical infrastructure, technology and sensitive industries including defence-related industries. The sectors will be further exemplified in ordinances and regulations from the competent authorities. These are not yet enacted, but examples indicated in the preparatory works include services or infrastructure within energy, transport, healthcare, water supply, food production and food supply, telecommunications, banking and finance, security-sensitive operations, critical inputs or raw materials, activities whose major purpose is processing of sensitive personal data or location data, activities related to emerging technologies and other strategic protected technologies, military equipment and dual-use products.	
4.	**Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)**
The new Act is said to strengthen Sweden's ability to safeguard national security and protect critical infrastructure from potential risks associated with foreign investments. The method is to prevent foreign direct investments that may harm national security, public order or public safety in Sweden. Certain investments posing security risks shall be reviewed and, if necessary, restricted or prohibited.	

Foreign investor – Government proposal:

The Act defines a foreign direct investment as an investment made by an investor who is:

- a natural person with citizenship of a state not member of the European Union,
- a legal entity domiciled in a state not member of outside the European Union,
- a legal person directly or indirectly owned or controlled by a state not member of outside the European Union; or
- a legal person directly or indirectly owned or controlled by a legal person established in a state not member of a non-European Union or by a natural person who is a national of such a third country.

A foreign direct investment shall also mean an investment made by an investor for the benefit of any of the aforementioned entities.

Activities – Government proposal:

According to the act, activities that require protection pursuant refer to:

- essential activities,
- security-sensitive activities according to the Swedish Protective Security Act (2018: 585),
- exploration, extraction, enrichment or sale of critical raw materials or of metals or minerals that are strategically important for Sweden's supply,
- large-scale processing of sensitive personal data or location data in or through a product or service,
- the manufacture or development of, research into or provision of war material in accordance with the Swedish Military Equipment Act (1992:1300), or the provision of technical support for such war material,
- manufacturing or developing, researching or providing dual-use items or providing technical assistance for such items; and
- research into, or provision of, products or technology in emerging technologies or other strategically important technologies or activities capable of producing or developing such products or technology.

By essential activities means activities, services or infrastructure that maintain or ensure societal functions that are necessary for society's basic needs, values or security.

Assets subject to foreign investment assessment:

The definition does not distinguish between investments in the form of start-ups, known as greenfield investments, and investments consisting of the acquisition of existing assets, so called brownfield investments.

Investment thresholds:

Any party that intends to invest, directly or indirectly, in a limited liability company, a European company or an economic interest grouping engaged in activities worthy of protection shall notify the investment if, after the investment, the investor, or any member of its ownership structure, or any person on whose behalf the investor is acting, would, directly or indirectly, hold voting rights which correspond to or exceed any of the thresholds of 10, 20, 30, 50, 65 or 90 per cent of the voting rights in the legal person. A notification shall be made each time an investment is made whereby the investor, a member of the investor's ownership structure or a person on whose behalf the investor is acting would have votes equal to or exceeding any of the thresholds. A notification must therefore be made if the party holds at least 10 per cent or more of the voting rights in the legal entity.

5.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**

The investor is liable to notify the supervisory authority about the investment, The target entity is under a statutory obligation to inform the investor about the requirement to notify. In the absence of a notification, the supervisory authority will arrange prepare the documents necessary for a notification.	
6.	**Exceptions**
A notification is not required for the acquisition of shares in a new issue with preferential rights in relation to the number of shares held by the investor.	
7.	**Notification / review type (e.g. mandatory, pre-closing, suspensory)**
Within twenty-five working days of a notification being complete, the investigating authority shall decide to either leave the notification without action or initiate an investigation of the investment. A notification shall be left without action if the investigating authority assesses that there is no reason to assume that the investment is a foreign direct investment that could have a harmful effect on Sweden's security or on public order or public safety in Sweden. An investment subject to the notification requirement may only be implemented if the notification of the investment has been left without action or if the investment has been approved in a review. The investigating authority may decide to initiate a review of an investment in an activity worthy of protection that is not subject to a notification obligation, if there is reason to assume that the investment may have a detrimental effect on Sweden's security or on public order or public safety in Sweden. If the review authority has initiated a review on its own initiative, the investment may only be implemented if the investment has been approved during the review. Within three months of its decision to initiate an investigation, the investigating authority shall decide to either prohibit or approve the investment. However, if there are special reasons, the reviewing authority may communicate the decision within six months. If there is no reason to prohibit an investment that has been reviewed, it shall be approved.	
8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**
The investigating authority shall be able to order the investor or the undertaking which is or has been the subject of the investment to provide the information or documents and to grant access. An order may be accompanied by a fine.	
9.	**Filing fee**
There is no information in the Act about a filing fee. Supplementary ordinance (please see information presented in point 1 above) are not expected to set forth any filing fees.	
10.	**Submission deadline / stand-still obligation**
Within twenty-five working days of a notification being complete, the investigating authority shall decide to either leave the notification without action or initiate an investigation of the investment. The deadline does not start until the notification is complete.	

The reviewing authority shall, within three months of its decision to initiate a review and decide to either prohibit or approve the investment. However, if there are special reasons, the reviewing authority may issue the decision within six months.	
11.	**Availability of pre-notification / informal consultation**
There is no information in the Act about this issue. It may the case that this matter will be specified in supplementary ordinance (please see information presented in point 1 above).	
12.	**Scope of information / documents required for filing**
The investor and the undertaking which is or has been the subject of the investment shall be obliged to provide, at the request of the supervisory authority, any information or documents necessary for its examination or to verify compliance with the notified conditions. The supervisory authority shall have the right of access, to the extent necessary to obtain the information or documents, to areas, premises and other spaces, other than residential premises, used in the activities of the investor or the undertaking which is or has been the subject of the investment. The investigating authority shall be entitled to order the investor or the undertaking which is or has been the subject of the investment to provide the information or documents and to grant access. An order may be accompanied by a penalty payment. The investigating authority may request executive assistance from the Swedish Enforcement Authority to gain access. The provisions of the Enforcement Code on the enforcement of obligations that do not relate to payment obligations, eviction or removal shall apply. Municipalities and regions and the authorities determined by the Government shall provide information to the review authority if the review authority requests it in connection with its review or its control of compliance with the conditions notified and it is necessary for the authority to be able to fulfil its mission under the Act. According to the Bill, the review authority should consult with the Swedish Armed Forces, the Swedish National Board of Trade, the Swedish Civil Contingencies Agency and the Swedish Security Service in matters reviewed under the Act. The authorities that need to be included in the circle may also vary over time depending on the development of society. Against this background and with reference to the proposal that the review authority should not be designated in the Act, it does not seem appropriate to regulate in law which authorities should be included in the collaboration. This should instead be regulated in an ordinance. The Government considers that it would be unnecessarily burdensome for the authorities to have to cooperate on all notified investments. Cooperation should be mandatory only for investments that the reviewing authority has decided to review. There is otherwise a risk that valuable resources and time would be used for unproblematic investments.	
13.	**Proceedings timetable (timing for review)**
The reviewing authority shall, within three months of its decision to initiate a review and decide to either prohibit or approve the investment. However, if there are special reasons, the reviewing authority may issue the decision within six months.	
14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**

A notification shall be left without action if the investigating authority assesses that there is no reason to assume that it is a foreign direct investment that could have a harmful effect on Sweden's security or on public order or public safety in Sweden. A foreign direct investment in activities worthy of protection shall be prohibited if it is necessary to prevent harmful effects on Sweden's security or on public order or public safety in Sweden. If there is no reason to prohibit an investment that has been reviewed, it should be approved.	
15.	**Publicity of the decision and confidentiality of the information provided**
According to the proposal, a confidentiality-breaking provision will be introduced in the Public Access to Information and Secrecy Act (2009:400), which means that international cooperation does not prevent the Swedish Armed Forces or the Swedish Security Service from providing information to the investigating authority if the information is necessary for the investigating authority to be able to fulfil its mission. Information may only be disclosed if the interest in disclosing the information takes precedence over the interest that secrecy is intended to protect.	
16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**
Decisions on injunctions and fines may be appealed to the Administrative Court in Stockholm. Leave to appeal is required for appeals to the Administrative Court of Appeal. Decisions on prohibitions regarding foreign direct investment in operations worthy of protection and decisions on approval with conditions may be appealed to the Government. Other decisions may not be appealed.	
17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**
The investigating authority may decide to levy a penalty on a person who has not made a notification to the examining authority even though there was a duty to notify and has not fulfilled its obligation to provide information.	
18.	**Other national security review distinct from FDI rules**
None.	
19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**
See information presented in point 1 above.	
20.	**Helpful links**
• https://data.riksdagen.se/fil/1D20FA9B-DDFC-406B-AEF6-A4DB8E726291	

- https://www.regeringen.se/contentassets/eee59193c02a42148a2eafc22017e312/ett-granskningssystem-for-utlandska-direktinvesteringar-till-skydd-for-svenska-sakerhetsintressen-prop.-202223116.pdf
- Ett granskningssystem för utländska direktinvesteringar till skydd för svenska säkerhetsintressen - Regeringen.se
- New act will stop investments in companies by foreign actors that could harm Sweden - Government.se

THE NETHERLANDS

DVAN Advocaten DVAN | Home

1.	Relevant legislation (foreign investment legislation in force)
Wet veiligheidstoets investeringen, fusies en overnames (Dutch only) (Investments, Mergers and Acquisitions Security Screening Act), abbreviated in Dutch as the "*Wet Vifo*" or "*Vifo Act*".	
2.	**Relevant authority (foreign investment regulator)**
Formally, the minister of Economic Affairs and Climate is the relevant authority. In fact, the Bureau Toetsing Investeringen (the Bureau for Verification of Investment) abbreviated in Dutch as the "*BTI*" leads the relevant processes.	
3.	**Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)**
Sectors covered are: • vital providers in the sectors of heat transport, nuclear energy, air transport and ground handling, port area, banking, financial market infrastructure, extractable energy, gas storage; • providers of sensitive technology including: dual-use products (the definition of which is aligned with Regulation 2021/821), military goods and technologies included in the EU Common Military List; and • managers of corporate campuses.	
4.	**Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)**
Transactions fall within the scope of the Vifo Act if the target company has an actual connection with the Netherlands. This concerns the factual connecting factors: is the company managed from the Netherlands and is production or research carried out in the Netherlands? In addition, it is important to note that all acquirers fall within the scope of the Vifo Act. It is irrelevant whether the acquirer is from the Netherlands, Europe or another country. Even if the acquirer is a Dutch company, the transaction could fall within the scope of the Vifo Act and the parties must report the transaction to the BTI. A transaction must be reported in case of so called acquisition activities relating to the abovementioned sectors. This includes investments, mergers, acquisitions and demergers that give a buyer control over a company.	

For target companies providing sensitive technology (as mentioned above), a transaction falls within the scope of the Vifo Act if the buyer/investor acquires significant influence. A buyer/investor may be deemed to have acquired significant influence if he has 10% of the voting rights in the general meeting of shareholders of the target company.

5.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**

Notifying parties:

- the acquirer of:
  - ✓ control or
  - ✓ significant influence in the target company, and
- target company.

6.	**Exceptions**

There are multiple exceptions to the Fivo Act control regime. These are applicable to situations wherein:

- it is only possible for the State of the Netherlands, provinces, municipalities or other public bodies, on the basis of a statutory provision, to be the acquirer of a certain acquisition activity, either directly or indirectly;
- another law makes the acquisition activity subject to a specific national security test, regardless of the content of that specific test;
- another law is applicable that provides for a specific test on national security grounds, but that test only does not apply to a target company because the acquisition activity does not meet a minimum scope of acquisition activity set out in the other law or is of a different nature from that prescribed by the other law for review.
- the acquirer is a legal entity that is independent of a listed target company, if the purpose of such acquirer is to promote the interests of such target company, and a company affiliated with it, which acquires control or significant influence after the announcement of a public offer for the duration of up to two years to protect such target company;
- the acquirer is the State of the Netherlands, a province or a municipality located in the Netherlands or another public body under Dutch law; or
- the acquirer is a legal entity whose statutory objective is to promote the interests of the financial system involved in an orderly and controlled manner in the resolution of a vital banking provider, for which it has been determined by De Nederlandsche Bank or, depending on the division of competences under Article 7 of Regulation 806/2014, the resolution board referred to in Article 42 of that Regulation, that the conditions for resolution of that target company have been met.

7.	**Notification / review type (e.g. mandatory, pre-closing, suspensory)**

Any intention to carry out an acquisition activity that falls within the scope of the Vifo Act must be notified by the intended Target or the acquirer to the BTI. In principle, an acquisition activity does not take place until:

- the BTI (on behalf of the Minister) has notified that no review decision is required; or
- a positive review decision has been made.

8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**

Any third party that is a so called "*belanghebbende*" or "*interested party/stakeholder*" has the right to object to a decision by the BTI. In order to be an interested party, the party must have his own personal, objectively determinable, actual and sufficiently certain, as well as a directly 'affected' interest.

Such a party has the same rights as the party that filed the initial notification of the acquisition activities, such as the right to be heard, the right to a motivated decision and the right to file supporting evidence.

9.	**Filing fee**

None.

10.	**Submission deadline / stand-still obligation**

There is a standstill obligation. The concerned parties are not allowed to effectuate the acquisition activity until:

- the BTI (on behalf of the Minister) has notified that no review decision is required; or
- a positive review decision has been made.

The BTI (on behalf of the Minister) can grant an exception to this standstill obligation. Exemption can only be granted if the public interest is at stake, with a risk of economic, physical or social harm to society or parts thereof or adverse effects on financial stability, if the exemption is not granted.

11.	**Availability of pre-notification / informal consultation**

It is possible to (anonymously) engage informally with the BTI.

12.	**Scope of information / documents required for filing**

- Description of the acquisition activities
- Information about the acquirer, the group companies of the acquirer, the representative of the acquirer and documents to prove his/her capacity
- Information about the target company (including the EU-states wherein the company is active, the sectors in which the company is involved and the sensitive technology involved (if any))
- The nature of the acquisition activities
- Answers to questions that are relevant to national safety
- Financing and motives for the transaction
- Copies of the most recent transaction documentation
- Whether or not the acquisition is also notified to other anti-trust authorities in different member states
- Whether or not the acquisition activities will likely have an effect on Projects of Common Interest

13.	**Proceedings timetable (timing for review)**

Action	**Timing**

Notification of envisaged acquisition activities by the acquirer and/or the target	Before the acquisition takes place, or in case of an acquisition as a result of inheritance, within 2 weeks after the stake has been inherited
Notifcation by the BTI (on behalf of the Minister) whether or not a review decision is necessary	Within 8 weeks after receiving the notification of the envisaged acquisition, or if suspended by the BTI (on behalf of the Minister), within a maximum of 6 months
If the BTI (on behalf of the Minister) has decided that a review decision is necessary, a request for this review decision has to be filed in order to proceed	N/A
Review decision by the BTI (on behalf of the Minister)	Within 8 weeks after receiving the request, or if suspended by the BTI (on behalf of the Minister), within a maximum of 6 months (taking into account and subtracting earlier extension of the review period for the notification)

Please take into account that any time the BTI (on behalf of the Minister) requests for additional information, the term is suspended until said information has been provided.

If, following a notification, it appears that there is a foreign direct investment that falls within the scope of Regulation (EU) 2019/452, the periods of 6 months mentioned above can be extended with another 3 months.

14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**

The BTI (on behalf of the Minister) can give full clearance to an acquisition activity if it decides that the activity does not constitute a risk to national safety. If it decides that it does in principle cause a risk to national safety, it can forbid giving effect to the acquisition activity.

However, it can also attach conditions to the approval, including but not limited to:

- adhering to additional safety and usage requirements regarding the usage of sensitive information;
- establishing a security commission or appointing a security official;
- prohibiting the sale of certain products or the rendering of services to certain companies or countries;
- establishing a supervisory board; and/or
- mandatory certification of shares through a trust fund.

If the target company is active with sensitive technologies, additional conditions can be attached, such as:

- giving certain technology or (genetical) code to the state for safekeeping;
- mandatory sharing of information with the BTI (on behalf of the Minister) before the termination of certain activities or the moving of certain activities to a third party country

15.	**Publicity of the decision and confidentiality of the information provided**

The decision is not made public.	
16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**
Interested parties may object against the decision to impose requirements or regulations on an acquisition activity or impose a ban. They have to object within 6 weeks after the decision is made. The BTI (on behalf of the Minister) will have to decide on the objection within 12 weeks after the initial decision was made. The decision on objection can be appealed through an administrative procedure with the court of Rotterdam if the appeal is filed within 6 weeks after the decision on objection. A decision from the court of Rotterdam can be appealed within 6 weeks at the "*College van Beroep voor het bedrijfsleven*" or the "*Trade and Industry Appeals Tribunal*".	
17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**
The consequences for failure to notify can be: Administrative sanctions • A fine of up to a maximum of EUR 900,000 or a fine not exceeding 10% of the company's annual turnover (for functionally offending natural persons or legal persons), • the BTI (on behalf of the Minister) can order the acquirer or the target company to do what is necessary to resolve the undesirable consequences of the acquisition activities. Criminal (breach of the Vifo Act is an economic crime) *For intentional breaches:* • fines of up to EUR 90,000, • imprisonment for a maximum of six years. *For unintentional breaches:* • fines of up to EUR 22,500, • imprisonment for a maximum of one year. Civil law consequences are (depending on the manner of acquisition) the effect that the acquisition is: • deemed to be null and void, or • voidable by a judge.	
18.	**Other national security review distinct from FDI rules**
• Elektriciteitswet 1998 (Electricity Act 1998) and Gaswet (Gas Act) Based on the Electricity Act 1998, any change must be notified in relation to control in a generating plant with a nominal electrical capacity exceeding 250 MW or a company operating a generating plant with a nominal electrical capacity exceeding 250 MW. The change must be notified with the Minister. Under the Gas Act, any change relating to control in an LNG facility or an LNG company must be reported to the Minister by one of the parties involved in the change.	

The Minister may impose further requirements on the proposed change of control relating to the qualifying generating plant or LNG facility. The Minister may also decide to prohibit the change. The Minister will do so if he or she considers that risks to public safety, security of supply or security of delivery arise because of the change of control.

- Telecommunicatiewet (Telecommunications Act) i.e. the Wet ongewenste zeggenschap telecommunicatie (Unwanted control of telecommunications act) which has been inserted into the Telecommunicatiewet

Based on the Telecommunications Act, the minister has the power to prohibit the acquisition and holding of 'predominant control' in a telecommunications party if, in the minister's opinion, such control leads to a threat to the public interest. In order to keep track of qualifying takeovers in the telecommunications sector, the Telecommunications Act provides for a notification requirement. The notification obligation under the Telecommunications Act applies if (i) predominant control is acquired in (ii) a 'telecommunications party' and (iii) this leads to 'relevant influence' in the telecommunications sector.

Predominant control exists when effective control over the telecommunications party is conferred. This occurs, inter alia, when a party (i) alone or in concert, directly or indirectly, holds at least 30% of the votes in the general meeting, (ii) can appoint or dismiss more than half of the directors or supervisory board members, or (iii) is a priority shareholder.

A telecommunications party is a branch office, a Dutch legal person, a sole proprietorship or a partnership, being a provider or holder of a controlling interest in a provider of (i) an electronic communications network or electronic communications service, (ii) a hosting service, internet node, trust service or data centre (excluding data centres mainly for own use), or (iii) a category of networks or services designated as such by the Dutch government.

The question of whether predominant control results in relevant influence in the telecommunications sector determines what the consequences would be if this control would be used to cause harm. For this purpose, it is not important whether the acquirer or holder of control actually has the intention to cause harm.

19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**

The Vifo Act has only entered into force on 1 June 2023.

20.	**Helpful links**

- https://business.gov.nl/amendment/checking-investments-national-security-risk/
- https://www.bureautoetsinginvesteringen.nl/
- Critical Infrastructure (protection)

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1.	Relevant legislation (foreign investment legislation in force)

(a) Primary legislation

The National Security and Investment Act (NSIA) came into force on 4 January 2022. The text of the legislation is available here: https://www.legislation.gov.uk/ukpga/2021/25/contents/enacted .

The NSI establishes a statutory regime for Government scrutiny of, and intervention in, investments for the purposes of protecting national security. The NSIA:

- sets up a mandatory system under which proposed acquisitions of control (for example through the purchase of certain shares or voting rights) in qualifying entities or assets in sensitive sectors are subject to clearance from the Secretary of State before they take place;
- sets up a voluntary notification system to encourage parties who consider that their proposed acquisition may raise national security concerns to notify the Secretary of State of the transaction; and
- gives the Secretary of State the power to "call in" acquisitions of control over qualifying entities or assets in order to undertake a national security assessment.

(b) Secondary legislation

The following pieces of secondary legislation deal with specific areas linked to the NSIA and the investment screening regime:

- Notifiable acquisition statutory instrument - this sets out the acquisitions of qualifying entities in the 17 areas of the economy that are subject to the mandatory notification requirements
- Monetary Penalties statutory instrument - this sets out the methods for calculating business turnover in the event of the Secretary of State issuing monetary penalties for non-compliance with the National Security and Investment Act
- Form and Content of Notification Forms Statutory Instrument - this sets out the information required in the notification forms that parties can submit to the government under the Act
- Procedure for Service Statutory Instrument - this sets out how the government sends and receives documents under the Act.

2.	Relevant authority (foreign investment regulator)

The Secretary of State in the Cabinet Office is able to exercise powers under the NSI, such as imposing conditions on an acquisition, or blocking it altogether.

Administrative and policy support for the exercise of these powers is provided by the Investment Security Unit (ISU).

3.	**Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)**

Type of transactions caught

The NSIA gives the Secretary of State the power to "call in" acquisitions of control over "qualifying entities" or "qualifying assets" in order to undertake a national security assessment.

This call-in power may be exercised where the Secretary of State reasonably suspects that a "a trigger event has taken place [or where arrangements are in place that means a trigger event may take place] in relation to a qualifying entity or qualifying asset, and the event has given rise to or may give rise to a risk to national security" (S 1, NSIA).

The term "national security" is not defined in the NSIA, meaning that potentially any transaction within the scope of S1 could be called in. However, under S 3 of the NSIA, the Secretary of State publishes a statement as to how (s)he expects to use the power and must have regard to the statement. The government will take into account the following factors when national security risk:

- target risk — what does the target do?
- acquirer risk — what are the characteristics of the acquirer and what are its relationships?
- control risk — what level of control will the acquirer obtain over the target?

The NSIA therefore does not rely on specific financial thresholds but instead focuses on control and influence. Unlike similar regimes in other countries, these provisions cover all transactions, not just those involving foreign investment. The call-off power is also not limited to acquisitions in certain sectors.

Trigger events

The types of transactions caught and the notification thresholds are determined based on specific trigger events. These are described below in our response to Q5.

1) **Definition of Trigger Events:** Each trigger event involves an individual or entity (the acquirer) acquiring rights or interests conferring control over either:

   A Qualifying Entity: A qualifying entity includes any entity other than an individual, whether or not it is a legal person. This encompasses a wide range of entities, such as UK companies, limited liability partnerships, partnerships, unincorporated associations, trusts, and entities formed or recognized outside the UK that carry on activities in the UK or supply goods or services to persons in the UK.

   A Qualifying Asset: Qualifying assets consist of:

   - Land.
   - Tangible moveable property.
   - Ideas, information, or techniques with industrial, commercial, or economic value, used in connection with activities in the UK or the supply of goods or services to persons in the UK. This category includes trade secrets, databases, source code, algorithms, designs, plans, software, and more.

2) **Thresholds for Trigger Events:** Unlike the previous regime under the Enterprise Act, the government's powers to intervene in transactions under the NSIA do not depend on the target of the acquisition meeting minimum turnover or share of supply thresholds. This change was aimed at preventing parties from bypassing the regime by acquiring assets rather than shares in the company that owns them.

3) **Categories of Trigger Events (for qualifying entities):** The NSIA Act specifies four categories of trigger events (two covered in the first bullet below) over qualifying entities that may require a national security assessment under the NSIA regime. These categories involve acquiring control of a qualifying entity and include:

- **Increasing (i) ownership or (ii) voting rights:** When the acquirer's percentage of shares or voting rights in the qualifying entity increases to more than 25%, more than 50%, or at least 75%.
- **Exercising Control:** When the acquisition of voting rights in the qualifying entity enables the acquirer to secure or prevent the passage of any class of resolution governing the entity's affairs.
- **Exercising Material Influence:** When the acquirer can exercise material influence over the policy of the qualifying entity.

4) **Categories of Trigger Events (for qualifying assets):** The trigger event occurs where there is an acquisition of a right or interest in (or in relation to) a qualifying asset which gives the acquirer the ability to either:

- Use the qualifying asset or use it to a greater extent than before the acquisition.
- Direct or control how the asset is used or do so to a greater extent than before the acquisition.

In summary, the NSIA Act identifies specific trigger events related to the acquisition of control over qualifying entities or assets. This approach shifts the focus away from financial metrics and toward ensuring that acquisitions potentially affecting national security are subject to review and intervention by the UK government.

Notification thresholds

A transaction is subject to a duty of mandatory notification where **both** of the following criteria are met:

- **Trigger event requirement**. As a result of the acquisition, the acquirer gains control of a **qualifying entity** by either:
  - ✓ increasing the percentage of shares (or votes) that it holds in the entity to: (i) more than 25%; (ii) more than 50%; or (iii) at least 75%; or
  - ✓ acquiring voting rights in the entity that enable it to secure or prevent the passage of any class of resolution governing the entity's affairs.
- **Sector requirement.** The qualifying entity undertakes particular activities in the UK within a specified high-risk sector of the economy. The definitions of the relevant sectors are discussed further below (Q5).

It is important to note that the power of the Secretary of State to call-in transactions is not limited to those where there is a mandatory duty to notify. Also please note that the duty does not extend to the acquisition of qualifying assets at the current time.

As stated elsewhere, the parties may also make a voluntary filing. They may wish to do this if the mandatory filing duty does not arise but they consider the transaction may be called in.

4.	**Parties to be included in the foreign investment assessment (notifying parties and protected entities)**

Notification under the mandatory regime must be made by the person gaining control of, or acquiring an interest in, the relevant qualifying entity pursuant to the notifiable acquisition *(section 14(1)).*

A notification under the voluntary regime may be given by a seller, acquirer or any qualifying entity concerned *(section 18(2))*. A notification can be submitted on behalf of the notifying party by an authorised representative, such as their solicitor.

5.	**Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)**

A "qualifying entity" will be subject to the mandatory notification regime if it operates in the UK in any of the activities in any of the 17 sectors that are prescribed in the Schedules to the National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021 (SI 2021/1264) (Notifiable Acquisition Regulations).

The prescribed sectors are as follows:

Advanced materials	Cryptographic authentication	Suppliers to emergency services
Advanced robotics	Data infrastructure	
Artificial intelligence	Defence	
Civil nuclear	Energy	Synthetic biology (formerly known as Engineering biology and renamed following the consultation)
Communications	Military and dual use	
Computing hardware	Quantum technologies	Transport
Critical suppliers to the government	Satellite and space technology	

6.	**Exceptions**

By secondary legislation, the Secretary of State may grant an exemption to certain acquirers with specified characteristics from the mandatory notification regime. This would disapply the obligations to notiy and seek approval for transactions which would otherwise be within the scope of the NSIA. However, it would not remove the ability of the Secretary of State to call in such transactions.

This provision allows the Secretary of State to remove the mandatory notification regime acquisitions which would ordinarily be likely to involve an elevated national security risk in circumstances where there are fewer concerns because of the acquirer's characteristics (e.g. passive investors).

7.	**Notification / review type (e.g. mandatory, pre-closing, suspensory)**

As explained in our answer to Q1, there are two types of notifications: mandatory and voluntary. Failure to notify and obtain clearance for a transaction which is subject to a mandatory notification requirement may be subject to penalties. The obligation is to notify and seek approval prior to the acquisition being completed (section 14(1)).

On the other hand, voluntary notifications will relate to other transactions, where the duty to notify has not arisen but which *could* be subject to the Secretary of State's call-in power and where the parties wish to have certainty around the NSIA risk. There is no standstill obligation for those transactions unless an interim order has been issued.

The Secretary of State has the power to make an interim order, which may (among other things) include provisions requiring persons to do, or not to do, particular things (*section 25(4)*). This might include, for example:

- Prohibiting the parties to an in-flight trigger event from completing the transaction.
- Requiring the reversal of any existing integration.

As detailed elsewhere, breaching the terms of an interim order is a criminal offence.

A voluntary notice may be submitted at different points in the process, providing more flexibility:

- It can be given when arrangements are in progress or contemplation that, if carried into effect, will result in a trigger event taking place regarding a qualifying entity or a qualifying asset (section 18(2)(b)).
- It can also be submitted after a trigger event has already occurred (section 18(2)(a)).
- The determination of whether arrangements are in progress or contemplation, which would trigger the need for a voluntary notification, depends on various factors and circumstances. These factors include considering how likely it is in practice that a person will carry out an action in the future that would result in a trigger event taking place. The timing of a voluntary notification can vary based on the progress and likelihood of these arrangements (section 12(2) - (4)).

8.	**Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)**

Third parties may become involved at various points in the process. First, when issuing a "call-in notice", the Secretary of State may opt to issue this to known, interested third parties such as a sectoral regulator or competitors of the parties or others with an interest in the outcome.

Third parties may also seek a judicial review of a decision by the Secretary of State which they disagree with. However, to launch such an action they will need to demonstrate that they have standing (i.e. sufficient interest) in the decision they wish to challenge before the court.

9.	**Filing fee**

There is no filing fee.

10.	**Submission deadline / stand-still obligation**

Please see our answer to Q7.

11.	**Availability of pre-notification / informal consultation**

Pre-notification informal consultation is possible under NSIA. Parties can engage in informal discussions with the Investment Security Unit (ISU) by email. Additionally, if there is

significant uncertainty about whether an acquisition is notifiable under the mandatory notification regime, parties can seek the ISU's view. However, the provision of a response within a particular timeline cannot be guaranteed.

While the ISU aims to be as helpful as possible, its guidance is non-binding. It may not always provide substantive responses, especially in hypothetical scenarios, to avoid potential misapplication of the advice to substantially different real situations.

12.	**Scope of information / documents required for filing**

As the information requirements differ, we have answered this question by reference to both mandatory and voluntary filings.

Mandatory filings

When making a mandatory filing, the following key information needs to be provided as part of the submission:

a) *Contact Details and Related Notifications:*
- Information about the acquirer or their representative.
- Contact details, including name, position, email, and telephone.
- Authorisation to accept correspondence regarding the notification.

b) *Acquisition Details:*
- Identification of relevant sectors and "trigger events."
- Description of the qualifying entity's activities within these sectors.
- Additional information concerning the acquisition, such as changes in shareholding or voting rights that meet the control thresholds.
- Key dates associated with the acquisition.
- Whether the acquisition requires approval from UK regulators.

c) *Qualifying Entity Details:*
- Information about the qualifying entity, including its name, business address, and website.
- Description of the entity's UK activities, products, and services.
- Whether the entity is authorized to receive or hold information with a UK Government Security Classification.
- Details about licenses held by the qualifying entity.
- Information on any supply relationship with the UK government in specific areas.
- Details of research and development funded by the UK government.
- Information regarding contracts requiring personnel to hold National Security Vetting (NSV) clearance.

d) *Ownership and Structure of Qualifying Entity:*
- Pre-acquisition and expected post-acquisition structure charts.

e) *Acquirer Details:*
- Information about the acquirer, including name, country of incorporation or nationality.
- Description of the acquirer's products, services, and activities.
- Whether a non-UK government has share ownership or voting rights in the acquirer or in the operation or decision-making of the acquirer.
- Any contractual arrangements related to share ownership or voting rights between the acquirer and other parties.

f) *Declaration and Other Relevant Information:*
- Submission of a signed declaration, as required by the specific circumstances.

- Optional inclusion of other relevant documents and information concerning the acquisition.

Voluntary filings

The voluntary National Security and Investment (NSI) Act notification form is generally shorter. However, in terms of information required, it shares considerable overlap with the mandatory form with some limited distinctions.

13.	**Proceedings timetable (timing for review)**

Where no notification is made

Time limits apply for the Secretary of State to issue call-in notices. For non-notified trigger events occurring on or after 4 January 2022:

- A call-in notice may be given at any time while the trigger event is in progress or contemplation.
- If the transaction has already been completed, a call-in notice can be issued within six months of the Secretary of State becoming aware of the transaction, as long as this awareness occurs within five years of completion. The five-year limit does not apply when there's a failure to notify a trigger event subject to mandatory notification.

These time limits may be adjusted in cases where false or misleading information has significantly affected a decision made by the Secretary of State.

Timeline where notification is made

The timing of assessments under the National Security and Investment (NSI) Act follows a statutory timetable:

- After a call-in notice is given, the Secretary of State has an initial assessment period of 30 working days to determine whether to issue a final order or a final notification regarding the trigger event.
- This initial assessment period can be extended by an additional 45 working days if there is a national security risk.
- The Secretary of State and the acquirer can agree on a voluntary period for further scrutiny, which has no statutory limit on its duration.

In summary, the overall statutory timetable for reviewing a non-notified trigger event could be up to 75 working days, and for a notified transaction, it could be up to 105 working days. However, the actual review period may be longer in practice, depending on factors such as information gathering or the agreement of a voluntary period for further scrutiny.

During the assessment process, if the Secretary of State issues an information notice or an attendance notice, the statutory assessment period is paused until compliance is confirmed.

According to the latest annual report on the functioning of NSIA (see further Q20 below), the average time taken for call-in decisions during 2022 was 28 working days for mandatory notifications and 27 working days for voluntary notifications. The length of review following a call-in varied, with an average of 25 working days to issue a final notice and 81 working days to issue a final order in relation to called-in transactions. Some transactions proceeded to additional review periods, and a few were ultimately cleared or resulted in a final order.

14.	**Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)**

An investigation under the National Security and Investment (NSI) Act can result in one of three decisions:

- **Clearance:** The transaction is cleared without any further actions or conditions.

- **Prohibition:** The Secretary of State may prohibit the transaction if there is a national security risk. This results in the issuance of a final order blocking the trigger event.
- **Conditions:** In cases where the Secretary of State reasonably considers it necessary and proportionate, they can impose conditions on the clearance. These conditions can include requirements for specific actions or restrictions. The duration of these conditions is determined by the Secretary of State.

The first final order blocking a trigger event was issued in July 2022 (*Newport Water Fab / Nexperia* case – see answer to Q20), and the 2023 annual report indicates that of the 15 final orders issued in the reporting period, 5 either blocked the transaction or required it to be unwound. NSIA allows for flexibility in imposing conditions, which can apply to various parties involved in the transaction.

15.	**Publicity of the decision and confidentiality of the information provided**

The Government is not obligated to publish information regarding call-in notices or final notifications (clearances). However, Government guidance indicates that it may voluntarily choose to publish this information in certain instances, particularly when the parties disclose such information, or when the acquisition is already in the public domain and the Secretary of State deems it to be in the public interest.

For cases resulting in final remedies, including blocking orders imposed for national security reasons, specific information must be published following the assessment process. This information includes the date the order comes into force, the entities or assets involved, a summary of the order and its reasons, among other details.

In the case of final orders, the Secretary of State is required to publish a notice as soon as practicable. However, they may exclude information that could prejudice commercial interests or contravene national security interests. An example of a final order being published is the one related to the acquisition of Sepura Limited by Sword Bidco, Epiris GP, and Epiris LLP, which was issued on 14 July 2022 (see answer to Q19).

Decisions on cases assessed and cleared without imposing any remedies will not routinely be published. Nevertheless, the government may choose to publish such information, particularly when parties disclose it or when the acquisition is already public knowledge and aligns with the public interest.

Additionally, at the end of each financial year, the Secretary of State must provide an annual report to Parliament. This report contains various information regarding the NSI Regime's operation during that year, including the number of notices accepted and rejected, the sectors involved, the number of call-in notices, and the number of final notifications and orders issued.

16.	**Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)**

Yes, a decision made under the National Security and Investment Act 2021 (NSIA) can be challenged through the administrative law judicial review process. That can be done by any party which can demonstrate a sufficient interest (standing) in the decision. That requirement is likely to be fulfilled by any notifying party or another party to the transaction.

Judicial review is a legal action under which the Courts review whether a decision taken by a public body was lawful. Judicial review does not consider the merits of a decision (and in general courts afford decision makers a margin of discretion), but questions whether the way in which it was made was lawful. Grounds for judicial review include illegality, procedural unfairness, unreasonableness/irrationality, or for infringement of rights protected by the European Convention of Human Rights.

However, the standard judicial review process is modified in relation to certain decisions under the NSI Act, such that claims for the review of those decisions must be brought within 28 days (as opposed to the standard "promptly and in any event within 3 months limit") beginning with the day after the day on which the grounds to make the claim first arose, unless the court considers that exceptional circumstances apply (*section 49(4)*).

Grounds for judicial review can include issues such as proportionality, differential treatment, incorrect information, failure to gather relevant information, and failure to consider representations. These grounds provide opportunities for businesses or affected parties to challenge NSIA decisions in the High Court.

Separate provisions apply where a person wishes to challenge a fine imposed under the NSIA. Such appeals will be made on a "full merits" basis rather than judicial review. Again, they must be filed within 28 days of notice of the appeal.

17.	**Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)**

Fines and criminal penalties

Pursuant to Ss 32(1), 39(1) and 41(1) of the NSIA, it is a offence for any person to complete a notifiable acquisition without obtaining prior clearance from the Secretary of State. Such a person may suffer the following penalties:

- (in the case of an individual or business entity) a fine of up to £10 million or (in the case of business entities and if higher than the £10 million amount) 5% of total worldwide turnover, including the turnover of any businesses owned or controlled by the person being penalised;
- (for individuals), up to five years' imprisonment.

There is still an offence even if the acquisition is later approved by the Secretary of State under the notification or validation procedures in *sections 15 to 17* (*section 32(2)*).

Pursuant to s 36, where the person committing an offence under section 32(1) of the NSI Act is a business entity, officers of the body (e.g. company directors, members of a limited liability partnership) will also be guilty of the offence (and liable to civil and criminal sanctions accordingly) if it is committed with their consent or connivance, or due to their neglect .

For offences related to breaching an order or failing to comply with information or attendance notices, the Secretary of State can also impose penalties calculated by a daily rate to expedite compliance.

It is also an offence to provide information to the Secretary of State which is false or misleading in a material way (s 34 NSIA). Individuals who commit this offence may face a term of up to one year imprisonment.

Voidness of transaction

A notifiable acquisition that is completed without the Secretary of State's approval will be void (*section 13(1)*) and legally ineffective. However, the NSIA includes a provision which will enable parties to have their deal made valid retroactively in some cases.

A deal may also be void where it is completed in violation of the conditions of a final order issued by the Secretary of State (*section 13(3)*).

18.	**Other national security review distinct from FDI rules**

N/A

The merger control provisions of the Enterprise Act 2002 may apply independently of the NSIA, such that a transaction may require both competition clearance and approval under the NSIA.

19.	**Significant legislative/regulatory developments in the past year and possible proposals for reform**

Acquisition of Sepura Limited

As mentioned in Q15, the Secretary of State issued its final order in relation to the acquisition of Sepura Limited by Sword Bidco, Epiris GP, and Epiris LLP on 14 July 2022 (varied in June 2023). The Final Order and variation are available here: https://www.gov.uk/government/publications/acquisition-of-sepura-ltd-by-epiris-llp-notice-of-final-order . The order allowed the transaction to proceed subject to restrictions on sensitive information related to communication technology used by UK emergency services.

Newport Water Fab / Nexperia

In a recent development related to the National Security and Investment Act (NSIA), the UK Government exercised for the first time its "lookback" power to review the acquisition of Newport Wafer Fab (NWF) (final order here: https://www.gov.uk/government/publications/acquisition-of-newport-wafer-fab-by-nexperia-bv-notice-of-final-order), the UK's largest semiconductor manufacturer, by China-backed Nexperia. After an extended review period and voluntary extensions, the Secretary of State blocked the transaction. This marked the first use of retroactive powers under NSIA to assess a transaction that had closed before the new regime came into force.

The decision was influenced by both national and international pressures, including concerns about the semiconductor industry's importance to national security and global interests. The final order required Nexperia to sell at least 86% of NWF's share capital. The case highlighted the continued enforcement focus on semiconductors, emphasizing their significance in the UK and globally. Nexperia is challenging the decision in court, as the forced sale could impact Newport's viability and value proposition. The case underscores the importance of the semiconductor industry in the context of national security.

Possible future changes to scope of filing duties

Pursuant to S 6(5) – 6(7), the Secretary of State may (by secondary legislation):

- Vary the acquisitions that are subject to mandatory notification, including the possibility of expanding the regime to capture asset acquisitions.
- As mentioned in our answer to Q6, exempt certain types of acquirer from the duty to notify or seek approval for a transaction which would otherwise be caught by the regime.

In 2021, the UK Government also confirmed that the mandatory notification sectors will be kept under review and where there is a need to update the regulations due to emerging technology or newly identified national security risks, it will be possible to do this through secondary legislation in the future. Changes may be made if, for example, reviews of relevant transactions routinely are cleared without a need to issue remedies.

20.	**Helpful links**

- Text of the legislation: https://www.legislation.gov.uk/ukpga/2021/25/contents/enacted
- Guidance on the seventeen sectors: https://www.gov.uk/government/publications/national-security-and-investment-act-guidance-on-notifiable-acquisitions/national-security-and-investment-act-guidance-

on-notifiable-acquisitions#:~:text=on%2Dnotifiable%2Dacquisitions-,Overview,harm%20the%20UK's%20national%20security.

- First annual report on the functioning of the NSIA (for 2022-2023): https://www.gov.uk/government/publications/national-security-and-investment-act-2021-annual-report-2022
- Second annual report on the functioning of the NSIA (for 2022-2023): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1169054/National_Security_and_Investment_Act_2021_annual_report_2022-23__PDF_.pdf
- UK Government guidance on the information needed to complete a notification form.
- NSIA notification service: mandatory, voluntary and retrospective forms