

FRANCE



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1.	Relevant legislation (foreign investment legislation in force)
<p>The French foreign investment regime currently relies on Decree No. 2019-1590¹ and the Order of 31 December 2019², as modified by the Orders of 27 April 2020³ and of 10 September 2021⁴, relating to foreign investments in France, and notifications under these regulations have to be made to the French Minister of the Economy (“FME”).</p> <p>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.</p>	
2.	Relevant authority (foreign investment regulator)
<p>The foreign direct investment screening procedure is led by the FME through the Directorate General of the Treasury (<i>Direction Générale du Trésor</i> – “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.</p> <p>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.</p>	
3.	Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)
<p>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.</p> <p>There are three categories of sensitive sectors, based on the nature of the activity of the target investment entity:</p> <ul style="list-style-type: none"> (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.

<p>and electronic communication services, public health, food safety, political or general press publication; and</p> <p>(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).</p> <p>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.</p> <p>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.</p>	
4.	<p>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)</p>
<p>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).</p> <p>More specifically, the following three cumulative conditions must be met:</p> <p>(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.</p> <p>(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.</p> <p>(iii) Sensitive activities are carried out by the French target company (see Question 3 above).</p>	
5.	<p>Parties to be included in the foreign investment assessment (notifying parties and protected entities)</p>
<p>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.</p>	
6.	<p>Exceptions</p>
<p>Article R. 151-7 of the MFC provides three categories of exception to the prior authorisation under the FDI procedure.</p>	

	<ul style="list-style-type: none"> • <u>Intra-group operation</u> <p>The investor is exempted from the authorisation requirement when the investment transaction is carried out between entities all belonging to the same group, <i>i.e.</i> 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).</p> <p>This rule is strictly interpreted, and further guidance is available in the Guidelines.</p> <ul style="list-style-type: none"> • <u>Threshold exceeded after a previously authorised acquisition of control</u> <p>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.</p> <ul style="list-style-type: none"> • <u>Acquisition of control after exceeding a threshold previously authorised</u> <p>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.</p> <p>However, these three exceptions will not apply in the following situations:</p> <ul style="list-style-type: none"> ✓ 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, filing 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
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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)
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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.

<p>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).</p> <p>Any request for information from the FDI office during the phase I review suspends the 30-business day deadline.</p> <p>If a phase II review is launched, requests for information during this phase do not suspend the 45-business day deadline.</p>	
14.	Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)
<p>At the end of the <u>phase I</u> of the screening procedure, the investor will receive one of three possible answers from the administration:</p> <ul style="list-style-type: none"> • 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. <p>At the end of the <u>phase II</u>, if any, there are three possible outcomes:</p> <ul style="list-style-type: none"> • 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
<p>The procedure is strictly confidential. Civil servants are under an obligation of professional secrecy prescribed by the law.</p> <p>In addition, the final decision is not published, and third parties are not involved in the review process.</p> <p>Consequently, there is no need to specifically request protection of business secrets.</p>	
16.	Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)
<p>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:</p> <ul style="list-style-type: none"> • 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). <p>The judge must verify that the FME complied with the applicable legal provisions.</p>	

<p>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.</p>	
17.	<p>Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)</p>
<p>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).</p> <p>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):</p> <ul style="list-style-type: none"> • 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 <i>status quo ante</i> at the investor’s expense. <p>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).</p> <p>The FME may also impose a fine (Article L.151-3-2 of the MFC) up to the greater of:</p> <ul style="list-style-type: none"> • 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. <p>Lastly, criminal measures may be imposed upon complaint by the FME.</p>	
18.	<p>Other national security review distinct from FDI rules.</p>
<p>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).</p>	
19.	<p>Significant legislative/regulatory developments in the past year and possible proposals for reform</p>
<p>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.</p> <p>Foreign investment control activity in France has remained stable in 2022, with 325 cases submitted to the French Treasury, compared with 328 in 2021.</p>	

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-etranagers-en-france>