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