

**SPAIN**



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<b>1.</b>	<b>Relevant legislation (foreign investment legislation in force)</b>
	<p>Royal Decree 571/2023, of July 4, on foreign investments (<a href="https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-15549">https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-15549</a>) 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 (<a href="https://www.boe.es/buscar/act.php?id=BOE-A-2003-13471">https://www.boe.es/buscar/act.php?id=BOE-A-2003-13471</a>).</p> <p>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.</p>
<b>2.</b>	<b>Relevant authority (foreign investment regulator)</b>
	Ministry of Economy, Bank of Spain and Investment Registry of the Ministry of Industry, Commerce and Tourism.
<b>3.</b>	<b>Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)</b>

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.

<b>4.</b>	<b>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)</b>
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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 (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.

<b>5.</b>	<b>Parties to be included in the foreign investment assessment (notifying parties and protected entities)</b>
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- 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.

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

<p>✓ 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.</p>	
<b>8.</b>	<b>Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)</b>
<p>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.</p>	
<b>9.</b>	<b>Filing fee</b>
<p>The application is not subject to an administrative fee.</p>	
<b>10.</b>	<b>Submission deadline / stand-still obligation</b>
<p>See paragraph 7 above.</p>	
<b>11.</b>	<b>Availability of pre-notification / informal consultation</b>
<p>See paragraph 7.2 above.</p>	
<b>12.</b>	<b>Scope of information / documents required for filing</b>
<p>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:</p> <ul style="list-style-type: none"> <li>• 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.)</li> <li>• information on the ownership structure of the foreign investor and the target person,</li> <li>• information on the products or services and business activities of the foreign investor and the target person,</li> <li>• 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,</li> <li>• the source of financing of the foreign investment,</li> <li>• the amount of foreign investment,</li> <li>• the date of planned completion of the foreign investment,</li> </ul>	



<ul style="list-style-type: none"> <li>• information on the involvement of the target person in projects or programmes of interest to the EU,</li> <li>• information on foreign investor’s current shareholdings and voting rights in the target person.</li> </ul>	
<b>13.</b>	<b>Proceedings timetable (timing for review)</b>
<p>The Control Mechanism of 7 bis is summarized in the following terms:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>	
<b>14.</b>	<b>Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)</b>
<p>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:</p> <ul style="list-style-type: none"> <li>• Authorizations without conditions.</li> <li>• Authorization denials.</li> <li>• Authorizations subject to conditions imposed by the resolution body or to commitments presented by the investor and accepted by the resolution body; either</li> <li>• 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.</li> </ul>	
<b>15.</b>	<b>Publicity of the decision and confidentiality of the information provided</b>
<p>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.</p>	

<b>16.</b>	<b>Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)</b>
<p>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.</p> <p>The resolution of authorization requests will correspond, following a report from the Foreign Investment Board:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• to the Council of Ministers in the rest of the cases.</li> </ul>	
<b>17.</b>	<b>Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)</b>
<p>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.</p> <p>In addition, a fine will be imposed simultaneously, which may amount to the same amount of the content economics of the operation.</p>	
<b>18.</b>	<b>Other national security review distinct from FDI rules</b>
<p>There is no other national security review.</p>	
<b>19.</b>	<b>Significant legislative/regulatory developments in the past year and possible proposals for reform</b>
<p>No other relevant changes have been implemented in the past year.</p>	
<b>20.</b>	<b>Helpful links</b>
<p><a href="https://comercio.gob.es/InversionesExteriores/novedades/Paginas/entrada-vigor-rd-571-2023.aspx">https://comercio.gob.es/InversionesExteriores/novedades/Paginas/entrada-vigor-rd-571-2023.aspx</a></p> <p><a href="https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-15549">https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-15549</a></p> <p><a href="https://www.boe.es/buscar/act.php?id=BOE-A-2003-13471">https://www.boe.es/buscar/act.php?id=BOE-A-2003-13471</a></p>	