

# FDI Guide 2022



## Ladies and Gentlemen,

The opportunity to compare notes and exchange knowledge ranks among the foremost advantages of belonging to an international industry association. At any rate, this was the thinking that led us to compile this practical guide to the vetting of certain investments by national authorities in the European Union as well as in other European jurisdictions.

One of the effects of the coronavirus pandemic, what with the dramatic drops of business valuations and the financial problems it has brought, has been the growing fear among political decision makers that deep-pocketed investors from countries other than trusted allies might sweep in to buy up companies at a bargain.

Accordingly, the legislatures of European countries, and around the world as well, rushed to enact new regulations under which prospective investors face a verification process so as to gauge any risks which they might be bringing along with their cash. The shorthand name for these instruments is FDI regulations, but this simple blanket term belies the myriad of approaches taken to im-

plementation and enforcement around the world. Potential investors now face another regulatory hurdle, and the fact that it is an entirely new one, instituted on short notice with little thought to coordination, does not make for comfort.

In this guide, we endeavour to shed some light on FDI regulations as enacted and followed in various countries. We hope that it might facilitate navigating this complex field, and enable preliminary assessment of whether or not FDI clearance will be needed for a specific project.

I am proud to say that each one of the firms contributing to this publication is a leading outfit in its home jurisdiction. At the same time, by virtue of their membership in Lawyers Associated Worldwide, they enjoy international outreach and the possibility of liaising with peers on even the most complex international transactions.

I take this opportunity to thank all our contributors for their time and effort. Appreciation is also due to Lawyers Associated Worldwide for bringing us together in the first place!

Happy reading,  
**Krzysztof Jasiński**  
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# AUSTRIA

## Introduction

The acquisition of a certain percentage of (i) an Austrian business (ii) the voting rights in an Austrian business (iii) control otherwise obtained and/or (iv) assets which give a controlling interest; in each such case in certain sensitive industries the acquisition by a foreign person requires prior FDI approval of the Austrian Federal Minister for Digital and Economic Affairs. The relevant percentage depends on the industry acquired and varies from a minimum of 10% to 25% and/or 50% of the enterprise directly or indirectly acquired. A foreign person is any physical or legal person other than the EU, European Economic Area or Switzerland. Only such acquisitions in certain sensitive industries (eg in critical infrastructure sectors), which are listed in an Annex to the Austrian Investment Control Act require such approval. The approval depends on the potential or imminent danger to security or public order that may stem from the planned acquisition. The Austrian Investment Control Act aims to maintain the attractiveness of Austria as a business location while protecting enterprises of specific importance for security or the so called “public order and security”. All such terms are undefined making the act a political instrument.

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### When introduced?

Entered into force on 25 July 2020 (except for the provisions regarding the cooperation mechanism on EU level, which entered into force on 11 October 2022).

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### Mandatory ☒ Voluntary ☐

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### Prior to transaction / post

An application for FDI approval must be filed by the purchaser immediately upon the signing of the acquisition agreement or upon the announcement of the intention to launch a public takeover bid (similar as it is done in competition law).

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### How many proceedings last year?

According to a report published by the Federal Ministry of Economic Affairs, 50 cases were handled in the first year since the FDI rules entered into force (25 July 2020 until 24 July 2021). No application was denied, four cases were withdrawn, all others granted.

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### Who is obliged to obtain an FDI approval?

Provided that the other conditions are met, the FDI approval must be obtained by a foreign person acquiring the shares and/or control. A foreign person is an individual not holding the citizenship of the EU or EEA Member State or Switzerland or any legal entity having its registered seat or main place of administration outside the EU, the EEA or Switzerland.



**Which entities are protected under the FDI rules?**

Entities which: (1) have status of an entrepreneur; and (2) have registered office or main seat in Austria; and (3) are active in certain relevant industry sectors listed in a non-exhaustive enumeration in an Annex to the Austrian Investment Control Act. The Austrian Investment Control Act distinguishes between “particularly sensitive sectors” such as defense goods and technologies, operation of critical energy or digital infrastructure (especially 5G), research and development in the fields of medical products, vaccines, medical devices, etc, and “other sensitive sectors” such as critical infrastructure, critical technologies and dual use goods, security of supply with critical resources (including supply with energy, raw material, food, medicinal products and medical devices including vaccines. As well as R&D in these fields). The Annex does not include an all-inclusive list of relevant sectors.

**What kind of transactions are covered by the FDI rules?**

Transactions resulting in the direct and indirect acquisition of (i) the whole undertaking, (ii) a specific share of voting rights (ten per cent or twenty five per cent), (iii) of a controlling interest/influence or (iv) of material assets, whereby a determining influence on part of an undertaking is acquired.

**How long do the proceedings last?**

On receipt of a complete application, the authority has to start the EU cooperation mechanism immediately (which usually takes no longer than 6 weeks) followed by a two-stage proceeding: (i) Phase I: Authority has to decide within one month after the EU cooperation mechanism has been closed and either (a) grant approval or (b) initiate in-depth “Phase II” assessment (ii) Phase II: Authority has to decide within a further two months and either (a) grant approval (subject to conditions) or (b) deny approval.

**What are the consequences of breaching the regulation?**

Sanctions under civil law: An acquisition subject to Austrian FDI authorisation is not binding (valid) until the authorisation is granted. The authorization works as a condition precedent by operation of law. If an acquisition that requires Austrian FDI permit is completed totally or partially prior to the obtaining of final FDI authorisation, if it is deemed that the implementation of the transaction leads to a threat to security or public order, if remediable, the authorities may impose conditions to eliminate such threat shall be imposed. If such conditions are insufficient to eliminate such threat, the unwinding of the entire acquisition or the completed parts thereof shall be ordered by the FDI authorities.



# AUSTRIA

Sanctions under criminal law: The Austrian Investment Control Act provides for penalties of up to one year's imprisonment (or up to three years' imprisonment in qualified cases), as well as administrative penalties (fines of up to 40.000 Euros).

Federal Minister for Digital and Economic Affairs.

**What is the name  
of the national  
authority handling  
the investment  
control issues?**

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## Introduction

**On the federal level a legislative proposal was filed on 23 February 2021, which would enter into force the seventh month following the month of its publication in the Belgian Official Gazette, which has yet to happen.**

## When introduced?

Legislative proposal filed on 23 February 2021.

## Mandatory ☒ Voluntary ☐

## Prior to transaction / post

The notification shall be filed prior to the transaction.

## Who is obliged to obtain an FDI approval?

Any non-EU natural person or non-EU company which intends to make or has made a direct foreign investment, subject to the conditions set out below (2.2 + 2.3 cumulatively). Companies which together constitute a consortium (art. 1:19 Code of Companies and Associations) shall be deemed to constitute a single investor. Natural persons acting together with their minor children and their spouses or persons with whom they legally cohabit are considered to constitute a single investor.

## Which entities are protected under the FDI rules?

An investment is deemed to have a potentially significant impact on national security or public order if this investment relates to one or more of the following areas: (i) Critical infrastructure, both physical and virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace and defence infrastructures, electoral or financial infrastructure, and sensitive installations, as well as land and real estate critical to the operation of such infrastructure; (ii) critical technologies and dual-use items as defined in the EU regulation, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence energy storage, quantum technologies and nuclear technologies, as well as nanotechnologies and biotechnologies; (iii) the supply of critical inputs, including energy or raw materials, as well as food security; (iv) access to sensitive information, including personal data, or the ability to monitor such information; (v) the freedom and pluralism of the media.

## What kind of transactions are covered by the FDI rules?

(i) Transactions resulting in the foreign investor directly or indirectly acquiring 10 % or more of the voting rights in a legal entity or resulting in the foreign investor being able, pursuant to an agreement related to the investment, to nominate the majority of the directors. (ii) Transactions not resulting in the acquisition of voting rights, where the foreign direct investment has a value greater than or equal to EUR 4 500 000.



**How long do the proceedings last?**

The first phase lasts up to 21 calendar days, where the commission decides whether further research is needed. This 'further research' phase can last up until 6 months after the receipt of the latest information requested from the direct foreign investor.

**What are the consequences of breaching the regulation?**

The Minister of Economic Affairs may oblige the investor to sell the investment to a party approved by him and within a period determined by him. The Minister of Economic Affairs also imposes a fine of EUR 1.000 to EUR 100.000 on the foreign investor.

**What is the name of the national authority handling the investment control issues?**

Since the legislative proposal still has to be adopted, the screening commission has yet to be established. This screen commission (screeningcommissie / commission de filtrage) will be under the authority of the Federal Minister of Economic Affairs.

**Other material information**

Currently, only the Flemish Region has introduced limited a posteriori control of foreign investments in strategic (semi-) public assets in Flanders via its Flemish Administrative Decree of 7 December 2018. No similar legislation on the control of foreign direct investments exists in the Walloon Region and the Brussels Capital Region.

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# BULGARIA

## Introduction

Foreign direct investment in Bulgaria for the first three months of 2022 stood at 1.06 billion euro, the equivalent of 1.4 per cent of the gross domestic product (GDP), statistics from the Bulgarian National Bank (BNB) showed in May. In the same period of 2021 FDI was 244.1 million euro. With one of the lowest corporate tax rates in the area (10%) and its low labour costs, the country is relatively well-placed for foreign investments. There are no legal limits on foreign ownership or control of firms, and foreign entities are formally granted the same treatment as national companies.

## When introduced?

There is no legislation Act named FDI rules in Bulgaria. Provisions regarding FDI matter are included in the following Acts: The Investment Promotion Act, the Law on the Economic and Financial Relations with Companies Registered in Jurisdictions with Preferential Tax Regime, Entities Controlled by Them and Their Beneficial Owner, the Commerce Act and others. On the other hand, Bulgaria has signed various bilateral investment treaties with countries such as Singapore, Lebanon, Cuba, Egypt, Finland, Austria, Morocco, Belarus, United Kingdom, Sweden, etc. As an EU member state Bulgaria is also a party to the Energy Charter Treaty and the Comprehensive Economic and Trade Agreement (CETA) which include provisions regarding foreign investment protection.

## Who is obliged to obtain an FDI approval?

No prior FDI approval of the foreign investment is required in Bulgaria. Nevertheless, the Investment Promotion Act establishes various requirements the investments shall meet in order to be promoted. In this regard for investments meeting the requirements shall be issued a certificate under Art. 20 of the Investment Promotion Act which shall grant rights to use the measures under Art. 15, Para 1 of the latter. The investments are determined as different classes on the basis of the criteria for the minimum amount of the investments and employment.

## Which entities are protected under the FDI rules?

The principle of protection of foreign investment is proclaimed in the international legal sources, as well as in the domestic legislation. In Bulgarian domestic legislation the principle is established in the Constitution of the Republic of Bulgaria and refers not only to the foreign investments, but also to economic activity carried out in the country by foreign citizens and legal entities. The legislation does not provide for differences in the application of the principle - both Bulgarian and foreign citizens and legal entities are equally protected from an investment point of view.



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## What kind of transactions are covered by the FDI rules?

The international investment treaties to which Bulgaria is a party provide a large scope of protection not only to property rights, but also to any other rights and legal interests acquired by residents of the contracting party, including the right of use on immovable property, leasehold rights, shares, stocks or other securities materializing participation in companies or any other form of participation, copyrights, industrial property rights, etc. Although, the various treaties establish different definitions of the term 'investment' which include non-exhaustive list of rights, all of those definitions mention 'every kind of assets'.

## What are the consequences of breaching the regulation?

In case of a regulation breach investors may protect their rights by filing a claim before the court. Bilateral investment treaties also provide the latter with the opportunity to submit disputes to an arbitral tribunal.

## What are the consequences of breaching the regulation?

There are two institutions in Bulgaria responsible for collecting and maintaining data on FDI inflows, as follows: The Bulgarian National Bank (BNB) and Invest Bulgaria Agency. The Minister of Economy and Industry, with the support of the Invest Bulgaria Agency, is directly responsible for implementing the government policy towards foreign investments.

## Other material information

Regardless the fact that no FDI rules are adopted in Bulgaria, it is important to outline that the country benefits of a stable tax policy, flat 10% corporate tax, a simple and fast company registration process, as well as affordable and highly educated labour market. The latter attracts foreign investment reaching EUR 26 884 352 000 in 2020.

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## Introduction

Foreign investments are not directly regulated or subject to approval under Cypriot law, with the exception of investments in immovable property. Cypriot laws which potentially have an impact on foreign investments are: the Cyprus Securities and Exchange Commission Laws 73(I)-2009 consolidated up to 109(I)-2016, regulating the structure, responsibilities, powers, organisation of the securities and exchange commission and other related issues; the Immovable Property Acquisition (Aliens) Law Cap 109, outlining the rules and procedure of immovable property acquisition by foreign nationals; the Civil Registry Laws of 2002-2015, which provides the legal basis for the immigration framework and related schemes of Cyprus.

### Who is obliged to obtain an FDI approval?

Except for the acquisition of immovable property by non EU nationals, there are no industries/legal sectors with restrictions explicitly targeting foreign direct investments.

### What kind of transactions are covered by the FDI rules?

A permit is required to be granted to foreign investors in the case of purchase of a residential property.

### How long do the proceedings last?

It takes about one month for the permit to be granted.

### What are the consequences of breaching the regulation?

If the permit is not available, the land registry does not enter the person concerned as the owner of the property in the land register.

### What is the name of the national authority handling the investment control issues?

The Council of Ministers (District Administration) is handling the applications for acquisition of immovable property.

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# CZECH REPUBLIC

## Introduction

In the Czech Republic the regulation of foreign investments is contained primarily in Act No. 34/2021 of the Coll., on Foreign Investment Examination (hereinafter referred to as the “FDI Act”), which sets down obligations of the foreign investors, i.e. investors from outside of the Czech Republic and member states of the EU, in case they intend to make an investment into certain sensitive targets specified in the FDI Act or if such an investment may endanger security, internal or public order of the Czech Republic. The FDI Act implements Regulation (EU) 2019/452 of the European Parliament and of the Council, which establishes a framework for the examination of foreign direct investments in the European Union. The Czech Governmental Regulation No. 178/2021 of the Coll., then contains a model form for submitting an application for examination of a foreign investment that requires a permit and a form for proposal for consultation of a foreign investment.

<b>When introduced?</b>	The FDI Act has been in force since 3 February 2021.
<b>Mandatory</b> <input checked="" type="checkbox"/> <b>Voluntary</b> <input type="checkbox"/>	
<b>Prior to transaction / post</b>	Examination of a foreign investment can be performed both prior to and following the transaction implementing the investment.
<b>Who is obliged to obtain an FDI approval?</b>	Anyone who has made or intends to make a foreign investment in the Czech Republic and is not a citizen of the Czech Republic or another member state of the European Union, or is not domiciled in the Czech Republic or another member state of the European Union, or is directly or indirectly controlled by those who meet the above requirements.
<b>Which entities are protected under the FDI rules?</b>	Entities (i) active in the research, development, innovations or recycling of weapons or army materials, (ii) operating an element of a fundamental infrastructure, (ii) administering information or communication systems of a fundamental information infrastructure or basic services, and (iv) active in development or production of goods of dual use. In addition, any investment which may pose a danger to the security of the Czech Republic or its internal or public order.
<b>What kind of transactions are covered by the FDI rules?</b>	The transactions consisting in the provision of a value in whatever form by a foreign investor for the purpose of performing an economic activity in the Czech Republic, which, at the same time, gives to the foreign investor a possibility to exercise a certain level of control over performance of such economic activity. The required level of control is met in



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case that the foreign investor may exercise at least 10% of the aggregate voting rights in the target entity, have a right to nominate a member in the corporate bodies of the target, have the ability to exercise ownership rights in respect of the assets(s) through which the economic activity is performed or the ability to obtain access to information, systems or technologies, which are important for the security of the Czech Republic or internal or public order, etc.

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## How long do the proceedings last?

In general, the Ministry of Industry and Trade is obliged to issue a decision within 90 days from the day of the commencement of the procedure for the examination of a foreign investment. The deadline can be extended in cases specified in the FDI Act.

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## What are the consequences of breaching the regulation?

By violating the FDI Act, the respective foreign investor commits an offense for which it can be fined up to 2% of its total net turnover achieved for the last completed financial period. If it is not possible to determine the turnover, the fine may range from CZK 100,000 to CZK 100 million. In addition, the sale of the target entity or target item or participation in the target entity may be ordered by the Ministry of Industry and Trade.

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## What is the name of the national authority handling the investment control issues?

The superior national authority dealing with investment control issues is the Ministry of Industry and Trade.

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# ESTONIA

## Introduction

**The Estonian FDI regime is estimated to enter into force on the 1st of May 2023. Previously, while some sector specific notification requirements have been in place in Estonia, which carry some similarities to the to be established FDI regime, Estonia has lacked an overall FDI regime.**

## When introduced?

There is currently no foreign investment control regime in Estonia, however a corresponding draft law has been prepared and it is envisioned to enter into force on the 1st of May 2023. The following answers in this FDI Guide are based on the latest draft law.

## Mandatory ☒ Voluntary ☐

## Prior to transaction / post

The notification shall be filed after the conclusion of the agreement underlying the transaction, but prior to the closing of the transaction. As such, the notification requirement aligns with general rules on merger control.

## Prior to transaction / post

Since the law is currently not in force, there have been no proceedings.

## Who is obliged to obtain an FDI approval?

The obligation to obtain approval is on the foreign investor. A foreign investor is considered as any entity that meets any of the below conditions: (1) a natural person who has the citizenship of a third state (irrespective of whether or not he/she also holds citizenship of an EU Member State) or a natural person without citizenship; (2) an undertaking established under the law of a third country and registered in that country; (3) an undertaking controlled by the aforementioned natural person or undertaking, regardless of the place of establishment and registration thereof. A third state for the purposes of above is considered as any state which is not an EU member state. If the target or other party to the foreign investment becomes aware that the foreign investor has not applied for a permit, the Consumer Protection and Technical Regulatory Authority must be informed about the foreign investment as soon as possible.

## Which entities are protected under the FDI rules?

The FDI is currently planned to only apply to specific sectors, determined by the activities of the target. The sectors covered by the regime are the following: (1) vital service providers (e.g. operators of critical infrastructure, such as energy, heating, etc.); (2) an undertaking with state ownership; (3) other undertakings carrying out other specific economic activities:



- a national television or radio service provider or an on-demand audio-visual media service provider within the meaning of the Media Services Act, as well as a publisher of newspapers and magazines in the print media and on the Internet with a turnover of at least three million euros in the previous calendar year;
- an undertaking which has a geological prospecting or mining permit for the exploration or extraction of oil shale or raw materials included in the list of critical raw materials of the European Union prepared by the European Commission in Estonia;
- an undertaking which manufactures or supplies goods specified in the list of military goods or dual-use goods specified in the Strategic Goods Act or provides technical assistance related to such goods to the state agencies, except for an undertaking active in the handling of weapons of war, munitions and war material referred to in the 2nd chapter of section 11-1 of the Weapons Act;
- an undertaking with which a state has an operational stockholding contract or a delegated stock contract has been entered into;
- an undertaking which owns a permanent object of national defense within the meaning of the National Defense Act;
- an undertaking which owns the infrastructure necessary for the operation or transmission of the public broadcasting programs;
- a railway infrastructure manager who operates a public railway within the meaning of the Railway Act;
- a certified airport or heliport operator whose airport or heliport is open to international scheduled air traffic and an air navigation service provider providing air traffic services in the Tallinn flight information region within the meaning of the Aviation Act;
- the operator of an Estonian seaport belonging to the trans-European transport network in accordance with Annex II to Regulation No 1315/2013 of the European Parliament and of the Council on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010 / EU (OJ L 348, 20.12.2013, p. 1–128) to the list of those ports.

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**What kind  
of transactions  
are covered  
by the FDI rules?**

As a general rule, the proceedings last 30 calendar days. If the Consumer Protection and Technical Regulatory Authority deems it necessary to extend the proceedings or if other Member States wish to intervene in the proceedings, the proceedings may be extended up



to 120 calendar days. The proceedings can be extended by an additional 60 calendar days for negotiations with the foreign investor, if conditions are required. This means that the maximum length of the proceedings is 180 calendar days.

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**How long do the proceedings last?**

In the event of non-application for a permit, the Notifying Authority has the right to issue a precept to the parties of the foreign investment obliging them to transfer the acquired shareholding or part of the target undertaking, revert the transaction or perform other actions to restore the pre-investment situation. In case of non-compliance with the precept, the Notifying Authority has the right to impose a penalty payment (maximum 100,000 euros). The penalty payment can be repeated until the precept is complied with.

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**What are the consequences of breaching the regulation?**

In the event of non-application for a permit, the Notifying Authority has the right to issue a precept to the parties of the foreign investment obliging them to transfer the acquired shareholding or part of the target undertaking, revert the transaction or perform other actions to restore the pre-investment situation. In case of non-compliance with the precept, the Notifying Authority has the right to impose a penalty payment (maximum 100,000 euros). The penalty payment can be repeated until the precept is complied with.

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**What is the name of the national authority handling the investment control issues?**

Consumer Protection and Technical Regulatory Authority

**Firm Submitting Information:**



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## Introduction

In Finland, foreign direct investments are regulated under the 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 (FDI Screening Regulation), and Finnish Act on Screening of Foreign Corporate Acquisition (172/2012, as amended). FDI Screening Regulation is directly applicable in Finland, and thus, it is the primary legal source when concerning an FDI approval. The provisions of the Finnish Act on Screening Foreign Corporate acquisition complete the regulation.

## When introduced?

The FDI Screening Regulation is introduced on 19 March 2019, and the Finnish act on screening of foreign corporate acquisition is introduced on 1 July 2014.

## Mandatory ☒ Voluntary ☐

## Prior to transaction / post

The approval must be obtained prior to transaction.

## Who is obliged to obtain an FDI approval?

A foreign citizen not domiciled in the EU or the EFTA Member States; an organisation or foundation not domiciled within the EU or the EFTA Member States; and an organisation or foundation which is domiciled within the EU or the EFTA Member States but in which foreign citizen, foundation or organisation not domiciled in the EU or the EFTA Member States, 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 obliged to obtain an FDI approval. Defence industrial company is obliged to obtain an FDI approval, if it is domiciled in any other EU Member State than Finland or in the EFTA Member State. Furthermore, a Finnish organisation or foundation in which at least one tenth of the aggregate number votes of all shares in a limited liability company, or corresponding actual influence in an organisation or business undertaking, lies with a natural person or organisation or foundation that is domiciled in any other EU Member State than Finland or in the EFTA Member State is obliged to obtain an FDI approval.

## Which entities are protected under the FDI rules?

Defense industrial companies and companies that produce or supply critical products or services related to the statutory assignments of Finnish authorities are protected under the FDI provisions. Moreover, in certain matters organisations or businesses that are, evaluated as a whole, critical in terms of securing functions vital to society on the basis of their field, business or commitments may be protected under the FDI rules.



**What kind of transactions are covered by the FDI rules?**

FDI rules cover the transactions where a foreign investor is intending to gain at least one tenth, at least one third, or at least one half of the total number of votes conferred by all shares in the company or corresponding actual influence in a limited liability company or other entity subject to screening.

**How long do the proceedings last?**

The processing time varies on a case-by-case basis, depending on the nature of the case. The Ministry of Economic Affairs and Employment of Finland (the "Ministry") will require comments from other authorities as necessary, and the comment round usually takes three (3) to four (4) weeks. In other than cases concerning defense or security sector companies, the Ministry must initiate further investigations within six (6) weeks, and the decision to refer the case forward must be made within three (3) months. Applications shall always be processed urgently in the Ministry. All in all, the process timeline is usually between one (1) and six (6) months.

**What are the consequences of breaching the regulation?**

A fine may be imposed unless the breach is considered minor.

**What is the name of the national authority handling the investment control issues?**

The primary authority to handle the issues is Ministry of Economic Affairs and Employment of Finland. In a certain issue the Ministry shall and may refer the issue to the general assembly of Finnish Government for consideration.

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## Introduction

Financial relations between France and foreign countries are free (Article L151-1 of the Monetary and Financial Code. However, Articles L151-1 to L151-4 of the MFC temper the principle of freedom of relations with foreign countries by framing it around two regimes: the prior authorization regime (i) and the declaration regime (ii).

An investment is subject to the prior authorization regime if the targeted company's activities are likely to jeopardize public order, public security or national defense interests, future technologies (i.e. cryptology), aerospace, hosting of certain data or even new sectors. This list was extended in order to take into account, in particular, the developments of the European Regulation of 19 March 2019 establishing a framework for the screening of foreign direct investments in the European Union, in fields like the written and online press services of political and general information, food safety, energy storage and quantum technologies.

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Mandatory ☒ Voluntary ☐

## Prior to transaction / post

The sensitive activities of French entities which are covered by the control of foreign investments in France and therefore to the prior authorization procedure, are determined by Article R.151-3 of the CMF and Article 6 of the Order of 31 December 2019 on foreign investments in France, as follows:

- Activities relating to arms, ammunition, powder and explosive substances for military purposes or to war material and the like;
  - Activities relating to dual-use items and technologies listed in Annex IV to Council Regulation (EC) No 428/2009 of 5 May 2009;
  - Activities of the entities holding national defense secrets;
  - Activities relating the information systems security sector, including as a subcontractor, for a public or private operator managing vital installations;
  - Activities of the entities which have concluded a contract, either directly or by subcontracting, for the benefit of the Ministry of Defense for the realization of a good or a service considered as a sensitive activity;
  - Cryptology activities ;
  - Activities relating to technical equipment or devices capable of intercepting correspondence or designed for the remote detection of conversations or the capture of computer data;
  - Activities relating to the provision of services by assessment Center (assessment and certification of the security offered by information technology products and systems);
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- Gambling, except for casinos;
- Activities against the illicit use of pathogens or toxic agents in terrorist activities;
- Processing, transmission or data storage, which risk to affect the exercise of sensitive activities;
- Activities relating to infrastructure, goods or services essential to ensure:
  - Energy supply ;
  - Water supply ;
  - Operation of transport networks and services;
  - Space operations;
  - Operation of electronic communications networks and services ;
  - The exercise of the missions of the national police, the gendarmerie, the civil security services, as well as the exercise of the missions of public security of the customs and those of the approved companies of private security;
  - The operation of establishments, installations and structures of vital importance within the meaning of the Defense Code (and their information systems);
  - Protection of public health ;
  - Food security ;
  - Publishing, printing or distribution of political and general information press publications.
- Research and development activities in critical technologies (cybersecurity, artificial intelligence, robotics, additive manufacturing, semiconductors, quantum technologies, energy storage and biotechnologies and technologies involved in renewable energy production);
- Research and development activities on dual-use goods and technologies.

The activities which are not listed above are only subject to a statistical report after the transaction is completed and only if (i) the investment exceeds 15 million euros and (ii) affects 10 % or more of the share capital of the French legal entity.

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**Who is obliged to obtain an FDI approval?**

According to the legislation, any investment operation is subject to a preliminary control by the Minister in charge of the economy if it meets the following three cumulative criteria: (i) the presence of a foreign investment; (ii) an investment in a French entity; (iii) the exercise, even occasional, of an activity in a strategic sector of activity, defined by regulation.

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	<p>A foreign investor is defined, within the meaning of the control of foreign investments in France as: (i) Any natural person of foreign nationality; (ii) Any individual of French nationality who does not domiciled in France within the meaning of the General Tax Code; (iii) Any entity under foreign law; (iv) Any entity under French law controlled by one or more of the persons or entities mentioned above.</p> <p>And if the investment falls within the categories of operations defined by CMF, namely through which: (i) control of an entity governed by French law is acquired; (ii) all or part of a branch of activity of a French entity is acquired; (iii) the threshold of 25% of the voting rights of a French entity is crossed, directly or indirectly, alone or in concert.</p> <p>The notion of entity is broadly understood and can cover several organizations such as companies, foundations, trusts, etc.</p>
<b>Which entities are protected under the FDI rules?</b>	(i) Any legal entity governed by French law; (ii) all or part of a branch of activity of a French entity; (iii) when the threshold of 25% of the voting rights of a French entity is crossed, directly or indirectly, alone or in concert of a French legal entity.
<b>What kind of transactions are covered by the FDI rules?</b>	Any transaction of any kind (sale, purchase, increase of share capital, contribution in kind, etc..) which may result in taking the control of a French legal entity, a branch of activity of a French legal entity or passing the threshold of 25% of the voting rights of a French entity is crossed, directly or indirectly, alone or in concert
<b>How long do the proceedings last?</b>	The French ministry of economy has 30 days to deliver an opinion. If no decision is received within 30 days, the prior authorization is considered as automatically rejected. If the ministry of economy requires additional information, a new time period of 45 days is open. If no decision is received within this new time period, the prior authorization is considered as automatically rejected.
<b>What are the consequences of breaching the regulation?</b>	The French ministry of economy may require: (i) the cancellation of the transaction; (ii) some amendments to the original transactions; (iii) may impose a fine of up to twice the amount of the investment or 10 % of the turn over of the targeted investment or 5 million euros whichever is higher; (iv) may require 5 years of imprisonment for the legal officers of the legal entities involved in the transaction.



**What is the name  
of the national  
authority handling  
the investment  
control issues?**

For the prior authorization: French Ministry of Economy and Finance (which may require the implication of the Ministry of Defense). For the statistical declaration: the Banque de France.

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**LERINS**

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## Introduction

The German regulatory framework for FDI mainly consists of the German Foreign Trade and Payments Act (Außenwirtschaftsgesetz - AWG) and the Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung – AWV). The framework operates on three levels: Regular reporting of certain foreign direct investments (“Reporting”), a filing requirement (“Filing”) for foreign direct investments in certain “critical” industries such as defense (“Sector-Specific”) or in targets engaged in “critical” activities (“Cross-Sectoral”), and ex officio review and possible prohibition of foreign direct investments which do not require a Filing (“Prevention”). Special rules may apply under regulations for very specific industries (e.g. satellite data).

## When introduced?

### BOETTICHER:

Germany has maintained FDI rules since 1961. The scope of Filing and Prevention has been significantly extended from 2019 onwards. There is no time limit on application of these rules.

### BOETTICHER:

Mandatory ☒ Voluntary ☐

## Prior to transaction / post

**BOETTICHER:** Filing is required prior to transaction. Reporting and Prevention occur post transaction.

## How many proceedings last year?

**Esche Schümann Commichau:** National proceedings according to AWV: 306

## Who is obliged to obtain an FDI approval?

**BOETTICHER:** All non-German acquirers within the scope of Sector-Specific Filing requirements and all acquirers not domiciled in a member state of the European Union (EU) within the scope of Cross-Sectoral Filing requirements. Member states of the European Free Trade Association (EFTA) have the same status as EU member states for FDI purposes.

## Which entities are protected under the FDI rules?

**Seitz:** Generally, the German authorities can review any transaction of all industries, provided that certain other conditions are met. However, there is a focus on energy, water, nutrition, information technology, health, finance and insurance, transportation and traffic as well as defense-related products. These terms are interpreted broadly by the German authorities.

## What kind of transactions are covered by the FDI rules?

**Seitz:** The German FDI rules cover both share and asset purchases. Depending on the target entity's industry different thresholds for the acquisition of voting rights (in most cases, i.e. shares) apply: 10% (e.g. energy, water, nutrition, health, defense etc.), 20% (e.g. robots, AI technology etc.) or 25% (all other industries).



**How long do the proceedings last?**

**Esche Schümann Commichau:** The first phase lasts up to 2 months from knowledge of the BMWK of the transaction and the second phase lasts up to 4 months after receipt of complete documents (but an extension up to 3-4 months is possible).

**What are the consequences of breaching the regulation?**

**Esche Schümann Commichau:** If the acquisition is subject to the obligation to notify, there is a prohibition of enforcement pursuant to § 15 (4) AWG. This relates to the exercise of voting rights and the receipt of profit payment entitlements from shares in the domestic company and the exchange of certain company-related information on the domestic company. In the event of a deliberate violation, the penalty is up to five years' imprisonment; in the event of negligence, the penalty is a substantial fine.

**What is the name of the national authority handling the investment control issues?**

**BOETTICHER:** The Federal Ministry for Economic Affairs and Climate Action (BMWK), department VB1.

**Other material information**

**Esche Schümann Commichau:** There is the possibility to obtain a so called "statement of non-objection" from the BMWK according to § 58 AWW, which has the legal effect of releasing the relevant transaction. The statement of non-objection is deemed to be granted if the BMWK does not open a formal review proceeding within two months after having been notified of the transaction in question. In all transactions with a German target company and a non-EU acquirer where there is even a small risk of impairing the public order or safety of the Federal Republic of Germany or an EU member state, it is strongly advisable to notify the transaction to the BMWK. A closing condition that a statement of non-objection is obtained or the two month period has lapsed is necessary where the target company fulfills one of the many categories listed in § 55a AWW and is advisable in cases where there is a certain likelihood that the transaction impairs the public order or safety of the Federal Republic of Germany or an EU member state, in particular where the buyer is not from a state usually considered "safe" by the BMWK, e.g. PRC, Russia, South Africa, most South American countries, etc.

**Firm Submitting Information:**



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SCHÜMANN  
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**seitz**

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Jurisdiction Germany



## Introduction

The so called “Liquidity Decree” (Decree-Law No. 23/2020), adopted to fight the negative effects of the Covid-19 Pandemic, has extended the scope of application of the “Golden Power” regime, i.e. a system of special intervention powers provided for by the so called “Golden Power Decree” (Decree Law No. 21/2012), whose purpose is to safeguard strategic sectors of national interest, including in the case of an FDI. Recently, the Golden Power regime was further extended by Decree Law No. 22/2022.

## When introduced?

The Golden Power Decree came into force in 2012, the Liquidity Decree came into force in 2020.

## Mandatory ☒ Voluntary ☐

## Prior to transaction / post

Prior to the transaction.

## How many proceedings last year?

There were 496 proceedings in 2021.

## Who is obliged to obtain an FDI approval?

Any investor – both individuals and companies - from outside the EU and, in certain cases, also any investor from the EU.

## Which entities are protected under the FDI rules?

Italian companies – both private and public - holding assets of strategic importance for the national interest in relevant sectors, including critical infrastructures, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, cloud, aerospace, defense, electoral or financial infrastructures (including in the credit, banking and insurance sectors), and sensitive facilities, as well as investments in land and real estate essential for the use of such infrastructures, critical technologies and so-called dual use products, including artificial intelligence, robotics, semiconductors, cybersecurity, quantum and nuclear technologies, as well as nanotechnology and biotechnology, security of supply of critical inputs, including energy and raw materials, as well as food security, access to sensitive information, including personal data, or the ability to control such information.

## What kind of transactions are covered by the FDI rules?

(1) In the sectors of national defense and security, the acquisition, for any reason whatsoever, of a shareholding in an undertaking which carries out activities of strategic importance for the national defence and security system by a party other than the Italian State, Italian public bodies or entities controlled by the latter, where the purchaser



comes to hold, directly or indirectly, including through successive acquisitions, through a third party or entities otherwise connected, a level of shareholding in the voting capital capable of jeopardising in the specific case the interests of national defence and security. Where the acquisition concerns shares of a company admitted to trading on regulated markets, the notification must be made if the purchaser holds, as a result of the acquisition, a shareholding exceeding the threshold of 3 per cent, and the acquisitions which determine that the thresholds of 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent and 50 per cent are exceeded are subsequently notified. Where the acquisition relates to shares in a company which is not admitted to trading on regulated markets, the notification must be given if, as a result of the acquisition, the purchaser holds more than the thresholds indicated in the second sentence above. (2) In the sectors of communications, energy, transport, health, agri-food and finance, including credit and insurance, the acquisition, for any reason whatsoever, of shareholdings by persons belonging to the European Union (and the EEA), including those residing in Italy, of such importance as to determine the permanent establishment of the purchaser by reason of the acquisition of control of the target company. (3) The acquisition of shareholdings by foreign non-EU (and non-EEA) persons in companies holding assets identified as strategic which attribute a share of voting rights or capital at least equal to 10 per cent, taking into account the shares or quotas already directly or indirectly held, when the total value of the investment is equal to or greater than one million euro, and the acquisitions which determine the exceeding of the thresholds of 15 per cent, 20 per cent, 25 per cent and 50 per cent of the capital are also notified.

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**How long do  
the proceedings  
last?**

The proceedings last 45 days from the notification of the transaction, but this term is suspended if clarifications are sought by the Government. Should the Government fail to reply within this term, the transaction is deemed authorized.



**What are the consequences of breaching the regulation?**

The breach of the Golden Power regime proceedings, including the Government's conditions to authorize the transaction, entails the application of a penalty ranging from the suspension of voting rights to the nullity of the transaction, without prejudice to the case in which the breach amounts to a criminal offence. In most cases, an administrative sanction is also applied, for an amount up to double the value of the transaction and, in any case, not less than 1 per cent of the turnover achieved by the companies concerned in the last financial year, in addition to the obligation to restore the status quo ante. This sanction is applied to the purchaser and also to the target company.

**What is the name of the national authority handling the investment control issues?**

Prime Minister Office (Presidenza del Consiglio dei Ministri).

**Other material information**

The Golden Power regime, including the notification obligations, applies also to the adoption of resolutions and related transactions by the shareholders' meeting or by the governing bodies of companies that carry on activities of strategic importance and which have the effect of changing the ownership, control or availability of the assets in question, including those concerning the merger or demerger of the company, the transfer of the business or branches thereof or of subsidiaries, the transfer abroad of the registered office, the modification of the corporate purpose, the dissolution of the company, the modification of any clauses of the by-laws adopted, the assignment of rights in rem or of use of tangible or intangible assets, the assignment of the same as security or the assumption of constraints conditioning their use. Under the Golden Power regime, the Italian Government can veto the relevant resolutions and transactions.

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## Introduction

Where FDI control is applicable, the Government decides by a majority vote of the ministers. The substantive test is “influence entailing actual or potential imperilment of national security”. Blocking decisions are subject to full judicial review.

Mandatory ☒ Voluntary ☐

## Prior to transaction / post

The notification must be filed prior to acquisition of control

## Who is obliged to obtain an FDI approval?

(i) Natural or legal person or (ii) group of such persons acting in concert, which intends, directly or indirectly, to (a) obtain at least “significant participation” (i.e., at least 10% of shares or “significant influence”) in a “commercial company which is important for national security”; or (b) “obtain influence” over a “commercial company which is important for national security”.

## Which entities are protected under the FDI rules?

(i) Electronic communications service provider which (a) has a significant market power and (b) is subject to tariff regulations; (ii) Radio broadcaster having a coverage permission for at least 60% of Latvian territory; (iii) TV broadcaster having a terrestrial coverage permission for at least 95% of Latvian territory; (iv) Natural gas transmission or distribution or storage service provider, or an owner of liquefied natural gas equipment connected to the transmission system; (v) Producer of electrical or heat energy with installed capacity above 50 MW; (vi) Heat transmission and distribution operator which owns heat lines of at least 100 km; (vii) Licensee of electrical energy transmission rights; (viii) Owner of at least 10 000 ha of forest land in Latvia; (ix) Owner of at least 4 000 ha of agricultural land in Latvia; (x) Holder of a licence, issued by the Ministry of Defence, for trade in goods of strategic importance or a certified manufacturer of military products, if the licensee or manufacturer has concluded a strategic partnership agreement with the Ministry of Defence.

## What kind of transactions are covered by the FDI rules?

(i) With respect to incorporated entities: (a) Acquisition of at least “significant participation” (i.e., at least 10% of shares or “significant influence”); (b) Acquisition of decisive influence; (c) Transfer of undertaking; (d) Preservation of participation or indirect voting rights if UBO changes; (ii) With respect to partnerships: (a) Admission of a new partner; (b) Preservation of membership if UBO changes.

## How long do the proceedings last?

Phase I: up to 1 month from filing; Phase II: up to 4 months from filing.



**What are the consequences of breaching the regulation?**

(i) Prohibition to record transfer of ownership at Company Register; (ii) Invalidity of transfer of ownership; (iii) Invalidity of votes cast at shareholders' meeting; (iv) Divestment obligation.

**What is the name of the national authority handling the investment control issues?**

Administrative body: Ekonomikas ministrija (Ministry of Economy);  
Decisionmaking body: Ministru kabinets (Cabinet of Ministers)

**Other material information.**

Standstill obligation applies. There is no penalty for failure to notify or for closing prior to clearance, but see 2.5. above concerning invalidity. A prohibition can be appealed before a court; judicial review extends to the merits of the decision, but applicant's access to the evidence relied upon by the Government will be very limited.

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## Introduction

Where FDI control is applicable, the inspection regarding investor's compliance with national security interests (hereinafter – the Inspection) is carried out by Coordination Commission for the Protection of Objects of Importance for National Security (hereinafter – the Commission). If a conclusion is reached that investor is not compliant with national security interest, such conclusion is forwarded to the Government, which adopts a legal and binding ruling. The decision adopted by Commission or the Government are subject to judicial review.

Mandatory ☒ Voluntary ☐

### Prior to transaction / post

The notification must be filed prior to the transaction or acquisition of control.

### Who is obliged to obtain an FDI approval?

(I) Natural or legal person or (II) group of such persons acting in concert, which intends, directly or indirectly, (A) to acquire of 1/4 or more voting rights or shares in the (a) Category I entity which is important to national security, (b) Category II entity which is important to national security, (c) entity operating in (i) economic sector of strategic importance or (ii) in the territory of the protection zone or (B) to acquire of 1/3 or more voting rights in the Category III entity which is important national security or (C) to acquire rights into asset or infrastructure which is important for national security.

### Which entities are protected under the FDI rules?

(I) Category I entities which are important to national security; (II) Category II entities which are important to national security; (III) Category III which are important to national security; (IV) entities operating in the economic sector of strategic importance i.e., (i) Energy; (ii) Transport; (iii) IT, telecommunications and other high-tech; (iv) Finance and credit; (v) Military equipment; (V) entities operating in the territory of the protection zone.

### What kind of transactions are covered by the FDI rules?

Acquisition of 1/4 or more voting rights or shares in the (a) Category I entity which is important to national security, (b) Category II entity which is important national security, (c) entity operating in (i) economic sector of strategic importance or (ii) in the territory of the protection zone or (B) acquisition of 1/3 or more voting rights in the Category III entity which is important to national security or (C) acquisition rights into asset or infrastructure which is important to national security (D) Category I, II and III entities' which are important to national security transactions exceeding 10% of previous financial turnover and certain other transactions of such companies.



**How long do the proceedings last?**

Phase I: up to 25 working days from filing; Phase II: up to 4 months from filing. A different timeline applies for 2.3. (D) transactions – Phase I: 29 working days from filing; Phase II: up to 5 months from filing.

**What are the consequences of breaching the regulation?**

(I) Invalidity of transaction or (II) inability to exercise voting rights.

**What is the name of the national authority handling the investment control issues?**

Coordination Commission for the Protection of Objects of Importance for National Security (Nacionaliniam saugumui užtikrinti svarbių objektų apsaugos koordinavimo komisija) and the Government of the Republic of Lithuania (Lietuvos Respublikos Vyriausybė).

**Other material information.**

Standstill obligation applies. A prohibition can be appealed before a court.

**Firm Submitting Information:**



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## Introduction

Foreign direct investments are regulated under the regulation (EU) 2019/452 (the “Regulation”), which is directly applicable in the Netherlands and the Dutch Implementation Act Screening Regulation Foreign Direct Investment (the “Implementation Act”), which completes the Regulation. An important part is that the member state can request foreign investors to provide certain information which the investor has to provide without unnecessary delay. The Investment, Mergers and Acquisitions Security Test Act (the “Security Test Act”) complements the Implementation Act and sector-specific legislation. Under this act (FDI) approval can be required for acquisition of (i) a vital provider or (ii) target which is active on the field of sensitive technologies.

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### Who is obliged to obtain an FDI approval?

Investor or target. An important principle of the Security Test Act is that it is country neutral. Not the origin of an acquirer, but the nature of the target determines whether the acquisition activity must be reported. This act is therefore not just applicable to foreign direct investments only.

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### Which entities are protected under the FDI rules?

The Security Test Act defines who qualifies as a vital provider in the areas of, among others, nuclear energy, air transport, the port area, banking and extractable energy. The act also includes a, non-exhaustive, list of what sensitive technology means: (1) dual-use items (this refers to items that can have both civil and military uses); and (2) military goods.

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### What kind of transactions are covered by the FDI rules?

The acquisition activities subject to the Security Test Act include, among others, investments, mergers and demergers whereby control is acquired in a target. Control means the possibility of exercising decisive influence on the activities of an undertaking on the basis of factual or legal circumstances. Regarding sensitive technology, it is sufficient when ‘significant influence’ is acquired or increased.

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### How long do the proceedings last?

Pursuant to the Security Test act, any intention to carry out an acquisition activity must be reported by the intended target or the acquirer to the Minister of Economic Affairs and Climate Change (the “Minister”). In principle the Minister must announce whether an assessment decision is required within eight weeks of receiving the notification. This will be the case if an acquisition activity can lead to a risk to national security. The Minister’s assessment of whether an acquisition may lead to a risk to national security will take into account the following with respect to all acquisition activities: (1) the degree of transparency of the acquirers ownership structure and relationships, (2) whether the acquirer is affected by



restrictions (e.g. sanctions legislation) and (3) the security situation in the acquirers country of origin or establishment. In the event that it has been notified that an assessment decision must be made and an application has subsequently been submitted for this purpose the Minister shall, in principle, make an assessment decision within eight weeks of receiving the application. In principle an acquisition activity does not take place until: (1) the Minister has announced that no assessment decision is required or (2) an assessment decision has been made. The Minister may decide that an acquisition activity will be permitted, provided certain requirements or further regulations are met. If the Minister considers that an acquisition activity leads to a risk to national security that cannot be sufficiently mitigated by requirements or regulations, he shall prohibit (1) the acquisition activity or (2) holding control or significant influence.

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**What are the consequences of breaching the regulation?**

In the event that prohibited acquisition activities have taken place, the Security Test Act enables the Minister to act against them with the following instruments: (1) nullity; (2) voidability by a court order; and (3) the execution of a charge to prevent or undo the undesirable effects of the acquisition activity. The violation of the obligation to provide information under the Implementation Act / Regulation or of certain provisions of the Security Test Act can result into impose a charge under a periodic penalty, imprisonment, community service or a fine.

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**What is the name of the national authority handling the investment control issues?**

The responsible ministry appoints responsible officers to supervise if the investor is compliant with its information obligation under the Implementation Act / FDI Regulation. Supervision of compliance with the Security Test Act is done by officers to be appointed by the Minister.

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## Introduction

The investment regime in Norway is open to all foreigners, and a party investing in Norway doesn't need to seek a general approval from the government. Nevertheless, in recent years, regulations giving the government the power to block acquisitions if national security interests are threatened have been implemented, ref. the Security Act (Norw: sikkerhetsloven).

## When introduced?

The Security Act entered into force on 1 January 2019 (the "Security Act").

## Mandatory ☒ Voluntary ☐

## Prior to transaction / post

The Security Act gives Norwegian authorities the possibility to review and block acquisitions before they are conducted. The acquisition can be blocked if national security interests mentioned under point 2.3 below are threatened, the acquisition concerns an qualified ownership interest, and the company is brought under the scope of the Security Act, cf. Section 10-3. Furthermore, the government also have general authority to stop/reverse acquisitions threatening national security interests, cf the Security Act, Section 2-5.

## Who is obliged to obtain an FDI approval?

See point 1, above. If the company has been brought under the scope of the Security Act, the acquiring party needs to seek approval.

## Which entities are protected under the FDI rules?

National security interests, see point 2.3. below.

## What kind of transactions are covered by the FDI rules?

The government needs to file a decision bringing the company under the scope of the Security Act. This authority covers companies that; 1) handle classified information; 2) companies' handling information, information systems, objects or infrastructure of great importance to fundamental national facilities or functions; or 3) companies involved in activities of great importance for fundamental national facilities or functions. As mentioned before, the government also has a general authority to block acquisitions even involving companies that haven't been brought under the scope of the Security Act, provided the transaction still is held to be a threat against national security interests.

## How long do the proceedings last?

No deadline for the proceedings. Nevertheless, the government shall, within 60 days give feedback to the person filing a report about the acquisition, cf. the Security Act, Section 10-2.



**What are the consequences of breaching the regulation?**

The Security Act does not give the government the authority to issue administrative penalties or to instigate criminal proceedings, but the government may in effect reverse transactions.

**What is the name of the national authority handling the investment control issues?**

The relevant Ministry or the National Security Authority.

**Firm Submitting Information:**



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<b>When introduced?</b>	Entered into force on 24 July 2020.
<b>Mandatory</b> <input checked="" type="checkbox"/> <b>Voluntary</b> <input type="checkbox"/>	
<b>Prior to transaction / post</b>	The notification shall be filed prior to the transaction.
<b>How many proceedings last year?</b>	There were 9 such proceedings in 2021.
<b>Who is obliged to obtain an FDI approval?</b>	Provided that the other conditions are met, the FDI approval must be obtained by: (1) a natural person that is not a national of a member state of the EU or the OECD, or of a state that is a party to the EEA Agreement ("Member State"); or (2) an entity other than a natural person that is not, or has not been for at least two years from the day preceding the notification, established within the territory of a Member State.
<b>Which entities are protected under the FDI rules?</b>	Entities which: (1) have status of an entrepreneur; and (2) have registered office in Poland; and (3) achieved revenue from sales and services in the territory of Poland of over EUR 10,000,000 in any of the two financial years preceding the notification; and (4) qualify into at least one of the following categories: (i) a public company, (ii) an owner of property disclosed in a uniform list of critical infrastructure facilities, installations, equipment and services, (iii) an entity carrying out specific IT activities (as listed in the FDI regulation), (iv) an entity carrying out other specific economic activities (as listed in the FDI regulation).
<b>What kind of transactions are covered by the FDI rules?</b>	Transactions resulting in the acquisition or achievement of significant participation in a protected entity or acquisition of dominance over a protected entity. This can result from various events regarding the protected entity, such as: (i) acquisition of shares, (ii) acquisition or leasing of an enterprise or an organised part thereof, (iii) conclusion of an agreement regarding the distribution of profits of such an entity, (iv) redemption of shares, (v) division or merger, or even (vi) amendment to the articles of association of a protected entity.
<b>How long do the proceedings last?</b>	The first phase lasts up to 30 business days and the second phase lasts up to 120 calendar days.
<b>What are the consequences of breaching the regulation?</b>	Breach of the regulation might result in civil sanctions, including nullity of a transaction, as well as penal sanctions.



**What is the name of the national authority handling the investment control issues?**

President of the Office of Competition and Consumer Protection (pol. Prezes Urzędu Ochrony Konkurencji i Konsumentów).

**Other material information.**

There is also a general FDI regime (introduced on 24 July 2015), however, it only covers entities that were expressly listed as protected (currently 13 such entities), that are of crucial importance to the state.

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# PORTUGAL

## Introduction

**Portugal's FDI regime is guided by the principle of non-discrimination – there is no discrimination between investments based solely on nationality. In the same vein, there is no entry restrictions for foreign capital. With the exception of strategic sectors, Portugal remains a competitive entry for foreign investment.**

**Mandatory** ☒ **Voluntary** ☐

## Prior to transaction / post

The approval notification can be filed prior to the transaction. Under certain conditions, a screening process is also triggered post transaction.

## Who is obliged to obtain an FDI approval?

As stated, the regime operates selectively, a third country national to the European Union or to the EEA is treated as a national citizen. However, a sectoral screening is triggered if the Foreign Investor acquires direct or indirect control over strategic assets and if such acquisition poses a real and severe threat to national security or the provision of basic services considered fundamental for the country.

## Which entities are protected under the FDI rules?

Any entity that operates on the following listed strategic sectors: defense, energy, water management, telecommunications, railways, maritime transportation, air transport.

## What kind of transactions are covered by the FDI rules?

All transactions that warrant a sectoral screening. To determine if a threat is “real and severe”, the relevant member of the Government conducts a broad assessment regarding chiefly: the physical security, availability, operability, quality and integrity of the Asset; Similarly, a broad assessment is conducted to determine if the provision of basic services considered fundamental is endangered. In this case, the focus is on the links between the Foreign Investor and its Purchasing past.

## How long do the proceedings last?

It varies. There are 2 types of proceedings that can occur: (i) an ex ante confirmation process promoted by the interested party or (ii) an ex post opposition screening from the Portuguese Government. In the first case, the Foreign Investor can formally request an approval from the Ministry responsible for the strategic sector of the target company. It can last up to 30 business days, and if no notification is received, the transaction can occur. In the second case, the Minister of the affected can start a screening process up to 30 days after the transaction. This process demands that the acquiring parties deliver a set of relevant documents to the member of the Government. It can last up to 60 days counted from the delivery of the relevant documents. As the former procedure, a lack of decision is equated to a non-opposing stance.



# PORTUGAL

## **What are the consequences of breaching the regulation?**

If there is an opposing decision made by the Government, all contracts and legal acts associated with the investment are deemed null. This includes ancillary contracts related to the exercise of rights over assets connected with the acquired enterprise. The opposing decision can be judicially appealed.

## **What is the name of the national authority handling the investment control issues?**

The Council of Ministers and each Ministry of the strategic sectors involved.

## **Other material information.**

Whilst still expected to remain pro-business and non-discriminatory towards third country nationals, the recently elected Government is widely expected to change the rules regarding FDI in the coming months. However, there has yet to exist any formal indication of how these changes will impact the market.

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## When introduced?

Entered into force on 18 March 2020

## Mandatory ☒ Voluntary ☐

## Prior to transaction / post

The notification shall be filed prior to the transaction.

## Who is obliged to obtain an FDI approval?

Non-European Investors and Non-Spanish European Investors. (A) Non-European Investors are: (i) those residing outside the European Union (EU) and the European Free Trade Association (EFTA); and (ii) those residing in the EU or the EFTA but whose ultimate beneficial owners reside outside the EU and the EFTA. (B) Non-Spanish European Investors are: (i) those residing in EU or EFTA countries other than Spain; and (ii) those residing in Spain but whose ultimate beneficial owners reside in EU or EFTA countries other than Spain. For these purposes, ultimate beneficial owner shall mean those who ultimately own or control, directly or indirectly, more than 25% of the share capital or voting rights of the investor, or otherwise exercise direct or indirect control over the investor.

## Which entities are protected under the FDI rules?

(A) Entities in the following sectors: (i) critical infrastructure, whether physical or virtual (including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities), as well as land and real estate that are key to the use of such infrastructure; (ii) critical and dual-use technologies, key technologies for industrial leadership, and technologies developed under programmes and projects of particular interest to Spain, including telecommunications, artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies, nanotechnologies, biotechnologies, advanced materials and advanced manufacturing systems; (iii) supply of fundamental inputs, in particular energy, or those referring to strategic connectivity services or raw materials, as well as food security; (iv) sectors with access to sensitive information, in particular personal data, or with the capacity to control such information; (v) media; or (vi) other sectors as the Spanish government may determine from time to time if they may affect public safety, public order and public health. (B) In addition, irrespective of the sector in which the relevant entity conducts its business, the FDI rules shall apply to Non-European Investors (but not to Non-Spanish European Investors) in the following cases: (i) if the foreign investor is directly or



indirectly controlled by the government, including public bodies or the armed forces, of a third country; (ii) if the foreign investor has made investments or engaged in activities in the sectors affecting public security, public order and public health in another Member State, and in particular those sectors listed in (A) above; or (iii) if there is a serious risk of the foreign investor engaging in criminal or illegal activities affecting public security, public order or public health in Spain.

**What kind of transactions are covered by the FDI rules?**

Those investments as a result of which the investor acquires a shareholding equal to or greater than 10% of the share capital of a Spanish company, or when, as a result of a transaction, control of said company is acquired. In the case of Non-Spanish European Investors, application of the FDI regime also requires that the investment is made in (i) a company listed in Spain or (ii) an unlisted company provided that the value of the investment exceeds EUR 500 million. It should be noted that Investments of less than EUR 1 million are not subject to the FDI regime.

**How long do the proceedings last?**

6 months. However, there is a simplified procedure of 30 business days for investments of less than EUR 5 million. In both cases, the investment is deemed not to have been cleared if the competent authority does not issue a decision within the relevant deadline.

**What are the consequences of breaching the regulation?**

Breach of the regulation might result in civil sanctions, including nullity of the transaction, as well as fines up to the amount of the transaction.

**What is the name of the national authority handling the investment control issues?**

Ordinary procedure: Council of Ministers (spa. Consejo de Ministros). Simplified procedure: Directorate-General for International Trade and Investments (spa. Dirección General de Comercio Internacional e Inversiones).

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## Introduction

In the Slovak Republic, the regulation of foreign investments is temporarily (until the adoption of a new law as described below) contained primarily in Act No. 45/2011 of the Coll., on Critical Infrastructure as amended (hereinafter referred to as the “CI Act”) and also applies to investments within the EU. However, this only applies to critical infrastructure elements in the areas of energy and industry. The Act on Foreign Investment Examination, which is to set down obligations of the foreign investors from outside of the Slovak Republic and member states of the EU, is currently in the process of its approval in the Parliament of the Slovak Republic (at the stage of processing comments submitted within the interdepartmental comment procedure). The date of the effectiveness of the new law is not yet known. The current regulation under the CI Act anticipated the issuance of a government regulation that would clarify the process of approving investments, but such regulation has not been issued to date. If we provide specific data below, they are based on the wording of the relevant section on investment approval of the currently valid CI Act.

<b>When introduced?</b>	The relevant section of the CI Act is effective since 1 March 2021.
<b>Mandatory</b> <input checked="" type="checkbox"/> <b>Voluntary</b> <input type="checkbox"/>	
<b>Prior to transaction / post</b>	Examination of an investment can be performed both prior to and following the transaction implementing the investment – depending on which circumstances under the law are met.
<b>Who is obliged to obtain an FDI approval?</b>	The operator of the critical infrastructure element, pledgee (creditor), liquidator, bankruptcy trustee, executor or other person authorized to transfer the critical infrastructure element, or the one who is to acquire the critical infrastructure element in cases specified in the CI Act (commencement of execution, liquidation, exercise of the pledge, etc.) is obliged to request an examination of a transfer. The Ministry of Economy may also examine the transfer on the basis of the notification of the transfer of the critical infrastructure element by the operator.
<b>Which entities are protected under the FDI rules?</b>	Entities in the energy and industry sector which operate a critical infrastructure element.



# SLOVAKIA

## **What kind of transactions are covered by the FDI rules?**

a) Transfers of a critical infrastructure element to another entity, including the sale of an enterprise or part of an enterprise, as well as changes in persons who have direct or indirect control in the operator (more than 10%) or have the power to exercise control over the operator of the critical infrastructure element, which is comparable to the effect corresponding to the stated share.

b) Entry into liquidation, the commencement of insolvency proceedings, restructuring proceedings or other similar proceedings, execution or other similar enforcement proceedings, as well as the commencement of the exercise of a pledge or other similar right in relation to the operator of the critical infrastructure element or its property (also when the authorities of the Slovak Republic are not competent).

## **How long do the proceedings last?**

The Ministry of Economy is obliged to announce the decision within 60 days from the day of the commencement of the procedure.

## **What are the consequences of breaching the regulation?**

In general, administrative offenses in the area of critical infrastructure apply (for which a fine may be imposed).

## **What is the name of the national authority handling the investment control issues?**

The Ministry of Economy of the Slovak Republic (Ministerstvo hospodárstva Slovenskej republiky).

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## Introduction

Foreign investments are not directly regulated or subject to approval under Swiss law. Swiss laws which potentially have an impact on foreign investments are the Swiss Code of Obligations (CO), the Swiss Federal Act on the Acquisition of Real Estate by Persons Aboard (so-called “Lex Koller”), certain financial markets laws such as the Swiss Act on Banks and Savings Banks or the Swiss Federal Act on Financial Market Infrastructures, and the Swiss Antitrust Act. However, except for the Lex Koller statute, none of the mentioned statutes directly addresses foreign investments, but rather sets general rules applicable to both Swiss and foreign investors.

### Who is obliged to obtain an FDI approval?

Except for the acquisition of residential property by foreign nationals (Lex Koller), there are no industries/legal sectors with restrictions explicitly targeting foreign direct investments.

### What kind of transactions are covered by the FDI rules?

The only approval specifically required by foreign investors applies in the case of investments in residential property, which is, for example, the case for investment in real estate management companies or apartment hotels with a self-use right of an apartment by the foreign investor for a certain period of time per year.

### How long do the proceedings last?

In case of real estate transactions (see Section 2.3 above), the approval might be obtained within 2 to 3 months, depending on the complexity of the transaction.

### What are the consequences of breaching the regulation?

If the authorisation according to the Lex Koller is not available, the land registry does not enter the person concerned as the owner of the property in the land register.

### What is the name of the national authority handling the investment control issues?

There is no superior national authority handling the investment control issues.

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## Introduction

The FDI regime in England and Wales is governed by the National Security and Investment Act 2021 (NSI). The regime operates on both a mandatory and voluntary notification basis. The mandatory regime requires proposed acquirers of shares or voting rights (exceeding certain defined thresholds) in companies undertaking specified activities in the UK in certain sensitive sectors to seek approval of the transaction from the Secretary of State by way of a notification. The voluntary regime applies to transactions which do not meet the mandatory notification requirement. In addition, the Secretary of State has the power to review any transaction which falls under the scope of the NSI where there is a reasonable suspicion that it has or may give rise to a risk to national security.

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Mandatory ☒ Voluntary ☐

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Prior to transaction /  
post

Prior

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Who is obliged  
to obtain an FDI  
approval?

Persons acquiring rights or interests conferring control over “qualifying entities” or “qualifying assets”. Qualifying entities include companies, limited liability partnerships, partnerships, unincorporated associations, trusts or any other body corporate. The definition excludes individuals. Entities formed or recognized under the law of a country or territory outside the United Kingdom will only fall under the definition of “qualifying entity” if they carry on activities in the United Kingdom or supply goods or services to persons in the United Kingdom. Qualifying assets include land, tangible moveable property and ideas, information or techniques which have industrial, commercial or other economic value and which are used in connection with activities carried on in the UK or the supply of goods or services to persons in the UK.

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Which entities  
are protected  
under the FDI  
rules?

There are no protections for corporate persons under the NSI, however, a person is not regarded as gaining control of a “qualifying asset” where the acquisition is made by an individual for purposes wholly or mainly outside the individual’s trade, business or craft subject to exceptions including where the asset relates to land.



**What kind of transactions are covered by the FDI rules?**

Transactions where the acquired entity operates in a sensitive area of the economy may fall under the NSI regime. The 17 areas of the economy classed as sensitive are advanced materials, advanced robotics, artificial intelligence, civil nuclear, communications, computing hardware, critical suppliers to government, cryptographic authentication, data infrastructure, defence, energy, military and dual-use, quantum technologies, satellite and space technologies, suppliers to emergency services, synthetic biology and transport.

**How long do the proceedings last?**

The review period for the Secretary of State to consider notifications is 30 working days beginning on the day on which the notification is given to the person who gave the mandatory notice.

**What are the consequences of breaching the regulation?**

Breaches of the NSI can incur both civil and criminal liabilities. The penalties for summary offences under the NSI include a term of imprisonment not exceeding 12 months or a fine, or both. For offences on indictment, the maximum length of imprisonment shall not exceed 2 years. The Secretary of State also has the power to impose monetary penalties of a fixed amount or at a daily rate, or a combination of the two.

**What is the name of the national authority handling the investment control issues?**

The Secretary of State for Business, Energy and Industrial Strategy.

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