



# MINISTÈRE DE L'ÉCONOMIE ET DES FINANCES

*Liberté*  
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Direction générale du Trésor



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# FOREIGN DIRECT INVESTMENT SCREENING IN FRANCE

# 1. Principe : freedom of investment in France

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- PRINCIPLE : Financial operations between France and foreign countries are unrestricted
  - *(Article L.151-1 Monetary and Financial Code)*
  
- EXCEPTION : Some operations might be subject to prior authorization of the Minister in charge of Economy *(Article L.151-3 Monetary and Financial Code)*
  - *When the company acquired operates in sensitive sectors*
  - *Activities at stake are likely to jeopardise public order, public safety or national defence interests ;*
  
- Regulation in line with TFEU provisions : freedom of movement of capitals can be restricted on grounds of public order and safety, including with third countries.

➤ Figures - in 2018 :

- 1323 transactions (source : *Business France*) ;
- 184 transactions screened by the French Treasury (=14 % of transactions) ;

➤ Activities of targeted companies :

- Defense activities : 35%
  - Energy, transport, public health, electronic communications etc. : 45%
  - Defense and other activities : 20%
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- 50% of screened FDI came from EU, 50% from third countries.

## 2. Scope of screening

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How does it work ?

Three cumulative criteria : if one is not met, the financial operation is not subject to prior authorization

- Origin of the investor *As from 1 April 2020, the definition of the foreign investor is being clarified*
  
- Nature of investment operation
  - Acquisition of control*
  - Acquisition of a line of business*
  - Acquisition of more than 25% of capital shares or voting rights (only for investors outside EEA)*
  
- Sensitive activities of the targeted company : *defense activities, energy, transport, public health, electronic communications, new technologies, aerospace, data centers - as from 1 April 2020, media and food safety fall within the scope of the screening*

# 3. Procedural stages

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## Phase 1 – Max 30 Days – For all applications

- 1) Application for authorization
  - 2) Assessment of the 3 criteria by all government departments involved
- > Most likely outcome :
- the investor is informed that no authorization is needed ;
  - The investment is authorized without condition
- > Possible outcome : a phase 2 must be engaged

## Phase 2 – Max 45 Days – For complex files

- 1) In depth analysis of the filing
  - 2) Discussions with the investor to evaluate the possibility to authorize the investment under conditions
- > Most likely outcome : the investment is authorized under conditions
- > Rare outcome : the authorization is not granted

# 4. Typology of mitigation measures

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The Minister in charge of Economy has the possibility to authorize a transaction under conditions (mitigation measures)

*(Article R. 153-9 of the Financial and Monetary Code)*

- Continuation of the line of business in France
- Governance of the acquired company (rarely)
- Intellectual property
- Protection of information
- Reporting

# 5. The French reform of FDI screening

The modification of the FR screening mechanism, completed at the end of 2019 aimed to:

- Better protect **France's** interests
  - *Participation controlled from 25% of capital ownership*
  - *New sectorial coverage*
  - *Obligation to declare financial connection with a foreign Government*
  - *Reinforcement of administrative and sanction powers of the Minister in charge of Economy*
- Guarantee legal certainty for the investors
  - *First reply within 30 days increases legal certainty*
  - *Possibility to ask an opinion on the sensitivity of activities*
  - *Encourages early notification in M&A processes -> more certainty for the investor, more options for the French authorities*

# 6. Complementary measures adopted in light of the COVID 19 crisis

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Two amendments to the FR screening mechanism were announced on April 29<sup>th</sup>.

- Inclusion of biotechnologies in the list of critical technologies subject to screening
  - *In line with the EU Regulation*
- Lowering of the threshold from 25% to 10% triggering the screening for sensitive listed companies
  - *Temporary regime (until the end of the year)*
  - *Operations subject to a fast-track procedure*
  - *Not applicable to intra UE/EEA takeovers*

# 7. FDI screening regulation – A new approach

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- France has actively supported the EU regulation on FDIs screening. This regulation :
  - *Sends a strong political signal confirming the importance to ensure a better protection of strategic sectors within the Union.*
  - *Provides a cooperation mechanism between the Member States. Member States are still free to decide on whether or not to enact a screening mechanism at national level.*
  - *Contributes to the harmonization of Member States' practice - Several European partners are currently considering or working on the establishment of a screening mechanism at national level.*
  
- In the context of the COVID 19 crisis, France is engaged in strengthening and deepening informal cooperation with its Member States counterparts on shared-interest cases.
  
- The regulation entered into force in April 2019. It will be applicable as from October 2020.