MINISTÈRE
DE L'ÉCONOMIE,
DES FINANCES
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INDUSTRIELLE ET NUMÉRIQUE

Liberté
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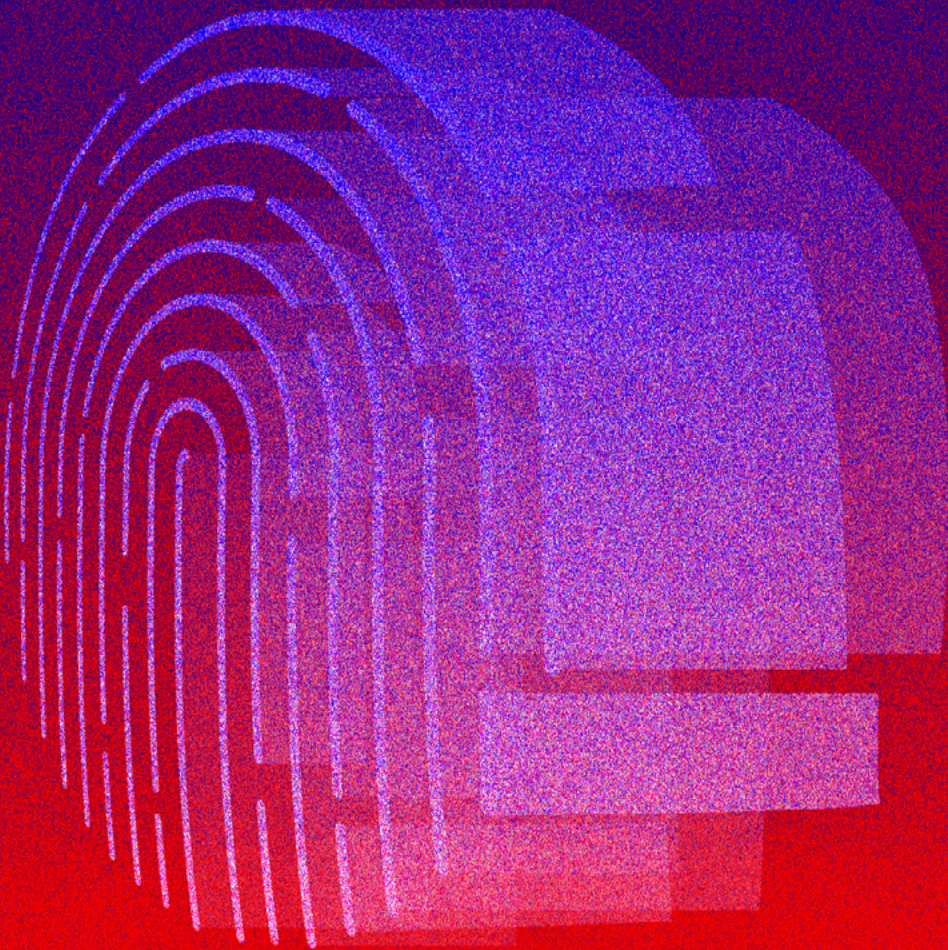


Foreign Investment Screening in France

Annual Report 2022

Centre de traduction du ministère de l'économie, des finances et de la souveraineté industrielle et numérique – Dossier n° 0566-23 du 11/09/2023

“On the backdrop of heightened international tensions and intensified competition between economies, greater safeguarding of the technologies and companies that are key to France’s economic security has emerged as a priority.”

Message from the Minister for the Economy

France’s economy is open, dynamic and fully integrated into the global investment system. Year after year, foreign investors choose to invest in France and, in so doing, help create jobs and drive innovation and French business growth. As part of the investment process, the government pays special attention to protecting our country’s fundamental interests. Many foreign investment transactions are subject to my approval due to their sensitive nature in terms of national defence, public security and public order.

Bruno Le Maire
Minister for the Economy, Finance and Industrial and Digital Sovereignty

2022 was a year shaped by geopolitical, economic and climate shocks. The COVID-19 pandemic had already made clear the need to increase the resilience of our value chains and to secure our sovereignty in industry and technology. On the backdrop of heightened international tensions and intensified competition between economies, greater safeguarding of the technologies and companies that are key to France’s economic security has emerged as a priority.

Foreign investment screening plays a part in protecting our economy, which is why I have continued to bolster it since the 2019 Business Growth and Transformation Action Plan (PACTE) Act. This legislation lowered the foreign investment screening thresholds, expanded the grounds for rejecting investments and increased sanctioning powers. From the outset of the pandemic, I have prioritised the importance of better protecting French listed companies from opportunistic equity investments by non-European investors by lowering the threshold of voting rights that triggers the screening procedure from 25% to 10%.

In recent years, foreign investment screening has been expanded to include a number of technologies vital for 21st century industry, such as renewable energy storage, biotechnologies, artificial intelligence and semiconductors. The Directorate General of the Treasury (“French Treasury” or “Treasury”) occupies a central role in safeguarding our economy’s strategic sectors, including defence, transportation, energy, public health and agri-food. And the government remains fully dedicated to continuing to protect the interests of France.

“The French Treasury is committed to implementing France’s foreign investment screening policy in a proportionate, transparent and predictable manner.”

Message from the Director General

For another consecutive year the French Treasury has been an integral part of the government’s policy for protecting national interests. This second edition of the Annual Report on Foreign Investment Screening in France attests to the Treasury’s hard work in the area of foreign investment screening. We received 325 applications for authorisation in 2022, about the same as in 2021.

Emmanuel Moulin
Director General of the Treasury

In 2022, 131 foreign investments in sensitive French entities were authorised by the Minister for the Economy, including 70 authorisations with conditions to safeguard national interests. These figures show that the Treasury works continuously to maintain investment freedom while ensuring the protection of public order, public security and national defence interests.

The French Treasury is committed to implementing France’s foreign investment screening policy in a proportionate, transparent and predictable manner. In September 2022 it published for the first time guidelines on foreign investment screening to clarify legal provisions regarding foreign investment screening and to increase the legal certainty of transactions carried out by foreign investors.

Foreign investment screening in France also involves many different government actors. Under the leadership of the Treasury, the line ministries represented on the Interministerial Committee on Foreign Investment in France have demonstrated an unwavering commitment to making screening procedures efficient, agile and flexible.

At European level, the French Treasury plays an active role alongside other Member States and the Commission in the EU cooperation mechanism on foreign investment screening. France has again shown this year that it is one of the most active EU countries in this cooperation and has consolidated its key role on foreign investment screening-related matters in the EU.

Key figures
on foreign investment screening in 2022

325 applications filed
similar to the number in 2021

ORIGIN OF ULTIMATE INVESTORS IN 2022

34,2% (EU/EEA)

65,8% NON-EU/EEA

INVESTMENTS AUTHORISED UNDER FOREIGN INVESTMENT SCREENING REGULATIONS IN 2022

131 **transactions subject** to foreign investment screening

including

70 authorisations **with conditions**

AUTHORISATIONS BY SECTOR

23,7% Inherently sensitive activities

51,9% Essential infrastructure, goods and services

24,4% Mixed

2022 comparable to 2021 in terms of the number of applications filed for screening

France's foreign investment screening system had yet another especially busy year in 2022, receiving a similar number of applications for foreign investment screening, to comply with France's foreign investment screening rules, as in 2021.

The French Treasury reviewed 325 files in 2022, compared to 328 in 2021.
The French Treasury reviewed 325 files in 2022, compared to 328 in 2021. This includes two types of filings: applications for investment authorisation (filed by foreign investors) and requests for opinion on whether a French company's business activity requires screening (filed either by the foreign investor or by the targeted French company). At the end of the review period, when not withdrawn, applications for investment authorisation may be considered as falling outside the scope for screening or, when deemed subject to screening requirements, entail a decision (e.g. simple authorisation, authorisation with conditions or rejection).

In 2022, 131 investments were authorised under the foreign investment screening system and targeted business activities in France which, even if only occasionally, contribute to the exercise of public authority or are liable to jeopardise public order, public security or national defence interests. The Minister for the Economy set conditions on 53% of these investment authorisations so as to safeguard such interests when necessary. This percentage was virtually unchanged, as 54% of investment authorisations were made with conditions in 2021.

INVESTMENTS AUTHORISED UNDER FOREIGN INVESTMENT SCREENING REGULATIONS IN 2022

131 **transactions subject** to foreign investment screening including **70** authorisations **with conditions**

In addition, **42 requests for opinion were processed by the French Treasury in 2022.** A request for opinion is a procedure allowing a foreign investor, or a French entity targeted by an investment, to seek an opinion from the Treasury before initiating an investment transaction in order to confirm whether prior authorisation is required. Both parties can use this procedure to better anticipate any screening requirements: the target company can incorporate the Treasury's feedback to more effectively pursue investors, and the investor can reflect the use of foreign investment screening procedures in the transaction's contractual documentation.

In 2022, 81% of request for opinion reviews found that the business activities involved did not require screening. In such cases, a foreign investment made in a French company carrying out these activities does not require prior authorisation by the Minister for the Economy. The procedure thus provides additional certainty to stakeholders, who can anticipate the need to obtain the Minister's authorisation through the foreign investment screening process prior to completing the transaction.

REQUESTS FOR OPINION

81 % of business activities **did not require screening**

The majority of sensitive foreign investments in 2022 again concerned essential infrastructure, goods and services in the civil sector

Foreign investments that require screening can be classified in three categories, depending on the nature of the French target company's activities.

First, there are investments in **inherently sensitive activities**[1], that primarily – albeit not exclusively – fall within the defence and security sectors, such as activities relating to weapons, munitions, explosive powders and substances intended for military use or relating to war material, dual-use items and technologies, cryptology services, and research and development activities carried out in the sectors mentioned above that relate to certain critical technologies and dual-use items and technologies[2]. In 2022, **23.7%** of investments authorised fell under this category, a proportion almost double that of 2021 (13.7%).

There are also investments made in activities relating to **infrastructure, goods and services that are essential**[3] to safeguard, among others, the integrity, security and continuity of energy and water supplies, transportation networks and services, public health, and food safety. Also included in this category are research and development activities carried out in the sectors mentioned above that relate to certain critical technologies and dual-use items and technologies[4]. In 2022, **51.9%** of investments authorised related to this category. The share of this category in the total number of foreign investments authorised declined slightly on 2021, when it stood at 56.9%.

Lastly, a third category includes foreign investments falling under both categories. For example, this is the case of French businesses that manufacture aircraft parts for civil and military aviation. These investments are classified in the "mixed" category. In 2022, they accounted for **24.4%** of screened investments compared to 29.4% in 2021.

1. Paragraph I. of Article R. 151-3 of the Monetary and Financial Code.
2. Paragraph III. of Article R. 151-3 of the Monetary and Financial Code.
3. Paragraph II. of Article R. 151-3 of the Monetary and Financial Code.
4. Paragraph III. of Article R. 151-3 of the Monetary and Financial Code.

AUTHORISATIONS BY CATEGORY

23,7 % **Inherently sensitive activities**

51,9% **Essential infrastructure, goods and services**

24,4% **Mixed**

Diving deeper

French government departments are keeping a close watch over the defence sector, the longstanding focus of foreign investment screening

The defence sector has long formed the backbone of foreign investment screening. With the introduction in 1966 of the principle of freedom of financial dealings between France and foreign countries, restrictions were immediately placed on investment freedom in order to effectively protect strategic sectors of France's economy, with national defence obviously being one such sector[5]. At that time, foreign investments in these sectors were subject to a declaration that had to be submitted to the Minister for the Economy.

In 1980, the prior declaration procedure for investments, together with the Minister for the Economy's authority to postpone investments, that was abolished for European Community investors, was maintained for investments in activities involving the production or sale of weapons, munitions and war material[6]. In the 1990s, these very same investments, regardless of the origin of the investor, became subject to a prior authorisation procedure even though, in parallel, the foreign investment screening regime became less restrictive for European Community investors and investments in small companies[7]. In 1996, the Minister for the Economy's enforcement and sanctioning powers were expanded with regard to violations of the prior authorisation procedure[8].

As from 2003, French law states verbatim that the Minister for the Economy's powers extend to foreign investments "liable to threaten national defence"[9].

Currently, Article R. 151-3 of the Monetary and Financial Code contains a list of business activities in the defence sector subject to the prior authorisation procedure, i.e. those considered as "liable to jeopardise national defence interests"[10] as well as those involving "the research into and production or sale of weapons, munitions, explosive powders and substances". These activities are said to "inherently" require screening, meaning their "essential" nature does not need to be proven for investments in them to fall under the scope of the foreign investment screening procedure.

5. Article 4 of Decree No. 67-78 of 27 January 1967 laying down the rules for implementing Act No. 66-1008 of 28 December 1966 relating to financial dealings with foreign countries.

6. Decree No. 80-617 of 4 August 1980 amending Decree No. 67-78 of 27 January 1967 laying down the rules for implementing Act No. 66-1008 of 28 December 1966 relating to financial dealings with foreign countries, amended by Decree No. 69-264 of 21 March 1969 and by Decree No. 71-143 of 22 February 1971.

7. This is true for exemptions from the administrative declaration procedure for investments made by EEC investors, pursuant to Article 11 of Decree No. 89-938 of 29 December 1989 regulating financial dealings with foreign countries, as worded under Decree No. 90-58 of 15 January 1990, and for exemptions from the administrative declaration procedure for investments in companies with turnover below a threshold level, pursuant to Article 11 ter of Decree No. 89-938 of 29 December 1989, as worded under Decree No. 92-134 of 11 February 1992.

8. Act No. 96-109 of 14 February 1996 relating to financial dealings with foreign countries and Implementing Decree No. 96 117 of 14 February 1996.

9. Article 78 of Financial Security Act No. 2003-706 of 1 August 2003 and Decree No. 2003-196 of 7 March 2003.

10. Article L. 151 3 of the Monetary and Financial Code.

Since 2019, screening covers, in addition to the research into production of weapons, munitions, explosive powders and substances intended for military use or relating to war material and similar materials, research and development activities relating to a list of critical technologies[11] and dual-use items and technologies[12], particularly when investments are intended to fund business activities in the national defence sector.

2022 was a big year for the screening of foreign investments in companies that support national defence, with 42% of screened investments involving sensitive activities, whether pure defence or dual-use activities.
In 2022, the need to protect sovereignty in matters of defence resulted in 76% of authorisations being tied to conditions for foreign investments in French companies with sensitive operations in the defence sector.

SHARE OF AUTHORISATIONS SUBJECT TO CONDITIONS ON DEFENCE-RELATED GROUNDS IN 2022

76 % **of authorisations** were conditional

11. Cybersecurity, artificial intelligence, robotics, additive manufacturing, semiconductors, quantum technologies, energy storage, biotechnologies and technologies involved in the production of renewable energy.

12. Order of 31 December 2019 relating to foreign investments in France.

Message from
Alexandre Lahousse

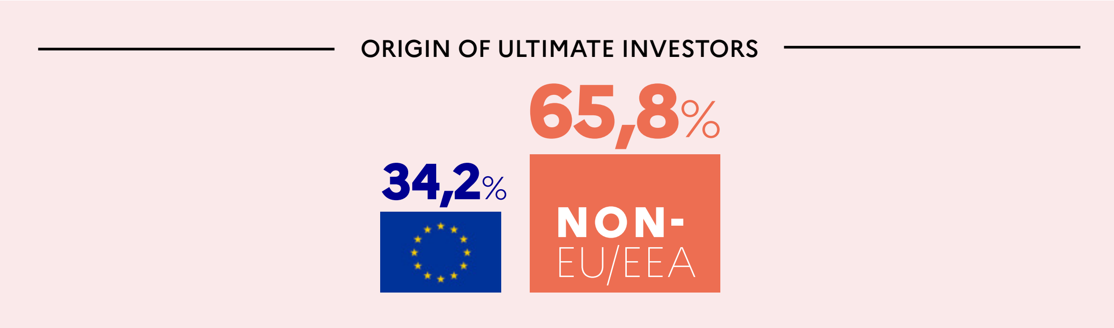
Head of the Department for Industrial Affairs and Economic Intelligence (S2IE) at the Defence Procurement Agency (DGA)

One of the missions of the DGA, and especially the Department I run, is to maintain an industrial base capable of meeting the armed forces' needs. This industrial policy underpins our strategic autonomy in defence.

The Department for Industrial Affairs and Economic Intelligence (S2IE), which saw its operations strengthen at the beginning of the pandemic and continuously ever since, strives every day to assess the capabilities and potential weaknesses of critical companies in the defence industrial and technological base (DITB) so as to be able to guide, inform, assist and protect them. To this end, the DGA takes part in the foreign investment screening process in France for companies operating in the defence sector. It is a major tool of our defence industrial policy, as it safeguards national defence interests when foreign investors acquire stakes in French companies without prohibiting or discouraging such investments when they are beneficial for key players in our industrial ecosystem. With this in mind, the S2IE Department works closely with the French Treasury to set down conditions which foreign investors must agree to respect before they can complete an investment. The S2IE monitors defence industrialists, including by verifying whether foreign investors have complied with their commitments.

The ramifications of the Ukraine conflict and the wide-scale overhaul that is required for us to meet the demands of the "wartime economy" show that now, more than ever, we need to continue to have a robust and resilient domestic DITB, whose dependence on foreign countries must be reined in and of our own accord. The challenge we face is having the latitude to equip our armed forces and those of our allies while maintaining the strategic autonomy desired by high-level authorities. In addition, we want to contribute our fair share of the resources needed to foster a more autonomous and resilient DITB in Europe in order to encourage a preference among EU institutions for a "made in Europe" defence strategy.

The majority of ultimate investors of transactions screened in 2022 were non-European



The origin of the ultimate investors whose transactions were screened has been relatively stable from year to year, whether in terms of their geographic area (European Union/European Economic Area or a non-EU country) or their country of origin.

In 2022, most screened investments – 65.8% – were made by non-European ultimate controlling investors[13]. The main countries of origin of these ultimate investors were, as in 2021, the **United Kingdom**, the **United States** and **Canada**.

Within the European Union and European Economic Area, investments were mostly made by ultimate investors located in **Germany, Luxembourg** and **Italy**.

13. Article R. 151 1 of the Monetary and Financial Code: "non-European" refers to countries outside the European Union and European Economic Area; classification as a non-European ultimate investor takes into account the investor's ultimate controlling entity/individual. There may be non-European links in the chain of control up to this ultimate investor; where there are several ultimate investors (in the case of joint control), the fact that one of them is non-European results in a classification as a non-European ultimate investor, regardless of the origin of the other ultimate investors.

Screened transactions in 2022 were, as in 2021, primarily financial investments

47.4% of the ultimate investors in 2022 were financial investors (compared to 49% in 2021), **39%** were industrial investors (compared to 42% in 2021) and **13.6%** were individuals (compared to 9% in 2021). [14].

14. Legal entities are classified as financial investors or industrial investors.

The French Treasury's role

in the screening of foreign investments

A unit exists within the Treasury that is dedicated to France's foreign investment screening policy.

Foreign investment screening cannot be performed without a sound understanding of the ecosystem of French businesses and their capital requirements. Screening is therefore fully integrated into the French Treasury's various activities.

The Treasury develops and implements the regulatory and legislative framework for foreign investment screening in France: it reviews applications for foreign investment on behalf of the Minister for the Economy and implements the Minister's enforcement and sanctioning powers in the event of non-compliance.

The French Treasury relies on the Interministerial Committee on Foreign Investment in France, for which it provides the secretariat general, to review applications submitted under foreign investment screening regulations and to monitor foreign investors' compliance with any conditions tied to authorisations. The Interministerial Committee comprises officials from the government ministries and agencies most involved in the activities subject to screening who provide their expertise to analyse the sensitivity of a French company's activity for public security, public order and national defence interests. Other government departments may also be involved in the review on a case-by-case basis if specific expertise is required.

The Treasury represents France in European and international institutions that handle the screening of foreign investments. It represents France in the European Commission's group of experts on the screening of foreign direct investments (FDIs) into the European Union and in the Council of the European Union's working groups on these issues. The Treasury's screening unit is the French point of contact for the European Commission and other Member States as part of European cooperation on FDI screening, which took effect on 11 October 2020.

FOREIGN INVESTMENT SCREENING ELIGIBILITY CRITERIA

The target of the investment is a **French legal entity**

Yes

No

Presence of a foreign investor (EU and non-EU)

Yes

No

The transaction is not subject to foreign investment screening

Transaction

Acquisition of control

or

Crossing the threshold of 25% of voting rights for non-EU/EEA investors

or

Acquisition of all or part of a business line of a French legal entity

or

Crossing the threshold of 10% of voting rights in a company listed on a regulated market for non-EU/EEA investors*

No

Yes

The transaction is subject to foreign investment screening

*Fast-track procedure: a foreign investor that crosses the threshold of 10% of voting rights informs the French Treasury. In such cases, the Minister for the Economy has 10 business days to decide whether the transaction should be subject to closer scrutiny, on the basis of a full application for authorisation (see diagram on the progress of the foreign investment screening procedure).

PROGRESS OF THE FOREIGN INVESTMENT SCREENING PROCEDURE

Application filed by the investor with the French Treasury

PHASE 1
MAXIMUM OF 30 BUSINESS DAYS.

Examination of the investment by the **Interministerial Committee on Foreign Investment in France** on the basis of three foreign investment screening eligibility criteria

The investment is not subject to prior approval by the Minister for the Economy.

The investment is subject to prior approval by the Minister for the Economy **and an additional examination is required.**

The investment is subject to prior approval by the Minister for the Economy **and the transaction is authorised without conditions.**

PHASE 2
Maximum of 45 business days.

Additional examination by the Interministerial Committee on Foreign Investment in France

The transaction is authorised by the Minister for the Economy without conditions.

The transaction is authorised by the Minister **subject to conditions in order to safeguard national interests.**

The transaction is refused by the Minister, by means of an explicit decision or lack of response following Phase 2.

PROGRESS OF THE FOREIGN INVESTMENT SANCTION PROCEDURE

Foreign investment screening in France

The framework was made both stable and clearer in 2022

Owing to changes to the economic climate, due to the energy crisis, the temporary measure to lower the threshold for the screening of foreign investments in French listed companies was extended until 31 December 2023 and the Minister for the Economy has now announced that this will be a lasting measure.

From the outset of the pandemic, the government prioritised the importance of protecting French listed companies from opportunistic equity investments by non-European investors that could threaten national security. Accordingly, a temporary measure was adopted in July 2020[15] to lower the threshold of voting rights that triggers the screening procedure from 25% to 10% for investments made by non-EU/EEA investors in French listed companies. The measure is designed to protect these companies whose ownership is dispersed by nature and in which a minority stake could give the shareholder significant influence over the company and its sensitive activities.

As the economic climate at the end of 2022, due to the energy crisis, meant that the risks run by French listed companies could not be ignored, this exceptional measure was extended by the Minister for the Economy until 31 December 2023[16]**.**

Foreign investment screening for this type of investment is conducted by means of a fast-track and streamlined procedure. The Minister has 10 business days in which to decide, on the basis of a notification file which is shorter than the application for authorisation[17], whether the transaction is authorised (no response from the Minister constitutes acceptance and dispensation from filing an application for authorisation according to ordinary law procedure). Should the Minister object to the dispensation, the foreign investor has to file a full application for prior authorisation according to ordinary law procedure.

During his New Year wishes addressed to the media on 5 January 2023, the Minister for the Economy announced that this screening measure would become lasting under practical conditions to be unveiled during 2023.

15. Decree No. 2020-892 of 22 July 2020 on the temporary lowering of the threshold for the screening of foreign investments in French companies whose shares are admitted to trading on a regulated market.

16. Decree No. 2022-1622 of 23 December 2022 on the temporary lowering of the threshold for the screening of foreign investments in French companies whose shares are admitted to trading on a regulated market.

17. Order of 22 July 2020 on the temporary lowering of the threshold for the screening of foreign investments in French companies whose shares are admitted to trading on a regulated market.

The rules on foreign investment screening in France were clarified in guidelines published in September 2022.

The French Treasury published guidelines on foreign investment screening in September 2022.

Drawing on a public consultation conducted in March 2022, the publication of this instructional resource represents a further step towards establishing administrative doctrine for foreign investment screening in France. It follows on from transparency initiatives introduced by the French Treasury and, especially, the publication of FAQ also in March 2022. **A courtesy translation of the guidelines in English will be available during the course of 2023.**

The purpose of this document is to help investors and their advisers to implement regulations on foreign investment screening in France and to **inform the general public of the steps in a screening procedure.** It makes this procedure more understandable and predictable for all stakeholders and provides a type of legal certainty when processing applications filed with the French Treasury pursuant to foreign investment screening regulations.

The guidelines clarify the interpretation of legislative and regulatory provisions, and, in particular, the criteria for identifying a foreign investor and an investment. For instance, they explain the concept of an investor's chain of control or pinpoint the crossing of thresholds or joint control in a French legal entity.

The guidelines also set out the various procedural steps in foreign investment screening and emphasise the obligations binding on investors once an authorisation has been issued.

They provide broad guidance in the framework set by legislation and regulations, especially the provisions of the Monetary and Financial Code. However, in the event of any difference or problem with interpretation, the legislative and regulatory provisions take precedence.

These guidelines will be added to and updated as new requirements in terms of clarification or regulatory changes emerge.

The French Treasury's involvement

in work on foreign investment screening in Europe

The European Commission's Second Annual Report on the screening of foreign direct investments into the Union, in which France is playing a leading role, reviews the first year of full application of the European Regulation

On 1 September 2022, the Commission published its Second Annual Report[18] which flags up the satisfactory functioning of the EU cooperation mechanism on FDI screening.
The Regulation, which took effect on 11 October 2020, has two main goals: first, to establish a common approach to FDI screening by determining principles applying to all domestic legislations and mechanisms, with transparency and non-discrimination in the front line and, second, to define the conditions for cooperation and the exchange of information between the Commission and Member States concerning investment transactions planned or carried out on European territory by non-European investors.

The number of Member States introducing a screening mechanism is still on an upward trajectory with three more setting up such a mechanism in 2021 (the Czech Republic, Denmark and Slovakia) bringing the total number up to eighteen. Also in 2021, seven Member States began a process for the future adoption of such a mechanism (Belgium, Estonia, Greece, Croatia, Luxembourg, Sweden and Ireland, with the latter's being close to completion).

Member States are making increasing use of foreign investment screening at national level: four countries (France, Italy, Spain and Germany) accounted for 70% of all applications received in 2021 but it was 86.5% in the first annual report. This shows increased implementation by Member States of their national screening mechanisms.

In addition, the number of notifications at European level is on the rise with a core of five Member States continuing to be responsible for the vast majority (85%). **France is very actively involved in ensuring the correct functioning of this cooperation mechanism and strongly backed its introduction in 2019.**

Amongst particularly sensitive transactions at EU level, manufacturing accounted for 44% with, within this category, an equal breakdown between **energy, defence, semi-conductors and aerospace.** For their part, ICTs constituted 32% of sensitive transactions, double the figure in the first annual report.

18. https://ec.europa.eu/transparency

Diving deeper

The OECD Investment Committee's report on the framework for screening foreign direct investment into the European Union

On 10 November 2022, the OECD, at the request of the European Commission, published a report assessing the effectiveness and efficiency of Regulation (EU) 2019/452.

The report presents positive results from the first two years of full application of the Regulation which bolstered exchanges of information between Member States on both individual transactions and best practices for screening policies. On one hand, Member States' increasing participation in the cooperation mechanism enables information to be exchanged on transactions which have an impact on public security in a number of Member States, and thereby enhances assessment of the sensitivity of investments. On the other, the setting up of a group of experts on the screening of foreign direct investments into the European Union, under the aegis of the Commission, and in which the 27 Member States are represented, boosts the dissemination, heightening and convergence of screening practices within the EU, beyond those Member States that already possess a national mechanism. The OECD estimates that adoption of the Regulation has contributed to five Member States establishing a national screening mechanism or to the consolidation of existing mechanisms. These positive findings from the initial years of implementation can be shared by France which was a staunch advocate of the draft regulation.

Nevertheless, the report does mention that there is room for improvement in several areas. The French Treasury agrees with the OECD that it is regrettable that, at present, not all Member States have a screening mechanism as the risk to public security presented by a foreign investment can be neither identified nor regulated in those Member States. The differing criteria defining investments subject to screening (sector of activity, origin of investors, nature of investments) from one country to another, which is highlighted in the report, probably restricts the effectiveness and comprehension of the mechanism at European level, although these differences also derive from the legitimate visions that Member States have of their sovereignty. Lastly, the report calls for the streamlining and harmonisation of a large number of procedural steps (as regards timelines, content and the conditions for exchanges as part of cooperation) for which a costs/benefits analysis is required to mitigate the administrative burden with an eye to resource efficiency.

The European Commission, which commissioned the report from the OECD, could draw on it to conduct its own evaluation of the Regulation by October 2023 pursuant to its Article 15.

Diving deeper

Foreign investment screening mechanisms in the European Union

In 2023, 18 EU Member States have a foreign investment screening mechanism whereas there were only 15 in 2020 prior to the entry into application of Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union under the impetus of France, Germany and Italy. **Following the entry into force of the Regulation, an increasing number of Member States established national FDI screening mechanisms and a trend for the convergence of foreign investment screening regulations gradually gathered pace among Member States that already had a national mechanism.**

The mechanisms introduced in the six Member States which are the most advanced as regards FDI screening (France, Germany, Italy, Spain, Austria and Denmark) have common features. These Member States have a prior authorisation condition for foreign investments. They also screen a common base of investments and sectors of activity which is supplemented by each country's own specificities, in particular on the basis of the features of domestic economies. The types of investments subject to screening systematically include acquisitions of control, business lines and minority stakes.
The six Member States have gradually added goals to safeguard public health, energy security or the integrity of telecommunications or transport infrastructure, as set out in the Regulation, to their mechanisms. All these countries, except Austria, can also screen investors originating from the EU across a broad range of sectors (for instance, in Italy or, temporarily, in Spain) or on a more limited basis (focused on the defence sector in Germany).
Lastly, in terms of procedures, the screening policy is the responsibility of the minister for the Economy and the examination of transactions is usually carried out in two separate phases which demonstrate the degree of sensitivity of these cases. The second phase is scheduled for the most complicated and sensitive transactions and the mechanisms of the six Member States include a system of conditions tied to authorisations to control the risks identified for a foreign investment.

Besides these shared features, each mechanism has specific characteristics due to each Member State's own assessment of their national security and public order. There are a number of differences as regards sensitive sectors and technologies. For example, in both Austria and Italy, the expansion of 5G has been specifically identified as a sensitive issue.
Some mechanisms, such as Denmark's, go well beyond ownership transactions or the acquisition of assets as they are able to screen long-term financial agreements (R&D joint-ventures, especially with Danish universities,

19. https://ec.europa.eu/transparency - pages 21 and following

financial agreements including public procurement, agreements for the supply of goods or services) when these provide a foreign investor with special influence over sensitive Danish companies. In respect of regulatory examination timelines, France is within the average (3.5 months), similar to Italy (2.5 months), Denmark and Austria (3 months), and much less than the timelines in Germany and Spain which may be even longer than 6 months.

References

on foreign investment screening in France

For more information on foreign investment screening in France, please refer to:
Investissements étrangers en France | Direction générale du Trésor (in French with some English content)

FAQ

Guidelines (in French)

To file applications under foreign investment screening regulations or to ask a question about foreign investment screening in France: iefautorisations@dgtresor.gouv.fr

Reference legislation:
Articles L.151-1 et seq. of the Monetary and Financial Code (in French)

Articles R.151-1 et seq. of the Monetary and Financial Code (in French)

Order of 31 December 2019 relating to foreign investments in France (in French)

Decree No. 2022-1622 of 23 December 2022 on the temporary lowering of the threshold for the screening of foreign investments in French companies whose shares are admitted to trading on a regulated market (in French)

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

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