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DE L'ÉCONOMIE,  
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Directorate  
General of the  
Treasury

# Foreign Direct Investment Screening in France in 2021

# Message from the Director General

**Emmanuel Moulin**  
Director General of the Treasury



The Directorate General of the Treasury ("French Treasury" or "Treasury") experienced bustling activity in 2021 pertaining to the screening of foreign direct investments into France. The government received 328 applications, an increase of 31% over 2020. Findings are presented for the first time in the form of an annual report that outlines the year's key figures and regulatory changes in public policy on foreign direct investment screening.

In 2021, 124 transactions screened by the French Treasury were found to pose potential risks to public order, public safety or national defence interests. In 54% of those cases, the Minister for the Economy tied specific conditions to investment authorisations in order to safeguard France's national interests. This increased activity took place amidst the pandemic that began in 2020, which led many countries around the world, including France, to strengthen their screening regulations.

French foreign direct investment screening procedures were deftly, and effectively, adjusted to tackle issues raised by the pandemic. Given the economic and public health environment that still prevailed as 2021 neared its end, France also decided to extend the temporary measure to lower the threshold of voting rights held by a non-European investor that triggers the screening of publicly listed French companies until the end of 2022.

The French Treasury was once again in 2021 very active on both the European and international stages, deliberating on foreign investment screening policy and advancing France's own positions. 2021 was also the first full year during which the European cooperation mechanism for screening foreign investments was put into practice. This mechanism was swiftly deployed owing in part to the efforts of the Treasury.

Lastly, the French Treasury continued to demonstrate its readiness to assist stakeholders as well as its commitment to an increasingly transparent screening system. The Treasury will continue to pursue these efforts in 2022 by publishing guidelines that clarify the interpretation of foreign investment rules in France. Such transparency is essential for France to keep its borders open to inbound investments and remain one of the top European destinations for foreign capital, while safeguarding public order, public safety and national defence interests.

# Key figures on foreign investment screening in France in 2021

## Number of applications

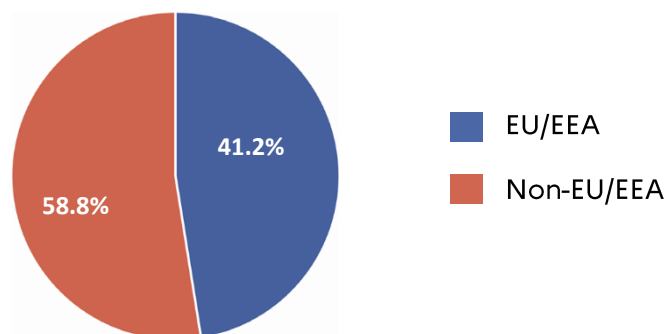
**328** applications filed

+31.2% compared to 2020

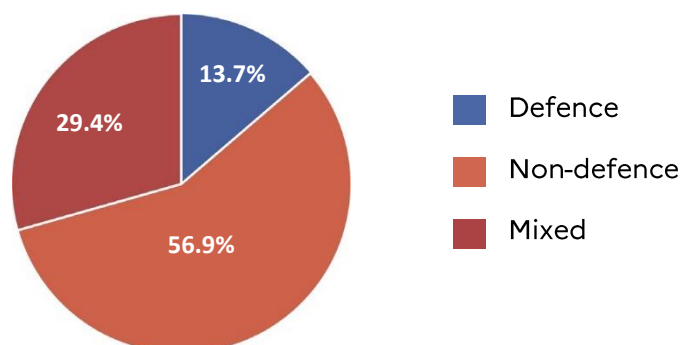
**124** transactions authorised

with **67** authorisations subject to conditions

## Origin of ultimate investors



## Authorisations by sector



## The number of applications that required screening rose significantly in 2021

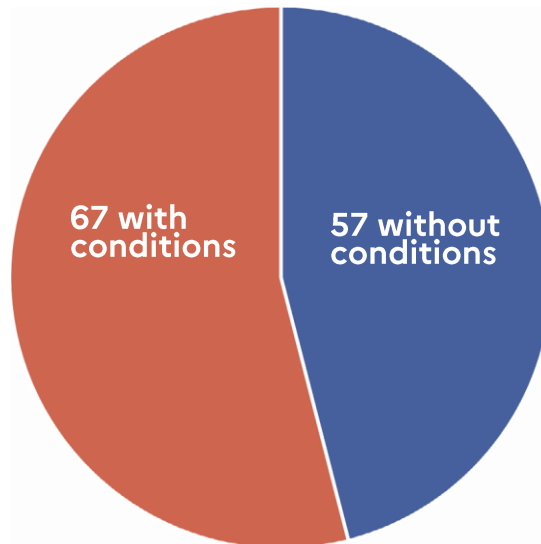
France's foreign direct investment (FDI) screening mechanism was far from idle in 2021. Investors and other stakeholders are becoming increasingly familiar with FDI screening regulations, particularly owing to an expansion in screening systems that has been observed at the global and European level (see page 14).

**The French Treasury reviewed 328 files in 2021, an increase of 31.2% over the previous year.<sup>1</sup>** This includes two types of filings: applications for investment authorisation (filed by foreign investors) and requests for opinion on whether the business activity of a French company requires screening (filed either by the foreign investor or by the targeted French company).

**In 2021, 124 investments were authorised under the FDI screening system.<sup>2</sup>** In other words, these investments targeted a French business activity that was liable to jeopardise public order, public safety or national defence interests. The Minister for the Economy set conditions on 54% of these investment authorisations in order to safeguard national interests.

### Investments authorised under foreign investment screening regulations in 2021

**124** transactions  
were authorised



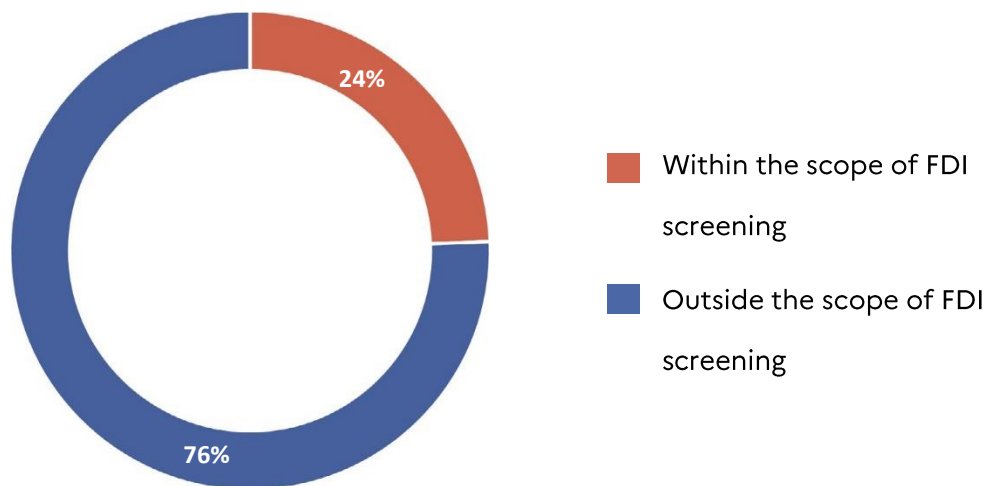
<sup>1</sup> Following a change in methodology for tallying the number of applications, those received at the end of year N-1 are no longer counted in year N.

<sup>2</sup> The report does not specify the number of pending applications as of 31 December 2021, applications withdrawn, transactions that fell outside the scope for screening or applications that were not authorised in 2021.

In addition, **41 requests for opinion were processed by the French Treasury in 2021**. A request for opinion is a streamlined procedure allowing a foreign investor, or a French entity targeted by an investment, to seek an opinion from the Minister 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 feedback to more effectively pursue new investors, and the investor can reflect FDI screening procedures in the transaction's contractual documentation.

**In 2021, 76% of request for opinion reviews found that the business activities 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.

### Requests for opinion



## Applications continued to increase across non-defence sectors in 2021

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

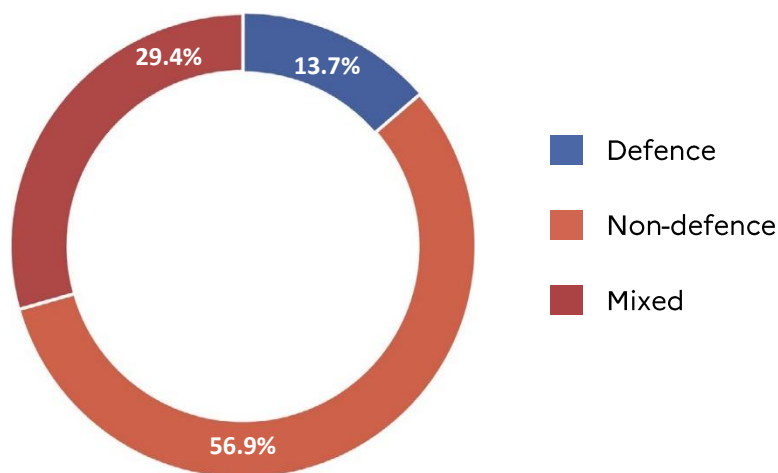
First, there are investments in **inherently sensitive activities**<sup>3</sup> that primarily fall within the defence and security sectors, such as activities relating to weapons, munitions, explosive powders and substances intended for military use or relating to war material, dual-use items and technology, activities relating to cryptology resources and services, and research and development activities carried out in the sectors mentioned above which relate to certain critical technologies.<sup>4</sup> **In 2021, 13.7% of investments screened fell under these sectors, down from 31.5% in 2020.**

There are also investments made in activities relating to **infrastructure, goods and services that are essential**<sup>5</sup> to safeguard 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 which relate to certain critical technologies<sup>6</sup> and dual-use items and technologies. **In 2021, 56.9% of investments screened related to this category, compared to 50.5% in 2020.**

Some foreign investments fall under both categories (for example, investments in companies that have both civil and military aviation activities). These investments are classified in the "mixed" sector. **This is the sector that experienced the strongest growth in 2021, accounting for 29.4% of screened investments compared to 18% in 2020.**

The increase observed in 2021 in the number of screened transactions in the latter two categories reflects the multiple expansions in the scope of the regulations to include non-defence activities.

### FDI screening authorisations by sector



<sup>3</sup> Paragraph I. of Article R. 151-3 of the Monetary and Financial Code.

<sup>4</sup> Paragraph III. of Article R. 151-3 of the Monetary and Financial Code.

<sup>5</sup> Paragraph II. of Article R. 151-3 of the Monetary and Financial Code.

<sup>6</sup> Paragraph III. of Article R. 151-3 of the Monetary and Financial Code.

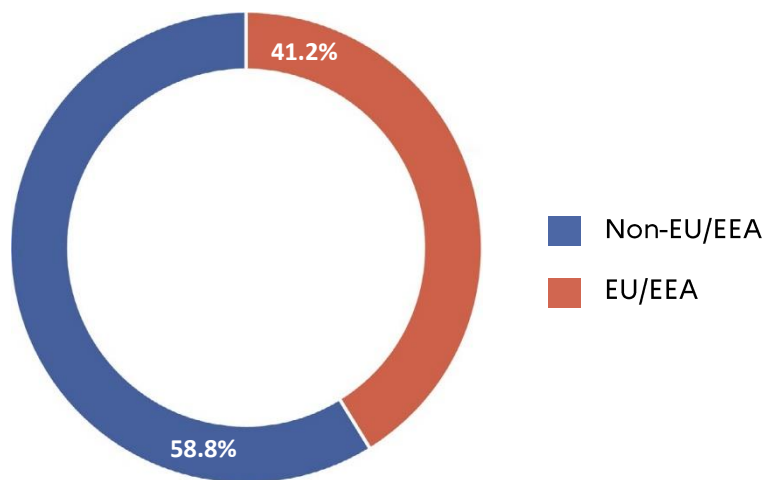
## The geographic distribution of foreign investors remained largely the same in 2021

In 2021, most screened investments were made by non-European (non-EU/EEA) ultimate investors,<sup>7</sup> accounting for 58.8% of investments. These investors were mainly out of the United Kingdom, the United States and Canada.

Within the European Union (EU) and European Economic Area (EEA), investments were mostly made by ultimate investors located in Germany, Luxembourg and Ireland.

There was little change from 2020 in the geographic origin of the ultimate investors whose transactions were subject to foreign investment screening. While the United Kingdom was one of the largest investors in 2020, along with Germany and Luxembourg, it is now tallied as a non-EU investor. Since the United Kingdom is one of the main countries of origin of screened foreign investors, its exit from the EU instantly reduced the number of investors stemming from the European Union and increased the number of investors from outside the EU.

### Geographic origin of ultimate investors in 2021

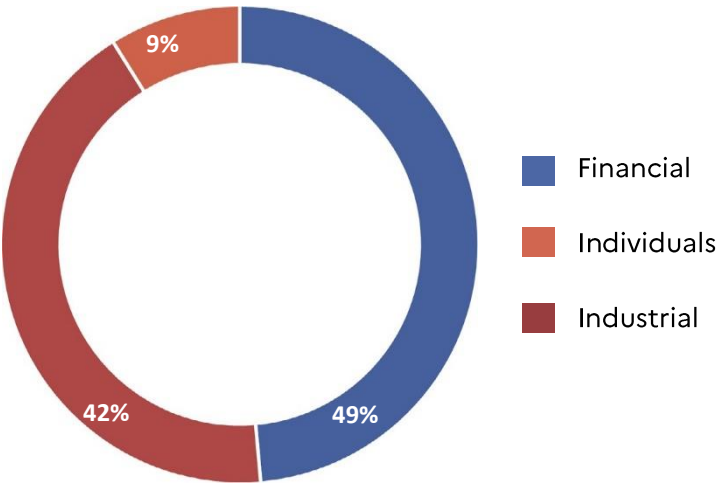


<sup>7</sup> Article R. 151-1 of the Monetary and Financial Code

# Screened transactions in 2021 were primarily financial investments

48.6% of the ultimate investors in 2021 were financial investors, 42.5% were industrial investors and 8.9% were individuals.

Categories of investors





# The French Treasury's role in the screening of foreign investments

**A unit within the Treasury is dedicated to France's FDI screening policy.** FDI 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 Treasury's various activities.

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

**The Treasury relies on the Interministerial Committee on Foreign Investment in France to review applications submitted under FDI screening regulations and to monitor foreign investors' compliance with any conditions tied to authorisations.** The Interministerial Committee comprises about 30 officials from government ministries and agencies with specific expertise in the sectors subject to screening to analyse the sensitivity of a French company's activity for public order, public safety and national defence interests. Other government departments may also be involved in the review if specific expertise is required, on a case-by-case basis.

**The screening unit in the Treasury represents France in European and international institutions that handle the screening of foreign investments.** It represents France in the Council of the European Union on issues related to the screening of foreign direct investments in the European Union and is the French point of contact for European cooperation on investment screening, which entered into force on 11 October 2020.

## French foreign direct investment screening procedures were deftly adjusted to tackle issues raised by the pandemic in 2021

### In light of an unabating pandemic, the temporary measure to lower the voting rights threshold that triggers the screening procedure for publicly listed French companies was extended until 31 December 2022

From the outset of the pandemic, the government has made it a priority to protect French listed companies from opportunistic takeovers by non-European investors that could threaten national security. Accordingly, a temporary measure was adopted in July 2020<sup>8</sup> 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 companies whose shares are listed on a regulated market. The measure is designed to protect these companies with dispersed ownership and in which a minority stake could give the shareholder significant influence over the company and its sensitive activities.

**In December 2021, the exceptional measure was extended to 31 December 2022<sup>9</sup> in light of the continuing pandemic and economic crisis that still threatened to weaken publicly listed French companies.**

If voting rights cross the 10% threshold, foreign investments are screened under an accelerated and streamlined procedure. The file that accompanies the request is shorter compared to an application for authorisation.<sup>10</sup> Based on this file, the Minister for the Economy has 10 business days to decide whether the transaction should be authorised (no response indicates tacit approval) or be subject to further examination. In the latter case, the foreign investor will have to file a full application for prior authorisation under a standard authorisation procedure.

### France's foreign direct investment screening system has enhanced the protection of public health-related industries by expanding its scope to include biotechnologies

Foreign direct investments in public health-related industries have been subject to the French screening mechanism since 2014.<sup>11</sup> The regulation stipulates that any foreign investment in a French company whose activities are essential to guarantee public health is subject to the prior authorisation of the Minister for the Economy.

<sup>8</sup> 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.

<sup>9</sup> Decree No. 2021-1758 of 22 December 2021 extending the temporary measure to lower the threshold for the screening of foreign investments in French companies whose shares are admitted to trading on a regulated market.

<sup>10</sup> 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.

<sup>11</sup> Decree No. 2014-479 of 14 May 2014 on foreign investments subject to prior authorisation.

**The pandemic has highlighted the importance of screening R&D activities meant to protect public health when they relate to biotechnologies.** Accordingly, France announced by Order<sup>12</sup> in April 2020 that the list of critical technologies subject to the FDI screening procedure was being expanded to include biotechnologies. As a result, foreign investment stakes in French companies (very often start-ups) with R&D activities associated with public health, such as vaccine research and the treatment of rare diseases, are now subject to screening.

**Between 2020 and 2021, applications for prior authorisation in the healthcare sector have doubled.** In 2021, applications in the biotechnologies sector accounted for about 26% of filings related to public health protection. **Among applications related to biotechnologies, half of the transactions presented significant risks to public safety and required conditional authorisations by the Minister.**

## Technologies involved in the production of renewable energy are now included in the list of critical technologies subject to screening

Effective since the 1<sup>st</sup> of January 2022, in an effort to adapt the French system of FDI screening to ongoing developments and challenges in the renewable energy sector, the Order of 10 September 2021 relating to foreign investment in France added technologies involved in the production of renewable energy to the list of critical technologies.

As a result, R&D activities relating to these technologies now fall within the scope of the French FDI screening mechanism when they are essential to safeguard the country's public security and national defence interests. **The change is designed to strengthen the protection of essential activities to ensure the supply of energy in France and the greening of the country's energy mix.**

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<sup>12</sup> Order of 27 April 2020 relating to foreign investment in France.

## Towards even more transparency for the foreign direct investment screening policy in 2022

### The information that must be provided in an application for authorisation has been expanded to include some European provisions

The Order of 10 September 2021 broadened the list of documents to be submitted when filing an application for authorisation or a request for opinion in order to reflect the European cooperation mechanism that was newly implemented by European Regulation 2019/452 on establishing a framework for the screening of foreign direct investments into the European Union.

Investors must include the European notification form in their application, as well as describe their business activities, competitive environment and strategy in the European Union.

Applications must also now include additional information, particularly relating to intellectual property rights as well as how French customer data is accessed and managed.

These provisions entered into force on 1 January 2022 in order to give the various parties to investment transactions enough time to adapt.

### Forms can be found on the Directorate General of the Treasury's website

Forms have been available on the Directorate General of the Treasury's [website](#) (in French) since February 2022. These forms facilitate the process for the stakeholders to a transaction by including all information and documents required under the Order of 31 December 2019 relating to FDI screening in France, in the version in force on 1 January 2022.

The forms simplify the administrative procedures involved in filing an application under France's FDI screening regulation and ensure that filed applications are thoroughly completed.

### Guidelines on foreign investment screening regulations are being drafted

In an effort to increase stakeholders' understanding of the French FDI screening regulation, guidelines will be published in 2022. These guidelines are intended to clarify the legal framework of the screening regulation.

# The French Treasury's involvement in foreign investment screening policy in Europe and abroad

## The Treasury has been actively involved in implementing the European regulation on screening foreign direct investments into the European Union

2021 was the first full and effective year of application for the regulation on screening FDI into the European Union, which was adopted on 11 October 2020. France had been calling for such a Europe-wide regulation since 2017.

The regulation establishes a mechanism allowing Member States and the European Commission to better cooperate on the screening of foreign direct investments into the European Union. Any direct investment made by a non-European investor (excluding portfolio investments) that is subject to screening in one of the Member States must be notified to all other Member States and the European Commission, which may together decide that the transaction be subject to further debate.

**Member States and the European Commission can share their analyses and information on the challenges and risks that such inbound investments may pose to public order, public safety and projects or programmes of European Union interest.**<sup>13</sup> Information may also be shared on transactions which are not subject to screening in a particular Member State and were therefore not notified. All communication that takes place under the framework is confidential, and any information that is shared may be classified under the European system. All Member States take part in these discussions, whether or not they possess a national foreign investment screening mechanism of their own.

The Member States and European Commission can then comment or issue an opinion. Any such feedback must be carefully considered by the Member State(s) in which the foreign investment is being contemplated. The European Commission's opinion is binding if the proposed investment could impact a project or programme of European interest.

**The European regulation lays out a mechanism for cooperation: its purpose is not to create a system for screening foreign investments at the European level.** Each Member State has full discretion to establish a mechanism for screening foreign investments in its own territory. Member States also retain the power to authorise or veto a foreign investment within their borders. **This is mechanism is the first of its kind, and the only one by which France shares information on specific foreign investments in its territory with foreign authorities.**

<sup>13</sup> A revised list comprising 18 projects and programmes of European Union interest entered into force on 23 December 2021 (see Commission Delegated Regulation (EU) 2021/2126 of 29 September 2021 amending the Annex to Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union).

## Diving deeper: The enhancement of foreign direct investment screening regimes around the world

Countries around the world have strengthened and expanded their foreign investment screening systems since 2018, particularly in response to suspicions of foreign interference in domestic economies and to confront risks of strategic foreign dependence brought about by the pandemic: the number of OECD member countries with a foreign investment screening mechanism increased from 60% in 2012 to 87% in 2021.<sup>14</sup>

Within the European Union, there has been a growing trend to create and strengthen national foreign investment screening mechanisms following the entry into force of the European regulation on the screening of foreign direct investments into the European Union in October 2020. This trend gathered steam when the pandemic broke out, and in March 2020, the European Commission officially (and for the first time) called on all Member States to adopt robust foreign investment screening systems (or fully enforce existing ones) to confront the crisis.<sup>15</sup> The pandemic also encouraged Member States, primarily Spain, Italy and France, to strengthen their foreign investment screening mechanisms. To date, 18 out of 27 Member States screen foreign investments flowing into their countries.

On the international stage, what makes France's foreign direct investment screening mechanism unique is the close attention it pays to increasing legal certainty and making the framework easily understood by foreign investors. France and Japan are among the few countries to spell out which sectors of activity are subject to screening in their regulations. The United States, Canada, Australia and Norway do not publish a full list of the sectors in which foreign investments may require prior approval (although Canada and Australia do publish non-exhaustive lists). Furthermore, while the concept of "foreign investor" is objectively defined in France and Japan, in the United States, for example, transactions where the investor is "likely" to be controlled by a foreign entity or individual may be reviewed by the Committee on Foreign Investment in the United States (CFIUS). In Australia, entities in which foreign investors are found to hold a "substantial" interest are considered to be foreign. In Norway, screening is required whenever an investment entails a significant risk, whether the investor is foreign or Norwegian.

<sup>14</sup> See "Transparency, Predictability and Accountability for investment screening mechanisms", OECD, 27 May 2020.

<sup>15</sup> See [guidance \(europa.eu\)](https://european-council.europa.eu/media/146842/attachment/data/1/1/16022021_guidance_en.pdf).



## France fine-tuned its foreign direct investment screening system to incorporate the changes brought about by the European regulation

France adapted its foreign investment screening practices and rules in light of the adoption and implementation of the European regulation.

In step with the European regulation, two sectors were added to the scope of the French regulation on 1 July 2020:<sup>16</sup> food safety and activities related to the publishing, printing or distribution of political and general information press. In addition, since 1 January 2022, applications for authorisation filed with the Treasury must include the notification form required under the European cooperation mechanism. The form must be completed if the investor does not belong to the European Union.

**Since 11 October 2020, the Treasury has represented France in the group of experts from Member States created by the European regulation and in all European bodies that deliberate on the cooperation mechanism.** The cooperation framework allows the Treasury to actively participate in discussions and information sharing with the European Commission and other Member States, relay information within the French government, and promote France's positions to other European authorities. The Treasury also presents and promotes France's screening system to Member States interested in either creating or strengthening their own mechanism.

**Since the European regulation was adopted and the cooperation mechanism was introduced, the French Treasury has made a particular effort to support the parties involved in investment transactions.** The Treasury has also worked to ensure that the regulation does not create an additional and disproportionate administrative burden for stakeholders. The European mechanism therefore does not increase the amount of time afforded under the national procedure.

## The first year during which the European cooperation mechanism was put into practice showed encouraging results for the Treasury

Once the European cooperation mechanism became fully operational in October 2020, Member States notified

265 investment transactions to the network through June 2021. **The French Treasury was closely involved in the rapid build-up and very active in driving the cooperation.** The Treasury notified 108 foreign investment transactions on behalf of France in the regulation's first year of application, from 11 October 2020 to 11 October 2021. And France was among five Member States accounting for 90% of all notifications made between 11 October 2020 and 31 June 2021.

The discussions that take place under the cooperation mechanism help to promote a common culture of FDI screening within the European Union. A true European-wide network has been created, allowing to share best practices in foreign investment screening.

European cooperation also helped to strengthen and expand France's foreign investment screening system. For example, the notification of transactions by other Member States to the European network allowed the French Treasury to detect transactions that were going to be, or should have been, subject to screening. The Treasury was also able to refine its risk assessment of foreign investments based on the information shared as part of the cooperation mechanism, particularly in cases of investments related to a group with a presence in several Member States.

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<sup>16</sup> Decree No. 2019-1590 of 31 December 2019 relating to foreign investment in France.

## More:

- > **The European Commission's FAQ** on the regulation establishing a framework for the screening of foreign direct investments into the European Union
- > **The European Commission's 2021 report** on the screening of foreign direct investments into the European Union

## Diving deeper - The EU-US Trade and Technology Council

The EU-US summit on 15 June 2021 led to the creation of the EU-US Trade and Technology Council (TTC), based on a proposal by the European Union. The Council aims to foster transatlantic dialogue, based on common democratic values, in the fields of trade, technology and economic security.

For Europe, the TTC is co-chaired by European Commission Executive Vice-Presidents Valdis Dombrovskis and Margrethe Vestager, who are responsible for competition and trade, respectively. For the United States, the TTC is co-chaired by Secretary of State Antony Blinken, US Trade Representative Katherine Tai and Secretary of Commerce Gina Raimondo.

The TTC has established a transatlantic working group dedicated to foreign direct investment screening. The working group is tasked to exchange information on foreign direct investment trends on both sides of the Atlantic that could have an impact on national security, to share best practices in investment screening, and to develop a holistic view of the policy tools to mitigate risks related to sensitive technologies. Information on individual transactions is not exchanged within this working group.

The French Treasury cooperates closely with the European Commission in preparing the working group's agenda.

## For more information:

- > Pittsburgh Summit Statement of 29 September 2021:  
[EU-US Trade and Technology Council Inaugural Joint Statement \(europa.eu\)](#)



# References on foreign direct investment screening in France

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

[FAQ on foreign direct investment screening in France](#)  
[FAQ \(long version\)](#)

For questions on screening procedures, or to file an application, please use the following email address:  
[iefautorisations@dgtresor.gouv.fr](mailto:iefautorisations@dgtresor.gouv.fr)

## References:

[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. 2021-1758 of 22 December 2021 extending the temporary measure to lower 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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