



MINISTÈRE
DE L'ÉCONOMIE,
DES FINANCES
ET DE LA SOUVERAINETÉ
INDUSTRIELLE ET NUMÉRIQUE

*Liberté
Égalité
Fraternité*

Direction générale
du Trésor

Foreign Direct Investment Screening in France

FAQ
unabridged

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1. Why are foreign direct investments screened in France?

Foreign direct investments (FDI) in business activities in France which, even if only occasionally, contribute to the exercise of public authority or are liable to jeopardise national interests are subject to prior approval from the Minister for the Economy in order to ensure the protection of public order, public safety and national defence interests ([Article L.151-3 of the French Monetary and Financial Code](#)). Because this system goes against the principle of freedom to invest, it is strictly governed by law and regulation.

2. What is the scope of FDI screening?

Foreign direct investments are subject to screening by the Minister for the Economy if the following three cumulative conditions are met:

- (i) A foreign investor is involved ([Article R.151-1 of the French Monetary and Financial Code](#)):
- Any individual with foreign nationality, or any individual with French nationality who is not domiciled in France for tax purposes
 - Any entity governed by foreign law, or any entity governed by French law that is controlled by (i) an individual with foreign nationality, (ii) an individual with French nationality who is not domiciled in France or (iii) an entity governed by foreign law

The investor's nationality is determined by considering the entire ownership chain of the direct acquirer. If any link in the chain is foreign under the relevant regulations, the investor is deemed foreign under the system.

- (ii) The investment transaction is of a particular nature ([Article R.151-2 of the French Monetary and Financial Code](#))

Within the meaning of the rules on FDI screening in France, the investment transaction involves:

- a foreign investor acquiring control (as defined in Article L.233-3 of the French Commercial Code) of a French legal entity or an establishment registered in the Trade and Companies Register
- a foreign investor acquiring all or part of a business of an entity governed by French law
- an investor from a third country with respect to the European Union (EU) or the European Economic Area (EEA) crossing the 25% voting rights threshold of an entity governed by French law

- an investor from a third country with respect to EU or the EEA crossing the 10% voting rights threshold of a French listed entity

For the latter two conditions, if a link in the ownership chain is a national of a third country with respect to the EU or the EEA, the investor is considered to originate from a third country with respect to the EU or the EEA.

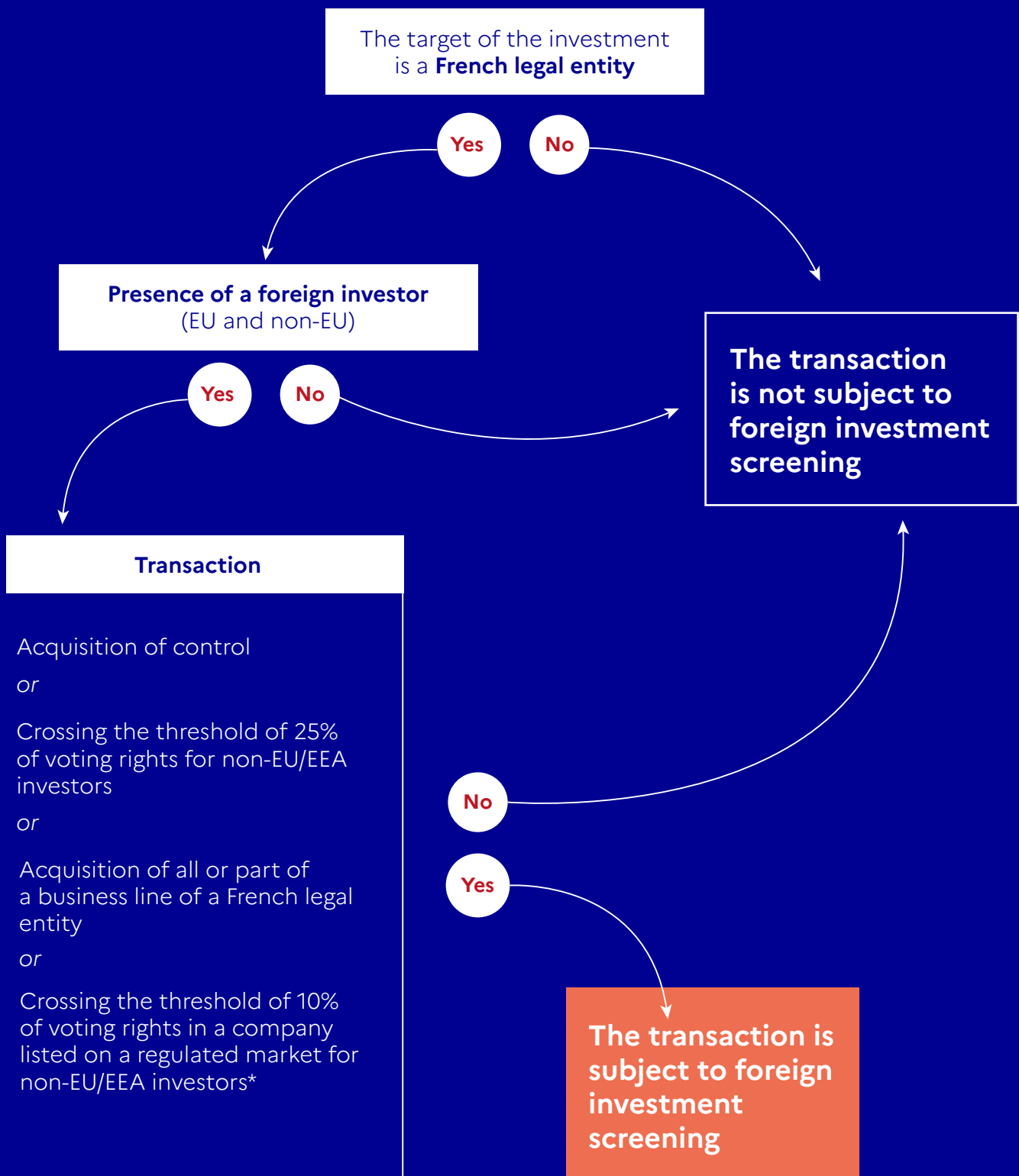
(iii) The French target entity has sensitive business activities ([Article R.151-3 of the French Monetary and Financial Code](#))

Only investments that are (i) made in one of the sectors specifically listed by regulation and (ii) liable to jeopardise public order, public safety or national defence interests are subject to screening.

There are three categories of sectors:

1. Inherently sensitive business activities that fall within the defence and security sectors (Article R.151-3, paragraph I of the French Monetary and Financial Code).
2. Business activities that may, depending on their characteristics, fall within the scope of screening as they relate to essential infrastructure, goods and services for carrying out certain strategic activities, in particular the integrity, security and continuity of the supply of energy and water, transportation networks and services, public health, and food safety (Article R.151-3, paragraph II of the French Monetary and Financial Code).
3. R&D activities that relate to critical technologies listed in the Order of 31 December 2019 and to dual-use items and technologies intended to be used in the sectors mentioned above (Article R.151-3, paragraph III of the French Monetary and Financial Code).

FOREIGN INVESTMENT SCREENING ELIGIBILITY CRITERIA



*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).

3. How does an application for authorisation get filed?

Investments must be at a sufficiently advanced stage before authorisation can be requested. An investor is exempt from obtaining authorisation for certain specific investments covered under Article R.151-7 of the French Monetary and Financial Code.

An application for authorisation must be filed by the foreign investor with the French Treasury on the [FDI in France Platform](#) online service. An electronic acknowledgement of receipt is sent upon receipt of the application.

The application must be submitted in French and include information on the investor, the target entity and the proposed investment, as specified in [Article 1 of the Order of 31 December 2019 \(amended\)](#). A standard form setting out the information requested on the platform is available on the French Treasury's website. The application must also include the EU notification form, completed in English (see Question 12).

Questions about how the screening procedures work or regarding pending applications can be emailed to iefautorisations@dgtresor.gouv.fr. The email must include the related application number, if applicable.

4. How is an application for authorisation reviewed?

The FDI screening procedure is led by the French Treasury and includes the Interministerial Committee on Foreign Investment in France. The Committee comprises officials from different administrative departments (ministries or agencies) with specific expertise in the sectors that are subject to screening. The review examines the three eligibility criteria that determine if an investment is subject to screening. Particular emphasis is given to the impact on public order, public safety and national defence interests.

The procedure takes place in two phases (see Question 6) throughout which the French Treasury cooperates closely with the investor and/or their legal counsel representing them.

During the review, the French Treasury may approach the investor to solicit additional information that was not provided in the application. It may also reach out to the French target undertaking to obtain specific information relating to its business activities.

By law, the investor and the target entity are required to provide the French Treasury, at its request, all documents and information necessary to review the application, and neither the investor nor the target undertaking may object on trade secret grounds ([Article L.151-5 of the French Monetary and Financial Code](#)).

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.

5. How long does it take to reach a decision?

Pursuant to the regulations, the government must make a decision in 75 business days ([Article R.151-6 of the French Monetary and Financial Code](#)). This review period consists of a first phase of no more than 30 business days from the date on which a complete application has been filed followed by a second phase of no more than 45 business days.

6. What are the possible outcomes of the screening procedure?

At the end of the first phase of the screening procedure, the investor will receive one of three possible answers from the Minister for the Economy:

1. Prior authorisation from the Minister is not required under FDI screening regulations as not all of the three eligibility criteria (see Question 2) have been met.
2. Prior authorisation from the Minister is required under FDI screening regulations and the transaction is unconditionally authorised.
3. Prior authorisation from the Minister is required under FDI screening regulations and further review is needed to determine if conditions should be attached to the authorisation in order to safeguard national interests.

In the third instance, the Minister for the Economy gives notice to the investor that a second phase of review will begin. The second phase has three possible outcomes:

1. The investment is unconditionally authorised by the Minister.
2. The investment is authorised by the Minister subject to conditions in order to safeguard national interests. Any such conditions must be justified by the need to protect public order, public safety and national defence interests and comply with the principle of proportionality.

These conditions are primarily designed to ([Article R.151-8 of the French Monetary and Financial Code](#)):

- ensure the continuity and security of sensitive business activities on French territory and protect any information related to these activities;
- preserve and protect the skills and know-how of the French entity;
- adjust the French entity's internal organisational and governance procedures, as well as how the investor's rights in the target French entity are exercised;
- define procedures to share information between the various investment stakeholders and the government.

The Minister may also make the authorisation conditional on the transfer of a percentage of the acquired capital, or of all or part of a business operated by the

target French entity, to an entity separate from the investor and approved by the Minister.

Conditions are discussed with the investor prior to notification of the Minister's decision. The investor must comply with the conditions for as long as they exercise control over the French target entity or for a length of time specified in the decision. In certain cases, conditions may be modified at the investor's request or the Minister's initiative in accordance with the procedures set out in [Article R.151-9 of the French Monetary and Financial Code](#).

3. The investment is not authorised by the Minister. Refusal may or may not be explicitly communicated; it is implied if no response is given within the prescribed regulatory deadline of 75 business days. The grounds on which authorisation may be refused are strictly limited by regulations ([Article R.151-10 of the French Monetary and Financial Code](#)), namely if there are doubts about the investor's character or if it is not possible to attach sufficiently robust conditions set forth by the system to safeguard national interests.

Any decision taken by the Minister can be appealed before the Administrative Court of Paris within two months.

7. What happens after the Minister has reached a decision?

If the investment does not fall within the scope of FDI screening in France, no further action is required by the foreign investor.

If the investment is authorised with or without conditions by the Minister for the Economy, the investor must file a disclosure within two months from the date on which the investment is made. The disclosure must indicate the date on which the investment was completed, the French target entity's new shareholder structure following the investment, the size of the investment (the amount paid or an estimate including the valuation method that was used), and any change in the ownership chain of the French target entity that occurred since the date on which the Minister granted authorisation ([Article 3 of the Order of 31 December 2019, amended](#)).

Any conditions attached to the Minister's authorisation will be **monitored** by the relevant ministerial departments throughout their entire duration.

8. What happens if an investment was carried out without authorisation?

Any undertaking, agreement or contractual clause which directly or indirectly gives rise to a foreign direct investment without the prior authorisation required by FDI screening regulations is deemed null and void ([Article L.151-4 of the French Monetary and Financial Code](#)).

If a foreign direct investment was made without prior authorisation, and following an adversarial procedure initiated by a notice to the investor from the Minister for the Economy, the Minister may order the investor to implement one or more of the following measures ([Article L.151-3-1 of the French Monetary and Financial Code](#)):

1. Apply for authorisation to put the transaction in order. Screening is then performed following the same procedures that apply to investors who seek authorisation prior to making an investment.
2. Amend the transaction.
3. Return to the *status quo ante* at the investor's expense.

Enforcement orders may be cumulatively accompanied by a daily penalty payment ([Article R.151-14 of the French Monetary and Financial Code](#)) to encourage compliance, and/or precautionary measures to protect public order, public safety and national defence interests (such as suspending the investor's voting rights acquired under the transaction requiring authorisation; assigning an agent to safeguard national interests within the French entity; temporarily suspending, restricting or prohibiting the investor from disposing of assets tied to sensitive business activities; prohibiting or restricting the investor from receiving dividends or stock compensation tied to the transaction requiring authorisation).

The Minister may also impose a maximum fine ([Article L.151-3-2 of the French Monetary and Financial Code](#)) up to the greater of:

1. twice the amount of the unauthorised investment
2. 10% of the target entity's annual turnover
3. €1m for an individual and €5m for a legal entity

Lastly, criminal penalties may be imposed upon complaint by the Minister for the Economy, in accordance with [Article 459 of the French Customs Code](#).

9. What happens if the conditions attached to the authorisation are not met?

If an investor fails to comply with one or more of the conditions attached to the authorisation, the Minister for the Economy may, following an adversarial procedure initiated by a notice to the investor, take one or more of the following measures:

1. withdraw the authorisation
2. order the investor to comply with the initial conditions within a specified period of time
3. enforce compliance with new conditions, such as requiring the investor to divest certain business activities or return to the *status quo ante*

Enforcement orders may be cumulatively accompanied by a daily penalty payment to encourage compliance and/or precautionary measures. The Minister may also impose a fine (see Question 8).

Lastly, criminal measures may be imposed upon complaint by the Minister for the Economy if conditions attached to an authorisation are violated, in accordance with [Article 459 of the French Customs Code](#).

10. What happens if the investor obtained authorisation in a fraudulent manner?

The Minister may impose a fine (see Question 8) and criminal measures may be ordered upon complaint by the Minister, in accordance with [Article 459 of the French Customs Code](#).

11. What is the procedure to request an opinion on whether a business activity requires screening?

A request for opinion is a streamlined procedure allowing investment stakeholders to better plan for a transaction. Both the foreign investor and the French target entity can seek an opinion from the administration before initiating an investment transaction in order to confirm whether the French entity's business activities fall within the scope of FDI screening in France ([Article R.151-4 of the French Monetary and Financial Code](#)). The purpose of this request for opinion is to provide greater clearance for planned investments from the moment negotiations begin between the parties or as soon as the French entity considers raising capital. The French entity can take advantage of this procedure to more effectively pursue new investors. This also helps both parties to better anticipate any conditions precedent to the transaction.

The application that must be submitted is more succinct than an application for authorisation given that the government only needs to review information pertaining to the French entity's business activities. A standard form can be found on the French Treasury's website.

The Minister for the Economy will decide if the French entity's business activities require screening within two calendar months.

12. What is the EU FDI screening mechanism?

An EU regulation establishing a framework for the screening of foreign direct investments into the Union entered into force on 11 October 2020. The regulation provides for the implementation of a mechanism allowing Member States and the European Commission to better cooperate and share information on investment

transactions carried out by investors originating outside the EU in one or more Member States.

Pursuant to the EU regulation, any transaction involving a non-EU entity in the investor's ownership chain must be notified to the EU network. Consequently, investors, or their legal counsel, must include the EU notification form in their application for authorisation. The form, which must be completed in English, is available on the French Treasury's [website](#). The government also recommends including an English translation of the application for authorisation, in Word format, that outlines, with supporting rationale, any information that should not be shared with the EU network.

The EU cooperation mechanism on FDI screening does not increase the amount of time afforded under the national procedure for FDI screening in France.

All communication that takes place under the cooperation mechanism is confidential, and information is exchanged through secure channels that comply with national and EU procedures and standards.

For more information on FDI screening in France, please refer to: [Investissements étrangers en France | Direction générale du Trésor](#) (in French)

Reference legislation:

[Articles L.151-1 et seq. of the French Monetary and Financial Code](#) (in French)

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

[Order of 31 December 2019 \(amended\) on foreign direct investments in France](#) (in French)

[Article 459 of the French Customs Code](#) (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](#)

of the 1990s, the 2000s have been characterized by a new wave of health care reform.

As a result of the 2000s health care reform, the following changes have taken place:

- 1. The number of people with health insurance has increased.
- 2. The number of people with private health insurance has decreased.
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