

FDI Guide

Estonia

Contact

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Foreword: A specific chapter is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former.

	Topic	Explanation/Description of what is expected	Estonia
1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	Regime by exception <ul style="list-style-type: none">• The Maastricht Treaty applicable to Estonia guarantees the principle of free movement of capital between Member States of the EU and third countries.• In accordance with Article 65 of the Treaty on the Functioning of the EU (TFEU) exceptions nevertheless exist, including, inter alia, measures grounded on public policy or public security.• Based on this exception principle, Estonia intends to implement a screening procedure regarding FDI in Estonian target companies operating in some sensitive sectors: the Draft Law of the Foreign Investment Reliability Assessment Act (<i>Välisinvesteeringu usaldusväarsuse hindamise seaduse eelnõu</i> or the ‘draft FDI rules’).
2.	Legal regime Authority(ies) in charge	Describe source(s).	The draft FDI rules were presented to the Government at the end of May 2022 and have not yet reached Parliament. According to the explanatory notes, the draft FDI rules are expected to enter into force on 1 May 2023.

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		Name of authority in charge of applying the FDI rules (Minister/Agency/...).	<p>Please note that as the Estonian draft FDI rules are at an early stage,¹ the below answers are based on the draft FDI rules as of 7 June 2022 and the information set out in this questionnaire may change.</p> <p>According to the draft FDI rules, applications for the authorisation of foreign investment must be submitted to the Consumer Protection and Technical Regulatory Authority (Tarbijakaitse ja Tehnilise Järelevalve Amet) via an electronic information system that will be set up specifically for this purpose.</p> <p>The authorisation of foreign investment is decided by the Foreign Investment Committee (Välisinvesteeringukomisjon), which operates at the Consumer Protection and Technical Regulatory Authority. The Foreign Investment Committee consists of the representatives of the Ministry of Justice, Ministry of Defence, Ministry of Economic Affairs and Communications, Ministry of Finance, Ministry of the Interior, Ministry of Foreign Affairs, Security Police Board, Police and Border Guard Board, Consumer Protection and Technical Regulatory Authority and State Intelligence Agency.</p>
3.	Transactions that may be subject to FDI <ul style="list-style-type: none"> • Type • Materiality thresholds • Rights of evocation 	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p>The draft FDI rules cover all transactions resulting in a foreign investor:</p> <ol style="list-style-type: none"> 1. holding directly or indirectly at least ten per cent of the share capital of the target undertaking; 2. acquiring direct or indirect control over the target undertaking; 3. taking over the assets or economic activities of the target undertaking. <p>‘Control’ over a company exists when at least one of the following conditions is met by a natural or legal person:</p> <ol style="list-style-type: none"> 1. the person holds a majority of the voting rights represented by shares in the company or holds the majority of the votes as a general partner or limited partner; 2. the person who is a shareholder, a general partner or limited partner of the company has the right to appoint or remove the majority of members of the supervisory board or management board of the company;

¹ Legal acts are the result of work in multiple stages. The first stage involves the drafting of a bill. During the second stage, the bill is initiated in Parliament (*Riigikogu*). The bill then passes three readings, during which it may be amended. After being passed by Parliament, the act is sent to the President for proclamation, and is then published in the State Gazette (*Riigi Teataja*).

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			<p>3. the person who is a general partner, limited partner, partner or shareholder of the company controls alone the majority of votes pursuant to the agreement entered into with other general partners, limited partners, partners or shareholders; and</p> <p>4. the person exercises or has the power to exercise dominant influence or control over a company.</p> <p>The following persons are considered <i>foreign investors</i>:</p> <ol style="list-style-type: none"> 1. natural persons who are third-country (ie, non-EU) nationals; natural persons who have several nationalities, at least one of which is a third-country nationality; and natural persons who are stateless persons; 2. an entity established under the law of a third country (ie, non-EU); and 3. an entity controlled by: <ul style="list-style-type: none"> (i) a natural person specified in clause 1; or (ii) an entity specified in clause 2, regardless of the place of establishment thereof.
		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are shares transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p><i>Indirect acquisitions</i> of shares are also subject to the draft FDI rules (please see answer 3. If a foreign investor (non-EU investor) acquires a stake in the parent company of an Estonian target company, depending on the economic sector, the investment may be assessed in the EU Member State of the parent company. The cooperation mechanism under Regulation 2019/452 will be used in the case in which several Member States are involved in the authorisation procedure.</p> <p>Share transfers involving group company <i>internal restructuring</i> are covered, if in the course of such a restructuring the foreign investor intends to increase its qualifying holding/acquire control of an undertaking.</p> <p>The draft FDI rules also apply in situations in which a foreign investor intends to increase its qualifying holding/acquire control of an undertaking which, at the time of the acquisition of the qualifying holding, did not fall under the draft FDI rules.</p> <p>Greenfield investments are also covered.</p>
		<p>Does the FDI authority (or another type of governmental authority) have a power</p>	<p>The Consumer Protection and Technical Regulatory Authority is entitled to monitor transactions carried out in Estonia and the compliance of the foreign investment permission</p>

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		of evocation/ex officio/call-in powers? If so, please describe.	obligation set out in the draft FDI rules. The Consumer Protection and Technical Regulatory Authority may apply the following special state supervision measures in the course of the state supervision proceedings: questioning and requiring of documents, summons and compelled attendance, identification of a person, examination of a movable, entry into and examination of premises.
4.	Sectors falling under the FDI scope	<p>Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.</p> <p>Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?</p>	<p>Eleven activities fall under the draft FDI rules.</p> <p>If the investment is made in an Estonian entity that carries out one or more of these activities, permission must be obtained from the Consumer Protection and Technical Regulatory Authority. The Consumer Protection and Technical Regulatory Authority assesses the impact of foreign investment on the security and public order of Estonia or another EU Member State. The completion of the foreign investment subject to a permit is prohibited before foreign investment permission is obtained.</p> <p>The draft FDI rules apply to the following sectors:</p> <ol style="list-style-type: none"> 1. a provider of a vital service;² 2. an undertaking in which the state has a qualifying holding (at least ten per cent of voting rights); 3. an undertaking which, on the basis of a valid contract, manufactures or supplies goods specified in the list of military goods or dual-use goods of the Strategic Goods Act to a public authority or provides technical assistance related to such goods (except for undertakings engaged in the handling of weapons of war, ammunition and ammunition the acquisition of which is regulated in Chapter 112 subchapter 2 of the Weapons Act); 4. a nationwide television or radio service provider, or on-demand audio-visual media service provider within the meaning of the Media Services Act, as well as a publisher of news, newspapers and magazines in the print media and on the internet whose turnover in Estonia in the previous calendar year was at least EUR 3m;

² A vital service is a service that has an overwhelming impact on the functioning of society and the interruption of which is an immediate threat to the life or health of people or to the operation of another vital service or service of general interest. A vital service is regarded in its entirety together with a building, piece of equipment, staff, reserves and other similar facilities indispensable to the operation of the vital service (s 2(4) of the Emergency Act).

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			<ol style="list-style-type: none"> 5. an undertaking that has a geological prospecting or mining permit in Estonia for the exploration or extraction of oil shale or raw materials included in the list of critical raw materials of the EU prepared by the European Commission; 6. an undertaking for which a state's operation stockpile contract or an agreement on delegated stockpile has been entered into; 7. an undertaking that owns a permanent object of national defence within the meaning of the National Defence Act;³ 8. an undertaking that has the infrastructure of masts at least 200 metres high and ensures the operation of national communications or is necessary for the transmission of broadcasting programmes; 9. a railway infrastructure manager who operates a public railway within the meaning of the Railway Act; 10. an operator of a certified aerodrome or heliport whose operated aerodrome or heliport is open to international scheduled air traffic and an air navigation service provider providing air traffic services in the Tallinn Flight Information Region within the meaning of the Aviation Act; and 11. the operator of an Estonian maritime port that belongs to the trans-European transport network in accordance with the list of maritime ports in Annex II of Regulation 1315/2013 of the European Parliament and of the Council. <p>In particular, the following is taken into account in the assessment of economic activity:</p> <ol style="list-style-type: none"> 1. the economic sector of the target undertaking and the importance of the undertaking in that field; 2. the extent to which the target undertaking is financed by EU funds or other public funds; 3. whether the foreign investor intends to change the economic activity or management of the target undertaking;

³ A national defence object may be land, a building or a device, where the attacking, seizure, damage or destruction of which may pose a threat to national security or increased threat to public order, and the realisation of the threat may hinder the normal functioning of the state, disturb the organisation of the military part of national defence, disturb internal security or the capacity for the consistent functioning of a vital service, or cause the destruction of national cultural heritage (s 83(1) of the National Defence Act).

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			<ol style="list-style-type: none"> 4. whether the target company is engaged in R&D and what intellectual property rights it owns; and 5. whether the intellectual property rights are part of the target undertaking. <p>One of the factors is the general competitive situation in the market in which the target undertaking operates, for example, in the case of a highly competitive market in which the target undertaking is not an indispensable market player, the impact of the foreign investment on public policy or public security is relatively small.</p>
5.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	<p>There are three types of foreign investors:</p> <ol style="list-style-type: none"> 1. natural persons who are third-country (ie, non-EU) nationals; natural persons who have several nationalities, at least one of which is a third-country nationality; and natural persons who are stateless persons; 2. an entity established under the law of a third country (ie, non-EU); and 3. an entity controlled by: <ol style="list-style-type: none"> (i) a natural person specified in clause 1; or (ii) an entity specified in clause 2 regardless of the place of establishment thereof. <p>Clarification: Any investor mentioned above, including in a chain of control, is considered a ‘foreign investor’ for the purposes of the Estonian draft FDI rules.</p> <p>A chain of ‘control’ consists of a group formed by a direct investment vehicle, which is a foreign-registered entity as well as an EU entity, and the persons or entities that control it through a holding chain.</p>
6.	Procedure 6.1 Before or post-closing filing		<p>If a planned investment falls within the scope of the draft FDI rules, permission from the Consumer Protection and Technical Regulatory Authority (which may be subject to conditions) must be obtained <i>prior to the completion of the investment</i> in the targeted Estonian entity.</p>
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	<p><i>It is mandatory</i> to apply for permission before the completion of the investment within the scope of the draft FDI rules.</p>

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			<p>Foreign investment permission should therefore be a closing condition precedent to the completion of the transaction.</p> <p>Exceptions: An application must be filed immediately <i>after</i> the transaction, and until permission has been obtained, the foreign investor is not allowed to use the rights attached to the qualifying holding or control, in particular, voting rights:</p> <ul style="list-style-type: none"> • in the case of public offering transactions in securities or series of securities transactions, including transactions in securities convertible into other securities listed on a stock exchange.
8.	6.3 In the case of post-closing, what are the powers of the authority?		Not applicable (pre-filing is mandatory).
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	<p>The target Estonian undertaking, the investor or other participant in foreign investment (eg, the transferor of shares) may reach out to the Consumer Protection and Technical Regulatory Authority and ask for clarification, as well as seek advice on whether the foreign investment is subject to permission.</p> <p>Response timeframe</p> <p>The Consumer Protection and Technical Regulatory Authority must respond within 30 calendar days after the date of registration of the request. The term may be extended to up to two months depending on the complexity of the response.</p>
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	<p>If an intended investment falls within the scope of the draft FDI rules, the investor must file a request for authorisation with the Consumer Protection and Technical Regulatory Authority after the conclusion of the agreement or other transaction on which the foreign investment is based, but before the completion of the foreign investment.</p> <p>The Consumer Protection and Regulatory Authority may request additional information and documents before the start of the proceedings. The proceedings do not start until all the necessary information has been provided. Therefore, in some cases, it may take more time to start the procedure.</p>

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11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist <i>de facto</i> or <i>de jure</i> .	<p>The Consumer Protection and Technical Regulatory Authority has up to 30 calendar days from the date on which the application was deemed complete to reach a decision.</p> <p>In the case that further examination is necessary or if another Member State of the EU or the European Commission has indicated its intention to submit comments or an opinion under Regulation (EU) 2019/452, the term may be prolonged once by up to 90 calendar days.</p> <p>If approval is subject to commitments from, or conditions imposed on, the investor, the Consumer Protection and Technical Regulatory Authority may extend the above terms by up to 60 calendar days to negotiate the measures with the investor.</p> <p>The Consumer Protection and Regulatory Authority may request additional information and documents during the proceedings. However, requesting additional information does not extend the above time limit of the proceedings.</p>
12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	<p>The draft FDI rules set out that if approval is subject to commitments from, or conditions imposed on, the investor, the measures will be negotiated with the investor.</p> <p>As the rules have not yet entered into force, there has been no practice of negotiations.</p>
		Are there any guidelines issued by the authority?	Currently, there are no publicly available guidelines.
13.	(iv) Filing fees	Is there a filing fee?	Not applicable.
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	<p>The following information concerning the foreign investor is required:</p> <ol style="list-style-type: none"> 1. name; 2. date of birth; 3. registry code and date of establishment; 4. address, registered office, email and website address, and telephone number; 5. the state under the law of which the undertaking is established and registered; 6. the citizenship or citizenships of the natural person;

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			<ul style="list-style-type: none"> 7. a description of participation in the transaction and its role in the foreign investment; 8. a description of the ownership structure, including information on the undertaking over which it has control (including its ultimate controlling unit); 9. the beneficial owner; 10. a brief description of the economic activity, including the relevant <i>Nomenclature des Activités Économiques dans la Communauté Européenne</i> (NACE) codes of the Eurostat classification; 11. main competitors; 12. Member States of the EU in which a significant amount of business is conducted, including the names of subsidiaries or branches; 13. turnover in euros of the financial year preceding the foreign investment; 14. the total number of employees; 15. an explanation of whether he or she or the company controlled by him or her is or has been the subject of an international sanction, including a financial sanction; and 16. (where applicable) a stock exchange where the securities of the undertaking owned or controlled by the foreign investor are listed and the relevant trading code or share symbol.
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	As set out in answer 11 above, the final decision must be made within a set timeframe.
16.	Conditionality of approval (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	<p>Foreign investment permission may contain additional conditions that oblige the foreign investor or target company to take measures to avoid endangering the security or public order of Estonia or another Member State of the EU, including transferring a certain shareholding in the target undertaking or continuing existing supply or service agreements.</p> <p>Depending on the individual case, these additional conditions may vary, for example, when a shareholding is acquired, certain persons are prohibited from becoming members of the undertaking's governing bodies or from accessing certain information. The conditions may</p>

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			also include an obligation to transfer a certain shareholding in the undertaking in that situation that the continuity of vital services may depend on it. Additional conditions may also be temporary until new undertaking is found to ensure security of supply.
17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	No. There is no discretion to review transactions that would not meet the conditions set by Estonian law.
18.	(iii) Risk of veto	Describe a topical case. Statistics	It is possible for permission to be revoked by the Consumer Protection and Technical Regulatory Authority. In this case, the foreign investor, target undertaking or other participant in the foreign investment must take the necessary steps to restore the pre-investment situation without delay. As the draft FDI rules have not yet entered into force, there is no practice or statistics on vetos.
19.	Role of other national authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	The relevant authorities or administrations are involved in the Foreign Investment Committee. Please see answer 2.
20.	Sanctions	Describe the type of sanctions that may be imposed by the authority in the case of:	
		<ul style="list-style-type: none"> breach of conditions and/or commitments attached to the approval; and 	If the additional conditions (see answer 16) have not been met, the Consumer Protection and Technical Regulatory Authority has the right to issue a precept to the foreign investor, target undertaking or other participant in the foreign investment obliging compliance with the additional conditions or to transfer a holding or part of the target undertaking, or to perform other actions to restore the pre-investment situation. The precept will contain a deadline for the performance of the obligations provided for in the precept.

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			<p>If the precept is not complied with in due time, the Consumer Protection and Technical Regulatory Authority may impose a penalty payment in the amount of up to €100,000 for each imposition.</p> <p>The term may be set and a penalty payment may be applied repeatedly until the obligation is duly fulfilled.</p> <p>The sanction imposed must be effective and proportionate to remedy the breach.</p>
		<ul style="list-style-type: none"> investment carried out without prior approval. 	<p>If an investment subject to the draft FDI rules is carried out without prior authorisation, the Consumer Protection and Technical Regulatory Authority has the right to issue a precept to the foreign investor, target undertaking or other participant in the foreign investment obliging the transfer of the holding or part of the target undertaking or perform acts to restore the pre-investment situation.</p> <p>In the event of non-compliance with the precept, the Consumer Protection and Technical Regulatory Authority may impose a penalty payment in the amount of up to EUR 100,000.</p> <p>The term may be set, and a penalty payment may be applied repeatedly until the obligation is duly fulfilled.</p>
21.	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic.	Not applicable. The draft FDI rules have not yet entered into force.