

FDI Guide
France

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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.

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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.	<p>Regime by exception</p> <ul style="list-style-type: none"> • The Maastricht Treaty applicable to France guarantees the principle of free movement of capital between Member States of the EU and third countries. This principle is replicated in Article L 151-1 of the French Monetary and Financial Code (Code monétaire et financier). • In accordance with Article 65 of the Treaty on the Functioning of the European Union (TFEU) exceptions nevertheless exist, including, inter alia, measures grounded on public policy or public security. • Based on this exception principle, France has implemented a screening procedure regarding FDI in French target companies operating in some sensitive sectors (the ‘FDI rules’, as widely determined in Article L151-3 I of the Monetary and Financial Code).
2.	Legal regime Authority(ies) in charge	Describe source(s). Name of authority in charge of applying the FDI rules (Minister/Agency/...).	<p>French foreign investment screening rules are set out at:</p> <ul style="list-style-type: none"> • Articles L 151-1 and what follows of the French Monetary and Financial Code; and • R 151-1 and what follows of the same code. • Foreign investment clearance requests must be sent to the attention of the Minister of the Economy by registered mail or electronic means.¹ <p>Within the Ministry of the Economy, the relevant department is the Treasury Department (Direction Générale du Trésor) and specifically the Foreign Investment Office (Bureau Multicom 4, Télédoc 233, 139, rue de Bercy – 75572 Paris Cedex 12).</p>

¹ See: www.tresor.economie.gouv.fr/services-aux-entreprises/investissements-etrangers-en-france/la-composition-de-votre-dossier-de-demande, accessed 11 October 2022. An electronic acknowledgement of receipt is sent upon receipt of the application.

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3.	Transactions that may be subject to FDI <ul style="list-style-type: none"> Type 	<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 nature of the transactions depends on whether the foreign investor(s) is(are) based in the EU or European Economic Area (EEA), or in another third country entity.</p> <ol style="list-style-type: none"> For investors based in the EU or EEA: acquisition of ‘control’ of the French target entity (as defined by the French Commercial Code): <ul style="list-style-type: none"> ‘control’ over a company exists when a natural or legal person: <ul style="list-style-type: none"> directly or indirectly holds a fraction of the share capital that gives it the majority of voting rights at that company’s shareholders meetings;² solely holds the majority of voting rights in that company by virtue of an agreement entered into with other shareholders and this is not contrary to the company’s interests; effectively determines the decisions taken at that company’s shareholders meetings through the voting rights it holds; or is a partner in, or shareholder of, that company and has the power to appoint or dismiss the majority of members of that company’s administrative, management or supervisory bodies. Investors based in countries outside the EU or the EEA: acquisition, directly or indirectly, solely or in concert, of more than 25 per cent of the voting rights of a French entity. Investments from foreign investors, irrespective of the country in which they are based: acquisition, in part or in full, of any business division operated by a French entity. <p>See also special Covid thresholds under 20 below.</p>
	<ul style="list-style-type: none"> Materiality thresholds 	<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>Yes. Any investor mentioned above, including in a chain of control, is considered a ‘foreign investor’ for the purposes of French FDI control.</p>

² A person is deemed to exercise such control when it directly or indirectly holds a fraction of the voting rights above 40 per cent and no other shareholder directly or indirectly holds a fraction larger than its own. Additionally, two or more persons acting jointly are deemed to jointly control another company when they effectively determine the decisions taken at its shareholders meetings.

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		<p>Are shares transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>A chain of control consists of a group formed by a direct investment vehicle, which can be a foreign-registered entity, as well as a French entity, and the persons or entities that control it through a holding chain (see above definition of control).</p> <p>When no control can be established on the basis of shareholding, one should verify the situation in light of the rights, contracts or other means which, either separately or in combination and having regard to the circumstances of fact or law, may confer the possibility of exercising decisive influence on the activities of an undertaking.</p> <p>Relevant investors are exempt from any request for authorisation when the investment is made between entities belonging to the same group, that is, entities held at more than 50 per cent of the capital or voting rights directly or indirectly by the same shareholder.</p> <p>Exemption for greenfield investments is not relevant for France.</p>
	Rights of evocation	Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.	French authorities are entitled to monitor transactions being carried out in France and to require that the FDI rules be complied with if a given transaction falling within their scope is not properly referred to them.
4.	Sectors falling under the FDI scope	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>Nine main activities fall under the FDI rules.</p> <p>If the investment is made in a French entity that carries out one or more of these activities, the Minister of the Economy <i>must</i> apply the screening procedure; by contrast, it is not entitled to apply it regarding activities not included in the list set out by the French legislator:</p> <ul style="list-style-type: none"> • defence/airspace-related activities;³ • food production;⁴ • all gambling activities except casinos;

3 Production of arms/ammunition; supply of goods and services to operators of vital importance; contracts or subcontracts with the French Ministry of Defence for the supply of arms; dual use goods; and contracts requiring a licence under laws on national defence secrecy.

4 Production, processing and distribution of agricultural products as far as they contribute to national food security objectives.

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			<ul style="list-style-type: none"> • media;⁵ • public health; • R&D;⁶ • data processing and storage;⁷ • main infrastructure and associated services/suppliers;⁸ and • public and private security, and IT security.⁹ <p>Note: There may be a grey area regarding the qualification of the activities carried out by the French entity in which the investment is planned, with regard to the legal definitions. A ruling procedure exists (see 8 below).</p>
			<p>Specifically, prior authorisation is required for foreign investment in an activity in France that, <i>even on an occasional basis</i>, participates in the exercise of public authority or falls within one of the following fields:</p> <ul style="list-style-type: none"> • activities likely to adversely affect public policy, public security or national defence interests; and • activities related to the research, production or marketing of weapons, ammunition, powders and explosive substances.
		<p>Are there sector-specific stricter limits on foreign investment that will apply such as a lower thresholds or sectors for which no foreign investment is possible? If yes,</p>	<p>Applicable thresholds are specified in 3 above and are the same regardless of the sector. However, there are specificities for listed companies with activities in sensitive sectors: see 21 below.</p>

5 All activities in relation to political and general information press services (on paper and online).

6 R&D activities in relation to cybersecurity; artificial intelligence; robotics; additive manufacturing (eg, three-dimensional printing); semiconductors; telecoms, quantum technologies; biotechnologies; energy storage; and, as of 1 January 2022, the production of renewable energy.

7 Activities of processing or storage of data, disclosure (voluntary or not) of which is likely to impair the exercise of other sensitive activities.

8 Operation of, and supply to, the following sectors: (1) transport; (2) energy; (3) potable water; (4) telecoms; (5) critical infrastructure for the interest of national defence; and (6) space operations.

9 Licensed companies in private security; activities relating to cryptology; activities necessary for the exercise of missions by police forces; civil security services; customs services; activities in relation to counterterrorism or the fight against chemical attacks; and provision of information/technology security services to strategic public or private operators.

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		which sectors (eg, nuclear energy/agriculture)?	
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 four types of foreign investors:</p> <ol style="list-style-type: none"> 1. any individual of foreign nationality; 2. any individual of French nationality who is not tax-domiciled in France; 3. any foreign-registered entity; and 4. any French entity controlled by one or more persons or entities referred to above. <p>Clarification: Any investor mentioned above, including in a chain of control, is considered a ‘foreign investor’ for the purposes of the French 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 a French entity, and the persons or entities that control it through a holding chain (see also responses to 3 above).</p> <p>Note: Foreign investors from the EU/EEA face a reduced scope of FDI rules versus investors from other foreign countries with higher thresholds that trigger French Ministry of the Economy screening (see 3(1) above).</p>
6.	Procedure 6.1 Before or post-closing filing		<i>As a principle</i> , if a planned investment falls within the scope of the FDI rules, the clearance of the Minister of the Economy (which may be subject to conditions) is required (and must be obtained) <i>prior to the completion of the investment</i> in the targeted French law entity.
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	<i>It is mandatory</i> to file a request for clearance before the completion of any investment falling within the scope of the FDI rules. Foreign investment clearance should therefore be a closing condition precedent to the completion of the transaction.

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			<p>Exceptions: No application is required:</p> <ul style="list-style-type: none"> • when the investment is made between entities belonging to the same group; and • when the investor exceeds, directly or indirectly, solely or in concert, the threshold of 25 per cent of the voting rights in an entity that it had previously acquired with the proper authorisation of the Minister of the Economy.
8.	6.3 In the case of post-closing, what are the powers of the authority?		<p>Not applicable (pre-filing is mandatory).</p> <p>But please refer to 18 (Part II) regarding the control by the authority, <i>after closing</i>, of the satisfaction of the commitments conditioning the approval.</p>
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 targeted French law entity, or the investor itself (with the prior approval of the French targeted entity or the ‘Target’), is entitled to file a written preliminary request with the Minister of the Economy to determine whether or not a contemplated investment is subject to prior clearance (Article R 151-4 of the French Monetary and Financial Code).</p> <p>Application and supporting documents</p> <p>This request must be filed with a list of documents and information as determined in French Order dated 31 December 2019.</p> <p>Response timeframe</p> <p>The Ministry must respond within two months from the date of receipt of the request:</p> <ul style="list-style-type: none"> • either the Minister requires a filing; or • confirms that no filing is required. <p>No response within two months implies that a filing must be made.</p>
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	<p>Once a projected investment falls within the scope of the FDI rules, the investor must file a request for authorisation with the Minister of the Economy.</p>

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			<ul style="list-style-type: none"> • <i>De jure</i>, the Ministry has a maximum period of 75 <i>business days</i> to issue its decision from the date on which the application is deemed complete. Reaching the time limit is equivalent to a rejection. • <i>In practice</i>, given the possibility for the competent services to request additional information during the process, the review may take longer than three and half months.
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>Under the relevant provisions governing the FDI rules, the review and the response time are framed by specific deadlines within two successive and theoretical periods as described below:</p> <p>First period (Phase 1): ‘fast track’</p> <p>Within 30 <i>working days from the date of receipt of an application</i>, the authority must issue a first decision according to which:</p> <ul style="list-style-type: none"> • the investment does not require any prior control (out of scope) and is fully approved;
			<ul style="list-style-type: none"> • the investment does require prior approval, which is granted without any conditions; • the investment does require prior approval, but further review is needed to determine whether and how the preservation of national interests should be guaranteed (see the ‘long track’ below); or • the investment is rejected. <p>The absence of a response within this 30-working day period is deemed a rejection of the request for approval.</p> <p>Second period (Phase 2): ‘long track’</p> <p>When further examination is necessary, clearance conditions can be imposed in the form of certain binding commitments of the investor vis-à-vis the Minister of the Economy.</p>

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			<p>The decision shall be issued within <i>45 working days</i> of receipt of the Minister's notification of the decision that the investment requires further examination.</p> <p>The lack of a decision at the end of this 45-day period is deemed to be a rejection.</p> <ul style="list-style-type: none"> • Both the 30-day and 45-day periods can be extended at will by the authority as long as the file or data requested are not completed to its satisfaction. • The process may be also delayed due to the involvement of other ministries (eg, the Ministry of Defence, and possibly other Member States and the European Commission) (also refer to responses below on this aspect).
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 process is interactive with the relevant services of the Minister of the Economy, and there is room for the applicants and their lawyers to discuss both the content and drafting of the prior commitments required.</p> <p>It is not unusual to meet several times with the teams in charge of the review of the request, and to make proposals and present arguments to try to negotiate the scope and content of these commitments.</p> <p>The conditions cannot be entirely discretionary: they must be guided by the principle of proportionality (see 14 below).</p>
		Are there any guidelines issued by the authority?	Currently no publicly available guidelines provide insight into how the relevant department processes applications or guidance on the applicable criteria for deciding clearance conditions, if any. However, the French Ministry of the Economy has recently announced the publication of guidelines before the end of 2022 following a public consultation launched by the General Directorate of the Treasury.
13.	(iv) Filing fees	Is there a filing fee?	No.
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	The application must be submitted in French and include information on: ¹⁰

10 Order dated 31 December 2019 amended by an order dated 21 September 2021.

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		shareholders? Information on other FDI approvals by other authorities?	<ul style="list-style-type: none"> • the investor: identity; organisation chart; corporate information, including shareholding up to the top entity controlling the investors; detailed description of the activities carried out, in particular the services or products provided; mention of any capital link or significant financial support from a state or public body outside the EU during the last five years; description of the markets in which the investor operates; list of French and foreign competitors; and declaration of non-conviction; • the target entity (detailed corporate information, ownership, description of its activities, market share, products and services, etc); • the proposed investment: amount, strategy of the investor in the sensitive sectors concerned in France and the EU, financial terms, timetable and the list of states of the EU in which the operation has been or will be notified under the applicable merger control and foreign investment rules and the dates of the various notifications.
			<p>A form is available on the Directorate General of the Treasury’s website.¹¹</p> <p>The application must also include the European notification form, completed in English, if any.</p> <p>Questions on screening procedures or pending applications can be emailed to IEFautorisations@dgtresor.gouv.fr. The email must include the related file number, if applicable.</p> <p>During the review, the Treasury Department may approach the investor to solicit additional information that was not provided in the application. It may also reach out to the French target company to obtain specific information relating to its activities.</p> <p>By law, the investor and target company are required to provide the Treasury Department, at its request, all documents and information necessary to review the</p>

11 See www.tresor.economie.gouv.fr/Articles/2022/02/22/ief-publication-des-dossiers-types-pour-le-depot-des-demandes-d-examen-prealable-ou-d-autorisation-au-titre-de-la-reglementation-sur-le-controle-des-investissements-etrangers-en-france accessed 11 October 2022.

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			application, and neither the investor nor the company may object on trade secret grounds.
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 11 above, if the Minister does not issue a decision within the legal time periods, that is, at the end of the Phase 1 or Phase 2 review, as the case may be, the proposed investment is deemed rejected.
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>Conditions or commitments usually aim at:</p> <ul style="list-style-type: none"> ensuring the continuity and security, on the French territory, of activities falling within the scope of a sensitive sector and carried out by the entity in which the investment is being made, in particular by ensuring that: (1) these activities are not subject to the legislation of a foreign state likely to hinder them; and/or (2) the information related to them is adequately secured and not freely accessible by third parties; maintaining the knowledge and know-how of the French entity in which the investment is being made and preventing their diversion to foreign entities or interests;
			<ul style="list-style-type: none"> adapting the internal organisation and governance of the entity (including by way of the appointment of a French state representative to the board as a member of the board or an observer); and ensuring that the French public authorities are informed on an ongoing basis about how the commitments are being met over time.
			Commitments may, in some cases, go as far as having a significant portion of the shares or the relevant branch of the target entity transferred to another entity designated by the authority.

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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.	<p>No. There is no discretion to review transactions that would not meet the conditions set by French law.</p> <p>The Ministry of the Economy must scrupulously respect the legal framework. Its decisions are subject to appeal,¹² should this not be the case.</p> <p>This said, the Ministry has a wide discretionary assessment power to accept, conditionally accept or reject a request for clearance.</p>
18.	(iii) Risk of veto	Describe a topical case. Statistics	<p>A veto is possible, but extremely rare. In most cases, the French Ministry and foreign applicants reach an agreement on binding commitments, thereby avoiding a mere rejection.</p> <p>However, in 2021, the French Minister vetoed: (1) the United States investor Teledyne's application to invest in Photonis (taking into account the opinion of the Ministry of the Armed Forces); and (2) the Canadian Couche-Tard was deterred by public announcement of the Ministry of the Economy from acquiring Carrefour.</p>
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 FDI process may lead to other French ministries or French administrative authorities being involved depending on the activities (defence, aviation, banking and finance, and media because sector-specific restrictions apply), and possibly other Member States, as well as the European Commission. ¹³
20.	Sanctions	Describe the type of sanctions that may be imposed by the authority in the case of:	<ol style="list-style-type: none"> 1. If an investment subject to FDI rules is carried out without a prior clearance, the Minister of the Economy has a wide range of powers:

¹² Before the administrative court; the appellants may base their claim on the illegality of the decision or a manifest error of assessment by the authority (which, in practice, is very difficult to demonstrate).

¹³ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 (the 'Regulation') provides a framework for screening FDI in the EU. It contains various provisions designed to strengthen cooperation between Member States, such as the implementation of an alert mechanism between Member States and the possibility of requesting opinions from the European Commission and other European competent authorities. As of 1 January 2022, the application documents in the various relevant Member States shall include the notification form required under the Regulation, where an entity in the investor's chain of control is a national of a non-EU state.

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		<ul style="list-style-type: none"> breach of conditions and/or commitments attached to the approval; and 	<ul style="list-style-type: none"> order the investor (the offender) to: file for an authorisation request, ex post; restore the previous pre-transaction situation at its own expense; amend the investment/transaction; and
			<ul style="list-style-type: none"> take provisional measures, if the protection of national interest is at stake, such as: <ul style="list-style-type: none"> ordering the suspension of the voting rights attached to shares irregularly acquired by the investor; ordering the appointment of a temporary manager (an agent) entrusted with the management, daily operation and representation of the French entity; the appointed manager is responsible for ensuring the protection of national interests and may obstruct any decision of corporate bodies likely to harm these interests; ordering the suspension, or temporarily restricting or prohibiting the free disposal of all or part of the assets related to the sensitive activities at stake; and
			<ul style="list-style-type: none"> ordering the prohibition or limitation of any distribution of dividends attached to the shares irregularly acquired by the investor. <p>2. If the foreign investor <i>fails to comply with the clearance conditions</i>, the Minister of the Economy has the power to withdraw authorisation¹⁴ or order the investor to implement the initial clearance conditions or new conditions within a certain period, including measures to restore the previous pre-transaction situation, or divest all or part of the sensitive activities at stake.</p>
		<ul style="list-style-type: none"> investment carried out without prior approval. 	<p>The Minister of the Economy may impose daily penalties in the case of non-compliance with its order(s), which cannot exceed EUR 50,000 per day (R 151-14 FMFC).</p>

14 In such an event, unless it restores the pre-transaction situation, the foreign investor must reapply for the investment authorisation.

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			<p>The Minister of the Economy also has the power to impose fines, the amount of which cannot exceed the highest of the following amounts:</p> <ul style="list-style-type: none"> • twice the value of the irregular investment; • ten per cent of the annual pre-tax sales of the targeted French law entity; or • EUR 1m for natural persons and €5m for legal entities. <p>The fines must be proportional to the gravity of the infringement committed.</p>
21.	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic.	<p>In response to the health crisis, a special Decree dated 22 July 2020 provided for the temporary lowering of the control threshold for foreign investment in French companies whose shares are admitted to trading on a regulated market from 25 per cent to ten per cent of voting rights. This measure is applicable until 31 December 2022.</p> <p>In order to limit the obstacles to market liquidity, the process has been simplified, with reduced information¹⁵ to be notified to the Minister who must request a filing within ten business days from the notification.</p> <p>Absent such a request, the investment shall be deemed authorised.</p>

¹⁵ Such notification must contain information regarding its planned interest in the relevant French listed company (shares, securities giving access to shares, voting rights etc), as well as the usual information contained in the statement of intent any investor must file with the French Regulator (*Autorité des marchés financiers*).

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