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CELIS Country Note

on

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by

Ruben Koslar, CELIS Country Reporter for France

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Abstract

This Country Note provides a comprehensive analysis of France's foreign investment screening mechanism as of 2025, examining its legal, administrative, and political context.

France actively encourages foreign investment through favourable policies and incentives, maintaining its position as a leading European destination for international capital. However, investments in sensitive sectors—such as defense, critical infrastructure, and advanced technologies—are subject to prior authorization by the Minister of Economy to safeguard national interests. The screening framework, rooted in the French Monetary and Financial Code and shaped by evolving geopolitical and economic considerations, applies broadly to foreign investors, including those from the EU.

The report details the procedural steps for investment review, the scope of sensitive activities, and the conditions or sanctions that may be imposed. It highlights the dynamic nature of the French regime, which adapts to emerging threats and policy debates, balancing economic openness with sovereignty and security concerns. Recent legislative and regulatory developments, as well as ongoing discussions about the future direction of investment control, are also addressed.

The analysis draws on recent data, case studies, and official guidelines, offering insights for policymakers, investors, and legal practitioners navigating France's foreign investment landscape.

Author

Ruben Koslar is a member of the Paris Bar and a Partner at Jeantet AARPI, which he joined in 2015 after having worked for several years at another leading French business law firm.

He advises French international clients in M&A transactions, including all aspects relating to foreign investment control.

Throughout his career, Ruben has advised a significant number of foreign investors on complex foreign investment authorization processes in the context of highly strategic transactions, touching upon French sovereignty in a range of industry sectors (critical technologies, healthcare/ biotechnology, agriculture, defense, infrastructure, including (renewable) energies, etc.).

He has been actively contributing to stakeholder consultations on French foreign investment guidelines organized by the French Ministry of Economy ahead of their publication in September 2022.

He is regularly quoted as an expert on foreign investment control in France.

Ruben is also a lecturer at the Law School (Ecole de Droit) of SciencesPo (Paris), where he teaches a class on legal aspects of M&A transactions, with a particular focus on foreign investment control in M&A transaction, at master level.

Contact the author: rkoslar@jeantet.fr

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CELIS Country Note on France, 2025

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1. Political Background

Part 1 of the Country Note gives an overview over the political background of the French foreign investment screening mechanism, including (1.1.) foreign investment policy (1.2.) other relevant policies and (1.3.) key features of the screening mechanism.

1.1. Foreign Investment Policy

Like other European jurisdictions, France actively seeks to attract foreign investment by creating favourable economic policies and conditions.

As such, the French government actively promotes investment opportunities through agencies like *Business France*.¹ These entities provide information, support, and incentives to foreign investors. Every year, in order to promote its economic assets, foreign investors are invited to *Choose France*² in Versailles, a summit dedicated to France's economic attractiveness.

France also offers tax incentives and subsidies to attract foreign investment, such as tax credits for research and development activities or tax breaks for investments in specific regions. France ranks among the first OECD countries regarding public funding and tax incentives for R&D, thanks to programs such as the *crédit d'impôt recherche* (CIR).³

Even though most recent figures are somewhat less promising, according to a yearly study published by Ernst & Young on 2 May 2024, France has been the most attractive destination in the European Union (EU) for foreign investments for the fifth year in a row, with 1,194 announced investments in 2023 (compared to 995 in the UK and 733 in Germany), of which 530 creations or extensions of industrial sites, and 39,773 jobs created (of which more than 20,000 for industrial projects).⁴

¹ *Business France*, <https://www.businessfrance.fr/>, consulted on April 25, 2025.

² *Choose France*, <https://www.elysee.fr/emmanuel-macron/choose-france>, consulted on April 25, 2025.

³ *Innotax*, <https://stip.oecd.org/innotax/countries/France>, consulted on April 25, 2025.

⁴ *Info.gouv.fr*, « Attractivité : la France championne d'Europe des investissements étrangers », <https://www.info.gouv.fr/actualite/attractivite-la-france-championne-deurope-des-investissements-etrangers>, consulted on April 25, 2025.

This approach is in line with the legal principle that financial relations between France and foreign countries are authorized as a matter of principle (Article L151-1 of the Monetary and Financial Code), a principle applying across all sectors of the economy, in furtherance of the constitutionality enshrined freedom of commerce, as well as the freedoms of the EU internal market (in particular the freedom of movement of capital).

1.2. Other Relevant Policies

However, investments in sensitive activities (i.e., those considered to participate in the exercise of public authority or putting at risk public security, public security and national defence interests) are subject to prior approval by the Minister of Economy, i.e., a foreign investment screening mechanism.

To fully apprehend the French foreign investment screening mechanism – and the balance it aims to achieve between attractiveness to foreign investments and the protection of national interests – it is useful to briefly recall the history of the French screening mechanism, which has come to life in 1966, as a corollary of the opening of the country's economy to foreign investments in the aftermath of World War 2. The contours of a prior authorization mechanism with specific sanctions attached to it arise in 1996 and it is from 2003 onwards that the sectorial logic of today's mechanism starts to take form, adding in a first step private security and gambling activities to defence activities (which are detailed out in 2005).

The dynamic of sectorial extension of the mechanism is then pursued through political crises, which continue to shape the perception of what is strategic for the country, notably in 2014 (the so-called *décret Montebourg*), with a first list of critical infrastructures, such as energy, water, transport, electronic communications and, subsequently, research and development in critical technologies (cybersecurity, artificial intelligence, semi-conductors, robotics, quantum technologies, etc.).

1.3. Key Features of the Screening Mechanism

The aforementioned balance between attractiveness to foreign investments and the protection of national interests is an ever-evolving one, where the political sphere often reacts to current events to exert pressure on the legal framework, for example following foreign investments ill-perceived by the public opinion (such as the acquisition of Alstom's energy division by General

Electric in 2014 (leading to the *décret Montebourg*),⁵ the Covid crisis (giving rise to the inclusion of biotechnologies in the list of critical technologies) and, most recently, the trade conflicts between China and the EU, giving rise to the classification of critical raw materials as sensitive.

Like in many other European and other countries, protectionist voices are more and more dominant, reshaping the perception and assessment of public security considerations, with an emphasis on sovereignty. In extreme cases, political interventions bypass a regular assessment, via ministerial declarations leading to a shelving of the investment process (e.g., in the context of the planned acquisition of the French supermarket group Carrefour by Canadian competitor Couche-Tard, due to food safety considerations).⁶

In a recent first, the French Minister of Economy has ceded to political pressure from the opposition and made public an agreement between the French State, US investment fund CD&R and Sanofi in relation to the acquisition of a majority stake in Sanofi's non-prescription division Opella (producing the Frenchs favourite painkiller Doliprane), before the screening of the investment in a regular screening process.⁷

2. Overview of Domestic Screening Mechanisms

Part 2 of the Country Note gives a short inventory of the French domestic screening mechanism, in the context of various possible mechanisms, including (2.1.) a cross-sectoral screening mechanism, (2.2.) sectoral screening mechanisms, (2.3.) mixed screening mechanisms, (2.4.) asset-based screening mechanisms, (2.5.) designated-entity screening mechanisms and (2.6.) sub-national screening mechanisms.

⁵ M.-A. Lavergne, « Contrôle des investissements étrangers en France : entre souveraineté économique et attractivité aux investissements étrangers », *Dalloz Actualité*, February 15, 2023, [Contrôle des investissements étrangers en France : entre souveraineté économique et attractivité aux investissements étrangers | Interview | Dalloz Actualité](#), consulted on April 28, 2025.

⁶ P. Bine, « Contrôle des investissements étrangers en France : le rôle de l'avocat », *Dalloz Actualité*, March, 13 2023, , [Contrôle des investissements étrangers en France : le rôle de l'avocat | Interview | Dalloz Actualité](#), consulted on 28, April 2025.

⁷ Ministère de l'économie, des finances, et de la souveraineté industrielle et numérique, « *L'Etat obtient les garanties du maintien et du développement d'Opella en France* », October, 21 2024, <https://presse.economie.gouv.fr/letat-obtient-les-garanties-du-maintien-et-du-developpement-dopella-en-france/>, consulted on April 28, 2025.

2.1. *Cross-Sectoral Screening Mechanism*

While financial relations between France and other countries are in principle unrestricted,⁸ the prior authorisation from the Minister of Economy is required for foreign investment in an activity in France which, even on an occasional basis, is involved in the exercise of public authority or falls within one of the following areas: a) Activities likely to undermine public order, public security or the interests of national defence; b) Activities relating to the research, production or marketing of weapons, munitions, powder and explosive substances.⁹

The list of sensitive activities has been established in significant details, on the basis of three categories: defence-related activities, activities relating to critical infrastructure, goods and services and research and development activities relating to critical technologies.

Due to its wide scope of application, covering many different sectors of activity, this mechanism can be qualified as a cross-sectoral screening mechanism. For further details, please refer to Part 3.

2.2. *Sectoral Screening Mechanisms*

The aforementioned cross-sectoral mechanism applies in the same manner to all sectors within the scope of application of French foreign investment screening regulations. For example, there are no formally stricter requirements or a different scope of application of the screening mechanism for investments in the defence sector.

This being said, in practice, the assessment of threats to national interest varies depending on the sector concerned by the investments, with investments in the defence sector being subject to very close scrutiny.

2.3. *Mixed Screening Mechanisms*

Formally, France does not have mixed screening mechanisms, meaning that the same legal framework applies to all sectors falling within the scope of French foreign investment control, subject to differences in sectoral application.

In particular in the defence sector, the screening can overlap with other types of review, which are not necessarily linked to the nationality of the investor.

⁸ Article L151-1 of the Monetary and Financial Code.

⁹ Article L151-3 of the Monetary and Financial Code.

2.4. Asset-Based Screening Mechanisms

There is not as such an asset-based screening mechanism in France. However, as mentioned above, the French Minister of Economy has the authority to screen foreign investments based on the activity of the target. This screening applies to all asset classes to the extent they are involved in a sensitive activity (real estate, infrastructure, patents, etc.) In this regard, it should be noted that an acquisition of all or part of a branch of activity can fall within the scope of French foreign investment control, allowing the Minister of Economy to control acquisitions of asset portfolios or even isolated assets, to the extent they are involved in a sensitive activity (e.g., a patent). In addition, it should be noted that the French State can be the owner of assets and has control over the public domain.

2.5. Designated-Entity Screening Mechanisms

The French State holds a significant number of participations in strategic French companies, notably via the *Agence des participations de l'Etat*. As significant or majority shareholder, the French State can oftentimes exercise decisive influence over such entities and can have rights to control its shareholding, via specific laws or on a contractual basis (for example, specific veto rights or control sales of shares via approval requirements).

For listed companies, an authorization requirement applies for crossing the threshold of 10% of voting rights. Please see further details below.

2.6. Sub-National Screening Mechanisms

Sub-national (e.g., regional) screening mechanisms are very uncommon in France, due to the centralized organization of the political institutions of the country. There is sub-national screening mechanism for foreign investments in France.

3. Overview of Relevant Framework

Part 3 of the Country Note provides an overview of the relevant framework, via description of (3.1.) the legal, administrative and supervisory framework of French foreign investment screening, (3.2.) the scope of application of the screening mechanism, (3.3.) the procedure of the review mechanism, (3.4.) conditions, refusals of authorization, (3.5.) sanctions and (3.6.) legal recourses against investment screening decisions.

3.1. Overview of Legal, Administrative and Supervisory Framework

French foreign investment control's legal and regulatory provisions are codified in the French Monetary and Financial Code (*Code monétaire et financier*), notably Articles L151-3 to L151-5 (legal provisions containing the principles and sanctions) and Article R151-1 to R151-17 (regulatory provisions detailing out the legal framework). These provisions are the result of process of legal evolution started in the 1960s (please refer to Part 1). The provisions of the French Monetary and Financial Code frequently refer to other legal provisions, in particular of corporate law and, as regards sanctions, criminal/customs law.

Further details of the application of the codified legal framework have been added by successive orders and decrees, most importantly Order of 31 December 2019 on foreign investment in France, which has been updated by further orders and decrees, notably to update the list of sensitive activities and to align certain aspects of the French screening mechanism to 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 (EU Screening Regulation).

The administrative doctrine of the French Minister of Economy is summarized in the Guidelines relating to foreign investments in France dated September 2022, a key document guiding foreign investors and their advisors on the interpretation of the regulatory framework by the Minister. The Ministry also publishes annual reports on its activity relating to foreign investment control and FAQs, both also being available in the English language.¹⁰ These publications are highly appreciated by practitioners, due to the increase in transparency of the screening mechanism they bring about (even though transparency remains overall rather limited).

For a more detailed overview of the applicable legal and regulatory framework, please refer to Annex 1.

¹⁰ Ministère de l'économie, des finances, et de la souveraineté industrielle et numérique, « Contrôle des Investissements étrangers en France : Procédures de demande d'autorisation et d'examen préalable », <https://www.tresor.economie.gouv.fr/services-aux-entreprises/investissements-etrangers-en-france>, consulted on April 28, 2025.

3.2. Scope of Application of the Screening Mechanism

The prior authorization mechanism applies subject to three cumulative conditions being met: (A.) the investor must be foreign, (B.) the investment must be an investment within the meaning of French regulations and (C.) the activity of the target must be considered sensitive.

A. Foreign investor

Foreign investors are:

1. Foreign nationals;
2. French nationals having their residence outside of France;
3. foreign companies;
4. French companies having a foreign company in their chain of control.

Control is assessed on the basis of French corporate law (Article 223-3 of the Commercial Code), which includes a very broad definition of control, either alone or in concert, including by virtue of holding shares giving access to a majority of voting rights, other means of holding a majority of voting rights, having the power to decide *de facto* within the shareholders' assembly, having control of governance bodies of a company. Control is presumed to exist when a person holds (directly or indirectly) 40% or more of the voting rights of a company and no other person holds (directly or indirectly) at least 40% of such voting rights.

In case no control can be established on the basis of the aforementioned provisions, a concentration within the meaning of French merger control provisions (Article 430-1 of the French commercial Code) is deemed to constitute a change of control.¹¹

In 2023, 43% of the ultimate investors in 2023 were financial investors, 32,7% were industrial investors and 24,3% were individuals. Most screened investments (67,3%) were made by non-European ultimate controlling investors. These investors' primary countries of origin were the United States, United Kingdom and Canada. Within the European Union and European Economic Area, most investments were made by ultimate investors in Germany, Luxembourg and the Netherlands.¹²

¹¹ Article R151-1 of the Monetary and Financial Code.

¹² Ministère de l'économie, des finances, et de la souveraineté industrielle et numérique, Direction Générale du Trésor, "Foreign Investment Screening in France, Annual Report 2023", June 4, 2024, page 10, <https://www.tresor.economie.gouv.fr/Articles/c7ec36f3-6df0-4cf8-82aa-9c772917afeb/files/83865cf0-0ecd-4684-badf-3e39fa6bb833>, consulted on April 28, 2025.

Investments from China have become very rare in France, due to an often unfavourable assessment of their investment projects having significantly discouraged Chinese capital from being directed towards France.

B. Investment within the meaning of French regulations

An eligible investment is:

1. An acquisition of control over a French law entity (company or branch of a foreign company) registered with the French commercial register;
2. the acquisition of all or part of a French branch of activity;
3. if the foreign investor is not an EU or European Economic Area (EEA) national, the acquisition of 25% or more of voting rights;
4. if the foreign investor is not an EU or EEA national, the acquisition of 10% or more of voting rights in a French listed company.¹³

C. Sensitive activities

There are three types of sensitive activities: (I.) defence-related and similar activities (which are inherently sensitive), (II.) activities relating to critical infrastructure, goods and services (which are subject to a multi-criteria sensitivity test) and (III.) research and development activities relating to critical technologies (which are also subject to multi-criteria sensitivity test).¹⁴

- I. Activities posing a threat to public order, public security or national defence interests, involve exercising public authority, as well as activities of research, production and marketing of arms, ammunition and explosives:
 1. Activities mentioned in Article L. 2332-1 of the French Defence Code, concerning weaponry, munitions, explosives for military or warfare purposes, and related materials within the purview of Title III or Title IV of Book III of the French Defence Code;

¹³ Article R151-2 of the Monetary and Financial Code.

¹⁴ Article R151-3 of the Monetary and Financial Code.

2. Activities associated with dual-use goods and technologies listed in Annex IV of European Council Regulation No 428/2009 dated May 5, 2009;
 3. Activities carried out by holders of national defence secrets;
 4. Activities carried out in the information systems security sector, including as a subcontractor, for an operator mentioned in Articles L. 1332-1 or L. 1332-2 of the French Defence Code (i.e., an operator of vital importance);
 5. Operations conducted by entities under agreement, either directly or through subcontracting, with the Ministry of Defence for producing goods or services involving the activities mentioned under 1, 2 and 6;
 6. Activities relating to the cryptology resources and services mentioned in paragraphs III and IV of Article 30 and I of Article 31 of Law no. 2004-575 of 21 June 2004 on Confidence in the Digital Economy;
 7. Operations involving technical equipment or devices capable of intercepting correspondence, detecting conversations, or capturing computer data, as defined in Article 226-3 of the French Criminal Code;
 8. Activities relating to services provided by assessment centres approved under the conditions laid down in Decree no. 2002-535 of 18 April 2002 relating to the assessment and certification of the security offered by information technology products and systems;
 9. Operations related to gambling, excluding casinos;
 10. Operations concerning means intended to combat the illicit use of pathogenic or toxic agents or to mitigate the health consequences of such use;
 11. Operations related to the processing, transmission, or storage of data, the compromise or disclosure of which could put at risk the activities under 1 to 10 above and the activities under II. below.
- II. Activities likely to affect the interests of national defence, involved in the exercise of public authority or likely to affect public order and public safety, when they relate to infrastructures, goods or services essential to guarantee:
1. The integrity, security or continuity of the energy supply;
 2. The integrity, security or continuity of water supply;

3. The integrity, security or continuity of the operation of transport networks and services;
 4. The integrity, security or continuity of the space operations referred to in 3° of Article 1 of Law No. 2008-518 of 3 June 2008 on Space Operations;
 5. The integrity, security or continuity of operation of electronic communications networks and services;
 6. The performance of the duties of the national police, the national gendarmerie, civil security services, prison security services and the performance of the public security duties of the customs service and those of approved private security companies;
 7. The integrity, security or continuity of operation of an establishment, installation or facility of vital importance within the meaning of articles L. 1332-1 and L. 1332-2 of the Defence Code;
 8. Protection of public health;
 9. The production, processing or distribution of agricultural products listed in Annex I to the Treaty on the Functioning of the European Union, where these contribute to the national food safety objectives mentioned in 1°, 17° and 18° of I of Article L. 1 of the French Rural and Maritime Fishing Code;
 10. Publishing, printing or distributing political and general information press publications, within the meaning of Article 4 of Law no. 47-585 of 2 April 1947 on the status of newspaper and periodical grouping and distribution companies, and political and general information online press services within the meaning of Article 1 of Law no. 86-897 of 1 August 1986 reforming the legal status of the press;
 11. The integrity, security or continuity of the extraction, processing and recycling of critical raw materials.
- III. Activities likely to affect the interests of national defence, participating in the exercise of public authority or likely to affect public order and public safety, when they are intended to be implemented in one of the activities mentioned in I or II:
- i. Research and development activities involving critical technologies, the list of which is defined by order of the Minister for the Economy as follows:
 1. Cyber security;

2. Artificial intelligence;
 3. Robotics;
 4. Additive manufacturing;
 5. Semiconductors;
 6. Quantum technologies;
 7. Energy storage;
 8. Biotechnology;
 9. Technologies involved in the production of low-carbon energy;
 10. Photonics.¹⁵
- ii. Research and development activities on dual-use goods and technologies listed in Annex I of the aforementioned Regulation (EU) of the European Parliament and of the Council of 20 May 2021.

It should be noted that the Minister of Economy possesses broad discretion in evaluating these sensitive sectors and is not bound by previous decisions. In this regard, it should be noted that (i) the evaluation can evolve over time and (ii) there is no public register or other type of publicity relating to decisions.

Finally, unlike in some other European countries, EU nationals are considered as foreign investors for the purpose of all sensitive sectors (and not only defence-related activities).

In terms of frequency of screened investments in the above sectors, in 2023 almost two thirds of screened investments related to critical infrastructure and R&D (63,7%), with the remaining investments relating to defence (21,5%) and mixed activities (14,8%).¹⁶

3.3. Procedure of the Review Mechanism

The Minister of Economy is represented for the purpose of foreign investment screening by the Office for the Control of Foreign Investments in France, which is a unit of the Directorate General of the Treasury (*DG Trésor*) within the Ministry of Economy. This office has the role

¹⁵ Article 6 of Order of 31 December 2019 on foreign investment in France.

¹⁶ Ministère de l'Économie, des finances, et de la souveraineté industrielle et numérique, Direction Générale du Trésor, "Foreign Investment Screening in France, Annual Report 2023", June 4, 2024, page 9, <https://www.tresor.economie.gouv.fr/Articles/c7ec36f3-6df0-4cf8-82aa-9c772917afeb/files/83865cf0-0ecd-4684-badf-3e39fa6bb833>, consulted on April 28, 2025.

to coordinate foreign investment screening processes within the framework of the Interministerial Committee on Foreign Investment in France (*CIIEF*).

Two types of screening mechanisms are available, i.e., (A.) the prior screening of an activity and (B.) the prior screening of an investment project, (C.) which have a few common procedural rules.

A. Prior Screening of an Activity

Targets (i.e., entities governed by French law) can submit a request to the Minister for an opinion as to whether all or part of the activity of this entity is subject to French foreign investment control (i.e., whether it is sensitive). In such a case, the Minister for the Economy must respond within two months in order to confirm whether the activity is sensitive.

Under the same conditions, an investor may, with the agreement of the entity carrying out the activities covered by the investment, submit the same request to the Minister. In this case, a copy of the opinion given to the investor is sent to the entity carrying out the activities covered by the investment.¹⁷

This procedure remains less popular in practice than the authorization request (see below). The main reasons for this are (i) that sellers are often reluctant to manage a regulatory screening process, which is otherwise under the responsibility (and at the cost of) the investor, (ii) confidentiality concerns, leading to involving personnel only on a need to know basis at an early stage of a transaction and (iii) that in case the activity is considered sensitive, an authorization request will need to be made.

According to the latest available statistics, for 309 total files submitted, 27 decisions on a request for prior screening of an activity were rendered in 2023, with 70% of them confirming that the activity was not subject to foreign investment control.¹⁸

B. Prior Authorization Request

Requests for prior authorization of a foreign investment must be filed by the investor. However, where the planned investment involves one or more investors belonging to a chain of control,

¹⁷ Article R151-4 of the Monetary and Financial Code.

¹⁸ Ministère de l'Économie, des finances, et de la souveraineté industrielle et numérique, Direction Générale du Trésor, "Foreign Investment Screening in France, Annual Report 2023", June 4, 2024, page 8, <https://www.tresor.economie.gouv.fr/Articles/c7ec36f3-6df0-4cf8-82aa-9c772917afeb/files/83865cf0-0ecd-4684-badf-3e39fa6bb833>, consulted on April 28, 2025.

the application may be filed by one of the members of that chain on behalf of all the investors who are members of it.

i) Simplified Procedure for Crossing of 10% Threshold (for Listed Companies)

A simplified procedure is available for the crossing of the threshold of 10% of voting rights in a French listed company: An investor making an investment referred to in 4° of Article R. 151-2 (cf. Section 2.I.B above) is exempt from the authorization requirement set out in the first paragraph, provided that the Minister of Economy has been notified in advance of the investment project. Unless the Minister objects, the exemption from the authorization requirement arises at the end of a period of ten working days from the date of notification.¹⁹

ii) Phase 1 Screening

Within thirty working days from the date of receipt of a request for authorization, the Minister of Economy informs the investor who submitted the request that the investment either:

- does not fall within the scope of French foreign investment control (so called “out of scope decision”), or
- falls within the scope of French foreign investment control and is authorized unconditionally, or
- falls within the scope of French foreign investment control, but further examination is required to determine whether the preservation of the national interests can be guaranteed by attaching conditions to the authorization.

In the absence of a response within this timeframe, the request for authorization is deemed to have been rejected. However, in practice, the Minister of Economy systematically issues a decision at the end of the Phase 1 screening.

iii) Phase 2 Screening

Within forty-five working days from the date of receipt by the investor of the aforementioned Phase 1 decision, the Minister of Economy notifies to the investor (and where applicable, other relevant members of its group) a decision, which can be:

- a refusal, or

¹⁹ Article R151-5 of the Monetary and Financial Code.

- an authorization, where applicable subject to conditions.

In the absence of a response within this period, the application for authorization is deemed to have been rejected.²⁰ Authorized investments have to be notified to the Minister of Economy within two months from their completion.

In practice, the Phase 2 screening is most of the time used by the Minister of Economy to propose to the investor a draft letter including unilateral undertakings (commitments) of the investor in relation to the target. The investor has the occasion to comment such letter (albeit with very limited space for negotiations). For further details, please refer to Section 4 below.

Refusals (express or by absence of response) represent a very small minority of decisions. However, no statistics are published on the number of refusals and other reasons for requests not leading to an authorization (notably out of scope decisions, withdrawals of requests for different reasons).

In 2023, for 309 filings (compared to 325 filings in 2022), 255 decisions were rendered, with 135 transactions being subject to French foreign investment screening and 60 of the rendered authorizations being subject to conditions.²¹

The investor is exempt from the authorization requirement if the investor of last resort in the chain of control had, prior to the investment, already acquired control of the entity that is the subject of the investment (unless such a transaction has the effect of preventing an investor from complying with the conditions for which it has been made responsible in connection with an authorization previously issued or its purpose is to transfer abroad all or part of a branch of sensitive activities).²²

C. Common Procedural Rules

The content of foreign investment filings is defined in Articles 1, 1-1 and 2 of Order of 31 December 2019 on foreign investment in France, which has been updated to include activity, market and competitor data also covering the EU, as well as the notification form required

²⁰ Article R151-6 of the Monetary and Financial Code.

²¹ Ministère de l'économie, des finances, et de la souveraineté industrielle et numérique, Direction Générale du Trésor, "Foreign Investment Screening in France, Annual Report 2023", June 4, 2024, page 5, <https://www.tresor.economie.gouv.fr/Articles/c7ec36f3-6df0-4cf8-82aa-9c772917afeb/files/83865cf0-0ecd-4684-badf-3e39fa6bb833>, consulted on April 28, 2025.

²² Article R151-7 of the Monetary and Financial Code.

under the EU Screening Regulation (only required in case an entity in the chain of control of the investor is established outside of the EU).

It should be noted that a “stop the clock” principle applies in case a filing is considered incomplete by the Minister of Economy, meaning that the screening period will stop running from the date of a request until the date on which the requested information has been provided.

Since 1 October 2023, filings (to the exceptions of simplified filings relating to the crossing of the 10% voting rights threshold in French listed companies) are submitted via an electronic platform, which allows investors and their advisors to follow the status of their file and procedural time periods in real time. Subsequent communication in relation to filings is made via email, with the designated case handler.

3.4. Conditions, Refusals of Authorization

Unless the screening process leads to an out-of-scope decision or authorization without conditions, (A.) the granted authorization is subject to conditions; (B.) conditions can be revised. If conditions are insufficient to preservation of the national interests, (C.) the authorization is refused.

A. Authorizations Subject to Conditions

As illustrated by the available statistics, conditional authorizations are very common in France, as opposed to other countries (like Germany and Austria, for example).

These conditions are primarily intended, in compliance with the principle of proportionality, to:

1. Ensuring the continuity and security, on national territory, of sensitive activities carried out by the target, in particular by ensuring that these activities are not subject to the legislation of a foreign State likely to hinder them, as well as the protection of information relating to them;
2. Ensuring that the knowledge and know-how of the entity that is the subject of the investment are maintained and preventing them from being appropriated;
3. Adapting the terms of internal organisation and governance of the entity, as well as the terms of exercising the rights acquired in the entity as a result of the investment;
4. Set the terms and conditions for informing the administrative authority responsible for supervision (i.e., the Office for the Control of Foreign Investments in France).

To this end, the Minister of Economy may in particular make an authorisation conditional on the transfer of part of the shares acquired in the capital of the target or of all or part of a branch of activity of such target to a separate entity approved by the Minister.²³ A recent example of such a “golden share” is the acquisition by the French State of a share in Exxelia International SAS, a French defence tech company, in the context of its acquisition by the American investor HEICO Corporation.²⁴ In most cases, however, the principle of proportionality leads the Minister of Economy to limit commitments to the more “standard” conditions set out in 1°, 2° and 4° above.

In relation to targets considered as highly sensitive, these measures are however reinforced so that they can pose significant limits to the management of the target (management of intellectual property rights, flow of information between the target group, restrictions on use of products subject to restrictions by foreign States, etc.).

A participation of the State in the governance of a target is limited to the most sensitive cases and rarely seen outside of the defence sector. From a practical perspective, investors have to appoint an entity within their chain of control responsible for ensuring compliance with the conditions and an operational contact point.

B. Modification of Conditions

Conditions attached to an investment set may be revised, at the investor's request:

1. In the event of a change, unforeseeable on the date of completion of the authorised operation, in the economic and regulatory conditions under which the sensitive activities of the target are carried out;

And, at either the investor's or the Minister of Economy's request (in compliance with the principle of proportionality):

2. In the event of a change in the shareholding of the entity that is the subject of the investment or a change in the members of the chain of control;
3. In application of one of the conditions attached to the authorisation.²⁵

²³ Article R151-8 of the Monetary and Financial Code.

²⁴ Article 1 of Order of 24 March 2023 on the decision of the acquisition by the State of a participation in the share capital of Exxelia International SAS.

²⁵ Article R151-9 of the Monetary and Financial Code.

In practice, revision processes can be quite burdensome and lengthy, with an uncertain outcome, as the Minister of Economy has wide discretion on its assessment of requests, in particular regarding changes of economic and regulatory conditions.

C. Refusal of Authorizations

The Minister of Economy can refuse, by reasoned decision, the investment authorisation requested, if the implementation of conditions is not sufficient on its own to ensure the preservation of the national interests. The Minister may take into consideration the fact that the investor has links with a foreign government or public body.

He may also refuse, by reasoned decision, to authorise an investment:

1. If there is a serious presumption that the investor is likely to commit one among a list of very serious offences or the concealment of one such offences (drug trafficking, abuse of minors or vulnerable persons, organization of prostitution/pimping and related offences, asset/money laundering, terrorism and related offences, corruption of public officials, participation in a criminal organization, etc.);
2. If the investor has been convicted and sentenced for one of the abovementioned offences or for equivalent offences under the legislation of another State, during the five years preceding the submission of the application for authorisation;
3. If the investor has been the subject of a sanction, or has seriously and persistently disregarded injunctions or precautionary measures issued in relation to foreign investment control, during the five years preceding the submission of the authorisation application.²⁶

A recent example of a refusal of an authorization for a foreign investment is the intended acquisition of French military night-vision specialist Photonis by the American conglomerate Teledyne, where the French State considered that the implementation of conditions would not be sufficient to ensure the preservation of the national interests.²⁷

²⁶ Article R151-10 of the Monetary and Financial Code.

²⁷ E. Vincent, "Défense : veto de la France au rachat de Photonis par Teledyne", *Le Monde*, December 19, 2020, https://www.lemonde.fr/economie/article/2020/12/19/defense-veto-de-la-france-au-rachat-de-photonis-par-teledyne_6063950_3234.html, consulted on April 28, 2025.

3.5. Sanctions

The French Minister of Economy disposes of a large choice of sanctions to enforce French foreign investment screening regulations, regarding specifically (A.) unauthorized investments and (B.) non-compliance by investors with conditions. To both of these, (C.) procedural rules and financial penalties apply.

A. Unauthorized Investments

If a foreign investment has been made without prior authorisation, the Minister of Economy can take one or more of the following measures:

1. Order to the investor to submit an application for authorisation;
2. Order the investor to re-establish the previous situation at its own expense;
3. Injunction to the investor to modify the investment.

These injunctions may be accompanied by a penalty payment of up to EUR 50,000 per day of non-compliance.²⁸

The Minister of Economy may also, if the protection of national interests is compromised or likely to be compromised, take any precautionary measures that appear necessary. To this end, it may:

- a) Suspend the voting rights attached to the fraction of the shares or corporate units whose ownership by the investor should have been subject to prior authorisation;
- b) Prohibit or restrict the distribution of dividends or remuneration attached to shares or corporate units the holding of which by the investor should have been subject to prior authorisation;
- c) Temporarily suspend, restrict or prohibit the free disposal of all or part of the assets linked to the sensitive activities;
- d) Appoint an agent responsible for ensuring the protection of national interests within the company responsible for the sensitive activity. This representative may oppose any decision taken by the company's governing bodies that could undermine these interests. Their remuneration is set by the Minister for the Economy; it is paid, together

²⁸ Article L151-3-1 I. and R151-14 of the Monetary and Financial Code.

with the expenses incurred by the representative, by the company to which they are appointed.²⁹

In addition, any commitment, agreement or contractual clause that directly or indirectly makes a foreign investment in a sensitive activity shall be null and void when the investment has not been subject to the required authorisation.³⁰

B. Non-Compliance with Conditions

If the Minister of Economy considers that conditions attached to an authorization have not been complied with, the Minister may take one or more of the following measures:

1. Withdrawal of the authorization. Unless it re-establishes the situation prior to the investment, the foreign investor must reapply for an investment authorization;
2. An injunction to the non-complying investor to comply with the conditions set out in the authorization within a time limit set by the Minister;
3. An injunction to the non-complying investor to carry out, within a set time period, requirements in substitution for the disregarded obligation, including the re-establishment of the situation prior to the non-compliance or the transfer of all or part of the sensitive activities.

These injunctions may be accompanied by a penalty payment of up to EUR 50,000 per day of non-compliance. The Minister for the Economy may also take the precautionary measures set out further above.³¹

C. Common Procedural Rules and Financial Penalties

Decisions or injunctions in relation to non-compliance with foreign investment screening regulations may only be taken or made after the investor has been given formal notice to submit comments within a period of fifteen days, except in cases of urgency, exceptional circumstances or imminent threat to public order, public security or national defence.³²

In the event of an investment being made without prior authorization, prior authorizations being obtained by fraud, non-compliance with conditions, total or partial non-execution of decisions

²⁹ Article L151-3-1 I. and R151-15 of the Monetary and Financial Code.

³⁰ Article L151-4 of the Monetary and Financial Code.

³¹ Article L151-3-1 II. of the Monetary and Financial Code.

³² Article L151-3-1 III. of the Monetary and Financial Code.

or injunctions, the Minister of Economy may, after having given the investor the opportunity to present his observations on the charges within a minimum period of fifteen days, impose a financial penalty of up to the higher of the following amounts:

- Twice the amount of the irregular investment,
- 10% of the annual turnover before tax of the company carrying out the sensitive activities,
- five million euros for legal entities and one million euros for natural persons.

The amount of the financial penalty must proportionate to the seriousness of the offences committed.³³

3.6. Legal Recourses Against Investment Screening Decisions

Two types of legal recourses are available against investment screening decisions:

- An administrative recourse, to be lodged with the Minister of Economy (as the authority having rendered the decision). Such a recourse must be submitted within two months from the foreign investment screening decision. In the absence of a response within two months period, the administrative recourse is deemed to have been rejected.
- A judicial recourse, to be lodged with the administrative tribunal competent for the area in which the target has its registered seed. Such a recourse must be submitted within two months from the foreign investment screening decision or, if an administrative recourse has been submitted, within two months from the (express or implicit) decision on such administrative recourse.

In practice, judicial recourses are very rare, and only a few relevant court decisions are known.

4. Developments to Follow

Part 4 of the Country Note gives an overview of developments to follow, by addressing (4.1.) expected legislative changes implementing the EU Screening Regulation, (4.2.) expected legal developments in France and (4.3.) ongoing discussions.

4.1. Expected Legislative Changes (EU)

France has fully implemented the EU Screening Regulation (and is one of the four most active EU member states in using the cooperation mechanism). No further changes are expected at

³³ Article L151-3-2 of the Monetary and Financial Code.

this stage. This being said, on 24 January 2024, the European Commission submitted a legislative proposal for a new regulation to strengthen the cooperation mechanism, for review by the Council of the European Union and the European Parliament.

France is likely to largely meet minimum requirements addressed by this proposal. However, the proposal also advocates the harmonization of national rules, which could lead to adaptations of the French regulations.

4.2. Expected Legal Developments

As already mentioned, a characteristic of the French foreign investment screening mechanism is that it constantly evolves in reaction to current events, geopolitical shifts and technological evolutions. Recent such adaptations include a permanent threshold for triggering the screening procedure set at 10% of voting rights in a listed French company by a non-European Union investor, the extension of screening to French branches of foreign legal entities carrying out sensitive activities, the inclusion of activities related to the extraction, processing and recycling of critical raw materials and activities related to prison security, as well as the extension of screening to R&D in low-carbon energy production technologies and photonics.

Depending on future evolutions, further adaptations of the screening mechanism can be expected. In addition, the Office for the Control of Foreign Investments in France is currently working on a revised version of its Guidelines relating to foreign investments in France dated September 2022.

4.3. Ongoing Discussions

Discussions about foreign investment control are sometimes pushed to the forefront of current events and political discussions due to planned foreign takeovers of French companies perceived as unwelcome by politicians or part of the public. These events generally spark discussions on economic sovereignty and put pressure on government officials to restrict foreign investments. The latest such occasion was the investment of US fund CD&R in Sanofi's non-prescription division Opella.

While in particular opposition politicians tend to increasingly take the position that stringent controls (or outright refusals) are essential for protecting strategic sectors, a number of members of the business community believe that over-regulation could deter foreign investors, potentially stifling economic growth and innovation. Government officials tend to reconcile

these positions. This being said, the French investment screening mechanism is generally well accepted, widely used and complied with by stakeholders.

Annex 1: Relevant laws, ordinances, regulatory guidelines

- French Monetary and Financial Code (*Code monétaire et financier*): Articles L151-1 *et seq.*; Articles R151-1 *et seq.*
- Order of 31 December 2019 on foreign investment in France (*Arrêté du 31 décembre 2019 relatif aux investissements étrangers en France*) (NOR : ECOT1937237A), as modified by subsequent ministerial orders.
- Ministère de l'Economie, des finances, et de la souveraineté industrielle et numérique, Direction générale du Trésor, Guidelines relating to foreign investments in France (*Lignes directrices relatives au contrôle des IEF*), dated September 2022, <https://www.tresor.economie.gouv.fr/Institutionnel/Niveau2/Pages/f149e66d-6df2-4726-a594-3d95409d7a46/files/3aff28c7-f745-4b3c-be0b-e1781eaa4cd2>, consulted on April 28, 2025.
- Ministère de l'Economie, des finances, et de la souveraineté industrielle et numérique, Direction générale du Trésor, Foire aux questions sur le contrôle IEF (FAQ), <https://www.tresor.economie.gouv.fr/Institutionnel/Niveau2/Pages/f149e66d-6df2-4726-a594-3d95409d7a46/files/4662ee9b-8e2d-4910-8f8c-c9b3cfae4e0b>, consulted on April 28, 2025.
- Ministère de l'économie, des finances, et de la souveraineté industrielle et numérique, Direction Générale du Trésor, "Foreign Investment Screening in France, Annual Report 2023", June 4, 2024, <https://www.tresor.economie.gouv.fr/Articles/c7ec36f3-6df0-4cf8-82aa-9c772917afeb/files/83865cf0-0ecd-4684-badf-3e39fa6bb833>, consulted on April 28, 2025.

Annex 2: Relevant administrative and court cases

- Conseil d'Etat, 10^e et 9^e sous-sections réunies, decision no. 262626, November 3, 2004, mentioned in the tables of the recueil Lebon, <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000008154629/>, consulted on April 28, 2025.
- Conseil d'Etat, 6 / 2 SSR, decision no. 160550 "Société Pathé holding France", April 15, 1996, published in Recueil lebon,

<https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007915058>, consulted on April 28, 2025.

- Conseil d'Etat, 6^e et 5^e chambres réunies, decision no. 442580 "M. et Mme B... c. FII Co et Warwick Capital Partners, April 3, 2020, mentioned in the tables of the recueil Lebon, <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000041782278>, consulted on April 28, 2025.
- Cass., decision no. 17-31.034, February 6, 2019, <https://www.legifrance.gouv.fr/juri/id/JURITEXT000038137161>, consulted on April 28, 2025.
- CADA, opinion no. 20194281, February 20, 2020, <https://www.cada.fr/20194281>, consulted on April 28, 2025.

Annex 3: Relevant literature

- P. Dupeyrat, IEF Le contrôle des investissements étrangers en France, éd. Relians, 21/10/2024.
- P. Dupeyrat, *Sécurité économique et souverainetés industrielles*, Préf. B. Le Maire, éd. PUF, 2020.

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