



Multi-jurisdiction guide for screening foreign investments

May 2021

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Introduction

There is little debate about the impact of foreign direct investments (**FDI**) on economic development since the 1990s, when FDI flows started increasing steadily due to a shift towards international technology-based production and a wave of cross-border mergers and acquisitions (**M&A**). Due to the COVID-19 crisis, FDI flows decreased substantially all over the world in 2020 (reaching their lowest level since 2005 according to the OECD) but certain economies such as China and India still recorded high FDI inflows. The importance of FDI in today's globalized economy, enabling economic actors in various industries to reach unprecedented economies of scale, is beyond doubt.

FDI activity also has important implications for both origin and destination countries in terms of economic growth and labor productivity. Governments have reconsidered their positions and have shifted policies to become FDI magnets, particularly in developing and emerging countries. Many have removed restrictions on financial flows, fostering even greater mobility of capital and international exchanges, but the profile of each specific country varies. For example, the OECD presents Japan, China or France, to name a few, as sources of FDI outflows worldwide whereas the Netherlands, the United Kingdom or Brazil tend to be recipient countries.

The flipside is, however, that investments in certain sensitive/strategic sectors (e.g. key technologies) can be seen as a risk to national security or public order. Consequently, some local as well as supranational authorities (such as the EU) have developed measures aimed at screening foreign investments, ultimately enabling them to intervene either *ex ante* and/or *ex post* should those investments require control, or in the more severe cases, prohibitions.

Despite efforts such as EU Regulation 2019/452 (which entered into force on 11 October 2020) to establish a framework to screen FDI into the EU, the reality is that FDI regimes are far from harmonized and there is no single path that an investor can follow in terms of due diligence. The new legislation does promote cooperation, information sharing and a minimum level of transparency regarding FDI control between the European Commission and Member States but it does not -and cannot- create a one-stop shop, nor replace national FDI screening mechanisms.

Introduction

To a large extent, governments retain their freedom to design FDI screening regimes for their countries' needs. And while many share common grounds (e.g. the focus on sectors such as telecommunications, critical infrastructure -particularly energy and transport- or defense and public order) the fact each country has discretion explains why, for example, the US is seen as a more permissive regime than others across the EU or Asia. Even within the EU, the range of sectors defined as strategic varies widely and many Member States have yet to adopt an FDI regime.

In the midst of COVID-19, several Member States reviewed their screening mechanisms, or adopted specific new mechanisms to cover investments in healthcare, biotech and other sectors. Other countries, such as France and Australia, adopted a temporary regime to ensure the protection of their national interests during the crisis. Furthermore, in the wake of the European Commission's proposal for a Regulation on foreign subsidies, non-EU investors will face new regulatory hurdles and will need to consider different regulatory approvals concurrently, especially in M&A, when investing in the EU.

While the aim of this guide is not to substitute proper due diligence and specialized advice when considering a country's FDI climate, it will hopefully help the reader navigate the different regimes, particularly in this complex context. This guide explains the key aspects of regimes, including main issues to consider as well as thresholds and proceedings to take into consideration when investing in our globalized world.



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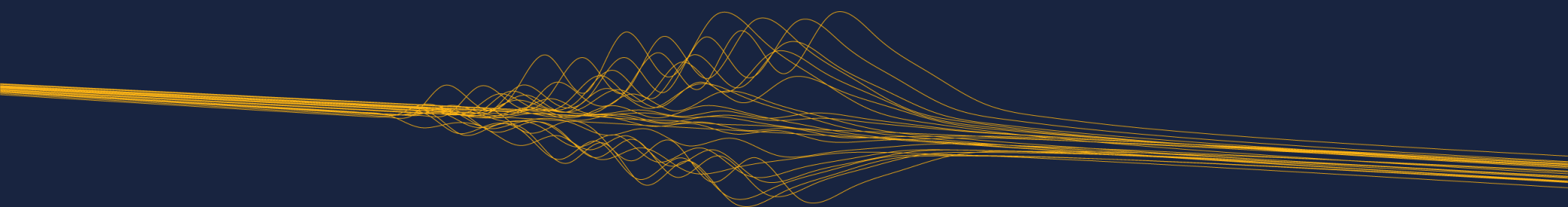


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Status of foreign investment screening mechanisms in various countries



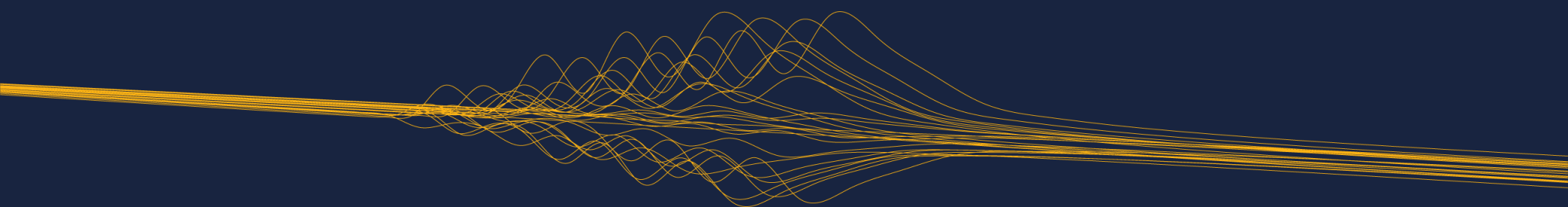
JURISDICTIONS WITH DLA PIPER PRESENCE	JURISDICTIONS WITH SFI MECHANISM IN PLACE	JURISDICTIONS WITHOUT SFI MECHANISM
Australia	✓	
Austria	✓	
Belgium		✓
Brazil	✓	
Canada	✓	
Chile	✓	
China		✓
Colombia	✓	
Czech Republic	✓	
Denmark	✓	
EU	✓	
France	✓	
Germany	✓	
Hungary	✓	
Ireland		✓
Italy	✓	
Japan	✓	
Kenya		✓
Mexico	✓	
The Netherlands		✓ ¹
New Zealand	✓	
Norway	✓	
Peru	✓	
Poland	✓	
Portugal	✓	
Romania	✓	
Russia	✓	
Slovakia		✓
South Africa	✓	
Spain	✓	
Sweden	✓	
Switzerland		✓ ²
UK	✓	
Ukraine	✓	
US	✓	

¹ There is no mechanism now but it will be introduced in the future

² In Switzerland, DLA Piper works with a local relationship firm



Overview of foreign direct investment screening mechanisms by jurisdiction





Australia





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<p>On the basis of the most current publicly available information:</p> <ul style="list-style-type: none">• US (25.6%)• UK (17.8%) <p>are the biggest investors in Australia, followed by:</p> <ul style="list-style-type: none">• Belgium (9.1%)• Japan (6.3%)• Hong Kong (SAR of China) (3.7%)
<p>Legal framework in force</p>	<p>Australia's foreign investment policy framework comprises the Foreign Acquisitions and Takeovers Act 1975 (FATA), its related regulations, and Australia's Foreign Investment Policy. Australia's Foreign Investment Policy provides guidance on what factors are typically considered in assessing whether an investment proposal is contrary to the national interest. The concept of national interest includes factors such as national security, competition, the impact on the economy, the community, and the character of the investor. Where a proposal involves a foreign government or a related entity, the government also considers the commerciality of the investment by a foreign entity in Australia may require the formal submission of a proposal. This is subject to approval by the Australian Foreign Investment Review Board (FIRB).</p>
<p>Last revision of the legal framework</p>	<p>Significant amendments to the FIRB approval regime came into force from January 1, 2021.</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>In national security measures triggered by the COVID-19 pandemic, since March 29, 2020, a AUD0 monetary screening threshold applied to all acquisitions subject to the FIRB regime. From January 1, 2021, the pre-March 29, 2020, monetary thresholds for "notifiable actions" and "significant actions" were reinstated and significant changes were made to the FIRB regime.</p>
<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>The FIRB examines proposals and advises the Australian government on whether those proposals are suitable for approval under the government's policy. Whether a proposal is required to be submitted to FIRB by the investor depends on the monetary value, the nature of the investment, and type of investor.</p>



<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>The applicable legislation provides that certain foreign investment proposals can be subject to compulsory or voluntary notification. A compulsory notification is required where the proposal constitutes both a notifiable action and significant action, or a notifiable national security action. A voluntary notification applies where the proposal constitutes a significant action or a reviewable national security action. Generally, a minimum 20% interest in a target is needed before FIRB approval is mandatory. Voluntary notification will typically apply in the case of the acquisition by a foreign person of a 10% interest or more in a target's securities or in the assets of a business. Asset value thresholds also apply and depend on the nature of the asset and the acquirer.</p>
<p>Scope – sectors covered</p>	<p>Special thresholds apply if the target of the acquisition operates a national security business or is an agribusiness. In those cases any direct interest in a target that meets the applicable monetary threshold will require FIRB approval. The monetary threshold is nil if the acquirer is a foreign government investor or where the target operates a national security business.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>As noted above, investment by a foreign entity in Australia may require the formal submission of a proposal to FIRB who will assess whether a proposed transaction is consistent with the national interest. Whether notification is mandatory or voluntary will depend on the size of the interest and value of the asset. In certain circumstances (such as where the target operates a national security business), notification is compulsory irrespective of the value of the target.</p>
<p>Design – reciprocity?</p>	<p>Applicable monetary thresholds are generally more favorable to acquirer's from one of the free trade agreement counties or regions; namely Canada, Chile, China, Hong Kong, Japan, Mexico, New Zealand, Peru, Singapore, South Korea, the US and Vietnam.</p>
<p>Design – procedures and deadlines</p>	<p>The Treasurer has 30 calendar days to make a decision in respect of a FIRB approval application and a further 10 calendar days to notify the applicant. In practice, this timeframe is often extended.</p>



Design – transparency and information requirements (filing forms?)

The government may share documents lodged as part of an application with Commonwealth, state and territory government departments and agencies for consultation purposes. The government respects "commercial-in-confidence" information it receives and ensures that appropriate security is provided. The government will not provide applications to third parties outside of the government unless it has permission or it is ordered to do so by a court of competent jurisdiction. The government will defend this policy through the judicial system if needed.

Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI

Compulsory notification

Where notification is compulsory, the proposed acquirer is legally obliged to notify FIRB of the proposed transaction, and failure to do so is a criminal offence.

The acquirer cannot complete the proposed transaction unless and until it obtains FIRB approval. The treasurer can choose to approve the proposed transaction (ie grant FIRB approval) if the treasurer considers it would not be contrary to the national interest. The approval can be given on an unconditional basis or subject to binding conditions.

If the treasurer considers the transaction would be contrary to the national interest, the treasurer can make an order prohibiting the proposed transaction. If the transaction has already occurred, the treasurer has the power to make an order requiring disposal.

Voluntary notification

Where voluntary notification applies, if prior FIRB approval is not obtained, the acquirer is subject to the risk that the treasurer at any time within ten years after the transaction completes, may exercise the call-in power to review the transaction on national security grounds and to make orders (such as a disposal order) if the treasurer is satisfied that the transaction is contrary to national security.



Interaction with other legal frameworks (eg merger control)	<p>FIRB consults broadly with Commonwealth, state and territory government departments and agencies when assessing FIRB applications. In particular, FIRB consults with the Australian Competition and Consumer Commission (ACCC) the Australian Taxation Office (ATO) and, where critical infrastructure assets (such as telecommunications, gas, electricity, water and ports) are involved, the Critical Infrastructure Centre.</p> <p>The ATO conducts a "tax risk assessment" of each FIRB application. FIRB is entitled to adopt its own position on competition concerns, even if the ACCC clears a transaction, but engages with the ACCC on competition matters. The Critical Infrastructure Centre undertakes a national security risk assessment of a proposal where the target is a critical infrastructure asset.</p>
Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.	<p>An investment proposal will be blocked if it is assessed to be contrary to the national interest. The concept of national interest includes factors such as national security, competition, the impact on the economy, the community, and the character of the investor. Where a proposal involves a foreign government or a related entity, the government also considers the commerciality of the investment.</p>
Judicial Review Please specify timeline, competent courts and standard of judicial review.	<p>Applicants have no right of administrative or judicial review of foreign investment decisions made under the FATA or the policy. The Administrative Decisions (Judicial Review) Act 1977 specifically exempts decisions made under the FATA from judicial review.</p>
Publication in Official Gazette or other	N/A
Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.	N/A
Stakeholders views on the legal framework	<p>The new regime came into force in January 2021 and it is too early for stakeholder feedback.</p>
Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.	N/A
Other relevant information	N/A

Austria





Indicate five biggest FDI countries of origin (indicate percentage if available)

According to the OECD International Direct Investment Database – FDI Statistics by Partner Country and by Industry¹, as of January 28, 2020, the most FDI financial flows come to Austria from following countries:

- Germany (28.7%)
- Russian Federation (15.4%)
- The US (8.2%)
- Switzerland (6.8%)
- Italy (5.9%)²

Thus, FDI comes to Austria, with 75.6% from Europe, 72.4% from OECD countries, 52.8% from the EU and 1.5% from Africa.³

According to the FDI (inward direct investment) statistics of the Austrian National bank, the main investing countries in 2018 were as follows:

- Germany (28.6%);
- Russian Federation (13.9%);
- The US (7.9%);
- The Netherlands (7.7%); and
- Italy (5.7%)⁴.

Hence, Germany, Russia, the US and the Netherlands accounted for almost 60% of Austria's FDI stock in 2018. Italy, Switzerland, France, Luxembourg, the UK, United Arab Emirates and Canada are other major investors.⁵

¹ FDI statistics of the OECD International Direct Investment Database cover all entities in an FDI relationship. An FDI relationship is established when an investor in one country acquires 10% or more of the voting power in a business enterprise in another country. The investor is also called a direct investor, or a parent and the business enterprise is called a direct investment enterprise or an affiliate. The 10 percent criterion is used to establish that the direct investor has a significant degree of influence over the operations of the direct investment enterprise; see OECD, FDI statistics by partner country and by industry – Summary <https://stats.oecd.org/Index.aspx?DatasetCode=FDI_FLOW_INDUSTRY#> accessed on December 19, 2020.

² OECD, FDI statistics by partner country and by industry – Summary <https://stats.oecd.org/Index.aspx?DatasetCode=FDI_FLOW_INDUSTRY#> accessed on December 19, 2020.

³ OECD, FDI statistics by partner country and by industry – Summary <https://stats.oecd.org/Index.aspx?DatasetCode=FDI_FLOW_INDUSTRY#> accessed on December 19, 2020.

⁴ Santander, Austria: Foreign Direct Investment <https://santandertrade.com/en/portal/establish-overseas/austria/foreign-investment?&actualiser_id_banque=oui&id_banque=0&memoriser_choix=memoriser> accessed on December 19, 2020;

⁵ Santander, Austria: Foreign Direct Investment <https://santandertrade.com/en/portal/establish-overseas/austria/foreign-investment?&actualiser_id_banque=oui&id_banque=0&memoriser_choix=memoriser> accessed on December 19, 2020;

Oesterreichische Nationalbank, Inward direct investment positions broken down by region <<https://www.oenb.at/isaweb/report.do?report=9.3.31>> accessed on December 19, 2020.



According to the FDI statistics of UNCTAD, the Austria's top five partners in 2018 were as follows:

- Germany (USD53,091 exports)
- The US (USD12,486 exports)
- Italy (USD11,386 exports)
- Switzerland, Liechtenstein (USD8,787 exports)
- France (USD7,534 exports)⁶

Austria does fairly well in terms of business environment as it ranks 27th out of 190 countries in the World Bank's 2020 Doing Business Ranking.⁷

Legal framework in force

- Investment Control Act (Investitionskontrollgesetz)
- Austrian Foreign Trade Act 2011 (Außenwirtschaftsgesetz 2011)
- First Austrian Foreign Trade Regulation (Erste Außenwirtschaftsverordnung)
- Second Austrian Foreign Trade Regulation 2019 including Attachment 1 and Attachment 2 (Zweite Außenwirtschaftsverordnung 2019 inklusive Anlage 1 und Anlage 2)

Last revision of the legal framework

The last revision of the legal framework took place on July 25, 2020, and it refers to the implementation of the Investment Control Act which amended the applicable provisions of the Austrian Foreign Trade Act 2011 and incorporated these into a new law, the Investment Control Act.

⁶ UNCTADSTAT, General Profile: Austria <<https://unctadstat.unctad.org/CountryProfile/GeneralProfile/en-GB/040/index.html>> accessed on December 19, 2020.

⁷ World Bank Group, Doing Business 2020 – Economy Profile: Austria <<https://www.doingbusiness.org/content/dam/doingBusiness/country/a/austria/AUT.pdf>> accessed on December 19, 2020.



Contextualization of the legal framework (historical or other)

Austria has traditionally attracted significant amount of FDI due to its geographical location as an intersection of Eastern and Western Europe. Especially since joining the EU, Austria has developed into an important investor and attractive investment location in the middle of Europe.⁸

Based on the performance of businesses in Austria in 2019, the World Bank ranks Austria 27th out of 190 of the easiest economies to do business in, first regarding "Trade Cross Borders" and tenth in "Enforcing Contracts."⁹

Moreover, Austria's attractiveness as an FDI destination has improved from 24th to 21st place in the Foreign Direct Investment Confidence Index 2019. Austria's jump in the rankings is likely in part the result of its business-friendly tax environment and an area of growing strength is Austria's technology sector (FDI Confidence Index 2019).¹⁰

Austria is also in the front ranks when it comes to research and development (R&D). Austria has developed a national strategy to further develop its R&D know-how. Such measures will likely contribute to attracting FDI in light of the fact that investors place particular importance on the technological innovativeness of a country.¹¹

The Austrian Parliament passed a new bill – the Investment Control Act – to meet the requirements of the new Regulation (EU) 2019/452 of the European Parliament and of the Council of March 19, 2019, Establishing a Framework for the Screening of Foreign Direct Investments into the Union (EU-FDI Regulation). The new Investment Control Act has already entered into force in Austria.

The main amendments from the Investment Control Act are as follows: reduction of the minimum threshold of company shares (from 25% to 10%) for certain "particularly sensitive areas," the specification of the areas in which public security and public order may be threatened by a direct investment from third countries, and the duty of disclosure for the Austrian target company being acquired by a foreign direct investor under certain circumstances.¹²

⁸ Austrian Economic Chambers (Wirtschaftskammer Österreich) <<https://news.wko.at/news/oesterreich/wko-analyse-2019-fdi-oesterreich.html>> accessed on December 19, 2020.

⁹ World Bank Group, Doing Business 2020 – Economy Profile: Austria <<https://www.doingbusiness.org/content/dam/doingBusiness/country/a/austria/AUT.pdf>> accessed on December 19, 2020.

¹⁰ The 2019 Kearney Foreign Direct Investment Confidence Index <<https://www.kenney.com/foreign-direct-investment-confidence-index>> accessed on December 19, 2020.

¹¹ ABA – Invest in Austria, A.T. Kearney: Austria improves in the investment ranking <<https://investinaustria.at/en/news/2019/06/foreign-direct-investments-in-europe.php>> accessed on December 19, 2020.

¹² Austrian Parliament, Change of the Austrian Foreign Trade Act 2011 (Änderung des Außenwirtschaftsgesetzes 2011) <https://www.parlament.gv.at/PAKT/VHG/XXVI/ME/ME_00149/index.shtml#tab-Uebersicht> accessed on February 25, 2020.

<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>Approval for FDI is required by the competent ministry according to the Investment Control Act, if:</p> <ul style="list-style-type: none"> • the Austrian target company is operating in one of the areas specified in the Annex of the Act; • the EU and international law provisions do not conflict with an approval requirement; and • there is a direct investment; <ul style="list-style-type: none"> • within the meaning of Section 1 No 3 lit b of the Act reaching or exceeding a minimum share of voting rights pursuant to Sections 4 and 5 of the Act (ie 10%, 25% und 50%); • within the meaning of Section 1 No 3 lit c of the Act acquiring a controlling influence irrespective of the specific share of voting rights held; or • within the meaning of Section 1 lit d of the Act acquiring a controlling influence by buying significant company assets. <p>Pursuant to Section 27 Investment Control Act, the respective FDI transaction may not be carried out (or closed) prior to the granting of the required approval. Until the required approval has been granted, the respective legal transaction is pending and ineffective (schwebend unwirksam). The unauthorized execution of an acquisition is punishable by law and may constitute a criminal offence.</p>
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>The following thresholds for FDI within the meaning of the Investment Control Act is applicable:</p> <ul style="list-style-type: none"> • For "particularly sensitive areas" a share of voting rights of 10%, 25% and 50% is decisive; and • For "other areas in which there may be a threat to security or public order, including crisis preparedness and public service tasks within the meaning of Articles 52 and 65 TFEU" a share of voting rights of 25% and 50% is decisive.
<p>Scope – sectors covered</p>	<p>The Investment Control Act differentiates between the following areas with regard to the share of voting rights relevant for the approval requirement:</p> <ul style="list-style-type: none"> • particularly sensitive areas; and • other areas in which there may be a threat to security or public order, including crisis preparedness and public service tasks within the meaning of Articles 52 and 65 TFEU. <p>The "particularly sensitive areas" are listed in Part 1 of the Attachment of the Investment Control Act (eg, defense equipment and technologies, operation of critical energy infrastructure, research and development in the fields of pharmaceuticals, vaccines, medical devices and personal protective equipment).</p> <p>The "other areas" are listed in Part 2 of the Attachment of the Investment Control Act (eg, energy, information technology, traffic and transportation, health, food, telecommunications, finance, research facilities, etc).</p>

<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>The required application for an FDI transaction must be made:</p> <ul style="list-style-type: none"> • "immediately" after the conclusion of the respective contract (ie after signing occurs); or • in case of a public offer, "immediately" after the announcement of the intention to make an offer.
<p>Design – reciprocity?</p>	<p>The Austrian Foreign Trade Act does not mention reciprocity.</p>
<p>Design – procedures and deadlines</p>	<p>The required application for an FDI transaction must be made:</p> <ul style="list-style-type: none"> • "immediately" after the conclusion of the respective contract (ie, after signing occurs); or • in case of a public offer, "immediately" after the announcement of the intention to make an offer. <p>Within one month of receipt of the respective application the Austrian Federal Ministry for Digital and Economic Affairs decides either:</p> <ul style="list-style-type: none"> • to declare in form of official decree that: <ul style="list-style-type: none"> –an approval procedure is not initiated because such a procedure would be contrary to obligations under EU or international law; or –there are no objections to the respective acquisition because there is no justified reason to fear a threat to the interests of public security or public order within the meaning of Section 3 of the Investment Control Act; or • to notify that an in-depth investigation is initiated because a more detailed examination of the impact on the interests of public security or public order is required. <p>If the competent Austrian minister neither issues a decree nor a notification within that period, the respective transaction will be considered as approved.</p> <p>Within two months of receipt of the respective notification about the initiation of the in-depth investigation as mentioned above, the competent Austrian minister issues the following decrees:</p> <ul style="list-style-type: none"> • Approving the transaction if there is no reason to fear a threat to the interests of public security or public order within the meaning of Section 3 of the Investment Control Act; or • If such a threat is to be feared by the respective transaction, to <ul style="list-style-type: none"> –grant approval with the necessary conditions in order eliminate that threat; or –reject the application if the conditions are not sufficient in order to eliminate that threat. <p>If the competent Austrian minister does not issue a decree within that period, the respective transaction will be considered as approved.</p>



<p>Design – transparency and information requirements (filing forms?)</p>	<p>Information regarding investment control and FAQ section is available on the homepage of the Austrian Federal Ministry for Digital and Economic Affairs under <https://www.bmdw.gv.at/Themen/Investitionskontrolle.html> (only available in German). The required application for a transaction must contain various information such as name, address, detailed description of the commercial activity (including products, services and transactions), ultimate beneficial owner of the acquirer, origin of the financial means for the direct investment, etc).</p>
<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>The Investment Control Act provides the following possibilities:</p> <ul style="list-style-type: none">• blocking (ie, rejecting the approval and thus prohibiting the respective transaction because the conditions are not sufficient to eliminate the threat to the interests of public security and public order);• granting approval with necessary conditions in order eliminate the threat to the interests of public security and public order; and• granting approval without conditions. <p>In addition, the competent Austrian minister is under certain circumstances entitled to initiate ex officio an approval procedure for a transaction.</p>
<p>Interaction with other legal frameworks (eg merger control)</p>	<p>International and EU law such as the Dual-Use-Regulation (Regulation (EU) 2019/496 of the European Parliament and of the Council as of March 25, 2019).</p>
<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<ul style="list-style-type: none">• Blocking respectively the rejection of an application or granting an approval with necessary conditions may be issued by the competent Austrian minister in terms of the respective transaction if there may be a threat to the interests of public security or public order within the meaning of Section 3 of the Investment Control Act in conjunction with Article 52 and Article 65 Para 1 TFEU.• In addition, the competent Austrian minister is under certain circumstances entitled to initiate ex officio an approval procedure for a transaction.• In an official response to the written parliamentary question no 3336/J regarding the Effectiveness and Amendment of the Austrian Foreign Trade Act, dated April 17, 2019,¹³ the competent minister responded on June 17, 2019, inter alia, that the applications which were submitted to the ministry concerned the sectors energy, automotive, construction machinery, telecommunications and aviation industry. However, due to official secrecy and data protection, no information was made relating to data of each companies concerned.

¹³ Austrian Parliament, Austrian Federal Ministry for Digital and Economic Affairs, Official Response to the Written Parliamentary Question No 3336/J regarding the Effectiveness and Amendment of the Austrian Foreign Trade Act <https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_03350/imfname_757040.pdf> accessed on February 29, 2020.

<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>Competent court for the judicial review in Austria is the Austrian Constitutional Court. The Constitutional Court is responsible for verifying compliance with the provisions of the Constitution. In its capacity as a "court of fundamental rights" and based on its powers to review laws and regulations for their constitutionality, it is called upon to enforce and secure the democratic order of the state under the rule of law.</p> <p>All government bodies and other institutions fulfilling government functions are obliged to comply with the Constitution. In the event of an (alleged) infringement of the Constitution by any such body or institution, the Constitutional Court, established on the basis of the Austrian Constitution, renders a final decision on the matter and, if necessary, provides for an appropriate remedy. Therefore, it is often referred to as the "guardian of the Constitution." ¹⁴</p>
<p>Publication in Official Gazette or other</p>	<p>The respective foreign acquirer of an Austrian company within the meaning of the Investment Control Act is not required to publish the application or the planned transaction in official gazettes.</p>
<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>In an official response to the written parliamentary question no 3336/J regarding the effectiveness and Amendment of the Austrian Foreign Trade Act, dated April 17, 2019, the competent minister responded on June 17, 2019, as follows : ¹⁵</p> <ul style="list-style-type: none">• There has been in total eight applications regarding transactions potentially requiring an approval pursuant to (then) Section 25a Austrian Foreign Trade Act 2011 since this provision came into force in 2013:<ul style="list-style-type: none">• Three applications were rejected because Section 25a Austrian Foreign Trade Act 2011 was not applicable.• In two cases, the competent Austrian minister informed in form of official decree that there are no objections to the planned acquisition because there is no reason to fear a threat to interests of public security and public order within the meaning of Article 52 and Article 65 Para 1 TFEU, including the provision of general interest and crisis prevention.• In two applications for preliminary enquiry, the competent Austrian minister informed that the submission of an application for approval pursuant to Section 25a Austrian Foreign Trade Act 2011 is not required.• In one application for ensuring that no application for approval is required the competent Austrian minister confirmed that no application is required.

¹⁴ The Constitutional Court: Overview <https://www.vfgh.gov.at/verfassungsgerichtshof/constitutional_court_overview.en.html> accessed on December 19, 2020.

¹⁵ Austrian Parliament, Austrian Federal Ministry for Digital and Economic Affairs, Official Response to the Written Parliamentary Question No 3336/J regarding the *Effectiveness and Amendment of the Austrian Foreign Trade Act* <https://www.parlament.gov.at/PAKT/VHG/XXVI/AB/AB_03350/imfname_757040.pdf> accessed on February 29, 2020.



- Eight applications concerned the sectors energy, automotive, construction machinery, telecommunications and aviation industry.
- The applications related to acquisitions from the following third countries: China, United Arab Emirates and Mexico.

Stakeholders views on the legal framework

Various stakeholders such as the Austrian Ministry of Economics, the Vienna Labour of Chamber and a Senior Scientist from the Vienna University of Economics and Business criticized the then draft bill (ie Investment Control Act) stipulating the reduction of the minimum threshold of company shares from 25% to 10% for "particularly sensitive areas," but not for the entire energy sector. Further critics related to the lack of transparency of the approval procedure for transactions and suggested to involve the main committee of the Austrian Parliament.¹⁶

Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.

In an official response to the written parliamentary question no 3336/J regarding the "Effectiveness and Amendment of the Austrian Foreign Trade Act" dated April 17, 2019,¹⁷ the competent Austrian minister responded on June 17, 2019, that the Austrian provisions already comply with the minimum requirements of the EU-FDI Screening Regulation by being transparent, providing clear deadlines, not discriminating between investments from certain third countries and providing possibilities for legal review.

Tugce Yalcin (Senior Consultant in M&A/Corporate department) and Christoph Mager (Partner in M&A/Corporate department) from DLA Piper Vienna analyzed in an article the potential impacts of the new EU-FDI Screening Framework for foreign companies and investors in Austria. They came to the conclusion that it is to be expected that numerous questions will arise in connection with the establishment of the new EU-FDI Screening Framework, in particular because terms such as "critical infrastructure" or "sensitive facilities" are not precisely defined in the new EU-FDI Regulation.

The article is accessible under:

<https://www.dlapiper.com/de/austria/insights/publications/2019/08/impact-of-foreign-direct-investment-screening-framework-of-the-eu-for-foreign-companies-in-austria/>

¹⁶ Wiener Zeitung, More Investment Protection (Mehr Investitionsschutz) <<https://www.wienerzeitung.at/nachrichten/wirtschaft/oesterreich/2012585-Mehr-Investitionsschutz.html>> accessed on December 19, 2020.

¹⁷ Austrian Parliament, Austrian Federal Ministry for Digital and Economic Affairs, Official Response to the Written Parliamentary Question No 3336/J regarding the Effectiveness and Amendment of the Austrian Foreign Trade Act <https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_03350/imfname_757040.pdf> accessed on December 19, 2020.



Other relevant information

DLA Piper Vienna successfully advised the Wanfeng Group, a listed manufacturer of components for the automotive and aviation industries with around 12,000 employees with its headquarter in Xinchang, on the acquisition of the leading Austrian aircraft manufacturer Diamond Aircraft in 2017, as well as Huachangda Canada Holdings Inc (HCD) on the acquisition of Valiant Corporation and Winvalco Limited.

Due to the increased demand for legal advice for Chinese investments in European companies, DLA Piper Vienna installed a China Desk that is specialized in M&A transactions relating to FDI and company acquisitions by foreign investors:

<https://www.dlapiper.com/en/austria/insights/publications/2019/02/dla-piper-china-desk-in-austria/>.

Brazil





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<p>The five biggest FDI countries of origin in Brazil are, respectively:*</p> <ul style="list-style-type: none">• The Netherlands (29%)• US (15%)• Luxembourg (9%)• Spain (8%)• Switzerland (6%) <p>(*Considering the total FDI volume, according to data from the Central Bank of Brazil in 2016)</p>
<p>Legal framework in force</p>	<p>Law 4,131/62, as amended; Law 11,371/06, as amended; General regulation from the National Monetary Council (Conselho Monetário Nacional (CMN)) and the Central Bank of Brazil (BACEN), including but not limited to:</p> <ul style="list-style-type: none">• BACEN Resolution No. 3,844/10, as amended• BACEN Circular No. 3,689/13, as amended• CMN Resolution No. 4,373/14, as amended
<p>Last revision of the legal framework</p>	<p>N/A</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>The basic structure of the Brazilian financial system (Sistema Financeiro Nacional) was established by Law No. 4,595, dated of December 31, 1964 (Law No. 4,595). The main regulatory agencies of the Brazilian financial system are the following regulatory bodies:</p> <ul style="list-style-type: none">• CMN• BACEN• the Securities and Exchange Commission (Comissão de Valores Mobiliários – CVM)• the Private Insurance Superintendence (Superintendência de Seguros Privados)• the Complementary Pensions Secretariat (Secretaria de Previdência Complementar) <p>The CMN oversees the financial and capital markets. The Central Bank regulates the Brazilian banking sector.</p> <p>Currently, the CMN is the highest authority in the system and is responsible for Brazilian monetary and financial policy and for the overall formulation and supervision of monetary, credit, budgetary, fiscal and public debt policies.</p>



<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>Brazilian legislation and regulation demand that all foreign investment in Brazil must be registered with BACEN. This registration is solely declaratory and by no means implies a previous authorization. Foreign capital is registered in specific modules, according to classification, which are: FDI (IED), financial operations (ROF), and portfolio investments. Guarantees provided by international organizations in internal credit operations must be registered as well.</p> <p>FDI is regulated by the National Monetary Council (CMN). The company receiving the investment, together with the representatives appointed by it, if applicable, is responsible for the registration. The entry of foreign capital in Brazil must be registered within 30 days from the date of the trigger event. Failure to comply with the requirements within the established period; failure to provide required regulatory information or the transmission of false information are subject to penalties.</p> <p>Furthermore, companies receiving foreign investments are obliged to keep their net worth and paid-up corporate capital, together with the paid-in capital by each foreign investor duly updated in the registry.</p>
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>Any foreign investment (either controlling or portfolio) is subject to registration.</p>
<p>Scope – sectors covered</p>	<p>All sectors are covered.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<ul style="list-style-type: none"> • No pre-authorization is necessary. • Covers controlling investments as well as portfolio investments. • Mandatory nature.
<p>Design – reciprocity?</p>	<p>There are no express reciprocity provisions in Brazil.</p>



<p>Design – procedures and deadlines</p>	<p>Companies receiving foreign investment are obliged to keep their net worth and paid-up corporate capital, together with the paid-in capital by each foreign investor, duly updated in the registry RDE. This update must be carried out (i) within 30 days of the occurrence of any event that changes the corporate interest of a foreign investor and (ii) annually, until March 31 in relation to the previous year ended December 31 for companies receiving FDI, whose assets and net worth are less than BRL250 million.</p> <p>Companies receiving FDI which have total assets and net worth equal to or exceeding BRL250 million must provide BACEN with financial statements on a quarterly basis.</p> <p>Law 11,371 (2006) obliges registry, with the BACEN, of foreign capital invested in the country in local currency, which is not subject to any other form of registry. FDI originating from exchange contracts and imported goods with no obligation to pay, on the other hand, must be registered in foreign currency.</p>
<p>Design – transparency and information requirements (filing forms?)</p>	<p>The company receiving the investment, together with the representatives appointed by it, if applicable, is responsible for the registration, according to instructions available on BACEN's website, option "Câmbio e Capitais Internacionais/Registro de capitais estrangeiros no País/Manuais do Registro Declaratório Eletrônico/RDE-IED Manual do Declarante" (only in Portuguese). Once all form issues regarding registration have been addressed, as well as issues regarding other government offices, there are no restrictions, whatsoever, for international transfers related to the investment.</p>
<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>We do not perceive in Brazil mechanisms that interfere with FDI.</p>



Interaction with other legal frameworks (eg merger control)

There is limited interaction between the FDI base rules presented above and other Brazilian legal regimes. As previously discussed, exception made to the sectors in which the government limits the access of foreign capital, all others are free to receive international capital flows from any jurisdiction. The sectors facing limitation are: (i) banking; (ii) telecoms;* (iii) radio/ television broadcasting; (iv) air transport;** (v) airport and air traffic controls;*** (vi) land transportation;** (vii) fishing companies; (viii) rural property; (ix) health system; and (x) transport of money and values. The Federal Constitution also imposes broader limitations on specific activities, namely: the nuclear sector; mail services; and aerospace activities.

As a general rule, there is neither special treatment nor a more adverse approach towards FDI in comparison to local investments.

Merger control rules, for instance, are applicable irrespective of the source of the capital. Whenever the legal thresholds set forth at the Law 12,529/2011 are met, a merger notification will be due. As Brazil follows a pre-merger review approach, transactions cannot be closed without the Brazilian Antitrust Authority (CADE) previous approval – even when BACEN's regulatory approval has already been granted.

* Foreign companies may participate, but they require a license.

** Limited to 20% shareholding.

*** Foreign capital entities may operate only under concession agreements.

Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.

The only acceptable circumstances to have an FDI blocked will be based on the restricted areas pointed out above (see question 14). Both controlling entities and hampered counterpart may rely on administrative or judicial reviews of any governmental act.

Swift preliminary injunctions can be obtained in case of any imminent harm. These measures tend to be very effective if any authority unduly applies limitations beyond those expressly defined in law.



<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>Brazilian law does not provide a specific procedure for investors to request a judicial review in cases related to FDI, therefore, most disputes would be carried out through two types of lawsuits: an ordinary lawsuit and the writ of mandamus.</p> <p>Ordinary lawsuits are the most commonly used legal vehicle to bring a dispute into Brazilian Courts. The parties may file an appeal against the decision rendered by Federal and State Courts within 15 business days from the day the judgement is published in the official gazette.</p> <p>The writ of mandamus can be brought to protect any liquid and certain right unprotected by habeas corpus against illegality or abuse of power by the public authorities. The writ of mandamus has a preferential place on the docket and a specific and fast judicial procedure but does not encompass an evidence presentation phase. In other words, it is only possible to file a writ of mandamus when the claimant has previous and enough evidence to prove the certainty and determination of its right.</p> <p>The procedure of the writ of mandamus is ruled by the Law no. 12,016 (2007) and is supplemented by the Civil Procedure Code. In short, it encompasses the initial petition, the information to be presented by the defendant authority and the legal report from the Public Attorney's Office. After such report is attached to the case records, the writ of mandamus is supposed to be decided within 30 days.</p> <p>The parties may file an appeal against the issuance or rejection of the writ of mandamus within 15 business days from the day the judgement is published in the official gazette.</p> <p>Another alternative dispute involving FDI is arbitration.</p>
<p>Publication in Official Gazette or other</p>	<p>Please refer to question 16 above.</p>
<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>Even though judicial decisions are published in the official gazette in Brazil, most of the cases involving FDI are submitted to arbitration, which procedure is legally confidential.</p>



<p>Stakeholders views on the legal framework</p>	<p>Even though there are still legal restrictions with regards to foreign investments in certain areas, imposed mostly by the Brazilian Federal Constitution, there is a growing trend to adjust these rules and restrictions, especially in regard to the current restrictions on the purchase of land by foreigners.</p> <p>Under the current rules, foreigners are subject to heavy restrictions to acquire rural land in Brazil. In this sense, there has been a growing discussion concerning the alterations on these restrictions, an initiative which has been informally encouraged by the Ministries of Agriculture, Finance and Foreign Affairs in Brazil. Many members of the Brazilian Congress have publicly stated that the current rules are considered to be very strict, and it is a priority that they work towards an opening, even if it is gradual.</p> <p>In this sense, there is a bill of law (projeto de lei) pending analysis in the House of Representatives (PL 4059/2012). If the wording is approved, it will facilitate the acquisition, lease and registration of rural property by foreigners in Brazil.</p>
<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>N/A</p>
<p>Other relevant information</p>	<p>N/A</p>

Canada





Indicate five biggest FDI countries of origin (indicate percentage if available)	<ul style="list-style-type: none">• US (53%)• EU (27%)• China (4.5%)• Japan (2.5%)• Australia, India and Switzerland (tying in fifth place) (1.7%)¹
Legal framework in force	<p>Canada's approach to foreign investment under the Investment Canada Act has two primary purposes: to review large investments to ensure they are likely to be of net benefit to Canada, and to review investments that could potentially be injurious to national security.</p> <p>Net benefit</p> <p>A foreign investor's acquisition of control of an existing Canadian business valued at or above the relevant "net benefit" review threshold requires pre-closing approval and the investor must file an application for review. The review assesses the proposed investment against the net benefit factors set out in the Act, and the parties may not close the transaction unless the Minister of Innovation, Science and Industry (the Minister) is satisfied that the investment is likely to be of net benefit to Canada.</p> <p>In some cases, the ICA deems the acquisition of a minority interest of a Canadian business by a non-Canadian investor to be an acquisition of control.</p> <p>The Minister takes into account several factors when making a determination of likely net benefit. These factors ensure predictability for investors while maintaining the flexibility to ensure the investment's overall economic benefit to Canada.</p> <p>Large Investments will involve binding commitments by way of written undertakings relating to the maintenance and/or growth of the Canadian business being acquired. Undertakings related to employment, capital expenditures, participation of Canadians in the Canadian business, including those to maintain head offices or head office functions in Canada are common. Research and development undertakings are frequently required, particularly in research and technology-driven industries.</p>

¹ Annual Report under the Investment Canada Act, 2017-18 available at: https://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/h_lk81126.html



Last revision of the legal framework

The Budget Implementation Act, 2009 amended the Investment Canada Act to permit the review of investments injurious to national security. 2009, c.2, s.453.

Investment Canada Regulations 85-611 (as amended SOR/ 2015-64)

National Security Review of Investments Regulations 2009-271 (SOR/ 2009-271, as amended SOR/2015-65)

Guidelines – Investment by State-owned Enterprises – Net benefit assessment – Specific guidelines on the net benefit assessment of investments by investors that are owned, controlled or influenced by a foreign state. Pursuant to the Guidelines on Investment by State Owned Enterprises (SOEs), the Minister takes into account the governance and commercial orientation of the investor and investors will need to demonstrate their strong ongoing commitment to transparent and commercial operations. (December 2012)

Guidelines on the National Security Review of Investments – Specific guidelines to inform investors of procedures that will be followed in the administration of the national security review process set out in Part IV.1 of the Act and the National Security Review of Investments Regulations. The guidelines provide a list of nine non-exhaustive factors, which will be considered in the assessment, including the effects of the investment on Canadians' defense capabilities and interests and intelligence activities; the transfer of sensitive technology or know-how outside of Canada; the effects on the security of Canada's critical infrastructure and the supply of critical goods and services; and the potential of the investment to enable foreign surveillance or espionage. (December 2016).²

COVID-19 Policy – On April 18, 2020, the Canadian government announced a new policy affecting foreign investment screening (the Policy), citing as its justification the extraordinary circumstances of the global COVID-19 pandemic. The Policy will apply until the economy recovers from the effects of the COVID-19 pandemic. This suggests an open-ended time horizon into the future.

The government stated its concern that many Canadian businesses had seen their valuations decline as a result of the pandemic and such sudden declines in valuations could lead to opportunistic investment behavior. The Policy provides that the government will scrutinize with particular attention foreign investments of any value, whether a controlling or non-controlling interest, in Canadian businesses that are related to "public health" or "the supply of critical goods and services to Canadians or to the government." The government signaled that it could cast a wider net in applying the national security review provisions to foreign investments in Canada. In addition, the Policy subjects to enhanced scrutiny under the Act all foreign investments by state-owned investors or by private investors "assessed as being closely tied to or subject to direction from foreign governments," regardless of the value of such investments.

² Guidelines on the National Security Review of Investments, (December 19, 2016); available at: www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk81190.html



Contextualization of the legal framework
(historical or other)

In February 2009, the Act was amended to include a new part, Part IV.1 Investments Injurious to National Security. This amendment provides the government of Canada with the authority to review a foreign investment that could be injurious to national security. Under this new part, an investment is reviewable if the Governor in Council (GiC) orders a review. For the GiC to order a review, the Minister must have reasonable grounds to believe, after consulting with the Minister of Public Safety, that a foreign investment could be injurious to national security. In addition to ordering a review, the GiC has the authority to take any measure with respect to an investment that it considers advisable to protect national security. The national security provisions provide for a review of a broader scope of investments by non-Canadians than the net benefit provisions, including: the establishment of a new Canadian business or an entity carrying on operations in Canada, the acquisition of control of a Canadian business of any dollar value (ie below the net benefit review threshold), and the acquisition of all or part of an entity carrying on operations in Canada. All these investments are subject to a multi-step national security review process led by Canada's national security agencies.³

Scope – Screening Mechanism – origin of FDI
(review of intra- or extra-EU FDI)
Are there any loopholes?

The Investment Canada Act will look all the way up the chain of ownership to the ultimate controller of the investor and will require disclosure of the country of origin of the ultimate controller and a description of the manner in which control is exercised. The Investment Canada Act specifies enforcement procedures when the Minister believes that an investor has not complied with its obligations under the Act, or contrary to the Act has entered into any transaction or arrangement primarily for a purpose related to the Act. If the investor fails to comply with a demand letter issued by the Minister, an application may be made by the Minister to a superior court. The court may order any measure as the circumstances require, including directing divestiture, compliance with undertakings, payment of a penalty of CAD10,000 for each day of contravention, revocation of voting rights and disposition of voting interests.

³ Annual Report of the Investment Canada Act 2009-10 at pp. 9-10



Scope – screening thresholds

Please indicate notably whether it covers solely controlling investments or also portfolio investments.

Net (Economic) benefit screening

There are multiple thresholds for review of direct acquisitions of control of a Canadian business by a non-Canadian investor. The 2019 thresholds are as follows:

For private-sector investors from World Trade Organization (WTO) member countries, the threshold for review in 2021 is CAD1.043 billion in enterprise value of the target Canadian business (this amount is indexed annually), based on total acquisition value, plus total liabilities less operating liabilities, minus cash and cash equivalents.

For investors from the US, EU, Mexico, Chile, Colombia, Panama, Peru, Honduras, South Korea, Japan, Vietnam, Singapore, Australia and New Zealand (collectively, Trade Agreement Investors), the threshold for review in 2021 is CAD1.565 billion in enterprise value of the target Canadian business (this amount is indexed annually) for an investment to directly acquire control of a Canadian business made by a non-Canadian that is controlled by nationals of these countries who are not state-owned.

For WTO member country state-owned or influenced enterprises the relevant threshold in 2021 is CAD415 million (this amount is indexed annually), based on the book value of assets of the Canadian business being acquired.

For investors from non-WTO member countries acquiring a non-WTO controlled target Canadian business, the relevant threshold for review is CAD5 million or more, based on the book value of assets of the Canadian business being acquired.

Controlling investments and portfolio investments

Control of corporations is deemed not to occur unless one third or more of voting shares are acquired (subject to control in fact test for cultural businesses or SOE acquisitions). Control is presumed to be acquired for acquisitions of between one-third and a majority of voting shares, but this presumption can be rebutted if there is no control in fact.

For non-corporate entities, control is acquired when a majority of voting interests is acquired, and no control is acquired when the voting interests acquired represent less than a majority.

National security screening

For acquisitions of control of Canadian businesses valued below the relevant thresholds, investors must file a notification, but the investment is not subject to review and approval under the net benefit provisions. Indirect investments by WTO investors are not subject to net benefit review, but the investor must file a notification. An indirect acquisition is an acquisition of a foreign company that has Canadian subsidiaries. A notification is also required when a non-Canadian investor establishes a new business in Canada.



<p>Scope – sectors covered</p>	<p>International investment across all sectors is subject to the Investment Canada Act. The thresholds for review are set out above.</p> <p>Cultural Businesses</p> <p>Cultural businesses are considered a protected sector, as evident with low thresholds for pre-closing review and approval of the foreign acquisition of a cultural business. Cultural businesses include businesses involved in the production or distribution of books, music, film and other media such as video games. Even if the cultural business activities are ancillary to the principal business of the target Canadian business and revenues from sales of cultural products are de minimis, a Canadian business will be considered a cultural business and will be subject to review by and approval of the Minister of Canadian Heritage.</p> <p>The direct or indirect acquisition of a Canadian business that is a cultural business is generally subject to a review requirement if the book value of the assets of the Canadian business is CAD5 million (in the case of a direct acquisition) or CAD50 million (in the case of an indirect acquisition). The establishment of a new cultural business or the acquisition of a cultural business below the thresholds may be subject to review if the government of Canada (federal cabinet) considers it in the public interest to review the investment. Such reviews are rare.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following:</p> <p>(a) Pre-authorization vs. ex-post screening of FDI? Other?</p> <p>(b) Covers solely controlling investments or also portfolio investments?</p> <p>(c) Mandatory or voluntary nature?</p>	<p>The Investment Canada Act does not define national security, which injects significant discretion and corresponding uncertainty into this aspect of the investment review process. In December 2016, the Minister issued guidelines on the National Security Review of Investments, which provide guidance as to the factors that will be taken into account in assessing investments under the national security provisions. The national security provisions cover the acquisition of a minority holding in a Canadian business, or the establishment of a new Canadian business, or even a foreign entity carrying on all or part of its operations in Canada.</p> <p>A notification must be filed where a foreign investment results in an acquisition of control of an existing Canadian business or the establishment of a new Canadian business and will be subject to the national security provisions of the Investment Canada Act. Where the thresholds for the net benefit to Canada (in question 7) are met, a pre-closing application for review must be filed and approval of the Minister must be obtained before the transaction can be completed.</p> <p>There are no monetary thresholds for national security reviews. The national security provisions cover the acquisition of a minority holding in a Canadian business, or even a foreign entity carrying on all or part of its operations in Canada. However, neither of these requires a notification to be filed and no voluntary filing or pre-closing clearance process is available.</p>
<p>Design – reciprocity?</p>	<p>N/A</p>



<p>Design – procedures and deadlines</p>	<p>Where the relevant threshold for review as set out above in question 7 is met, the acquisition is reviewable on a pre-closing basis and the parties may not complete the transaction until such time the Minister has found (or is deemed to have found) that the investment is of net benefit to Canada. The Minister has up to 45 calendar days (which they may extend by an additional period of 30 calendar days) to determine whether the investment should be approved. The review period may be extended past 75 days for an additional period which is determined by agreement between the Investment Review Division and the investor.</p> <p>If a direct or indirect investment by a non-Canadian does not meet the review thresholds set out above in question 7, the investor must file a notification with the Investment Review Division. A notification must be filed at any time prior to the implementation of the investment or within 30 days after closing. Non-Canadians who establish a new Canadian business must file a notification within 30 days after the establishment of the Canadian business.</p>
<p>Design – transparency and information requirements (filing forms?)</p>	<p>An Application for Review form, with information required for purposes of the net benefit assessment and a Notification form, with information required to assess the investment from a national security perspective, are both prescribed under the Investment Canada Act.</p>
<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>Measures to mitigate the potential harm to national security were considered and in some cases were imposed through conditions in an Order made under section 25.4 of the Investment Canada Act on the investment. The following are examples of measures that were considered or imposed on investments by such an Order made under the Act:</p> <ul style="list-style-type: none">• requiring government approval of proposed business locations in order to avoid proximity to strategic assets;• requiring that all servicing and support for some or all business lines are conducted in Canada;• creating approved corporate security protocols to safeguard information and access to a site;• requiring the engagement of a security-cleared compliance officer to ensure and report on compliance;• requiring third-party compliance audits on request;• requiring access to facilities for compliance inspection;• requiring employees with access to sensitive information to attest to compliance with approved security protocols;• notifying existing customers of pending new ownership;• providing notice to the Minister of new prospective employees who would have access to sensitive information or technology as a part of their job description; and• excluding sensitive business segments or assets from a transaction.⁴

⁴ Annual Report under the Investment Canada Act, 2017-18 available at: https://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/h_lk81126.html



Interaction with other legal frameworks (eg merger control)

One of the factors considered under the Investment Canada Act is the foreign investment's effect on competition in any industry in Canada. In practice, the Investment Review Division seeks the Commissioner of Competition's view on the competitive effects of a reviewable acquisition. However, the Minister is not bound by the Commissioner's analysis of the competitive impact of the transaction.

Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.

Between June 1985 and March 31, 2018, the Minister reviewed and approved approximately 1,750 investments under the net (economic) benefit to Canada test. The Minister must take into consideration the statutory factors in assessing the proposed investment. However, the Minister ultimately has complete discretion to apply the statutory net benefit to Canada. With respect to whether to block a proposed investment from a national security perspective, the decision is made by the GiC (ie the federal cabinet), upon the recommendation of the Minister, who is required to consult with the Minister of Public Safety and Emergency Preparedness.

During the period 1985 to March 31, 2018, only a handful of major proposals (outside the cultural area) were disallowed.

Recent Trends in Canadian Foreign Investment

Generally, the current federal government has specifically welcomed foreign investment in Canada. Specifically, the Liberal government has demonstrated a strong interest in attracting FDI in infrastructure projects and investment from Chinese companies, including Chinese state-owned enterprises. However, Chinese investments in critical infrastructure and advanced military laser technology have resulted in transactions being blocked or required divestitures under the national security regime. Historically, there have been many successfully completed acquisitions of and investments in Canadian mining companies by Chinese entities, including state-owned entities. However, in late 2020, the Canadian government blocked the proposed acquisition by Shandong Gold (Shandong) of Canadian gold-mining company TMAC Resources (TMAC) on national security grounds. TMAC operates the Hope Bay property in Nunavut and began producing gold in 2017 at the Doris mine. This marked the first time that a Chinese investment in Canada's mining sector has been formally blocked under the Act. Current challenges in the Canada-China relationship may have been a factor. Also, it was reported that there were substantive national security concerns arising from an investment by a Chinese state-owned enterprise in a business geographically proximate to sensitive military and strategic assets in the Arctic.

The COVID-19 Policy (described in question 4, above) has resulted in longer review periods in some cases, and the increased scrutiny of foreign investments by SOEs or by private investors with foreign government ties to assess whether such investments are motivated by non-commercial imperatives that could harm Canada's economic or national security interests.



<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>Decisions and orders of the GiC, and decisions of the Minister, made under the national security provisions of the Investment Canada Act are final and binding and, except for judicial review under the Federal Courts Act, are not subject to appeal or to review by any court.</p>
<p>Publication in Official Gazette or other</p>	<p>The Investment Canada Act process is confidential and exempt from Access to Information Act (AIA) requests. However, a list of completed decisions and/or notifications of investments by non-Canadians in Canada is published each month on the government of Canada website. It contains only the information which may be disclosed under the Investment Canada Act, namely the name of the Investor and his location, the name of the business being acquired or established and its location, and a description of the business activities of the Canadian business.</p>
<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>In assessing investments under the national security provisions of the Act, and as articulated in the guidelines on the National Security Review of Investments, the terms of the investment, the nature of the asset or business activities involved, and the parties, including the potential for third-party influence, are considered. Determinations made by the Minister or GiC are made on a case-by-case basis.</p>
<p>Stakeholders views on the legal framework</p>	<p>Until amendments were made to the Investment Canada Act in 2009, the Minister had no obligation to provide any reasoning to the parties for his refusal to clear a transaction under the net economic benefit screening. Now, when refusing to clear a transaction, the Minister must provide reasons. The Investment Canada Act national security review is an opaque process and there is no obligation on the Minister or the GiC to provide reasons for refusing to clear a transaction for national security reasons.</p>
<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>N/A</p>



Other relevant information

Industry-Specific Review: Transport Sector

Canada's main federal transportation legislation, the Canada Transportation Act, contains a review process for mergers involving transportation companies under federal jurisdiction. In the case of a foreign investor, this review is in addition to the review and/or notification under the Investment Canada Act and the merger control provisions under the Competition Act.

Parties are required to submit information about the proposed transaction and its impact on the public interest as it relates to national transportation.

Public interest factors include the economic, environmental, safety, security and social implications of the proposed transaction.

It is a criminal offense for parties to fail to notify under the Canada Transportation Act, or to close without cabinet approval where required, or to fail to adhere to terms and conditions imposed by the cabinet. Any officer or director who authorized or participated in the offense is personally liable, in addition to the corporation. Penalties include fines and/or imprisonment.

Restrictions on Foreign Investment

Investment in the following industries is restricted by Canadian ownership requirements: uranium mining, aviation, telecommunications, insurance, fisheries and real estate.

Chile





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<p>The five biggest FDI countries of origin in Chile are:¹</p> <ul style="list-style-type: none"> • US (12.99%) • Spain (12.68%) • Canada (12.61%) • Netherlands (7.50%) • UK (6.90%)
<p>Legal framework in force</p>	<ul style="list-style-type: none"> • Foreign Direct Investment Law 20,848 (hereinafter, the FDI Law). • Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations (hereinafter, the Chapter XIV). • Additionally, Chile has signed numerous Bilateral Investment Treaties with several countries, as well as numerous Free Trade Agreements, Multilateral Agreements and Preferential Agreements, which are in force.
<p>Last revision of the legal framework</p>	<p>The FDI Law has not been subject to revision since its issuance. The Chapter XIV and its Manual were last revised in December 2019. The latest amendments became effective March 1, 2020.</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>The FDI Law replaced the Decree Law N° 600 of 1974 (DL 600) on January 1, 2016. Under DL 600, the foreign investors had to apply for an authorization from the Foreign Investment Committee, which is the public body in charge of the matter. After the approval, the foreign investor could enter a Foreign Investment Contract with the State of Chile. A foreign investor was able to access the formal foreign exchange market for both incoming capital and for acquiring the currency to remit capital or profit. Also, a foreign investor had the right to perform capital remittances one year after the capital entered Chile and could make profit remittances at all time. Lastly, they had the right to choose between a Common Tax Regime or a Special Tax Regime.</p> <p>The FDI Law enacted in 2016 aims to simplify the whole investment scheme and relies on a non-discrimination policy between national and foreign investors. Among the main characteristics of the new FDI structure, the following aspects of the FDI Law should be mentioned:</p> <ul style="list-style-type: none"> • It includes several definitions, such as foreign direct investment and foreign investor. • It aims to promote the foreign investment in certain specific areas, in order to transform Chile from an export country into a producer country. • It creates the Foreign Investment Promotion Agency, also known as "InvestChile," which replaced the former Foreign Investment Committee. InvestChile is the public organization that promotes Chile as a destination for foreign direct investment in the global market, connecting the interests of foreign investors with the business opportunities that the country offers.

¹ Data originates from the Central Bank of Chile and corresponds to the Passive Direct Investment Stock per country in 2019. Percentages are approximate.

- It establishes certain rights for all those that qualify as foreign investors (ie the right of remitting overseas the transferred capital and the liquid profits generated, to the extent that it has met its tax obligations; the right of accessing the formal exchange market to liquidate or obtain foreign exchange; the right to access the tax exemptions over the sale and import of certain capital goods; and the right of non-discrimination between foreign and national investors). These rights are granted without the need of obtaining any kind of authorization from any regulatory body, for all investors that obtain a Foreign Investor Certificate.
- It creates a Ministerial Committee for the promotion of the Foreign Investment, which will advise the President of the Republic on all foreign investment related matters. This Committee will be led by the Ministry of Economy.
- Allows local governments to attract and promote foreign investment by their own means.

It is important to note that even when a new FDI structure has been enacted, contracts signed between the State of Chile and foreign investors under DL 600 remain in force as well as their rights and obligations. These contracts will be administered by InvestChile as the successor and legal continuator of the Foreign Investment Committee.

Chapter XIV already existed besides the DL 600 and continues to exist besides the FDI Law. Whereas the FDI Law provides for certain advantages for foreign investors, but is not compulsory for the most part, the application of Chapter XIV is mandatory in the cases regulated by it.

Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI)
Are there any loopholes?

There is no need for foreign investors to obtain any sort of authorization granted by any regulatory body. However, if the foreign investor wants to qualify for the special tax regime regulated under the FDI Law, it has to send a request to the Foreign Investment Promotion Agency in order to receive a certificate where the Agency recognizes the foreign investor and its investment.

The request submitted by the foreign investor for these purposes must prove the materialization of the investment in Chile, as well as contain a detailed description of it, including its amount, destination and nature, in the form and under the conditions determined by said agency. The Foreign Investment Promotion Agency shall issue said certificate within 15 days from the date of receipt of the application submitted by the foreign investor. The certificate must contain all the details that allow the individualization of the foreign investor and the investment made up to the date of issuance. Chapter XIV mainly establishes the rules applicable to foreign exchange operations regarding international loans, deposits, investments and capital contributions, from abroad. Such rules are not applicable to credits, deposits, investments or capital contributions of up to USD10,000 or its equivalent in any foreign currency, nor to the operations of this type that are regulated on banking companies established in Chile.

There are no specific rules for foreign investors that consider the EU or non-EU qualification of investors in the FDI Law or in the Chapter XIV.

Also, in our opinion, there are no significant loopholes in the FDI Law. However, there are some critics regarding this new foreign investment model, which are referred to in section 19 below.



Scope – screening thresholds

Please indicate notably whether it covers solely controlling investments or also portfolio investments.

Without prejudice that there are no mandatory authorizations required for foreign investors under the FDI Law, it applies to "the transfer to the country of foreign capital or assets owned or controlled by a foreign investor for an amount of or more than USD5 million or their equivalent in other currencies." The FDI Law also includes investments that give the foreign investor control of at least 10% of the company's voting shares, or an equivalent percentage of the share capital if it is not a stock company, or of the net worth of the company in question. In case of smaller investments, it is not possible to obtain a Foreign Investor Certificate.

On the other hand, under the Chapter XIV credits, deposits, investments and capital contributions in a foreign currency must be declared to the Formal Exchange Market if their amount is more than USD10,000 or its equivalent in a foreign currency. In case the aforementioned operations involve an amount equal to or higher than USD1 million or its equivalent in a foreign currency, the actors of the operation have to inform in writing the Central Bank of Chile about the corresponding operations to be performed, in accordance with the provisions of the corresponding Manual of Chapter XIV issued by said body.

Scope – sectors covered

In principle, all economic sectors are open to private investment (both for national and foreign investors, according to the non-discrimination principle) except for a few exceptions, as mentioned below (see section 15).

Even when the FDI Law covers all sectors indistinctly, there are specific sectors that are promoted by the FDI Law by applying a tax exemption to the import of capital goods that are used for the development, exploration or exploitation in Chile of mining, industrial, forestry, energy, infrastructure, telecommunications; and technology, medical or scientific development research projects, if they involve investments for an amount equal to or more than USD5 million. For these purposes, the investor must file a request before the Ministry of Finance for it to verify and certify the compliance of certain legal requirements which must be met for the tax exemption.

However, note that the main investment sectors ² in Chile are mining (31.58%); financial services (23.47%); electricity, gas and water (13.28%); commerce (6.58%) manufacturing industry (5.46%); and communications (4.50%).

² Data originates from the Central Bank of Chile and corresponds to the Passive Direct Investment Stock per economic sector in 2019.

<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<ul style="list-style-type: none"> a) Under Chapter XIV, there is an ex ante screening for credit operations of more than USD10,000, since they must be carried out through the Formal Exchange Market (basically, through a Bank or an authorized Money Exchange House). In case of operations that involve an amount equal to or higher than USD1 million, the interested parties must inform said operation to the Central Bank of Chile before or at the same time as the currency enters Chile. b) The FDI structure covers controlling investments as well as portfolio investments. c) Under FDI Law it is not mandatory, but foreign investors may request from InvestChile a Foreign Investor Certificate which gives them the possibility to access the rights granted by the FDI Law, as mentioned above. Under Chapter XIV, it would be mandatory in cases where the credit operations involve the amounts indicated in answer a) above.
<p>Design – reciprocity?</p>	<p>Not applicable since the Chilean FDI structure relies on the non-discrimination principle between foreign and national investors. Therefore, unless there is an International Multilateral or Bilateral Treaty between Chile and other countries, there should not be special treatment for any foreign investment, no matter where they come from.</p>
<p>Design – procedures and deadlines</p>	<p>Procurement of the Foreign Investor Certificate Regarding this, the request filed by the foreign investor must prove the investment in the country, as well as contain a detailed description of it, including its amount, destination and nature, all in the form and conditions determined by the referred Foreign Investment Promotion Agency. The referred Agency must issue the certificate referred to within 15 days from the date of receipt of the request submitted by the foreign investor.</p> <p>Procurement of the Tax exemption resolution Under the provisions of the Law on taxes to sales and services, investors can access a tax benefit regarding the import of certain capital goods, if they are destined to the development of certain activities. This tax exemption can be requested only after 12 months of the goods' import or acquisition in Chile was performed. For this purpose, the investor has to file a request before the Ministry of Finance to issue a tax exemption resolution (foreign investors have to attach the Foreign Investor Certificate). Said resolution will be issued within 60 calendar days starting from the presentation of the request and all relevant background information; if this term is not complied with, the request will be deemed as approved, and said Ministry must issue, without delay, the resolution granting the tax benefit, within 5 business days since the 60 days' term expired. If the Ministry issues the certificate, it must send a copy to the Tax Authority within 20 calendar days of the issuance of the relevant resolution.</p>



Information to the Central Bank of Chile

Under Chapter XIV, and only in case of credit operations with an amount equal to or higher than USD1 million, the Central Bank of Chile must be informed in writing by the debtor/receiver of the currencies. This must be done before or at the same time as the currency enters Chile. The information shall be sent by completing the special Form prepared by the Central Bank to do so, which is contained in the relevant Manual related to Chapter XIV.

Design – transparency and information requirements (filing forms?)

Procurement of the Foreign Investor Certificate

The form and list of documents needed for obtaining a certificate from InvestChile can be found on its website. The information required will depend on whether the foreign investor is a natural person or a legal entity. In the case of natural persons, they comprise among others: (i) a photocopy of passport; (ii) if presented by the foreign investor's representative, enough power of attorney for this purpose; (iii) a certificate of domicile or tax residence overseas in Spanish or English, duly certified or legalized and registered by a public notary in Chile, as applicable; (iv) a foreign exchange operation report or equivalent, issued by the Central Bank of Chile, indicating the transfer of the capital to the country; (v) a legalized copy of the deeds of incorporation or increase in equity of the company receiving the investment and any other deeds necessary to accredit materialization of the investment and that the foreign investor has 10% of the control of or stake in it; (vi) a legalized copy of the registration, in force, of the recipient company on the Business Register of the corresponding Custodian of Real Estate.

In the case of legal entities, the relevant background information contains, among others: (i) bylaws of the foreign investor in Spanish or English, duly certified or legalized and registered by a public notary in Chile, as applicable; (ii) a Good Standing Certificate of the foreign investor in Spanish or English, duly certified or legalized and registered by a public notary in Chile, depending on the case; (iii) power of attorney to represent the foreign investor before InvestChile in Spanish or English, duly certified or legalized and registered by a public notary in Chile, depending on the case; (iv) a foreign exchange operation report or equivalent, issued by the Central Bank of Chile, indicating the transfer of the capital to the country; (v) a legalized copy of the deeds of incorporation or increase in equity of the company receiving the investment and any other deeds necessary to accredit materialization of the investment and that the foreign investor has 10% of the control of or stake in it; (vi) a legalized copy of the registration, in force, of the recipient company on the Business Register of the corresponding Custodian of Real Estate.

For both cases abovementioned, other information may be required if InvestChile deems it necessary.



Procurement of the Tax exemption resolution

In this case it is necessary that the investor files all background information necessary for the Ministry of Finance to verify and certify that the investor complies with all legal requirements for accessing to the tax benefit (which in case of foreign investors, will include the Foreign Investor Certificate).

Information to the Central Bank of Chile

In the case of credit operations with an amount equal to or higher than USD1 million, the debtor/receiver of the foreign currencies has to file the form contained in Annex 1 of the Manual for Chapter XIV, either directly or through an entity of the Formal Exchange Market, jointly with the instructions issued for the purposes of the delivery of the foreign currencies or its liquidation in Chilean pesos. Other details are included in the relevant Manual referred to.

Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI

The discretionary powers of the relevant authorities involved are mostly determined by law and includes the possibility (i) to request more information that they deem necessary for issuing a resolution or certificate; and (ii) to sanction infringers in case they have made false declarations or filed fake documents. A wide range of sanctions are available.

Regarding other possible decisional outcomes, the authority must strictly comply with the law. It is even possible that in case of non-response to the investors' requests, the silence of the authority will be deemed as approval of said request as expressly indicated by law.

Interaction with other legal frameworks (eg merger control)

Merger control takes place if the investment can be categorized as a concentration operation under Competition law. This is the case when there is a change of control, which occurs when the transaction results in an acquisition of control of a business as a consequence of a merger or acquisition of capital. For mandatory merger control, the transaction has to surpass a threshold determined by the competition authority. To date (Exempt Resolution No. 157/2019 of the National Economic Prosecutor's Office), the thresholds are that: (i) the parties' combined turnover in Chile is CLF2.5 million or more (USD99 million); (ii) at least two of the parties have individual turnover in Chile of CLF450,000 or more (approx. USD17 million).

Regarding minority interests, filing is mandatory within 60 days of completion where the acquisition is of a minority interest of more than 10% of a competitor, and only if both firms compete in Chile and each have a turnover in Chile of more than CLF100,000 (USD4 million).

Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.

In principle, all economic sectors are open to the private investments and foreign capital in Chile. The FDI Law, however, has certain specific restrictions:

- **Border areas:** A natural person or legal entity from a neighboring country cannot acquire state-owned land which is within 10 km from a bordering land or 5 km from the coast. Exceptionally, foreigners domiciled in Chile may have access to land located on the coastal strip, subject to authorization from the Undersecretary of Armed Forces, the Ministry of National Defense and the National Directorate of Borders and Boundaries (DIFROL), as the case may be.
- **Aquaculture and fishing:** Only Chilean natural persons, legal entities incorporated under Chilean law and foreigners with permanent residence in Chile can be granted authorization to harvest and capture hydrobiological species.
- **Hydrocarbons, lithium and deposits in Chilean waters:** Mining concessions cannot be awarded on hydrocarbons, lithium or deposits of any type in Chilean waters or areas classified as important for national security.
- **Naturally-occurring nuclear materials and nuclear energy:** Naturally occurring nuclear materials cannot be subject to any legal act except those implemented or entered into by the Chilean Nuclear Energy Commission (CChEN) with it or counting with the CChEN authorization.
- **Domestic shipping:** Only Chilean boats are permitted to transport passengers and freight along the coast, by river or on lakes between different points in Chile or between them and naval infrastructure in Chilean waters or the Economic Exclusion Zone.
- **Telecommunications and radio:** Only legal entities governed by public or private law and incorporated and domiciled in Chile may hold a concession for an open television service or make use of it.
- **Television:** Only legal entities incorporated and domiciled in Chile may hold a telecommunications or radio broadcasting concession.

These grounds are not based on the WTO definitions.

Also, as most of the restrictions are established by law and do not give any discretionary powers to the relevant bodies, the degree of discretion of the authority to apply the legal criteria in question is very limited. Exceptionally, even in those cases where the law expressly gives discretionary powers to a specific authority, they must be exercised with strict adherence to the law.



<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>Firstly, any case will be reviewed based on the Investment International Treaty between Chile and the foreign investor's country of origin. These treaties may include rules for solving potential disputes, commonly the UNCITRAL and ICSID Convention Arbitration Rules.</p> <p>The Chilean judicial system is generally transparent and independent. It is based on the rule of law with civil and criminal courts distributed throughout the country and other special courts, such as labor and tax courts. These are the first instance courts whose verdict could be subject to appeal before other second instance courts, the Courts of Appeals, located in each region of Chile. Finally, the highest Court is the Supreme Court, based in the country's capital, Santiago. It does not constitute a third instance, but a court of cassation.</p> <p>As to the processing times for cases brought before the Chilean courts, it is possible to distinguish among the different procedures. In civil matters, for example, it can take an average of four years to process a case in the first instance. As for higher courts (Appeals Courts and Supreme Court), cases are usually resolved promptly, after the attorney's verbal allegations, but it can take up to a year from the time the case enters the respective court and pleadings are scheduled. Please note, that these times decrease considerably when the case is heard outside of Santiago.</p> <p>Finally, it should be noted that some judicial and administrative proceedings have been slowed due to the COVID-19 pandemic.</p>
<p>Publication in Official Gazette or other</p>	<p>N/A</p>
<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>N/A</p>



Stakeholders views on the legal framework	<p>Taking into account foreign investors' concerns, the Chilean government has been working on simplifying investment procedures in Chile for the last few years and has entrusted InvestChile with the job to promote foreign investments and help foreigners invest in Chile as well as encouraging bigger investments by awarding them benefits.</p> <p>The following criticism has been raised by the relevant actors:</p> <ul style="list-style-type: none">• The lack of a contract between a foreign investor and the state of Chile represents uncertainty and risk for foreign investors, who used to execute agreements for the safeguard of their rights (since they required the prior consent of both parties to be amended, while any change to the FDI Law depends only on the will of the state of Chile.)• The main reason argued by the Chilean authorities for the derogation of DL 600 was that the investment structure regulated therein did not respond to the current needs, particularly considering that now Chile is an "economically, socially and politically stable country." This affirmation has been much debated in the years following the FDI Law's entry into force.• The new structure is not clear enough regarding the powers that local governments have in the promotion of foreign investments, in comparison to the efforts that the central Agency may make.• The definition of foreign investors is quite limited, as it would leave out legal entities incorporated in Chile but subject to the control of a foreign person. This could prevent the implementation of certain business strategies.• As the tax invariance benefit is not included in the FDI Law (and was included under DL 600), it may make Chile less competitive with neighboring countries that do have it.
Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.	N/A
Other relevant information	N/A

Colombia





Indicate five biggest FDI countries of origin (indicate percentage if available)	<ol style="list-style-type: none">1. Spain (24.3%)¹2. US (21.6%)3. Switzerland (11.4%)4. British Virgin Islands (10.1%)
Legal framework in force	<ul style="list-style-type: none">• Law 9 of 1991• External Resolution No. 1 of 2018 issued by the Colombian Central Bank• Decree 1068 of 2015• Circular DCIN 83 issued by the Colombian Central Bank's Foreign Exchange Direction
Last revision of the legal framework	The legal framework was reviewed on the first semester of 2018, which ended up with the issuance of the External Resolution No. 1 of 2018 on May 25, and the modification of the Circular DCIN 83.
Contextualization of the legal framework (historical or other)	<p>Before the issuance of the Constitution of 1991, Colombia had a restriction over the usage of foreign currencies in its territory.</p> <p>Since 1991, under the scope of the freedom of enterprise principle that is provided by the Constitution, FDI is generally permitted and can only be prohibited or restricted considering reasons of sovereignty, technology transfer or public policies regarding specific sectors.</p> <p>Despite the economic openness that arose from the Constitution of 1991, the law has considered necessary to regulate or limit the investments made in certain sectors for public order motives, such as the investments in financial institutions, hydrocarbon sector and TV networks.</p>

¹ Information available at https://www.banrep.gov.co/sites/default/files/paginas/C2Flujo_Paises_2007.xlsx. The percentages were calculated considering the flow of foreign investments in Colombia during 2020.



<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>FDI is permitted in Colombia in all economic sectors, except for activities related to national defense and security and those concerning the processing, disposition and disposal of toxic waste not produced in Colombia, which are explicitly prohibit.</p> <p>Additionally, as a general rule, a public authorization is not required for foreign investment. Regarding any investment made in branches of foreign companies that engage in activities related to the exploration and exploitation of oil, natural gas, carbon, ferronickel, and uranium; or that provide services exclusively to the oil and gas sector, the law provides a special foreign exchange regime that regulates how the flow of fund between the branch and its parent company.</p> <p>Nonetheless, some special regimes provide that a public authorization will in fact be required or establish limits to the amount of the investment; such is the case of:</p> <ul style="list-style-type: none">• Investments made in financial institutions that imply the acquisition of the 10% more of its capital have to be previously authorized by the Superintendence of Finance, who will particularly review the solvency of the investor, as well as its moral and professional conditions. <p>Regarding the Colombian TV network sector, Law 680 of 2001 provides that foreign investments made in a television concessionaire (national and regional networks and national networks of private operation) are allowed provided that they do not exceed the 40% of the capital of such concessionaire. Additionally, the National Television Authority will verify the treatment granted by the country of origin of the investment regarding Colombian investments in the same sector, considering reciprocity and transference of technologies, in order to authorize the FDI.</p>
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>Investments made in a television concessionaire will be reviewed to verify (i) that the transaction does not imply that more than 40% of the concessionaire’s capital is owned by foreigners and (ii) that there is reciprocity with the country of the foreign investor.</p> <p>Regarding FDI in financial institutions, the threshold for the screening of the FDI requires that the investment is equivalent to 10% or more of the financial institution’s capital.</p> <p>In both cases the screening will cover both FDI and portfolio investments.</p>
<p>Scope – sectors covered</p>	<p>As mentioned, the screening covers the investments made in financial institutions or television concessionaires.</p>



<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>Regarding television concessionaires, the screening mechanism is an ex-post control which is initiated by the Television Authority. Regarding financial institutions, the screening mechanism is a procedure for pre-authorization.</p>
<p>Design – reciprocity?</p>	<p>As it was previously mentioned, regarding FDI on television concessionaires, the Authority considers reciprocity for such investment, regarding the possibility of the Colombian companies to invest in the same sector in the country of the foreign investor, as well as the possibility to perform transference of technology that allow such Colombian investor to contribute to the development of the Colombian television industry.</p>
<p>Design – procedures and deadlines</p>	<p>There is no specific deadline or term for the authority to approve an FDI on financial institutions. At present, the authority is taking between two and three months to consider such authorization requests; however, this term may vary (eg in the last few months the term has increased from being between two and three weeks). The term will also depend on the timing of inquiries for additional information which the authority requests from the investor and from foreign authorities. These requests for additional information are commonly associated with the requirement to (i) identify the real beneficiary of the investment; and (ii) identify and prevent any risk related to money laundering and terrorism financing.</p>
<p>Design – transparency and information requirements (filing forms?)</p>	<p>Regarding FDI in television concessionaires, there are not specific forms or information that the Authority requires to be filed. Therefore, the foreign investor shall submit all the information that can support the fulfilling of the requirements provided by law regarding the percentage of foreign investment in the concessionaire's capital, as well as the reciprocity and transference of technology with the FDI's country of origin if demanded by the Authority. Regarding FDI in financial institutions, the Superintendence of Finance has designed forms and checklists with information that shall be filed before the authority to assess the investment.</p>
<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>With regard to FDI in financial institutions, it does not appear possible to provide a specific range of decisional outcomes considering that all the filings are private, and, therefore, information becomes available only with regard to approved investments. Nevertheless, recent experience shows that it is unlikely that the approval will be denied by the authority unless a risk, related to money laundering and terrorism financing associated with the investor, its affiliates or the real beneficiary, is identified.</p>



<p>Interaction with other legal frameworks (eg merger control)</p>	<p>Despite the aforementioned, the screening of FDI interacts with different legal frameworks, as follows:</p> <ul style="list-style-type: none">• Merger control: If the foreign investor, directly or indirectly, participates on the same chain of value than the recipient of the investment in Colombia, the transaction shall be notified or pre-assessed by the Superintendence of Industry and Commerce. Such procedures are mandatory if the relevant merger control thresholds are met.• Authorization for specific sectors: Colombian regulation has procedures for the pre-authorization of certain transactions related to the acquisition of participation in companies in specific sectors, such as private surveillance; health, public services, among others. These procedures shall be made by any investor, regardless of whether it is foreign or national
<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>Regarding FDI in television concessionaires, as aforementioned, there are three criteria applicable: (i) that the total foreign investment in such television concessionaire does not exceed the 40% of its capital; and regarding the country of origin of the investment, (ii) the reciprocity and transference of technology opportunities for Colombian investors.</p> <p>Regarding FDI in financial institutions, the criteria is wider as the law provides that the authority shall consider the solvency of the investor, as well as its moral and professional conditions. Nevertheless, from such wideness does not arise a high degree of discretion since the authority mainly considers the experience of the investor in the finance sector, the curriculum of its directors, and the origin and management of the investor funds, especially for purposes of preventing asset laundering and financing of terrorism.</p>
<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>Considering that both the Superintendence of Finance and the National Television Authority are public authorities, their decisions are subject to judicial review by the Colombian judges in two different instances: The first instance decision can take between 12 and 36 months; and the second instance decision can take up to ten years. In any case, the judge will only apply the law directly and verify if the decision of the authority applies such regulation.</p>
<p>Publication in Official Gazette or other</p>	<p>Regarding the procedures before the Superintendence of Finance, all the filling, documents and the decision are private, therefore there is no publication of such decision.</p> <p>The same consideration shall apply regarding the investment made in television concessionaires. Nevertheless, considering the public relevance of the television concessionaires, the Authority usually issues a statement informing the decision but without revealing the filling, the documents of support, and all the considerations of such decision.</p>



<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>As all the information regarding the investments in finance institutions is private there are no relevant examples.</p> <p>Regarding investment in television concessionaires, there is one recent case related to the concession of a public network in Colombia called Canal Uno, which was granted to a concessionaire integrated by three Colombian companies, and a foreign investor called HMTV, a company duly incorporated in Florida. As per the public information, the participation of HMTV does not exceed the 40% threshold. Despite the aforementioned, the authorization of the investment made by HMTV was made in the course of a bid process decided by the National Television Authority. This particularity is a consequence of the public nature of the network to be granted.</p> <p>Regarding privately operated networks, there are no recent cases to be considered as precedent.</p>
<p>Stakeholders views on the legal framework</p>	<p>As a general view, the Colombian regulation is seen as not restrictive of the FDI as there is no need to request authorization and the only procedure is related with the foreign exchange duties to be fulfilled before the Central Bank, that are made by the intermediary, or once that investment has been made.</p>
<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>N/A</p>
<p>Other relevant information</p>	

Czech Republic





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<p>The latest official statistics are as of December 31, 2018 – statistics from the Czech National Bank:</p> <ul style="list-style-type: none">• Netherlands (18.6%)• Luxembourg (16.8%)• Germany (16.4%)• Austria (9.8%)• France (7.3%) <p>The official 2019 statistics will be available in March 2021.</p>
<p>Legal framework in force</p>	<p>Bilateral investment treaties (BIT) Multilateral agreements ICSID (International Centre for Settlement of Investments Disputes) Convention MIGA (Multilateral Investments Guarantee Agency) Convention Agreement on Trade-Related Investment Measures (TRIMs)</p> <p>EU legislation Regulation (EU) 2019/452 establishing a framework for the screening of FDI into the Union (FDI Regulation).</p> <p>National legislation the Czech Act No. 72/2000 Coll., on Investment Incentives, as amended – partially relevant; and the Draft Act on Screening of Foreign Investment which implements the EU Regulation (Act).</p>
<p>Last revision of the legal framework</p>	<p>ICSID Convention – entered into force on October 14, 1966 MIGA Convention – last amendment on November 14, 2010 TRIMs Agreement – entered into force in 1995 Regulation – entered into force on April 10, 2019 Act – shall be discussed by the Czech Senate on December 3, 2020</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>Former Czech Act No. 219/1995 Coll., the Foreign Exchange Act, as amended – abolished on October 18, 2016. The Act implementing the Regulation was introduced in 2019.</p>



<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>The proposed Act non-exhaustively enumerates the sectors that are subject to potential screening procedures. These sectors are usually connected to the strategic or safety interests of the Czech Republic (see question 7 below).</p> <p>The regulation applies to all the investors residing outside of the EU, including European entities which are controlled from the outside of the EU. The Act stipulates that the Ministry of Industry and Trade (Ministry) requires an investor who applies for an authorization of the FDI to provide full disclosure of the information including ie the complete ownership structure and the source of financing (see question 12 below for more details).</p>
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>For the Ministry to commence a screening procedure regarding any FDI, a basic threshold of direct or indirect acquisition or a possibility of disposal with 10% or more of the voting rights of the target must be met – so-called effective influence.</p> <p>The Act further provides only non-economical screening thresholds that are closely related to the national security which are classified followingly:</p> <p>FDI requiring authorization</p> <p>The authorization is necessary for the acquisition of control of the businesses that operate in nationally strategic fields, in particular:</p> <ul style="list-style-type: none">• manufacture, research innovation of military material;• operation of an element of critical infrastructure as designated by state authority;• the administrator of the critical informational system or communicational infrastructure; and• developer or manufacturer of dual-use items (for civil and military use). <p>FDI that may be screened ex officio</p> <p>Under this category falls other FDI that has the potential to endanger the security of the Czech Republic or its internal order. In this case, the prior authorization is not required but the Ministry may commence the screening procedure ex officio within five years after the completion of the FDI. The terms "national security" or "internal order" are not defined by the Czech law which leaves an uncertainty for the investors. Act at least provides us with the following aspects of the target entity that are taken into account when assessing the aspects of the FDI:</p> <ul style="list-style-type: none">• access to the energy, transport, health, communication, defense, cybersecurity, aviation, media or information infrastructure, technology or dual-use items;• access to the supply that relates to the energy, raw material or food; and• possibility to significantly influence public opinion.
<p>Scope – sectors covered</p>	<p>The sectors that are covered by the Act are usually related closely to the business of strategic and military importance which if compromised by FDI would consequently mean a direct threat to the security of the Czech Republic and its public or internal order.</p> <p>See question 7 above for more specific information on the sectors covered.</p>

<p>Design of FDI Screening Mechanism Please indicate notably the following:</p> <p>(a) Pre-authorization vs. ex-post screening of FDI? Other?</p> <p>(b) Covers solely controlling investments or also portfolio investments?</p> <p>(c) Mandatory or voluntary nature?</p>	<p>Taking into account the different sensitivity of some sectors, the Act establishes:</p> <p>(a) A mandatory screening mechanism is established for FDI targeting key areas for the protection of the essential security interest of the Czech Republic (see the FDI requiring authorization above). These investments need pre-authorization.</p> <p>(b) Both are covered due to the fact that the key aspect is the threshold of control or influence over the target entity's 10% or more of the voting rights.</p> <p>(c) Voluntary pre-screening mechanism is established for other potentially risky FDI in certain sectors (see the FDI that may be screened ex officio) where investors may avoid the subsequent ex officio screening procedure by commencing a consultation process with the Ministry before completion of the FDI. In case the target entity has a TV or radio broadcasting license or is a periodical print publisher whose aggregate minimum average printed load is 100,000 copies per day for the last calendar year, the consultation is mandatory.</p>
<p>Design – reciprocity?</p>	<p>N/A</p>
<p>Design – procedures and deadlines</p>	<p>Pre-screening procedure – Consultation The Ministry has 45 days since the commencement of the process of consultation to initiate a screening procedure, otherwise it is considered as if the FDI is permissible.</p> <p>Screening procedure The screening of the FDI is supervised by the Ministry in cooperation with other national entities – Ministry of Foreign affairs, Ministry of Finance, Ministry of Defence, Ministry of Interior, Czech Police, Czech Intelligence service and concerned EU Member States. Those authorities provide the Ministry with their statement regarding the FDI.</p> <p>If the FDI is assessed in certain aspects or as a whole as pertaining to national security, etc, the Ministry shall lead an official negotiation with the investor. Such negotiation has a goal to amend the original intent of the FDI to avoid the potential endangerment of national security. During the negotiations the limitation time periods are being interrupted. At the end of the negotiations, the Ministry may issue a decision on authorization of the FDI. If the potential danger remains, the Ministry shall submit a proposal of the decision to the Czech government.</p> <p>The Ministry has 90 days (in justified cases it may be prolonged by 30 extra days) to conclude the screening procedure by authorizing the FDI or by filing a proposal for a final decision to the government, who has another 45 days to issue a decision.</p> <p>The decision issued in the screening proceeding is, within two months after its been delivered, reviewable by the respective Administrative Court.</p>



Design – transparency and information requirements (filing forms?)

At the beginning of the screening procedure, the investor must disclose the information that is set out in the relevant form, in particular:

- complete ownership structure of the investor himself and the target entity, including the identity of the person or persons who are the ultimate investors and their shares;
- the source of the investment's financing and the total amount;
- entrepreneurial activities, including the information on the sector-specific regulation, conducted in the country of the origin;
- the date of the completion of the FDI;
- direct or indirect share of the voting and proprietary rights of the target prior and after the FDI; and
- list of EU Member States where the investor already operates.

The Ministry may in addition to the matter set out above also require the investor to disclose any other information that is considered important by the Ministry.

Documents that are reviewed during the proceedings and contain classified or confidential information are held separately from the file and are not accessible to the public or the investor.

Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI

As further discussed in question 11 above, the final decision in the screening procedure may be issued by the Ministry if there are no doubts about its permissibility. In case of discrepancies found during the proceedings, the Czech government issues the following decision on:

- conditional authorization of the FDI;
- conditions of the FDI;
- refusal to issue an authorization of the FDI;
- prohibition of the FDI; and
- unwinding (cancellation) of the FDI.

The unwinding of the already realized FDI is usually exercised via restriction in proprietary or voting rights or forced sale.

In case the investor does not comply with the conditions of the authorization of the FDI, the Ministry may impose a fine in the amount of up to 2% of the total turnover of the investor in the last completed accounting period, or between CZK100,000 (approx. EUR4,000) and CZK100 million (approx. EUR4 million) if the such turnover cannot be ascertained. In case the investor completes the FDI without previous authorization, the Ministry may impose a fine in the amount of up to 1% of the total turnover of the investor in the last completed accounting period, or between CZK50,000 (approx. EUR2,000) and CZK50 million (approx. EUR2 million) if the such turnover cannot be ascertained

Interaction with other legal frameworks (eg merger control)

The Czech Act No. 181/2014 Coll., on Cybersecurity, as amended, and the Czech Act No. 240/2000 Coll., on Crisis Management, as amended, may provide the investors or the Ministry with sector-specific definitions and may help with interpretation of the Act.



<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>Regarding the restrictions refer to question 7.</p>
<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>The action may be proceeded with against the decision issued in the screening procedure. As the decision was issued in the administrative proceedings, the Administrative Court is competent. The applicant may seek an annulment of the decision within two months after the final decision has been delivered. The action against the decision shall not have a suspensive effect.</p>
<p>Publication in Official Gazette or other</p>	<p>N/A</p>
<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>N/A</p>
<p>Stakeholders views on the legal framework</p>	<p>The Czech legislative authorities (ie Parliament and government) have expressed support to the intention of the EU Council to regulate FDI. Following the adoption of the Regulation, the Czech Ministry of Industry and Trade is currently working on a draft of the Act on screening of Foreign Investment was submitted to the government and will be reviewed by the senate in early December. The Regulation has been applicable since October 11, 2020.</p>
<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>See answer to question 19 above.</p>
<p>Other relevant information</p>	<p>N/A</p>

Denmark





Indicate five biggest FDI countries of origin (indicate percentage if available)

According to the Danish National Bank, the US is the biggest FDI country in Denmark. Investors from the US make up almost 30% of the foreign investments in Denmark. However, most FDIs in Denmark are made through transit companies in Luxembourg and the Netherlands.

According to the Danish National Bank, the second biggest FDI country in Denmark is the UK. The third biggest FDI country in Denmark is Germany. The fourth and fifth biggest FDI countries in Denmark are Japan and Canada, respectively.

Legal framework in force

On March 19, 2019, the EU adopted a new regulation on a regulatory framework for the screening of FDI in EU (Regulation 2019/452/EU). The regulation establishes a regulatory framework for Member States' screening FDIs in the EU for reasons of security or law and order. The regulation does not seek to harmonize national FDI screening rules and does not create an obligation to introduce a screening mechanism. The regulation introduces minimum requirements for countries willing to adopt an FDI mechanism. If an EU Member State chooses to adopt an act specifically addressing foreign investments, the act must meet the minimum requirements set out in the EU regulation. The regulation entered into force on October 11, 2020.

On May 4, 2021, the Danish Parliament adopted a Danish act on screening certain FDIs in Denmark. Translated into English, the title of the act is "act on screening of certain foreign direct investments etc. in Denmark" (The Investment Screening Act). The act entered into force on July 1, 2021. However, the act does not apply to FDIs and specific financial agreements completed before September 1, 2021. The act meets the requirements set in the EU regulation mentioned above.

There are some sectoral regulations comprising foreign investments and foreign economic activities etc. Among other matters, there are sectoral regulations in relation to competition, security of supply, war material, cybersecurity, activities in outer space and third-country investments in financial companies. See below in "Scope – sectors covered." These acts are generally in accordance with the requirements set in the EU regulation mentioned above.

Under the Treaty on the Functioning of the European Union (TFEU), Denmark must grant specific rights and freedoms to businesses based in the EU, including freedom of movement and freedom of establishment. Denmark is one of the strongest supporters of trade liberalization in the EU. However, Denmark has opted not to be part of EU cooperation in four areas: The Economic and Monetary Union, the Common Security and Defence Policy, the Justice and Home Affairs Council and EU Citizenship.



Danish corporate law has been reformed in recent years by amending the Danish Companies Act. M&A transactions are largely unregulated under Danish law, and purchase agreements are mainly regulated by general contract law. The primary legal regime for public takeovers is the Danish Capital Markets Act and the accompanying Executive Order on Takeover Bids, amended on July 1, 2020, (the Takeover Order) implementing the EU Directive on takeover bids (2004/25/EC). On July 1, 2018, the Danish Companies Act for Greenland entered into force and replaced the former Danish Act on Public Companies for Greenland and Danish Acts on Private Companies for Greenland.

Last revision of the legal framework

N/A

Contextualization of the legal framework (historical or other)

As a state with a small national economy and relatively large international trade and investments, Denmark is generally positive and supportive regarding foreign investments.

As mentioned above, a Danish act on screening of certain foreign direct investments in Denmark has been adopted. The act enters into force on July 1, 2021. The purpose of the act is to ensure that FDIs etc do not constitute a threat to national security or public order in Denmark. Among other matters, this is to be ensured through screening of, and possible intervention, in such investments. For example, the act contains provisions on a license scheme and a notification scheme for certain foreign investments in Denmark. See below.

Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI)

Are there any loopholes?

Under the Danish act on screening of certain FDIs in Denmark, a standard procedure for the authorities to actively screen the market for relevant FDIs and financial agreements is established. The act thus applies to FDI in and special financial agreements with Danish companies. See section 3(1) of the act. Under section 3(3) of the act, the Minister for Industry, Business and Financial Affairs may, after negotiations with other relevant ministers, set rules to the effect that the act shall apply to FDIs in and financial agreements with other Danish entities, if such FDI or financial agreement may constitute a threat to national security or public order.

The act defines an FDI as: “Acquisition of control of or significant influence in a company which is domiciled in Denmark, either by direct or indirect possession of or control over ownership interest or voting rights in the company or similar control by other means, including acquisition of assets and long-term loans.” See section 4(4) of the act. The establishment of a new company in Denmark may also be comprised by the definition of an FDI, if such company is within a sensitive sector and with similar control or significant influence.



The act defines a special financial agreement as: “A joint venture or an operating or service provider agreement entered into with a company domiciled in Denmark [...], or another entity covered by the rules set under section 3(3), if a foreign investor thereby gains control of or significant influence in the company or entity.” See section 4(5) of the act.

The act defines control or significant influence as: “Decisive influence on decisions about matters in relation to management, finance, development or operation in a company or in a business critical area of a company.” See section 4(6) of the act.

Under the act, the standard procedures for the authorities’ screening for relevant FDIs and financial agreements apply to all FDIs made by foreign citizens, except for FDIs made by foreign citizens from EU Member States or EFTA countries.

Under the act, such procedures also apply to FDIs made by a company which:

- is not domiciled in Denmark and does not have a permanent establishment in Denmark;
- is domiciled in Denmark, if the company is a subsidiary or a branch of a company, which is domiciled outside Denmark; and
- is domiciled in Denmark, if a foreign citizen or company, which is not domiciled in Denmark, has control over or significant influence in the company.

The procedures do not apply to FDIs made by a company which is domiciled in an EU Member State or an EFTA country, unless such company is under the control of or significantly influenced by a company which is domiciled outside EU and EFTA.

Under the act, a company is domiciled in a state (country) or jurisdiction in which the company is registered or has its registered domicile (office). Under the act, the Minister for Industry, Business and Financial Affairs may, after negotiations with other relevant ministers, set rules to the effect that the act shall also apply to FDIs made by legal entities other than those mentioned above, which may constitute a threat to national security or public order.



Among other matters, the act establishes a mandatory investment approval scheme for investments within certain sensitive sectors. The sensitive sectors include the national defense, IT security functions, processing of classified information, production of dual-use products, other critical technology and critical infrastructure. As part of the mandatory approval scheme, a foreign investor who intends to acquire at least 10% of the ownership interests or voting rights or equivalent control by other means in a Danish company within a sensitive sector, must apply for an approval of the investment to be granted by the Danish Business Authority. See sections 5 and 6 of the act. An approval will be granted by the Danish Business Authority if it finds that the investment cannot constitute a threat to national security or public order. If the Danish Business Authority finds that the investment may constitute a threat to national security or public order and that the threat cannot be mitigated by agreed terms for the investment, the Danish Business Authority will submit the application to the Minister for Industry, Business and Financial Affairs. The minister will then assess and determine whether the investment may or may not constitute a threat to national security or public order. Based on that the minister will either grant an approval of the investment or reject the application for an approval. See sections 8, 9 and 32 of the act.

The act also, among other matters, introduces a voluntary investment notification scheme under which investors outside the EU and EFTA may submit a notification to the Danish Business Authority of an intended or completed investment, if the investment may constitute a threat to national security or public order in Denmark, and the foreign investor directly or indirectly acquires at least 25% of the ownership interests or voting rights or equivalent control by other means in a company in Denmark. See sections 10 and 11 of the act.

Moreover, the act provides that both the mandatory investment approval scheme and the voluntary investment notification scheme shall apply to certain special financial agreements if such agreements involve a foreign investor acquiring financial control or having significant impact on business matters which may constitute a threat to national security or public order in Denmark. As mentioned above, the act defines such financial agreements to include joint ventures, service provider agreements and operating agreements which are entered into between a foreign investor and a Danish company. See sections 7, 10 and 11 of the act.

Under the act, the Danish Business Authority examines and determines whether an FDI or a financial agreement constitutes a threat to national security or public order. This applies to all FDIs and financial agreements, irrespective of whether they are subject to the mandatory investment approval scheme or the voluntary investment notification scheme. See sections 8, 9, 12 and 14 of the act.

If an FDI does not constitute a threat to national security or public order, the Danish Business Authority grants an approval to the foreign investor of its investment in or financial agreement with the Danish company. The approval may be granted on specific terms. See section 13 of the act.



In relation to the setting of terms for the approval, the Danish Business Authority may negotiate with foreign investors and set terms in the approval to mitigate potential threats, such as terms to the effect that the possibility of acquiring financial control or having significant impact on business matters is limited.

For investments which may constitute a threat to national security or public order but have not been notified to the Danish Business Authority, the Danish Business Authority has authority to examine such investments for up to five years after the implementation of the investment. The Danish Business Authority also has authority to issue orders to liquidate such investments if they have been completed and are regarded to be threats to national security or public order. See section 14 of the act.

In relation to its examinations and decisions, the Danish Business Authority may request a foreign investor planning to invest in or enter into a financial agreement with a Danish company to provide all information which is necessary to assess whether an investment or a financial agreement constitutes a threat to national security or public order. The Danish Business Authority may also obtain information from the Danish company to verify information from the foreign investor or obtain information about the Danish company, including information on management structure, business area etc. Furthermore, the Danish Business Authority may require that the provided information from the foreign investor or the Danish company is accompanied by a statement from an auditor approved in accordance with the Danish Audit Act. See section 12(3) of the act.

Under the act, the Danish Business Authority may decide to grant or not to grant an approval of foreign investments, prohibit the implementation of investments and issue orders to liquidate completed investments. The Danish Business Authority may do so after negotiations with other relevant ministries. See section 17-20 of the act. If a foreign company does not act in accordance with an order issued by the Danish Business Authority, the Business Authority may suspend or nullify any voting rights of the foreign company in the Danish company. If such voting rights are suspended or nullified, then the foreign company's ownership rights in the Danish company will have no effect. See section 48 of the act.

The Danish Business Authority supervises different matters under the act, including among others, that information provided by foreign and/or Danish companies is sufficient and correct, and that foreign companies under the act are observing and acting in accordance with any terms of an approval. The Danish Business Authority also performs a risk-based supervision of FDIs and special financial agreements which are subject to the mandatory approval scheme or the voluntary notification scheme to prevent them from constituting a threat to national security or public order. See section 22 and sections 25-29 of the act.



The Danish Business Authority may in some situations change or withdraw approval under the act. This includes, among others, situations where the granting of the approval was based on incorrect or misleading information or where the party to which the approval was granted does not act in accordance with the terms of the approval. The Danish Business Authority may also withdraw approval under the act if a change in circumstances results in the investment or the financial agreement becoming and being a threat to national security or public order. See section 9(4) of the act.

Cases processed under the act are exempted from the rules of the Access to Public Administration Files Act. This is to ensure that information in a case may not be handed over to the parties of the case if this is necessary for reasons of national security or public order. See section 38 of the act.

Please note that investments in Denmark that involve acquisition of control of an existing business or the creation of a joint venture (a transaction constituting a concentration) may require review under EU or Danish merger control law.

Scope – screening thresholds
Please indicate notably whether it covers solely controlling investments or also portfolio investments.

Screening thresholds and matters in relation thereto are addressed above.

Scope – sectors covered

The Danish act on screening of certain FDIs in Denmark, among other matters, introduces a mandatory approval scheme and a voluntary notification scheme for foreign investments in Denmark. The mandatory approval scheme applies to certain sensitive sectors, including national defense, IT security functions or processing of classified information, production of dual-use products, other critical technology and critical infrastructure.

Under the act, both the mandatory approval scheme and the voluntary notification scheme apply to certain special financial agreements if such agreements involve a foreign investor acquiring financial control or having significant impact on business matters which may constitute a threat to national security or public order in Denmark. Such agreements include joint ventures, acquisitions of assets, service provider agreements and operating agreements. See above in no. 6.

There are also sectoral regulations in relation to competition, security of supply, war material, cybersecurity, activities in outer space and third-country investments in financial companies.

Among other matters, the following Danish legislation apply (with any subsequent amendments):

- The Danish Consolidated Act no. 360 of March 4, 2021, on competition (the Competition Act) and the accompanying Executive Order no. 690 of May 25, 2020, on the notification of mergers and Executive Order no. 1286 of November 26, 2019, on the calculation of Turnover in the Competition Act.

	<ul style="list-style-type: none"> • The primary legal regime for public takeovers is the Danish Capital Markets Act and the accompanying Executive Order on Takeover Bids, latest amended July 1, 2020, (the Takeover Order) implementing the EU Directive on takeover bids (2004/25/EC). • The Danish Consolidated Act no. 1189 of September 21, 2018, on the continental shelf and certain pipelines installations on territorial waters. • The Danish Consolidated Act no. 1004 of October 22, 2012, on war material. • The Danish Consolidated Act no. 836 of August 7, 2019, on cybersecurity. • The Danish Act no. 409 of May 11, 2016, on activities in outer space. • Act no. 262 of April 1, 2016, on Amendment of the Danish Act on Public and Private Limited Companies (Companies Act) in relation to registration of beneficial owners (<i>Reelle ejere</i>). <p>The above is not an exhaustive list of relevant Danish legislation, but an overview of some of the most relevant Danish legislation in the area.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>These matters are generally addressed above in sections “Scope – Screening Mechanism – origin of FDI” and “Scope – sectors covered”.</p>
<p>Design – reciprocity?</p>	<p>The issue of reciprocity is generally not addressed in the regulations.</p>
<p>Design – procedures and deadlines</p>	<p>Screening procedures and deadlines and matters in relation thereto are generally addressed above in the sections “Scope – Screening Mechanism – origin of FDI” and “Scope – sectors covered”.</p>
<p>Design – transparency and information requirements (filing forms?)</p>	<p>General information on companies and other legal entities shall be registered at the Danish Business Authority. Among other matters, this includes information on the company name, place of the main office, board of directors, owner companies and beneficial owners. In relation to acquisitions described above in the section “Scope – Screening Mechanism – origin of FDI” and other specific transactions, other information relating to the concrete transaction shall be submitted to the relevant public authorities.</p> <p>In Denmark, a general principle of transparency in the administration applies. This includes a general right of access to documents in public files under Act no. 606 of June 12, 2013, on public access to documents in public files. However, the Act also comprises certain exemptions thereto, including in relation to trade secrets and information relevant to national security. If an exemption applies, entire documents or relevant parts thereof will be kept confidential and will not be disclosed.</p>

Cases processed under the Danish act on screening of certain FDIs in Denmark are exempted from the rules of the Access to Public Administration Files Act. This is to ensure that information in a case may not be handed over to the parties of the case if this is necessary for reasons of national security or public order. See above in the section “Scope – Screening Mechanism – origin of FDI”.

Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI

Under the Danish act on screening of certain FDIs in Denmark, the Danish Business Authority may decide to grant or not to grant approvals of foreign investments, prohibit the implementation of investments and issue orders to liquidate completed investments. The Danish Business Authority may do so after negotiations with other relevant ministries. See section 17-20 of the act. If a foreign company does not act in accordance with an order issued by the Danish Business Authority, the Business Authority may suspend or nullify any voting rights of the foreign company in the Danish company. If such voting rights are suspended or nullified, the foreign company’s ownership rights in the Danish company will have no effect. See section 48 of the act.

In Denmark, the authorities may reject a transaction if it is not consistent with national legislation, see above in the sections “Scope – Screening Mechanism – origin of FDI” and “Scope – sectors covered”. For example, failure to notify a notifiable merger transaction or pre-implementation of such a transaction (for example exercising control before approval) may potentially result in a demerger of the merged undertakings, see above in the section “Scope – Screening Mechanism – origin of FDI”. The authorities may also reject a part of a transaction or set relevant terms in its approval of a transaction. Relevant terms may, for example, be terms on performance of activities, ownership of companies.

The authorities will decide whether or not to approve a transaction or an activity in accordance with the general rules and principles of administrative law, including the principles of objectiveness, non-discrimination and proportionality.

Interaction with other legal frameworks (eg merger control)

Investments in Denmark that involve acquisition of control of an existing business or the creation of a joint venture (a transaction constituting a concentration) will often require review under EU or Danish merger control law. Acquisition of control can be established in many ways; for example, by acquisition of shares or assets, by agreement or establishing de facto control. The merger control rules do not differentiate between these different means of acquisition of control. This means that the structure of the acquisition is not of relevance in relation to merger control.



The merger control assessment is conducted by the European Commission or by the Danish Competition and Consumer Authority (DCCA), as determined by their respective areas of competence. The object of the review is to ensure that a transaction will not significantly impede competition. Whether a transaction must be notified is generally determined on the basis of certain revenue thresholds. There are certain sector-specific regulations; for example, a transaction within the Danish telecoms sector in most cases requires merger control review regardless of revenue because of sector-specific merger control regulation.

The nationality of the parties to a transaction has no impact on the competition law assessment by the DCCA. Danish law does not include provisions that allow the DCCA to take into account the nationality of a party to a transaction. EU regulation allows inclusion of considerations regarding the nationality of parties to a transaction.

Notification of an acquisition of a minority shareholding of a business (for example, a non-controlling interest) is not required under Danish merger control law. The DCCA does not have a call-in option, that is the DCCA cannot interfere in a transaction or investment for which notification is not required. The Danish merger control regime does not allow parties to notify voluntarily, as is possible in some other jurisdictions, such as Norway.

Under the Danish Financial Business Act, financial undertakings (banks, mortgage credit institutions, investment firms, investment management firms, insurance companies, pension companies) may not merge or be amalgamated with another financial undertaking or parts thereof without prior permission from the Ministry of Industry, Business and Financial Affairs. According to the Danish Financial Business Act, acquisition of 10% or more of the share capital or voting rights of a financial undertaking or a financial holding company requires permission from the Danish Financial Supervisory Authority (Danish FSA).

Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.

Under the Danish act on screening of certain FDIS in Denmark, the Danish Business Authority examines and determines whether an FDI or a financial agreement constitutes a threat to national security or public order. This applies to all FDIs and financial agreements irrespective of whether they are subject to the mandatory approval scheme or the voluntary notification scheme. See sections 12 and 14 of the act.



If an FDI does not constitute a threat to national security or public order, the Danish Business Authority grants an approval of the foreign investor for its investment in or financial agreement with the Danish company. The approval may be granted on specific terms. See section 13 of the act.

In relation to the setting of terms in an approval, the Danish Business Authority may negotiate with a foreign investor and set terms in an approval to mitigate potential threats, such as terms to the effect that the possibility of acquiring financial control or having significant impact on business matters is limited.

For investments which may constitute a threat to national security or public order, but have not been notified with the Danish Business Authority, the Danish Business Authority is given authority to examine such investments for up to 5 years after the implementation of the investment, and to issue orders to liquidate such investments if they have been completed and are regarded to be threats to national security or public order. See section 14 of the act.

Under the act, the Danish Business Authority may decide to grant or not to grant approvals of foreign investments, prohibit the implementation of investments and issue orders to liquidate completed investments. The Danish Business Authority may do so after negotiations with other relevant ministries. See sections 17-20 and 32 of the act. If a foreign company does not act in accordance with an order issued by the Danish Business Authority, the Business Authority may suspend or nullify any voting rights of the foreign company in the Danish company. If such voting rights are suspended or nullified, then the foreign company's ownership rights in the Danish company will have no effect. See section 48 of the act.

Under the Danish Consolidated Act no. 1189 of September 21, 2018, on the continental shelf and certain pipelines installations on territorial waters, establishment of electricity cables and pipelines for transport of hydrocarbons on the Danish maritime territory requires a license (permission) from the Minister of Energy, Supply and Climate. A license may only be granted if it is compatible with Denmark's foreign, security and defense interests.

Under the Danish Consolidated Act no. 1004 of October 22, 2012, on war material, war material may only be manufactured under a license to do so. Furthermore, a separate license is required if a company, which has been granted a license to manufacture war material etc under the Act, is or becomes connected to foreign persons and/or foreign companies as regards ownership or decisive influence. The relevant connections to foreign persons and/or foreign companies are explicitly stated in the Act. The separate license is granted, unless it is not in accordance with foreign policy or security matters.



	<p>Under the Danish Act no. 409 of May 11, 2016, on activities in outer space, space activity may only be performed under a license from the Minister of Education and Research. A license may only be granted if it is in accordance with national security interests, Denmark's international obligations and foreign policy interests. Among other matters, the assessment in relation thereto is based on matters regarding ownership of the spacecraft and the operator.</p> <p>A public authority may decide to block (reject) a transaction or an activity based on the above matters and other relevant matters which may be used as grounds under Danish law and international law applicable in Denmark. When a public authority decides to block (reject) a transaction or an activity, the authority has a certain degree of discretion to apply the legal criteria in question. However, the authority shall always decide whether or not to approve a transaction or an activity in accordance with the general rules and principles of administrative law, including the principles of objectiveness, non-discrimination and proportionality.</p>
Judicial Review Please specify timeline, competent courts and standard of judicial review.	Under the Danish act on screening of certain FDIs in Denmark, decisions made by the Danish Business Authority may be brought before the courts in Denmark.
Publication in Official Gazette or other	<p>Decisions made by public authorities are subject to some general principles of transparency, see above in the section " Design – Transparency and Information requirements".</p> <p>There is no general obligation to publish decisions made by public authorities. However, a public authority may decide to publish a decision if it is considered relevant and in accordance with Danish law and international law applicable in Denmark.</p> <p>Cases processed under the Danish act on screening of certain FDIs in Denmark are exempted from the rules of the Access to Public Administration Files Act. This is to ensure that information in a case may not be handed over to the parties of the case if it is necessary for reasons of national security or public order. See above in the section "Scope – Screening Mechanism – origin of FDI".</p>
Relevant Examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last 5 years.	N/A
Stakeholders views on the Legal Framework	N/A



Interplay with the future EU regulation
Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.

The EU regulation introduces minimum requirements for countries that choose to adopt an FDI mechanism. If an EU Member State chooses to adopt an act specifically addressing foreign investments, the act must meet the minimum requirements set out in the EU regulation.

A Danish act on screening of certain FDIs in Denmark has been adopted and enters into force on July 1, 2021. The act meets the minimum requirements set out in the EU regulation.

Existing national legislation is generally in compliance with EU legislation.

Other relevant information

N/A



EU





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<p>On the back of the recent signing of an EU China investment agreement the EU, the direction of travel is further co-operation, clearly accompanied by a raft of "autonomous measures" such as FDI screening (carved out of this investment agreement) but also action on distorting foreign subsidies (see below) as well as mandatory due diligence legislation on supply chain standards. China's increased FDI in Europe's high-tech and manufacturing industries remain the source of growing concern and the political rationale behind coordination at European level. While Chinese FDI in the EU, following a change in government policy, declined by 17% from 2016 to 2017, at EUR30 billion it still remains at the second highest level that has ever been recorded.¹ The EU is also concerned by the relative share of state-owned players in total Chinese investment in Europe As it reached 68% in 2017.² According to Eurostat,³ the most important countries of origin in 2015 were: the US, Switzerland, British Virgin Islands, Jersey, Canada, Curacao, Singapore, Bahamas, China and Japan. In 2015, the US was the biggest originator of inward EU investment with FDI flows of EUR252.4 billion.⁴ The majority of these investments were made in the financial and insurance activities sector, but in terms of transaction value, the transport, utilities and infrastructure sector came first.⁵ Chinese investors remain focused on the EU's largest market economies: in 2017, the UK, Germany and France accounted for 75% of China's total EU FDI.⁶ With a little over EUR12 billion in Chinese FDI transactions, France comes fourth on the European stage in terms of FDI transactions.⁷</p>
<p>Legal framework in force</p>	<p>A regulation of the European Parliament and of the Council establishing a framework for screening of FDI into the EU entered into force in April 2019 (Regulation (EU) 2019/452 of the European Parliament and of the Council of March 19, 2019; OJ L 791, 21.3.2019, p. 1-4.). Although this new regulation does not seek to harmonize national FDI screening rules and does not create an obligation to introduce a screening mechanism, it introduces minimum requirements for countries willing to adopt an FDI mechanism. And the EU has also presented its thinking on the possibility of having new additional tools to control acquisitions and investments of foreign-subsidized companies in the Union. The European Commission released its "White Paper on levelling the playing field as regards foreign subsidiaries." In June 2020.⁸</p>
<p>Last revision of the legal framework</p>	<p>No previous EU Framework on FDI exists.</p>

1. Mercator Institute for China Studies, Chinese FDI in Europe in 2017, <https://www.merics.org/en/papers-on-china/chinese-fdi-in-europe>.
2. Mercator Institute for China Studies, Chinese FDI in Europe in 2017, <https://www.merics.org/en/papers-on-china/chinese-fdi-in-europe>.
3. Eurostat, Foreign direct investment flows, http://ec.europa.eu/eurostat/statistics-explained/index.php/Foreign_direct_investment_-_flows.
4. Eurostat, Foreign direct investment flows, http://ec.europa.eu/eurostat/statistics-explained/index.php/Foreign_direct_investment_-_flows.
5. Mercator Institute for China Studies, Chinese FDI in Europe in 2017, <https://www.merics.org/en/papers-on-china/chinese-fdi-in-europe>.
6. Mercator Institute for China Studies, Chinese FDI in Europe in 2017, <https://www.merics.org/en/papers-on-china/chinese-fdi-in-europe>.
7. Idem.



<p>Contextualization of the legal framework (historical or other)</p>	<p>The surge in Chinese FDI in critical infrastructure in some of the EU's largest economies over the recent years and a number of other concerns relating to the role of Chinese state-owned enterprises (SOE) in the economy as well as a lack of reciprocity and unfair competition and trading conditions, has sparked debate among EU policy makers on how to respond to such new geopolitical developments.⁹ Following the Chinese takeover of the leading German robotics firm Kuka,¹⁰ the ministers of economy of France, Germany and Italy proposed to create an EU framework strengthening the coordination of the screening mechanisms already in place in the EU Member States.</p>
<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>Article 7: MS Notification and reporting The Member States shall annually report to the Commission:</p> <ul style="list-style-type: none">• screened FDI and FDI undergoing screening;• prohibition decisions;• decisions subjecting FDI to conditions/mitigating measures; and• sectors concerned, origin and value of FDI. <p>Member States without an FDI screening mechanism shall annually report to the Commission (but not to Member States). Such reporting is based on information available to them.</p>
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>Definition in Article 2 of the regulation: foreign direct investment means investments of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity.</p> <p>This suggests that investment, albeit of any kind, needs to be in the form of capital in both variants (making available/enabling control). It is not clear whether investment could also be in the form of other financial instruments (eg bonds, guarantees, pure contractual arrangements relating to management). The EU Member States may screen; however, there is no obligation to do so.</p> <p>The European Commission may screen where FDI is likely to affect projects/programs of EU interest on grounds of public security or public order. The screening is not mandatory; however, if the European Commission wants to screen, it seems that the reading is rather wide.</p>

9. In December 2017, the European Commission published an analysis of the characteristics of China's economic model prepared in the context of the entry into force of the new EU methodology for anti-dumping and anti-subsidy investigations as part of the reform of the EU's trade defense instruments, available at http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf.

10. European Council on Foreign Relations, Germany's turnabout on Chinese takeovers, https://www.ecfr.eu/article/commentary_germanys_turnabout_on_chinese_takeovers_7251

<p>Scope – sectors covered</p>	<p>Member states and the Commission "may" consider "potential effects" on (in a non-exhaustive list): "critical infrastructure" including:</p> <ul style="list-style-type: none"> • Energy • Transport • Communications • Data storage • Space or financial infrastructure • Sensitive facilities <p>"critical technologies" including:</p> <ul style="list-style-type: none"> • Artificial intelligence • Robotics • Semiconductors • Dual use technologies • Cybersecurity • Space technology • Nuclear technology <p>"security of supply of critical inputs" "access to sensitive information" to control sensitive information.</p> <p>In determining whether FDI is likely to affect security or public order, Member States and the Commission may take into account whether the foreign investor is controlled by the government of a third country, including through significant funding.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>The regulation takes into account the existing diversity between Member States in relation to screening of FDI – including the design thereof (ie <i>ex-ante/ex-post</i>; voluntary/mandatory notification, general/sectoral coverage; companies/assets; applicable to investments from other Member States and third countries or third countries only, etc).</p> <p>The regulation does not require Member States to adopt a screening mechanism for FDI, nor does it exhaustively mandate the substantive or procedural features for screening mechanisms. It only sets out basic requirements that should be common to Member States' screening mechanisms.</p>
<p>Design – reciprocity?</p>	<p>The issue of reciprocity is not addressed in the regulation.</p>



Design – procedures and deadlines

Article 8: Cooperation

The screening Member State must inform the Commission and other Member States within five days of the start of the screening. Thereby the Member State should indicate whether the FDI in question is subject to EU merger control. This does not apply the other way around. The regulation does not prescribe to the Member State within which timeframe to start the screening.

Other Member States may provide comments to the Member State receiving FDI of its own SPO concerns and must forward such comments to the Commission in parallel. Such comments may also be made to Member States that do not have a screening mechanism. The comments must be provided within at the latest 25 working days following the notification of screening.

Article 9: EC screening

The Commission may issue a non-binding opinion addressed to the Member State where the FDI is planned or has been completed.

The opinion may also be issued absent Member State comments. Such opinion must be communicated to all Member States.

An opinion must be issued 25 working days after receiving information requested.

If the opinion follows comments from a Member State, the Commission has an additional 25 working days. Both the Commission or other Member States may ask the screening Member State to provide information necessary to provide the respective opinion or comments. It is not clear whether the Commission can make several of these requests.

If additional information is required, the Commission has an additional 25 working days as of the receipt of the information. It is not clear whether these extra working days pursuant to Article 9(3) can be cumulated with the additional 25 working days pursuant to Article 8(5). There is no time limit for the Member State to submit requested information.

The Member State receiving FDI shall take the utmost account of the opinion and provide an explanation to the EC if not followed. In practice, EC opinions issued in the context of Article 8 require due consideration. It is however not clear what exactly due consideration entails and whether it is enforceable and/or subject to judicial control.

Design – transparency and information requirements (filing forms?)

Article 6: Framework for MS screening

Under the new EU Framework, the national screening mechanisms must set out the circumstances triggering the screening, the grounds for screening and the applicable detailed procedural rules in a transparent and non-discriminatory manner.



	<p>FDI screening is typically ad hoc, in that it is a particular project (eg the acquisition of an airport terminal by a Chinese investor) that raises SPO concerns.</p> <p>It is not clear what <i>transparent</i> means other than a decision may be published if the screening leads to blocking. It is also not clear how the discrimination can be avoided. Inevitably, the SPO grounds have to remain vague in order to be adaptable to changing conditions.</p> <p>The regulation does not specify the timeframe in which the Member State has to initiate screening. Importantly, the Member States are not required to substantiate their decisions through a statement of reasons.</p>
Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI	Please refer to question 9 above.
Interaction with other legal frameworks (eg merger control)	The regulation is consistent with other EU policies, including the free movement of capital and freedom of establishment, the EU Merger Regulation, Energy policy, etc.
Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.	<p>The grounds for investment screening are defined in compliance with the relevant requirements for the imposition of restrictive measures based on grounds of security or public order stipulated in the WTO Agreement (including in particular Article XIV(a) and Article XIV bis of the GATS), and in other trade and investment agreements or arrangements to which the EU or its Member States are parties.</p> <p>The Member States enjoy discretion in determining public policy and public security requirements in the light of their national needs; however, those public interests cannot be determined unilaterally by the Member States without any control by the institutions of the EU and must be interpreted strictly: they may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society.</p>



<p>Judicial review, including timeline, competent courts and standard of judicial review</p>	<p>Article 6: Framework for MS screening Foreign investors and undertakings concerned shall have the possibility to seek judicial redress against screening decisions of the national authorities. However, this may be meaningless. In the US, CFIUS decisions are standard letters without detailed reasoning; ie there is nothing to challenge. In SPO, courts typically grant the executive a wide margin of discretion or prerogative. In the EU, the duty to state reasons is emphasized where judicial review is limited due to administrative discretion. The regulation does not oblige Member States to reason their decisions. Other than the infringement of procedural rights (a particularly toothless tiger), judicial review shall not lead to any tangible results, all the more as the SPO grounds are already very broad in scope. Substantive judicial review could be meaningful, if at all, in the unlikely event that a Member State tries to protect culturally symbolic industries (Belgian chocolate, German beer etc) or targets (eg Eiffel Tower). The timeline is for the Member State to specify; however, it should comply with the general principles of EU law, in particular the principles of proportionality and legal certainty.</p>
<p>Publication in official gazette or other</p>	<p>N/A</p>
<p>Relevant examples of application</p>	<p>N/A</p>
<p>Stakeholders' views on the legal framework</p>	<p>The European Commission received three positions in the framework of its public consultation of stakeholders organized from September to December 2017.</p> <ul style="list-style-type: none"> • The Federation of German Industries (BDI), which had expressed its opposition to the extension of the scope of the German FDI screening scheme in mid-2017, emphasizes that clear definitions are needed to delineate the scope of the future regulation in various areas. • The Austrian Chamber of Commerce (WKÖ), inter alia, stresses the need to take the principle of reciprocity into account. • The Federation of European Private Port Operators and Terminals (FEPORT) advocates eliminating the inconsistencies of the current patchwork of national regulatory frameworks, thus enhancing certainty.
<p>Interplay with the EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>N/A</p>



Other relevant information

Article 12: Contact points

Each Member State is to appoint an FDI screening contact point. On the other hand, the regulation does not require the European Commission to appoint contact points. The European Parliament will set up "institution-based contact points and a coordination group on FDI screening" bringing together experts from the Commission and the Member States to share best practices.



France





Indicate five biggest FDI countries of origin (indicate percentage if available)	In 2019, the five biggest FDI countries of origin were: ¹ <ul style="list-style-type: none">• US (16.2%)• Germany (15.5%)• UK (12%)• Italy (8%)• Switzerland (5.2%)
Legal framework in force	Articles L. 151-3 to L. 151-7 and R. 151-1 to R. 151-17 of the French Monetary and Financial Code (MFC)
Last revision of the legal framework	N/A
Contextualization of the legal framework (historical or other)	<p>Originally, a French law of 1966 on foreign exchange provided for a general principle of freedom regarding the financial relations between France and other states, subject to the safeguarding of national interests. This regime was replaced by Law No. 2004-1343, adopted on December 9, 2004, which empowered the French government to police foreign investments. A major evolution on the regulatory framework was the adoption of Decree No. 2014-479 by the former French Minister for the Economy Arnaud Montebourg on May 14, 2014, by which the scope of the French prior authorization regime was substantially extended in the context of the contemplated acquisition by General Electric of the energy business of Alstom, a flagship of the French industry. The reform of the French regulation in November 2018 further amends and expands the scope of the control to digital technologies, notably artificial intelligence, digital data storage, nanotechnologies, cybersecurity, computer data capture and space operations. Then, the adoption of the so-called PACTE law by the French Parliament in May 2019 has strengthened the French government's investigative powers and choices of sanctions in case of non-compliance with the foreign investment regulation. Finally, the last piece of the French FDI regulation reform, notably implementing the legislative changes introduced by the PACTE law, has been adopted in December 2019 with a Decree and an Order. The Decree amends and expands the scope of FDI control to new sectors including food safety, press, and R&D activities relating to energy storage and quantum technology, but also reforms the authorization procedure and the concept of foreign investment and investor, notably by removing the distinction between EU and non-EU investors, introducing the concept of chain of control, lowering the threshold to 25% and reducing the response time of the Ministry to thirty days. The latest reform results in the exceptional features adopted by the French government in the context of the COVID-19 pandemic, including the extension of sensitive activities to "R&D activities relating to biotechnologies," and temporary lowering the applicable threshold to 10%.</p>

1. Business France – Annual Report 2019



<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>As of April 1, 2020, the following individuals and entities are each deemed a foreign investor under the new French FDI regulation:</p> <ul style="list-style-type: none">(i) any individual of foreign nationality;(ii) any French individual who is not a French tax resident;(iii) any foreign law entity; and(iv) any French entity controlled by one or more individuals or entities mentioned in (i), (ii), (iii).
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>Foreign investors are required to seek prior authorization for any of the following:</p> <ul style="list-style-type: none">• direct or indirect acquisition of a controlling stake in a French company (share deal);• the acquisition of all or part of a line of business of a French company (asset deal); or• the acquisition of more than 25% of the stock or voting rights of a French company (threshold test). <p>Please note that this last threshold should be lowered to 10% in the case of the acquisition of voting rights in a French listed company, for non-EU/EEA investor, until December 31, 2021, due to the COVID-19 situation.</p>
<p>Scope – sectors covered</p>	<p>The sensitive sectors requiring approval are listed under article R. 151-3 of the MFC and are as follows: Activities relating to security and defense sectors in the broadest meaning:</p> <ul style="list-style-type: none">• information;• goods or services related to the security of the information systems of public or private sector companies managing critical infrastructures;• the supply of research or equipment to the Ministry of Defence;• cryptology systems;• the interception of communications and computer data equipment;• audit and certification of information technology systems and products;• R&D or manufacture of means of fighting the illegal use of pathogens or toxic substances or to prevent the sanitary consequences of such use;• data processing, transmission, storage;• Activities relating to the supply, security and continuity of :• water, electricity or other energy sources, transport services and networks, space operations, electronical telecommunications, vitally important establishments, protection of public health and missions of the national police, gendarmerie, civil security and public safety;• production, processing or distribution of agricultural products, and the editing, printing or distribution of political and general information press publications;

	<ul style="list-style-type: none"> • R&D activities relating to: • cybersecurity, artificial intelligence, robotics, additive manufacturing, semi-conductors, quantum technologies, energy storage (ie the critical technologies as defined in the Order of December 31, 2019) and certain dual-use items and technologies; and • biotechnologies.
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>Pursuant to article L. 151-3 of the MFC, any foreign investment made in France in sectors that are essentials to guarantee French national interests in terms of public policy, public security or national defense are subject to a prior authorization by the MINEFI. This prior authorization is mandatory for every investment falling within the scope of the regulation. A wide range of sanctions may be imposed by the MINEFI for failure to respect the authorization regime.</p>
<p>Design – reciprocity?</p>	<p>No</p>
<p>Design – procedures and deadlines</p>	<p>As of April 1, 2020, the French FDI review process has been modified with the introduction of a new "two steps process." According to this new process, the Ministry has:</p> <ul style="list-style-type: none"> • Phase 1: 30 working days from the date of receipt to indicate whether the transaction (i) falls outside the scope of the review, (ii) is cleared unconditionally or (iii) requires further analysis. If no response is received by the applicant within this time frame, the request is deemed rejected; • Phase 2: where further analysis is required, the Ministry have an additional period of 45 working days to provide the investor with its final decision, ie either (i) the refusal of the investment or (ii) the clearance with commitments. If no response is received by the applicant within this time frame, the request is deemed rejected. In the event that the Minister for the Economy denies the authorization, he must provide the investor with the reasons for such denial. <p>It should be noted that it is the investor which is responsible for obtaining the clearance in due time.</p>
<p>Design – transparency and information requirements (filing forms?)</p>	<p>In essence, the prior authorization request must include:</p> <ul style="list-style-type: none"> • Information regarding the investor: presentation of the direct investor (certificate of incorporation etc), description of the chain of control if applicable (including ultimate investor), its activities with information related to markets, market shares, competitors etc, and mention of any capital/financial links with a State or public entity other than the European Union over the last five years;

	<ul style="list-style-type: none"> • Information regarding the target : presentation of the sellers, the target company, description of the target's activities, customers, markets and market shares, competitors and its involvement in programs of Union interest or any financial support with European Union funds; • Information regarding the investment: copy of any document attesting that the investment project is "sufficiently advanced"; possible option on the capital balance; amount of the investment in France and for the global transaction, rationale for the transaction in connection with the investor's global strategy; and the financial terms of the transaction. <p>Prior authorization requests must be sent in one original copy to the MINEFI at the following address: Direction générale du Trésor, 139, rue de Bercy, 75572 Paris Cedex 12 and in one electronic version at the following address: IEFautorisations@dgtresor.gouv.fr.</p>
<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>In practice, the Minister's decisional power is not limited to granting or denying authorization of an investment, but the Minister may also make the authorization subject to a number of commitments by the investors if it is likely to jeopardize national interests. Such conditions typically concern the continuity of the company's business and the sustainability of its activities, the safety of its supply chain, its industrial capabilities etc.</p>
<p>Interaction with other legal frameworks (eg merger control)</p>	<p>N/A</p>
<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>The substantive test for clearance is to verify that a contemplated transaction or investment may not harm national interests and that there is no risk under business ethical rule. Nonetheless, as for the scope of the regulation, given the fact that French law does not define the concept of national interest, the Minister for the Economy has a rather high degree of discretion concerning the decision whether to grant the authorization to invest.</p> <p>However, the series of factors listed by the EU Regulation n°2019/452 to be taken into account in determining whether a foreign investment is likely to affect security or public order should normally also apply in the French context.</p>



Judicial Review Please specify timeline, competent courts and standard of judicial review.	MINEFI decisions are subject to full review (recours de plein contentieux) by administrative law courts. Under this procedure, French administrative law judges are given broad powers to substitute their appreciations for those of MINEFI and to overrule MINEFI authorizations or rejections. Additionally, an investor can challenge a MINEFI decision under European Community law in French courts if it can demonstrate that the French regulatory framework restricts the free movement of capital and is not narrowly tailored to the protection of the public interest at issue.
Publication in Official Gazette or other	Not required. However, since the PACTE law, aggregated statistics on the number of applications received, the origin of investors and the sectors concerned are published annually on the website of the DGT, at the following address: https://www.tresor.economie.gouv.fr/services-aux-entreprises/investissements-etrangers-en-france
Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.	N/A. There is no publicly available source of information regarding MINEFI's approval or rejection of foreign investments. Therefore, the only examples of FDI decisions are cases with a significant political impact and related press coverage. In two of these publicly known sensitive cases concerning foreign investments, (ie the acquisition by General Electric of the energy business of Alstom in 2014 and the takeover of Alcatel lucent by Nokia in 2015) the clearance was finally granted by the authorities subject, in the case of Alstom, to a certain number of commitments. However, the MINEFI seemed to have harden its position recently with the veto opposed by the Ministry to the acquisition of Carrefour by the Canadian Group "Couche-Tard" in January 2021.
Stakeholders views on the legal framework	N/A
Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.	The existing French foreign legislation has been amended to take into account Regulation (EU) 2019/452 of the European Parliament and of the Council of March 19, 2019 (OJ L 791, 21.3.2019, p. 1-4) which entered into force on October 11, 2020.
Other relevant information	N/A

Germany





Indicate five biggest FDI countries of origin (indicate percentage if available)	<p>In 2018, more than 77% of all FDI came from EU member countries, the biggest share from the Netherlands. The biggest non-EU investor is Switzerland (however, these investments are not subject to FDI review outside Sector A, Switzerland being an EFTA member country). In 2018, the biggest FDI origin countries to which FDI review applies were:</p> <ol style="list-style-type: none">1. US2. South Korea3. Hongkong4. People's Republic of China5. UAE
Legal framework in force	AWG (Foreign Trade and Payments Act), esp. Secs. 1, 4, 5, 14a, 15, 18; AWV (Foreign Trade and Payments Ordinance), esp. Secs. 55 – 62.
Last revision of the legal framework	May 1, 2021
Contextualization of the legal framework (historical or other)	<p>The German regulation is generally based on the fundamental principle of free trade, allowing all economic transactions with foreign firms or countries as long as they are not explicitly forbidden or otherwise regulated. The latest revisions in 2020 and 2021 broadly extended the scope and specified the scope of application with regards to the area of the critical infrastructure and critical industries (extended to certain state communication measures, pharma, medical devices, personal protective equipment) as well as the military/state secrets area examinations of corporate acquisitions.</p> <p>Asset deals, while concluded to be within the scope in the past, have explicitly been included in the scope. While intra-group transactions generally are within the scope of the FDI regime, such transactions fall out of the scope if the purchaser and seller are fully owned by an identical owner and both have their management within the same jurisdiction.</p> <p>The scrutiny threshold for taking up a transaction has been lowered considerably from “danger to security and order” to the “potential impairment of security and order,” but not only of Germany but also of the other Member States as well as with regard to important EU projects, thus reflecting the EU FDI Regulation.</p> <p>A major change to the framework is that transactions in the area of critical infrastructures and industries are now conditional on clearing by the competent Federal Ministry of Economic Affairs and Energy (BMW i).</p> <p>Certain acts of closing (transferring voting rights, dividends, and even critical information – the latter even in due diligence) can now be prosecuted as criminal acts if transactions in the critical areas have not been cleared by BMW i before such acts occur.</p> <p>In addition, the amended rules now also explicitly refer to critical investors with a special attention to investors that are controlled by the state or public entities. Thus, the assessment by BMW i whether a potential impairment of security and order may be in place can also be based on the actual purchaser, especially if the latter is state-controlled or has acted illegally in the past.</p>

Scope – Screening Mechanism – origin of FDI
(review of intra- or extra-EU FDI)
Are there any loopholes?

FDI occurs in three different areas in Germany:

- Sector A: Military/classified state information sector (see point 7 below);
- Sector B1: Critical infrastructure sector (see point 7 below);
- Sector B2: Critical industries sector (see point 7 below); and
- Sector C: Other potentially critical entities (see point 7 below).

The framework does not establish a standard procedure for the authorities to actively screen the market for relevant FDIs although screenings occur, which, however, in fact, will not capture all cases.

If BMWi comes across relevant information (eg via newspapers), it has the competence to start a procedure.

Notification to BMWi (which is in charge of FDI examination) by the immediate purchaser is required:

- in Sector A in case of the direct or indirect acquisition of a minimum of 10% of the voting rights in a German entity by a non-German entity;
- in Sector B1 in case of the direct or indirect acquisition of a minimum of 10% of the voting rights in a German entity by a non-EU entity;
- in Sector B2 in case of the direct or indirect acquisition of a minimum of 20% of the voting rights in a German entity by a non-EU entity; but
- no notification is required in Sector C. However, in critical cases, notification is recommendable.

While non-compliance with notification requirements itself in Sectors A and B does not lead to any immediate penalties, transferring voting rights, providing dividends and certain critical information without clearing by BMWi are pending void and even criminal acts.

BMWi may order investigations of transactions even years after closing. Since the latter is under the conditions subsequent of clearing by BMWi, BMWi generally has the power to invalidate any acts taken after a closing that is later ordered to be ineffective by BMWi. Of course, BMWi as an alternative may order a reverse transaction or certain conditions (eg reporting obligations, sale of certain business parts).

Please note that the German regulation aims to close loopholes by extending rules to cases where domestic or intra-EU corporations seem to act as scarecrow acquirers or to asset deals that lead to situations as in a purchase of voting rights/shares. Also, even if the immediate purchaser is a German entity, review shall occur with regard to all direct and indirect owners of this German entity.

The scope also applies to asset deals if definable parts of the operation of a domestic company or all the essential operating equipment of a domestic company or of a definable part of the operation of a domestic company needed to maintain the operation of the company or of definable part of the operations are acquired.



Scope – screening thresholds

Please indicate notably whether it covers solely controlling investments or also portfolio investments.

For each of the sectors, different thresholds apply, please see below.

Calculation of voting rights is identical for all sectors, though. Please note that for calculation not only the actual voting rights are taken into consideration but also the assurance of additional seats or majorities on supervisory bodies or in management, the granting of veto rights in strategic business or personnel decisions, or the granting of rights concerning critical information. The same applies in the case of voting rights agreements. If purchasing/holding companies together cross any thresholds and both are indirectly or directly controlled by the same state or public bodies of the same state, the individual percentage of voting rights is added to each other's voting rights.

Please also note that calculation of voting rights is not proportional in the case of indirect acquisitions. Thus, if a shareholder holds 10% in a company that acquires 10% of a German entity in Sector A or Sector B1, this is considered not as an acquisition of 1% of the voting rights but of 10% of the voting rights in the target by the shareholder.

Sector A:

Direct or indirect acquisition of 10% or more of the voting rights of entities that:

- currently develop, manufacture, modify or have effective control over any goods listed in the German export list (military goods) or have done so in the past and still have knowledge or other access to the technologies;
- develop, manufacture, modify or have actual control over goods in the field of defense technology which are covered by classified patents or have done so in the past and still have knowledge or other access to the technologies;
- currently manufacture or have manufactured in the past products with IT security functions to process classified state information or components essential to the IT security function of such products if the overall product was licensed with the knowledge of the company by the Federal IT Security Agency.
- are legally defined defense-related facilities.

Please note that the notification requirement also applies to additional investments even if an earlier investment was cleared by BMWi if such investment crosses the 20%, the 25%, the 40%, the 50% or the 75% threshold.

Scope – screening thresholds

Please indicate notably whether it covers solely controlling investments or also portfolio investments.

Sector B1:

Direct or indirect acquisition of 10% or more of the voting rights of an operator of critical infrastructure or comparable areas (see below) by a non-EU/non-EFTA person/entity. This applies to:

- operators of a critical infrastructure (with certain thresholds defined by law) in the following sectors:
 - Energy sector: power plants, power storage plants, transmission networks, pipelines, etc;
 - Water Sector: water works, water processing installations, distribution or sewer systems, purification plants, etc;
 - Food Sector: Food production, treatment, processing, distribution, etc;
 - Telecommunications sector: networks, transmission networks, IXP, DNS-Resolvers, DNS-Server, data housing and hosting, content delivery networks, trusted services operations;
 - Health sector: hospitals, life-saving medical device production, pharmaceutical manufacturing plant, pharmacy, communications system, lab, etc;
 - Finance and insurance Sector: authorizing system, clearing systems, etc;
 - Transport and traffic sector: airports, train stations, system for operation of water ways, traffic control systems, public transport, etc;
- entities specifically developing or specifically modifying software that is industry-specific for the operation of aforementioned critical infrastructures;
- entities entrusted with surveillance measures or establishment of technical facilities for the implementation of legally prescribed measures for monitoring telecommunications and knowledge of that technology;
- entities offering cloud computing services (certain thresholds apply);
- entities holding an authorization for components or services of the telematics infrastructure regarding patients' cards for the public health insurance system;
- media enterprises (broadcasting, telemedia, print) that take part in building public opinion and have special current and broad effect; and
- enterprises providing services which are needed to ensure the trouble-free operation and functioning of certain state communication infrastructures.

Please note that the notification requirement also applies to additional investments even if an earlier investment was cleared by BMWi if such investment crosses the 20%, the 25%, the 40%, the 50% or the 75% threshold.



Scope – screening thresholds

Please indicate notably whether it covers solely controlling investments or also portfolio investments.

Sector B2:

Direct or indirect acquisition of 20% or more of the voting rights of an operator of critical infrastructure or comparable areas (see below) by a non-EU/non-EFTA person/entity. This applies to:

- entities developing and/or manufacturing personal protective equipment;
- entities developing and/or manufacturing and/or marketing essential medicines, including their precursors and active ingredients to ensure the provision of healthcare to the population, or possessing a corresponding license under pharmaceuticals law,
- entities developing or manufacturing medical devices products which are intended for diagnosis, prevention, monitoring, predicting, forecasting, treating or alleviating of life-threatening and highly infectious diseases, or
- entities developing or manufacturing in-vitro-diagnostics which serve to supply information about physiological or pathological processes or conditions or stipulate or monitor therapeutic measures relating to life-threatening and highly infectious diseases;
- operators of high-quality remote sensing systems under the Satellite Data Security Act;
- air carriers with an operating license;
- employers of employees working at security-sensitive posts in vital facilities;
- raw materials extractors, processors and refiners;
- entities of fundamental importance for food safety and directly or indirectly covering or culturing an agricultural area of more than 10,000 hectares;
- developers or manufacturers of:
 - goods which, by means of artificial intelligence procedures are capable of independently optimizing their algorithms usable for cyber-attacks, identity fraud, surveillance and repression;
 - autonomous motor vehicles or unmanned aerial vehicles and components;
 - robots specially designed for handling explosive agents, specially designed or rated as radiation-hardened to withstand, without loss of function, a radiation dose exceeding 5×10^3 Gy (silicon), specially designed to operate at altitudes exceeding 30,000 meters, or specially designed to operate in water depths of 200 meters or greater;
 - semiconductors;
 - IT products and components for the protection of IT systems, defense against cyber-attacks or IT technology for the investigation of criminal offences and the preservation of evidence by law enforcement authorities;
 - certain dual-use goods in the aviation and space industry area;
 - dual-use nuclear technology;



Scope – screening thresholds

Please indicate notably whether it covers solely controlling investments or also portfolio investments.

- quantum technologies;
- industrial 3D printers;
- goods specifically designed for the operation of wireless or wireline data networks;
- smart-meter gateways and security modules for these goods; and
- goods which are protected by classified patents by law.

Please note that the notification requirement also applies to additional investments even if an earlier investment was cleared by BMWi if such investment crosses the 25%, the 40%, the 50% or the 75% threshold.

Sector C:

Sector C is a catch-all sector: It covers any acquisition of 25% or more of the voting rights of any German entity by a non-EU purchaser that may endanger national security or public order. While there is no notification requirement, notification may be recommendable if the target may be critical (eg mainly active for public entities), as otherwise BMWi may ex officio investigate the transaction for five years from signing. Please note that even if an earlier investment was cleared by BMWi or if the five-year period for an ex officio investigation has passed, in case additional investments cross the 40%, the 50% or the 75% threshold, the ex officio competence applies, again. Thus, a notification may be recommendable in such cases, as well.

As mentioned above, asset deals with an effect identical to acquiring the aforementioned entities are covered by FDI screening, as well. Loopholes are closed by circumvention regulation.



Scope – sectors covered	Please see question 7, above
Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?	<p>a) Notification may generally occur only when not even minor amendments to the acquisition agreement are expected. However, while for Sector C it is generally recommendable to only close after the end of FDI procedure, for sectors A, B1 and B2, a closing's validity is pending until clearance by BMWi has occurred.</p> <p>b) Depending on the area of a target's activities:</p> <ul style="list-style-type: none">• Sector A: 10 %, 20%, 25%, 40%, 50% 75% of the voting rights;• Sector B1: 10%, 20%, 40%, 50%, 75% of the voting rights;• Sector B2: 20%, 25% 40%, 50%, 75% of the voting rights;• Sector C: 25%, 40%, 50%, 75% of the voting rights. <p>c) Notification is mandatory in sectors A, B1 and B2 but investigation procedures by BMWi are not. BMWi may simply review and give clearance or order in-depth review. A certificate of non-objection may be applied for voluntarily after signing in Sector C.</p>
Design – reciprocity?	Regulation does not mention reciprocity. However, reciprocity was discussed in earlier legislative processes and may matter de facto: eg the blocking of the acquisition of Aixtron in 2016 by a Chinese investor has been interpreted as an attempt to negotiate better access for German investors to the Chinese market.



Design – procedures and deadlines

After notification or finding out about the transaction, BMWi provides existing information to other stakeholders (other ministries and authorities, member states, Commission) in order to receive their comments.

Only after receiving these, will BMWi decide on ordering an in-depth review. BMWi needs to take this decision within two months from learning about the transaction.

If BMWi does not decide within this two month period, this is under law considered to be a clearance of transaction.

If BMWi decides to order an in-depth review of the acquisition, it orders such review within the aforementioned timeframe. Such order requires the immediate purchaser to submit a defined set of information (including percentage of shares before and after transaction, description of business objective of purchaser and acquired entity, business strategy of purchaser, annual financial statements and business reports of past three years, acquisition agreement, etc).

In addition, BMWi raises questions individually designed for each transaction.

In all, the investigation needs to be finalized within four months. However, the expiry of the deadline is suspended during periods in which questions have not been answered by the purchaser. Please note that BMWi may issue several rounds of questions.

If during the aforementioned time period BMWi finds expectable impairment to public order and security, it has the competence to:

- order invalidity of closing (if closing has occurred);
- order a reverse transaction (if closing has occurred);
- prohibit the acquisition before closing (also if closing has occurred but was pending void); and
- instruct the purchaser and target entity to take mitigation measures (eg reporting obligations, limit the acquiring party's right to use its voting rights for certain decisions, sell critical assets).

Design – Transparency and Information requirements (Filing Forms?)

No forms are available, yet. However, under the latest amendment, notification may occur electronically; thus, certain forms are expected on short notice for electronic filings.

The regulation itself does not explicitly define what information is required with regard to the notification required, but only states that the conclusion of an obligatory agreement in Sectors A, B1 and B2 requires written notification and certain information. For both Sectors, BMWi has issued decrees containing lists of required information.

BMWi has also provided a list of information it generally expects in case of an application for a certificate of non-objection (Sector C).

BMWi generally expects that information is sent by mail and transferred electronically.

<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>German law provides for:</p> <ul style="list-style-type: none"> • blocking, ie prohibiting the closing (Untersagung); and • ordering invalidity of closing as one form of implementing prohibition; • unwinding as another form of implementing the prohibition: BMWi can appoint an escrow for this purpose, at the acquirer's cost; and • instructions, in the form of administrative orders, eg unbundling of critical business parts from the purchased entity, measures to make sure that technology is not shared, limited voting rights; reporting requirements. <p>Another means often employed by BMWi is the conclusion of a public law contract between BMWi and the purchaser (and potentially the target) in which BMWi clears the transaction in exchange for the purchaser (and target) agreeing to certain conditions (reporting obligations, sale of business parts, etc.)</p>
<p>Interaction with other legal frameworks (eg merger control)</p>	<p>Not under law.</p>
<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>Blocking, as well as other instructions, may be ordered if an acquisition potentially impairs public order or safety of the Federal Republic of Germany, other EU Member States, or certain defined EU projects. This is not based on WTO definitions. However, BMWi interprets it as defined in the new EU FDI regulation. BMWi has discretion regarding the application of the criteria. No court decisions have occurred on the reach of the discretion, so far.</p>
<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>Judicial review is available within one month from the order of blocking or instructions with the competent administrative court (administrative court of Berlin, usually). The competent court may review if public order and safety are indeed potentially impaired and whether the order in question is adequate (ie appropriate – thus, able to cure the situation; required – thus, the least intense way of dealing with the issue in question; and equivalent, ie it seems not completely out of range). So far, judicial review has not been employed in this regard to our knowledge</p>
<p>Publication in Official Gazette or other</p>	<p>Not required.</p>



<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>In 2016 to 2017, in four cases, stipulations (not restricting the acquisition) were decided by BMWi, and in seven cases, the certificates of non-objection were only issued after public law contracts assuring public order and security were concluded. Since 2016, the German government vetoed four acquisitions, each time with regards to Chinese investors.</p> <ul style="list-style-type: none">• In the first case (October 2016) a Chinese investor was banned from acquisition of a manufacturer of semiconductors and nano materials (Aixtron) based on an intervention from the US. While 51% of the investment should have come from a private investor, 49% of the investment should come from an entity indirectly held by the local government of Xiamen, China.• The second case referred to Leifeld Metal Spinning AG. The investor Yantai Tahai was vetoed because of safety interests, in part because the investor does business in the nuclear area.• Even though not in the scope of the German foreign investment screening, the German government in March and July 2018 made sure that the Chinese state-owned SGCC could not acquire 20% of the shares of German grid operator 50hertz. In March, the purchase was avoided by Belgian Elia's acquisition, and in July by acquisition of the shares by the government's public bank KfW.• In December 2020, the Federal Government prohibited the acquisition of IMST GmbH, a 5G, satellite and radar expert company by a Chinese buyer. <p>Please note that no information is available on transactions that may have been aborted because of concerns of BMWi.</p>
<p>Stakeholders views on the Legal Framework</p>	<p>The latest amendments have drawn some criticism from industrial organizations, especially the Federation of the German Industry (BDI).</p>
<p>Interplay with the future EU Regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>The updated German regulation takes full reference to the EU Regulation. While the existing procedures already allowed to stay in line with required notification and answering periods, the broadened scope explicitly allows other Member States and the Commission to provide their input and to base actions by BMWi on their interests, too.</p>
<p>Other relevant information</p>	



<p>Stakeholders views on the legal framework</p>	<p>The Federation of German Industries (BDI), while refraining from clear criticism of the regulation as-is, strongly opposes further restrictions on FDI or more restrictive FDI screenings. Employees and public opinion tend to be increasingly reluctant, especially when investors come from a different economic, political and cultural background, such as China. The metal workers' union IG Metall spoke out against FDI for the first time in 2016, when a Chinese investor wanted to buy a German traditional enterprise, Osram. Each time the area of review is broadened, industrial organization tend to take a rather negative stand.</p>
<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>The updated German regulation took full reference to the EU Regulation. While the existing procedures already allowed to stay in line with required notification and answering periods, the broadened scope explicitly allows other Member States and the Commission to provide their input and to base actions by BMWi on their interests, too to provide their input and to base actions by BMWi on their interests, too.</p>
<p>Other relevant information</p>	<p>It is expected that Sector B will see an extension, soon, also to apply, among others, to robotics and semiconductors developers and manufacturers.</p>



Hungary



<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<p>Based on data published by the Hungarian National Bank, during Q3 of 2020, the top six sources of inward FDI in Hungary were: Luxemburg, Austria, the UK, South-Korea, Belgium, and Japan.</p>
<p>Legal framework in force</p>	<p>Regime enacted in 2018 (2018 FDI Regime):</p> <ul style="list-style-type: none"> • Act on the Control of Foreign Investments Offending the National Security of Hungary (Act LVII of 2018) (2018 FDI Act) • Government Decree 246/2018. (XII.17.) on the Implementation of Act LVII of 2018 on Control of Foreign Investments Offending the National Security of Hungary • Government Decree 532/2020 (XI.28.) on measures applicable during the state of emergency for the protection of the economy <p>Regime enacted in 2020 (2020 FDI Regime):</p> <ul style="list-style-type: none"> • Act LVIII of 2020 on intermediary measures and pandemic preparedness in connection with the termination of the state of emergency (2020 FDI Act) • Government Decree 188/2021. (IV. 21.) on the amendment of Government Decree 289/2020 (VI.17.) on the definition of specific fields of operation of corporations having their headquarter in Hungary • Government Decree 189/2021 (IV.21.) on the application during the state of emergency of provisions necessary for the protection of companies having their seat in Hungary, in order to prevent and remedy the consequences of the human epidemic causing mass illnesses and endangering life and property security <p>Other notable sources:</p> <ul style="list-style-type: none"> • Act on the Investments of Foreigners in Hungary (Act XXIV of 1988) • Act on the Acceleration and Simplification of the Implementation of Investments of Strategic Importance from the Perspective of the National Economy (Act LIII of 2006) • Bilateral Investment Treaties concluded by Hungary • Agreements on Strategic Partnership concluded by Hungary • Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) • Convention on the Settlement of Investment Disputes between States and Nationals of other States (Washington Convention)
<p>Last revision of the legal framework</p>	<p>April 21, 2021</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>The Act on the Investments of Foreigners in Hungary (Act XXIV of 1988) was introduced shortly before the 1989 collapse of the communist regime in Hungary. Its introductory provisions declare that it aims at "facilitating the direct participation of foreign operating capital in the Hungarian economy." Hungary has gone through many significant positive developments since the introduction of the act, such as becoming a Member State of the EU in 2004. Although the Act remained effective to date, about two-third of its early provisions, containing various administrative restrictions on foreign direct investment, have long been abolished.</p>



Nevertheless, much like an investment treaty, the current version of the Act grants substantive protections to investors such as full protection and security or protection against expropriatory measures (or measures having an equivalent effect). It stipulates that any expropriatory measures may only be taken upon the payment of prompt compensation at the actual value of the assets of the foreign investor. Compensation is granted through the competent administrative agencies of the state in the same currency in which the investment was made. In the event of a violation of the law, a competent domestic court can be seized to review the decision of the administrative agency on the issue of compensation. To facilitate the projects financed by EU subsidies by providing a faster, simpler and more unified procedural framework and to use the available resources more efficiently, the Hungarian Parliament adopted Act LIII of 2006 on the Acceleration and Simplification of the Implementation of Investments of Strategic Importance from the Perspective of the National Economy. The aim of the Act is to promote the forming of a regulatory environment which corresponds to the special needs raised by investments of high importance from the perspective of the national economy, by accelerating authority approval procedures and reducing public administration deadlines. The scope of the Act does not only extend to FDI but also to domestic investments of strategic importance.

As of February 15, 2020, Hungary has bilateral investment treaties for the promotion and protection of foreign investments with the following countries: Albania; Argentina; Australia; Austria; Azerbaijan; Belgium Luxembourg; Bosnia and Herzegovina; Bulgaria; Cabo Verde; Cambodia; Canada; Chile (signed but not yet in force); China; Croatia; Cuba; Cyprus; the Czech Republic; Denmark; Egypt; Finland; France; Germany; Greece; India (terminated in 2017); Indonesia (terminated in 2016); Israel (terminated in 2007); Italy (terminated in 2008); Jordan; Kazakhstan; Kuwait; Latvia; Lebanon; Lithuania; North Macedonia; Malaysia; Moldova; Mongolia; Morocco; the Netherlands; Norway; Paraguay; Poland; Portugal; South Korea; Romania; Serbia; the Republic of Singapore; Slovakia; Slovenia; Spain; Sweden; Switzerland; Tajikistan (ratified but not yet entered into force); Thailand; Tunisia (signed but not yet in force); Turkey; Ukraine; the United Kingdom (including the territories of Bermuda, Gibraltar, Guernsey, Isle of Man, Jersey, and the Turks and Caicos Islands); Uruguay; Uzbekistan; Vietnam; and Yemen. Hungary is also party to the Energy Charter Treaty.

In the past decade, the Hungarian government has also facilitated the conclusion of agreements on strategic partnership in order to strengthen cooperation with foreign investors in Hungary and with their Hungarian subsidiaries. A system of criteria has been set up for the conclusion of such agreements. The aim is that only companies which will probably contribute to the country's economic and social development in the long run can be included in the scope of companies concluding such agreements. In turn, strategic agreements ensure that the particular investor will receive an instant and comprehensive insight into the legislative changes affecting its industry.

Hungary acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on March 5, 1962, and its provisions entered into force on June 3, 1962, in respect of Hungary. Hungary also signed the Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States on October 1, 1986, and its provisions entered into force on March 6, 1987, in respect of Hungary.

From a purely FDI regulatory perspective, we note that in addition to the above, to ensure compliance with EU law, the 2018 FDI Regime entered into effect in 2018 that has been amended during the pandemic, in November 2020, so as to cover also investments made by EU/ EEA investors during the state of emergency period in Hungary.

Also, during the course of 2020, with a view to the pandemic, the Hungarian FDI regime was further supplemented with a new leg, by enacting the 2020 FDI Regime, which establishes a much wider scope of screening (from the point of view of strategic industries) as compared to the 2018 FDI Regime

Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI)
Are there any loopholes?

As a Member State of the EU, generally, Hungary has a rather favorable attitude towards foreign investments. Below we summarize the mechanisms under the 2018 and 2020 FDI Regime, respectively (also taking into consideration extraordinary measures taken during the pandemic and in respect of the state of emergency in Hungary).

According to the 2018 FDI Act and the 2020 FDI Act, a pre-screening procedure is based on a notification obligation (to be completed towards the Minister of Interior under the 2018 FDI Regime, and towards the Minister of Innovation and Technology, under the 2020 FDI Regime), regarding the establishment or to the change in the ownership of or, in certain cases, majority influence in the enterprises related to specific, defined activities considered strategic (See questions 7 and 8). The respective notification obligations apply to foreign investors (which notion, during the state of emergency in Hungary, has been extended to encompass both extra EU and EEA, as well as EU/ EEA investors under both regimes). It must be assessed on a case-by-case basis, whether the scope of the Regimes cover a specific transaction and a specific investor (in light of the wording of the Regimes, as effective at the time of the contemplated signing of the transaction documents).

A mandatory pre-screening procedure is carried out when a foreign investor seeks to establish an enterprise or acquire ownership or possession of any other right in enterprises important to national security in case the rights higher than the threshold limits (See question 7).

Foreign investors and investments are required to operate in compliance with prevailing Hungarian laws (eg company law, tax law, criminal law) in the same way as Hungarian investors and investments.



Scope – screening thresholds

Please indicate notably whether it covers solely controlling investments or also portfolio investments.

The 2018 FDI Regime

The mandatory notification obligation under the 2018 FDI Regime falls on a foreign investor who seeks to establish an enterprise or acquire ownership or possession of any other rights in enterprises important from the perspective of national security:

- in case of these rights are higher than 25% also if the acquisition results that the foreign investor's ownership collectively would exceed this threshold limit; or
- exceeding the 10% in the case of a public limited liability company; or
- in case of acquiring dominant influence.

The 2020 FDI Regime

The mandatory notification obligation falls on a foreign investor, who seeks to:

- acquire majority influence (within the meaning of the Civil Code) in a strategic company, through the following transactions, if the aggregate value of the transaction reaches or exceeds HUF350 million (EUR1 million) and provided that the foreign investor is a person that is a citizen of/ incorporated in a member of the EU/ EEA/ Switzerland (or if, in any foregoing person a citizen of/ incorporated in a member of the EU/ EEA/ Switzerland has majority influence): acquisition of ownership stake, of bonds, or usufruct;
- acquire an ownership stake exceeding 10% in a strategic company, as a result of the acquisition of ownership, bond or usufruct, if the investor does not have a thoroughly EU/ EEA/Swiss background (ie it is either incorporated outside of the EU/EEA/ Switzerland, or incorporated in the EU/EEA/Switzerland, but is under the majority influence of a person that is a citizen of or incorporated in a country outside of the EU/EEA/Switzerland) and the overall value of the transaction reaches or exceeds HUF350 million (EUR1 million);
- acquire an ownership stake of 15%, 20%, 50% in a strategic company, or as a result of the acquisition of an ownership stake / bond/ usufruct, the overall stake of foreign stakeholders will exceed 25% in a strategic company, provided that the foreign investor is not an investor of thoroughly EU ownership background;
- acquire the ownership or operation right or the right to use strategic infrastructure and equipment in strategic industries, or the encumbering of such infrastructure or equipment, if the investor qualifies as a foreign investor under the 2020 FDI Act (or is an entity in which a foreign investor has dominant influence pursuant to the Civil Code).

The notification obligation under the 2020 FDI Regime does not pertain to transactions (i) executed in respect of a mother company incorporated outside of Hungary (even if such transactions result in the above changes in control/ownership in respect of the foreign target's Hungarian subsidiary, that is a strategic company), (ii) among associated businesses (*kapcsolt vállalkozás*) within the meaning of Act C of 2000 on accounting, that are executed in respect of an entity incorporated in a country outside of Hungary.

Scope – sectors covered

The 2018 FDI Regime

The pre-screening procedure according to the 2018 FDI Act is applicable only for the activities in the economic sectors important to national security as follows:

- weapon and ammunition production, production of military technology, equipment subject to authorization;
- dual-use product production;
- production of intelligence tools;
- provision of financial services and functioning of payment systems;
- services in the field of electricity, supply of natural gas, water utility services and electronic communications; and
- set-up, development, and operation of electronic information systems subject to the Act on Electronic Information Security of Central and Local Government Agencies.

It is important to note that the scope of relevant activities is further narrowed down by the government decree executing the act (during the state of emergency, government decree no. 532/2020, and apart from the state of emergency, government decree no. 246/2018. (XII.17.)).

The 2020 FDI Regime

A strategic company (in respect of the acquisition of which the notification obligation may be applicable) is defined as a limited liability company, public company limited by shares, private company limited by shares incorporated in Hungary, which engage in an activity falling within the scope of strategic sectors (energy, transport, communication, and sectors set out in Article 4 (1) a-e) of the Regulation).

Government Decree no. 289/2020 (VI.17.) completes the regime by setting out the exact list of sectors and activities (within such sectors) that are of strategic importance, inter alia: communication, trade (retail, wholesale, vehicle), energy, agriculture, food industry, IT, construction industry, production of medical equipment, tourism, labor hire.

Design of FDI Screening Mechanism

Please indicate notably the following:

- (a) Pre-authorization vs. ex-post screening of FDI? Other?
- (b) Covers solely controlling investments or also portfolio investments?
- (c) Mandatory or voluntary nature?

According to the 2018 FDI Act and the 2020 FDI Act, in case of a new establishment, or taking up a new strategic activity, the screening procedure starts with a mandatory notification after establishment of a new enterprise or acquiring ownership in enterprises engaged in the specified activities (See previous answer to question 8. In other cases, under both Regimes, the screening may be started with the submission of the notification on the transaction, after the conclusion of the relevant transaction document.

As a general rule, both regimes are silent as to whether a preliminary opinion may be obtained from the authorities, before the conclusion of the transaction documents, and performing the filing obligation.

The foreign investor may acquire the right of use or operation of infrastructure, facilities and assets for the relevant activities after the ministers' acknowledgment.

The notification obligation under the regimes is mandatory, if a transaction falls under the scope of the Regimes, respectively.



Design – reciprocity?	<p>There are no express reciprocity provisions in Hungarian law <i>per se</i>. However, bilateral investment treaties concluded by Hungary operate on a reciprocal basis. Such agreements contain clauses designed to protect investments made by investors of either contracting party in the territory of the other contracting party.</p>
Design – procedures and deadlines	<p>The foreign investor shall notify the relevant minister (see the answer to Question 6) within ten days from signing the contract or pre-contract targeting the acquisition of ownership or the right of operation. In the case of newly adopted activity in the company registry the relevant minister shall be notified within ten days of its registration.</p> <p>The minister informs the investor about the receipt of the notification within a maximum of eight days. After receiving the notification the minister shall check if the notification complies with the requirements and examine whether the activities carried out by the investor may pose a real threat to national security interests.</p> <p>Under the 2018 Regime the minister notifies the investor within 60 days following the receipt of the notification and sends the acknowledgement of the acquisition of ownership, or the prohibition. In especially justified cases the term can be prolonged with 60 days.</p> <p>Under the 2020 Regime the minister has 30 business days to assess the file and adjudicate whether it grants its acknowledgment or prohibits the transaction. In special cases of high complexity the minister may prolong the procedure for an additional 15 days.</p>
Design – transparency and information requirements (filing forms?)	<p>The notification (under both regimes) shall include (in case a legal person or other organization) the name, seat and seat of branch in Hungary, specification of the state performing the duties related to the official registration, contact details for written communication, the data of the legal entity or other organization acting behalf of the foreign investor.</p> <p>In the notification the foreign investor shall (i) outline the business activity and enclose all documents on the basis of the ownership structure of the investor and the beneficial owner (as specified in the Act 53 of 2017 on the prevention and combating of money laundering and terrorist financing) can be established, and (ii) describe the transaction at hand.</p> <p>In the notification all the documents arising in relation to the legal transaction targeting the ownership acquisition or the right of operation or registration of the newly adopted activity shall be enclosed. Both regimes underline that disclosure of the ownership structure of the foreign investor, especially documents based on which the beneficial owner (within the meaning of the Hungarian Anti-Money Laundering Act) may be established, is of key importance.</p> <p>The language of the notification shall be Hungarian. If a document submitted is not issued in the Hungarian language, an official Hungarian translation must be annexed to the notification.</p>



<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>Under the FDI Regimes the respective notification processes may end with the ministers' confirmation of the acknowledgement of the notification or with the prohibition of the acquisition of ownership, the right of operation or company registry. In addition, the authority may establish that the 2018 Regime, or the 2020 Regime is not applicable to a certain transaction (this decisional outcome is not expressly set out in the regimes but has occurred in our experience). In the case of prohibition, the acquiring party shall not be entered in the share register or the membership rights cannot be exercised.</p>
<p>Interaction with other legal frameworks (eg merger control)</p>	<p>Pursuant to the 2018 FDI Act, acknowledgment obtained thereunder is a pre-condition to any further authorization procedures necessary for the acquisition of ownership (in connection with the same (strategic) activities). The 2020 FDI Regime does not concern/interfere with other notification/authorization procedures set out in other regulations, which concern the acquisition of ownership, acquisition of usufruct, bonds, and operation rights.</p>
<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>The 2018 FDI Regime The minister may prohibit the acquisition of ownership, the right of operation by the foreign investor or the conduction of newly adopted activities on the base that the investment violates Hungary's security interest, or the legal entity was established for or serves the purpose of making the control difficult and circumventing the procedure. The minister has a wide scope of discretion in evaluating the circumstances.</p> <p>The 2020 FDI Regime The minister may prohibit a transaction if it establishes as a result of its assessment that:</p> <ul style="list-style-type: none">• the notification is not in line with the requirements set out in the act;• the acquisition by the acquirer of the ownership interest impairs or endangers the national interest, public order or public safety of Hungary, with a view especially of the safety of satisfying basic necessities of the society;• directly or indirectly the acquirer is under the control of a public administration organ/governmental body (<i>közigazgatási szerv</i>) (including armed authorities and public organs) of a state outside of, or belonging to the EU, via its ownership structure or material financing;• the acquirer has already been involved in any activity that impairs the safety and public order in any EU member state; or• there is a risk that the acquirer will conduct illegal or criminal activities. <p>Based on the strict interpretation of the wording of the 2020 FDI Act, if a circumstance listed above is present, the minister automatically prohibits a transaction. Nevertheless, in an informal guidance the ministry referred to the fact that prohibition is not automatic (ie the minister has discretion to decide).</p>

<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>Hungarian law provides the investors with the opportunity to seek judicial review in cases related to FDI. Under the FDI Regimes, the prohibiting decision may be contested for the violation of essential procedural rules or in relation to the qualification. The Budapest Capital Regional Court has exclusive jurisdiction in respect of these cases. If the court finds that the law was violated, they shall repeal the decision and the Minister shall be obliged to launch a new procedure. There is no room to amend the decision.</p> <p>Further comments If the foreign investor or the FDI suffers damages owing to a regulatory measure imputable to the Hungarian state, a suit for damages may be brought before the competent Hungarian courts, usually within the general limitation period of five years. If the dispute is based on a contractual relationship between the foreign investor or the FDI and the Hungarian state, usually the dispute resolution clause of the contract specifies the procedure to be followed. Furthermore, disputes concerning FDI that fall under the scope of a bilateral investment treaty concluded by Hungary may usually be referred to arbitration depending on the specific dispute resolution clause contained in the relevant treaty.</p>
<p>Publication in Official Gazette or other</p>	<p>Under the FDI Regimes The 2018 and 2020 Regimes do not expressly contain provisions on any publication requirement but provide that the ministers in charge keep a register of the acknowledgments and prohibitions they issue. Data registered under the 2018 Regime will be deleted from the respective register (i) five years from the submission of the notification, in the case of a refusal issued by the minister, (ii) five years from the final and binding closure of a judicial review procedure, (iii) upon the deletion from the company register of the relevant transaction, in the case of an acknowledgment issued by the minister. Data registered under the 2020 Regime will be deleted from the respective register after (i) six months from the moment when the minister gained knowledge of the relevant transaction, but at the latest, (ii) five years from the occurrence of the relevant circumstances. The regimes do not specify whether these registers are available for inspection.</p> <p>General comments Certain judicial decisions of Hungarian courts are published in the Official Gazette by redaction of the name and confidential data of the parties. Arbitral awards are either confidential or public, depending on the parties' agreement and the relevant Rules of Arbitration.</p>
<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>N/A</p>



Stakeholders views on the legal framework	The notification processes place considerable administrative burden on the investor, given the cost and time implication of these processes, which, therefore, must be taken into consideration upon the planning of the transactions. In our experience, FDI screening is becoming more widely accepted among experienced investors, especially in multijurisdictional deals.
Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.	<p>FDI Regulation</p> <p>The existing Hungarian legislation ensures the prevalence of the principles of freedom of establishment and free movement of capital, and it provides sufficient guarantees for investment protection in accordance with EU law.</p> <p>The 2018 Regime was meant to implement the Regulation. Due to the pandemic, the (i) scope of the 2018 Regime was modified in November 2020, and (ii) 2020 Regime was introduced. Currently, each regime applies to investors with a purely EU ownership background, as well. The scope of their application (ie application to investors with a purely EU ownership background) will have to be revised upon the end of the state of emergency in Hungary, so the regimes remain compliant with EU law.</p> <p>Further considerations</p> <p>It has to be noted, however, that on March 6, 2018, the Court of Justice of the EU in <i>Slovak Republic v. Achmea BV</i> (C-284/16) determined in a preliminary ruling that investor-state arbitration provisions contained in intra-EU bilateral investment treaties are contrary to the Treaty on the Functioning of the EU and are thus precluded (Achmea Decision).</p> <p>Given that Member States of the EU were bound to draw the necessary consequences from the <i>Achmea</i> Decision, in January 2019 Hungary joined 27 EU Member States in committing to terminate all intra-EU bilateral investment treaties. As of February 15, 2019 no formal act of termination of intra-EU bilateral investment treaties has been adopted by EU Member States.</p>
Other relevant information	N/A

Ireland





Indicate five biggest FDI countries of origin (indicate percentage if available)	According to the Central Statistics Office (CSO), ¹ the five biggest FDI countries of origin in Ireland in 2019 were: <ul style="list-style-type: none">• Offshore Centers (38%)• US (21%)• Switzerland (8%)• Luxembourg (7%)• UK (4%)
Legal framework in force	Ireland does not currently have an FDI screening framework.
Last revision of the legal framework	N/A
Contextualization of the legal framework (historical or other)	<p>Ireland is a predominantly open, free-market economy. Outside of the specific frameworks discussed at question 14 below, Ireland has not (yet) enacted a specific FDI screening framework to assess investments that are likely to affect security or public order (eg investments in critical infrastructure, technologies or other sensitive industries).</p> <p>On March 19, 2019, the EU adopted Regulation 2019/452 (FDI Regulation). In broad terms, the EU FDI Regulation establishes a common framework to allow EU Member States to monitor FDI flows by investors from outside of the EU which might adversely affect security or public order, and if necessary, to oppose or unwind such investments. The definition of an FDI is broad and includes investments of "any kind." Explanatory guidance to the original proposal suggested that this may cover acquisitions, mergers, real estate investments, securities investments, loans, etc.</p> <p>The EU FDI Regulation entered into force on October 11, 2020. Even though Ireland is not obliged to adopt national screening measures, the EU FDI Regulation requires Ireland to (i) set up a national contact point to enable sharing of information relevant to screening investments which may affect security or public order, and (ii) submit an annual report to the European Commission with aggregated information on foreign direct investments that took place in Ireland.</p> <p>At national level, the Department for Enterprise, Trade and Employment (DETE) is responsible for trade matters within the Irish government. In the run-up to the passage of the EU FDI Regulation, the Trade Policy Unit of the DETE noted that the rules were a "high priority" and actively monitored its legislative progress. A key aim disclosed by the Trade Policy Unit was to ensure that Ireland was not obliged to enact FDI screening rules. While Ireland ultimately succeeded on ensuring that the EU FDI Regulation did not provide for mandatory FDI screening, the EU FDI Regulation envisages that EU counterparts in another Member State may request Ireland to comment on an investment in Ireland by a third-country investor.</p>

¹ <https://www.cso.ie/en/releasesandpublications/er/fdi/foreigndirectinvestmentannual2019/>



Following an internal DETE reshuffle, responsibility for the EU FDI Regulation now sits with a dedicated Investment Screening Unit. Ireland has appointed the Investment Screening Unit as the national contact point to review and handle queries generated under the EU FDI Regulation. The Investment Screening Unit will also be responsible for preparing the annual report on Irish FDI activity.

In May 22, 2020, the DETE held a public consultation on how to fully and effectively implement the EU FDI Regulation in Ireland. The consultation considered whether it was appropriate to introduce a formal screening mechanism and recognized that primary legislation would be required to give Ireland the power to implement such a measure. In particular, the consultation explored what types of investment should be screened on security and public order grounds, and what level of investment might trigger the screening process. The consultation also noted that any new FDI screening mechanism should not lessen Ireland's attractiveness as a location for investment and the need for any intervention to be balanced against the open and free-market economic model successfully pursued by Ireland.

In September 2020, the Irish government announced that it planned to draft legislation to "give full effect" to the EU FDI Regulation via the Investment Screening Bill 2020. Once enacted, the Investment Screening Bill 2020 will empower the Minister for Enterprise, Trade and Employment to respond to threats to Ireland's security and public order posed by particular types of foreign investment, and to prevent or mitigate such threats. Under the proposed legislation, the Minister will be able to assess, investigate, authorize, condition, prohibit or unwind foreign investments from outside of the EU, based on a range of security and public order criteria. Announcing the legislation, the Minister for Enterprise, Trade and Employment said that "we have a strong reputation as a welcoming home for Foreign Direct Investment and that will continue over the lifetime of this government. Foreign investment will be crucial as we seek to repair the economic damage wrought by the COVID-19 pandemic."²

The text of the bill has not yet been published.

Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI)
Are there any loopholes?

N/A

N/A
Scope – screening thresholds
Please indicate notably whether it covers solely controlling investments or also portfolio investments.

² <https://www.gov.ie/en/press-release/77066-government-agrees-eu-regulation-to-screen-foreign-direct-investment/>



Scope – sectors covered	N/A
Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?	N/A
Design – reciprocity?	N/A
Design – procedures and deadlines	N/A
Design – transparency and information requirements (filing forms?)	N/A
Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI	N/A
Interaction with other legal frameworks (eg merger control)	<p>Mergers, acquisitions and full function joint ventures that meet the financial thresholds in the Competition Acts 2002 to 2017 must be notified to the Competition and Consumer Protection Commission (CCPC) before they are put into effect. The current financial threshold is met where two undertakings generate a combined turnover of more than EUR60 million in Ireland, and each undertaking generates a turnover of more than EUR10 million in Ireland. The CCPC investigates and determines whether a merger may be approved, approved with conditions or prohibited. In addition, media mergers are subject to a mandatory notification obligation and are reviewed separately by the CCPC and the Broadcasting Authority of Ireland (BAI).</p> <p>In certain sectors, other forms of regulatory scrutiny may apply. For example:</p> <ul style="list-style-type: none"> • Financial services may require authorization and may be subject to regulation by the Central Bank of Ireland. • Broadcasting activities may require notification and authorization from the BAI. • Telecommunication services may require licensing from the Commission for Communications Regulation (ComReg). • Medical products are subject to regulation by the Health Products Regulatory Authority (HPRA).



Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.	N/A
Judicial Review Please specify timeline, competent courts and standard of judicial review.	N/A
Publication in Official Gazette or other	N/A
Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.	N/A
Stakeholders views on the legal framework	The Irish government actively promotes foreign investment and the Industrial Development Agency (IDA) is an autonomous state funded body which promotes FDI into Ireland. The IDA provides support to investors and offers a grant aid system to incentivize companies who are investing and meet certain criteria. ³
Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.	The Irish government is actively planning to adopt national legislation to "give full effect" to the powers under the EU FDI Regulation.
Other relevant information	In 2014, the Irish government published a detailed 30-page Policy Statement on FDI. ⁴ This document is expected to be updated to reflect recent developments and is likely to take account of a variety of global, regional and local developments in the intervening period. For example, these may include the impact of state-owned entity investment in Ireland, the outcome of the EU-UK Brexit negotiations, the development of sensitive technologies in Ireland, the importance of major data centers based in Ireland, plurality of the media concerns, and energy independence post-Brexit.

³ <https://www.idaireland.com>

⁴ <https://enterprise.gov.ie/en/Publications/Policy-Statement-on-Foreign-Direct-Investment-in-Ireland1.html>

Italy





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<p>According to the latest statistics provided by the Bank of Italy (inward FDI stocks by Ultimate Investing Company/Ultimate Investing Country), in 2018 the five biggest FDI countries of origin were:</p> <ul style="list-style-type: none">• France (approx. 16.5%)• US (approx. 12.2%)• UK (approx. 10.5%)• Germany (approx. 8.7%)• Switzerland (approx. 7.7%)
<p>Legal framework in force</p>	<p>Decree No. 21 of March 15, 2012, ratified by Law No. 56 of May 11, 2012 (Decree 21/2012), as subsequently amended, grants special powers to the Italian government in relation to transactions involving national strategic activities/assets in various sectors (defense and national security, energy, transport, communications, 5G technologies and other sectors).</p> <p>The applicable national legislation also comprises the following implementing measures:</p> <ul style="list-style-type: none">• Prime Ministerial Decree No. 108 of June 6, 2014, which identifies the activities of strategic relevance in the defense and national security sectors, as defined by Article 1, paragraph 1, of Decree 21/2012;• Decree of the President of the Republic No. 35 of February 19, 2014, governing the review process in the defense and national security sectors, pursuant to Article 1, paragraph 8, of Decree 21/2012;• Decree of the President of the Republic No. 85 of March 25, 2014, which identifies the strategic assets in the energy, transport and communications sectors, as defined by Article 2, paragraph 1, of Decree 21/2012;• Decree of the President of the Republic No. 86 of March 25, 2014, governing the review process in the energy, transport and communications sectors, pursuant to Article 2, paragraph 9, of Decree 21/2012;• Decree of the Secretary General of the Presidency of the Council of Ministers adopted on February 18, 2015, providing ad hoc notification forms.
<p>Last revision of the legal framework</p>	<p>The latest revisions of the applicable legal framework have been introduced by the following acts:</p> <ul style="list-style-type: none">• Decree No. 22 of March 25, 2019, ratified by Law No. 41 of May 20, 2019, providing for a screening mechanism in relation to broadband electronic communication services based on 5G technologies;• Decree No. 64 of July 11, 2019, representing a first attempt to review the whole FDI legislation, finally not ratified;• Decree No. 105 of September 21, 2019, ratified by Law No. 133 of November 18, 2019, significantly amending the screening mechanism applicable to all the relevant sectors and implementing the provisions of Regulation (EU) No. 2019/452 (Decree 105/2019);



The latest revisions of the applicable legal framework have been introduced by the following acts:

- Decree No. 22 of March 25, 2019, ratified by Law No. 41 of May 20, 2019, providing for a screening mechanism in relation to broadband electronic communication services based on 5G technologies;
- Decree No. 64 of July 11, 2019, representing a first attempt to review the whole FDI legislation, finally not ratified;
- Decree No. 105 of September 21, 2019, ratified by Law No. 133 of November 18, 2019, significantly amending the screening mechanism applicable to all the relevant sectors and implementing the provisions of Regulation (EU) No. 2019/452 (Decree 105/2019);
- Decree No. 23 of April 8, 2020, ratified by Law No. 40 of June 5, 2020 laying down urgent measure to mitigate the effects of the COVID-19 outbreak, which has further extended the scope of FDI legislation and introduced the power of the Italian government to initiate ex officio an investment screening procedure even in cases of breach of the notification obligation (Decree 23/2020).
- Before the adoption of Decree 105/2019 the sectors subject to FDI screening mechanism were the following:
 - defense and national security;
 - electronic broadband telecommunications networks in 5G technology;
 - energy, transport and communications sectors.
- Decree 105/2019 has extended the scope of the FDI regime to all assets falling within the sectors under Article 4(1), lets. a) and b) of Regulation (EU) No. 2019/452 (FDI Regulation), until the adoption of a Decree of the President of the Council of Ministers (DPCM) which should identify in detail such additional assets. The above-mentioned sectors include:
 - a) critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defense, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure;
 - b) critical technologies and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No 428/2009, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies.

Decree 23/2020 has further extended the scope of the applicable legislation to assets in the remaining three sectors identified by Article 4(1) of the Regulation.

Until the issuance of the DPCM, the following additional categories of assets are therefore relevant:

- c) supply of critical inputs, including energy or raw materials, as well as food security;
- d) access to sensitive information, including personal data, or the ability to control such information; or
- e) the freedom and pluralism of the media.

Decree 23/2020 has also specified that the financial sector under Article 4(1), let. a) shall include the credit and insurance sectors, and that the health sector shall encompass the production, import and wholesale distribution of medical devices and personal protective equipment.

Contextualization of the legal framework (historical or other)

Decree 21/2012 repealed Article 2 of Law Decree No. 334 of May 31, 1994, which established the right of the Italian government to hold a certain amount of shares in companies operating in strategic sectors, on the basis of which the government was able to influence the decisions of the undertakings concerned (so-called golden shares).

The provisions of Law Decree No. 334 of 1994 were found to be incompatible with the EU principle of free movement of capital, as they were likely to discourage foreign investments.

In order to comply with the principles developed by the EU Court of Justice in its case law, the government decided to intervene by adopting Decree 21/ 2012, which sets out an exhaustive list of special powers to be exercised by the government on the occurrence of specific events concerning undertakings active in certain strategic sectors, subject to compliance with objective and non-discriminatory criteria (so-called golden powers).

Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI)
Are there any loopholes?

As a general rule, investments covered by Decree 21/2012 must be notified to the Italian government within a certain time-limit in order to enable the government to exercise its special powers, subject to the conditions prescribed thereby.

The review procedure set out in Decree 21/2012 is applicable to resolutions, transactions and acquisitions of equity interests involving companies carrying out strategic activities in the defense and national security sectors, or companies holding strategic assets in the energy, transport, communications and sectors envisaged by Article 4(1) of the Regulation.

Defense and National Security

The review process applies to investments made by any person, other than the Italian state, national public entities and state-controlled entities, irrespective of its nationality.

Energy, Transport, Communications and sectors under Article 4(1) of the Regulation

The investment control regime normally applies only to investments made by non-EU persons. For the purposes of Decree 21/2012, a non-EU person is defined as:

- a) any individual or entity whose legal or habitual residence, registered office, headquarters or principal place of business is not located within the EU or the EEA, or which is not established therein;



- b) any individual or entity whose registered office, headquarters or principal place of business is located within the EU or the EEA, or which is still established therein, and that is controlled, directly or indirectly, by any individual or entity having its legal or habitual residence, registered office, headquarters or principal place of business outside the EU or the EEA, or which is not established therein;
- c) any individual or entity whose legal or habitual residence, registered office, headquarters or principal place of business is located within the EU or the EEA, or which is still established therein, for the purpose of circumventing the provisions of Decree 21/2012.

Decree 23/2020 introduced a temporary regime under which the screening mechanism temporarily applies also to acquisitions of controlling interests in national strategic companies by EU investors. The temporary regime currently applies until December 31, 2020, but a possible extension of the regime until June 30, 2021, is currently under discussion in Parliament.

5G technologies

The screening mechanism applies in the event of acquisitions by Italian companies of 5G-based products and/or services from non-EU persons, as defined under point (ii) above.

Please note that, in certain cases, notification is also required for intra-group transactions, although they are not subject to the special powers of the government. This exemption does not apply if well-founded information indicates that such transactions are likely to seriously harm certain fundamental national interests (ie national security and defense, public policy, the safeguarding and operation of networks and facilities).

Scope – screening thresholds

Please indicate notably whether it covers solely controlling investments or also portfolio investments.

Defense and National Security

Notification is mandatory for any kind of investment involving companies operating in the defense and national security sectors if leading to the acquisition of any interest exceeding 3%, 5%, 10%, 15%, 20%, 25% and 50% of the share capital.

Energy, Transport, Communications and Sectors under Article 4(1) of the Regulation

According to the new provisions of Decree 23/2020, until the issuance of the DPCM implementing the Regulation, notification is mandatory for any acquisition of equity interests in companies holding assets in the sectors at hand.

Decree 23/2020 introduced a temporary regime (currently applicable until December 31, 2020) under which the notification is mandatory also for:

- any resolution, act and transaction adopted by a company holding assets in the sectors at hand and involving changes in the ownership, control or availability of the assets in those sectors or a change in their destination;

- any acquisition of controlling equity interests (as defined in article 2359 of the Italian Civil Code and in the Legislative Decree No. 58/1998) by foreign entities, including those belonging to the European Union, in relation to assets in the sectors at hand;
- any acquisition of equity interests made by non-EU companies allowing to acquire a share of the voting rights or of the capital equal to at least 10% – taking into account the shares already held, directly or indirectly – in relation to assets in the sectors at hand, provided that the value of the investment is equal or higher than EUR1 million (notification must then be made when the thresholds of 15, 20, 25 and 50% are exceeded).

The temporary regime currently applies until December 31, 2020, but a possible extension of the regime until June 30, 2021, is currently under discussion in Parliament.

The temporary measures described above apply to relevant transactions for which the obligation to notify arose within December 31, 2020, even though the filing occurred later or was not submitted.

5G technologies

Notification is mandatory in relation to:

- the purchase of assets or services regarding the design, manufacturing, maintenance and management of networks relating to broadband electronic communication services based on 5G technologies; and
- the purchase of high-tech components instrumental to the building or operation of networks relating to broadband electronic communication services based on 5G technologies.

Scope – sectors covered

The sectors covered by Decree 21/2012 are defense, national security, energy, transport, communications, sectors envisaged by Article 4(1) of the Regulation, 5G technologies.

Defense and national security

Prime Ministerial Decree No. 108 of 2014 identifies the strategic activities, including key strategic activities, falling within the scope of the review procedure applicable to the defense and national security sectors. Such activities belong to the competence of either the Ministry of Defense or the Ministry of the Interior.

Energy, transport and communications

Decree of the President of the Republic No. 85 of 2014 identifies the strategic assets (including the underlying contractual relationships) falling within the scope of the review procedure applicable to the energy, transport and communications sectors, namely:

- the energy networks of national interest, comprising the national network for the transport of natural gas, gas compression stations and dispatching centers, gas storage facilities, infrastructures for the supply of natural gas and electricity from non-EU countries (including onshore and offshore LNG regasification plants), the national network for the transport of electricity, electricity control and dispatching plants, the related management activities;
- large transport networks and facilities of national interest, aimed also to ensure the main trans-European connections, such as ports, airports and railways; and
- dedicated telecoms networks, the telecoms network publicly accessible to end-users in connection with metropolitan networks, service routers, long-distance networks, telecoms facilities used to provide access to end-users to services covered by universal services obligations and to broadband and ultra-broadband services.

Please note that further assets in the energy, transport and communications sectors may be identified by the new DPCM implementing the provisions of Article 4(1) of the Regulation.

Sectors under Article 4(1) of the Regulation

Article 2, paragraph 1 ter of Decree 21/2012 mandates the government to define in details the strategic assets falling within the sectors envisaged by Article 4(1) of the Regulation.

To this end, the government has approved a draft new DPCM, which – according to the available information – was submitted to the Parliamentary committees for their opinion. The new DPCM has not been published yet in the Official Journal.

It should be however noted that Decree 23/2020 has specified that the financial sector under Article 4(1), let. a) shall include the credit and insurance sectors, and that the health sector shall encompass the production, import and wholesale distribution of medical devices and personal protective equipment.

5G technologies

The screening mechanism regards transactions involving assets or services regarding the design, manufacturing, maintenance and management of networks relating to broadband electronic communication services based on 5G technologies, as well as high-tech components instrumental to the building or operation of networks relating to broadband electronic communication services based on 5G technologies.



<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>(a) Prior notification and review procedure. (b) Please refer to question 7. (c) Mandatory.</p>
<p>Design – reciprocity?</p>	<p>According to Article 3 of Decree 21/2012, the acquisition, in any form, by a non-EU person of an equity interest in companies carrying out strategic defense and security activities or holding strategic assets in the energy, transport, communications and the other relevant sectors is subject to the reciprocity principle, as enshrined in the international agreements entered into by Italy or by the EU.</p>
<p>Design – procedures and deadlines</p>	<p>Relevant transactions in the defense and national security and 5G technology sectors must be notified to the competent office of the Presidency of the Council of Ministers within ten days from the acquisition. Relevant transactions concerning companies holding strategic assets in the energy, transport, communications sector or in the sectors pursuant to Article 4(1) of the Regulation must be notified within ten days and, in any case, prior to their implementation.</p> <p>Upon receipt of the notification, the government has 45 days to exercise its special powers, after which the investment may be executed. The term for the government to exercise its special power in the 5G technology sector is 30 days.</p> <p>The said term may be suspended once if additional information/documents are required by the government to the investor and/or other third parties; additional information/documents must be provided by the investor within 10 days and by other third parties within 20 days.</p> <p>Decree 23/2020 has introduced the power for the government to start <i>ex officio</i> the screening mechanism, even in cases of failure to notify. In such cases, the term for the exercise of the special powers runs from the conclusion of the proceeding which ascertains the breach of the obligation to notify.</p> <p>The review process is regulated by Decrees of the President of the Republic No. 35 of 2014 (concerning the defense and national security sectors) and No. 86 of 2014 (regarding the energy, transport, communications and high-tech sectors).</p>

In particular, during the standstill period of 45/30 days, the Ministry to which the preliminary assessment is entrusted² shall evaluate the proposed investment and submit a proposal to the Presidency of the Council of Ministers, together with a draft of the related Prime Ministerial Decree.

The review procedure is coordinated by the competent office of the Presidency of the Council of Ministers (ie the Department of Administrative Coordination), supported by a coordination group comprising representatives of the various ministries involved, as well as members of other structures and bodies. Until completion of such procedure, the effects of the notified resolutions, acts or transactions, as well as voting rights and any other non-property rights attached to the acquired interests, are suspended.

Design – transparency and information requirements (filing forms?)

Filing forms are available on the government’s website.³

The notification must include all the documents and information that may be necessary for the government to carry out its assessment (eg minutes of the resolutions, a detailed description of the investor, etc).

Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI

Defense and national security

The special powers attributed to the government encompass:

- the power to impose specific conditions relating to security of supplies, security of information, transfer of technologies, exports control, in the event of an acquisition, in any form, of an equity interest in companies carrying out strategic activities for the defense and national security system;
- the power to veto the adoption by the company’s general meeting or board of directors of resolutions concerning the following transactions: mergers, demergers, assets disposals, transfer abroad of the company’s seat, amendments to the corporate purpose, winding-up, amendments to the provisions of the articles of association establishing limits to voting rights (pursuant to Article 2351, par. 3, of the Italian Civil Code) or equity ownership caps (pursuant to Article 3, par. 1, of Law Decree No. 332 of 1994), transfer of ownership or other rights on assets or the creation of constraints on the use of such assets; and
- the power to veto the purchase, in any form, of equity interests in a company as defined under let. a) by a person other than the Italian state, national public entities or state-controlled entities, in case the purchaser would hold, either directly or indirectly, an interest in the company’s voting share capital liable to jeopardize defense or national security interests.

Energy, transport, communications and sectors under Article 4(1) of the Regulation

The special powers attributed to the government encompass:

² Preliminary assessment may be entrusted to the Ministry of Economy, if the investment involves a company controlled by it, or to the Ministry of Defence, the Ministry of the Interior, the Ministry of Economic Development and the Ministry of Infrastructures, in accordance with their respective competences.

³ <http://www.governo.it/it/dipartimenti/dip-il-coordinamento-amministrativo/dica-att-goldenpower-moduli/9297>.

- the power to veto any resolution or transaction by a company holding one or more strategic assets, that would result in a change of control or ownership of these assets or a change of their intended purpose, if such resolution or transaction is likely to determine an exceptional threat of serious harm to national public interests concerning the safeguarding and operation of networks and facilities⁴;
- the power to make the purchase, in any form, of a controlling interest in a company under let. a) conditional upon the purchaser's compliance with certain commitments, where such purchase is liable to seriously harm the fundamental national interests indicated above or to threaten public security and policy; and
- the power to veto the purchase, in any form, of a controlling interest in a company under let. a) in cases of an exceptional risk for the protection of the above-mentioned interests, which cannot be eliminated by the imposition of specific commitments.

5G technology

The special powers attributed to the government encompass the power to veto or impose specific conditions on the transaction. The government may also order the parties to restore at their own expenses the situation existing prior to implementation of the transaction.

Interaction with other legal frameworks (eg merger control)

Transactions covered by the Decree 21/2012 may fall within the scope of merger control under Italian Antitrust Law (Law No. 287 of 1990) or under the EU Merger Regulation (Regulation No. 139/2004), provided that they meet the requirements set out therein.

Additionally, foreign investments may be subject to sector-specific authorizations.

For instance:

- pursuant to Article 25 of the Italian Code of Electronic Communications (Legislative Decree No. 259 of 2003), the authorization granted by the Ministry of Economic Development for the supply of electronic communication networks or services may be transferred to any third party subject to prior notice to the ministry, which may withdraw its authorization within 60 days if the designated third party does not fulfil the necessary requirements; and
- according to Article 50-ter of the same Code, in case the company designated as holding significant market power intends to transfer to a third party all of its activities in the local access networks or a substantial part thereof, it must inform beforehand the Italian Communications Authority, which may impose, amend or withdraw the specific obligations prescribed to such company.

⁴ As far as the high-technology sectors are concerned, other fundamental national interests should be taken into account, namely public security and policy.



Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.

The special powers described above must be exercised on the basis of the objective and non-discriminatory criteria envisaged by the Decree 21/2012.

In particular, the government may intervene only in the event of a threat of serious harm to certain fundamental national interests, such as national security and defense, public policy, the safeguarding and operation of networks and facilities.

In this regard, the government must assess:

- whether the economic, financial, technical and organizational capacity of the investor, as well as the proposed business plan, is likely to guarantee the regular prosecution of the company's activities, the security and continuity of supplies and the proper and timely execution of the existing contractual obligations;
- whether the future corporate structure is likely to ensure: (i) the safeguarding of the national defense and security system; (ii) the security of information relating to military defense; (iii) the international interests of the state; (iv) the protection of the national territory, of critical strategic infrastructures and the national borders; (v) the safeguarding and operation of networks and facilities; and
- the existence of potential links between the investor and third countries that do not recognize democracy and the rule of law, do not observe international law or have adopted dangerous behaviors towards the international community, maintain relationships with criminal or terrorist organizations.

In carrying out this assessment, the government must also take into account the principles of proportionality and reasonableness.

In assessing transactions in the defense and national security, energy, transport, communications sectors and in the sectors under Article 4(1) of the Regulation involving a non-EU person, the government shall also take into account:

- a) whether the buyer is directly or indirectly controlled by the public administration, including state bodies or the armed forces, of an extra-EU country, also by virtue of its ownership structure or of substantial financing;
- b) whether the buyer has already been involved in activities affecting security or public order in a Member State of the European Union;
- c) whether there is a serious risk that the buyer engages in illegal or criminal activities.

In assessing transactions in the 5G technology sector the government shall also take into account elements indicating the presence of vulnerability factors that could compromise the integrity and security of the networks and data transiting through them, including those identified on the basis of the principles and guidelines developed at international level and by the European Union.

<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>Decisions adopted by the President of the Council of Ministers following the investment control procedure may be appealed before the Administrative Court of Rome (<i>Tribunale Amministrativo Regionale del Lazio</i>) within 60 days from the date of the notification or publication of the decision. The judicial review carried out by the Administrative Court of Rome does not extend to the substance of the matter, but it is limited to the legitimacy of the government's decision⁵.</p> <p>Against the government's decisions it is also possible to lodge an extraordinary appeal to the President of the Republic (<i>Ricorso Straordinario al Presidente della Repubblica</i>) within 120 days from the date of the notification or publication of the decision.</p> <p>Foreign investors may also challenge the government's decision before national courts if it is deemed to be contrary to EU law (with particular reference to the EU fundamental freedoms), in order to obtain the annulment of the infringing measure and/or compensation for the damages suffered in connection therewith.</p> <p>It should also be recalled that disputes arising out of Bilateral Investment Treaties (BITs) to which Italy is a party may be submitted to ICSID (International Centre for Settlement of Investment Disputes) arbitration or to other dispute settlement mechanisms, in accordance with the provisions of the specific treaty⁶.</p>
<p>Publication in Official Gazette or other</p>	<p>Annual Report by the Italian government to the Parliament on the golden power activities.</p>
<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>On the basis of publicly available information, it seems that the in 2019 the Italian government has exercised its special powers mainly in the 5G technology sector, generally by imposing commitments. In particular, in 2019 the Italian government has exercised its special powers in relation to 13 notified transactions, 11 of which concerned the 5G technology sector.</p> <p>One of the most significant cases in the government's practice has concerned the acquisition by the French company Vivendi S.A. of a relevant stake (approx. 24%) of TIM S.p.A., the Italian primary telecoms network operator. With a Decree issued on October 16, 2017, the President of the Council of Ministers imposed a number of commitments to be implemented within 90 days by Vivendi, TIM S.p.A., Telecom Italia Sparkle S.p.A. and Telsy Elettronica e Telecomunicazioni S.p.A., with the aim to ensure the safeguarding and operation of networks and services supporting strategic activities for the national defense and security system⁷. These commitments consisted in organizational and governance measures.</p>

5 The judgment of the Administrative Court of Rome may be challenged before the Consiglio di Stato (ie the administrative court of last instance) within 30 days from its notification or three months from its publication, in accordance with the rules on fast-track procedures under Article 119 of the Italian Code of the Administrative Procedure.

6 Please note that foreign arbitral awards are generally enforceable in Italy. Moreover, litigation before national courts is prevented when an arbitration agreement is in place between the parties.

7 The government, indeed, considered that TIM performs certain strategic activities for the national defense and security system through its subsidiaries Sparkle and Telsy.



Stakeholders views on the legal framework	N/A
Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.	As mentioned above, Article 2, paragraph 1 <i>ter</i> of the Decree 21/2012 mandates the government to adopt a new DPCM to further implement the provisions of Article 4(1) of the Regulation. According to the available information, the new DPCM has not been entered into force yet.
Other relevant information	It should be mentioned that, if the government vetoes the purchase of an equity interest, the purchaser is prevented from exercising voting rights or any other non-property rights attached to the acquired interest and it must dispose of it within one year. In the event of non-compliance with the government's decision, the related transactions are null and void. Furthermore, the investor is subject to an administrative pecuniary fine equal to twice the value of the transaction (150% of the value of the transaction for transactions in the 5G technology sector) and, in any case, equal to at least 1% of the turnover resulting from the latest approved financial statement (25% of the value of the transaction for transactions in the 5G technology sector). The same fine is applied in case of failure to notify the investment.

Japan





Indicate five biggest FDI countries of origin (indicate percentage if available)

According to the statistics provided by JETRO (JETRO Invest Japan Report 20201), the five biggest FDI countries of origin were:

- US (approx. 23.6%)
- France (approx. 11.6%)
- Netherlands (approx. 11.5)
- Singapore (approx. 10.5%)
- UK (approx. 7.4%)

Legal framework in force

In Japan, the Foreign Exchange and Foreign Trade Act (the FEFTA) regulates FDI. The FEFTA is applied for FDI conducted by foreign investors in the form of, among others:

- (1) the acquisition of 1% or more of shares of listed companies;
- (2) the acquisition of shares of unlisted companies;
- (3) the transfer of shares from a non-resident individual to a foreign investor (where a non-resident acquired such shares while a resident);
- (4) a substantial change in the business purpose of a domestic company (if the company is the listed company);
- (5) the establishment of a branch, factory or other business offices (excluding a representative office) in Japan or substantially changing the type or business objectives of such a branch factory or other business office, excluding those with the business objectives of:
 - banking;
 - foreign insurance;
 - gas;
 - electricity;
 - certain types of securities;
 - investment management;
 - foreign trust; and
 - fund transfer
- (6) loans over one year to Japanese corporations exceeding certain threshold
- (7) a business succession caused by a business transfer, an absorption-type split or mergers by resident companies (excluding the cases of (1) and (2))

In general, the only requirement for foreign investors making investments in Japan is to submit an ex post facto report to the Minister of Finance and the relevant ministries through Bank of Japan.

The purpose of imposing a reporting requirement is to make a statistical record resulting in no ex post facto review or investigation conducted by the government. However, the FEFTA requires prior notification for certain limited investments involving particular areas of businesses and particular geographic areas or countries. Please refer to question 6 below for the details of the prior notification.



Last revision of the legal framework	The last revision of the FEFTA was made on June 7, 2020.
Contextualization of the legal framework (historical or other)	<p>The FEFTA was enacted in 1949. The original FEFTA reflected the environment surrounding Japan's economy at the time and therefore foreign transactions was basically prohibited under the original FEFTA. In 1980, the FEFTA was amended and the foreign transactions became free as rule and in 1998, the FEFTA was further amended, and the prior-permission and prior-notification system was basically abolished for the purpose of making both domestic and foreign transactions freely and quickly. Through these amendments, FDI into Japan by foreign investors has become free, in principle, for more than a decade since then.</p> <p>In 2017, a system was established that allows foreign investors who have made FDI regarding security-related investments without notification to be ordered to sell shares etc In addition, under the amended FEFTA, foreign investors are able acquire unlisted shares from other foreign investors subject to a regulation of notification with prior screening. Through these amendments, the FEFTA have tightened restrictions on FDI from the perspective of national security.</p> <p>In 2020, the FEFTA was further amended to tighten the regulation regarding "inward direct investment" by a foreign investor (2020 Amendments), aiming at ensuring that Japan's foreign investment regime cannot be exploited by foreign investors that may endanger its national security. Under the 2020 amendments, the definition of "inward direct investment" was further expanded by reducing the prior notification requirement threshold concerning the acquisition of the shares or voting rights of listed companies in Japan from 10% of all outstanding shares or voting rights to 1%.</p>
Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?	<p>The Japanese government has placed relatively few restrictions on FDI. As mentioned above in question 3, the FEFTA requires prior filing for certain limited investments involving particular areas of businesses and particular geographic areas or countries only. The business-related restrictions are imposed on, among others, investments on business related to:</p> <ul style="list-style-type: none">• national security (eg weapons, airplanes, nuclear power or space development);• public infrastructure (eg electricity, gas, water, telecommunications or railways);• public safety (eg vaccine manufacturing or private security service); and• domestic industry protection (eg agriculture). <p>The area-related restrictions are imposed on, among others, investments concerning countries with which Japan has not executed a treaty on FDI (eg Iran) and certain activities involving the Iranian government, entities, individuals or groups.</p>

	<p>If the investment falls into such an exceptional category, the investor who intends to make such an investment is required to submit prior notification of the intended investment to the Ministry of Finance and the relevant ministries through the Bank of Japan within six months from the expected date of FDI. Note that if the investor is not a resident of Japan, such prior notification shall be submitted by an agent who is a resident of Japan. The Ministry of Finance and the relevant ministries will then review the filed report in principle within 30 days from filing. After reviewing, the relevant ministries may order a suspension or amendment of the filed FDI if they find the investment is likely to:</p> <ul style="list-style-type: none"> • impair national security; • impede public order; • hamper the protection of public safety; or • have a significant adverse effect on the smooth management of the Japanese economy.
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>Under the FEFTA, as stated previously, acquisitions of the minority interests, except for acquisitions of less than 1% of the shares of listed companies, are generally covered by the FEFTA. Please note however that there are certain exemptions from the filing requirement triggered by such 1% acquisition.</p>
<p>Scope – sectors covered</p>	<p>Please refer to question 6 above.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>When foreign investors invest into Japan, they are required to submit an ex post facto report in general. In addition, as aforementioned, if such investor falls under the exceptional category, such investor shall make a prior notification.</p> <p>These <i>ex post facto</i> report and prior notification are mandatory for every investment falling within the scope of the regulation and wide range of sanction may be imposed for the failure to the filing of the <i>ex post facto</i> report and the prior notification on both individuals and judicial persons (imposing fines for both individuals and judicial persons, and imprisonment for the individuals).</p>
<p>Design – reciprocity?</p>	<p>N/A</p>
<p>Design – procedures and deadlines</p>	<p>Under the FEFTA, if an investment falls into an exceptional category that is required to file prior notification, the investor who intends to make such an investment is required to submit prior notification of the intended investment to the relevant ministries.</p>



After filing the prior notification, the investor may not make an investment, for a period of 30 days from the date that the Ministry of Finance and the relevant ministries accept the application (waiting period). However, such a waiting period will be normally shortened to two weeks from the acceptance in accordance with the relevant ordinance. According to the Ministry of Finance, more than 95% of applications have been so shortened.

After filing the prior notification, the investor may not make an investment, for a period of 30 days from the date that the Ministry of Finance and the relevant ministries accept the application (waiting period). However, such a waiting period will be normally shortened to two weeks from the acceptance in accordance with the relevant ordinance. According to the Ministry of Finance, more than 95% of applications have been so shortened.

Moreover, with an aim to facilitate more FDI in Japan, the Ministry of Finance and other relevant ministries have implemented expedited fast-track options for green field investment (ie certain investments involving a wholly owned Japanese subsidiary), rollover investments (ie certain investments, the same type of which were previously filed within six months by the same investor) and passive investments (ie certain investments that the investor undertook so as not to proactively participate in the management or to take control of the company). If the fast-track option is applied, the waiting period will be further reduced to five business days.

The relevant ministries will then review the filed report in principle within 30 days from filing. After reviewing, the Minister of Finance and the relevant ministries may recommend a suspension or amendment of the filed investment if they find the investment is likely to:

- impair national security;
- impede public order;
- hamper the protection of public safety; or
- have a significant adverse effect on the smooth management of the Japanese economy.

In case an investor is recommended suspension or amendment of the filed investment, the investor has to answer whether (i) it will comply with the recommendation or (ii) refuse the recommendation. If the investor does not answer to the recommendation or refuse the recommendation, the Minister of Finance and the relevant ministries may order a suspension or amendment of the filed investment.

However, if the authority finds that there needs to be a review procedure on whether the investment is likely to impair the national security, impede public order or compromise public safety, the waiting period can be extended up to five months.

Note that it is extremely rare for the ministries to issue such an order. In fact, there has been only one case where the ministries have actually issued an order for suspension of investments under the current FEFTA.



	<p>If the FDI does not fall under an exceptional category that is required to file prior notification, the investor who intends to make such an investment is generally required to submit an ex post facto report to the Minister of Finance and the relevant ministries through Bank of Japan by the 15th day of the following month in which the investor conducts the FDI.</p>
<p>Design – transparency and information requirements (filing forms?)</p>	<p>In case an investor shall file prior notification, the investor is required to prepare the notification by using the notification forms. Such forms are available on the government website.¹</p> <p>There are several types of forms. The types of forms to be filed vary in accordance with the types of FDI the investor will conduct. The investor shall file such notification to the Minister of Finance and the competent minister through the Bank of Japan.</p> <p>In case an investor shall submit an <i>ex post facto</i> report, the investor is required to prepare the report by using the report forms as well² and submit such report to the Minister of Finance and the competent minister through the Bank of Japan.</p>
<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>When the Minister of Finance and the competent minister for the business find through examination the filled FDI falls under the FDI pertaining to national security, etc, they may recommend an investor who has given notification of the FDI, etc to amend the content of the FDI or discontinue the FDI after hearing opinions of the Council on Customs, Tariff, Foreign Exchange and other Transactions.</p> <p>When an investor who has received a recommendation has not given a notice pursuant to the provisions of paragraph or has given a notice of refusal of the recommendation, the Minister of Finance and the competent minister for the business may order the investor to amend the content pertaining FDI, or to discontinue the FDI.</p>
<p>Interaction with other legal frameworks (eg merger control)</p>	<p>As mentioned in question 3 above. the following are subject to the regulation of the FEFTA:</p> <ul style="list-style-type: none">• the acquisition of 1% or more of shares of listed companies; and• the acquisition of shares of unlisted companies from the domestic investor.

¹ The forms of the notifications are available from the: <https://www.boj.or.jp/about/services/tame/t-down.htm/> (Japanese)

² The forms of the reports are available at the same websites of the notifications.



<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>Please refer to question 6 above for the grounds for blocking.</p>
<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>A negative decision can be appealed. A party can make an appeal to the relevant ministry challenging the orders rendered by the authority to sustain or amend the content of the investment. The ministry receiving a motion of appeal is required to hold a public hearing after giving a reasonably lengthy advance notice. The party who is dissatisfied with the decision by the relevant ministry in the appeal procedure may opt to bring an action to court.</p>
<p>Publication in Official Gazette or other</p>	<p>N/A</p>
<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>N/A</p>
<p>Stakeholders views on the legal framework</p>	<p>As stipulated above, the relevant ministries may order a suspension or amendment of the filed FDI in certain situations. Before issuing an order to suspend or amend the content of an investment, the relevant ministers are required to hear opinions from the Council on Customs, Tariff, Foreign Exchange and other Transactions. The Council shall be comprised of academic experts nominated by the Minister of Finance. Competitors or customers may not be involved in the review process. Note that, here are no procedures allowing the complainants to participate.</p>



<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>Whether future legislation will take place to adapt with the new EU regulation is not certain.</p>
<p>Other relevant information</p>	<p>N/A</p>

Kenya





Indicate five biggest FDI countries of origin (indicate percentage if available)	<ul style="list-style-type: none">• The UK (15.8%)• South Africa (12.4%)• US (11.6%)• France (5.8%)• Mauritius (4.9%)¹
Legal framework in force	The Investment Promotion Act (No. 6 of 2004) Foreign Investments Protection (Chapter 518 Laws of Kenya)
Last revision of the legal framework	2014
Contextualization of the legal framework (historical or other)	<p>Investment Promotion Act (No. 6 of 2004)</p> <p>The Investment Promotion Act, 2004 establishes the Kenya Investment Authority (KIA) which is responsible for promotion and facilitation of investment by assisting investors to obtain the relevant permits and licenses to conduct business in Kenya in addition to providing incentives for investment. The KIA is mandated by the law to issue investment certificates on receipt of an application from a foreign investor. The investment certificate is meant to facilitate a foreign investor in obtaining certain key licenses and necessary regulatory approvals for its business and operations. A foreign investor is eligible to apply for the investment certificate if the amount to be invested is at least USD100,000 or the equivalent in any currency and the investment and the activity related to the investment is lawful and beneficial to Kenya. If in the opinion of KIA, an application for an investment certificate raises environmental, health or security issues, KIA is mandated to refer it to the appropriate person or body and shall inform the applicant of that referral. Pursuant to this provision, the Investment Promotion (Investment Registration And Certificates) Regulations, 2005 create an Investment Committee within the KIA whose function is to review technical applications for investment certificates touching on security, environment and health. This Investment Committee has the power to impose conditions on an investment certificate to address bona fide concerns based on laws affecting health, environment and security.</p> <p>Before its amendment in 2005, this law required all foreign investors intending to invest in Kenya to apply to the KIA for the investment certificate. However, application for the investment certificate is now optional and foreign investors can proceed to make investments in the country without the investment certificate.</p>

¹ See the Foreign Investment Survey 2018 available at <https://www.knbs.or.ke/?p=5283>



Foreign Investments Protection Act (Chapter 518 Laws of Kenya)

The Foreign Investments Protection Act was enacted to give protection to certain approved foreign investments. A foreign national who proposes to invest foreign assets in Kenya may apply for a certificate under the Act for purposes of approval of the enterprise in which the assets are to be invested. The holder of such a certificate may transfer out of Kenya in the approved foreign currency and at the prevailing rate of exchange the profits realized after taxation. Further, the approved enterprise or property shall not be compulsorily taken possession of except in accordance with the provisions of the Constitution of Kenya.

Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI)
Are there any loopholes?

Subject to compliance with proceeds of crime and anti-money laundering regulations, there is no distinction on source of foreign capital in Kenya. For instance, any cash transactions exceeding USD10,000 or its equivalent in any other currency are to be reported to the relevant financial services regulator.

In essence, since acquisition of the investment certificate is not mandatory, there is no screening mechanism for FDI in Kenya. For foreign investors that choose to apply for the investment certificate, their application is screened by the investment committee if the proposed business touches on security, environment and health.

Further, there are some sector-specific requirements applicable to both local and foreign investors. In the banking sector, any proposed holder of more than 5% in a bank is required to disclose certain information (including shareholding details) in addition to declaring on oath that the proposed capital injection is not from proceeds of crime. Every bank is also required to disclose the ultimate beneficial owner of any shares held by a company, other body corporate or a nominee to the Central Bank of Kenya. This has been reinforced by the coming into force of the Companies (Beneficial Ownership Information) Regulations 2020, which require every company to maintain a register of beneficial owners containing information on the natural persons who ultimately control the company. The Insurance Regulatory Authority has the power to carry out an assessment of the suitability of any person managing, controlling or having a significant ownership or significant beneficial interest in a person licensed under the Insurance Act (insurance companies, brokers or agents).

Scope – screening thresholds
Please indicate notably whether it covers solely controlling investments or also portfolio investments.



Other than merger control and applicable regulatory requirements for some sectors, foreign investments (either controlling or portfolio) are not subjected to regulatory monitoring in Kenya. This is because the acquisition of an investment certificate is no longer mandatory. Where a foreign investor applies for the investment certificate, KIA is required to determine whether the investment and the activity related to the investment is lawful and beneficial to Kenya. KIA will consider the following parameters:

- creation of employment in Kenya;
- acquisition of new skills or technology for Kenyans;
- contribution to tax revenues or other government revenues;
- a transfer of technology to Kenya;
- an increase in foreign exchange, either through exports or imports substitution;
- use of domestic raw materials, supplies and services;
- adoption of value addition in the process of local, natural and agricultural resources;
- use, promotion, development and implementation of information and communication technology; and
- any other factors that KIA considers beneficial to Kenya

Merger control

Any acquisition of shares, business or other assets (whether inside or outside Kenya) resulting in a change of control of a business, part of a business or an asset of a business in Kenya is considered a merger. A minority shareholder can also be considered to have acquired control in a target if it is able to exercise material influence in the target entity.

The Kenyan competition merger regime has the following categories of merger control:

- Mergers excluded from notification – small transactions (generally below USD5 million combined turnover or value of assets);
- Mergers eligible to apply for exclusion – medium transactions (generally below USD10 million combined turnover or value of assets but above USD5 million); and
- Mergers requiring approval – other transactions (generally above USD10 million combined turnover or value of assets).

Sector regulatory requirements

- Telecommunications – where at least 30% of Kenyan shareholding must exist within three years of the issuance of business license.
- Insurance – where at least 33% of shareholding is required for insurance companies and agents to be held by citizens of East Africa and 60% shareholding is required for brokers.
- Aviation – where 51% of Kenyan shareholding is required.
- Mining – where the holder of a mining license is required to maintain local equity participation amounting to at least 35% of the mineral right.

	<ul style="list-style-type: none"> o Retirement benefits scheme administrators – where applicants are required to have at least 60% of the paid up share capital owned by Kenyan citizens unless the applicant is a bank or an insurance company. o Architectural sector – partnerships between persons registered with the Board of Registration of Architects and Quantity Surveyors and an unregistered person (foreign firms) is permitted as long the registered person owns a minimum of 51% of the shares in such a partnership. Effectively, unregistered firms are restricted to a maximum of 49% ownership in an architectural business.
Scope – sectors covered	See sectors outlined in answer to question 7 above
<p>Design of FDI Screening Mechanism Please indicate notably the following:</p> <p>(a) Pre-authorization vs. ex-post screening of FDI? Other?</p> <p>(b) Covers solely controlling investments or also portfolio investments?</p> <p>(c) Mandatory or voluntary nature?</p>	<p>The Kenyan merger control process is a mandatory legal process that parties to a proposed merger must adhere to before implementation of a transaction. Further, Kenya’s Competition Authority has the power to unwind a transaction if it has been implemented before approval.</p> <p>a) Prior notification and review procedure.</p> <p>b) Merger control applies to controlling investments but owing to the statutory definition of what constitutes a merger, an investor can be deemed to have acquired control in portfolio investments if it has ability to exercise material influence through, among others, minority control rights.</p> <p>c) Mandatory</p>
Design – reciprocity?	N/A
Design – procedures and deadlines	<ul style="list-style-type: none"> • If a foreign investor chooses to apply to the KIA for the investment certificate, it is required to attach incorporation documents to the cover letter addressed to the Managing Director of KIA together with proof of investment. KIA is required to provide the applicant with a written notice of its decision within 20 business days of submission of the application. If KIA decides not to issue the investment certificate, it is required to refer the application together with its reasons to the Cabinet Secretary for Trade within five business days of its decision. The parties to a proposed merger are required to file the application either for exclusion of a merger or for merger approval as applicable. There is an online application process. • In relation to merger control, the Competition Authority responds to applications for exclusion and merger approval within 14 days and 60 days of filing respectively, with time extensions if the Competition Authority requests for further information from the parties. • Parties to a merger are prohibited from effecting the transaction before getting approval from the Competition Authority, and the payment of more than 20% of the consideration is considered implementation of the merger.



<p>Design – transparency and information requirements (filing forms?)</p>	<p>Notification to the Competition Authority must be filed in a prescribed form, which is available online. For foreign investors that choose to apply for the investment certificate, there are prescribed forms also available online.</p>
<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>In relation to merger control, the Competition Authority can approve a merger, approve it with conditions or prohibit it altogether. There are no mechanisms that are purely aimed at interfering with foreign investments in Kenya. Foreign investments will, however, just like investments by local investors, be monitored by the relevant regulatory bodies for compliance with the relevant laws and regulations.</p>
<p>Interaction with other legal frameworks (eg merger control)</p>	<p>As addressed above, other than merger control and compliance with applicable regulatory requirements for some sectors and with anti-money laundering laws, foreign investments (either controlling or portfolio) are not screened in Kenya. With respect to anti-money laundering, the Proceeds of Crime and Anti-Money Laundering Act 2009 provides measures to combat money laundering and financing of terrorism by:</p> <ul style="list-style-type: none">• providing for the identification, tracing, freezing, forfeiture and confiscation of proceeds of crime; and• requiring reporting institutions (financial institutions and designated non-financial businesses and professions) to report any suspicious or unusual transaction or activity to the Financial Reporting Centre. <p>As a result, foreign investors may by law be required to disclose information relating to their identity, nationality, occupation and the sources of their funds to a financial institution or designated non-financial businesses and professions.</p>
<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>Under the Prevention of Terrorism Act, 2012, it is an offence to collect or provide property, funds or services for the commission of terrorism acts and deal in property owned or controlled by terrorist groups. This legislation also establishes the Counter-Terrorism Centre, which has the power to request any person for any information relating to terrorism. Further, financial institutions have a reporting obligation to the Counter-Terrorism Centre where there are reasonable grounds to believe that it holds any property or an account that is owned or controlled by or on behalf of a terrorist group.</p>



<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>In relation to merger control, any person aggrieved by the decision of the Competition Authority can appeal to Competition Tribunal within 30 days of publication of the decision for review. A party dissatisfied with the decision of the Competition Tribunal may appeal to the High Court of Kenya (for judicial review orders) against that decision within 30 days after the date on which a notice of that decision has been served on them and the decision of the High Court of Kenya shall be final. In practice, judicial review is an avenue available to a party challenging the process of decision-making as opposed to the substance of the decision and where all administrative review processes have been exhausted. The orders that a party can seek for in a judicial review application include:</p> <ul style="list-style-type: none">• Certiorari – an order where the court quashes the decision that has been made by the decision-making body. Application for this order must be made within a period of six months of the subject decision.• Mandamus – an order by the court compelling a decision-making body to mandatorily perform a certain act.• Prohibition – an order prohibiting a decision-making body to refrain from performing certain acts. <p>The purpose of judicial review is to check that public bodies do not exceed their jurisdiction and carry out their duties in a manner that is detrimental to the public at large.</p>
<p>Publication in Official Gazette or other</p>	<p>In relation to merger control, the Competition Authority is required to publish its decision in relation to a proposed merger in the Kenya Gazette. This includes a decision to permit, conditionally permit or prohibit a propose merger.</p> <p>There is no requirement to publish the decision of the investment committee in relation to foreign investors that choose to apply for the investment certificate</p>
<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>In relation to merger control, there have been no judicial review applications filed at the High Court of Kenya challenging the decision of the Competition Tribunal, which was formally established in 2017. There is no record of any judicial review application challenging the failure by KIA to issue a foreign investor with an investment certificate.</p>
<p>Stakeholders views on the legal framework</p>	<p>Since the acquisition of an investment certificate is no longer mandatory and Kenya does not have foreign exchange restrictions, stakeholders have generally not raised concerns with the existing legal framework on FDI in Kenya.</p>

Interplay with the future EU regulation
Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.

Kenya is not a member of the EU but is a member of the East African Community (EAC). The EAC partner states have signed the following protocols:

- the Protocol for the establishment of the EAC Customs Union, which was signed on July 1, 2005;
- the EAC Common Market Protocol entered into force on July 1, 2010, and is an expansion of the bloc's existing Customs Union; and
- the East African Monetary Union (EAMU) which was signed on November 30, 2013, and set the groundwork for a monetary union within ten years while allowing the EAC Partner States to progressively converge their currencies into a single currency in the EAC.

As a result of the wider economic and political integration objectives of the EAC member states, there are concerted efforts to harmonize laws across the EAC partner states, and this has necessitated amendment of various laws to comply with EAC laws.

Kenya is also a member of the Common Market for Eastern and Southern Africa (COMESA) which is a free trade area with 21 member states. The member states are from time to time required to harmonize their laws in accordance with adopted COMESA regulations eg anti-trust laws.

Further, the African Continental Free Trade Agreement (AfCFTA), which came into force on April 29, 2019, was ratified by Kenya in 2018. The AfCFTA establishes a single continental market for goods and services. It also seeks to increase intra-African trade by cutting tariffs by 90% and harmonizing trading rules at a regional and continental level.

Other relevant information

- Kenya has a legal framework for the protection of foreign investments under the Foreign Investments Protection Act (Chapter 518 Laws of Kenya) from arbitrary, unlawful and unfair expropriation. This statute guarantees approved enterprises (must have been registered with the Ministry of Treasury and Planning) the constitutionally guaranteed protection of right to property by requiring adherence to constitutional standards in the event of acquisition of private property, and a full and prompt payment of compensation.
- Further to the provisions of the Foreign Investments Protection Act, Kenya has signed various Bilateral Investment Treaties (which have entered into force) for the reciprocal promotion and protection in relation to foreign investments with various countries including France, Finland, the UK, Netherlands, Germany, Switzerland, Korea and Japan.
- Kenya also operates export processing zones (aimed at manufacturers of exports) and special economic zones² that offer numerous incentives for investors in the country. These regimes offer an attractive investment opportunity for export-oriented business ventures since there are no foreign shareholding restrictions and there are attractive fiscal incentives in the form of tax exemptions designed to lower operational costs.

² special economic zones are designated geographical areas where business enabling policies, integrated land uses and sector-appropriate onsite and offsite infrastructure and utilities are provided, or which has the potential to be developed, whether on a public, private or public-private partnership basis, where any goods introduced and specified services provided are regarded, in so far as import duties and taxes are concerned, as being outside the customs territory.

Mexico





Indicate five biggest FDI countries of origin (indicate percentage if available)	<ul style="list-style-type: none">• US (47.8%)• Spain (20.4%)• Canada (7.7%)• Germany (6.3%)• Australia (5.7%)
Legal framework in force	Foreign Investment Law (<i>Ley de Inversión Extranjera, (LIE)</i>) and the Regulation of the Foreign Investment Law (<i>Reglamento de Inversión Extranjera, (RLIE)</i>)
Last revision of the legal framework	The last revision of the LIE was made on June 15, 2018, and the last revision of the RLIE was made on August 17, 2016.
Contextualization of the legal framework (historical or other)	<p>Some of the most relevant ideas of the Explanatory Memorandum (<i>Exposición de Motivos</i>) of the LIE, as provided by the House of Deputies (<i>Cámara de Diputados</i>) published on November 25, 1993, supporting the need for approving LIE:</p> <ul style="list-style-type: none">• "The objective of this Foreign Investment Law is to establish a new regulatory framework that, in full compliance with the Constitution, promotes our competitiveness, provides legal certainty to foreign investment in Mexico and establishes clear rules for channeling international capital to the our economic activities."• "The Law to Promote Mexican Investment and to Regulate Foreign Investment¹ published at the Official Gazette on March 7, 1973, reflects the economic reality of Mexico and the world at the beginning of the 1960s, which was considerably different from the one that currently prevails. At that time, the generalized tendency of the developing countries was to establish mechanisms and legal regimes with an excessive regulatory emphasis on the participation of foreign investment in their economies."• "For the above mentioned reasons, it is appropriate to propose a new legal framework to promote foreign investment. Thus, the bill submitted to the consideration of the Congress, clearly defines relevant concepts and specifies the channels for obtaining foreign investment; it (the bill) is compliant with all constitutional provisions; allows foreign investment in activities where its participation is necessary and beneficial for national development; establishes obligations and grants precise powers to the competent authorities, and considerably simplifies administrative procedures."

¹ This law is no longer in force and is only referred to for historical context.



Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI)
Are there any loopholes?

FDI is an important catalyst for national development, since it has the potential to generate employment, increase savings and raise foreign currency, stimulate competition, encourage the transfer of new technologies and boost exports. All of this has a positive impact on the productive and competitive environment of a country.

Mexico enacted the LIE in 1993 and it drastically changed the regulatory framework for foreign investments in Mexico that was in place since 1973. The LIE has been reformed in various occasions, and such reforms follow the provisions imposed by the North America Free Trade Agreement (NAFTA). This new regulatory framework replaces the restrictions of the former investment law which generally limited foreign investment in Mexican companies to 49% or less.

Loopholes for Mexican regulation of FDI regulation have been trust funds. Nevertheless, there have been efforts to regulate and supervise trust funds precisely to avoid these loopholes.

Scope – screening thresholds
Please indicate notably whether it covers solely controlling investments or also portfolio investments.

Screening of FDI

Activities and companies with specific regulation

As provided under article 7 of the LIE, the following are the activities and companies in which foreign investment can participate subject to certain thresholds:

- up to 10% in cooperative production companies;
- up to 49% in:
 - manufacture and commercialization of explosives, firearms, cartridges, ammunition and fireworks, not including the acquisition and use of explosives for industrial and extractive activities, nor the preparation of explosive mixtures for the consumption of such activities;
 - printing and publication of newspapers for its exclusive sale in national territory;
- T Series shares of companies that own agricultural land, livestock and forestry;
- fishing in freshwater, coastal waters and in the exclusive economic zone, not including aquaculture;
- integral port administration;
- port services for piloting ships to carry out operations of interior navigation in the terms of the applicable law;
- shipping companies dedicated to the commercial exploitation of vessels for inland navigation and cabotage, with the exception of tourist cruises and the exploitation of dredges and naval artifacts for construction, port conservation and operation;
- supply of fuels and lubricants for boats and aircraft and railway equipment;
- broadcasting; and
- national air transport service, regular and non-regular; international non regular air transport service (taxi); and specialized air transport service.



Activities and companies where an authorization is required from the national foreign investment commission for a foreign majority participation

In certain activities and companies, foreigners can participate, only up to a maximum of 49% shareholding. However, if foreigners would like to acquire a higher percentage, they can do so as long as they previously obtain a favorable resolution from the National Foreign Investment Commission (CNIE).

Such activities and partnerships, as provided by article 8 of the LIE, are the following:

- port services to vessels to carry out their operations of interior navigation, such as towing, rope lashing and lanchaje;
- shipping companies engaged in the operation of vessels exclusively in high altitude traffic;
- concessionaires or permit holders of aerodromes;
- private services of preschool, primary, secondary and higher education (*media superior, superior y combinados*);
- legal services; and,
- construction, operation and operation of railways, and the rendering of the public rail transport service.

Scope – sectors covered

LIE allows foreign investors and Mexican companies controlled by foreign investors, without prior approval, to own 100% of the equity in Mexican companies and invest in almost all economic sectors. The only exceptions are those expressly contained in the LIE.

LIE provides that certain economic activities are (i) reserved to the Mexican state, (ii) reserved to Mexican nationals or Mexican companies without foreign equity participation, (iii) subject to foreign investment limitations, and (iv) subject to prior approval if the foreign investor pretends to own more than 49% of a company engaged in certain activities.

Limits on foreign control

Sectors reserved for the Mexican state (article 5 of LIE) include:

- exploration and extraction of petroleum and other hydrocarbons (in terms of the provisions of the seventh paragraph of Article 27, and the fourth paragraph of Article 28 of the Mexican Constitution and the corresponding regulations);
- planning and control of the national electric system (in terms of the provisions of the seventh paragraph of Article 27, and the fourth paragraph of Article 28 of the Mexican Constitution and the corresponding regulations);
- generation of nuclear energy;
- radioactive minerals;
- telegraphs;
- radiotelegraphs;
- postal service;
- coinage and printing of money;

	<ul style="list-style-type: none"> • control, supervision and surveillance of ports, airports and heliports; and • any other activities in terms of the applicable laws. <p>Some other economic activities are reserved to Mexican nationals or Mexican companies with a Foreigners Exclusion Clause.</p> <p>The following are the Sectors reserved for Mexican nationals as provided by article 6 of LIE:</p> <ul style="list-style-type: none"> • domestic transportation of passengers, tourism and freight, except for messenger or package delivery services; • development Banks; and • certain professional and technical services, as provided under the applicable laws.
<p>Design of FDI Screening Mechanism Please indicate notably the following:</p> <p>(a) Pre-authorization vs. ex-post screening of FDI? Other?</p> <p>(b) Covers solely controlling investments or also portfolio investments?</p> <p>(c) Mandatory or voluntary nature?</p>	<p>It is worth mentioning that all foreign investments in Mexico are required to be registered with the National Registry of Foreign Investments (RNIE).</p> <p>The National Foreign Investment Commission (CNIE) is the governmental authority that provides the corresponding authorizations related to foreign investments in Mexico, such as those related to exceed the 49% threshold abovementioned.</p> <ul style="list-style-type: none"> • Pre-authorizations are only granted by the CNIE. • Controlling investments and investments in certain economic activities, as above described. • Mandatory nature.
<p>Design - reciprocity?</p>	<p>Mexico is party to several international free trade agreements containing investment protection provisions which allow some levels of reciprocity in investments with other countries.</p>
<p>Design - Procedures and Deadlines</p>	<p>CNIE has 45 business days to resolve the requests submitted for approval. Criteria for approval includes employment and training considerations, technological contributions, and contributions to productivity and competitiveness. The Commission may reject applications for national security reasons. The Ministry of Economy must issue a permit for foreigners to incorporate or change the corporate purpose of Mexican companies.</p>
<p>Design - Transparency and Information requirements (Filing Forms?)</p>	<p>The following are the foreign investments procedures that can be carried out before the Mexican foreign investment authorities (CNIE and RNIE):</p> <ul style="list-style-type: none"> • notice for the establishment of foreign legal entities in the Mexican Republic to provide services; • notice for the establishment of foreign legal entities in the Mexican Republic; • authorization for the establishment of foreign legal entities in the Mexican Republic, intending to establish representative offices without income; • authorization for the establishment of foreign legal entities in the Mexican Republic to register its bylaws in the Public Registry of Commerce; • authorization of the CNIE; • neutral investment – issuance of shares;

- neutral investment – trust;
- neutral investment – international development associations;
- consultation on foreign investment;
- questionnaire to Request a Resolution of the CNIE; and
- advisory opinion of the CNIE referred to in Article 77 of the Federal Law of Telecommunications and Broadcasting.

Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI

CNIE is responsible for the application of the Foreign Investment Law and reports to the Ministry of Economy. It is integrated by the heads of the state ministries, and for its operation, it has a Committee of Representatives and an Executive Secretary. CNIE resolves queries on foreign investment requested by federal public administration agencies and entities to obtain information on the behavior of FDI in Mexico, only with respect to the information notified to the National Registry of Foreign Investments. The National Registry of Foreign Investments (RNIE) belongs to the Ministry of Economy through the General Management of Foreign Investment (DGIE). In this sense, the General Management of the RNIE is responsible for operating and publishing timely information on FDI.

Interaction with other legal frameworks (eg merger control)

In the international arena, foreign investments in Mexico and Mexican investments abroad are regulated and protected through International Investment Agreements. These agreements are expressed in investment chapters included in the majority of the International Commercial Agreements and in the Agreements for the Promotion and Reciprocal Protection of Investments (APPRIs) signed by Mexico. The Commercial Agreements on Investment that are in force include rules to protect, promote or strengthen investments with a country. Likewise, they include dispute resolution mechanisms between an investor and the state that receives the investment. At the national level, foreign investments in Mexico are regulated by the Mexican Constitution, the LIE, the RLIE and other applicable federal laws.

Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.

Activities and companies with specific regulation

As provided under article 7 of the LIE, the following are the activities and companies in which foreign investment can participate subject to certain thresholds:

- up to 10% in cooperative production companies;
- up to 49% in:
 - manufacture and commercialization of explosives, firearms, cartridges, ammunition and fireworks, not including the acquisition and use of explosives for industrial and extractive activities, nor the preparation of explosive mixtures for the consumption of such activities;
 - printing and publication of newspapers for its exclusive sale in territory national;
 - T series shares of companies that own agricultural land, livestock and forestry;

- fishing in freshwater, coastal waters and in the exclusive economic zone, not including aquaculture;
- integral port administration;
- port services for piloting ships to carry out operations of interior navigation in the terms of the applicable law;
- shipping companies dedicated to the commercial exploitation of vessels for inland navigation and cabotage, with the exception of tourist cruises and the exploitation of dredges and naval artifacts for construction, port conservation and operation;
- supply of fuels and lubricants for boats and aircraft and railway equipment;
- broadcasting; and
- national air transport service, regular and non-regular; international non regular air transport service (taxi); and specialized air transport service.

Activities and companies where an authorization is required from the national foreign investment commission for a foreign majority participation

In certain activities and companies, foreigners can participate, only up to a maximum of 49% shareholding. However, if foreigners would like to acquire a higher percentage, they can do so as long as they previously obtain a favorable resolution from the CNIE.

Such activities and partnerships, as provided by article 8 of the LIE, are the following:

- port services to vessels to carry out their operations of interior navigation, such as towing, rope lashing and lanchaje;
- shipping companies engaged in the operation of vessels exclusively in high altitude traffic;
- concessionaires or permit holders of aerodromes;
- private services of preschool, primary, secondary and higher education (*media superior, superior y combinados*);
- legal services; and,
- construction, operation and operation of railways, and the rendering of the public rail transport service.

Article 9 of LIE provides that an approval from CNIE is required in the event that Mexican companies where foreign investment intends to participate, directly or indirectly, in a proportion greater than 49% of its capital stock, only when the total value of assets of the corresponding company, at the time of submitting the request for acquisition, exceeds the amount determined annually by CNIE.

Judicial Review
Please specify timeline, competent courts and standard of judicial review.

Firstly, an administrative procedure must be followed, which takes approximately a year and a half. Judicial review is made by a *Tribunal Colegiado de Circuito* that is in charge resolving *amparo directo*.



Publication in Official Gazette or other	Publications are made in the Federal Official Gazette.
Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.	N/A
Stakeholders views on the legal framework	N/A
Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.	Whether future legislation will take place to adapt with the new EU regulation is not certain.
Other relevant information	N/A

The Netherlands





Indicate five biggest FDI countries of origin (indicate percentage if available)	US, Luxembourg, UK, Ireland, Switzerland ¹
Legal framework in force	The Telecommunications Sector (Undesirable Control) Act, which added a new Chapter 14a to the Dutch Telecommunications Act (the DTA).
Last revision of the legal framework	October 1, 2020
Contextualization of the legal framework (historical or other)	Chapter 14a DTA grants the Minister of Economic Affairs and Climate (the Minister) the power to prohibit the acquisition or the exercise of "predominant control" (<i>overwegende zeggenschap</i>) over a Dutch "telecommunications party." The purpose of this legislation is to prevent (potential) threats to national security or disruptions of public order.
Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?	Chapter 14a DTA covers all acquisitions of if "predominant control" of Dutch "telecommunications parties." There is no distinction between investments from another EU or EEA Member State or from outside the EEA. To qualify as a "telecommunications party," the relevant party must be a provider of, or the holder of "predominant control" in a provider of: <ul style="list-style-type: none"> • an electronic communications network or service; • a hosting service, internet node, internet certification service or data center; or • any other category of network or service as further specified by ministerial decree (no such other categories have yet been defined).
Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.	Chapter 14a DTA only covers investments through which the acquirer will be able to exercise "predominant control" over the relevant "telecommunications party." "Predominant control" is defined as the ability, acting alone or acting jointly with others, to: <ul style="list-style-type: none"> • exercise, directly or indirectly, at least 30% of the voting rights in the general meeting of shareholders; or • appoint or dismiss the majority of the members of the management board or the supervisory board. In addition, there is "predominant control" if the acquirer: <ul style="list-style-type: none"> • holds at least one share that provides the holder with special control rights, for example a priority share; or • becomes a fully liable partner in a partnership. If the above criteria are met, the Minister can only exercise its powers granted pursuant to Chapter 14a DTA if and when the acquisition or exercise of "control" leads to "relevant influence" in the Dutch telecom sector.

¹ Centraal Bureau voor de Statistiek, Den Haag/Heerlen 2019

	<p>Relevant influence exists when the acquired "telecommunications party," either by itself or in combination with the acquiring party:</p> <ul style="list-style-type: none"> (a) provides internet access services or telephone services to more than 100,000 end-users; (b) provides an electronic communications network over which internet access services or telephone services are provided to more than 100,000 end-users; (c) provides an internet node to which more than 300 autonomous systems are connected; (d) provides data center services with a power capacity exceeding 50 MW; (e) provides hosting services (internet connectivity, IP addresses, servers, storage, backup, geographic distribution, caching) for more than 400,000 ".nl" domain names; (f) provides qualified trust services (electronic signatures, stamps, time stamps, registered electronic delivery services and website authentication certificates); (g) provides an electronic communications service or network, data center or trust service to the General Intelligence and Security Service, the Ministry of Defence, the Military Intelligence and Security Service, the National Coordinator for Counterterrorism and Security or the National Police; or (h) provide a combination of the above services, which separately do not reach the above thresholds, but which combined exceed particular thresholds set by a calculation formula.
<p>Scope – sectors covered</p>	<p>The telecommunications sector.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>Chapter 14a DTA prescribes pre-authorization which is of mandatory nature. It applies if the acquisition leads to "predominant control" as described above.</p>
<p>Design – reciprocity?</p>	<p>Chapter 14a DTA does not mention reciprocity.</p>
<p>Design – procedures and deadlines</p>	<p>Chapter 14a DTA stipulates that if a party wishes to acquire "predominant control" over a Dutch "telecommunications party" which gives rise to "relevant influence" in the telecommunications sector, this must be notified to the Minister of Economic Affairs at least eight weeks before the acquisition takes place.</p>

Two important remarks in this respect are: (i) the notification obligation applies irrespective of the identity/origin of the party acquiring "predominant control" and therefore also applies if it concerns a Dutch or a EU/EEA party; (ii) an investor who for a previous transaction already notified the acquisition of "relevant influence" in the telecommunications sector, is no longer required under the DTA to notify further acquisitions of "predominant control" in subsequent transactions.

In principle, the Minister will indicate within the eight-week period whether the acquisition or the holding of "predominant control" will be prohibited. However, if the Minister deems further investigation necessary, the period can be extended by a maximum of six months.

There is no mandatory standstill period under Chapter 14a DTA. Provided the notification is made at least eight weeks before closing of the acquisition, it is not forbidden to close the transaction before the Minister has ruled on the notification. If however, the Minister considers that the acquisition may lead to a (potential) threat to public order, the Minister may prohibit the holding or acquisition of "predominant control." Before a prohibition is imposed, the parties involved may give an opinion on the intended decision.

Design - Transparency and Information requirements (Filing Forms?)

Written notification needs to be made by means of a notification form. The DTA and the notification form explicitly state what information is required in relation to the notification:

- Information relating to the parties;
- Structure of the transaction;
- Public interests (eg source of financing and past convictions);
- Documentation (eg transaction documentation, annual accounts); and
- EU information (eg will the transaction be notified in other EU countries or does the transaction impact EU projects).

Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI

If the acquisition of "predominant control" is prohibited, this implies that no more shares and/or control rights than the thresholds of "predominant control" (see question 7 above) can be acquired. Acquisition of a minority interest of eg 25% of the shares without special statutory rights and without the right to appoint or dismiss more than half of the members of the management board or supervisory board would still be possible.

If a prohibition on exercising "predominant control" is imposed, the pre-existing control rights of the party concerned are suspended. A subsequent acquisition of additional control rights is invalid, except in the case of acquisition via a stock exchange. The prohibition creates an obligation for the party concerned to reduce its control rights to below the thresholds set for "predominant control" (see question 7 above).

Interaction with other legal frameworks (eg merger control)

Chapter 14a DTA does not interact with any merger control legislation or other legal frameworks.



<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>The Minister can prohibit a transaction if he considers it a threat to the public interest. This is the case if abuse or deliberate failure of the telecommunications party over which "predominant control" is obtained or held can lead to a threat to national security or public order. The explanatory memorandum to the Telecommunications Sector (Undesirable Control) Act states that: "It is not objectively possible to determine exactly when this will be the case." Therefore there seems to be a wide margin of discretion for the Minister. It remains to be seen how this will be implemented in practice.</p>
<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>The Minister's powers must be exercised in accordance with the principles of Dutch administrative law. The Minister's decisions must state the reasons why the holding or acquisition of "predominant control" is not accepted in a particular case. A prohibition on the holding or acquisition of "predominant control" is a decision subject to administrative and judicial appeal Appeals can be lodged within six weeks from the Minister's decision. The competent administrative court will review whether public order and national security are indeed endangered and whether the order in question is adequate (ie appropriate (able to cure the situation) and proportional (the least restrictive way to deal with the issue at hand). So far, judicial review of decisions under Chapter 14a DTA has not been employed yet.</p>
<p>Publication in Official Gazette or other</p>	<p>Not required.</p>
<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>Because Chapter 14a DTA entered into force on October 1, 2020, there are no relevant examples of application yet.</p>
<p>Stakeholders views on the legal framework</p>	<p>The legislative proposal for introducing Chapter 14a DTA was published on the internet for consultation. In total, 14 responses were received, which were predominantly critical. Most stakeholders were not convinced that the government should intervene at the level of control and prohibit acquisitions up front. They expressed the opinion that the government should instead impose tightened security and continuity measures. A number of respondents further indicated that they found the legislative proposal too far-reaching and detrimental to the open Dutch economy.</p>
<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>The DTA takes the EU Regulation into account.</p>



Other relevant information

The Dutch government's coalition agreement (called: "Trust in the future" (*Vertrouwen in de toekomst*)) of October 2017 indicates that the government intends to introduce three additional protective measures: (i) a statutory reflection period of 250 days for companies regarding the proposal of shareholders for a fundamental change in strategy. A legislative proposal for this is currently under consideration of the Senate (*Eerste Kamer*); (ii) FDI screening of investments in "vital sectors" relevant to public order or national security. A draft bill has been published (see question 22 below) according to which Dutch companies active in such "vital sectors" can only be the subject of a hostile takeover with the approval of the Dutch government; and (iii) a registration obligation for shareholders, according to which large listed companies can require their shareholders to register substantial holdings and gross short positions with the Financial Markets Authority (AFM) if the substantial holding or short position equals or exceeds 3% of the issued capital.

Draft legislation concerning investments in all vital sectors:

A draft of the Screening Economy and National Security Bill (the Bill) has been published for consultation. The Bill, if enacted, will apply to investments in all vital sectors and sensitive technology in The Netherlands. Under the Bill, the Minister can impose conditions or prohibit the investment if it leads to national security risks. Part of the Bill is intended to apply with retroactive effect as from June 2, 2020. The Bill is yet to be submitted to the House of Representatives (*Tweede Kamer*) and the Senate (*Eerste Kamer*).



New Zealand





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<p>On the basis of the most currently publicly available information:</p> <ul style="list-style-type: none">• Australia (50.4%)• Hong Kong, Special Administrative Region of China (8.49%)• US (6.55%)• Japan (4.97%)• UK (4.72%)
<p>Legal framework in force</p>	<p>The regime is comprised of the Overseas Investment Act 2005 (Act)¹ and associated regulations.² Under the Act, overseas persons are required to obtain consent before investing in certain assets in New Zealand. The Act provides broad discretion for the relevant Ministers or the Overseas Investment Office (OIO) (where delegated by the relevant Minister) to grant consent, grant consent with conditions, or refuse an application entirely. Consent is required for acquisitions of significant business assets and sensitive land. A national interest is applied to consent applications for investments by non-NZ governments and acquisitions of strategically important businesses. There is also a call-in regime for investments in strategically important businesses that do not otherwise require consent.</p>
<p>Last revision of the legal framework</p>	<p>The regime has been subject to a comprehensive overhaul during 2020 and 2021 which is aimed at strengthening the regime for high-risk investments, while streamlining the process for low risk investors. In 2020 the Act was amended to introduce the national interest test, which covers investments by non-NZ government investors and investments in strategically important businesses such as utilities and media companies. In the latest round of changes, which are being phased in from July 2021, the process has been streamlined for overseas persons who wish to acquire sensitive land by requiring the investor to do a “before or after” analysis of the benefits likely to arise from the acquisition, while the thresholds for acquiring farmland have also been strengthened.</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>National security measures were triggered by the COVID-19 pandemic which came into effect in June 2020. The effect of these measures was to require all overseas investments in significant business assets and sensitive land where a more than 25% interest was being acquired, regardless of the value. From June 7, 2021, these measures will be replaced by a permanent national security and public order call-in regime that applies to investments in strategically important businesses that would not otherwise require consent.</p>

1 <http://www.legislation.govt.nz/act/public/2005/0082/33.0/DLM356881.html>

2 <http://www.legislation.govt.nz/regulation/public/2005/0220/latest/DLM341366.html>



<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>Consent must be obtained where the proposed investment exceeds the thresholds set out in the Act for significant business assets or sensitive land (see below). Where a transaction that requires consent triggers the national interest test, the relevant Ministers must decide whether the investment is contrary to the national interest, in which case they can either impose conditions on the consent to manage any risks associated with the investment or decline consent. For transactions that do not require consent but are subject to notification under the call-in regime, The Minister must issue a director order either permitting the transaction, permitting the transaction with conditions or prohibiting the transaction. Any transaction that is not notified can still be called in by the ministers, even if it has already been given effect to.</p>
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>Consent is required for the acquisition of a more than 25% ownership or control interest in a company (or an increase in an existing more than 25% interest) where the consideration paid, or the assets of the company, exceeds NZD100 million. Higher value thresholds apply to some countries that have trade agreements with New Zealand. Consent is also required to purchase or lease (for a term of ten years or more) sensitive land that is residential land or non urban land including farmland greater than five hectares, land adjoining the sea, a lake or various types of reserves, and land containing or adjoining conservation/heritage land, or to acquire a more than 25% ownership or control interest (or increase an existing more than 25% interest) in an entity that owns or controls an interest in sensitive land. The Act restricts the ability for an overseas person to acquire an interest in a fishing quota or to invest in a business that, directly or indirectly, owns or controls a fishing quota without consent.</p>
<p>Scope – sectors covered</p>	<p>The focus is on investments in residential and farmland, and those that exceed certain monetary thresholds. A national interest test applies to non-NZ government investors and strategically important businesses such as utilities and media businesses. Special consent pathways apply for development of new housing and forestry.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>If a transaction requires consent under the Act, an application for consent must be submitted to the OIO for approval by it or the relevant ministers before the transaction is given effect. Any such transaction must therefore be conditional upon OIO consent being obtained. The national interest test will be applied to any transactions that trigger it during the course of the consent application. Transactions that do not otherwise require consent may be subject to notification under the call-in regime. Notification is mandatory where a business involves military or dual-use technology or a “critical direct supplier.” Otherwise, notification is voluntary but transactions may still be called in by the relevant ministers and thereby risk being blocked even if they have already been given effect to.</p>
<p>Design – reciprocity?</p>	<p>Higher thresholds apply for certain countries with which New Zealand holds free trade agreements such as Korea, Japan, China, Hong Kong, Australia, Singapore and other countries that are party to the CPTPP.</p>



<p>Design – procedures and deadlines</p>	<p>Currently no time limits apply to consideration of applications for consent. The 2020 amendments to the Act provided for regulations to be made setting timeframes with which the decisionmakers must comply, which currently apply to notifications under the emergency regime and are also likely to apply to notification of call-in transactions.</p>
<p>Design - Transparency and Information requirements (Filing Forms?)</p>	<p>Applications must be made using the OIO's online forms. The OIO will consult on aspects of an application with relevant government departments and agencies such as the Department of Conservation and Heritage New Zealand. All applications are subject to disclosure under the Official Information Act, although applicants can request confidentiality under certain grounds.</p>
<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>Where consent is required, this must be obtained in advance of getting effect to any transaction and the transaction must be conditional on obtaining consent. Consent can be given subject to conditions with which the overseas person must comply. Non-compliance can result in consent being withdrawn and divestment of any acquired property. Where a transaction is subject to the call-in regime, the ministers must give a direction order either approving the transaction, which may be subject to conditions to manage any risks associated with the transaction, or blocking the transaction, if it is contrary to national security or public order. Transactions that are given effect to without being notified may still be called in by the ministers with the attendant risk of being unwound.</p>
<p>Interaction with other legal frameworks (eg merger control)</p>	<p>For transactions involving sensitive land, the OIO will consult with other relevant government agencies such as the Department of Conservation, Heritage New Zealand and the Walking Access Commission. Where competition issues arise, the OIO may consult with the Commerce Commission which regulates restrictive trade practices and merger control. For transactions involving strategically important businesses, consultation is undertaken with the relevant regulatory agency such as the Telecommunications Commission and the Electricity Commission.</p>
<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>Consent will only be granted where the transaction meets the thresholds set out in the Act. For sensitive land this is whether the proposed investment would result in a substantial and identifiable benefit to New Zealand. Consent will not be granted for transactions that are contrary to the national interest. Transactions that are subject to the call-in regime may be blocked if they are contrary to national security or public order. The OIO and relevant Ministers have a wide discretion to make such decisions.</p>
<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>Decisions of the Ministers and the OIO may be challenged through the judicial review process in the New Zealand High Court. Applications for judicial review are time-consuming and expensive and will only consider the fairness of the decision-making process rather than the merits of the decision.</p>



Publication in Official Gazette or other	The OIO publicly releases summaries of consent decisions whether granted or declined. Summaries of direction orders are only released where the transaction is approved, with or without conditions. Requests can be made for access to information about applications under the Official Information Act, which has a number of grounds for withholding information such as commercial sensitivity.
Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.	Decision summaries are published on the OIO's website: www.oio.govt.nz
Stakeholders views on the legal framework	Significant changes have been made to the regime to address concerns identified by the New Zealand Treasury in its review of the Act in 2019.
Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.	N/A
Other relevant information	N/A

Norway





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<ul style="list-style-type: none"> • Sweden (22.25%) • US (9.32%) • Luxembourg (9.27%) • The Netherlands (8.89%) • Denmark (7.33%)
<p>Legal framework in force</p>	<p>Norwegian legislation does not have a holistic approach to regulating FDI nor is there any individual legal regulation or act regulating FDI in general. However, regulations and restrictions apply in the following sectors:</p> <ul style="list-style-type: none"> • acquisition of waterfalls, rights for power supply and mines; • acquisition of land, real estate and leases in the long term; • acquisition of cultivable land and forests; • acquisition of more than a qualified holding in a Norwegian financial institution; and • direct investments in exploration and petroleum operations that are licensed by the government. <p>Additionally, the Security Act entitles Norwegian authorities to review and approve investments in and transactions relating to companies that are engaged in activities of crucial importance for national security, regardless of the nationality of the investor.</p> <p>One should also bear in mind that the Norwegian Competition Authority has the authority to stop transactions based on competition concerns; however, this this is not directly related to FDI.</p>
<p>Last revision of the legal framework</p>	<p>The Security Act: 1 June 2018</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>N/A</p>
<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>N/A</p>
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>Pursuant to section 10-3 of the Security Act, the Norwegian government may oppose an acquisition of a qualifying part of a Norwegian company (ie one-third of the share capital or votes), which is subject to the scope of the Security Act. The threshold for opposing the investment is that the acquisition is considered to entail a not insignificant risk to national security interests.</p> <p>There are no general guidelines on which companies are affected by the legislation – a company is considered affected by the Security Act and covered by the provisions on ownership control, only if the relevant Ministry have issued an administrative decision to that effect. The Ministry can only issue such a decision if the company:</p> <ul style="list-style-type: none"> • process classified information,

	<ul style="list-style-type: none"> • controls information, information systems, objects or infrastructure decisive for fundamental national functions, or • performs activities decisive for fundamental national functions. <p>The provisions on ownership control are not specifically directed towards FDI, as the nationality of the buyer is not relevant for whether or not the act can be used.</p>
<p>Scope – sectors covered</p>	<p>Sectoral regulations on FDI and ownership control exist in relation to</p> <ul style="list-style-type: none"> • forestry, mines, tilled land and waterfalls; • exploration rights within the oil and gas sector; • financial services, where investors that intends to acquire a qualified holding in a financial institution must notify competent authorities and get a prior authorization (or a no-objection) in advance before the acquisition can be implemented. The establishment and operation of Norwegian financial institutions require regulatory license from the Norwegian Financial Supervisory Authority. • Media. The applicable regulations are designed to ensure transparency of media ownership. Investors are obligated to disclose information to The Norwegian Media Authority regarding ownership in Norwegian media and information about cooperation agreements that gives a contracting party equivalent influence as ownership. • Fisheries and aquaculture, where the right to acquire a fishing vessel or share(s) in a company which owns vessels can only be given to a Norwegian citizen or a body that can be defined as a Norwegian citizen. <p>Additionally, general Norwegian company legislation contains certain restrictions, for instance, the general manager in a limited liability company or a public limited liability company, and at least half of the members of the board of directors, must be residents of Norway. The residency criteria do not apply to nationals of an EEA Member State who are permanent residents of one of those states and the Ministry of Trade and Industry may grant exemptions from this provision.</p> <p>Many of these nationality restrictions are contested under EEA legislation; however, remain effective under Norwegian law at the date of this report.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>Generally, the Norwegian screening mechanisms are based on pre-authorizations, and cover investments where the new investor gains "significant influence" over the management of the company. The mechanisms are mandatory.</p>
<p>Design – reciprocity?</p>	<p>N/A</p>



<p>Design – procedures and deadlines</p>	<p>Under the Security Act, the government screens investments on a case-by-case basis, based on discretionary assessments. The government may set binding conditions for allowing an acquisitions, usually where the FDI constitute more than one-third of the company. If a company has been brought within the scope of the Security Act, the acquirer is required to notify the relevant ministry of its investment. After receiving the application, the relevant ministry/Norwegian government shall approve the application within 60 days or forward it to King in Council (ie formal meeting of the Council of State) for a final ruling.</p>
<p>Design – transparency and information requirements (filing forms?)</p>	<p>No particular forms for notifications pursuant to the Security Act. Forms may exist under the sector regulations.</p>
<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>The King in Council has the authority to prohibit the acquisition in its entirety or may – at its discretion – decide that implementation shall be subject to conditions.</p>
<p>Interaction with other legal frameworks (eg merger control)</p>	<p>No interaction.</p>
<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>Pursuant to Section 10-3 of the Security Act, the King in Council may deny acquisitions which turn out to be a threat to national security interests, in a way which is not insignificant. According to the preparatory works, the King in Council has to consider on the importance of continuity of supply, strategic production of goods and services of national importance and protection of classified information.</p>
<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>The ordinary courts have jurisdiction over decisions pursuant to the Security Act.</p>
<p>Publication in Official Gazette or other</p>	<p>N/A</p>



<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>While use of the Security Act has been contemplated, no acquisitions have presently been stopped based on the ownership control provisions.</p>
<p>Stakeholders views on the legal framework</p>	<p>N/A</p>
<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>Norway continues to liberalize its foreign investment legislation to conform more closely to EU standards. By adopting the new Security Act, in particular its Chapter 10 on ownership control, Norway has followed the same route as many other countries, eg Finland and France, which previously introduced rules on review and approval of mergers and acquisitions as a tool to protect national security.</p>
<p>Other relevant information</p>	<p>N/A</p>

Peru





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<p>According to the Agency of Promotion of Private Investment (ProInversion) as of June 2020,¹ the most foreign investment financial flows come into Perú from the following countries:</p> <ul style="list-style-type: none">• UK (18%)• Spain (17%)• Chile (13%)• US (12%)• The Netherlands (6%)
<p>Legal framework in force</p>	<ul style="list-style-type: none">• Peruvian Constitution of 1993 (the Constitution)• Legislative Decree No. 662 – Regime of Legal Stability of Foreign Investment through the recognition of assurances (Legislative Decree 662)• Legislative Decree No. 757 – Legal Framework for the Growth of Private Investment (Legislative Decree 757)• Supreme Decree No. 162-1992-EF – Regulations of the Regime to Guarantee Private Investment (Supreme Decree 162)
<p>Last revision of the legal framework</p>	<p>Legislative Decree 662 was last revised in 2008. Legislative Decree 757 was last revised in 2018. Supreme Decree 162 was last revised in 1998.</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>The Constitution encourages foreign investment by providing that they are subject to the same conditions as national investments. Likewise, in the context of the promotion of foreign investment:</p> <ul style="list-style-type: none">• Legislative Decree 662 aims to promote foreign investment and foreign technology transfer.• Legislative Decree 757 aims for the growth of private investment in all sectors of the Peruvian economy.• Supreme Decree 162 regulates the guarantee regimes for private investment. <p>The main competent authority that rules on foreign investment is ProInversion. This authority promotes private investment through Public-Private Partnerships, Projects in Assets and Public Works Tax, for its incorporation into public services, public infrastructure, in assets, projects and Peruvian state companies, according to its attributions. Moreover, the Peruvian financial system is regulated primarily by the following agencies:</p> <ul style="list-style-type: none">• Peruvian Central Reserve Bank<ul style="list-style-type: none">• This agency aims to preserve the monetary and economic stability of the country. Moreover, it is in charge of regulating currency and financial credit and managing international reserves.

¹ <https://www.investinperu.pe/modulos/JER/PlantillaStandard.aspx?are=0&prf=0&jer=5652&sec=1>

- National Superintendence of Bank and Insurance
 - This entity is responsible for regulating and supervising the financial, insurance, and private pension system, its objective is to preserve the interests of depositors and insured persons.
- Superintendence of Stocks Market
 - This entity's main purpose is to look out for the investors, the efficiency and transparency of the markets under its supervision
- The National Institute for the Defense of the Competition and the Intellectual Property (Indecopi)
 - Indecopi aims to promote the market and the protection of consumer rights. It is in charge of the supervision of the fulfillment of the obligations of the suppliers in order to guarantee the respect of consumers' rights.

Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI)
Are there any loopholes?

Pursuant to article 1° of Legislative Decree 662, the Peruvian State promotes and guarantees foreign investments made and to be made in the country, in all sectors of economic activity, and in any of the business or contractual forms allowed by national legislation. Likewise, according to the aforementioned article, any foreign investment that is made for income-generating economic activities, under any of the following modalities, will be considered as a foreign investment:

- contributions owned by foreign natural or legal persons, channeled through the National Financial System, to the capital of a new or existing company in any of the corporate forms indicated in the General Law of Companies, in freely convertible currency or physical assets or tangible, such as industrial plants, new and reconditioned machines, new and reconditioned equipment, spare parts, pieces and parts, raw materials and intermediate products;
- investments in national currency from resources with the right to be remitted abroad;
- the conversion of private obligations abroad into shares;
- reinvestments carried out in accordance with current legislation;
- investments in assets physically located in the territory of the Republic;
- intangible technological contributions, such as trademarks, industrial models, technical assistance and patented or non-patented technical knowledge that may be presented in the form of physical goods, technical documents and instructions;
- investments for the acquisition of securities, documents and financial papers listed on stock exchanges or bank deposit certificates in national or foreign currency;
- the resources destined to joint venture or similar contracts that grant the foreign investor a form of participation in the production capacity of a company, without implying a capital contribution and that corresponds to commercial operations of a contractual nature through which the foreign investor provides goods or services to the recipient company in exchange for a participation in the volume of physical production, in the global amount of sales or in the net profits of the referred recipient company; and
- any other form of foreign investment that contributes to the development of the country.

Moreover, article 3° of Legislative Decree 662 sets forth that: (i) foreign investments effectively done in Peru are automatically authorized; and, (ii) once the foreign investment has been done, it should be registered with ProInversion. Notwithstanding the foregoing, under Peruvian legislation there is no peremptory time period for the registering nor sanction for those investors who do not comply with the registration. However, the registration of the foreign investment with ProInversion grants the right to transfer abroad, in freely convertible currencies, after having paid the applicable taxes, and without previous authorization from any authority in the Central government or any other institution, the following:

- income derived from their investments, including the sale of shares, stocks or rights, capital reduction, partial or total liquidation of companies; and
- earnings or net profits derived from their investments, payments for the use or enjoyment of goods located in Perú, royalties and considerations for the use or transfers of technology, including industrial property assets authorized by the Competent National Agency.

Likewise, investors who register their foreign investments will be allowed to, in all cases in which it is appropriate to convert foreign currency to national currency, use the most favorable purchase exchange rate at the time of carrying out the exchange operation, and in the case of conversion from national currency to foreign currency, the investor will have the right to use the most favorable selling exchange rate at the time of carrying out the exchange operation.

Scope – screening thresholds
Please indicate notably whether it covers solely controlling investments or also portfolio investments.

Any kind of foreign investment (as described in the answer to question 6 above) may be registered. This includes both controlling and portfolio investments.

Scope – sectors covered

In principle, all economic sectors are open to private investment for foreign investors. However, Peruvian legislation provides the following exceptions:

- Pursuant to article 71° of the Constitution, within 50 km of the borders, foreign investors cannot acquire or possess by any title, mines, lands, forests, waters, fuel or energy sources, directly or indirectly, individually or in society, under penalty of losing, to the benefit of the state, the right thus acquired. Notwithstanding, the cases of public necessity are excepted if it is expressly stated by a Supreme Decree approved by the Council of Minister
- According to article 8° of the Supreme Decree 162, the invest in the business activity of foreign trade has the following restrictions:
 - To export:
 - the prohibitions established in the Text of Prohibited Exportation Products;
 - the ones contained in the General Law of Protection of Cultural Heritage;
 - the obligations and rights originated from International Agreements signed by the country;

- the temporary emergency measures required to guarantee external security and internal order; and
- the provisions that aim to preserve the native genetic patrimony and the improvements in cultivation techniques and wildlife.
- To import:
 - the obligations and rights originated from International Agreements signed by the country;
 - the prohibitions established in the List of Imports Restricted Goods; and
 - the temporary emergency measures required to guarantee external security and internal order.

Pursuant to the article 79° of the Peruvian Civil Aviation Law sets forth that National Commercial Aviation operations can only be performed by Peruvian entities. The company that fulfills the following requisites is considered to be a Peruvian entity:

- It has its main domicile in the Peruvian territory.
- At least half plus one of the members of the directory, managers and people with management control over the company should be Peruvian or have a permanent residence in the Peruvian territory.
- The company's property should be substantially national. At least 51% of the capital stock should be of Peruvian property and be under the effective and real control of Peruvian shareholders or partners with a Peruvian residence.

Nevertheless, according to article 160° of the Peruvian Civil Aviation Law Regulations, six months after obtaining the first operational permit by the company, the percentage of the capital stock owned by foreigners may be up 70%.

Design of FDI Screening Mechanism
Please indicate notably the following:
(a) Pre-authorization vs. ex-post screening of FDI? Other?
(b) Covers solely controlling investments or also portfolio investments?
(c) Mandatory or voluntary nature?

- a) According to the Legislative Decree 662, foreign investments are authorized since they are effectively carried out in Perú. In this regard Perú has an ex post screening mechanism.
- b) Applies to controlling and portfolio investments.
- c) Please refer to answer provided in question 6 above.

Design – reciprocity?

Not applicable since the Peruvian legislation clearly establishes that foreign and national investments are subject to the same conditions.

Design – procedures and deadlines

Regarding the registration procedure, we must highlight that it requires the presentation of a filled form addressed to the Department of Investor Services of ProInversion, along with the corresponding documents, which may vary according to type of investment.



	<p>The Department of Investors Services of ProInversion has a 25 working days to deny the registration. This procedure is subject to positive administrative silence. If the registration is denied, the investor may file an administrative review or an appeal, which must be solved by the competent authority within a maximum of 20 working days.</p>
Design – transparency and information requirements (filing forms?)	<p>The filling forms are mandatory in order to register the investment. However, the forms and documents required for the registration will vary according to the type of investment that has been carried out.</p>
Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI	<p>All registration procedures are private; in that regard, it is not possible to determine the range of decisional outcomes. Nevertheless, it is unlikely that the approval is denied by ProInversion, unless the documents required to get the registration are not properly submitted or are incomplete.</p>
Interaction with other legal frameworks (eg merger control)	<p>Merger control is not yet in force under Peruvian legislation; however according to the Urgency Decree 013-2019 (published but not yet in force) the merger control regime will apply to any operation that affects in the whole or in a part of Peruvian territory, this includes operations that are done abroad bound directly or indirectly to the economic agents that develop economic activities in Perú. These operations may be:</p> <ul style="list-style-type: none">• a merger between two or more economic agents;• the acquisition of rights that allow it to exercise control overall, or part of, one or more economic agents, done directly or indirectly;• the establishment of two or more economic agents, independent of each other or joint venture, that implies the acquisition of joint control over one or more economic agents, in a way that said agent permanently performs functions of an autonomous economic entity; or• the acquisition of the productive operational assets of other economic agents. <p>Notwithstanding the foregoing, the merger control will be only applicable for the operations that meet – concurrently – the following thresholds:</p> <ul style="list-style-type: none">• The total amount of the sales or annual gross income in the country of the involved companies in the business concentration operation reached during the fiscal year prior to that in which the operation is notified, the equal or greater value of UIT118,000 (USD140,944,444).• The value of the sales or annual gross income in the country of at least two of the companies involved in the business concentration operation reached during the fiscal year prior to that in which the operation is notified, the equal or greater value of UIT18,000² (USD21.5 million).

2 A UIT is equivalent to PEN4,300 (approximately USD1,228)



Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.

The process of blocking foreign investments occurs mostly after the investment is effectively done. The grounds are based on environmental protection and changes in the administration, such as the designation of lands as intangible once they are owned by the investors, blocking the spectrum of action regarding said lands.

Judicial Review
Please specify timeline, competent courts and standard of judicial review.

The mechanisms of protection against transgressions to foreign investments can be analyzed in different jurisdictions, depending on the characteristics of each particular case.

A first alternative is the administrative jurisdiction: in case the transgression comes from a decision adopted by a state entity within an administrative procedure, it can be disputed before a higher hierarchical body of the same entity, through an administrative action. The processes on the most complex matters can take up to approximately four years. Once the final decision of the administrative entity is issued, it can be disputed before the judicial courts, through the administrative contentious action, which can be appealed before Peruvian Court of Justice. This process can last up to an average of five years.

On the other hand, there is judicial jurisdiction: in the case of the issuance of a norm of general and abstract scope that affects a direct investment, the investor can file a protection action, so the norm is not applied. The decision issued may be disputed until reaching the Constitutional Court, the entity that issues the final decision. This process duration may vary according to the complexity of the case. However, in our experience, they last approximately between two and eight years.

Moreover, investors may dispute resolutions under conciliation or arbitral jurisdiction. In Peru, contracts executed with the Peruvian State, must contain a dispute resolution clause. Therefore, in case the investors require to protect the rights conferred by an executed contract, they may activate the dispute resolution clause in application of said agreement. Notwithstanding the foregoing, exceptional cases provided by the Law of State Contracts, must be resolved in the judicial jurisdiction. These arbitration procedures may take up to approximately two years.

Finally, if the affectation occurs within the framework of an Investment Agreement signed between Peru and another state, the dispute can be resolved through arbitration before ICSID or other jurisdiction or dispute resolution mechanism, in accordance with what was agreed in the specific treaty. The duration of the proceedings before ICSID may vary according to the complexity of the case.

Publication in Official Gazette or other

Relevant decisions provided by administrative and judicial authorities may be published in Peruvian Official Gazette – *El Peruano* as well as in the corresponding authorities web pages.



Publication in Official Gazette or other

The awards issued in an arbitration against the Peruvian State are published on the OSCE (Supervisory Agency for State Procurement) website. As of the last amendment to the arbitration law, all arbitration against the Peruvian State is publicly accessible. Likewise, the awards issued by ICSID can be found on the web portal of the Ministry of Economy and Finance.

Relevant examples of application
If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.

ICSID Case No. ARB / 07/6 (Tza Yap Shum vs Republic of Peru)

Tza Yap Shum claimed that his investment in a Peruvian company had been expropriated, through a series of SUNAT (Peruvian Tax Authority) actions. It was argued that there was a violation of the BIT signed between the Government of the Republic of Peru and the Government of the People's Republic of China of 1994.

The aforementioned Treaty did not establish that in the arbitration process a decision could be issued as to whether or not there was an expropriation, yet with respect to compensation after the expropriation was executed. The Arbitral Tribunal made an extensive interpretation and concluded that the BIT did not limit ICSID's jurisdiction over expropriation, while the amount of compensation was discussed in some way. Likewise, the Arbitral Tribunal interpreted and concluded that the "expropriation" regulated in the Treaty could refer to both direct and indirect expropriation. This award is particularly important, as it considers that ICSID's competence should be interpreted in a broad and unrestricted manner.

ICSID Case No. UNCT / 13/1 (The Renco Group Inc. vs Republic of Peru)

This was the first case in which the Peruvian State was sued on the basis of the FTA investment chapter, the APC Peru-US 2006.

Renco sued the Peruvian state for alleged breaches of its obligations assumed under the Peru-US APC. Peru stated that Renco did not comply with the formal and material requirements of the APC, as it failed to waive the initiation or continuation of any other dispute resolution mechanism with respect to its same claim.

Renco only submitted a partial waiver of other dispute resolution mechanisms. Based on this, Peru argued that the prerequisite agreed in the Peru-US APC had not been fulfilled, so that the Arbitral Tribunal was not competent to rule on the dispute, nor to correct the vices incurred by Renco.

ICSID Case No. ARB 11/17 (Renée Rose Levy and Grencitel S.A vs Republic of Peru)

The Peruvian State was sued on the grounds of a BIT signed by Peru and France. Levy held French nationality and control over Grencitel S.A, company that was granted with a public tender and bought 200 hectares of land to the Municipality of Chorrillos in order to invest in a real state project. Before the initiation of the project, the corresponding Municipality declared that said lands were intangible, since they were historic grounds. It was argued that the legitimate expectation of Grencitel S.A was frustrated, and a compensation for USD1.5 million was requested. The Peruvian state won the case.



Stakeholders views on the legal framework	The Peruvian Legal Framework is not seen as restrictive by shareholders as there is no need for a pre-authorization in order to invest, due to the fact that the foreign investments are automatically authorized, and national and foreign investments are subject to the same conditions. Moreover, according to the BCR foreign investments' inflow are continually increasing throughout the last three years. ³
Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.	N/A
Other relevant information	N/A

³ <https://www.investinperu.pe/modulos/JER/PlantillaStandard.aspx?are=0&prf=0&jer=5652&sec=1>

Poland





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<ul style="list-style-type: none"> • Netherlands • Germany • Luxembourg • France • Switzerland¹
<p>Legal framework in force</p>	<p>Act of July 24, 2015, <i>on Control over Certain Investments (the Act)</i>; Ordinance of the Council of Ministers of December 25, 2016, on documents attached to notifications of intention to acquire or achieve significant participation or acquisition of dominance in an entity subject to protection Ordinance of the Council of Ministers of October 8, 2020, on a contact point for the implementation and application of the Regulation establishing a framework for monitoring foreign direct investment in the Union; Ordinance of the Council of Ministers of December 11, 2020, on the list of entities to be protected and the authority competent for screening mechanism;</p>
<p>Last revision of the legal framework</p>	<p>Act of June 19, 2020 – on Interest Subsidies for Bank Loans Granted to Businesses Affected by COVID-19 and on Simplified Proceedings for the Approval of a Composition Agreement in Connection with COVID-19 – introducing to the Act new regime screening mechanism due to the COVID-19 pandemic in Poland (COVID-19 Rules); Ordinance of the Council of Ministers of December 11, 2020, on the list of entities to be protected and the counter authorities competent for them – introducing an additional four companies to the list of companies covered by the existing general protection against the COVID-19 pandemic (Company Specific Rules).</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>The purpose of the Act is to protect the interests of the Polish state and control investments in strategic sectors of the Polish economy in order to protect public security and order.</p> <p>Company Specific Rules</p> <p>The Act was initially introduced in 2015. The Polish Council of Ministers identified certain threats in the modern world which could be destabilizing for the Polish economy. Finally, it was decided that the Polish authorities should have appropriate instruments (including legal ones) which would enable them to interfere and oppose the proposed transaction when necessary.</p> <p>Every year the Council of Ministers publishes a list of protected entities from the sectors specified in the Act, taking into account certain factors such as real and serious threats to the fundamental interests of society related to the activities of those entities (see more information in question 9 below). Currently there are 13 companies protected by the Company Specific Rules.</p>

¹ Narodowy Bank Polski (Polish National Bank), *Zagraniczne inwestycje bezpośrednie w Polsce w 2019 roku* (original title) – report on foreign direct investments in Poland in 2019; Warsaw, (https://www.nbp.pl/publikacje/zib/zib_2019_n.pdf and https://www.nbp.pl/publikacje/zib/zib_2019_pln.xlsx)



Depending on the sector in which the protected entity is active, the Minister of State Assets, Minister of Defence or Minister competent for maritime affairs is responsible for FDI notifications based on the Company Specific Rules.

COVID-19 Rules

On July 24, 2020, an amendment to the Act entered into force, introducing a new screening mechanism affecting foreign investors (ie investors from countries other than EU, EEA or OECD members) that want to invest in a Polish entity covered by special protection.

The amendment was adopted as a result of the COVID-19 pandemic and the Polish authorities' concerns regarding the risk of the takeover of Polish companies that are crucial for public order, safety or health. The amendment will be in force for two years, ie until July 24, 2022.

The amendment also implemented Regulation (EU) 2019/452 of the European Parliament and of the Council of March 19, 2019, establishing a framework for the screening of foreign direct investments into the European Union.

The Polish competition authority (UOKiK) is competent for FDI notifications based on COVID-19 Rules.

Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI)
Are there any loopholes?

Company Specific Rules

The Act is applicable to all investors, regardless of the nature of their operations or country of registration – it also applies to Polish investors.

COVID-19 Rules

The screening mechanism applies only to foreign investors ie (i) a physical person who does not have citizenship of the EU, EEA or OECD (Member State), or (ii) a person other than a physical person that was not established/registered in one of the Member States for at least two years before the day before the notification.

The subsidiaries and branches of foreign investors will also be classified as foreign, even if they are registered in one of the Member States.

Scope – screening thresholds
Please indicate notably whether it covers solely controlling investments or also portfolio investments.

The screening mechanism applies to situations which may result in the acquisition of dominant control or significant participation in the protected entity. Moreover, the Act applies not only to direct (eg the acquisition of shares) but also indirect (eg the acquisition performed via subsidiaries including the transactions when foreign law applied) transactions.

As the language of the Act is quite specific, it is advisable that each instance where the requirement of the application of the FDI screening mechanism is analyzed, it is assessed on a case-by-case basis.

Company Specific Rules

The Act concerns investments involving the acquisition:

- of shares (or stock); rights and obligations of a partner authorized to manage or represent the protected company (or partnership), enterprise or an organized part thereof,
- resulting in the acquisition or achievement of a significant participation in or the acquisition of a dominant position over a company that is subject to protection.



In the meaning of the Act, "significant participation" means the ability to influence another entity's operations, in particular due to:

- (i) holding, within the last two years, at least 20% of the total number of votes in its governing body; or
- (ii) having an interest in a partnership with a value of at least 20% of the total value of all contributions made thereto.

Moreover, the following factors may indicate that the entity is a dominant entity:

- (i) holding (directly or indirectly) the majority of votes in another entity's governing bodies (also if acting in concert);
- (ii) being authorized to appoint or dismiss the majority of members of another entity's management or supervisory bodies;
- (iii) having (directly or indirectly) more than half of the members of another entity's management board, registered proxies or managers;
- (iv) holding at least 50% of another entity's share capital; or
- (v) otherwise being able to take decisions on another entity's operations.

Moreover, in the case of subsequent acquisitions, a notification obligation is triggered by reaching or exceeding (directly or indirectly) the following thresholds: 20%, 25%, 33% and 50% of the total number of votes at the protected company's general meeting or in its share capital.

COVID-19 Rules

Acquisition of:

- a) "significant participation" in the protected entity is defined as the acquisition of 20% or 40% of the shares (separate thresholds) or of the total votes, capital or profits, or the lease of (i) an entire enterprise or (ii) part of an enterprise which is sufficiently separated;
- b) a dominant position over a target entity (in particular in the meaning of the Company Specific Rules described above) is achieved by taking one of the following actions towards the protected entity: (i) the acquisition of shares or rights attached to shares or the subscription for shares, or (ii) the conclusion of an agreement providing for the management of that entity or the transfer of profits by that entity.

The acquisition or achievement of a significant participation or the acquisition of a dominant position may also occur indirectly, in particular via subsidiaries or any other entity with whom another entity has concluded an agreement providing for the delegation of voting or other rights over or in relation to the shares, stocks or other equity rights of the protected entity.

The acquisition or achievement of a significant participation or the acquisition of a dominant position also means cases in which an entity acquires or achieves a significant participation or the acquisition of a dominant position over a protected entity or achieves or exceeds, respectively, 20% or 40% of the total number of votes in the protected entity, or a share in its profits or a capital share in a partnership with respect to the value of all contributions made to that partnership, as a result of: (i) the redemption of shares or stock of a protected entity or the acquisition of the protected entity's own shares or stock, (ii) a division of the protected entity or its merger with another entity, or (iii) an amendment to the articles of association or statutes of the protected entity regarding preferential rights to shares, participation in profits, or the establishment or modification or cancellation of the rights vested in particular partners, shareholders or participants of the entity.

Scope – sectors covered

Company Specific Rules

Every year the Council of Ministers publishes a list of protected entities from the sectors specified in the Act (eg energy, chemical, telecommunications, transshipment in seaports, mining, military, etc). The factors taken into account when drawing up the list include: significant share in the market, scale of operations, and real and sufficiently serious threats to fundamental interests of society related to the activities of the entity to be protected. The Council of Ministers should also consider if any other less restrictive measures could be implemented.

There are currently 13 companies covered by protection on these bases, ie Centrum Rozwojowo-Wdrożeniowe "Telesystem-Mesko," Emitel S.A., Grupa Azoty S.A., HAWE TELEKOM sp. z o.o. w restrukturyzacji, innogy Stoen Operator sp. z o.o., KGHM Polska Miedź S.A., Orange Polska S.A., Polkomtel sp. z o.o., Polski Koncern Naftowy ORLEN S.A., PKP Energetyka S.A., System Gazociągów Tranzytowych "EUROPOL GAZ" S.A., Tauron Polska Energia S.A., and TK Telekom sp. z o.o.

COVID-19 Rules

The COVID-19 Rules define a protected entity as an entity that generated turnover exceeding EUR10 million in Poland in either of the two financial years preceding the submission of the notification which meets one of the following conditions:

- i. is a public company; or
- ii. holds assets considered as critical infrastructure (eg communication and information systems, healthcare systems, energy supply systems);
- iii. develops software dedicated to specific sectors (eg energy, water supply, voice/data transmission or storage, finance/payments, insurance, healthcare, transport, food supply) or provides cloud computing services for them;
- iv. conducts business activity in one of the specified sectors:
 - energy (eg production of energy, pipeline transport/storage of crude oil, motor fuel or diesel oil, underground storage of crude oil or natural gas);

- heating (eg generation or transmission or distribution of heat);
- chemical (production of chemicals, fertilizers and chemical products, regasification or liquefaction of natural gas, distribution of natural gas or electricity);
- production of rhenium;
- mining and processing of metal ores used for the production of explosives, weapons and ammunition, as well as products and technologies for military or police purposes; healthcare (eg manufacture of medical equipment, instruments and supplies, or manufacture of medicines and other pharmaceutical products);
- military (eg manufacture and trade in explosives, weapons and ammunition, as well as products and technology for military or police purposes);
- transshipment (eg transshipment in ports that are of fundamental importance to the national economy, transshipment of crude oil and its products in seaports, transshipment in inland ports);
- telecommunication;
- food production (processing of meat, milk, cereals and fruit and vegetables).

Taking into account the objectives of the screening mechanism introduced by the COVID-19 Rules, the Council of Ministers may (after consultation with UOKiK) introduce some exemptions from the protection.

Design of FDI Screening Mechanism
Please indicate notably the following:
(a) Pre-authorization vs. ex-post screening of FDI? Other?
(b) Covers solely controlling investments or also portfolio investments?
(c) Mandatory or voluntary nature?

Both type of Rules (ie Company Specific and COVID-19) provides for *ex-ante* screening mechanisms only.
The notification is mandatory and the investor has to notify its intention to execute a given transaction before taking any actions.
In some ambiguous cases, some informal and formal preliminary consultations with the competent authority might be possible.

Design – reciprocity?

N/A

Design – procedures and deadlines

An entity that intends to acquire or achieve a significant participation or to acquire a dominant position is obliged to notify the relevant authority of such an intention. In the case of an indirect acquisition, the notification is submitted by the entity that entered into the transaction.
In the case of an indirect acquisition that took place as a result of an act carried out under the provisions of the law of a country other than Poland, the notification is submitted by the subsidiary through which the indirect acquisition was made.
In the case of acquisition or substantial participation, the relevant authority must be notified. The notification must be submitted by the entity that has acquired or achieved significant participation (directly or indirectly).



In the case of an indirect acquisition resulting from a transaction executed under laws other than in Poland, in particular a merger of companies whose registered offices are outside Poland, or an acquisition of shares in a company with a registered office outside Poland that is a parent entity of a protected company, the notification must be submitted by the company that has obtained the status of a parent entity of an entity holding at least 20% of the votes at the general meeting or of the share capital of (i) the protected company, (ii) its parent entity (or an entity having significant participation therein), or (iii) an entity having a legal title to the protected company's enterprise (or a part thereof).

The Act also provides for one situation in which the notification is submitted by the protected entity, ie in the case of consequential acquisitions, ie being a result of the cancellation of shares or share certificates in a company which is a protected entity. In that case, the notification must be made before holding a meeting of the governing body of the protected entity or before adopting a resolution of the shareholders or participants, or before any other act that would result in consequential acquisitions (or acquisitions of dominance or significant participation) over the protected entity.

Company Specific Rules

Depending on the sector in which the protected entity is active, the notification based on the Company Specific Rules should be submitted to one of the following: Minister of State Assets, Minister of Defence or Minister competent for maritime affairs.

The Act does not set forth more specific rules of the proceedings, ie any procedures that would be applicable where a notification obligation arises. The Act covers all types of transactions, regardless of their purpose. Notification is mandatory and there are no exceptions of any kind (it concerns all investors, both national and foreign).

COVID-19 Rules

The FDI notifications based on COVID-19 Rules should be submitted to UOKiK.

UOKiK has published special guidelines on this subject (Investment Control – procedural guidelines on submitting notifications to the President of UOKiK and conducting proceedings under the Investment Control Act <https://www.uokik.gov.pl/download.php?plik=24681> – available only in Polish)

In general, notification must be made before:

- concluding any agreement generating an obligation to acquire or executing any transaction leading to the acquisition of a dominant position over a protected company (or significant participation); or
- announcing a tender offer to subscribe for shares in a protected company that is a public company whose shares are admitted to trading on a regulated market.

Where a significant participation or the acquisition of a dominant position is achieved through the conclusion of more than one agreement or other legal action, notification must be given prior to the conclusion of the last agreement or any other legal action leading to the acquisition or achievement of a significant participation or the acquisition of a dominant position over a company that is subject to protection.

In the case of an indirect acquisition resulting from a transaction executed under laws other than Polish, as referred to above, notifications must be made within seven days of the date on which the acquisition of a dominant position or a significant participation becomes effective or, if such a moment cannot be determined, within 30 days of the date of the transaction (or other action) leading to such an acquisition.

The timing for the required notifications is the following:

- i. **For the Company Specific Rules:** 90 days from receipt of the written notification (+two additional working days for the delivery);
- ii. **For the COVID-19 Rules:**
 - **Phase I:** 30 working days for preliminary screening proceedings from receipt of the written notification
 - **Phase II:** 120 working days from the initiation of the phase II proceedings (+seven additional working days for the delivery).

Note: all the proceedings are subject to the "stop-the-clock" rule for an unlimited number of additional questions or requests from the competent authority. In the case of requiring additional information/documents, the notifying party will be given at least seven days for the submission of the reply.

Design - transparency and information requirements (filing forms?)

The Act indicates information that needs to be disclosed by the notifying party as well as documents (both official, eg articles of association, and private, eg a graphic organization chart of the capital group) that need to be submitted together with the notification. In contrast to the merger rules, neither the Act nor its implementing regulations provide for any form or any sample notification to be used by the notifying party.

The list of information and documents that should be provided in the notification is quite extensive. It includes:

- a) the intended acquisition (eg participation in a protected entity, the source of financing of the purchase etc);
- b) the investor and its capital group (business operations, members of its administrative and supervisory bodies, completed and pending proceedings);
- c) the investor's plans in connection with the transaction (eg long-term business plans, anticipated changes in the organization of the protected entity, the method of financing).

The notification and the accompanying documents must be drawn up in Polish – or in a foreign language together with an official translation into Polish made by a certified (sworn) translator or by a consul (eg documents translated from a rare language into a language known to the consul and then translated by the consul into Polish).

Foreign official documents should be legalized by a Polish consul before being translated (unless an international agreement to which Poland is a party provides otherwise).

In justified cases, in particular where the applicable law does not require the provision of documents to be attached to the notification, the notifying party or the person concerned may, instead of those documents, make a declaration to that effect containing the required information. At the same time, that person must also submit the documents which, in accordance with applicable law, constitute confirmation of those other documents, accompanied by an appropriate explanation.

Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI

Company Specific Rules

The competent minister may issue a decision blocking a given transaction (see question 15). On the other hand, if the notified transaction does not fall within the scope of the Act, the competent minister will issue a decision refusing to initiate the proceedings.

Before issuing the decision on the merits of the case, the competent minister must consult the Consultative Committee appointed by the Prime Minister (consisting of other ministers and public authorities important from the perspective of public security).

COVID-19 Rules

After conducting proceedings in Phase I, UOKiK may issue:

- an ordinance refusing to initiate the proceedings, if the notified transaction does not fall within the scope of the Act;
- a decision that the notified transaction does not fall within the scope of the Act and refuse to initiate the control proceedings and not oppose the proposed transaction, or
- an ordinance initiating **Phase II** – if (i) the notifying party did not provide the required documents/information or; (ii) it is justified to conduct further investigations from the perspective of the public order or security.

After conducting an in-depth investigation of the proposed transaction in Phase II, UOKiK issues a decision on the merits of the proposed transaction, ie not opposing or blocking the proposed transaction (see question 15).

Failure to comply with the obligation to submit a notification and to refrain from taking any action covered by the notification until obtaining a positive clearance decision from the competent authority or the expiry of the period within which the decision should have been issued, may result in certain civil and penal sanctions.



Company Specific Rules

The sanctions include:

- Invalidity of all investments carried out without notification or after having received a refusal from the competent minister.
- Penal sanctions including a fine of up to PLN100 million and/or imprisonment ranging from six months to five years with respect to natural persons acting in their own name as well as representing a legal entity.
- With respect to natural persons obliged by law or contract to manage the affairs of a subsidiary who are aware of an acquisition made in breach of the notification obligation and who fail to notify the relevant authority, possible penal sanctions include a fine of up to PLN10 million and/or imprisonment ranging from six months to five years.

There is no specific timeline or statute of limitations for imposing the abovementioned sanctions. In some particular circumstances indicated in the Act, the competent minister may initiate proceedings *ex officio*.

COVID-19 Rules

The sanctions include:

- Invalidity of all investments carried out without notification or after having received a refusal from UOKiK. In the case of an indirect acquisition carried out on the basis of foreign law, the sanction is the inability to exercise the rights attached to the shares of the protected entity.
- UOKiK is entitled to bring an action to annul actions taken pursuant to the investor's exercise of rights acquired in violation of the Act.
- Penal sanctions including a fine of up to PLN50 million and/or imprisonment ranging from six months to five years with respect to natural persons acting in their own name as well as representing a legal entity.
- With respect to natural persons obliged by law or contract to manage the affairs of a subsidiary who are aware of an acquisition made in breach of the notification obligation and fail to notify the relevant authority, possible penal sanctions include a fine of up to PLN5 million and/or imprisonment ranging from six months to five years.

The time limit for imposing the abovementioned potential sanctions is five years from the investment.

During that time UOKiK may initiate proceedings *ex officio*.

Interaction with other legal frameworks (eg merger control)

None. The Act provides for a separate procedure that does not depend on or affect any other legal framework, in particular merger control rules.

At the same time, in the case of notifications based on the COVID-19 Rules submitted to UOKiK, the authority announced that it will speed up the procedure (and potential clearance) – most likely the same official will conduct both proceedings.

Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.

Company Specific Rules

Blocking is justified for the purpose of:

- ensuring the fulfilment of obligations incumbent on Poland to safeguard its independence and the inviolability of its territories, ensuring freedom and human and civil rights, safety of citizens and protection of the environment;
- preventing social or political actions or events impeding or precluding Poland from performing its obligations under the North Atlantic Treaty or its participation therein;
- preventing actions or social or political events that may disturb Poland's foreign relations; and
- ensuring security and public order in Poland, meeting the necessary needs of the population and protecting their life and health.

COVID-19 Rules

Blocking by UOKiK may be justified in the following situations:

- there exists at least a potential threat to public order, public security, or public health in Poland; or
- the acquisition or achievement of a substantial participation or the acquisition of a dominant position would adversely affect projects and programs of interest to the EU; or
- it is not possible to establish whether the acquirer is from one of the Member States or should be classified as a foreign investor.

In both regimes, the competent authority would block the transaction if:

- the notifying party did not supplement formal defects in the notification or documents or information attached to the notification within the prescribed time limit or the summoned entity did not submit the information or documents as requested by the competent authority, or
- the notifying party did not provide additional written explanations within the time limit set by the competent authority.

If one of above factors for blocking a transaction is met in both regimes, ie Company Specific and COVID-19, but the transaction is an indirect acquisition executed under foreign law, instead of opposing the transaction, UOKiK or the competent minister will disallow the exercise of rights attached to the shares of the target entity (except for the right to sell the shares).

Judicial Review

Please specify timeline, competent courts and standard of judicial review.

Company Specific Rules

In relation to an issued decision, the notifying party may request that the case be reconsidered by the competent minister that issued the decision (ie the Minister of State Assets, Minister of Defence or Minister competent for maritime affairs). The notifying party may also file an appeal with an administrative court.

If the administrative court revokes the competent minister's decision, the 90-day time limit for the issuance of the decision starts to run again from the date on which the final judgment of the administrative court is delivered to the minister.



	<p>COVID-19 Rules The notifying party may file an appeal with an administrative court within 30 days of receiving the decision. If the administrative court revokes UOKiK's decision issued in Phase II or Phase I, the 120-day time limit for the issuance of the decision starts to run again from the date on which the final judgment of the administrative court is delivered to UOKiK.</p>
Publication in Official Gazette or other	<p>The notifying party is not subject to any special publication obligations concerning FDI screening, apart from those resulting from general rules (eg publication in the National Court Register). The decisions in cases analyzed by UOKiK are published on its official website (https://decyzje.uokik.gov.pl/bp/dec_prez.nsf).</p>
Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.	<p>There is already an example of a decision issued based on the recent amendments to the Act by UOKiK in October 2020 (No. DKK-179/2020). The case was resolved in the simplified procedure. According to the decision, H&F Fund with its registered office in the Cayman Islands took over a Polish company active in the financial sector, ie <i>Centrum Rozliczeń Elektronicznych Polskie ePłatności</i>. https://www.uokik.gov.pl/aktualnosci.php?news_id=16839</p>
Stakeholders views on the legal framework	<p>According to the common viewpoint, the Act is far from ideal, in particular due to the multiplicity of references and terminological inaccuracies, which partially result from the rapid pace of parliamentary work. The Act was prepared in less than five months. Moreover, restrictions and obligations resulting from the Act are very broad and burdensome, which may discourage or even prevent investors, both Polish and foreign, from executing relevant transactions.</p> <p>COVID-19 Rules The COVID-19 Rules were also implemented in a speeded-up procedure. Luckily, one of the propositions made during public consultations was included, and therefore investors from OECD countries will not be regarded as foreign entities. The UOKiK has issued special guidelines, but they mainly repeat the contents of the Act and do not provide any additional know-how.</p>
Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.	<p>The amendment to the Act introduced in 2020 implements EU Regulation 2019/452, and in particular establishes a contact point. This should enhance the cooperation between Polish authorities and the equivalent bodies from other European countries. As indicated in EU Regulation 2019/452, establishing contact points should support direct cooperation and the exchange of information between the contact points from different EU countries.</p>



At the same time, full compliance of the provisions of the Act with EU legislation from the beginning has raised certain concerns. The powers given to authorities seem to be too broad and too discretionary when compared to the EU's principles of freedom of establishment and freedom of movement of capital – as well as the proportionality principle. Statutory prerequisites for both granting protection to a given entity, as well as blocking a transaction or prohibiting the exercise of voting rights from the acquired shares, are determined too vaguely – the assessment of whether they are met may be based on political or economic grounds, and not legal.

Other relevant information

Said regulation is equally applicable to all investors regardless of their country of origin, including all Polish investors.

Portugal





Indicate five biggest FDI countries of origin (indicate percentage if available)	<ul style="list-style-type: none">• The Netherlands• Luxembourg• Spain• UK• France Source: <i>Bank of Portugal</i> ¹
Legal framework in force ²	Article 27. ^o -A of Law no. 11/90, of April 5 ("Framework Law on Privatizations"), as amended ³ and Decree-Law no. 138/2014, September 15
Last revision of the legal framework	No changes since enactment of Decree-Law no. 138/2014.
Contextualization of the legal framework (historical or other)	<p>Enacted following various changes made to the Privatizations' legal framework, as a result of the commitments made by the Portuguese authorities to the international creditors⁴ in the context of the Economic and Financial Assistance Programme to the country (implemented from May 2011 onwards until Summer 2014).</p> <p>More precisely, in the context of the program, the Portuguese authorities committed to withdraw any special powers of the state over the economy and abstain from adopting measures capable of restricting the free movement of capital, in parallel with committing to implement a series of privatizations (and the granting of exclusive concessions) in sectors such as energy, communications and airport infrastructure. Notwithstanding, on September 2011 the Parliament introduced several amendments to the government's proposal of law amending the Privatizations' Legal Framework (Law No. 11/90) and introduced Article 27-A. This new provision granted the government a mandate to establish "an exceptional regime for safeguarding strategic assets in sectors fundamental to the national interest, in compliance with the EU legal framework."</p>

1 <https://www.bportugal.pt/>

2 This refers only to national legal framework. In the context of merger control proceedings before the European Commission in the light of article 21 (4) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EU Merger Regulation), the Portuguese authorities "may take appropriate measures to protect legitimate interests other than those taken into consideration by this Regulation and compatible with the general principles and other provisions of EU law." (more details under the EU chapter)

3 Amended by Law No. 50/2011, of September 13

4 The international creditors are the European Commission, the European Central Bank and the International Monetary Fund. See for instance the references to the discussions on this legal framework with the Commission in the latter's 4th to 6th and later on the 11th Review Reports on the Economic Adjustment Program for Portugal, available at: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/which-eu-countries-have-received-assistance/financial-assistance-portugal_en#keydocuments.

5 Coalition formed by the Social Democrat Party and the Christian Democrat Party.

	<p>After long interaction with the international creditors surveilling the implementation of the Assistance Program, in November 2013 the government⁵ submitted to the Parliament a proposal for legislative authorization of the new legal regime in question (accompanied by the draft implementing decree-law). The proposal was approved by a majority and subsequently published as Law No. 9 / 2014, of February 24. On July 31, 2014 the Portuguese Council of Ministers approved the new legal regime (implementing decree-law), which was published on September 15.</p>
<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>Only applicable to acquisitions or influence by legal or natural persons from outside the EEA territory.</p>
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>Includes both indirect and direct acquisitions of control. The concept of control is defined by reference to Law No. 19/2012, of May 8 (Portuguese Competition Act), also including <i>de facto</i> control. The legislation is not clear on whether acquisition of joint control should also be subject to the screening mechanism. However, given that the legal regime expressly refers to the merger control regime, in our view it comprises acquisitions of both sole and joint control.</p>
<p>Scope – sectors covered</p>	<p>Covers the Energy, Transports and Communications sectors as concerns their strategic infrastructures and assets, as well as the provision of essential services.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>Is an ex-post screening mechanism concerning specifically acquisitions of control (see point 7 above). More precisely, the member of the government responsible for the relevant sector may, for means of a reasoned decision, initiate a procedure for the evaluation of operations. In such an event, purchasers must send all relevant information and documents related to the operation to the member of the government responsible for the sector in which the strategic asset in question integrates, after which the Council of Ministers, on proposal of that member of the government, has a within 60 days to exercise its opposition power, otherwise a tacit decision of non-opposition shall be formed. Allows for voluntary prior evaluation requested by the acquiring entity(ies). More precisely, the latter can also previously request the analysis of whether an operation is compatible with the national legislation by presenting a request with all the relevant information to the member of the government responsible by the sector at stake. Possible outcomes:</p> <ul style="list-style-type: none"> • the government may then issue a confirmation that it will not oppose to the acquisition as described in the request, within 30 days; or • presumption of confirmation that the government will not oppose the operation in case the government does not decide to open a formal evaluation procedure after the referred 30 days.

⁵ Coalition formed by the Social Democrat Party and the Christian Democrat Party.

<p>Design - reciprocity?</p>	<p>Decree-Law No. 138/2014 expressly states its compliance with the international rules and obligations binding on the Portuguese state and which stem from international conventions, acts, agreements and decisions of the World Trade Organization (WTO).</p>
<p>Design - procedures and deadlines</p>	<p>Concerning the <i>ex post</i> proceeding, within 30 days from:</p> <ul style="list-style-type: none"> • the conclusion of a legal transaction relating to a transaction which directly or indirectly results in the acquisition of direct or indirect control, by a person or persons from third countries to the EU and the EEA on strategic assets, irrespective of their legal form; or • the date on which such business become generally known, whichever is the latest event, the member of the government responsible for the area in which the strategic asset in question is integrated may initiate an evaluation procedure by means of a reasoned decision, in order to assess the risk of such a transaction for the defense and national security of the country or the security of the country's supply of essential services for the national interest. <p>If such evaluation is initiated, the acquirer must submit to the responsible member of the government all relevant information and documents regarding the transaction.</p> <p>Upon proposal from the member of the government responsible for the area in which the strategic asset in question is integrated, the Council of Ministers will have a period of 60 days to oppose the transaction. The absence of a decision is equivalent to a non-opposition decision.</p> <p>Please note that the government may request, at any moment, any administrative entity to provide information or any actions which the same deems necessary for exercising the competencies provided in the decree-law.</p> <p>The administrative entities adopt all the measures deemed necessary to cooperate in an efficient manner with the member of government responsible for the area where the asset in question belongs to, within the competencies provided by the decree-law, notably through the exchange of information and by undertaking any inquiries, inspections and verifications, when such actions are requested in a duly grounded manner.</p>
<p>Design - transparency and information requirements (filing forms?)</p>	<p>Both as concerns the <i>ex post</i> screening mechanism and the voluntary prior evaluation, it is established that the competent member of the government may set out, by ministerial order, which information and documents must be submitted.</p>
<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>If there is a screening (either voluntary or <i>ex post</i>) of the transaction, the decisional outcomes are either opposition or non-opposition (even tacitly) to the same transaction.</p> <p>If there is an opposition decision, all acts and legal transactions relating to the transaction are deemed null and void, including those relating to the economic exploitation or the exercise of rights over the asset or the entities that control it.</p>

Interaction with other legal frameworks (eg merger control)

The Competition Act⁶ provides for mandatory merger control of concentrations triggering the turnover or market share thresholds provided therein. The Competition Authority has the exclusive competence to scrutinize mergers under the referred Act.⁷
Thus, a given transaction may be subject to Portuguese merger control and the screening of the investment under Decree-Law No. 138/2014 – in separate proceedings.
Decree-Law No. 138/2014 provides that it shall be applied without prejudice to the powers exercised by the awarding authorities in existing concession contracts and to the powers of regulatory authorities or any other public authorities over strategic assets under the scope of the Decree-law. Notwithstanding, there is still no public information on any precedent that would provide relevant guidance in clarifying how this articulation of competencies shall be undertaken.

Design – grounds for blocking, if applicable (such as "public security," "vital interests")
Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.

The **grounds for blocking** are "the real and serious threat to the defense and national security of the country or the security of the country's supply of essential services for the national interest."
Specific criteria are set forth to what "should be considered in the assessment of the real and serious character of such threat," as follows:

- the physical security and integrity of the strategic assets;
- the availability and operability of the strategic assets, as well as their capacity for punctual fulfilment of the obligations, in particular of the public service, that are incumbent upon the persons who control them, under the terms of the law;
- the continuity, regularity and quality of the services of general interest provided by the persons who control the strategic assets; and
- the preservation of confidentiality, imposed by law or public contract, of the data and information obtained in the exercise of its activity by the people who control the strategic assets and of the technological assets necessary for the management of the strategic assets.

Moreover, the decree-law refers to **situations which are susceptible of posing a threat** to the defense and national safety or the safeguard of supply of the country as concerns the provision of fundamental services for national interest. These operations are the ones resulting directly or indirectly from the acquisition of direct or indirect control by a person or persons from third countries (outside the EU) when:

- there are serious indications, based on objective elements, of the existence of links between the person which is acquiring control and third countries which do not recognize or respect the fundamental principles of a democratic state, which represent a risk for the international community as a result of the nature of their alliances or which maintain links to criminal or terrorist organizations or persons linked to such organizations, taking into account the official positions of the EU on these matters, if applicable;

⁶ Law no. 19/2012, of May 8, as amended.

⁷ Without prejudice to what is provided for in Articles 4 and 9 of the EU Merger Regulation.

- the acquirer:
 - in the past has used its position of control over other assets to create serious difficulties to the regular provision of public services essential to the country in which the same were situated or neighboring countries;
 - does not guarantee the main allocation of the assets, as well as its reversal at the end of the corresponding concessions, if they exist, notably taking into account the absence of contractual provisions adequate for such a result; and
 - the operations at stake result in the change of destiny of the strategic assets, when they threaten the permanent availability and operability of the assets for the timely compliance of the public service obligations, in the light of the applicable provisions.

As concerns **WTO rules**, please see above answer to point 10.

As concerns the **degree of discretion of the government**, besides the circumstance that the criteria for assessing the operations are exhaustive and expressly provided for in the decree-law, the decision must be justified in line with the same criteria and "respecting the applicable rules and principles, in particular the principle of proportionality."

See point 16 below for judicial appeals.

Judicial Review
Please specify timeline, competent courts and standard of judicial review.

An opposition decision is open to challenge under the Code of Procedure in the Administrative Courts. Judicial appeal must take place within three months from the notification of the decision to the person acquiring control.

The standard of judicial review is the criteria provided by the applicable Decree-Law.

Publication in Official Gazette or other

No publication is provided for.

Relevant examples of application
If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.

A recent example consists in the launch by China Three Gorges of a general and mandatory tender offer for the acquisition of shares representing the share capital of EDP Renováveis, S.A., a Portuguese Energy Company.⁸

⁸ This information was obtained from the website of the Portuguese Securities Market Commission in the context of the referred announcement and the reference to the conditions precedent and regulatory approvals (<http://web3.cmvm.pt/sdi/emitentes/docs/fsd492459.pdf>).



<p>Stakeholders views on the legal framework</p>	<p>Criticism concerning the legal framework is mostly of a political nature and focused on the timing of enactment of the legal framework. More precisely, before its enactment the Portuguese government undertook the privatization of undertakings active in sectors considered strategic by many, such as energy, airport infrastructure and communications in the context of the Economic and Financial Assistance Programme. Several of the acquirers were from outside the EU. On September 20, 2014 several parliamentarians from the opposition parties decided to initiate parliamentary proceedings to amend said decree-law, so as to extend its scope but did not present a proposal. Consequently such proposal ceased its effects in late October 2015. Until now, the 2014 legal framework remains unchanged and there is no indication that there will be developments in the near future.⁹</p>
<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>In the past, the European Commission acting as counterpart to the Portuguese authorities in the implementation of the measures assumed by the latter in the context the Economic and Financial Assistance Programme, has publicly acknowledged that the Portuguese SFI Regime was compliant with EU rules. Regulation (EU) 2019/452 of the European Parliament and of the Council of March 19, 2019 establishing a framework for the screening of FDI into the Union does not expressly require the national legal frameworks to be amended. Notwithstanding, it may be an incentive for an evaluation of the adequateness of the current legal framework if the political environment changes.</p>
<p>Other relevant information</p>	

⁹ This is without prejudice to the circumstance that currently the Government is composed of members of the Socialist Party with Parliamentary support from the Communist and the *Bloco de Esquerda* parties, which are the three parties having voted against the proposal which became Law no. 9/2014.

Romania





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<p>The five biggest FDI countries in Romania are:</p> <ul style="list-style-type: none">• The Netherlands (23.9%)• Germany (12.7%)• Austria (12.2%)• Italy (9.5%)• Cyprus (6.2%). <p>The percentages were calculated based on the country of residence of the direct shareholder of at least 10% of the share capital of Romanian companies, according to a report prepared by the National Romanian Bank in 2018.</p>
<p>Legal framework in force</p>	<ul style="list-style-type: none">• Law 312/2005 on the acquisition of the right of private property on the land by foreign citizens and stateless persons, as well as by foreign legal persons• Supreme National Defence Council Decision 73 of 2012 on the application of article 46(9) of the Competition Law <p>Please note that a draft emergency ordinance (Draft FDI Ordinance) for the implementation of EU Regulation 2019/452 for the screening of FDI (FDI Regulation) was published on September 15, 2020, for public consultation on the Romanian Competition Council's website. The Draft FDI Ordinance was initially planned to enter into force on October 11, 2020, but it has been delayed. As of December 11, 2020, there are no further developments publicly available in this respect.</p> <p>We have included some further details related to the Draft FDI Ordinance at question 21 below. However, it is very likely that the content of the proposal will be further amended in the following phases of the legislative process.</p>
<p>Last revision of the legal framework</p>	<p>Law 312/2005 on the acquisition of the right of private property on the land by foreign citizens and stateless persons, as well as by foreign legal persons was last amended in 2007.</p> <p>Supreme National Defence Council Decision 73 of 2012 on the application of article 46(9) of the Competition Law has not been amended to date</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>Review of mergers for potential threats to national security</p> <p>Foreign Investment Law 35/1991, the first law for the liberalization of foreign investments in Romania, contained some form of screening for all foreign investments. Foreign investors had to make a request with the Romanian Agency for Development, which had a 30-day period to analyze the creditworthiness of the investor, the field and the way in which the investment was to be made, as well as the amount of capital invested. The 1991 Foreign Investment Law specifically required foreign investments not to affect national security and defense interest and not to harm public order, public health and ethics. The law was repealed in 1997.</p>

Until the amendment of Competition Law in 2011 through Government Emergency Ordinance 75/2010, there was no real form of screening of foreign investments. GEO 75/2010 has introduced a mechanism for the screening of investments which may present a threat to national security. The procedure was further detailed by the Competition Council Merger Control Regulation and by the Supreme National Defence Council Decision 73 of 2012 on the application of article 46(9) of the Competition Law.

Acquisition of land by foreign investors

At present, foreign entities and individuals are allowed to own land in Romania, provided that certain conditions are fulfilled. A preferential regime applies to EU or EEA (European Economic Area) nationals and EU or EEA-based companies which are resident in Romania following Romania's accession to the EU on January 1, 2007. Thus, resident EU or EEA nationals and companies are allowed to purchase land subject to the same conditions as Romanian nationals and companies. However, non-resident EU or EEA nationals and EU or EEA-based companies are allowed to acquire land only for the purpose of establishing a secondary residence or headquarters here and only with effect from January 1, 2012.

EU or EEA nationals and EU or EEA based companies are allowed to acquire agricultural land or forest in Romania as from January 1, 2014.

Non-EU nationals and companies may acquire land in Romania, provided that there is an international treaty between Romania and the relevant state, and that reciprocal arrangements are in place. So far, no such treaties have been concluded by Romania with non-EU/EEA countries.

These restrictions do not apply to the ownership of buildings as opposed to land. Foreigners may also hold certain rights over land (such as the right of "superficies" – the right to own a building and to use the underlying land).

Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI)
Are there any loopholes?

Review of mergers for potential threats to national security

The National Supreme Defence Council can review referred mergers and acquisitions for potential threats to national security after notification from the Romanian Competition Council. There is no express reference to foreign versus national investors, but this is probably one of the aspects to be considered in the authority's assessment.

Acquisition of land by foreign investors

A non-EU citizen, stateless person or foreign legal entity buying property in Romania can only acquire ownership rights over Romanian land under the conditions stipulated by international treaties, on a reciprocity basis. So far, no such treaties have been concluded by Romania with non-EU/EEA countries. On the other hand, a Romanian legal entity business organization, regardless of the nationality of its shareholders, can acquire ownership of Romanian land, including agricultural land, forests and forestry land. Consequently, the shareholders or the partners of a company can acquire land indirectly, no matter what their nationality.

<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>Review of mergers for potential threats to national security Only controlling investments are reviewed. The transactions scrutinized by the Supreme Defence Council are those amounting to an economic concentration, based on the relevant definition in the merger control legislation, irrespective if the economic concentration meets or not the filing thresholds with the Romanian Competition Council.</p> <p>Acquisition of land by foreign investors Only direct acquisitions by foreign entities are prohibited.</p>
<p>Scope – sectors covered</p>	<p>Review of mergers for potential threats to national security Economic concentrations pertaining to certain specific sectors that may affect national security are subject to the review of the Supreme National Defence Council, to assess their compliance from a national safety perspective. The full list of sectors covered is listed in the Supreme National Defense Council’s Decision No. 73 of 2012, and refers to:</p> <ul style="list-style-type: none"> • the security of the citizen and of the communities • border security • energy security • transport security • security of supply systems with vital resources • security of critical infrastructure • security of information systems and communications systems • security of financial, fiscal, banking and insurance activity • security of the production and circulation of armament, ammunition, explosives, toxic substances; • industrial security • protection against disasters • protection of agriculture and the environment • the protection of the privatization operations of state-owned enterprises or of their management <p>Acquisition of land by foreign investors The restriction applies to the acquisition of land in Romania by non-EU entities and individuals.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>We will refer here to the screening mechanism for mergers related to potential threats to national security (since there is no actual screening but straightforward prohibition for the acquisition of land by non-EU investors). In short, the mechanism would involve:</p> <p>a) pre-authorization: transactions pertaining to certain specific sectors that may affect national security may not be implemented before being reviewed by the Supreme Defence Council.</p>



- b) only controlling investments are reviewed: as mentioned, the transactions scrutinized by the Supreme Defence Council are those amounting to an economic concentration, based on the relevant definition in the merger control legislation.
- c) mandatory nature; the review of the transaction by the Supreme Defence Council is mandatory in case of transactions pertaining to the specific sectors that may impact national security

Design – reciprocity?

N/A

Design – procedures and deadlines

Economic concentrations pertaining to certain specific sectors that may affect national security, as defined in the National Security Strategy, are subject to the review of the Supreme National Defence Council, to assess their compliance from a national safety perspective.

The full list of sectors covered is listed in the Supreme National Defence Council Decision No. 73 of 2012, available here. These involve, among others, the security of sectors of energy, IT, critical infrastructure; communications systems, financial, fiscal, banking and insurance. Please see question 8 for the full list.

Mergers subject to review by the Competition Council

Every time the Competition Council receives a merger notification likely to fall under the sectors identified in the above mentioned decision of the Supreme National Defence Council, it must send the following information to the Supreme National Defence Council:

- the implementation method (for example, merger or acquisition)
- the parties and their identification data
- the markets in which the parties are active
- the object of the transaction (companies or assets)

Mergers below the notification threshold but likely to be analyzed from the point of view of national security

When the transaction does not meet the notification thresholds, so that notification to the Competition Council is not required, but the transaction falls into any of the sectors covered by Decision No. 73 of 2012, the party/parties acquiring control shall send a letter to the Competition Council comprising the information mentioned above; the notification to the Supreme National Defence Council is then made by the Competition Council.

Analysis by the Supreme National Defence Council

In case the Supreme National Defence Council informs the Competition Council that the transaction can potentially raise risks for the national security, the Competition Council's analysis is suspended until a final decision from the Supreme National Defence Council. The Competition Council shall inform the notifying party regarding this suspension within seven days as of the communication from the Supreme National Defence Council.

	<p>Should the Supreme National Defence Council issue a decision for prohibiting the transaction, the procedure of the Competition Council regarding the transaction is terminated. The Competition Council must inform the notifying party in this sense within 15 days as of the communication of the decision of the Supreme National Defence Council.</p> <p>Should the Supreme National Defence Council decide that the transaction does not raise risks for the national security, the procedure of the Competition Council resumes and the Competition Council must inform the notifying party in this sense within 15 days as of the communication from the Supreme National Defence Council.</p>
<p>Design – transparency and information requirements (filing forms?)</p>	<p>Please see section on Design - procedures and dealines.</p>
<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>Please see section on Design - procedures and dealines.</p>
<p>Interaction with other legal frameworks (eg merger control)</p>	<p>Please see section on Design - procedures and dealines.</p>
<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>Please see section on Design - procedures and dealines.</p>
<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>Since the above mentioned legislation does not contain any provisions regarding judicial review, the ordinary competent courts would have jurisdiction.</p>
<p>Publication in Official Gazette or other</p>	<p>N/A</p>
<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>No public information available.</p>

Stakeholders views on the legal framework	N/A
Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.	It would need to be assessed whether the screening limited to transactions resulting in a change of control as well as the sectors covered by the Supreme National Defence Council Decision are sufficient for the purpose of the EU Regulation.
Other relevant information	<p>As mentioned at question 3 above, a Draft FDI Ordinance has been published for public consultation on the Romanian Competition Council's website. The Draft FDI Ordinance was initially planned to enter into force on October 11, 2020, but it has been delayed. As of December 11, 2020, there are no further developments publicly available in this respect.</p> <p>The Draft FDI Ordinance puts forward a new approval mechanism as well as additional obligations, conditions and sanctions for foreign investors looking to invest in Romania – very brief points are included below. However, please bear in mind that it is very likely that the Draft FDI Ordinance will be further amended during the legislative process.</p> <p>Filing requirements</p> <p>Under the new FDI regime, transactions with an investment value of more than EUR2 million must be reported to the Romanian Competition Council if the economic activity concerns one of the following sectors:</p> <ul style="list-style-type: none"> • Security of Romania's citizens; borders; energy sector; transport sector; supply systems for vital resources; critical infrastructure; information systems and communications systems; financial, fiscal, banking and insurance activity; industry; production and circulation of weapons, ammunitions, explosives and toxic substances. • Protection against disasters. • Protection of agriculture and environment. • Protection of operations for the privatization of state-owned enterprises or its related management. <p>Other foreign-direct investments can also be subject to examination if national security or public order may be affected.</p> <p>Who will have to notify?</p> <p>Non-EU citizens, non-EU based companies and EU-based companies controlled by non-EU citizens and/or non-EU legal entities that intend to make an investment meeting the filing requirements indicated above in Romania will have to submit an FDI filing.</p> <p>Not only investments triggering an "acquisition of control" will be covered. The new FDI regime will also apply to FDI that provides "access" to information, systems or technologies that may have an impact on national security and public order.</p>



Process

While FDI filings will be submitted to the Romanian Competition Council, the actual screening of the investment will be performed by a dedicated FDI screening commission (*Comisia pentru examinarea investițiilor străine directe*).

The FDI Commission carries out the assessment of the FDI. However, if the FDI Commission identifies major national security concerns during the examination, the approval of the Supreme National Defence Council will also be required.

The FDI Commission will clear the FDI (followed formally by a decision issued by the prime minister to this effect) or it will decide that there is a potential risk and will issue a conditional clearance, prohibition or cancellation decision (followed formally by a decision issued by the government).

In principle, the FDI Commission must finalize its assessment within 45 days from receipt of all information. If an extended assessment is required, the process could be extended by an additional 45 days.

Standstill obligation and fines

The new FDI regime prohibits the implementation of a notifiable investment prior to its approval. Failure to comply with this standstill restriction may be sanctioned with fines ranging from 1% to 5% of the total turnover in the financial year before the transaction. The same sanction applies for providing inaccurate, misleading or incomplete information during the filing process.

Russia





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<p>In 2017 the following countries were the five biggest FDI countries: ¹⁰</p> <ul style="list-style-type: none"> • Cyprus (34%) • United Arab Emirates (25%) • Singapore (9%) • Austria (8%) • Canada (8%)
<p>Legal framework in force</p>	<p>The main rules are established by the following laws:</p> <ul style="list-style-type: none"> • Federal Law No. 160-FZ On Foreign Investments in the Russian Federation dated July 9, 1999 (Foreign Investments Law); • Federal Law No. 57-FZ On the Procedure for Foreign Investments in Business Entities Strategically Important for National Defence and State Security dated April 29, 2008 (Strategic Investments Law).
<p>Last revision of the legal framework</p>	<p>In July 2017, a new rule was introduced to article 6 of the Foreign Investments Law which provides that any transaction involving a foreign investor in relation to any Russian entity may require strategic approval upon the decision of the chairman of the Governmental Commission for Foreign Investments (Governmental Commission). As such, the prime minister of the Russian Federation, who is also the chairman of the Governmental Commission, was granted discretionary power to require, in the interests of national defense and state security, the prior approval of a transaction in relation to any Russian entity (i.e. not just companies that are qualified as strategic).</p> <p>In May 2018, the legal framework was amended by imposing certain restrictions on foreign investors that do not provide information to the regulator on their beneficiaries and controlling persons (Opaque Entity). Such restrictions, inter alia, include a restriction on establishing control over a strategic company, and an obligation to obtain clearance for an acquisition of more than 25% in a strategic company.</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>The special procedure for screening and clearing foreign investments in Russian companies was established in 2008 through adopting the Strategic Investments Law and amending the Foreign Investments Law. Before 2008 there was no special procedure for screening foreign investments; in practice competition law clearance was used for such purposes.</p> <p>The purpose of the FDI screening regime is to ensure national defense and state security.</p>
<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>In general there are no differences based on the country of origin of FDI. Russian citizens with citizenship of another state are considered to be foreign investors. There are no significant loopholes.</p>

¹⁰ <https://fas.gov.ru/documents/622161>



Scope – screening thresholds

Please indicate notably whether it covers solely controlling investments or also portfolio investments.

Clearance could be triggered by the following:

- a transaction which results in the acquisition of control over a strategic company (control could be established by various means inter alia the acquisition of more than 50% of shares of the strategic company; acquisition of a right to appoint the CEO, the majority of Board of Directors, etc.);
- the acquisition of more than 25% of shares of a strategic company that is a user of subsoil plots of federal significance;
- the acquisition of at least 25% of the assets of a strategic company;
- the acquisition at least a 5% stake in a strategic company requires the subsequent notification of the regulator;
- the acquisition of more than 25% of shares in any Russian company or more than 5% in a strategic company that is a user of subsoil plots of federal significance by (i) a foreign state, (ii) an international organization or (iii) an Opaque Entity, or an organization under control of any of the above; and
- an ad hoc resolution of the chairman of the Governmental Commission that the relevant transaction of a foreign investor shall require clearance.

In addition, the acquisition of at least 5% of shares of a strategic company requires the post notification of the regulator after closing the transaction.

Scope – sectors covered

A company is deemed to be a strategic company if it carries out activities in any of the following spheres:

- work which actively affects hydrometeorological and geophysical processes and events;
- nuclear and radioactive facilities, materials and waste; use, engineering and production equipment for nuclear facilities, radioactive sources;
- production, distribution, technical maintenance and services related to encryption (cryptographic) devices;
- production, repair, disposal, trade of weapons, their parts, ammunition and military equipment;
- production and distribution of explosive materials for industrial use;
- activities relating to aircraft safety;
- design, production, repair, testing of aircraft and equipment for aircraft;
- space activities;
- television and radio broadcasting where the footprint includes territories where at least half of the citizens of a particular constituent entity of the Russian Federation reside;
- provision of services by legal entities deemed a natural monopoly;
- dominant position in the Russian communication services market (except for internet access services), in the fixed-line telephone markets of at least five constituent entities, in the fixed-line telephone markets of cities of federal significance or in the provision of services in ports of the Russian Federation;

- production and sale of metals, alloys having specific characteristics, raw materials and materials used in the production of weapons and military equipment;
 - geological exploration of subsoil and/or exploration and extraction of natural resources on subsoil plots of federal significance;
 - extraction (catching) of biological resources in waters;
 - printing activities carried out by a legal entity, if such legal entity's potential output is at least 200 million pages per month;
 - activities as an editorial office, publisher and/or founder of a printed periodical in case of exceed of the stipulating amount;
 - activities on vulnerability evaluations of transportation infrastructure, the protection of transportation infrastructure and certification of transport safety enforcement forces; and
 - performance of activities of an operator of an electronic trading platform.
- The chairman of the Governmental Commission has the power to require that any transaction of any foreign investor in relation to any Russian company (not necessarily a strategic company) should be cleared by the Governmental Commission under the FDI clearance procedures.

Design of FDI Screening Mechanism
Please indicate notably the following:
(a) Pre-authorization vs. ex-post screening of FDI? Other?
(b) Covers solely controlling investments or also portfolio investments?
(c) Mandatory or voluntary nature?

The FDI clearance procedure is mandatory and requires prior approval.
If the transaction has been made without the requisite clearance, such transaction is deemed void.
Generally the FDI clearance procedure covers controlling investments, but, as discussed in more detail in point 7 above, in some cases it also covers the acquisition of a blocking stake (25%) or a minority stake (5%).
In addition, the acquisition of at least 5% of shares of a strategic company requires the post notification of the regulator after closing the transaction.

Design – reciprocity?

The reciprocity principle is not applicable.

Design – procedures and deadlines

The foreign investor (applicant) must file an application to the Federal Antimonopoly Service (FAS) prior to closing the transaction.
FAS must analyze the activities of the strategic company (including the scope of activities, existing licences, access to state secrets, government's defense order, etc) and provide its analysis and materials of the application to the Governmental Commission.
The Governmental Commission will consider the application and may consult with the relevant state authorities.
The reviewing period should not exceed three months, which can be extended by an additional three months.



	Clearance under Foreign Investment Law (related to the acquisition of more than 25% of shares in any Russian company by a foreign investor who is under the control of a foreign state or international organization) would in practice take about four to six weeks.
Design – transparency and information requirements (filing forms?)	There is no special form for making a filing. The application must include an extensive list of information and documents (e.g. transaction documents, information on group entities and beneficiary owners, business plan). All foreign official documents must be notarized legalized/apostilled and translated into Russian.
Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI	Further to reviewing the application, the Governmental Commission can take one of the following decisions: <ul style="list-style-type: none">• granting consent to the transaction;• granting conditional consent to the transaction (such conditions are specified by the Governmental Commission and provided in the agreement between FAS and the foreign investor); and• denying consent to the transaction.
Interaction with other legal frameworks (eg merger control)	FDI screening and merger control are not directly connected. However, FAS is the state body authorized for processing filings under both these clearances.
Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.	There is no list of specific grounds for blocking a transaction. The Governmental Commission may block a transaction based on its own discretion. In addition, if the applicant disagrees with the proposed terms of a conditional approval, this will result in a refusal to grant consent to the transaction.
Judicial Review Please specify timeline, competent courts and standard of judicial review.	The FDI screening procedure does not include a judicial review. The decision of the Governmental Commission or FAS may be challenged in court. Such claim may be filed within three months from the date when the company became aware of a violation of its rights and legitimate interests.
Publication in Official Gazette or other	Any official publication is not required. In practice information on a review of transactions by the Governmental Commission is published on the FAS website and on the website of the government of the Russian Federation.



<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>Based on the information provided by FAS,¹¹ from 2008 to April 27, 2018 516 applications related to transactions involving strategic companies were filed. 229 of them were reviewed by the Governmental Commission and 34 applications are being currently reviewed (the remaining petitions were returned to the applicants because they did not require the prior consent of the Governmental Commission or were withdrawn by the applicants). 216 out of 229 reviewed applications were cleared (63 applications were conditionally cleared), and 13 out of 229 applications were blocked. To the best of our knowledge the decisions of the Governmental Commission were not challenged so far. This means that 66% of applications were unconditionally cleared, 28% of applications were conditionally cleared and 6% of applications were blocked.</p>
<p>Stakeholders views on the legal framework</p>	<p>When developing legislative amendments, FAS consults, inter alia, with business representatives and experts. The Association of European Business is one of the organizations which may articulate its views on the legal framework.</p>
<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>The Russian Federation is not a member of the EU; therefore EU regulation is not applicable. However, when developing amendments to the current regulation, FAS takes into account the regulatory and law enforcement experience of foreign authorities, especially the EU Commission.</p>
<p>Other relevant information</p>	<p>N/A</p>

¹¹ <https://fas.gov.ru/p/presentations/145>

Slovakia



Indicate five biggest FDI countries of origin
(indicate percentage if available)

Statistics from the Slovak National Bank:

2017 FDI inward flows:

- Czech Republic
- Germany
- UK
- Sweden
- Belgium

2017 FDI inward positions

1. Netherlands
2. Czech Republic
3. Austria
4. Germany
5. Luxembourg

2018 FDI inward flows (preliminary data)

- Czech Republic
- UK
- France
- Belgium
- Austria

2018 FDI inward positions (preliminary data)

1. Netherlands
2. Czech Republic
3. Austria
4. Germany
5. Luxembourg

Legal framework in force

Multilateral agreements

ICSID Convention (International Centre for Settlement of Investment Disputes Convention)

MIGA Convention (Multilateral Investment Guarantee Agency Convention)

TRIMs Agreement (Trade-Related Investment Measures Agreement)

National legislation

Act No. 202/1995 Coll., Foreign Exchange Act, as amended (FOREX Act)

EU legislation

Regulation (EU) 2019/452 of the European Parliament and of the Council of March 19, 2019, establishing a framework for the screening of FDI into the Union (FDI Regulation)



<p>Last revision of the legal framework</p>	<p>Multilateral agreements ICSID Convention – entered into force on October 14, 1996 MIGA Convention – last amendment on November 14, 2010 TRIMs Agreement – entered into force in 1995 National legislation FOREX Act – the latest amendment to the FOREX Act is effective as of January 1, 2019 EU legislation FDI Regulation – this regulation applies from October 11, 2020</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>FOREX Act became effective on October 1, 1995, and revoked the previously effective national legislation in the foreign exchange area.</p>
<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>N/A The Slovak Republic currently does not have national legislation regulating FDI screening mechanism. The Ministry of Economy of the Slovak Republic (MoE) has already commenced preparation of such national legislation. The draft legislation is however not accessible to the public at this moment. In addition, FOREX Act regulates certain reporting obligations with respect to the FDI.</p>
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>N/A Please see question 6 above.</p>
<p>Scope – sectors covered</p>	<p>N/A Please see question 6 above.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>N/A Please see question 6 above.</p>
<p>Design – reciprocity?</p>	<p>N/A Please see question 6 above.</p>
<p>Design – procedures and deadlines</p>	<p>N/A Please see question 6 above.</p>



Design – transparency and information requirements (filing forms?)	N/A Please see question 6 above.
Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI	N/A Please see question 6 above.
Interaction with other legal frameworks (eg merger control)	N/A Please see question 6 above.
Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.	N/A Please see question 6 above.
Judicial Review Please specify timeline, competent courts and standard of judicial review.	N/A Please see question 6 above.
Publication in Official Gazette or other	N/A Please see question 6 above.
Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.	N/A Please see question 6 above.
Stakeholders views on the legal framework	As previously mentioned, the Slovak Republic currently does not have national legislation regulating FDI screening mechanism. However, given the trends and developments of the FDI in EU in recent years, the MoE perceives the need to introduce national FDI screening mechanism and has already commenced preparation of such national legislation (please also see question 6 above). Within its ordinary preliminary standpoint to the draft FDI Regulation, which was prepared by MoE on January 12, 2018 (Ordinary Preliminary Standpoint), the Slovak Republic expressed opinion that it shares the goal of the draft FDI Regulation.



Interplay with the future EU regulation
Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.

According to the Ordinary Preliminary Standpoint, no necessary amendments to the existing national legislation were identified in connection with the draft FDI Regulation.
Please also see questions 6 and 19 above and question 21 below.

Other relevant information

In accordance with Article 11 of the FDI Regulation, a contact point for the implementation of the FDI Regulation was established within the MoE.
Establishment of the contact point was approved by the Government of the Slovak Republic on the basis of resolution No. 558 dated September 16, 2020.
For the establishment of the contact point as such, it was not necessary to adopt any new national legislation given the fact the competencies of the contact point including respective obligations and rights follow directly from the FDI Regulation.
For the future, it is envisaged to increase the competencies of the contact point, among others with respect to the planned introduction of the national FDI screening mechanism.



South Africa





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<ul style="list-style-type: none"> • UK • The Netherlands • US • Germany • China
<p>Legal framework in force</p>	<p>N/A</p>
<p>Last revision of the legal framework</p>	<p>N/A</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>The Competition Amendment Act 18 of 2018 (Competition Amendment Act) Act introduces FDI screening on national interest grounds. The Competition Amendments Act was assented to on February 13, 2019, but the sections that introduce FDI screening are not yet in force</p>
<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>The Competition Amendment Act requires the president of South Africa to constitute committee, consisting of cabinet members and other public officials, (Committee) to decide whether the implementation of a transaction that constitutes a merger in terms of the Competition Act 89 of 1998 (Competition Act) may have an adverse effect on the national security interests of South Africa. A foreign acquiring firm which is required to notify the South African Competition Commission of a merger in terms of the Competition Act must, at the same time must file a notice with the Committee if the merger relates to a list of national security interests, as identified by the President of South Africa. The Committee must consider and decide whether the merger affects the national security interests of South Africa and must prohibit, or conditionally or unconditionally approve the merger.</p>
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>An investment by a foreign acquiring firm will require approval by the Committee if it constitutes a notifiable merger in terms of the Competition Act and it relates to a list of national security interests as identified by the president of South Africa.</p> <p>Foreign acquiring firm</p> <ul style="list-style-type: none"> • A foreign acquiring firm is any of the firms listed in (a) to (c) below that are incorporated, established or formed under the laws of a country other than South Africa; or whose place of effective management is outside South Africa: <ol style="list-style-type: none"> a) a firm that will directly or indirectly acquire, or establish direct or indirect control over, the whole or part of the business of another firm; b) a firm that has direct or indirect control over the whole or part of the business of a firm referred to in (a); or c) a firm, the whole or part of whose business is directly or indirectly controlled by a firm in (a) or (b).

- A firm controls another if it:
 - beneficially owns of more than half of the issued share capital of the other;
 - is entitled to vote a majority of the votes that may be cast at a general meeting of the other firm, or has the ability to control the majority of those votes;
 - is able to appoint or to veto the appointment of a majority of the directors of the other firm;
 - is a holding company, and the other firm is a subsidiary of that company in terms of the Companies Act;
 - in the case of a firm that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;
 - in the case of a close corporation, owns the majority of members' interest or controls directly or has the right to control the majority of members' votes in the close corporation; or
 - has the ability to materially influence the policy of the other firm in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in the preceding paragraphs.

Notifiable merger

- An investment that results in a firm acquiring or establishing direct or indirect control over the whole or part of the business of another firm is a notifiable merger if certain prescribed financial thresholds for notifiability are met.

List of national security interests

- The president must identify and publish a list of national security interests and in determining what constitutes national security interests, the president must take into account all relevant factors, including the potential impact of a merger transaction:
 - on South Africa's defense capabilities and interests;
 - the use or transfer of sensitive technology or know-how outside of South Africa;
 - on the security of infrastructure, including processes, systems, facilities, technologies, networks, assets and services essential to the health, safety, security or economic well-being of citizens and the effective functioning of government;
 - on the supply of critical goods or services to citizens, or the supply of goods or services to government;
 - to enable foreign surveillance or espionage, or hinder current or future intelligence or law enforcement operations;
 - on South Africa's international interests, including foreign relationships;
 - to enable or facilitate the activities of illicit actors, such as terrorists, terrorist organizations or organized crime; and
 - on the economic and social stability of South Africa.



<p>Scope – sectors covered</p>	<p>The list of national security interests which will set out the sectors or regions considered to be a national security interest has not been published yet.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>Prior approval is required. Applies only to controlling investments (see discussion of control under question 7 above). Mandatory.</p>
<p>Design – reciprocity?</p>	<p>N/A</p>
<p>Design – procedures and deadlines</p>	<p>A notice must be filed in a prescribed form with the Committee at the same time that the Competition Commission is notified of the merger. Within 60 days after the notice has been filed (or a longer period agreed by the president), the Committee must decide whether the merger may have an adverse effect on national security interests as identified by the president. Within 30 days of such decision, a decision to permit, permit with conditions or approve the merger must be published.</p>
<p>Design – transparency and information requirements (filing forms?)</p>	<p>Notice must be filed in a prescribed form, which has not been published yet.</p>
<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>If the Committee decides that the merger may have an adverse effect on national security interests as identified by the president, the merger may be permitted, permitted with conditions or prohibited.</p>
<p>Interaction with other legal frameworks (eg merger control)</p>	<p>The Competition Commission may not consider a merger if notice to the Committee is required and has not been made. The competition authorities may also not approve a merger if it has been prohibited following a decision by the Committee that it may have an adverse effect on national security interests.</p>
<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>National security interests. See discussion under question 7 above.</p>



Judicial Review Please specify timeline, competent courts and standard of judicial review.	Not specifically provided for in Competition Amendment Act.
Publication in Official Gazette or other	The decision to permit, conditionally permit or prohibit must be published in the Government Gazette.
Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.	None, as the Competition Amendment Act is not yet in force.
Stakeholders views on the legal framework	N/A
Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.	N/A
Other relevant information	Exchange Control Regulations (1961) were made in terms of the Currency and Exchange Act No. 9 of 1933, which regulates the flow of capital in and out of South Africa. Where foreign persons/entities wish to make FDI in South Africa and/or enter into commercial arrangements with South African persons/entities, prior approval is often required from the South African Reserve Bank (or its delegates). These regulations can have a constraining effect on FDI into South Africa (although not the most obvious barrier to FDI).

Spain





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<ul style="list-style-type: none">• Luxembourg (29.5%)• Netherlands (17%)• UK (13.3%)• Germany (11.7%)• France (10.5%) <p>Outside Europe:</p> <ul style="list-style-type: none">• US (2.1%)• Mexico (1.9%)• Hong Kong (1.2%)• Cyprus (1.2%)• Uruguay (1.1%)¹²
<p>Legal framework in force</p>	<p>Royal Decree 664/1999. Spanish Act 19/2003 which regulates capital movements, foreign economic transactions and money laundering, and which has been recently updated in November 2020 by Royal Decree 34/2020. Ministerial Order of May 28, 2001, establishing the applicable proceedings to foreign investments declarations. There is also an updated Code compiling the Spanish legislation applicable to foreign investments. It was updated in January 2021: https://www.boe.es/biblioteca_juridica/codigos/codigo.php?id=147_Codigo_de_Inversiones_Extranjeras_en_Espana&modo=2. With the COVID-19 outbreak, the Spanish government has also published three important Royal Decrees which include important amendments to the Spanish FDI regime: Royal Decree 8/2020, Royal Decree 11/2020 and Royal Decree 34/2020.</p>
<p>Last revision of the legal framework</p>	<p>The Code compiling the Spanish legislation applicable to foreign investments was updated in January 2021. The Ministerial Order was passed in 2001 and has not been amended; and The Spanish Act 19/2003 has been updated in November 2020 as a consequence of the different measures approved by the Spanish government in response to the COVID-19 outbreak.</p>

¹² Source: Ministry of Economy of Spain. Please note that the Spanish Ministry of Economy made these estimates based on the "immediate country" concept, that is to say, the country from where the investment directly enters in Spain, which may not always be the origin of the investment.



<p>Contextualization of the legal framework (historical or other)</p>	<p>Current Spanish legislation is the result of implementing EU legislation in Spain. The first regulation of foreign investments in Spain took place in 1885, when the current Spanish Commercial Code was published. After the entrance of Spain in the EU, Spanish legislative bodies tried to achieve a greater integration with EU regulation in this matter. Plus, the COVID-19 crisis has directly affected the Spanish FDI regime, and as a consequence, it has been updated during the past few months.</p>
<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>Review of investments originated outside Spain.</p>
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>With the last update of the Spanish Act 19/2003, the Spanish government has included new thresholds. In this sense, the Spanish FDI system based in liberalization will be suspended if the investment value is over EUR500 million or if the investment is made in companies listed in Spain. The other threshold established by law is EUR3 million when acquiring Real Estate in Spain or when the participation in foundations or associations is over EUR3 million. Screening covers both, solely controlling investments and portfolio investments. According to Spanish law, foreign investments in Spain can be carried out by several means, including:</p> <ul style="list-style-type: none">• Participation in Spanish companies.• Creation and expansion of branches.• Acquisition of marketable securities representing loans issued by Spanish residents.• Participation in investment funds, registered with the CNMV.• Acquisition of real estate located in Spain whose value is over EUR3 million or independently of its value when it comes from a tax haven.• Creation or participation in foundations, associations or similar entities when the participation is over EUR3 million, or independently of its value when the money comes from a tax haven.



Scope – sectors covered

Every foreign investment in Spain is subject to the screening procedure, independently of the sector where the investment is made.

However, there are sectors that have specific regulations:

- Game
- Television
- Radio
- Air transportation
- Manufacture, distribution and trade in arms and explosives for civilian use
- Minerals and raw materials with a strategic interest
- Private security
- Activities in connection with National Defense
- Banking, financial and insurance sectors

Besides, as a consequence of the last update of the Spanish Act 19/2003 and as a direct consequence of the COVID-19 outbreak, investments in the following sectors will require a prior authorization (therefore the liberalization regime has been suspended):

- Essential infrastructure (whether physical or virtual)
- Essential Technology
- Supply of essential inputs (particularly energy)
- Sectors with easy and direct access to sensitive information (specifically personal data)
- Media

Plus, this last update includes that the Spanish government may suspend the regime of liberalization of foreign direct investment in Spain in those other sectors not established by law, when they may affect public safety, public order and public health.



Design of FDI Screening Mechanism
Please indicate notably the following:
(a) Pre-authorization vs. ex-post screening of FDI? Other?
(b) Covers solely controlling investments or also portfolio investments?
(c) Mandatory or voluntary nature?

With the COVID-19 outbreak the Spanish FDI regime has been modified. And although the general rule is that foreign investments in Spain are liberalized, with the last update of the Spanish Act 19/2003, this liberalization has been suspended in specific situations. These specific situations are further explained in question 15.

Although foreign investments in Spain are liberalized, foreign investors must carry out an *ex post* compulsory declaration.

Foreign investments coming from tax havens will have to be declared before the investment is made, and also once the investment is completed. So investments from tax havens require two declarations (*ex ante* and *ex post*).

Ex ante rule for foreign investments coming from tax havens will not apply when (i) investments are made by means of marketable securities negotiated in the stock market, (ii) when the investments are carried out by means of participation in investments funds registered with the Spanish stock market regulator (CNMV) or (iii) when the investment in a Spanish company is not higher than 50% of the share capital. It also covers portfolio investments.

Design – reciprocity?

Reciprocal Investment Promotion and Protection Agreements are regulated by bilateral treaties that contain measures and clauses designed to protect investments made by investors of each State Party in the territory of the other State Party.

Design – procedures and deadlines

Declarations of foreign investments must be submitted to the Ministry of Economy through the Investments Register. Declaration must be made within one month since the day of the investment.

General Rule: *ex post* declaration of foreign investments by the non-resident holder. When the transaction has been intervened by a Spanish notary, the notary shall send to the Registry information on the transaction.

Declaration is made by the holder of the investment, however there are some specialties: (i) when the investment is made by means of negotiable securities and they are negotiated by companies offering investment services established in Spain, the investments will be declared by the companies offering investment services which negotiated the securities of the investment (ii) when the investment is made by means of negotiable securities not negotiated in secondary markets, but the parties have voluntarily deposited those securities, the depositary company will be in charge of carrying out the declaration (unless a security agency had intervened in the negotiation as per the previous rule) (iii) if the investment is made by means of nominative shares the subject in charge of making the declaration will be the Spanish company obtaining the investment, (iv) investments made in Spanish investment funds will be declared by the fund managers.

Depending on the type of investment, different procedures and forms may apply.

As explained in previous question, investments that come from tax havens must be declared *ex ante* and *ex post*.



Design – transparency and information requirements (filing forms?)

Different filing forms must be completed depending on the type of investment, the forms may require the parties to attach certain documents pertaining to the transaction. Forms can be found at <https://sede.comercio.gob.es/es-ES/procedimientos/ayuda/Paginas/pagAyudaFormulariosInversionesExteriores.aspx>

- A1: Declaration of foreign investment in transferable securities. Monthly overview or annual.
- A2: Declaration of foreign investment in transferable securities. List of monthly operations or annual deposits.
- DP-1: Prior declaration of foreign investment from tax havens in unlisted companies, branches and other forms of investment.
- DP-2: Prior declaration of foreign investment from tax havens in real estate.
- D-1A: Declaration of foreign investment in unlisted companies, branches and subsidiaries" other forms of investment.
- D-1B: Declaration of liquidation of foreign investment in unlisted companies, branches and other forms of investment.
- D-2A: Declaration of foreign investment in immovable property.
- D-2B: Declaration of liquidation of foreign investment in immovable property.
- D-4: Annual report on the development of investment in Spanish companies with foreign equity participation in its capital and branches.

These filing forms should be accompanied by a credential of the non-resident condition of the investor and a credential of meeting the requirements established by the specific regulations in case the investment is made within one of the sectors listed in question 8.

In case of an investment from a tax haven, the filing must be accompanied by proof of prior declaration (*Ex ante* requirement) and a brief memoir describing the main characteristics of the transaction.

Besides, in the following cases investors will have to file a memoir within the first nine months of each calendar year in regard of the investments made:

- When the investment is made in a Spanish branch.
- When the net equity of the company is higher than EUR1,502,530.27 and the participation of the foreign investor is equal to or higher than 10%.
- When the investment is made in a holding company.



Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI

If the investment is not higher than EUR6 million and the foreign investor does not declare *ex post* its investment or the information provided in regard of that investment in its *ex post* declaration is not true, the infringement will be considered a minor infringement and it will imply a sanction which can be equal to a quarter of the total amount of the investment (in any case it cannot be less than EUR3,000).

If the investment is higher than EUR6 million and the foreign investor does not declare *ex post* its investment or the information provided in regard of that investment in its *ex post* declaration is not true, the infringement will be considered serious and it will imply a sanction which can be equal to the half of the total amount of the investment (in any case it cannot be less than EUR6,000), plus a public caution in form of a press release published by the Ministry of Economy.

As previously explained in question 9, foreign investments in Spain are liberalized. However, there are certain situations where this liberalization regime applying to foreign investments may be suspended (Suspension of the liberalization regime applying to foreign investments in Spain is explained in question 15), in case of the liberalization regime suspended, the foreign investor will have to request for an authorization. If the foreign investor does not request this authorization and makes the investment, it will be considered a serious infringement and it will imply a sanction which can be equal to the total amount of the investment (in any case it cannot be less than EUR30,000) plus a public caution in form of a press release published by the Ministry of Economy.

When the investor declares the investment outside the legal period established by law, he will receive a sanction up to EUR300 (and no less than EUR150) if no more than six months have lapsed since the last day the investor had the obligation to make the declaration, and up to EUR600 (no less than EUR300) if more than six months have lapsed since the last day the investor had the obligation to make the declaration.

Very serious infringements prescribe in five years, serious infringements in three years and minor infringements in one year.

Interaction with other legal frameworks (eg merger control)

In general, FDI does not exonerate the parties from meeting other legislative requirements, such as obtaining clearance for their investments from competition authorities (merger control), approvals from stock market regulators or review from other bodies (eg money laundering).

With the last update of the Spanish Act 19/2003, the concept of foreign direct investment has changed. In this sense, rules of Competition law in regard of the meaning of "control" will apply. Specifically article 7.2 of the Spanish Act 15/2007 on Defense of Competition. This article states that control shall result from contracts, rights or any other means which, having regard to the circumstances of fact and law, confer the possibility of exercising decisive influence on a company.

Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.

As previously commented in question 9, foreign investments in Spain are liberalized. However, this liberalization regime may be suspended and the foreign investor instead of making the investment and afterwards declaring it, will have to request an authorization to the administration to be able to make the investment in Spain. In case of making the investment without the necessary authorization the foreign investor may face a sanction as commented in question 13.

A foreign investor therefore may see its liberalization regime suspended when the investment by its nature, form or conditions of execution, may affect or is likely to affect activities related to the exercise of official authority, public policy, public security, public health or national defense.

In these situations, the Spanish Administration will initiate an investigation dossier and will request to the General Director of Commerce and Investments to convene the Board of Foreign Investments to review the dossier and, raise the proposal of suspension to the Cabinet of Ministers for a final decision.

Suspension notification will be published in the State Official Gazette or notified to the stakeholder.

The authorization request must be resolved within six months of its application.

As previously explained in question 9, with the outbreak of the COVID-19 crisis the liberalization regime applied in Spain with regard foreign investments has been suspended in specific situations. Not only for investors coming from outside the EU and the EFTA but also for investors coming from EU Member States and EFTA countries (however the suspension of the liberalization for investments coming from the EU and EFTA is planned only until June 30, 2021 – it is a transitory regime).

The specific situations where the direct foreign investments have been suspended are the following:

- When the investment is intended in companies listed in Spain, or when the investment is intended in unlisted companies if the value of the investment exceeds EUR500 million.
- When the investment is carried out in any of the following sectors: essential infrastructure (whether physical or virtual), essential technology, supply of essential inputs (particularly energy), sectors with easy and direct access to sensitive information (specifically personal data) and media.
- When the foreign investor is directly or indirectly controlled by the government, including public agencies or the armed forces, of a third country, (the control criteria applied is the same one that the one used in Competition Law).
- When the foreign investor has made investments or participated in activities in sectors affecting security, public order, and public health in another country, and in the sectors mentioned in the second paragraph of this answer.
- When there is a serious risk that the foreign investor will carry out criminal or illegal activities affecting public safety, public order or public health in Spain.

	<p>It is important to highlight that with the last update of the Spanish Act 19/2003 and with the introduction of the suspension of the liberalization regime, a new concept of what it is considered as foreign direct investment in Spain has been included. These will be those investments as a result of which the investor will hold a stake equal to or greater than 10% of the listed company's share capital, or when, as a result of the corporate operation, act or legal business, control of the said company is acquired in accordance with the criteria established in Spanish Act 15/2007.</p> <p>As regards the subjective scope, the suspension regime will apply whether the investments described are made by residents of the/outside the EU and EFTA countries other than Spain, or if they were carried out by residents in Spain whose real ownership corresponds to residents of/outside the EU or EFTA (it is understood that such real ownership exists when the latter possess or ultimately controls, directly or indirectly, a percentage of more than 25% of the capital or voting rights of the investor, or when by other means they exercise control, directly or indirectly, over the investor).</p>
<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>Very Serious infringements can be appealed before the Spanish Supreme Court, within two months since the notification of the decision.</p> <p>Serious infringements and minor infringements can be directly appealed to the Spanish High Court within two months since the notification of the decision.</p>
<p>Publication in Official Gazette or other</p>	<p>Suspended investments will be published on the State Official Gazette.</p>
<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>N/A.</p>
<p>Stakeholders views on the legal framework</p>	<p>Most of stakeholders believe that the current legal framework is outdated taking into account financial innovation and the way in which foreign investment transactions are structured.</p> <p>Both the statistical reporting regime and the procedure for suspensions of investments require modernization in order to reduce unnecessary administrative burdens and to liberalize operations which are not justified for authorization.</p>
<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>The transitory regime approved by the Spanish government in response to the COVID-19 crisis and which implies the suspension of the liberalization of certain investments coming from the EU and EFTA, may imply a contradiction with European principles of free movement of capitals and right to establishment. That's why for the moment this suspension is only planned until June 2021.</p>
<p>Other relevant information</p>	<p>N/A.</p>

Sweden





Indicate five biggest FDI countries of origin (indicate percentage if available)	five biggest FDI countries of origin in Sweden are:* 1. The Netherlands (15.2%) 2. UK (14%) 3. Luxemburg (13.4%) 4. Germany (8.9%) 5. Norway (8.5%) * According to data from Statistics Sweden from 2019.
Legal framework in force	Since January 1, 2021, there have been new provisions in the Swedish Protective Security Act (2018:585) with a mandatory screening procedure for transfers of security sensitive activities businesses. In addition, there are sector-specific provisions in the Swedish Electricity Act (1997:857) that require operators to have special permission (a concession) to construct or operate high-voltage electricity lines. When the transfer of such a permission has a foreign connection, the grant decision is made by the government.
Last revision of the legal framework	January 1, 2021.
Contextualization of the legal framework (historical or other)	N/A
Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?	Since January 1, 2021, there have been new provisions in the Swedish Protective Security Act with a mandatory screening procedure for transfers of security sensitive activities businesses. The provisions are mandatory screening provisions and are applicable irrespective of the buyer's nationality and may therefore include a control of foreign investments. The provisions are not sector specific; their applicability depends on the operations of the transferred business. Under the law, operators planning to transfer the whole or any part of their security-sensitive activities must conduct and document (i) a security assessment and (ii) a suitability assessment. The operators are required to consult with the Swedish Security Service (Säkerhetspolisen) or the Swedish Armed Forces (Försvarsmakten) before the transfer. The authorities may decide that a transfer may not be concluded. The legislation is, however, not applicable on transfers of real estate or transfers of shares in public companies (not necessarily listed companies even though listing must be the intention).
Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.	There are no thresholds.



<p>Scope – sectors covered</p>	<p>The provisions are not sector specific; their applicability depends on the operations of the transferred business.</p> <p>The Protective Security Act is applicable when a business' activities or information is of importance for Sweden's national security, which includes both military and civil activities. It is not defined in legislation which activities are covered, but some examples that are given in preparatory works (except for military services etc) are services such as airports, powerplants and information systems for electronic communication. In addition, other services that could be of vital importance to Sweden's national security are sectors such as healthcare, financial services, artificial intelligence, innovations, and food supply, but suppliers of vital services or products to operators who perform security-sensitive activities may also be covered. In the assessment of what activities are covered, a decisive factor is whether a hostile act could lead to damaging consequences on a national level.</p>
<p>Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?</p>	<p>There is a mandatory screening procedure for transfers of security-sensitive activities businesses.</p> <p>Pre-authorization is necessary</p> <p>Operators planning to transfer the whole or any part of their security-sensitive activities must firstly conduct and document (i) a security assessment and (ii) a suitability assessment and thereafter (iii) consult with the Swedish Security Service (Säkerhetspolisen) or the Swedish Armed Forces (Försvarsmakten). The two assessments and the consultation must be completed before the acquisition can be completed.</p> <p>Covers controlling investments as well as portfolio investments</p> <p>There is no threshold to the number of transferred shares and therefore the act is also applicable if the number of transferred shares is low. The legislation is not however applicable on transfer of real estate and transfer of shares in public companies (not necessarily listed companies even though listing must be the intention).</p> <p>If applicable, of mandatory nature</p> <p>If the law is applicable, the assessments and the consultation is mandatory.</p>
<p>Design – reciprocity?</p>	<p>There are no express reciprocity provisions in Sweden.</p>
<p>Design – procedures and deadlines</p>	<p>There are no express deadline provisions except for that both the two assessments and the consultation must be completed before the acquisition can be completed.</p>
<p>Design – transparency and information requirements (filing forms?)</p>	<p>Notice must be filed in a prescribed form which is published on the websites of the respective consultation authority.</p>



Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI	The consultation authority is able to order operators to take measures to fulfil their obligations under the Act and, ultimately, able to decide on a prohibition, ie that a transfer may not be concluded. If activities or property are sold in violation of the prohibition, the transfer will be void.
Interaction with other legal frameworks (eg merger control)	N/A
Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.	Security-sensitive activities are activities that are of importance to Sweden's security or are covered by an international protective security commitment that is binding for Sweden. See discussion under question 8 above.
Judicial Review Please specify timeline, competent courts and standard of judicial review.	Decisions on measures may be appealed to the Administrative Court in Stockholm. Decisions on prohibition may be appealed to the government.
Publication in Official Gazette or other	N/A
Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.	N/A
Stakeholders views on the legal framework	N/A
Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.	N/A
Other relevant information	N/A

UK





<p>Indicate five biggest FDI countries of origin (indicate percentage if available)</p>	<p>For 2018:</p> <ul style="list-style-type: none">• US (80.1%)• UK offshore islands* (25%)• Canada (9.3%)• Spain (7.7%)• Germany (6.3%)¹ <p>* <i>Isle of Man and Channel Islands</i></p>
<p>Legal framework in force</p>	<p>The UK has passed its National Security & Investment Act (“NS&I Act”) on April 29, 2021 which when it comes into force (sometime at the end of 2021) will introduce an entirely new mandatory regime. The Act will also have retroactive effect in that it gives the Secretary of State the discretion to call in any transactions which closed after November 12, 2020 for up to five years.</p> <p>Until the NS&I Act comes into force, there is no mandatory clearance regime regulating foreign inward investments, but it is incorporated as part of the UK merger control regime and there are a number of ways in which the UK Government can intervene in and regulate such investments. The current regime is set out below which will continue to apply to Public Interest cases (media and financial stability), but see further the mandatory regime which will apply to national security which is anticipated for Q4 2021.</p> <p>(1) The Enterprise Act 2002 (The EA).²</p> <p>Under the EA, the UK government can intervene in the following situations:</p> <p>Public interest cases</p> <p>Firstly, when: (a) a transaction constitutes a relevant merger situation (see below); and (b) the merger raises at least one of four specific public interest issues (namely, national security, financial stability, media plurality or the UK’s ability to combat a public health emergency). Note that:</p> <ul style="list-style-type: none">• a relevant merger situation occurs when: (a) two or more enterprises cease to be distinct (see further the definition of control in the response to question 7 below); and (b) the merger meets either the turnover test (see below) or the share of supply test (see below);• the turnover test requires that the UK turnover associated with the enterprise which is being acquired exceeds GBP70 million, unless the merger relates to certain sectors impacting national security (namely, military or dual-use goods which are subject to export control, quantum technology or computing processing units),³ in which case the monetary threshold is reduced to GBP1 million;

1 Report available from: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8534>

2 <https://www.legislation.gov.uk/ukpga/2002/40/contents>

3 The UK government has published a National Security and Investment Bill on November 11, 2020, which proposes a mandatory regime, with no thresholds and 17 Key sensitive sectors. It is proposing to expand the list of sectors to which the lower national security merger control thresholds apply, to include the developing, producing or research into: (1) artificial intelligence, (2) cryptographic authentication technology and (3) advanced materials. The amendment will enter into force once approved by Parliament through secondary legislation, which is expected to take place in 2020.

- the share of supply test requires that the merger creates or increases a share of supply of 25% of goods or services of any description, unless the merger relates to certain sectors impacting national security (namely, military or dual-use goods which are subject to export control, quantum technology or computing processing units, artificial intelligence, cryptographic authentication technology and advanced materials),⁴ in which case the share of supply test can be satisfied by the target alone (ie there is no need for an increment in market shares).

Special public interest cases

Secondly, the government can intervene on the same specified public interest grounds (namely, national security, financial stability, media plurality or public health emergencies) in cases involving the following categories of businesses: (a) government contractors who hold or receive confidential defense-related information; and (b) certain newspaper and broadcasting businesses, in any transaction which meets all the requirements for a relevant merger situation other than the turnover test or share of supply test.

European intervention notice

Post Brexit (December 31, 2020) the UK can no longer intervene in EU mergers that might give rise to a UK legitimate interest.

(2) Additional avenues of control

In addition to the avenues under the Act, there are limited number of additional ways in which the UK government can intervene in certain FDI matters, including:

- Under the Industry Act 1975, the UK Secretary of State can prevent acquisitions of "important manufacturing undertakings" by non-UK entities where it appears to the Secretary of State that the change of control would be contrary to the interests of the UK (although note that this predates the Act, under which all recent cases have been dealt with); and
- Following the privatization of certain companies, the government retained certain special shares which in some cases give the government particular rights over the company (eg that no one shareholder can hold more than a stated percentage of the company's equity without the prior consent of the holder of the special shares ie the government).

⁴ See footnote 3, above.



<p>Last revision of the legal framework</p>	<p>June 2018, through: (a) the Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018;⁵ and (b) the Enterprise Act 2002 (Turnover Test) (Amendment) Order 2018,⁶ which both altered the share of supply or turnover tests to include the national security provisions (see above). On April 29, 2021 the Government adopted a new National Security and Investment Act which will replace the current voluntary regime with an entirely new mandatory regime.</p>
<p>Contextualization of the legal framework (historical or other)</p>	<p>The Act was implemented to establish and provide for the functions of the UK competition authorities and specialist courts, to make provision about mergers and market structures and conduct, to create an offense for undertakings entering into certain anti-competitive agreements, to provide for the disqualification of directors of companies engaging in certain anti-competitive practices and to make other provisions about competition law. The NS&I Act introduces a new regime divorced from the merger control one, whereby a mandatory pre-merger notification will need to be made to BEIS.</p>
<p>Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?</p>	<p>Review of extra-UK FDI. The rules are as set out above, there is no distinction between investment that is from another EEA Member State or ex-EEA. Under the new NS&I Act no distinction is made as to the origin of the investment or Acquirer.</p>
<p>Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.</p>	<p>A review must be strictly in compliance with the thresholds and requirements set out in response to question 3. Notably, in relation to the EA, a relevant merger situation in the UK (see above) requires that two or more enterprises cease to be distinct. This requires that they are brought under common ownership or control. Control can comprise:</p> <ul style="list-style-type: none">• legal control – which usually arises where one entity owns more than 50% of the voting shares in the target;• de facto control – which may arise where an entity has the ability to control a company's policy (eg a sub-50% shareholder might have de facto control if the voting record of other shareholders is such that the sub-50% shareholder often control the outcome of votes or where it has veto rights over key decisions); or• material influence – which may arise at low shareholdings where the acquirer has the ability to materially influence the behavior of the target (eg if the shareholder have veto rights of strategic decisions such as the budget or the business plan – but can also be found to exist if an industry player has a 10% or more shareholding and a board position) <p>The new NS&I Act includes as "Trigger Event" (i) the acquisition of any controlling or material influence shareholding (can be as low as 15%), or (ii) the acquisition of key assets, in one of the 17 listed Sensitive Sectors.</p>

5 <https://www.legislation.gov.uk/uksi/2018/578/contents/made>

6 <https://www.legislation.gov.uk/uksi/2018/593/contents/made>



Scope – sectors covered	<p>Primarily covers the defense, finance, media and health sectors, though following the recent amendments, any businesses involved in the manufacture of military or dual-use goods, quantum technology or computing processing units would also clearly be covered.⁷</p> <p>Once the NSIB is passed, Public Interest transactions will continue to be subject to the EA, but all national security transactions will be subject to the new regime.</p> <p>The NS&I act lists 17 sensitive sectors: Advanced Materials, Advanced Robotics, Artificial Intelligence, Civil Nuclear, Communications, Computing Hardware, Critical Suppliers to Government, Critical Suppliers to Emergency Services, Cryptographic Authentication, Data Infrastructure, Defense, Energy, Engineering Biology, Military and Dual use, Quantum Technologies, Satellite and Space Technologies, Transport.⁸</p>
Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?	<p>A) Due to the voluntary nature of UK merger control, the review can be either pre- or post-transaction. NB voluntary in this context means that parties to a qualifying transaction must decide whether to notify it. The regulator can still intervene and investigate transaction on its own initiative even if the transaction has not been notified (for up to four months following completion or when material facts of the transaction became public, whichever is later).</p> <p>B) See the response to question 7.</p> <p>C) Voluntary – the government must actively elect to intervene (and can only do so when the transaction satisfies the relevant requirements).</p> <p>When the NS&I Act comes into force (anticipated Q4 2021), notification of qualifying transactions will be subject to mandatory notification and failure to notify would make the transaction legally void.</p> <p>Furthermore once the NS&I Act comes into force the Secretary of State has the retrospective power to call in transactions closed after November 12, 2020, for five years from closing.</p>
Design – reciprocity?	N/A
Design – procedures and deadlines	<p>Public interest cases</p> <p>The Secretary of State (SoS) may issue a public interest intervention notice to the Competition and Markets Authority (CMA) if they believe that one or more public interest considerations (see above) apply to the consideration of a relevant merger situation in the UK.</p> <p>In Phase 1, which lasts for 40 working days from the date the CMA receives a complete merger notice or equivalent information, the CMA will consider and will seek third-party views on competition and public interest issues. Following that review, it will report to the SoS on jurisdictional and competition issues. The CMA's findings on jurisdictional issues (ie whether a "relevant merger situation" has arisen) and competition issues are binding on the SoS. The CMA will also prepare a summary for the SoS of any representations it has received on public interest matters.</p>

⁷ See footnote 15, above.

⁸ The government issued a consultation on the 17 sectors to be considered sensitive and their definition. The consultation closed on January 6, 2021



The SoS will then consider whether to make a Phase 2 reference, which it can do irrespective of whether the CMA has found competition issues or not.
If the SoS concludes that there are no public interests concerns, the matter proceeds as a normal merger and the CMA will analyze the potential competition issues.
If the SoS does make a Phase 2 reference, the CMA will review the transaction and report to the SoS within 24 weeks (subject to extensions in certain circumstances) in order that the SoS can make a final decision on the public interest test and any required remedial steps. The SoS has 30 days from the receipt of the CMA's report to make a decision. As mentioned above, the CMA's finding on competition law issues are binding on the SoS, but the SoS must decide how to proceed on public interest issues.

Special public interest cases

Principally the same as in public interest cases except that the CMA does not also consider the competition issues. Because of this, the typical merger review timetable does not apply, and the CMA will prepare its Phase 1 report within a time period set by the SoS.

National Security Cases

Under the new NS&I Act, parties must notify and once the notification is accepted as complete, there will be a 30-day review period, after which it will be deemed cleared or called in for an in-depth review as to the national security concerns by the SoS.

If a transaction is called- in the interim, measures can be imposed while the further review is carried out. At the end of the review remedies such as ringfencing of information can be imposed, or the transaction prohibited.

Design – transparency and information requirements (filing forms?)

The parties to the transaction would be required to provide all information reasonably required by the CMA for its investigation, including at a minimum the information required in the CMA's template Merger Notice.⁹ The CMA will typically also issue one or more requests for further information during its assessment of a merger.

Under the NS&I Act, further secondary legislation is awaited as to the notification requirements and form. Following notification BEIS will review and then confirm the notification is complete and the 30-day period starts or request additional information.

⁹ <https://www.gov.uk/government/publications/mergers-forms-and-fee-information>



<p>Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI</p>	<p>Ultimately, a transaction can be cleared in its entirety, cleared subject to undertakings (for example, divestments or ring fencing provisions), prohibited. If prohibited (or, in some cases, if cleared subject to undertakings) the CMA can order that the transaction, or part thereof, is unwound if it has already completed. A recent example of an unwinding order is provided by the Tobii AB / Smartbox merger, where the CMA ordered the parties to unwind certain reseller agreements between the parties following its investigation.</p> <p>Under the new national security regime, if a transaction is called -in any range of remedies can be imposed, including interim measures, final remedies and a prohibition.</p>
<p>Interaction with other legal frameworks (eg merger control)</p>	<p>Currently the government's control over inward FDI is strongly interlinked with the merger control under the EA, but a "public interest test" is applied instead of a "substantially lessening of competition" test. See the above responses.</p> <p>Once the NS&I Act comes into force the national security regime will be entirely separate from the merger control regime.</p>
<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>Under the EA: Public interest grounds, namely national security, financial stability, media plurality or public health emergencies. These are not based on WTO definitions and the CMA and SoS have a degree of discretion in interpreting the various grounds, but that discretion is subject to the requirement that the decision must be "reasonable" as that term is understood and interpreted in judicial review case law (see question 16 below).</p> <p>Under the NS&I Act, it is only national security interests that are relevant.</p>
<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>The Act provides for the review of CMA and/or SoS decisions by the Competition Appeal Tribunal (CAT). Any such application for review by the CAT must be made within four weeks of the date on which the applicant was notified of the disputed decision or of the date of publication of the decision, whichever is sooner. The CAT typically endeavors to deal with appeals within three weeks of the CMA's final report. The CAT will apply the same standards as those which would be applied by the Administrative Courts on an application for judicial review. With permission from the CAT, a further appeal on a point of law can be made to the Court of Appeal.</p> <p>Under the NS&I Act, decisions of the Secretary of State are subject to judicial appeal.</p>
<p>Publication in Official Gazette or other</p>	<p>Under the EA, reasoned decisions are publicized on the CMA's website¹⁰ in full (subject to redactions for confidential information), while the SoS decision will be published on BEIS website. OFCOM's report on media plurality will be published on its website.</p> <p>Under the NS&I Act, decisions will be published on the BEIS website</p>

¹⁰ <https://www.gov.uk/cma-cases>



<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>Public interest cases BSkyB/ITV (re media plurality, Final report in 2007, ultimately settled by undertakings in lieu of a Phase 2 reference), Lloyds TSB/HBOS (financial security, Final report in 2008, cleared Phase 1 reference), Global Radio Holdings Ltd/GMG Radio Holdings Ltd (Final report in 2012, no reference to Phase 2 on media plurality grounds), 20th Century Fox/Sky (Final report in 2018, European Intervention Notice, referred for a Phase 2 investigation on media plurality grounds and divestment remedies imposed), Advent/Cobham (European Intervention Notice, re national security, settled in 2019 by undertakings in lieu of a reference), Gardner Aerospace/Impcross (re national security, 2019, SoS indicated he was minded to refer for in-depth to Phase 2 inquiry, Gardner entered into undertakings as part of it abandoning the transaction) and Mettis Aerospace/Aerostar (national security, subject to a Public Interest Intervention Notice and pre-emptive order, transaction abandoned, 2020).</p> <p>Special public interest cases Insys Group Ltd/Lockheed Martin UK Ltd (settled in 2005 by undertakings in lieu of a reference) and Atlas Elektronik UK Ltd/QinetiQ (also settled, in 2009, by undertakings in lieu of a reference).</p>
<p>Stakeholders views on the legal framework</p>	<p>Typically, we have seen a balanced approach to screening FDI, especially in light of the amendments to the EA, where the SoS has shown a willingness to permit transactions where it has initially expressed concerns if the parties offer suitable remedies to address such concerns (eg ensuring that confidential information with national security implications are appropriately ring-fenced).</p>
<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>Following BREXIT (December 31, 2021), the UK Government merely has a general agreement to cooperate with the Commission on competition matters under the Trade and Cooperation Agreement. A specific Cooperation agreement relating to competition is anticipated.</p>
<p>Other relevant information</p>	<p>N/A</p>

Ukraine





Indicate five biggest FDI countries of origin (indicate percentage if available)	According to the State Statistics Service of Ukraine (as of October 1, 2020): <ul style="list-style-type: none">• Cyprus (31.1%)• Netherlands (20.2%)• UK (6.1%)• Switzerland (6%)• Germany (4.6%)
Legal framework in force	<ul style="list-style-type: none">• Law of Ukraine On Investment Activity dated September 18, 1991• Law of Ukraine On the Regime of Foreign Investment dated March 19, 1996• Commercial Code of Ukraine dated January 16, 2003• Law of Ukraine On State Support of Investment Projects with Significant Investments into Ukraine dated December 17, 2020
Last revision of the legal framework	<ul style="list-style-type: none">• Law of Ukraine On Investment Activity last revised on December 17, 2020• Law of Ukraine On the Regime of Foreign Investment last revised on December 17, 2020• Law of Ukraine On State Support of Investment Projects with Significant Investments into Ukraine adopted on December 17, 2020
Contextualization of the legal framework (historical or other)	<p>Before June 25, 2016, it was mandatory to register FDI with the Ukrainian government regardless of FDI amount and sector. Such registration was intended for information purposes and the only ground to reject FDI registration was noncompliance with the registration procedure. Starting from June 25, 2016, all FDIs are equally entitled to the privileges and guarantees provided for by the Law of Ukraine "On the Regime of Foreign Investment" such as protection against changes in legislation, protection against nationalization, guarantee of repatriation of profit etc.</p> <p>Also, from the end of 2019 the Ministry of Economy has been developing several versions of the draft law introducing FDI control mechanisms in Ukraine. On February 3, 2021, the draft Law of Ukraine On performance of foreign investments into enterprises of strategic importance to the national security of Ukraine was submitted to the Ukrainian parliament. The draft law provides that all foreign investors desiring to invest into one of the 38 strategic sectors envisaged by the draft shall undergo an assessment of their planned investments and shall obtain the relevant approval from state authorities. So far, the draft law is pending consideration by the Ukrainian parliament.</p> <p>Finally, with the adoption of the Law of Ukraine On State Support of Investment Projects with Significant Investments into Ukraine, which entered into force on February 13, 2021, both foreign and domestic investments which qualify as "significant" may be granted certain privileges from the state, such as exemption from taxes.</p>



Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI) Are there any loopholes?	N/A
Scope – screening thresholds Please indicate notably whether it covers solely controlling investments or also portfolio investments.	N/A
Scope – sectors covered	N/A
Design of FDI Screening Mechanism Please indicate notably the following: (a) Pre-authorization vs. ex-post screening of FDI? Other? (b) Covers solely controlling investments or also portfolio investments? (c) Mandatory or voluntary nature?	N/A
Design – reciprocity?	N/A
Design – procedures and deadlines	N/A
Design – transparency and information requirements (filing forms?)	N/A
Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI	N/A

<p>Interaction with other legal frameworks (eg merger control)</p>	<p>Under Law of Ukraine On Protection of Economic Competition, the following actions are considered mergers and require merger clearance:</p> <ul style="list-style-type: none"> • the merger of two or more companies into one company or the takeover of one or more companies to another company; • the acquisition of direct or indirect control by one or more companies over another company or companies as determined by a law; • incorporation of a company (joint venture) by two or more companies; and • direct or indirect acquisition of shares by one company (either by ownership or management) in another company, resulting in achieving or exceeding 25% or 50% voting rights in the highest governing body of both companies. <p>The definition of a merger subject to control in Ukraine generally corresponds with the definition in the EU merger regulation. Therefore, if a transaction is classified as a merger or "concentration" according to the EU merger regulation, it is likely that it will be treated as a merger in Ukraine as well.</p> <p>Merger control is applicable if the transaction exceeds the following thresholds:</p> <ul style="list-style-type: none"> • at least two parties to a concentration are active in Ukraine; and • combined worldwide turnover or value of assets of all parties exceeds EUR30 million, and • turnover or value of assets in Ukraine of each of at least two parties exceeds EUR4 million. • Target or a founder has operations in Ukraine; and • target in an acquisition, seller of assets or one of the joint venture founders have turnover or value of assets in Ukraine exceeding EUR8 million, and • turnover of at least one other party exceeds EUR150 million worldwide.
<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>N/A</p>
<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>N/A</p>
<p>Publication in Official Gazette or other</p>	<p>N/A</p>



<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	N/A
<p>Stakeholders views on the legal framework</p>	N/A
<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>Ukraine is not a member of the EU. In 2014, Ukraine and the EU signed an Association Agreement which came into force in 2017. The Association Agreement, among other things, stipulates that Ukraine shall take steps to harmonize and approximate its national legislation with the EU regulation in certain fields such as customs, sea transport, public procurement, competition etc. However, the Association Agreement is silent about bringing FDI legal framework in line with the EU regulation (apparently because in the EU itself FDI screening is a decentralized process falling within the competence of the Member States). Given the political course of Ukraine, it is likely that if Ukraine introduces FDI screening mechanism, it will be based on the EU legal framework in material respects.</p>
<p>Other relevant information</p>	<p>Ukrainian companies shall submit standard form reports on FDI they received to the State Statistics Service of Ukraine on a quarterly and annual basis. Such reports are used for data collection purpose, rather than for screening and/or blocking FDI.</p> <p>There are certain restrictions applicable to FDI in Ukraine. For example, foreign investors are not allowed to invest in agricultural lands. Investors originating from the offshore zones designated as such by the Ukrainian government (eg VI, Belize) or from Russia shall not invest in Ukrainian mass media.</p> <p>Following Russian aggression in the East of Ukraine and Crimea, the National Security Council of Ukraine (with the approval of the President of Ukraine) imposed sanctions on multiple companies and individuals according to the Law of Ukraine "On Sanctions" in order to ensure the protection of national interest and rights of Ukrainian citizens. These sanctions include freezing of assets, prohibition of commercial operation in Ukraine, prohibition of settlements, prohibition of capital outflows out of Ukraine, prohibition of participation in privatization etc.</p> <p>Also, Ukrainian law provides that foreign investors may enter into the joint investment activity agreements without the incorporation of legal entity. However, it is required to register such agreements with the Ministry for Development of Economy, Trade and Agriculture of Ukraine (Ministry of Economy). Such registration used to allow investors to receive certain customs duties exemptions when importing goods in Ukraine. However, since the Ukrainian customs legislation was changed in 2012, this requirement to register the agreements became inexpedient formality, which contradicts Ukrainian legislation. Therefore, in November 2019 the Ukrainian government proposed to abolish the requirement to register such joint investment activity agreement and submitted a draft law to the Ukrainian parliament.</p>



US





Indicate five biggest FDI countries of origin (indicate percentage if available)	CFIUS reports that from 2017 through 2019 the following are the five biggest FDI countries of origin: <ul style="list-style-type: none">• China (20.1%)• Japan (13.9%)• Canada (10.6%)• France (6.9%)• UK (5.2%)
Legal framework in force	The Defense Production Act of 1950 (the DPA) as amended by the Foreign Investment Risk Review Modernization Act (FIRRMA) signed into law in August 2018, and the implementing regulations contained in 31 C.F.R. Parts 800 -802. The regulatory body charged with enforcing the DPA, as amended, is the Committee on Foreign Investment in the US (CFIUS).
Last revision of the legal framework	FIRRMA was largely implemented on February 13, 2020, with new regulations in 31 CFR Parts 800 and 802. On April 29, 2020, CFIUS issued an interim final rule implementing filing fees for CFIUS notices filed on or after May 1, 2020. On September 15, 2020, CFIUS issued a final rule that modified the mandatory filing requirements for transaction that had not yet entered into a definitive agreement as of October 15, 2020.
Contextualization of the legal framework (historical or other)	<p>FIRRMA substantially revised and expanded CFIUS's jurisdiction to review investments into the US, including US businesses, joint ventures and real estate. In addition to creating mandatory filing requirements for certain transactions, FIRRMA established a limited carve-out for investment funds and created a limited "excepted investor" framework to exclude from review certain investments from designated allied countries.</p> <p>CFIUS remains focused on national security concerns posed by foreign access to US critical technology, sensitive infrastructure and sensitive personal data, in addition to other traditional national security risk areas. Investments of this nature from China and Russia continue to receive increased scrutiny by CFIUS, but CFIUS review – and the mandatory filing regulations – are not geographically limited.</p> <p>Debate persists over the effectiveness of CFIUS in preventing foreign access to US critical technology, particularly by China. During the negotiations and passage of FIRRMA, several members of Congress advocated for further expanding CFIUS's jurisdiction to review outbound transfers of technology. Review of outbound transfers was ultimately left to US export controls and the creation of the "emerging and foundational" technologies identification and control in the Export Control Reform Act, passed with FIRRMA. US export controls has since identified several "emerging" technologies for control, but progress to close perceived gaps in protection against unwanted technology transfer continues.</p>



Scope – Screening Mechanism – origin of FDI (review of intra- or extra-EU FDI)
Are there any loopholes?

CFIUS remains focused on national security concerns posed by foreign access to US critical technology, sensitive infrastructure and sensitive personal data, in addition to other traditional national security risk areas. Investments of this nature from China and Russia continue to receive increased scrutiny by CFIUS, but CFIUS review – and the mandatory filing regulations – are not geographically limited. Debate persists over the effectiveness of CFIUS in preventing foreign access to US critical technology, particularly by China. During the negotiations and passage of FIRRMA, several members of Congress advocated for further expanding CFIUS's jurisdiction to review outbound transfers of technology. Review of outbound transfers was ultimately left to US export controls and the creation of the "emerging and foundational" technologies identification and control in the Export Control Reform Act, passed with FIRRMA. US export controls has since identified several "emerging" technologies for control, but progress to close perceived gaps in protection against unwanted technology transfer continues. CFIUS has jurisdiction to review investments by a "foreign person" into US business and real estate regardless of domicile or nationality. A "foreign person" includes any foreign national, foreign government or foreign entity. A "foreign entity" is one that is organized under the laws of a foreign state and either has its principle place of business outside the US or its equity securities are primarily traded on a foreign exchange. However, a foreign entity that is ultimately majority owned by US nationals is not considered a foreign entity. To determine whether an investor is a "foreign person," CFIUS will review the entire ownership structure, including all individual beneficial owners with 5% or greater direct or indirect interest in the investor. CFIUS also reviews the context and informal relationships between parties, including side agreements, affiliations, and common involved individuals to assess both foreign person status and national security risks.

Scope – screening thresholds
Please indicate notably whether it covers solely controlling investments or also portfolio investments.

CFIUS has authority to review "covered control transactions," ie transactions that could result in foreign "control" of a US business; "covered investments," ie non-controlling investments in certain types of US businesses; and certain real estate transactions. A "US business" is broadly defined to include any entity engaged in interstate commerce in the US and may include assets that are sufficient to constitute a "business" even if not a registered entity. Thus, transaction structured as an asset purchase or the formation of a joint venture involving a US business may be subject to CFIUS review. Foreign "control" over a US business is broadly defined as the following:
The power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, whether formal or informal, to act in concert, or other means, to determine, direct or decide important matters affecting an entity.

Although assessing whether a foreign investor has "control" of a US business is a fact-specific analysis, CFIUS has traditionally found "control" where the foreign investor obtains greater than 10% voting equity, or less than 10% voting equity with material control rights, such as board representation. Since the implementation of FIRRMA, CFIUS also has authority to review non-controlling investments in certain types of US businesses, known as "TID US businesses," which include US businesses that (i) produce or engage with "critical technologies;" (ii) own, operate, or provide support services to "critical infrastructure;" or (iii) collect or maintain "sensitive personal data" on US citizens. To be subject to CFIUS review, a noncontrolling transaction must afford a foreign person with one of the following rights:

- access to material non-public technical information of the US business;
- membership, observer, or nomination rights on the board of directors; or
- any involvement in substantive decision-making (other than through voting shares).

As codified in 31 C.F.R. Part 802 (the CFIUS provisions specific to real estate transactions), CFIUS now has jurisdiction to review purchases, leases and concessions of real estate by foreign persons, irrespective of whether such transactions involve a US business. CFIUS's expanded authority to review real estate transactions is limited to those transactions involving property near sensitive US locations, such as airports, maritime ports, and military installations, and that afford the foreign investor with certain rights related to the property.

There is no minimum value threshold for transactions subject to CFIUS jurisdiction.

Scope – sectors covered

CFIUS's authority to review – and its interest in transactions – is not limited to any specific sectors. CFIUS has identified national security concerns in many sectors that – at first glance – do not appear directly related to US national security or are otherwise sensitive. In addition to the traditional national security sectors – aerospace and defense, energy, cybersecurity, critical infrastructure, and semiconductors – CFIUS has demonstrated a focus in several other areas. For example, CFIUS has focused recently on the following sectors:

- Telecommunications
- Agriculture
- Biotechnology
- Critical technology (eg artificial intelligence; big data analytics, advanced materials, PNT, sensors and lasers, etc)
- Insurance
- Semiconductors
- Financial services
- Transportation
- Real estate

- US government contractors/suppliers
 - Genetic information
 - Gene editing research and development
- CFIUS also has particular interest in foreign state-owned (direct or indirect) enterprise investments in US businesses.

Design of FDI Screening Mechanism

Please indicate notably the following:

- (a) Pre-authorization vs. ex-post screening of FDI? Other?
- (b) Covers solely controlling investments or also portfolio investments?
- (c) Mandatory or voluntary nature?

Generally

CFIUS review is largely a voluntary process and, unless mandatory (as described below), it can occur pre- or post-closing. In most circumstances where CFIUS applies and the parties decide to file voluntarily, it is prudent to file pre-closing and have CFIUS approval as a condition to closing.

CFIUS has authority to review completed transactions that it has not already reviewed ("non-notified transactions") indefinitely. Thus, a decision not to notify CFIUS of a transaction subject to its jurisdiction may result in ongoing CFIUS risk after closing, including the possibility that CFIUS will require the parties to file a notice and impose conditions or force divestiture by the foreign party. Achieving CFIUS clearance prior to closing eliminates this risk.

Controlling and Non-Controlling Transactions

As described above, CFIUS has jurisdiction to review "covered control transactions," ie transactions that could result in foreign "control" of a US business; "covered investments," ie non-controlling investments in certain types of US businesses; and certain real estate transactions. Notably, this jurisdiction may include asset purchases or the formation of a joint venture anywhere in the world if a US business makes significant contributions of its business or technology.

Mandatory Filings

There currently are two circumstances where filing with CFIUS is mandatory: (i) "covered control transactions" or "covered investments" where the US business produces, designs, tests, manufactures, fabricates or develops a "critical technology" that requires a regulatory approval to the country of the foreign investor and other involved parties; or (ii) substantial investments in certain types of US businesses where a foreign government holds a "substantial interest" (greater than 49%) in the foreign investor.

"Critical technology" includes:

- military technologies controlled under the International Traffic in Arms Regulations (ITAR);
- certain civilian/military dual-use technologies controlled under the Export Administration Regulations (EAR);
- certain nuclear facilities, equipment, and material;
- select agents and toxins; and
- emerging and foundational technologies controlled pursuant to the Export Control Reform Act of 2018.



If a filing with CFIUS is mandatory, then it must be submitted at least 30 days prior to closing the transaction. In practice, receiving CFIUS approval prior to closing is the preferred approach unless compelling circumstances dictate otherwise. CFIUS has authority to prevent the parties from closing the transaction until it completes its review.

There are exemptions for passive investments at 10% voting equity or less and a carve-out for US investment funds with foreign limited partners, subject to certain conditions. There also is a limited exception for "excepted investors" from the UK, Canada, and Australia, subject to several conditions and limited to only certain transactions.

Design – reciprocity?

N/A

Design – procedures and deadlines

Where a filing is required or submitted voluntarily, parties may choose to file jointly either a traditional "notice" or a short form "declaration."

Notice

A notice is a more extensive submission that includes detailed information about the transaction structure, operations of the US business, ownership structure and investors, and leadership team. Once a notice is formally accepted, which typically takes several weeks, CFIUS has 45 days to review a notice, followed by an optional 45-day investigation period, which is required for approximately half of notices filed. The entire CFIUS notice process, including pre-filing period, typically takes approximately three to five months, but may be longer for more complicated or sensitive transactions.

Declaration

A declaration is a more abbreviated filing intended for less sensitive transactions. Upon acceptance of a declaration, CFIUS has 30 days to review and respond. The most significant limitation of a declaration is that, if CFIUS identifies any national security concerns and is considering potential mitigation, then it will likely require the parties to file a full notice and restart the three- to five-month timeline described above. CFIUS may also respond to a declaration by taking no action, which does not block the transaction but does not provide the safe-harbor of CFIUS approval. Thus, where a transaction is sufficiently complicated or presents a national security sensitivity, it is recommended to file a notice at the outset to avoid unnecessarily prolonging the CFIUS approval process.



Design – transparency and information requirements (filing forms?)

Parties submitting a filing with CFIUS should expect to provide very detailed information regarding the transaction, the parties involved, and each entity and individual in the chain of ownership and investors with at least 5% direct or indirect interest in the investor. In addition to the details provided in the filing, CFIUS often requests additional information during its review.

Notice

Notices typically are jointly filed by the parties, and each party certifies as to the information contained in the notice regarding itself and the transaction description. The required contents of voluntary notices are set forth in the regulations. In general, the contents include (i) detailed information about the US business that is the subject of the investment; (ii) detailed information about the acquirer and its ownership, all the way up chain of ownership to individuals with beneficial interests of 5% or more (even if a public company); and (iii) information about the transaction, including side agreements (eg distribution agreements) beyond the primary investment agreement. Required information also includes sources of financing for the transaction, and other regulatory approvals required for the transaction, and personal identifying information for the officers and directors of each entity in the ownership structure. Voluntary notices are typically at least 30 pages in length and include multiple lengthy exhibits. Parties are obligated to update the notice for material information.

Declaration

A declaration is a much shorter document (approximately five pages) containing: (i) a brief description of the transaction; (ii) a description of the interests being acquired by the foreign person; (iii) total transaction value; (iv) expected closing date; (v) sources of financing; (vi) access rights foreign person will acquire; (vii) a description of the US business; (viii) disclosure of the critical technologies involved and whether they are controlled under US export control laws (ITAR and EAR); and (ix) certain information relating to the foreign person's ownership.

Design – range of decisional outcomes (such as blocking, unwinding, notably), so as to distinguish between the purely screening from the mechanisms aimed at interfering with FDI

CFIUS may approve a transaction by concluding that there are no unresolved national security concerns. This result may occur with or without conditions on the transaction. There are very few limitations on CFIUS's ability to negotiate and impose conditions or mitigation measures. These measures may be as simple as a board resolution up to the implementation of special governance mechanisms such as independent directors installed on the board with fiduciary duties to the US government to protect US national security or requiring the spin-off of certain aspects of the US business. CFIUS also has the authority to block a transaction from closing or, if already completed, to force the foreign party to divest its interest under CFIUS's supervision and to a CFIUS-approved buyer.



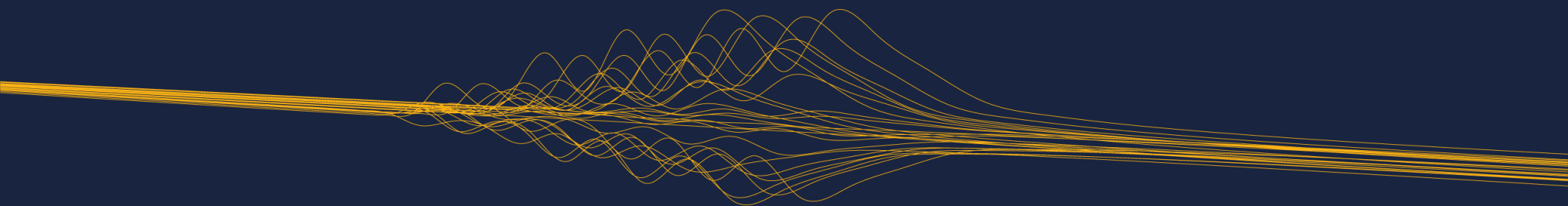
<p>Interaction with other legal frameworks (eg merger control)</p>	<p>The primary interaction of the CFIUS process with other US legal frameworks is with FOCI (foreign ownership control or influence) mitigation under the NISPOM for transactions involving a US business with a government security clearance to perform classified work. This FOCI mitigation process is overseen by the US Department of Defense's Defense Counterintelligence Security Agency (DCSA). However, the CFIUS process and the FOCI process are separate.</p>
<p>Design – grounds for blocking, if applicable (such as "public security," "vital interests") Please indicate whether those grounds are based on WTO definitions or not. Also, please indicate what is the degree of discretion of the authority to apply the legal criteria in question.</p>	<p>The only grounds for CFIUS blocking a transaction is national security. National security is not defined in the DPA or the regulations promulgated thereunder, although non-exhaustive lists of examples are given in the DPA and regulations. It has been interpreted very broadly. What some may view as economic interests (eg global technological leadership) have been viewed by CFIUS as matters of national security and formed the basis for many CFIUS decisions.</p>
<p>Judicial Review Please specify timeline, competent courts and standard of judicial review.</p>	<p>There is no judicial review or appeal right within the CFIUS process contained in the regulations. There have been only two court challenges related to CFIUS of which we are aware: the 2013 Ralls case, described below, and the pending TikTok case involving ByteDance's acquisition of Musical.ly in 2017. Parties typically abandon the transactions that do not clear CFIUS.</p> <p>In September 2012, the US president ordered Ralls, a subsidiary of Sany Group (Chinese) to divest wind farm project sites it had previously acquired, due to proximity to restricted Naval airspace. Ralls had not made voluntary a pre-closing filing. In 2013, Ralls unsuccessfully challenged the order in US district court. In 2014, a US appellate court found the president had not provided sufficient process to satisfy the Due Process Clause of the US Constitution and that Ralls was entitled to (i) notice of action, (ii) review of unclassified portions of evidence relied on by president, and (iii) right to respond to that evidence. The court remanded additional claims of Ralls (that the district court had dismissed) for hearing on the merits. Before any clarifications could take place on remand, the parties settled the suit and thereby left those issues outstanding.</p>
<p>Publication in Official Gazette or other</p>	<p>The CFIUS process, including whether parties to a transaction have filed, and the outcome of any filing, is confidential and exempt from disclosure in response to US Freedom of Information Act (FOIA) requests. The parties may themselves disclose that a transaction has been subject to CFIUS review, which is most commonly done in connection with US public company compliance with reporting obligations under US securities laws and Securities and Exchange Commission public filings.</p>
<p>Relevant examples of application If applicable and publicly available, please indicate the number of vetoes in the overall number of reviews and also the number of successful appeals for the last five years.</p>	<p>CFIUS has reported the following statistics for the period 2016 through 2019:</p> <p>Total Notices Filed: 869 Approval with Mitigation: 112 Notices Rejected: 3 Notices Withdrawn Due to National Security Concerns: 55</p>



<p>Stakeholders views on the legal framework</p>	<p>The US government relies on CFIUS as one of the foremost processes to protect against predatory foreign investment or transactions that otherwise threaten to harm broadly-defined US national security. The expansion of CFIUS jurisdiction to review transaction and the creation of the mandatory filing requirements in 2018 highlight the US government's commitment to use CFIUS aggressively to protect against perceived threats. Despite this posture, the US government remains open to foreign investment, as evident by the very high percentage of transaction that are approved each year.</p>
<p>Interplay with the future EU regulation Please indicate notably whether the existing national legislation will have to be amended so as to comply with the EU one.</p>	<p>N/A</p>
<p>Other relevant information</p>	<p>N/A</p>



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