

# FOREIGN DIRECT INVESTMENT SCREENING IN EUROPE AND THE MIDDLE EAST



Even before the onset of the COVID-19 pandemic, many countries had either implemented, or were giving serious consideration to implementing, new or stricter controls on inward bound foreign direct investment activity (“FDI”). One of the effects of the pandemic has been to accelerate this trend, particularly in the European Union (“EU”). For example, in March 2020, the European Commission (“EC”) issued revised guidance encouraging EU Member States to make full use of their FDI screening regimes. More recently, the French, Dutch, German, Italian and Spanish governments all tightened their respective FDI screening regimes. The British government has also announced stricter vetting procedures. These new measures are frequently designed to protect domestic businesses involved in sectors affecting health, medicines (including vaccines), medical equipment (such as personal protective equipment), security, public order, and businesses which operate in strategically important sectors and/or which might be vulnerable to foreign takeover as a result of the economic and other consequences of the pandemic. Some of these measures are temporary, while others will remain in force indefinitely.

The consequence is that foreign investors considering FDI will, in many cases, face increased scrutiny and will need to pay close attention to the FDI regimes in countries in which they are seeking to invest. Particularly for multi-jurisdictional transactions which involve more than one screening regime, it will be important to adopt, and work with legal advisers that are able to manage, a well co-ordinated and strategic approach to navigating through those regimes, not least because regulators in different jurisdictions increasingly consult one another on FDI matters. Indeed, following the recent introduction of the EU-wide FDI screening regulation, such consultation between EU Member States will be actively encouraged. Presenting a consistent message is therefore vital.

This document describes some of the main features of the FDI screening regimes at the EU level, and in certain key jurisdictions in Europe and the Middle East. Please speak to your usual Jones Day contact for further information.

Key	Critical Infrastructure	Critical Technologies	Critical Inputs	Access to Sensitive Information	Defence/National Security	Media	Finance/Banking/Insurance	Other Sectors
	Energy infrastructure, transport networks, water, health, 5G, communications, data processing or storage, aerospace, electoral or financial infrastructure, land and real estate crucial for the use of such infrastructure	AI, robotics, semiconductors, cybersecurity, aerospace, energy, storage, quantum and nuclear technologies, nano technologies and biotechnologies	Energy, raw materials, food security	Personal data and the control of personal data				
							<div style="border: 1px solid black; padding: 5px;"> <p> Subject to FDI screening</p> <p> FDI is prohibited</p> </div>	

# FOREIGN DIRECT INVESTMENT SCREENING IN EUROPE AND THE MIDDLE EAST

	Mandatory/ Voluntary	Suspensory	Thresholds for transactions to be screened	Relevant Sectors (see key)								Additional measures imposed in response to COVID-19
EU	Depends on the Member State in question.	Depends on the Member State in question.	Depends on the Member State in question.  The EC can issue a non-binding opinion regarding proposed FDI in a Member State if: <ul style="list-style-type: none"> <li>the FDI is likely to affect security or public order in more than one Member State;</li> <li>it has relevant information in relation to that FDI; or</li> <li>the FDI is likely to affect projects or programmes of Union interest on grounds of security or public order.</li> </ul>	✓	✓	✓	✓	✓	✓	✓ <sup>①</sup>	✓ <sup>②</sup>	The EC has called upon all Member States to establish fully-fledged FDI screening regimes. This will affect only those Member States that do not currently have screening regimes or whose screening regimes do not cover all relevant transactions.
Belgium	N/A  There is no Belgium-wide FDI regime. A regime exists only in Flanders.	No	<b>All Deals</b> <ul style="list-style-type: none"> <li>a foreign (or non-EU) person obtains control or decision making power over a Flemish government entity; and</li> <li>the strategic interests of Flanders are threatened.</li> </ul>	✓	✓	✓	✓	✓	✓	✓	✓ <sup>③</sup>	To date, there have been no changes to Belgium's FDI regime in response to COVID-19. However, the Belgian Federal Government has reportedly prepared a draft law to introduce an FDI screening regime.

Key	Critical Infrastructure	Critical Technologies	Critical Inputs	Access to Sensitive Information	Defence/National Security	Media	Finance/Banking/Insurance	Other Sectors	✓ Subject to FDI screening	✗ FDI is prohibited
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① The EU list refers to "critical infrastructure" which includes financial infrastructure.

② The EU list is non-exhaustive and could therefore be expanded in the future to include other sectors.

③ The Flemish FDI controls do not cover specific sectors, but are limited in scope to investments in: (a) the Flemish government, its services and institutions; (b) local governments within Flanders; and (c) any entity in Flanders which has been established to: (i) satisfy public interest requirements; and (ii) is financed, governed by or under the supervision of the Flemish government or local governments within Flanders.

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France	Mandatory	Yes	<p><b>Stock Deals</b></p> <ul style="list-style-type: none"> <li><b>Non-EU and non- EEA investors:</b> normally, acquisition of 25% or more of the voting rights of a French law entity operating in a relevant sector but, until 31 December 2020, reduced to 10% for listed companies.</li> <li><b>EU investors:</b> acquisition of control, which is presumed at 40% or more, of the shares or voting rights of a French law entity operating in a relevant sector.</li> </ul> <p><b>Asset Deals</b></p> <ul style="list-style-type: none"> <li>All asset deals by foreign investors in relevant sectors are caught.<sup>④</sup></li> </ul>	✓	✓	✓	✓	✓	✓	✓	✓	<p>Until 31 December 2020, the FDI screening threshold applicable to non-EU investors in listed companies has been reduced from 25% to 10%.</p> <p>FDI in businesses engaged in biotechnology-related R&amp;D will, for an indefinite period, be subject to FDI screening.</p>
Germany	Voluntary but mandatory for defence/ crypto-technology and critical infrastructure companies	No but suspensory for defence/ crypto-technology and critical infrastructure companies	<p><b>Stock Deals</b></p> <ul style="list-style-type: none"> <li><b>Defence, crypto-technology and critical infrastructure:</b> acquisition of 10% or more of voting rights by non-German investors.</li> <li><b>Other sectors:</b> acquisition of 25% or more of voting rights by non-EU investors.</li> </ul> <p><b>Asset Deals</b></p> <ul style="list-style-type: none"> <li>All asset deals where the assets constitute a “business” (i.e., a group of assets that form a going concern).</li> </ul>	✓	✓	✓	✓	✓	✓	✓	✓	<p>Germany has, for an indefinite period, expanded the definition of critical infrastructure businesses to include: (i) manufacturers of personal protective equipment, testing kits, vaccines, IV diagnostics, drugs and API; and (ii) businesses providing services to Germany's public safety digital radio network (which is used by emergency and security services).</p>

Key



Critical Infrastructure



Critical Technologies



Critical Inputs



Access to Sensitive Information



Defence/National Security



Media



Finance/Banking/ Insurance



Other Sectors

✓ Subject to FDI screening

✗ FDI is prohibited

<sup>④</sup> This includes asset purchases by French investors who are tax resident outside of France.



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Italy	Mandatory	Yes	<p><b>Stock Deals</b></p> <ul style="list-style-type: none"> <li><b>Defence/National Security:</b> acquisition of more than 3% of equity share capital (additional thresholds may apply when investors increase their stake further).</li> <li><b>Energy, Transportation and Communications:</b> acquisition of a controlling interest.<sup>⑤</sup></li> <li><b>Sectors contemplated by the European FDI Regulation:</b> acquisition of a controlling interest.<sup>⑤</sup></li> </ul> <p><b>Asset Deals</b></p> <ul style="list-style-type: none"> <li>All asset deals in relevant sectors.<sup>⑥</sup></li> </ul> <p><b>Corporate Actions</b></p> <ul style="list-style-type: none"> <li>Certain corporate actions for companies in relevant sectors are caught. These include, but are not limited to, the transfer of a company's corporate seat, the change of a company's purpose and the winding up of a company.</li> </ul>	✓	✓	✓	✓	✓	✓	✓	?	<p>Until 31 December 2020, Italy has extended its FDI controls to include all asset deals in the sectors contemplated by the EU FDI Regulation and has lowered the thresholds for purchases of stock in companies operating in those sectors and in the energy, transportation and communication sectors as follows:</p> <ul style="list-style-type: none"> <li><b>For Non-Italian Investors:</b> the acquisition of control.<sup>⑤</sup></li> <li><b>For Non-EU investors:</b> the acquisition of: (a) an interest of 10% or more of equity and/or voting rights with a purchase price of €1 million or more; or (b) an interest of more than 15% of equity and/or voting rights, regardless of the purchase price (additional thresholds may apply if investors increase their stake).</li> </ul>

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⑤ The acquisition of control does not necessarily require the acquisition of: (i) a majority equity interest; or (ii) the majority of the voting rights exercisable at an ordinary shareholder's meeting. Other criteria might also be applied and the issue will be judged on a case-by-case basis. Please also refer to the column titled "Additional Measures imposed in response to COVID-19".

⑥ The temporary measures imposed in response to COVID-19 mean that asset deals in the sectors contemplated by the European FDI regulation are currently subject to FDI controls until 31 December 2020. However, after that date, asset deals in those sectors contemplated by the European FDI Regulation will not be subject to FDI controls unless and until Italy implements new FDI rules.

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Netherlands	Mandatory	No	<p><b>Electricity sector</b></p> <ul style="list-style-type: none"> <li>A change of control in a production facility with a nominal electrical capacity exceeding 250 MW.</li> </ul> <p><b>Gas sector</b></p> <ul style="list-style-type: none"> <li>A change of control in a liquefied natural gas facility or company.</li> </ul>			✓ <sup>⑦</sup>					⑧		The Dutch Government has announced plans to introduce comprehensive FDI screening controls with retroactive effect for investments made from 2 June 2020 onwards in companies that: (i) supply critical services or infrastructure; or (ii) are active in high-end sensitive technology, such as goods with a military or dual use application. Once this proposed law enters into force, even completed investments in these sectors may be subject to a retroactive screening review.
Saudi Arabia	Mandatory	Yes	<p><b>Private owned businesses and companies</b></p> <ul style="list-style-type: none"> <li>All FDI into private Saudi businesses and companies regardless of size.</li> </ul> <p><b>Listed companies</b></p> <ul style="list-style-type: none"> <li>Foreign ownership is generally limited to 49% of the company, except in the case of 'foreign strategic investors', for whom no cap applies.</li> </ul>	✓	✓	✗ <sup>⑨</sup>	✓	✗ <sup>⑨</sup>	✓	✓	✗ <sup>⑨</sup>		N/A

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⑦ The Netherlands' FDI controls currently apply only to the electricity and gas sectors. It is currently anticipated that an FDI screening regime will be introduced for the telecommunications and defence sectors. The Act on Undesirable Control (Telecommunications) has been adopted by Parliament and published in the Official Gazette. Its date of entry into force is to be set in subordinate legislation and is not yet known.

⑧ While generally not considered formal FDI screening controls, the Netherlands has a specific regulation governing shareholder suitability which may apply to foreign investors.

⑨ FDI is prohibited in the sectors stipulated on the so-called negative list. This currently includes: fisheries; oil exploration; food catering for the military sector; security and police services; real estate investment in Makkah and Madina; tourist orientation services relating to Hajj and Umrah; recruitment offices; services provided by midwives; nurses; physical therapy services and quasi-doctoral services; poison centres; blood banks and quarantine centres.

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Spain	Mandatory	Yes	<p><b>All FDI:</b></p> <ul style="list-style-type: none"> <li>in relevant sectors; or</li> <li>in other sectors if:                             <ul style="list-style-type: none"> <li>the foreign investor is directly or indirectly controlled by a government;</li> <li>the foreign investor has invested or participated in activities in any sectors that affect security, public order or public health, in another EU Member State and particularly in relevant sectors; or</li> <li>proceedings have been initiated against the foreign investor for criminal or illegal activity.</li> </ul> </li> </ul> <p><b>The FDI must involve:</b></p> <ul style="list-style-type: none"> <li>the acquisition of 10% or more of the share capital of a Spanish entity by a foreign investor; or</li> <li>a foreign investor obtaining control of a Spanish entity;<sup>⑩</sup> and</li> <li>a transaction value of €1 million or more.</li> </ul> <p><b>Foreign investors include:</b></p> <ul style="list-style-type: none"> <li>non-EU/EFTA persons; and</li> <li>EU/EFTA persons in which a non-EU/EFTA person holds a stake of more than 25%.</li> </ul>	✓	✓	✓	✓	✓ <sup>⑪</sup>	✓	⑫	⑬	N/A

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⑩ While there is no formal definition of control in Spain's FDI screening regime, control will be presumed where an investor: (i) holds the majority of the voting rights of a company; (ii) is able to appoint or dismiss the majority of the board; (iii) controls a majority of the voting rights, as a result of agreements with third parties; or (iv) has appointed the majority of the board.

⑪ Any investment by a non-Spanish resident in defence activities is subject to FDI screening. Certain additional thresholds may also apply if the target is a listed company.

⑫ While there are no formal FDI screening controls in this sector, Spain has a specific regulation governing shareholder suitability which might apply to foreign investors.

⑬ While there are no formal FDI screening controls in this sector, any foreign investment may be screened if it affects: the exercise of public authority (for example by local governments or the police); public order; or public health. Real estate investments relating to the diplomatic premises of non-EU Member States will also be subject to FDI screening.

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UAE	Mandatory	Yes	<p><b>Onshore UAE</b></p> <ul style="list-style-type: none"> <li>Generally, at least 51% of any company must be owned by UAE nationals.</li> <li>For certain specified sectors (including oil and gas, exploration and production, banking, insurance, military and defence, water and electricity, broadcasting and publishing, telecoms, and freight services), no relaxation of the 51% requirement is permitted.</li> <li>For other sectors, foreign ownership of up to 100% may be permitted either on a sector-by-sector or a case-by-case basis. However, this might be subject to conditions, which can be wide-ranging and include prescribed levels of capital investment, additional reporting obligations and a requirement to employ UAE nationals.</li> </ul> <p><b>Free Zones</b></p> <ul style="list-style-type: none"> <li>100% foreign ownership is generally permitted.</li> </ul>	✓	✓	✓	✓	✓	✓	✓	✓	N/A

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UK	Voluntary	No  However, the UK Government may nevertheless prohibit the closing of a transaction in a relevant sector pending the outcome of an FDI review.	<p><b>Media plurality/national security/financial sector stability/public health emergency:</b></p> <ul style="list-style-type: none"> <li>the target had annual revenues from UK customers in the previous financial year greater than £70 million; or</li> <li>both the buyer and target supply or purchase the same category of goods and services in the UK and between them have a 25% or greater share of supply.</li> </ul> <p><b>Military/dual use/quantum computing/CPU technology:</b> <sup>(14)</sup></p> <ul style="list-style-type: none"> <li>the target had annual revenues from UK customers in the previous financial year of more than £1 million; or</li> <li>the target alone had a 25% or greater share of supply in the UK.</li> </ul> <p><b>UK government contractor possessing defence secrets/certain newspapers and broadcasters:</b></p> <ul style="list-style-type: none"> <li>the government can intervene in any deals in these sectors.</li> </ul>									<p>The UK Government has expanded the scope of the UK's FDI screening regime to include businesses responding to the COVID-19 pandemic such as manufacturers of vaccines and personal protective equipment.</p> <p>The UK Government has also announced plans to introduce a more wide-ranging FDI screening regime. At present it is not known when this regime will be introduced and what its exact scope will be.</p>

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<sup>(14)</sup> On 22 June 2020, the UK Government proposed legislation to apply this lower threshold to investments into: (i) artificial technology; (ii) cryptographic technology; and (iii) advanced materials. This legislation is expected to be approved by Parliament and come into force in early summer 2020.











<sup>(15)</sup> The UK's FDI controls in this sector apply only to businesses involved in responding to a public health emergency.

<sup>(16)</sup> The UK's FDI controls in this sector apply only to dual use items, quantum computing technology, CPU technology, artificial technology, cryptographic technology and advanced materials.

<sup>(17)</sup> The UK's FDI controls in this sector apply only to transactions that impact on financial sector stability.

## Key Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below.

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