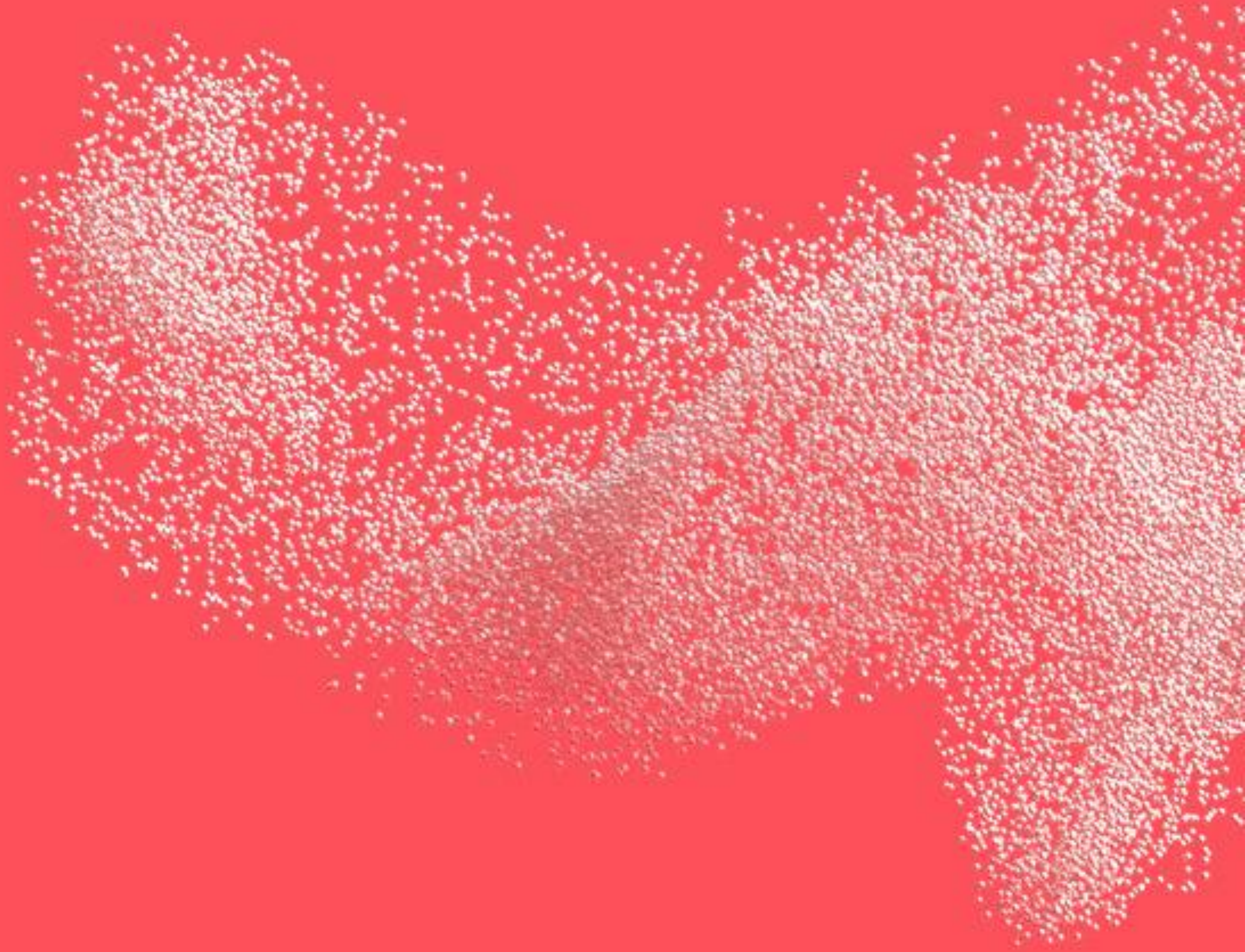
Foreign Direct Investment Regimes in Europe

Luxembourg



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Scope of FDI Regime: Transactions subject to review

- The national screening mechanism applies to foreign direct investment ("FDI"), with the exception of portfolio investments, which are investments of any kind made by a foreign investor, intended to establish or maintain direct and lasting relationships between the foreign investor and an entity governed by Luxembourg law for which the funds are intended, thereby enabling the foreign investor to participate alone, in concert or by interposition in the "control" of this entity carrying on in the Grand Duchy of Luxembourg a "critical activity".
- Portfolio investments, i.e. an acquisition of securities of an entity governed by Luxembourg law made with the intention of making a financial investment and which does not enable the foreign to exercise, directly or indirectly, control of the entity under Luxembourg law, are excluded from this regime.

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Scope of FDI Regime: Critical activities sectors

- energy;
- transport;
- water;
- health;
- communications;
- data processing or storage;
- aerospace;
- defence;
- financial;
- media; and
- agri-food sectors.

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Thresholds - Control definition

1 ° Directly or indirectly:

a) having the majority of the voting rights of the shareholders of an entity governed by Luxembourg law; or

b) having the right to appoint or remove the majority of the members of the administrative, management or supervisory body of an entity governed by Luxembourg law; or

c) to be a shareholder of an entity governed by Luxembourg law and to control, by virtue of an agreement entered into with other shareholders of that entity, the majority of the voting rights of the shareholders of that entity;

2° Holding 25 per cent cent or more of the voting rights in an entity governed by Luxembourg law

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Obligations of the foreign investor

Foreign investors must notify the Ministry of Economy of the intended FDI and obtain the authorisation before proceeding with the investment.
In specific cases where a foreign investor surpasses the twenty-five per cent (25%) voting rights threshold due to capital distribution events, they have a fifteen (15) days window to notify the transaction.

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Powers and role of the Ministry

- The Ministry is obligated to issue a decision within two (2) months of receiving the Foreign Investor's notification, unless additional information is requested, which would temporarily suspend the procedure until the information is provided.
- The Ministry evaluates the potential impact of the FDI on security or public order using designated screening factors.

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Powers and role of the Ministry

These screening factors include, among others:

- the integrity, security, and continuity of critical infrastructure supply,
- sustainability of activities related to critical technologies and dual-use goods,
- supply of essential inputs;
- access to sensitive information; and
- freedom and pluralism of the media.

Based on the assessment, the Ministry may authorize the FDI, prohibit it, or approve it subject to certain conditions. If conditions are imposed, they must be designed to prevent any compromise of security or public order, and the foreign investor is required to report on their implementation.

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Sanctions

- The Ministry may impose administrative measures and sanctions in cases of non-compliance. These measures can be enforced if the FDI is implemented without prior notification or clearance, or if the foreign investor fails to comply with the conditions imposed by the Ministry within the specified timeline.
- The Ministry is required to contact the foreign investor in writing, providing a warning and a fifteen (15) days opportunity for the foreign investor to present their observations. Afterward, the Ministry has thirty (30) days to implement the measures deemed appropriate, unless an imminent threat to security or public order exists.

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Sanctions

- The Ministry may also suspend voting rights related to the FDI, to order the modification or restoration of the transaction at the foreign investor's expense, or rescinding the authorization if screening procedure conditions are not met.
- Failure to comply within one (1) month can lead to fines of up to EUR 1,000,000 for natural persons and up to EUR 5,000,000 for legal entities. The amount of the fine is determined based on several factors, such as the seriousness and duration of the infringement, the foreign investor's responsibility and financial situation, advantages received, damages incurred by third parties, and any prior infringements committed.
- The foreign investor may appeal a fine within one (1) month of receiving the decision.

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