

Snapshot: Luxembourg's foreign direct investment screening law

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Luxembourg has introduced a new screening law to supervise foreign direct investment in so-called critical sectors.

The new foreign investment control regime came into effect on 1 September 2023 (the **FDI Law**) and transactions from that date onward require notification if they fall under the scope of the new law.

Who is affected by the FDI screening law in Luxembourg?

The Luxembourg regime specifically addresses investments made by non-European Economic Area (EEA) investors. It focuses on individuals who aren't nationals of an EEA Member State, entities set up outside the EEA, and entities whose final beneficial owner is either a non-EEA national or entity.

The FDI screening law applies to foreign investors who want to invest in Luxembourg entities operating in "critical activities."

The regime pertains to investments where a non-EEA investor gains control over a Luxembourg company. This happens when the foreign investor, either directly or indirectly:

- holds the majority of the voting rights in the Luxembourg firm
- has the authority to nominate or remove the majority of the Luxembourg company's administrative, management, or supervisory members and is also a shareholder
- is a shareholder and, due to an agreement with other shareholders, possesses the majority of voting rights in the Luxembourg firm

- acquires 25% or more of the voting rights in the Luxembourg company, either directly or indirectly

However, the regime doesn't cover portfolio investments. These are purchases of securities intended as a financial commitment without the aim of controlling the Luxembourg firm. Therefore, private equity (PE) / alternative investment fund (AIF) structures with primary investments outside Luxembourg are mostly not in scope of this new law, unless the investment is in a critical sector within Luxembourg itself.

What are the "critical activities" outlined in the FDI screening law?

The regime is applicable to companies operating under Luxembourg legislation, meaning entities based in Luxembourg, which engage in the following "critical activities":

- energy
- transport
- water
- health
- communications
- data processing/storage
- aerospace
- defence
- finance
- media
- agribusiness
- the development, exploitation and trade of dual-use items

The FDI Law additionally categorizes as critical (i) research activities linked to the aforementioned activities, (ii) production activities associated with the above-listed activities, (iii) supplementary activities that could provide access to sensitive information directly related to the above activities and (iv) supplementary activities that could allow entry to locations where the previously mentioned activities are conducted.

It is important to note that portfolio investments are expressly not covered by the regime.

What notification is required?

Before finalising a transaction that falls under the FDI Law, a foreign investor must inform the Luxembourg Ministry of the Economy about the intended FDI. The Ministry of Economy then has a two-month window to determine if the investment can go forward or if it necessitates a screening procedure, subsequently notifying the investor of its decision.

If a screening is warranted, the ministry has 60 days to evaluate if the investment might jeopardize security or public order, considering various aspects like the investment's effect on infrastructure stability, safety, and consistency.

Upon concluding the assessment, the Ministry of Economy communicates the final verdict to the foreign investor, either greenlighting the investment, setting conditions for its approval, or denying it.

What are the sanctions for violating the screening law?

Violations of the FDI screening law can result in various penalties. These might include directing the foreign investor to modify or reverse the FDI, suspension of their voting rights, or revocation of approval.

Non-compliance with these directives could lead the foreign investor to incur fines reaching up to EUR5 million.

How can Ogier help?

Ogier's experienced team of corporate lawyers in Luxembourg can assist with any enquires relating to the FDI Law and the new screening mechanism. Reach out to your usual Ogier or one of the team below for more information.

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