

Country Report on Southern EU Countries

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1. Greece

- No formal screening mechanism in place
- Law 4399/2016, Art. 14
 - evaluation process to access private investment aid schemes for the country's regional and economic development
 - projects are screened by the agency competent per sector
 - 30 day process
- Law 4146/2013, Art. 14
 - “Inclusion procedure” for investors seeking the inclusion of their investment proposal in the strategic investment procedure
- Law 3908/2011, Article 6
 - Application procedure to access aid for private investment to promote economic growth, entrepreneurship and regional cohesion

2. Spain

- Real Decreto 664/1999
 - Ex-post declaration (Article 4.2.b)
 - Certain investments coming from tax havens → prior declaration (Article 4.2.a)
 - Article 1(2): special regimes are applicable to foreign investments in Spain established in specific sectors (air transport, radio, minerals and mineral raw materials of strategic interest and mining rights, television, gambling, telecommunications, private security, manufacture, trade or distribution of weapons and explosives for civil use and activities related to National Defense).
 - Article 4: Declaration to the Investment Registry of the Ministry of Economy and Finance
 - Article 8: entities can be required to submit additional information to the General Directorate of Commercial Policy and Foreign Investments
 - Article 9: Board of Foreign Investments (reports)
 - Article 10: Suspension of the liberalised regime if the investment affects matters of public order or public health and safety
 - 10.2: Once the liberalization regime has been suspended, the affected investor must request prior administrative authorization in respect of the investment operations that, from the moment of the notification of the suspension, it was proposed to carry out
 - Such authorisation can last to up to 6 months
 - Article 11: equivalent to Article 10 for activities directly related to national defence

3. Portugal

- Decreto Lei 138/2014
 - Aimed at safeguarding strategic assets essential to guarantee national defense and security and the security of the country's supply of services essential to the national interests in the energy, transport and communication sectors.
 - Article 3: The Council of Ministers, on the proposal of the member of the Government responsible for the area in which the strategic asset in question is integrated, **may object** [...] to operations that directly or indirectly result **in direct or indirect control by a person or persons from third countries to the EU and the EEA** of strategic assets [...] in cases where there is a real and sufficiently serious threat to the defense and national security or security of supply of the Country in services fundamental to the national interest.
 - Criteria to assess the threat:
 - Physical security and integrity of strategic assets
 - Permanent availability and effectiveness of the strategic assets
 - Continuity, regularity and quality of services of general interest
 - Preservation of the 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.

3. Portugal

- Decreto Lei 138/2014
 - Article 4:
 - Within a period of 30 days
 - from the conclusion of legal transactions relating to an operation [...] or from the date on which such business becomes known, whichever is later,
 - the member of the Government responsible for the area in which the strategic asset in question is affected/threatened/interested may initiate an evaluation procedure
 - by means of a reasoned decision in order to assess the risk of such an operation for the defense and national security or for the security of the country's supply of services essential to the national interest.
 - Decision within 60 days
 - The absence of a decision within 60 days constitutes a decision of non-opposition
 - If an opposition decision is taken **all legal acts and deals relating to the transaction in question are null and void**
 - The decision is open to challenge, pursuant to the Code of Procedure in the Administrative Courts.

4. Italy

- Decreto Legge 21/2012
 - When assessing national interest, EU interests must be taken into account
 - Ministry of Economic Development identifies (every 3 years) areas strategic to national security and defense
 - Article 1.1: special powers may be exercised in case of threat of serious injury to the essential defense interests and national security:
 - imposition of specific safety conditions
 - veto on the adoption of certain board decisions
 - opposition to acquisition of companies or participations by any private (Italian or otherwise) subject
 - Article 1.3: assessment of the threat to national interest:
 - the economic, financial, technical and organizational capacity of the purchaser as well as of the industrial project, with respect to the regular continuation of activities, the maintenance of technological assets, also with reference to the activities key strategies, security and continuity of supply, as well as the correct and timely execution of contractual obligations assumed vis-à-vis public administrations, directly or indirectly, by the company whose investments are subject to acquisition
 - Personal and political links of the investor with states that raise concerns with regard to democracy, rule of law, criminal or terrorist influences.

4. Italy

- Decreto Legge 21/2012
 - Article 1.3: companies must notify the Ministry of their intentions so that the power of veto, should it be considered as needed, can be exercised
 - 15 days deadline
 - Ministry can ask for further information – to be given within 10 days
 - Besides vetoing, the Ministry can impose specific prescriptions or conditions (mitigation rather than objection)

 - Article 2: energy, transport and telecommunication sectors
 - 10-day deadline to notify the Ministry of every relevant Board decision
 - 10-day deadline to comply with any request for further information
 - Decision within 15 days from communication
 - Article 2.5: investors from outside the EU must notify the Ministry within 10 days of their investment
 - Article 2.6: if the investment prejudices essential public interests in the sectors of energy, transport and telecommunication → mitigation (unless the prejudice is considered too severe, in which case the Government can object to the investment as a whole).
 - Article 2.7: non-discrimination + objective criteria (cfr. Article 1.3)

5. Possible Effects of the EU Common Framework

- Greece:
 - Foreign investment is adequately monitored – compliance with Article 7.3 is ensured
 - Commission screening under Article 3.2?
- Spain:
 - Lack of specific deadlines in the law – exc. for 6 months overall deadline → consistent with EU framework?
- Portugal
 - Possible problems with Article 6.1
 - Transparency
 - Discretionality vs. non-discrimination
- Italy
 - 10/15 days deadlines do not allow for cooperation mechanism under Article 8 – revision needed?