

STATISTICAL REPORTING TO THE BANQUE DE FRANCE ON FOREIGN INVESTMENTS IN FRANCE

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Separately from the prior authorisation of foreign investment, the French Monetary and Financial Code established the principle that certain foreign investments must be declared to the Banque de France for statistical purposes. Article L.141-6 of the Monetary and Financial Code empowers the Banque de France to require the communication of any information necessary to establish the balance of payments and net international investment position. This gives the bank real investigative authority over cross-border financial flows.

Article R.152-3 of the Monetary and Financial Code stipulates that foreign direct investments in France involving more than €15 million (subject to certain criteria) must be declared no more than twenty working days after they are effectively completed.

Conversely, under certain conditions, statistical reporting is also required for liquidations of certain foreign direct investments in France, or where an individual or entity domiciled in France makes an investment abroad, but these cases will not be addressed below.

A non-resident (A) making certain investments in France (B) must file a statistical report (C) or face possible penalties under criminal law (D).

A. Definition of "non-residents"

The rules for statistical reporting to the Banque de France are based on the concept of a "non-resident", rather than a "foreign investor" as defined under the regulations for the prior authorisation of investments.

Article R.152-11 of the Monetary and Financial Code (paragraph 3) defines "non-residents" as individuals whose centre of main interests is located abroad, foreign civil servants and other public officials posted in France as soon as they take up their duties, and French or foreign legal entities with regards to their establishments abroad.

In contrast with the system for prior authorisation, the investor's nationality is not a decisive factor when implementing these rules, nor is the investor's tax residence within the meaning of Article 4B of the French Tax Code.

B. Covered investments

Statistical reporting is required for the following investments **when they exceed a value of €15 million**:

Direct foreign investment in France (Article R.152-3-1) as defined in paragraph 4 of article R.152-11 of the Monetary and Financial Code, namely:

■ **Transactions in which non-residents acquire at least 10% of share capital or voting rights, or cross the 10% ownership threshold of an enterprise not domiciled in France.**

The main transactions concerned here are: company creations, subscriptions for an issue of new shares, securities acquisitions, securities acquisitions through an exchange (e.g. contribution or merger) including within the same group.

The investment (whether an initial or later acquisition) must result in the holder owning at least 10% of share capital or voting rights in the resident company.

These rules are aimed at investments in shares or voting rights but do not seem to cover asset acquisitions (businesses as a going concern or isolated assets).

■ **All transactions of any kind between related undertakings: lending, borrowing, or deposits**

This can involve lending, borrowing, trade credit, capital investments, and reinvested earnings or shareholder loans.

■ **Property investments**

Article R.152-3-3° also covers "acquisitions of French real estate assets by non-residents".

In practice, the Banque de France seems to consider that a direct investment is made when the investing entity acquires or holds at least 10% of the investee's share capital or voting rights. Once the direct investment relationship has been formed, all cross-border financial interactions (lending, borrowing, trade credit, capital investment, reinvested earnings) between the investor, the companies it controls, the investee and the companies that it controls are also considered as direct investments and booked in the accounts accordingly. Statistical reporting to establish the balance of payments is necessary whenever a direct investment involves over €15 million.

The definition of foreign direct investment set out in Article R.152-3 of the Monetary and Financial Code only seems to pertain to direct investments involving cross-border financial flows.

C. Process

No more than twenty working days after the direct investment in question has been realised, a report must be sent to the Banque de France.

The report is sent by post or email to the department of statistics (balance of payments division) of the Banque de France (LOV-2513 DGSEI - DESS – SIETE - 75049 PARIS CEDEX 01 - invest.direct@banque-france.fr) via form B1, the "*report on foreign direct investment in France including real property*", available online at the website of the Banque de France (see <https://www.banque-france.fr/statistiques/balance-des-paiements-et-statistiques-bancaires-internationales/les-investissements-directs/declarer>).

In practical terms, the following information must be stated on the form: the resident company receiving the direct investment or the real property in which the investment is made, the non-resident direct investor, the seller (if any), the terms of the direct investment, the shareholding structure of the resident company (and investee) after the transaction, financing for the transaction, the ultimate goal of the transaction, the complete financial package, and its legal structure.

In contrast with the rules for prior investment authorisation, the timelines for statistical reporting to the Banque de France are calculated in working days (excepting only Sundays and bank holidays) rather than in business days (Monday-Friday, excepting bank holidays).

D. Penalties

Penalties for non-compliance with the statistical reporting obligation are not trivial. Under Articles 459 of the Customs Code and R.165-1 and L.165-1 of the Monetary and Financial Code, any violation of the rules on statistical reporting qualifies as a criminal offence punishable by a fine that can be as high as twice the investment amount, and a maximum prison sentence of 5 years. The maximum fine for legal entities is five times this amount (Article 131-38 of the Criminal Code). Legal entities also risk additional penalties including forfeiture (Article 131-39 of the Criminal Code).

To conclude, statistical reporting to the Banque de France is covered by a standalone set of rules that may apply even if the investment in question is not caught by the rules on the screening of foreign investments in France. Likewise, statistical reporting may not be required for a sensitive foreign investment, especially if it involves less than €15 million.