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Investing in Portugal: What has changed with the new Transaction Control Rules

info@abreuadvogados.com
abreuadvogados.com

Introduction: Three levels of analysis for one transaction

The European Union has entered a new phase in which transactions involving foreign capital are scrutinised far more rigorously than in the past: the traditional competition control is now joined by two additional layers — foreign direct investment (FDI) screening and the Foreign Subsidies Regulation (FSR).

In practice, this means that a single purchase or merger may have to pass through three different analyses: one focused on competition (to prevent monopolies), another focused on national security (to protect strategic sectors) and yet another directed at subsidies given by countries outside the EU (to prevent unfair competition).

These new rules reflect a shift in EU policy towards greater strategic autonomy, economic security and protection of the internal market against distortions originating outside the Union.

Why this change?

For decades, when one company purchased another in the EU, the analysis focused essentially on whether the operation harmed competition or consumers; national security issues were treated in an uncoordinated manner in each country.

But the geopolitical context has changed. The EU adopted Regulation (EU) 2019/452 in 2019, which created a cooperation system between countries to control foreign investments in sensitive sectors, and in 2022 Regulation (EU) 2022/2560 (FSR), which allows the European Commission to investigate whether companies benefited from financial support from third countries that distorts competition.

With the FSR, the EU began to apply the logic it already used to control State aid within the Union also to support coming from outside, signalling a firmer stance towards investors backed by foreign States and reinforcing the geopolitical component of business operations.

How does it work in Portugal?

Portugal has always had a relatively open stance towards foreign investment and, unlike other EU, does not have a comprehensive external investment control system across all sectors; control rests primarily on Decree-Law No. 138/2014, which allows the Government to block transactions that endanger national defence or the security of essential services in strategic areas.

Which sectors are concerned? Operations involving energy networks, telecommunications infrastructure or port concessions are now analysed not only by the Portuguese Competition Authority, but also considering security concerns and, where applicable, the EU Regulation on Foreign Subsidies.

This means that a cross-border investment that is approved from a competition perspective may still face obstacles due to parallel security or subsidy analyses at EU level.

Concrete examples: real cases

Case 1: Telecommunications in the United Arab Emirates
In the case of the United Arab Emirates telecommunications company "e&" (Emirates Telecommunications Group Company) purchasing PPF Telecom Group, the European Commission conducted, for the first time under the FSR, an in-depth investigation to understand whether unlimited state guarantees and other financial support given by the Emirates could distort competition; the operation was ultimately approved, but only after the company committed to removing the unlimited state guarantee and ensuring that financing would be done on normal market terms.

Case 2: Insurance prohibited on competition grounds, but also analysed for security
The attempted purchase of reinsurer VIG Re by Hannover Re (2022-2023) was analysed under EU competition rules and was ultimately prohibited by the European Commission (Case M.10647); at the same time, several EU countries also analysed the operation from a national security perspective, because the insurance sector is considered strategic.

Case 3: Lisbon Metro and Chinese subsidies
The European Commission opened an investigation under the FSR to understand whether the Portuguese subsidiary of Chinese company CRRC benefited from foreign subsidies that could have given unfair advantage in the public tender for the construction of the new "Violeta" line of the Lisbon metro; the investigation was opened following indications of possible distortion in the April 2025 tender and will determine whether corrective measures are appropriate, whether the contract should be blocked or whether there is no objection; the contract has not yet been awarded and the investigation is ongoing.

What challenges does this bring for investors?

The coexistence of these three control systems raises questions: whilst the legal criteria are different, they often analyse the same facts — for example, financing given by a foreign State may raise concerns of unfair competition (FSR) and at the same time strategic dependence (FDI).

For Portugal, which has always depended heavily on foreign capital, including in privatised sectors such as energy, telecommunications and infrastructure, this new framework may alter the balance between openness to investment and control; the challenge is to remain attractive to investors whilst aligning with EU economic security priorities.

Another practical problem is the coordination of timelines: the different analyses (competition, security, subsidies) have their own calendars, which can create uncertainty; whilst the European Commission seeks to facilitate coordination between processes, there is still no formal integration.

What does this mean in practice?

For transactions that must pass through national analysis in Portugal and EU procedures, it is essential to plan the sequence of steps carefully and understand where the risks lie in the contracts.

Practical advice for investors:

- Anticipate that your operation may need to be notified to several entities (competition, security, subsidies)
- Map from an early stage whether the target company or the purchaser benefited from financial support from countries outside the EU
- Prepare clear documentation on the origin and conditions of financing
- Expect longer timelines and possible conditions or commitments for approval
- Seek specialised advice from the planning phase of the operation

Conclusion: investing with knowledge and preparation

The rules have changed. Investing in Portugal today requires an integrated vision that articulates competition, security and subsidy control. What was previously a simple analysis of market share may now involve geopolitical and State financing issues.

The good news: with adequate planning and specialised advice, it is possible to navigate this new regulatory framework safely. Portugal remains an attractive investment destination, but prior preparation is determinant and essential.

If you are planning an investment or acquisition operation that may involve these issues, timely analysis of regulatory requirements is a fundamental step.

Thinking about tomorrow? Let's talk today.

Armando Martins Ferreira
armando.m.ferreira@abreuadvogados.com

Margarida Calixto Kolmer
margarida.c.kolmer@abreuadvogados.com

Francisco da Cunha Moreira
francisco.c.moreira@abreuadvogados.com

info@abreuadvogados.com
abreuadvogados.com

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