



Administrative and public law issues



SEKUENS

Agencia de Ciencia, Competitividad Empresarial
e Innovación del Principado de Asturias



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This document summarises the main regulatory aspects which affect investments in Asturias. It is especially useful not only for those investors who are approaching the Asturian regulatory environment for the first time, but also for those who want to delve deeper into the most relevant aspects related with the establishment and development of a company in our region.

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3.1. Basic administrative organisation in Spain. Special reference to the Principality of Asturias

3.1.1. Spain as a member state of the European Union

Spain is a member of the European Union, meaning that there are certain matters in which it has transferred powers (such as in matters of consumption, public procurement or public aid, inter alia) and which will be directly or indirectly, totally or partially, regulated by EU decisions in order to promote and guarantee the single internal market and the free movement of people and goods. The consequence thereof is that certain aspects of Spanish economic and legal business are similar and even the same as in the rest of the Member States of the Union, fostering regulatory homogeneity that provides greater legal certainty to economic operators.

3.1.2. Internal organisation

Furthermore, under its [Constitution](#), Spain has a unique administrative organisation in which there are, apart from the instrumental Administration, three territorial levels with their respective powers. These levels are the following:

- **State**

The Spanish State has exclusive jurisdiction in certain matters, which ensure equality in certain basic conditions throughout Spanish territory such as, inter alia:

- Business legislation, intellectual and industrial property
- Employment legislation
- Customs regime
- Monetary system
- Administration of Justice

In order to exercise its powers throughout Spanish territory, it has Government Delegations in each of the provinces, with the Asturias Delegation being located in Oviedo¹.

- **Autonomous Communities: Asturias**

Spain is organised into 17 autonomous communities which have their own governments (executive branch) and regional parliaments (legislative branch), and two autonomous cities (Ceuta and Melilla).

The Spanish Constitution provides that certain powers may be assumed by the autonomous communities themselves, which will be reflected in each case in the regulation on the creation and organisation of each of them, which is regarded as an organic law, and is called *the statute of autonomy*.

The Principality of Asturias has assumed, through its [Statute of Autonomy](#), competence in certain relevant areas, including the following which are worthy of special mention:

- Town planning and territorial organisation
- Agriculture
- Tourism

¹ Information and contact of the Delegation of the Government of Spain in Asturias.

However, there are other matters in which, for the time being, it has not assumed powers and so state legislation applies, such as in the field of public procurement or the environment.

- **Local entities, City/Town Councils**

The third level of the territorial Administration is the Local Entities², amongst which it is worth highlighting the City/Town Councils.

These Administrations have competences and powers to regulate and organise day-to-day life in the municipal areas, with the most important matters in terms of their action being town planning and the regulation of the establishment of activities in the municipality (see section Town planning regulations and reference to other permits for the liability of certain assets and/or rights), which must be taken into account when opening offices, branches or facilities in the Asturian territory.

- **Public Promotion Instruments**

Public Promotion Instruments are different types of bodies created by territorial Public Administrations for the performance of specific duties.

In Asturias they are especially relevant as there are organisations and entities that may be of interest to those who wish to establish their activity in this territory.

In this regard, we can highlight the already mentioned: (i) the SEKUENS Agency, the executor of economic development and progress policies in the field of research, technological development and innovation of the Principality; and the (ii) Regional Society for the Promotion of the Principality of Asturias (**SRP**) which is dedicated to financing investment projects carried out by Asturian companies.

3.2. Basic aspects of relations with the Public Administration

The Principality of Asturias has hardly regulated any specific aspects regarding administrative procedures in its Law 2/1995 of 13 March on the legal regime of the Administration of the Principality of Asturias, so the most relevant regulations of the relations with those administered are the State ones. The two most important national regulations in this matter are Law 39/2015 of 1st October on Common Administrative Procedure of Public Administrations and Law 40/2015 of 1st October on the Legal Regime of the Public Sector.

These regulations impose the obligation, in the case of legal entities (such as companies, for example), to interact electronically with Public Administrations, through the different platforms and electronic offices created for this purpose.

In order to access and use these platforms or offices, it will be necessary to have an electronic or digital certificate, issued by the National Mint (FNMT)³. Its processing is also electronic, but you must have a Spanish NIF to do so.

This requirement to interact electronically with the Administrations must be complied with in any interaction with public organisations, whether submitting offers in public tenders, requests for aid or subsidies, filing appeals or requesting formal authorisations, inter alia.

² Law 7/1985 of 2 April Regulating the Rules for the Local Regime.

³ At the following link you can access the FNMT page and more information about digital certificates and how to obtain them: <https://www.sede.fnmt.gob.es/certificados>

Each Administration must make available an electronic office where interested parties can submit the documents in question and through which notifications relating to them will be sent. The electronic offices are operated associated with an e-mail address, which usually receives notices of any changes and notifications that occur in the files processed via said offices.

There is also a general electronic office, a General Electronic Registry, which may be used to file documents with any administrative body of the Spanish territory (regardless of its territorial level) in the event that it does not have its own electronic office or procedures for the submission of the specific document. This office is known as the SARA Network (Application Systems and Networks for Administrations) which consists of a *set of communications infrastructures and basic services which connects the networks of Spanish Public Administrations and European Institutions, facilitating the exchange of information and access to services*⁴.

Furthermore, there is also a Unique Enabled Electronic Address (**DEHÚ**) which facilitates access to notifications issued by Public Administrations that are integrated into this system.

It is important to bear in mind that, although there is this obligation to relate electronically with the Public Administrations for legal entities, in cases in which the procedure is initiated by the administrative body and is brought to the knowledge of the interested party, a legal entity (for example, in the case of a sanctioning file), this initial communication or notification must be carried out on hard copy to the physical address of the legal entity.⁵, whilst the rest of the communications that may occur as a result of said first notification must be carried out by electronic media, including the response by the interested party to the first notification.

Finally, as regards the relationship with Public Administrations, they enjoy certain privileges or prerogatives. Of the latter, due to their importance, it should be highlighted that, if you wish to challenge an administrative act or decision, it is an essential requirement to have *exhausted the prior administrative route*, in other words, to have filed the administrative resources and/or appeals that may be applicable depending on the specific case before taking the legal route; otherwise, any possible appeal filed directly in court may be directly inadmissible and, if the period for the administrative challenge has already elapsed (which happens in the majority of cases), the act or decision would have become final.

3.3. Public procurement in Spain and Asturias

As Spain is part of the European Union, its public procurement regulations are strongly determined by European directives on the matter which aim to guarantee transparency and freedom of competition, as well as non-discrimination and the elimination of barriers between Member States to promote the single market.

This is why the Spanish Public Sector⁶ must subject the procurement of works, services and products to specific rules that make it necessary to process some procedures or others depending, essentially, on the estimated value of the contracts and the identity of the contracting body.

According to the provisions of Law 9/2017 of 8 November on Public Sector Contracts, whereby the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU of 26 February are transposed into the Spanish legislation, we could distinguish between two situations, preliminarily, based solely on the estimated value of the contract.

⁴ https://administracionelectronica.gob.es/ctt/redsara#.Y_ic_HbMKM8

⁵ Royal Decree 203/2021 of 30 March which approves the Regulations for the action and operation of the public sector by electronic media.

⁶ This concept must be understood in a broad sense, since the regulations on public procurement are applicable not only to Public Administrations, but also to all types of institutions, entities or organisations which may be included in the scope of application of the Public Sector Contracts Law, such as universities, instrumental organisations etc.

3.3.1. Minor contracts

These are contracts that can be awarded directly and without having to resort to various award criteria. Their estimated value cannot exceed the following amounts depending on their purpose:

- For works: up to €40,000 (exc. VAT).
- For services and supplies: up to €15,000 (exc. VAT).

3.3.2. Other contracts

In contracts with estimated values higher than those indicated, it will be necessary for the contracting body to carry out a bidding procedure whose characteristics will vary depending on certain circumstances, but which will have the objective of guaranteeing free competition, in other words, whereby different bidders may submit offers, with the price-quality ratio, as a general rule, being the determining criterion.

In order to be a Public Sector bidder in Spain, it will be necessary to meet a series of requirements and not incur any prohibition to contract which is legally provided for (such as not being up to date with tax or Social Security obligations, for example), at the same time that a digital certificate must be available, as has been anticipated, since the submission of offers to bidding procedures must be carried out via the platforms enabled for this purpose.

The most important Platform where the information related to all tenders for contracts with values higher than those of the minor contract is published, is the [Public Sector Procurement Platform](#) of the Ministry of Finance and Public Administration of the Government of Spain.

Some Public Sector bodies and entities have their own procurement platform, such as the [Principality of Asturias](#). Some City Councils, such as Oviedo, also have a section at their electronic office where you can search for their different completed or ongoing tenders.⁷

Furthermore, in Spain there is an Official Registry of Bidders and Classified Companies of the State (**ROLECE**): this is a national electronic registry that contains the data of the bidders and registration with it serves to speed up the accreditation of the company's solvency in order to participate in bidding procedures and it is mandatory for works contracts with an estimated value greater than €500,000 (exc. VAT).

Finally, it is worth mentioning that in Spanish legislation there is a special administrative appeal in procurement matters which may be filed against certain acts that occur during a tender (exclusion of a bidder or award of the contract, inter alia) of contracts for an estimated value higher than €100,000 in the case of service or supply contracts, and greater than €3,000,000 in the case of works contracts (exc. VAT, in both cases).

This special appeal is processed before the administrative court specialised in public procurement competent in line with the contracting body that issued the contested act and it is an optional action which, if filed, puts an end to the administrative route and its decision may be challenged before the contentious-administrative jurisdiction bodies. Given that it is usually resolved quickly, it constitutes a more flexible, speedier option than a judicial process and, in addition, as a general rule, no costs are awarded, and it is for these reasons that its filing is usually recommended despite not being a mandatory prior step in order to be able to go to court.

In the case of Asturias, which does not have its own administrative court in matters of public procurement, special appeals in matters of procurement which are filed against acts issued by

⁷ Oviedo City Council tender search engine

procurement bodies of the Region must be addressed to the Central Administrative Court for Contractual Appeals (**TACRC**), based in Madrid, although the processing of this procedure is completely electronic through the aforementioned SARA Network.

3.4. Public aid and subsidies

The Spanish Public Administrations carry out important work to promote various activities through their financial support by means of public subsidies and aid. The most important regulations on the matter are national in nature and they are Law 38/2003 of 17 November, the General Law on Subsidies and Royal Decree 887/2006 of 21 July which approves the Regulation of Law 38/2003 of 17 November, the General Law on Subsidies. Asturias has enacted its own regulation on subsidies, Decree 71/1992 of 29 October which regulates the general subsidy regime of the Principality of Asturias, but there are no significant differences between its regulation and the state one.

Both the autonomous Administration, the different municipalities and local entities, as well as the Instrumental Administration (such as the SEKUENS Agency in Asturias) call for numerous aid and subsidies for the promotion and development of different sectors. The SEKUENS Agency has a subsidies search engine at its electronic office.

Generally, subsidies are awarded on a competitive basis, after the publication of general regulatory rules (which define the requirements that applicants must meet and the eligible activity) and the attendant notices of convening which specify, inter alia, the filing period and the documentation that must accompany the applications in each specific case.

Subsidies may also be granted directly, or nominatively, for reasons of social or economic interest, but particular circumstances and requirements must be met which make this route the least common one.

To be a beneficiary of public subsidies, a series of requirements must be met, including being up to date with tax or Social Security debts or that the beneficiary does not have tax residence in a country classified as a tax haven.

Particularly important is the obligation for the beneficiary to justify both the defraying of eligible expenses and the use of the money granted to the subsidised action, according to the specific rules of the aid granted and the applicable legislation, since otherwise a subsidy reimbursement procedure could be initiated.

3.4.1. National Calls. Next Generation Funds

Economic activity in Asturias benefits not only from grants and subsidies provided by regional and local authorities but also from national-level grants, among which the ones distributed under the Spanish Government's Recovery and Resilience Plan (PRTR) stand out, which is Spain's strategy for channeling the European Union's Next Generation Funds aimed at addressing the damage caused by the COVID-19 crisis.

The PRTR is structured around 4 transversal axes: i) ecological transition; ii) digital transformation; iii) territorial cohesion and social equality; and iv) gender equality. These axes, in turn, are developed into policy levers and components, including fair and inclusive energy transition, modernization and digitalization of industrial and SME fabric, tourism recovery, and support for an entrepreneurial Spain, as well as modernizing the tax system for inclusive and sustainable growth.

In the execution of the PRTR, various policies have been approved, calling for numerous grants and subsidies, while also promoting and encouraging public procurement funded by Next Generation Funds. There is a search engine for tenders, subsidies, and grants under the PRTR framework that allows for monitoring their status, and it is subject to continuous updates.

In the specific case of the Principality of Asturias, it has a tool for capturing European projects and a European Projects Office that, together with the SEKUENS Agency, offer advice and information on how to access the various PRTR mechanisms to develop projects or activities that benefit from European funding.

3.4.2. Other Types of Public Assistance or Economic Activity Promotion Instruments from a Tax Perspective

Promotion of investment and economic development is also typically realized through means other than direct financial contributions. Specifically, from a tax perspective, there are several examples of fiscal benefits:

- In the area of Corporate Income Tax (IS), national-level deductions to the tax liability have been regulated to incentivize certain activities, such as scientific and technological research and development or the creation of film productions, audiovisual series, and shows.

Additionally, internationalization of Spanish companies and foreign companies' investments in Spain are promoted by establishing mechanisms to prevent double taxation in tax laws and by entering into agreements with other countries in this matter, such as the so-called Double Taxation Conventions (DTC) that have the status of international treaties.

Likewise, the Corporate Income Tax Law 27/2014, of November 27, includes special taxation regimes, such as mergers, divisions, asset contributions, exchange of securities, and changes of registered office from a European company or a European cooperative of one Member State to another within the EU, fostering economic growth and corporate reorganization transactions and investment in companies through income taxation deferment.

- Regarding Personal Income Tax (IRPF), we will explore the special tax regime applicable to workers, professionals, entrepreneurs, and investors relocating to Spanish territory as a clear means to attract talent to our country due to more favorable tax treatment than in other neighboring states.
- Additionally, there are other mechanisms to incentivize certain activities of general interest, such as tax deductions to the tax liability in both the Corporate Income Tax and the Personal Income Tax and the Non-Resident Income Tax (IRNR) for companies that make donations to Priority Patronage Activities (APM) and/or Events of Exceptional Public Interest (AEIP) as determined by the General State Budget Law for each year.

To give just one example, the General State Budget Law for the year 2023 declares APM the activities carried out by the Fundación Deporte Joven (Youth Sport Foundation) in collaboration with the Consejo Superior de Deportes (Higher Sports Council) under the "España Compite: en la Empresa como en el Deporte" (Spain Competes: in Business as in Sports) project with the aim of contributing to the promotion and projection of Small and Medium Enterprises (SMEs) in the domestic and international spheres, enhancing sports, and promoting the entrepreneur as a growth driver associated with sports values. Thus, the patron company, under certain conditions, can deduct 40 or 45% of the amount of the donation from its Corporate Income Tax liability, as long as it includes it as a non-deductible expense (positive adjustment) in its taxable base.

All of these tax incentives for economic activity promotion, along with some others, will be examined in their respective sections within the Tax System segment.

3.5. Urban Planning Regulations and Mention of Other Authorizations Affecting Certain Properties and/or Rights

First, the provisions of the current General Urban Plan (PGO) of the municipality where the installation or activity is intended to be located must be observed.

The PGO is a planning instrument that establishes the comprehensive urban planning of a municipality and, among other things, classifies the land for the establishment of the corresponding legal regime.

Specifically, the PGO of each municipality will classify the land into three different categories (urban land, developable land, and non-developable land). Depending on the characteristics of the specific activity, it may be located in certain classes of land but not in any.

Therefore, it is necessary to consult the PGO of the specific municipality to determine if the activity is compatible with the land classification where it is intended to be located and what licenses need to be obtained before commencing the activity (building permit, first use permit, etc.). These licenses must be requested from the Town Hall where the installation will be located or the activity will take place.

On the other hand, if the planned actions affect properties and/or rights owned by a Public Administration and/or entities providing public services or services of general interest (such as, for example, railways managed by the Railway Infrastructure Administrator (ADIF) or high-voltage power lines owned by Red Eléctrica de España (REE)), the regulations governing the specific property or right must be considered, and the corresponding authorizations or concessions must be requested before carrying out the works or commencing the activity.

Some of these properties and rights include:

- **Hydraulic public domain properties, such as rivers, lakes, or aquifers** (Legislative Royal Decree 1/2001, of July 20, approving the Consolidated Text of the Water Law and Royal Decree 849/1986, of April 11, approving the Regulation of the Hydraulic Public Domain, which develops Preliminary Titles I, IV, V, VI, and VII of Law 29/1985, of August 2, on Water).

Authorization or concession, depending on the intended use, will be required. In Asturias, this authorization is granted by the Cantabrian Hydrographic Confederation.

- **Ports** (Legislative Royal Decree 2/2011, of September 5, approving the Consolidated Text of the Law on State Ports and the Merchant Marine).

Activities presenting circumstances of exclusivity, intensity, danger, or profitability require authorization or concession.

The corresponding title must be requested from the competent Port Authority.

- **Coastal areas** (Law 22/1988, of July 28, on Coasts and Royal Decree 876/2014, of October 10, approving the General Regulations for Coasts).

Activities with special circumstances of intensity, danger, or profitability and the occupation of the maritime-land public domain with non-removable installations or movable property require authorization. The authorization must be requested from the General Directorate of the Coast and the Sea of the State Secretary of the Environment of the Ministry for Ecological Transition and the Demographic Challenge or the body that replaces it in the future.

Occupation with non-removable works or installations is subject to concession, and this concession must be requested from the General Directorate of the Coast and the Sea of the State Secretary of the Environment of the Ministry for Ecological Transition and the Demographic Challenge.

- **Assets forming part of the historical-cultural heritage** (Law 1/2001, of March 6, on the Cultural Heritage of the Principality of Asturias and Decree 20/2015, of March 25, approving the Regulations for the Development of Law 1/2001, of March 6, on Cultural Heritage).

If the installation or activity may affect a Property of Cultural Interest, an archaeological site, or any other asset forming part of the historical-cultural heritage of Asturias, the corresponding authorization must be obtained from the Cultural Heritage Service of the General Directorate of Cultural Heritage of the Vice-Ministry of Culture, Language Policy, and Sports of the Presidency of the Principality of Asturias or the body that replaces it in the future.

This list is not exhaustive. If other properties and/or rights of a Public Administration and/or entities providing public services or services of general interest are affected, the governing regulations must be consulted.

3.6. Environmental Regulations and Areas of Special Protection

3.6.1. Environmental Control Instruments in the Principality of Asturias

Depending on the type of facility or activity to be carried out, and more specifically, its foreseeable impact on the environment, it will be subject to different environmental control instruments, among which we can mention Environmental Impact Assessment or Integrated Environmental Authorization.

Therefore, if the planned installation or activity is included in the annexes of Law 21/2013 of December 9, on environmental assessment, and/or Royal Legislative Decree 1/2016 of December 16, approving the consolidated text of the Integrated Pollution Prevention and Control Law, it must undergo these environmental control instruments prior to substantive authorization.

Similarly, in the jurisdiction of Asturias, we must highlight the Principality of Asturias Law 1/2023 of March 15, on Environmental Quality, which applies to activities and installations, both public and private, carried out within the territorial scope of the Principality of Asturias and, due to their environmental impact: (i) require an environmental administrative authorization; (ii) are subject to environmental impact assessment; or (iii), due to their limited environmental impact, must undergo a regime of communication or responsible declaration.

Therefore, depending on the type of activity in question, it must be subjected, according to its potential impact on the environment and human health: (a) ordinary integrated environmental

authorization; (b) simplified integrated environmental authorization; or (c) environmental responsible declaration.

It should be noted that, in the case of issuing an integrated environmental authorization, this document will incorporate the environmental impact assessment, eliminating the need to obtain two separate permits.

Integrated environmental authorizations fall under the jurisdiction of the Ministry of Ecological Transition, Industry, and Economic Development of the Principality of Asturias or the entity that may replace it in the future, while environmental responsible declarations will be processed by the Municipalities in the municipalities where the activity will be carried out.

3.6.2. Areas of Special Protection

Another important aspect to consider when developing a facility or activity in Asturias is the presence of various areas designated as natural spaces with special protection regulations, such as those included in the Natura 2000 network, Habitats of Community Interest (HIC), Sites of Community Importance (LIC), Special Protection Areas for Birds (ZEPA), and so on.

In these areas, it is necessary to take into account the specific regulations that govern each of them and implement preventive and corrective measures aimed at protecting these areas and their biodiversity. These measures will be reflected in the report or resolution that concludes the applicable environmental control instrument.

3.7. Existence of Specific Regulations for Specific Sectors

In addition to the urban and environmental authorizations required depending on the installation or activity being proposed, certain economic sectors may require additional authorizations.

Specifically, various sectors have their specific regulations, which must be taken into account during the initiation and subsequent execution of the activity or installation.

For illustrative purposes, here are the main regulations in different sectors:

- **Transport Sector:** In this sector, there is abundant legislation that may or may not apply depending on the mode of transportation used. For example, the following:
 - National Legislation:
 - Law 16/1987 of July 30, on Land Transport Organization.
 - Law 14/2014 of July 24, on Maritime Navigation.
 - Law 38/2015 of September 29, on the Railway Sector.
 - Regional Legislation:
 - Law 12/2018 of November 23 on Transport and Sustainable Mobility in the Principality of Asturias.
- **Energy Sector:** In this case, you'll need to refer to either national or Asturian regulations depending on the administration responsible for granting the substantive authorization for the specific project:

- National Legislation:
 - Law 24/2013 of December 26, on the Electric Sector.
 - Royal Decree 1955/2000 of December 1, regulating the activities of transport, distribution, marketing, supply, and authorization procedures for electrical energy installations.
- Regional Legislation:
 - Decree 42/2008 of May 15, approving the Sectorial Territorial Guidelines for the use of wind energy.
 - Decree 43/2008 of May 15, on procedures for the authorization of wind farms by the Principality of Asturias.
- **Tourism Sector:** In this case, only regional legislation applies:
 - Law 7/2001 of June 22, on Tourism.
 - Decree 191/2019 of October 17, on Tourism Intermediation Companies.
 - Numerous development regulations based on the specific type of tourism activity, such as rural tourism accommodations, tourist hostels, camps, and hotel establishments, among others.
- **Pharmaceutical Sector:**
 - National Legislation:
 - Law 14/1986 of April 25, on General Health.
 - Law 33/2011 of October 4, on Public Health.
 - Royal Legislative Decree 1/2015 of July 24, approving the consolidated text of the Law on the Guarantee and Rational Use of Medicines and Healthcare Products.
 - Asturian Legislation:
 - Law 1/2007 of March 16 on Pharmaceutical Care and Organization in Asturias.
- **Healthcare Sector:**
 - National Legislation:
 - Law 14/1986 of April 25, on General Health.
 - Law 33/2011 of October 4, on Public Health.
 - Asturian Legislation:
 - Law 7/2019 of March 29 on Health.
- **Food Sector:**
 - National Legislation:
 - Decree 2484/1967 of September 21, approving the Spanish Food Code.
 - Law 14/1986 of April 25, on General Health.
 - Law 17/2011 of July 5, on Food Safety and Nutrition.
 - Asturian Legislation:
 - Law 2/2019 of March 1 on Food Quality, Differentiated Quality, and Direct Sales of Food Products.

- **Defense Sector:** In this case, only national legislation is available:
 - Royal Decree 369/2023 of May 16, regulating aeronautical easements for air navigation protection and amending Royal Decree 2591/1998 of December 4, on the organization of airports of general interest and their service areas, in accordance with Article 166 of Law 13/1996 of December 30 on Fiscal, Administrative, and Social Measures.
 - Law 24/2011 of August 1, on Public Sector Contracts in Defense and Security Areas.

3.8. Control of Foreign Investments in Spain

While, in general, the principle of freedom of capital movements and economic transactions with foreign countries applies, in certain cases, an investment made in Spain by a foreign entity requires authorization for it to be valid and have legal effects in our country.

Similarly, in specific cases, it will be necessary to declare foreign investments made in Spain to the Investment Register.

3.8.1. Authorization Regime for Foreign Direct Investments in Spain

What is a foreign direct investment?

According to Article 7 bis of Law 19/2003 of July 4, which regulates the legal framework for capital movements and economic transactions with foreign countries and includes measures for preventing money laundering, a foreign direct investment occurs when a foreign investor acquires a specific stake in the share capital of a Spanish company or gains control of all or part of a Spanish company through this operation. Specific details depend on whether the investor is a resident of a European Union (EU) member state or the European Free Trade Association (EFTA) or not.

In what cases is this authorization required?

Not all foreign direct investments are subject to this mechanism. It depends on the sector corresponding to the activity or installation and the characteristics of the foreign investor.

Sectors that are considered strategically important for the country, such as defense, critical infrastructure, key technologies for leadership and industrial capability, the supply of essential inputs, etc., may require authorization.

Authorization is also necessary when, for example, the foreign investor is controlled by the government of a third country or has made investments in sectors that affect the security, public order, and public health in another EU member state.

In addition to the previously mentioned Article 7 bis, various provisions in Chapter IV of Royal Decree 571/2023 of July 4, on foreign investments (RD 571/2023), need to be considered.

Applications for authorization should be directed to the Directorate-General for International Trade and Investment of the Ministry of Industry, Trade, and Tourism or the relevant authority that may replace it in the future.

How long does this regime last?

Without prejudice to the specific regulations of certain sectors, the suspension of the liberalization of certain foreign direct investments in Spain, as per the sole transitional provision of Royal Decree-Law 34/2020 of November 17, on urgent measures to support business solvency and the energy sector, and on tax matters, will generally apply until December 31, 2024, also to residents of other EU and EFTA countries when they carry out either (i) foreign direct investments in publicly traded Spanish companies, or (ii) foreign direct investments in non-publicly traded companies if the investment value exceeds 500 million euros.

Need for authorization for foreign investments in certain strategic sectors: the Defense sector or activities directly related to weapons.

Article 18 of RD 571/2023 suspends the liberalization regime for foreign investments in activities directly related to National Defense (those affecting the industrial capacities and areas of knowledge necessary to provide equipment, systems, and services that give the Armed Forces the necessary military capabilities, etc.), with limited exceptions provided in that provision.

In this case, applications for authorization should be directed to the Directorate-General for Armaments and Material of the State Secretariat of Defense at the Ministry of Defense or the relevant authority that may replace it in the future.

Similarly, the liberalization regime is suspended, and foreign investments in Spain related to the manufacture, trade, or distribution of firearms, ammunition, pyrotechnic articles, and civilian explosives will require authorization (as per Article 19 of RD 571/2023).

In this case, applications for authorization should be directed to the Directorate-General for International Trade and Investment of the Ministry of Industry, Trade, and Tourism or the relevant authority that may replace it in the future.

3.8.2. Requirement to Declare Foreign Investments in Spain to the Investment Register

It should also be noted that certain foreign investments in Spain, as outlined in RD 571/2023, and their disinvestment, must be declared to the Investment Register of the Ministry of Industry, Trade, and Tourism. This declaration is mandatory and must be made after the investment has been completed, except in specific cases provided for in Article 5.5 of the regulatory law, where the declaration must be made both prior to the investment and after the investment has been completed.

In certain cases, an annual report on the progress of the investment must also be submitted to the Investment Register.

3.9. Applicable Legislation

- Spanish Constitution.
- Organic Law 7/1981, of December 30, on the Statute of Autonomy for Asturias.
- Law 7/1985, of April 2, on the Bases of Local Government.
- Law 9/2022, of November 30, on the Agency for Science, Business Competitiveness, and Innovation.
- Law 2/1995, of March 13, on the Legal Regime of the Administration of the Principality of Asturias.
- Law 39/2015, of October 1, on Common Administrative Procedure of Public Administrations.
- Law 40/2015, of October 1, on the Legal Regime of the Public Sector.
- Royal Decree 203/2021, of March 30, approving the Regulation on the Operation and Functioning of the Public Sector through Electronic Means.
- Law 9/2017, of November 8, on Public Sector Contracts, transposing into Spanish law the Directives of the European Parliament and the Council 2014/23/EU and 2014/24/EU of February 26, 2014.
- Law 38/2003, of November 17, on General Subsidies.
- Royal Decree 887/2006, of July 21, approving the Regulation of Law 38/2003, of November 17, on General Subsidies.
- Decree 71/1992, of October 29, regulating the general regime of subsidies in the Principality of Asturias.
- Royal Legislative Decree 1/2001, of July 20, approving the Consolidated Text of the Water Law.
- Royal Decree 849/1986, of April 11, approving the Regulation of the Public Water Domain, which develops the preliminary titles I, IV, V, VI, and VII of Law 29/1985, of August 2, on Waters.
- Royal Legislative Decree 2/2011, of September 5, approving the Consolidated Text of the Law on Ports of the State and the Merchant Marine.
- Law 22/1988, of July 28, on Coasts.
- Royal Decree 876/2014, of October 10, approving the General Regulation of Coasts.
- Law 1/2001, of March 6, on the Cultural Heritage of the Principality of Asturias.
- Decree 20/2015, of March 25, approving the Regulation for the development of the Law of the Principality of Asturias 1/2001, of March 6, on Cultural Heritage.
- Law 21/2013, of December 9, on Environmental Assessment.
- Royal Legislative Decree 1/2016, of December 16, approving the consolidated text of the Law on the Prevention and Integrated Control of Pollution.
- Law of the Principality of Asturias 1/2023, of March 15, on Environmental Quality.

- Law 16/1987, of July 30, on the Organization of Land Transport.
- Law 14/2014, of July 24, on Maritime Navigation.
- Law 38/2015, of September 29, on the Railway Sector.
- Law 12/2018, of November 23, on Transport and Sustainable Mobility in the Principality of Asturias.
- Law 24/2013, of December 26, on the Electric Sector.
- Royal Decree 1955/2000, of December 1, regulating the activities of transportation, distribution, marketing, supply, and authorization procedures for electrical energy installations.
- Decree 42/2008, of May 15, definitively approving the Sectorial Territorial Guidelines for the use of wind energy.
- Decree 43/2008, of May 15, on procedures for the authorization of wind farms by the Principality of Asturias.
- Law 7/2001, of June 22, on Tourism.
- Decree 191/2019, of October 17, on Tourism Intermediation Companies.
- Law 14/1986, of April 25, on General Health.
- Law 33/2011, of October 4, on Public Health.
- Royal Legislative Decree 1/2015, of July 24, approving the consolidated text of the Law on the Guarantee and Rational Use of Medicines and Healthcare Products.
- Law 1/2007, of March 16, on Pharmaceutical Care and Organization in Asturias.
- Law 7/2019, of March 29, on Health.
- Decree 2484/1967, of September 21, approving the Spanish Food Code.
- Law 17/2011, of July 5, on Food Safety and Nutrition.
- Law 2/2019, of March 1, on Food Quality, Differentiated Quality, and Direct Sales of Food Products.
- Royal Decree 369/2023, of May 16, regulating aeronautical easements for air navigation protection and amending Royal Decree 2591/1998, of December 4, on the organization of airports of general interest and their service areas, in accordance with Article 166 of Law 13/1996, of December 30, on Fiscal, Administrative, and Social Measures.
- Law 24/2011, of August 1, on Public Sector Contracts in Defense and Security Areas
- Law 19/2003, of July 4, on the legal regime of capital movements and economic transactions with foreign countries.
- Royal Decree-Law 34/2020, of November 17, on urgent measures to support business solvency and the energy sector, and in tax matters.
- Royal Decree 571/2023, of July 4, on foreign investments.

