

FRANCE, A PROMISED LAND FOR FOREIGN INVESTORS: WALKING A FINE LINE BETWEEN ECONOMIC ATTRACTIVENESS AND PROTECTING STRATEGIC INTERESTS

*Interview with Grégory Mailly,
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Despite a series of events in recent years that have impacted its economic growth, France remains one of the leading countries for foreign investments. What do you think are the main reasons for this attractiveness?

Grégory Mailly: Since 2019, France has topped the European league table for foreign investments (by volume), and has recorded its highest level of jobs created in relation to these investments. This trend was maintained in 2020 and 2021, despite the COVID-19 impact. France's attractiveness remains paramount for investors looking notably for high-quality or even iconic assets. They find in France the major development projects undertaken, and the quality of the infrastructure networks connecting our regions, equally attractive. Both accommodate substantial flows of people and goods, while developing wealth for the entire ecosystem that depends on them.

Certain sectors are also bolstered by numerous powerful brands benefiting from worldwide recognition, as in the tourism, fashion and cosmetics industries, for example. This brand image is engraved in the minds of foreign investors and, in their eyes, justifies their enthusiasm or even their willingness to pay a premium on certain iconic assets.

The development of other sectors of our economy has accelerated more recently, withstanding the impacts of the pandemic, or even taking advantage of opportunities created by the health crisis. For example, R&D and engineering activities increased to 12% of foreign investments in France in 2021. Better still, the defence/security sector attracted 38% of these foreign investments in the same year. Healthcare, logistics, and digital companies are the other sectors buoyed by the current context and popular with investors in the M&A market, which is reflected in the significant inflation of multiples paid in recent transactions for the leaders in these sectors.

One consequence of crises is that they often act as clear indicators of pre-existing trends. As we move from one crisis to the next, which sectors do you think remain attractive and which, conversely, seem to be losing ground?

Grégory Mailly: The health crisis proved to be more of an accelerator of trends than a factor triggering a sudden change of trajectory. First and foremost, the rapid shift of tertiary working methods towards digital tools since the first confinement (and subsequently progressively towards “phygital” methods) was facilitated by high-quality

telecommunications networks, the "French-Tech" ecosystem of entrepreneurs, and applications already in gestation that were just waiting to find their purpose. These solutions immediately won over a new captive audience and changed many industries' ways of working forever.

As an example, it has been astonishing to witness the changes to the model adopted by the major banks in response to the competition they face from the numerous FinTech players that have introduced new solutions and content. The major national banks must therefore remain attentive, both to possible consolidation among the major players in the sector and to the development of FinTech start-ups, which they must acquire and then integrate on an autonomous basis before they become unaffordable unicorns.

At the same time, France has reaped certain benefits from Brexit, with many head offices returning to the European continent, and several to France (Nissan and Airbus, for example). France must step on this momentum by maintaining a sustainable business framework that ensures regulatory and fiscal competitiveness for foreign investment, and includes a recovery plan that clearly defines the sources of leverage and the beneficiaries, provides social shock-absorbing mechanisms in the post-crisis period, and facilitates the relocation of talents.

To be balanced, however, it should be mentioned that several sectors have suffered a significant slowdown since COVID: 66% of French companies' investments were down in 2020 compared to 2019, and 15% were postponed for more than 12 months. In terms of mergers and acquisitions in the airport and hotel sectors, for example, regardless of the quality of French assets, new transactions have literally been put on hold in 2020/2021 due to the inability to predict the market outlook for these sectors and the lack of credible benchmarks in valuation levels. Generally speaking, investors (even opportunistic ones) will not return to invest heavily in these hardly-hit sectors until an upturn in operations is clearly apparent.

France is engaged in an energy transition movement that has led to changes in the law applicable to companies. What impacts do you think this may have on foreign investors' appetite for French targets?

Grégory Mailly: For several years, the French authorities have chosen to promote "green" investments by establishing favourable regulatory and fiscal conditions, which have generated an impetus for the development of green energy, electric vehicles, recycling and waste recovery, and the creation of bond issues and investment funds dedicated to this green economy. According to the latest Business France report, 89% of foreign investors consider that French initiatives promoting this ecological transition enhance the country's attractiveness.

France is therefore facilitating the rapid development of clean energy sources, with a 13% increase in investments in this sector this year. The capacity to generate high-quality new projects is therefore the main problem encountered in this field, rather than finding the capital to finance them.

Now let's talk about foreign investors. How would you describe their plans, their fears and their expectations when it comes to targeting France? France's difficult image in the eyes of foreign investors is often blamed on social conflicts and taxation (its burden and instability). Do you think that in light of these preconceptions, the French investment control system is a negligible constraint?

Grégory Mailly: To be able to advise investors properly, not only do you need to determine the opportunities offered by our country, you must also, and above all, start by developing a detailed understanding of foreign investors, in terms of their diversity and in light of their aspirations. This is just as applicable to financial consultants as it is to the French State, in order to determine the acceptable degree of convergence between foreign investors, on the one hand, and the guarantor of national sovereignty on the other.

It should be noted that 64% of foreign investors in France are European, followed by 20% from North America and only 10% from Asia. There is a manifest need to encourage these investments as they contribute to the growth and success of our companies, while organising their control in strict compliance with the principle of proportionality.

With regard to France's poor image as perceived by foreign investors, we must bear in mind the deleterious effect of a few negative cases on the general attractiveness of our country, especially when they are caricatured abroad. In recent years, however, the government has focused on defining a clearer and more sustainable tax framework for investors, and on limiting the administrative burden on companies while strengthening legislation on the control of foreign investments in France (PACTE Law of 2019 combined with the ASAP Law of 2020). Furthermore, the measures in the €100 billion recovery plan put in place to combat the effects of the pandemic have been welcomed by foreign investors, who saw as both a boost and a social buffer should the difficulties continue with the energy crisis.

Turning to the control of foreign investments, how do you think investors perceive the control mechanism established by the "Multicom 4" foreign investment control office at the French Ministry of Finance?

Grégory Mailly: In a world in crisis that needs to be reorganised, and in which several companies are (re-)lo-

cating some of their production activities in France, it is also perfectly natural for the public authority to engage in the simultaneous control of foreign investments in certain assets (identified on a list that was extended in April 2020, i.e. at the beginning of the health crisis). In 2020, 275 transaction projects were subject to foreign investment control. These figures show that the State has further increased its vigilance concerning these various transactions, notably by broadening the scope of "strategic" areas, but without introducing barriers that could deter these investments. The vast majority of operations were approved either conditionally or unconditionally.

The veto should continue to be used on an exceptional basis, and justified by a combination of criteria related to the investment (strategic asset or takeover), and to the investor's profile. However, the government's increasing sensitivity to foreign investors' desires to take over iconic assets should be noted. The target's prominence, or its symbolic dimension in the public opinion, may occasionally lead the State to use foreign investment control as a preventive screening tool in order to extinguish nascent controversies.

Finally, the existence of the control mechanism itself – now clearly identified by investors and their advisers – is increasingly being used as a deterrent or even a filter to weed out certain investors who ultimately discover the State's reticence on certain subjects and/or in their regard. Few parties embark on such an uncertain process without seeking the advice of the Multicom 4 office in the French Treasury Department at the Ministry of Finance, at a relatively early stage of the proceedings.

What changes have the strengthening of the control mechanism made to your provision of support for foreign investors? Do you think that, as it stands, this system hinders foreign investment?

Grégory Mailly: Since 2019, the Ministry of the Economy and Finance has introduced several reforms designed to strengthen control over foreign investments in France (such as lowering the control thresholds and stipulating that it applies as soon as there is a single foreign entity in the chain of control), but also to encourage the anticipation of these controls by establishing a simplified and accelerated dialogue between the parties involved in the transaction and government agencies, in order to avoid any embarrassment when the transaction is announced. In this way, by developing a better understanding of the different stakeholders, on the one hand, and of the government's expectations, on the other, it is possible to find common ground for striking a deal. And even if an agree-

ment is not reached, at the very least, this saves time and avoids going up to the veto. The maintenance (demonstrated so far) of the confidentiality required for the smooth conduct of discussions by the Multicom 4 office means that this dialogue can be engaged in freely, without fear of disclosure, even when the terms of a transaction have not yet been finalised.

These early discussions do not generally lead to a detailed advance ruling, but the signals are usually clear and any conditions required for the proper performance of the transaction are explicitly stated. Experience in this field shows that it is extremely rare for an investor's project to be rejected outright at the end of the comprehensive vetting process (with the exception of the proposed takeover of Photonis – the world leader in night vision – by the US company Teledyne). In the vast majority of cases under review, an agreement is reached with terms and commitments that have been discussed in advance between the parties and the State. For example, one of the conditions may consist in either relinquishing the acquisition of certain sensitive activities or accepting the obligation to integrate a French player into the investor group.

Is all this a question of controlling foreign investments or foreign investors in France?

Grégory Mailly: It should be clearly understood that this is a question of both economic and geopolitical concerns. Each government therefore lays down its own terms and special conditions, and demonstrates that it can use its soft power (as in the Couche-Tard / Carrefour case) to refuse an investor or, on the contrary, publicly encourage it. This control mechanism should be interpreted as a shield designed to protect the authorities from any embarrassment in private matters that are sufficiently important to affect the public sphere. In this respect, the timely consultation and notification of the political authorities is an integral part of the advising bank's expertise.

The initial phases of the control carried out by the authorities at a very early stage consist in discovering and gauging the investors' reputations by paying particular attention to their compliance with the commitments made in their previous transactions (especially on the social level: jobs, relocation/reshoring). In this respect, some foreign investors cultivate a reputation for dependability and respect for the parties to a transaction. Attracting these investors to France then becomes a competition with other neighbouring nations as they provide an opportunity to ensure the continued viability of our economic fabric.