THE MAIN PURPOSE OF FRANCE'S FOREIGN INVESTMENT SCREENING POLICY

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The French market is characterised by its openness to foreign investors. This principle is enshrined in Article 63 of the Treaty on the Functioning of the European Union and, at national level, in Article L.151 1 of the French Monetary and Financial Code, according to which "financial dealings between France and foreign countries are unrestricted. This freedom is exercised subject to the procedures described in the present Chapter, in compliance with the international commitments made by France". By way of exception to this principle of freedom, certain foreign investments require prior authorisation from the Minister for the Economy, and Government control over these investments is strictly governed by law. This exception may only be applied if the proposed transaction meets three cumulative conditions, relating to the investor's nationality, the nature of the transaction and the sector of activity of the targeted French company.

Foreign investment screening as a defensive national security instrument

France's foreign investment screening system is designed to protect activities deemed essential to safeguard national interests in terms of public order, public safety and national defence. For example, this can mean ensuring autonomy of production and continuity in the supply of critical inputs across the French territory. In this light, foreign investment rules in France can thus be seen as a defensive instrument against investments that risk impacting production and supply chains across the country.

The Minister for the Economy may therefore attach a wide range of conditions to an investment authorisation, aimed at protecting strategic national interests and mitigating risks posed by the foreign investment, in particular the risk that sensitive assets or production capacity could be sent offshore and the French market no longer served. Such conditions can require that sensitive assets, whether relating to the defence sector or the non-defence sector (energy, critical technologies, transportation, food safety, communication networks, etc.), be kept or domiciled in France. In addition, these conditions may remain applicable either for a limited period of time or, if the risk is deemed to be long-term, for as long as control is exercised by the foreign investor.

Once an investment has been made, the Interministerial Committee on Foreign Investment in France, headed by the Directorate General of the Treasury and composed of 30 or so officials from different ministries, follows up the transaction and monitors the investor's compliance with any conditions set by the Minister for the Economy for the authorisation of the investment. In the event of a violation of the conditions tied to an investment authorisation, the Minister for the Economy may impose sanctions on the investor, in proportion to the nature and severity of the breach.

The Minister for the Economy may also refuse to authorise a foreign investment. Such a decision, which is the outcome of a strictly regulated process, is used as a last resort, particularly if the national interests at stake are so high that they cannot be protected by imposing conditions. Accordingly, pursuant to the EU regulation on the screening of foreign investments into the Union,[1] the Minister for the Economy is entitled to take into consideration any ties that a foreign investor may have to a foreign government or foreign public entity. The Minister for the Economy may also refuse to grant authorisation if there is a strong presumption that the investor is likely to commit an offence (e.g. a criminal or tax offence), has been convicted of such an offence, or has violated France's rules on foreign investment screening in the five preceding years.

Foreign investment screening as an offensive national security instrument

France's foreign investment screening rules are a tool for supervising the market and investment flows. The system gives the central government the power to intervene when a foreign investment is made in a company that carries out sensitive activities.

Before a foreign investment is made, a French target company, or a potential foreign investor, can seek an opinion from the Minister for the Economy as to whether the company's France-based activities fall within the scope for screening. By disclosing the level of sensitivity of the French company's activities while negotiations are still at an early stage the Minister for the Economy indicates how much vigilance he would exercise over a foreign investment in the company. In certain cases, this procedure can allow the Minister to prevent a merger or acquisition that could threaten public order, public safety and national defence interests. Indeed, if the transaction was executed without the prior requisite authorisation, the Minister for the Economy may either take corrective action to put the transaction in order, if the investor is deemed to be in good faith, or impose sanctions.

Detecting unauthorised investments is performed using both national and European tools. At national level, the central government relies on a multidisciplinary network of ministerial departments and government agencies located in France or abroad. At European level, the regulation on the screening of foreign investments complements national systems by providing a very unique framework for Member States to share intelligence. In particular, information on a specific investment that may affect other Member States can be cross-checked, and transactions that should have been subject to screening in France can be identified.

As a result, France has a range of tools and measures at its disposal to effectively protect its companies and assets that are essential to the country's national security.

[1] Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union.