

## INTRODUCTION TO THE SPECIAL ISSUE THE MECHANISM FOR FOREIGN DIRECT INVESTMENT SCREENING IN FRANCE

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The last three years have been affected by totally unprecedented health, geopolitical, environmental and economic crises, causing an upheaval in the volume and nature of foreign direct investment in the world.<sup>3</sup> Due to these different crises, many companies have become vulnerable targets for predatory practices by foreign investors. These various factors are linked to a more structural trend that ends a period of so-called happy globalization, and have led national governments to re-think the balance between attracting foreign investments

and economic sovereignty, and sometimes to make sudden changes to their support for foreign investments and transnational mergers and acquisitions in sensitive sectors.

Indeed, with the entry into force of the first European screening mechanism and substantial changes to the Chinese, American, British, German and French mechanisms, foreign direct investments screening is currently more than ever considered by national governments and States as an essential shield for protecting their strategic assets and a vital tool for dealing with predatory economic practices.

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<sup>3</sup> World investment report 2022: <https://worldinvestmentreport.unctad.org/world-investment-report-2022/#key-messages>

As a result, use of these control mechanisms enables the public authorities to oppose, sometimes publicly, investments that were easily accepted previously, on the grounds of national defence, industrial sovereignty and economic security.<sup>4</sup>

In France, the right balance between accepting and rejecting these investments is linked to changes in the economic structure, with foreign investments acting as a real or supposed catalyst for economic growth by creating jobs, technology transfers and an improvement in the financing and competitiveness of French companies. For these reasons, players in the French ecosystem go to great lengths to implement a policy favourable to foreign investments and to highlight indicators of the attractiveness of the French economy: 1,607 investment decisions in 2021<sup>5</sup> representing over 2 million jobs, more than 20% of revenue, over 14% of companies' investments and almost a third of exports.

Nevertheless, the return to prioritizing economic sovereignty in France and the greater presence of the State at the negotiating table in mergers and acquisitions in sensitive sectors do not date from the health crisis, but from 2014<sup>6</sup> and the debate on the controversial sale of Alstom Énergie to General Electric which, it should be remembered, sent shock waves through the country.

However it was not until 2019, with the Action Plan for the Growth and Transformation of Companies (PACTE) law,<sup>7</sup> and the decree<sup>8</sup> and order of 31 December 2019, that the control mechanism for foreign direct investment screening in France was really created, extending the list of sectors concerned and ending the multiplication of confusing texts.

The system for controlling foreign investments in France is now complete, more coherent and stabilised. The system is structured around defensive and offensive tools made available to the finance minister and a smaller team, the Multicom 4 Office of the French Treasury Department

responsible for examining requests for authorisation, as well as managing relations with interministerial authorities and the European Commission.

The public authorities responsible for control in France use the defensive tools to ensure the integrity of essential activities related to national defence, public security and economic sovereignty by controlling foreign investments that affect the organisation of production and supply chains.

They use the offensive tools to control flows of capital in sensitive sectors. Prior to transnational mergers and acquisitions, the finance minister informs the foreign investor and the target French company of the criticality of their planned deal. Following the operations, the public authorities have a wide range of tools to make adjustments and impose penalties to ensure the permanence of sensitive activities in France, protect companies' expertise and jobs, secure sensitive data and keep the authorities informed of the running of the activities after the investment.

This mechanism is seen as more intelligible by French and foreign players, but it would be better if the decisions under this new mechanism were more predictable, as this would give French companies and foreign investors the legal certainty they sometimes lack and that they still call for.

It is true that the transparency and intelligibility of controls have been increased by the organisation of symposiums, seminars and conferences, by and with all of the players involved in controlling foreign investment. The publication of an annual report on the foreign direct investment screening in France<sup>9</sup>, articles, books and the proceedings of symposiums, as well as templates of applications for controls also help the stakeholders to better understand the mechanism.

But the screening mechanism has been made really predictable by the drawing up and publication<sup>10</sup> on 9 September

<sup>4</sup> This list is not exhaustive and may include the following terminology: national and industrial independence, industrial champions, industrial policy etc.

<sup>5</sup> Annual Report 2021: Foreign investment in France,

[https://investinfrance.fr/wp-content/uploads/2017/08/Bilan\\_IDE\\_2021\\_UK.pdf](https://investinfrance.fr/wp-content/uploads/2017/08/Bilan_IDE_2021_UK.pdf)

<sup>6</sup> So-called Montebourg Decree of 14 May 2014, which is both a legal act and a strong political statement.

<sup>7</sup> Law No. 2019-486 of 22 May 2019 on growth and the transformation of companies.

<sup>8</sup> Decree 2019-1590, of 31 December 2019 on foreign investments in France.

<sup>9</sup> French Treasury Department, Publication of the annual report on the control of foreign investments in France in 2021. <https://www.tresor.economie.gouv.fr/Articles/9aa76183-24a8-49ba-9466-179c5b29f99c/files/47b9b032-3d2b-4779-8327-15d3400045ab>

<sup>10</sup> French Treasury Department, Control of foreign investments in France: publication of the guidelines on 9 September 2022: <https://www.tresor.economie.gouv.fr/Articles/314615b9-70b9-417f-bb94-5dd1437e7418/files/a81a841b-dc55-4685-af34-213bb0bd88cc>

ber 2022 of guidelines on the control of foreign direct investment screening in France.

These guidelines are the result of a public consultation in 2022, and provide stakeholders with a didactic and practical presentation of the scope of the rules on controls, the course of the control procedure, and monitoring of the authorisations issued by the finance minister.

Lessons learned and case studies also show how the effectiveness of the mechanism can be improved. For this purpose they make use, in more or less detail, of the cases of GE/Alstom Energie, Holcim/Lafarge, Nokia/Alcatel Lucent, Rio Tinto/Pechiney, PepsiCo/Danone, Pechiney/Alcan, Searchlight / Latécoère, Carrefour/Couche Tard, Teledyne/Photonis, Dailymotion/Yahoo! and Volkswagen/MAN Energy Solutions.

However, it may be necessary to clarify the notion of the completeness of the application. This notion is crucial since the duration of the preliminary inquiry for an application for authorisation of a foreign investment cannot exceed 30 working days, once completeness has been notified.<sup>11</sup> But for certain applications, the public authorities delay the completeness of the application and therefore the examination of the application, by asking questions over a period of time.

The challenge in the future will most certainly relate to the different practices in terms of transactions and controls, and the significant increase in the number of applications made. In 2021, no fewer than 328 operations were subject to control of foreign investments in France, compared with 275 in 2020 and 216 in 2019.

This special issue is the result of a successful collaboration between all of the stakeholders, and in the space of about forty articles and interviews. This special issue aims to present the trends, the current mechanism, the players in-

involved and the characteristics of the control of foreign investments in France, that a vast number of private and public, French and foreign players are shaping as a result of successive mergers and acquisitions in sensitive sectors.

Part 1 deals with the political, geopolitical, economic, geo-economic, European and international environment of foreign investments in France, by reviewing the new paradigm of attracting these investments but refusing industrial and economic predatory practices.

Part 2 explores the current mechanism for control of foreign investments in France with the Head of the Office in charge of the control of foreign investments in France at the French Treasury Department, and the Deputy Director-General of the Directorate-General for Trade at the European Commission.

Part 3 analyses the practices of companies, investment funds, law firms, merchant banks, strategy consultancies, lobbyists, specialists in economic intelligence, communications agencies, public authorities, Bpifrance, Business France, Banque de France, the various ministries, members of Parliament, unions, local players and journalists involved in the control of foreign investments in France.

Part 4 provides a review of recent developments and the emerging outlook for selected matters relating to transnational mergers and acquisitions and control of them. To explain their distinctive features, we had to hand over to the key actors. We also put the words of the key actors into perspective according to their sector (health, defence, new technologies), and the legal and financial engineering, in comparison with other mechanisms such as competition and compliance. Last but not least, we analysed the landmark cases of Teledyne/Photonis, Volkswagen/MAN Energy Solutions, Dubai Ports World in the United States and Carrefour/Couche Tard.

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<sup>11</sup> Article R.151-5 of the French Monetary and Financial Code.