

FLEXIBILITY AND OPENNESS FOR ECONOMIC SECURITY



*Interview with Anne Drif,
Journalist, Les Echos*

Les Echos

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In foreign investment control procedures, which are eminently political and linked to questions of sovereignty, journalists are key actors in bringing information to the general public's attention. They come into play when the different details are revealed and enter the public domain. Journalists therefore play a crucial role by shedding light on what was previously unknown without jeopardising the anonymity of their sources, while guaranteeing the veracity of the information disclosed and, as far as possible, ensuring a balanced presentation of perspectives.

Anne Drif, you are an economic journalist at Les Echos, and one of the people most widely read by professionals on this topic. How would you describe your position and approach to the question of foreign direct investment control in France? How do you respond to all the issues: political, economic, legal and discretionary?

Anne Drif: First of all, we need to remember why the issue of foreign direct investment (FDI) in France has been at the centre of the debate. We have been hit by various cyclical factors, starting with the Covid-19 pandemic, which increased the sensitivity surrounding FDI and concerns about predatory behaviour in the public sphere. The

2022 Presidential elections have also been thrown into the mix, creating favourable conditions for advocates of economic patriotism and also for the political extremes in the opposition who can use any failings against the majority in power. Lastly, the major geopolitical tensions between the United States and China and those triggered by the war in Ukraine have forced European governments to send signals of strength to their electorate and avoid any signs of weakness to the outside world.

The question of FDI has always been a subject of public debate, in tandem with major mergers and acquisitions (GE, Danone). But the political momentum linked to a

far-reaching economic crisis, now compounded by energy tensions, has brought this key issue to the fore.

There were times, such as after the 2008 financial crisis, when the question was not even asked: the country needed investment and the banks needed funds.

The balance between capital needs, the electoral situation in France and the geopolitical context is constantly being challenged. This is reflected in the perceived “risk” associated with the nationality of investors. For example, in 2015, people were upset that Qatar was buying Paris Saint-Germain and acquiring shares in LVMH and Vivendi. This is no longer a matter of public debate. The fact that Qatari fortunes are buying up luxury brands is no longer an issue. The opposite is true for Chinese buyers. No one expressed concern about the purchase of SGD Pharma, Sandro-Maje or Baccarat by Chinese investors, who could pay a high price and were even seen as saviours. The Baccarat story only reappeared in the press in 2020, when the crystalware factory was placed under temporary administration after the compulsory winding up of the Chinese investment fund Fortune Fountain Capital (FFC). The same thing happened to banks in Europe, with Libyan capital flowing into Italian banks and Chinese capital into British banks. And then there are US investors, who were the first to acquire companies in Europe and in France. After the GE/Alstom affair, US-based acquisitions, particularly of funds, no longer triggered controversy. With the Trump administration and the heightened awareness of economic warfare, sensitivities have been reignited. Following the Photonis veto, Elsan, the second largest French hospital group, was forced to accept having a French company at its core.

And today? It is the turn of Russian investors. Partners welcomed with open arms in some transactions, such as the logistics company Gefco, they have become *persona non grata*, or placed under high vigilance including in the framework of the mechanism of inter-state cooperation. Foreign investments are dictated by geopolitical shifts.

You describe a process in which the balance between cyclical factors is precarious and systematically challenged. But was there not a specific moment when a political tipping point was reached?

Anne Drif: Yes, it is cyclical, but there was a sudden shift with the Alstom case: in a highly competitive environment, involving nuclear power, extraterritorial sanctions and even the imprisonment of Alstom executives, the strategies of the key players became much clearer, their motives more transparent, in terms of their predatory behaviour. While the Montebourg decree had no effect on the GE takeover, the figures show that the number of

French government controls increased fivefold afterwards.

The shift is therefore permanent and happens depending on the economic environment, the need for capital, electoral issues, the nationality of the investors, and so on.

Saviours can very quickly turn into predators and vice versa. This is especially true in France, where the French Ministry of Finance is constantly balancing attractiveness and control. But it is true that since the Alstom affair, the awareness of economic, social and especially political risks has continued.

At the European level, the shift took place in 2020. Trump and the Sino-American economic war against the backdrop of the pandemic – with the attempted US takeover of CureVac, the darling of the fight against Covid – precipitated this shift. Until now, freedom of investment was defended at all costs and foreign investment was in some cases encouraged in Europe to prevent monopolies from forming. Margrethe Vestager’s announcement in March 2020, urging EU Member States to set up investment control mechanisms, was a watershed moment in European policy. There were repercussions within Member States, including France.

For many years, the discourse coming from the Ministry of Finance was that we could not go any further with our controls, that we could not get around or tighten the rules because there was a risk of being overruled by Brussels. Today, this type of statement is no longer valid and is clearly out of date. There is also the implementation of the new, rather unprecedented mechanism for cooperation between Member States.

When we ask foreign funds (American or Chinese in particular) about their view of controls in their home countries, they usually say they are more rigid and stricter. By contrast, haven’t French controls been seen as a sieve for years?

Anne Drif: Definitely. But could it have been done differently? We have a capital deficit in France. There are no major French investment funds, with a few exceptions, and they are more European than Franco-French. They are not arms of the State.

In many cases, the French financial marketplace has no alternative to offer and does not have sufficient depth to be an alternative to foreign investors, or the entrepreneur instead requires a new foreign shareholder to be marketable outside France. The situation with cyber is striking even today.

There are therefore controls, admittedly increasingly strict, but the French market remains open.

And what about the alternative of golden shares, shareholdings by the French authorities, the French public investment bank BPI and so on? Are these real alternatives to these foreign shareholdings?

Anne Drif: The role of BPI as a public stopgap should no longer be seen as the ultimate solution. In the past, it may have had a stake in the capital, but it was a minority share and had no right of veto. From this perspective, it was therefore rather inefficient, except for the political message that it wanted to send. BPI invested in several companies, some of which were not always successful. With others, there were internal tensions with foreign investors.

For example, in the case of Verallia, the buyer fund Apollo Global Management wanted to add debt and increase the dividend. There was a heated exchange with the management team because the director was being held personally liable. However, BPI did not take sides, at least officially, and did not apply any counter-pressure. BPI appeared, perhaps wrongly, to be a fairly limited strategic lever.

Photonis was a textbook case. We do not know the exact strategy adopted by the public authorities, as it seemed to fluctuate considerably. But the idea, if it existed, of making the transaction economically unattractive to the US buyer, because it was not possible to set up a proxy board or have an effective means of veto, did not really bear fruit. The fact that BPI became a minority shareholder with a guaranteed rate of return was unlikely to dissuade the US investor, who subsequently went back to the buyer. Our business law does not allow us, rightly or wrongly, to go as far as the United States in setting up “black boxes”. One thing is certain: we are not operating in the same legal environment because we simply do not have the same economic weight.

Clearly, if the intention is to use BPI to send a political message to stakeholders, it is a lever with rather limited scope, in my opinion. Incidentally, is this BPI’s roadmap and does this not take it beyond its economic support-focused mandate? In this area, yes, its role is undisputed.

Is the approach to FDI control in France specific or comparable to merger control? Is there a different approach, linked to the issue of economic attractiveness, sovereignty or economic patriotism, which may – in some cases – appear irrational?

Anne Drif: It seems quite specific. Merger control involves fairly clear rules depending on the size of the market. As for FDI control in France, we are dealing with something rather vague that cannot be controlled with a binary frame of reference. It is not enough to simply “tick the box”, because there is a geopolitical aspect. However,

how this “risk” is perceived varies from country to country. For a long time in France, the political aspect was not taken on board. They wanted to treat this external control as a purely technical control, with rules. A public veto has always been an absolute taboo, and it still is today. But the electoral context seems to have pushed this reservation to one side, and the Minister did not hesitate to come out against it even before a transaction had begun.

In the Carrefour/Couche-Tard case, according to some specialists, the technical basis for the veto was rather weak. Consequently, FDI control in France takes on a more political dimension, even though it is portrayed as technical abroad, so as to stick to the crest line where we strive to remain attractive to foreign investment. Only time will tell whether there was a momentary magnifying glass effect or whether the political approach is now more accepted.

However, a convergence between the two types of control, competitive and FDI, cannot be ruled out. At the European level, since the rejection of the Alstom Siemens merger, a more political approach to merger control is developing, as the buyer’s chain of control, especially one linked to a foreign State, may justify a rejection.

In France, there seems to have been an attempt at a more political approach to mergers, or at least one that is no longer purely economic but socially responsible, after the intervention of the Minister for the Economy against a decision of the Competition Authority. Some convergence seems to have taken place, but for the time being it is still quite subtle.

For merger control, there is litigation, appeals and very public discussions. By contrast, FDI control is completely discretionary. Given this situation, how do you manage to deal with these issues at an early stage? What type of stakeholders are you in touch with on these issues?

Anne Drif: There is no group of stakeholders in this area that should inherently always be sharing information. Interests differ widely. Some people have an interest in publicising, contradicting or opposing a decision. But even so, their policy is not to be seen. They have no certainty around the intended effect. In theory, the current political climate should encourage them to do so. But we also see the opposite.

Take Cerba Laboratories, for example, which is going to move from one fund to another (from a Swiss-Canadian to a Swedish fund). The media only found out about this once the exclusive negotiations had been finalised. Private equity deals are usually accepted with no problems, and in this case it was a change of control from non-EU to EU.

But the sellers contacted a small number of buyers to deliberately stay under the radar, especially since the Couche-Tard/Carrefour case, because the public authorities could have opposed it, rightly or wrongly, given that Covid tests could be considered sensitive.

How do operators who have an interest in sharing information contact you?

Anne Drif: There is no specific communication channel or person responsible for information sources, which is why I try to talk about specific cases rather than generalise. It all depends on the type of company, its size and its desire to take part in the public debate.

Photonis, for example, could well have remained under the radar. The choice of US company Teledyne was fully supported and approved by all the stakeholders in the Executive and also visibly by some in the Ministry of Defence. But this is a shifting landscape where interests can vary greatly, including within the public sector.

On the face of it, operators are not always willing to volunteer information, except in exceptional cases. It is unpredictable.

Cases involving a change of control during financial restructurings are special. Vallourec and Europcar spring to mind. In many cases (hedge funds, for example), switching to foreign control does not affect anyone: there is no political manipulation, because sometimes – or very often – it is the only alternative to bankruptcy. The experts have no desire to share information, except in cases where there is a clear clash between the financial parties or other options may exist.

There are many stakeholders and each one pursues its own interests. In the midst of all these stakeholders, do you sometimes feel like you are being used? Have new stakeholders emerged on these issues, such as the trade unions in some sensitive cases?

Anne Drif: The trade unions are among the most frequent contacts I talk to. In cases of foreign acquisitions, they are the only party to highlight the employment-related risks involved, more so than the company's management. But I do not speak to them any more than I do to other stakeholders. And in my view, neither should I be doing so per se. As journalists, we are naturally aware of the constant attempts by those with different interests to manipulate us. It is our job and our objective to keep a balanced view.

The safeguard consists precisely in speaking to multiple stakeholders, to bring together these different possible interpretations and maintain a balance, especially on subjects as political as foreign investment. Depending on the

configurations and types of companies involved, these interests can be positioned in radically different ways. Everyone tries to remain under the cover of the technical aspects and to conceal the political imperfections that are nevertheless at the heart of these issues. Even within politics, there can be different interpretations of these changes in control.

Getting the maximum amount of coverage ensures a certain degree of balance, but as a media outlet we are always exposed to the risk of bias, which often translates into highlighting the predatory aspects and threats to economic security, because it is easier and more profitable for a newspaper to go down that road.

From the outside, the legislative and regulatory provisions are poorly informed by the doctrinal literature and there is little data on how they are implemented. In your opinion, which approaches are appropriate for interpreting French foreign investment control? Can you compare the case of France with what is happening elsewhere?

Anne Drif: In my opinion, it is the political interpretation that takes precedence. The technical aspects are interpreted, manipulated and structured to fit in with what the original politician wants to do with them. Is it a sensitive issue or not, is there a particular electoral base, which ministries are involved? Interpretations can vary depending on the ministries involved (or even within a single ministry).

As far as foreign investors are concerned, the perception from here is of a more uniform, committed and non-technical political approach – as in the United States, China and other European countries – to the risks (or opportunities) associated with the nationality of the investor. But the same tensions within the State apparatus must of course be there.

How do you explain the refusal to share information? Is it for fear of revealing a strategy?

Anne Drif: Basically, I don't think there are any strategies. Unless there is an obvious or necessary alternative for the foreign investor, as long as the politician is not up against the wall in terms of the commitment to be made, it remains a blur of divergent interests without any real line being taken. As long as there is no political momentum, things remain in the technical sphere. I am not sure we can even say that there is a strategy within a ministry, within a government, and even less so within an executive and the State. Ultimately, this strategy only emerges when a decision is needed.

The Photonis case was quite revealing in this respect: it became a public issue even though the State had been associated with and approved the process from the outset. It was therefore supposed to have validated a “strategy”.

How does foreign investment control in France differ from what is practised in the United States?

Anne Drif: In the United States, the world’s largest economic and M&A market, control and its strategic role is so well accepted that it is clearly not a subject of debate. There is CFIUS, which provides a level of control that is probably as strong as that in China. Politicians accept this completely. This is not the case in France, which is certainly not in the same economic position and is not as sure of its attractiveness. We saw this with Couche-Tard and with Photonis. With Alstom, the position was not clear either. No one within the State clearly expressed the government’s position on the transaction, if indeed it had only one. Whereas in the US, the position is clear, even towards China.

Do you think we can move towards greater harmonisation of foreign investment control within the EU, to have more leverage?

Anne Drif: We have seen a refocusing at the national level during the pandemic, with security being a matter for each Member State.

On the face of it, the subject is too politically sensitive to be managed at the European level. We are talking here about national sovereignty. In this area, it is difficult to detach management from responsibility.

The framework put in place by the EU initially encouraged Member States to act on their own behalf; it freed them up. However, we are now seeing a change of pace in European political discourse and a convergence of views among the various governments, even if they are not yet speaking with one voice.

Has Covid been a turning point in foreign investment control? Have certain areas that were not strategic become strategic?

Anne Drif: This turnaround went hand in hand with the weakening of the economic situation. Predatory strategies have been portrayed as easier and public authorities have become increasingly aware of this. There was also a fear linked to the possible decline in the value of target companies.

The issue of relocation is also closely related to this. Public authorities are now more sensitive to this.

And yes, new sectors and sub-segments have become strategic.

Some parts of the manufacturing chains, which were not previously considered to be sensitive sectors, now are. Public authorities are becoming more vigilant because the entire production process can fail when a link in the supply and manufacturing chain is missing. As a result, the range of strategic companies has grown out of all proportion with the pandemic.

From your point of view, are these changes, the emergence of certain sectors, long-term?

Anne Drif: The definition of a strategic company varies and must vary according to the economic and security environment, except perhaps in the very sovereign field of national defence. From food at the height of the Covid crisis, to energy, to rare metals, this rebalancing is ongoing.

Is it easier to make it onto this list than off it?

Anne Drif: It all depends on what you want to do with the list.

What matters most is the intention of the politician rather than the list itself. Politicians want to show that they are aware of the situation, but they are still willing to discuss it. Another important aspect here is the commitments that remain a secret. Perhaps they should be made public. On this point, this summer’s court decision in the Nokia takeover of Alcatel opened up a significant loophole. We need to ask ourselves about the right to shareholder information, for example.

When we are told that a “flagship” of French industry should not change hands, it means nothing. There is no official economic definition.

In your opinion, do the stakeholders involved talk to each other?

Anne Drif: The way things are organised today is similar to the way M&A transactions are organised, where the lawyers work alongside the PR people. The scope of the whole thing has changed; they are more aware of the lobbyists.

To come back more broadly to your view of your role as a journalist working on foreign investment control, do you see an educational aspect to your job? Is your first step to make fairly technical topics more accessible to your readers?

Anne Drif: We write factual articles, others analyse transactions in greater depth.

At Les Echos, our target readership is already fairly well informed and non-partisan.

The best way to provide educational content is to increase your number of sources and remain neutral. We try to let our readers interpret the facts based on their position in the economic environment by reducing our personal and journalistic bias to a minimum.

This is quite a difficult task because we are the link that makes transactions public, so we could potentially turn them into a political issue. It is a complex task because our sources are scarce and do not like to be quoted.

Every journalist has their own national perspective. Do you think there is a French bias?

Anne Drif: You can never completely extricate yourself from this. You have to be responsible for what you write as an economic journalist for a national daily, while at the same time being part of an ecosystem: you can never com-

pletely detach yourself from French national interests. But you have to pay close attention to “French bias” and at the same time not fall into a kind of nationalism, which can also take completely opposite forms, depending on your position, in a transaction: is it better to save the company by accepting the offer from an unexpected foreign investor, even if their nationality is overly sensitive, or to let the company go under?

The best way to guarantee balance is to have multiple sources and an extensive investor history.

How would you describe French public opinion?

Anne Drif: I would say that there is not one public opinion but rather a variety of different opinions. For example, one tech entrepreneur would be delighted to be bought out by an American rather than eke out a living in France, while another would see it as a threat to national competitiveness. How people view FDI is usually closely related to how they view politics at the time.