

The measures adopted to adapt the control of foreign investments in France during the health crisis are further extended until December 31, 2022

The principle under French law is that financial dealings between France and foreign countries are unrestricted.

However, some investors making certain types of investments in so-called “*sensitive*” business sectors must follow a prior authorization procedure with the French Minister of the Economy.

The control of foreign investments in these business sectors has been significantly reinforced in recent years, especially since the outbreak of the health crisis resulting from the emergence and spread of COVID-19.

At the European level, a common legal framework for Member States, resulting from a regulation dated March 19, 2019^[1] that established a screening of direct investments in the European Union and cooperation mechanisms between Member States, came into effect on October 11, 2020.

At the French level, the so-called “*PACTE*” Law of May 22, 2019^[2], its Implementing Decree of December 31, 2019^[3] and an order dated the same day have reshaped and expanded the prior authorization procedure, strengthened the powers of the Minister of the Economy and introduced a new system of financial penalties.

For a detailed description of the applicable rules, please refer to our previous articles on the subject^[4].

With the outbreak of the health crisis resulting from COVID-19, a further strengthening of the control of foreign investments appeared necessary.

In a communication dated March 26, 2020, the European Commission *inter alia* alerted the Member States to the impact that “*acquisitions of healthcare-related assets*” would have on the European Union as a whole[5].

Two measures to strengthen the control of foreign investments in France were quickly adopted under French law.

As a first step, an order dated April 27, 2020 had completed the list of “*critical technologies*” protected under Article 6 of the order of December 31, 2019 referred to above by adding a reference to “*biotechnologies*”.

As a reminder, said Article 6, adopted in application of Article R. 151-3, III, 1° of the French Monetary and Financial Code, defines “*the list of research and development activities involving critical technologies*” for which foreign investments are subject to prior authorization.

These include *inter alia* cybersecurity, artificial intelligence and robotics.

Bruno Le Maire, French Minister of the Economy, justified the addition of “*biotechnologies*” by recalling that “*several thousand companies are involved in research on vaccines against COVID-19*”[6].

Even though he announced that this would be a transitional measure, the order of April 27, 2020 does not set a date for the end of its application and this measure is, therefore, still in force today.

The lack of a precise legal definition of the concept of “*biotechnology*” has been criticized by some legal writers who have noted the need to “*define the term rigorously, since the scope of application of the foreign investment authorization system depends on it*”[7].

The definition of the Organization for Economic Cooperation and Development, according to which biotechnology includes “*the application of science and technology to living organisms, as well as parts, products and models thereof, to alter living or non-living materials for the production of knowledge, goods and services*” appears too general to avoid any objection from foreign investors.

It is worth noting the effectiveness of this measure since between 2020 and 2021, controls on foreign investments in biotechnology have almost doubled[8].

As a second step, a Decree dated July 22, 2020[9] lowered the threshold for the acquisition of voting rights that could trigger control by foreign investors in French listed companies.

A further Decree had extended the duration of this measure from July 22, 2020 to January 31, 2021[10].

As the current health situation still does not allow “*to rule out risks to national security associated with opportunistic minority shareholdings in listed French companies*”[11], a new Decree[12] recently extended this temporary measure to lower the threshold until December 31, 2022.

It should be recalled that Article R. 151-2, 3° of the French Monetary and Financial Code specifies that when a foreign investor “*crosses, directly or indirectly, alone or in concert, the threshold of 25% of the voting rights of*

an entity incorporated under French law”, this constitutes an investment subject to authorization.

Decree of July 22, 2020 provided a temporary and exceptional exemption by lowering, until December 31, 2020, this threshold from 25% to 10%, for investments in French companies whose shares are admitted to trading on a regulated market.

However, this temporary lowering is applicable *“neither to an individual who is a national of a Member State of the European Union or of a State party to the Agreement on the European Economic Area that has concluded with France a convention on administrative assistance to combat tax evasion and avoidance and who is domiciled in one of these States, nor to an entity in which all the members of the chain of control, within the meaning of II of Article R. 151-1 of the [French] Monetary and Financial Code, are governed by the law of one of these States or are nationals of and domiciled in one of these States”*^[13].

In order to limit hindrance to the liquidity of the markets during these transactions involving the acquisition of a minority of the voting rights, the procedure to be followed by the foreign investor crossing the 10% threshold has been simplified^[14].

The investment project must indeed merely be priorly notified to the Minister of the Economy and is only subject to the filing of an application for authorization at the request of the latter within ten working days from said notification.

^[1] Regulation (EU) 2019/452 of the European Parliament and of the Council of March 19, 2019 establishing a framework for the screening of foreign direct investments into the European Union

^[2] Law No. 2019-486 of May 22, 2019 on business growth and transformation

^[3] Decree No. 2019-1590 of December 31, 2019 on foreign investment in France

^[4] See the articles entitled [Screening of foreign direct investments by the European Union](#) and [Foreign Investment Control in France: Strengthened rules but greater clarity for investors](#) published on our Blog on September 12, 2019 and February 28, 2020

^[5] See the article entitled [Covid-19: What consequences on foreign direct investments?](#) published on our Blog on April 29, 2020

^[6] Statement by Bruno LeMaire to LCI on April 29, 2020

^[7] Dalloz actualités, X. Delpech, May 5, 2020, Addition of biotechnology to the list of foreign investments subject to authorization

^[8] Press release No. 1733, Paris, November 29, 2021, *“Bruno Le Maire and Franck Riester announce the extension for one year of the exceptional lowering of the threshold for controlling foreign investments in*

France from 25 to 10%”

[9] Decree No. 2020-892 of July 22, 2020 on the temporary lowering of the threshold for controlling foreign investments in French companies whose shares are admitted to trading on a regulated market

[10] Decree No. 2020-1729 of December 28, 2020 amending Decree No. 2020-892 of July 22, 2020

[11] Press release No. 1733 mentioned above

[12] Decree No. 2021-1758 of December 22, 2021 extending the temporary lowering of the threshold for controlling foreign investments in French companies whose shares are admitted to trading on a regulated market

[13] Article 1 paragraph 2 of Decree No. 2020-892 of July 22, 2020

[14] Article 2 of Decree No. 2020-892 of July 22, 2020

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