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TEMPORARY AND PERMANENT TIGHTENING MEASURES CONCERNING FOREIGN DIRECT INVESTMENTS IN FRANCE TO PROTECT STRATEGIC SECTORS

Real Estate and Construction Environmental Law Public Law and Public Procurement Law Private Clients
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The threshold triggering the application of a – simplified – control is temporarily lowered from 25% to 10% of the voting rights of the entity subject to the investment, while biotechnology research activities have been permanently included in the list of strategic activities.

In recent weeks, two measures have strengthened the control of foreign direct investment ("FDI") in France to better protect strategic companies which, weakened by the health crisis, could be the target of undesirable FDI.

On the one hand, pursuant to a Decree and Order published in the *Journal Officiel* on 23 July 2020[1], a simplified control procedure will be applicable until 31 December 2020 in the event of the crossing of the 10% threshold of the voting rights of a company incorporated under French law (i) having a strategic activity within the meaning of the French Monetary and Financial Code ("FMFC") and (ii) whose shares are admitted to trading on a regulated market ("Operation").

In such a case, the investor must notify the Minister in charge of the Economy ("Minister") in advance of the Operation. The Minister may then oppose the Operation within 10 working days. If he does not object, the Operation is authorized, and the investor has six months to carry it out. If he objects, the investor may file an application for authorization of the Operation, under Article R. 151-5 of the FMFC.

This procedure leads to the following five observations:

1. it does not apply to Operations carried out within ten working days following 23 July 2020;
2. it does not apply if the investor or the members of its control chain are nationals of a Member State of the European Union or of certain States parties to the Agreement on the European Economic Area. In such a case, the Operation is exempted from notification;
3. it applies only if the shares of the entity subject of the Operation are admitted to trading on a regulated market;
4. the ordinary authorization procedure, applicable in the event of the Minister's opposition to the notification – and if the investor maintains its project – is longer (in principle between 30 and 75 days of investigation);
5. in the absence of an express derogation, the ordinary authorization procedure still applies, pursuant to the usual rules, to FDIs which result in the crossing of the 25% of the voting rights threshold. It should be recalled that, also in the sense of strengthening the FDIs control, this 25% threshold has replaced, since 1 April 2020, the previous 33% threshold.

On the other hand, this new evolution FDIs control, grounded on the uncertainties caused by the Covid-19 outbreak, recalls that, for the same grounds, the list of strategic activities was enriched in April 2020 with research and development activities in the biotechnology sector[2]. The aim of this measure is, mainly, to protect companies working on a vaccine against Covid-19.

This double reinforcement comes at a time when the FDI control regime had already been substantially amended in mid and late 2019.[3] This new step reflects the government's concern about the vulnerability of certain strategic French companies. Weakened by the health crisis, these companies are likely to be the object of the, sometimes undesirable, appetite of certain non-European competitors or investors.

However, preserving control of critical and strategic assets, which are not only essential to respond to health emergencies, but whose activity will also be critical to economic recovery, is a major challenge. On 25 March, the European Commission encouraged Member States to strengthen their control of FDI, especially in the health sector.[4]

By subjecting more FDIs to its control and extending it to the biotechnology sector, France is therefore part of this European movement and appears determined to use the legal leverage to protect its economy and strategic interests.

[1] [Decree N.2020-892 of 22 July 2020](#) on the temporary lowering of the control threshold for foreign investment in French companies whose shares are admitted to trading on a regulated market ; [Order of 22 July 2022](#) on the temporary lowering of the control threshold for foreign investment in French companies whose shares are admitted to



trading on a regulated market.

[2] Order of 27 April 2020 on foreign investments in France. This text came into force on 1 May 2020.

[3] Law N.2019-486 of 22 May 2019 said PACTE ; Decree N.2019-1590 and Order of 31 December 2019 relating to foreign investments. We would like to take the liberty to advise you to read our publications on the subject: "*Contrôle des investissements étrangers en France : le temps de la maturité ?*", *Revue Lamy Droit des Affaires*, n.151, September 2019 and "*Réforme du contrôle des investissements étrangers : dernier acte ?*", *Options Droit & Affaires*, 29 January 2020.

[4] See also : "Covid19 : la Commission européenne encourage les États membres à contrôler les investissements directs étrangers ", *La Tribune*, 30 March 2020.
