

# COVID-19 crisis inspires global tightening of Foreign Investment Screening

## France

**France, which has had an FDI screening mechanism since 1966, has in the last two years further strengthened and clarified it through successive reforms. These have turned it into a powerful tool, similar in many aspects to merger control procedures, among others in the possibility for the French administration to directly impose sanctions on non-compliant investors, which may go up to 10 percent of the undertakings active in the sector subject to control.**

As the law currently stands, XXX are subject to prior authorization by the Minister of Economy any acquisition by a foreign investor of a French entity active in a strategic sector. The concept of acquisition is interpreted in a wide manner and may mean the acquisition of:

- Control over a French entity
- An activity branch held by a French entity
- More than 25 percent of the voting rights in a French entity
- Foreign investment control in France covers a broad scope as it applies to:
- All investments by foreign entities, including European ones
- A wide area of activity including, in particular, health, safety, press, food safety, research and development in the areas of cybersecurity, artificial intelligence, etc.

From a procedural point of view, and not unlike merger control rules, the authorization may be obtained in two phases: the Ministry of economy has 30 days to respond to the authorization request, but a second phase, with an additional 45-day period may be triggered if the Ministry considers that an in-depth analysis is necessary.

Given the wide powers granted by the existing mechanism, no reinforcement measures have been voted for the time being, although French Minister of Economy Bruno Le Maire, has announced that he may seek to lower the 25 percent threshold to 10 percent. In any case, the French government has declared its intention to use its powers to fight against hostile takeovers that could threaten domestic companies: *"whether in the aeronautics, automotive or health sectors, it is essential to be able to protect companies whose value is now collapsing and which are*

*becoming easy prey for foreign investors"* (Declaration of 17 April before the French parliament [April 17](#)).

In this context, it appears likely that France will follow the EC Guidance issued on March 25 and will vigorously enforce the existing system. Even before the start of the sanitary crisis, the French Ministry of Economy showed its determination to use veto powers if they deem it necessary: at the beginning of April, the Ministry decided to block the takeover of Photonis, a French group specializing in night vision technologies, by the American Teledyne, due to the strategic value of the targeted technology, and the fact that the target is an important supplier of the French army ([link](#)).

It is also important to keep in mind that, under French merger control rules, the Ministry of economy has the possibility to authorize or block a merger, notwithstanding the contrary decision of the Competition Authority, for reasons relating to the national interests. The French Ministry recently used this exorbitant power for the first time in 2019, to rule on a merger in the food sector. Foreign investors should keep in mind this "double veto mechanism" in the management of the authorization procedures, moreover considering that these procedures are overseen by different services within the Ministry of Economy. It will be important to ensure the coherence of the foreign investment control and the merger control procedures.

Besides the screening of foreign investment, the French government is also considering to implement additional measures, such as:

- Increasing its shareholding in companies in which the State or its agencies are already shareholders, in particular through Golden Shares under the conditions set out by law

- Acquiring stakes or temporarily nationalizing strategic companies that would have been in financial difficulty due to business interruption or even threatened
- Setting up special loans

In order to sustain these measures, Bruno Le Maire announced on [April 15](#):

- The elaboration of a list of about 20 companies considered by the State as strategic and weakened in terms of capital by the current economic crisis

The creation of an additional €20 billion fund to increase state participation in strategic companies.

The first company to benefit from this fund is likely to be the French-Dutch airline Air France – KLM, which should also benefit soon from emergency state aids (in the form of loans).

By **Marta Giner**