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ALSTOM decree: economic patriotism strikes back

Pursuant to a Law dated December 28, 1966, still in effect today, *“financial dealings between France and foreign countries are unrestricted”*. This freedom is exercised in conditions set by the Government that may, *“to ensure the defense of national interests and by way of decrees adopted on the basis of a report of the Minister of Economy”*, subject foreign exchange transactions, French assets held abroad, and inward foreign investments to a declaration, prior authorization or control procedure.

At certain times, the freedom enshrined in the above-mentioned Law was more the exception than the rule and the control by the State more the rule than the exception. Everyone remembers the foreign exchange control regulations, the nationalizations and the State interventionism that prevailed until the mid-1980's when the then-President of the French Republic, Mr. François Mitterrand, decided to implement a radical change of policy.

In the mid-2000's, Jacques Chirac's Prime Minister, Mr. de Villepin, used the term “economic patriotism” to describe the State's intervention aimed at preventing the takeover of Danone by Pepsi and the acquisition of Suez by the Italian group Enel. At that time, it was about making sure that these French industrial “flagship companies” would not be acquired by foreign groups.

Decree of December 30, 2005 added new business sectors, such as gambling, private security services or information systems security, to the list of regulated sectors. Previously, only foreign investments in business sectors or companies that involved national defense or national security issues were covered by this regulation.

The rhetoric of “economic patriotism” gets a new lease of life since François Hollande was elected President of the French Republic, and now has a new emblematic icon, Mr. Arnaud Montebourg, Minister of the Economy and Production Recovery.

Furious that he had not been consulted during the discussions between General Electric and Alstom in relation to the contemplated sale of the latter, Mr. Montebourg pushed for a new Decree, adopted on May 14, 2014,

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that extends the scope of the State's prior authorization procedure to new business sectors.

This Decree targets, in particular, *"the activities relating to equipment, products or services, including those relating to the safety and the proper functioning of facilities and equipment, essential to guarantee the French national interests in terms of public policy, public security or national defense"*, such as the integrity, security and continuity of the supply of electricity, gas, oil or other source of energy and of water.

It also covers the integrity, security and continuity of the operation of (i) transportation networks and services, and (ii) electronic communication networks and services.

Knowing that Alstom is a world leader in the production and transmission of electricity from all sources of energy and the manufacturer of the fastest trains in the world, it is easy to understand why the media have given to this Decree the nickname "Alstom Decree". The fact that Mr. Montebourg recently opposed the acquisition of *Dailymotion*, a subsidiary of France Télécom, by Yahoo could explain that electronic communication networks and services are covered by the Decree.

A raging debate has broken out in France between the advocates of "economic patriotism" and those who consider that this ad-hoc Decree, based exclusively on present circumstances, will likely further discourage foreign investors and divert them to other European countries such as Germany, the United Kingdom, Spain or Italy.

According to the UNCTAD, foreign investments in France dropped by 77% in 2013 while, for the same period, they rose by 392% in Germany and by 37% in Spain. The total global flow of direct foreign investments, all countries taken together, rose by 11%.

Yet, according to a study published in 2012 on the website common to the Ministry of Finance and the Ministry of the Economy, foreign businesses in France employ one fourth of the workforce of the industrial sector and account for almost one third of French exports.

Mr. Montebourg's fiery speeches about "economic patriotism", relayed by TV channels worldwide, are surely unlikely to reassure foreign investors. The fact that such speeches are almost systematically directed against US companies is certainly surprising given the weight of such companies in our economy and the friendship and cultural ties existing between our two countries.

We all remember the words pronounced by François Mitterrand in the last speech he made before the European Parliament: *"nationalism leads to war"*. Let us hope that economic patriotism will not lead to isolation.

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