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The measure that lowers the threshold triggering the control of foreign investments in French listed companies operating in sensitive business sectors is extended in 2023

On December 22, 2022, Mr. Bruno Le Maire, Minister of the Economy, Finance, Industrial and Digital Sovereignty, and Mr. Olivier Becht, Minister Delegate for Foreign Trade, Economic Attractiveness and French Nationals Abroad, Attached to the Minister for Europe and Foreign Affairs, announced in a press release^[1] that the temporary measure lowering the threshold of voting rights in listed French companies that triggers foreign investment control in France will be extended until December 31, 2023.

Under French law, the principle is that financial dealings between France and foreign countries are unrestricted^[2]. However, by way of derogation, Articles L.151-3 *et seq.* and R.151-1 *et seq.* of the French Monetary and Financial Code require an administrative authorization for some investments made in France, including those made by companies incorporated under French law or by French nationals, and impose severe penalties for non-compliance with the regulations on foreign investments.

It should be recalled that the prior authorization of the Minister of the Economy is required for any foreign investment in an activity in France which, even on an occasional basis, involves the exercise of public authority or falls within one of the following areas:

- Activities that may undermine public order, public safety or interests of national security;
- Activities of research, production or marketing of weapons, ammunition, explosive powders and substances[3].

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 (please refer to our previous articles on the subject[4]).

By Decree dated July 22, 2020[5], the threshold for the acquisition of voting rights in French listed companies that could trigger the foreign control procedure was lowered from 25% to 10% of the voting rights.

This measure was first extended from July 22, 2020 to January 31, 2021[6], and then renewed until December 31, 2022[7].

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Given the current economic context linked to the energy crisis, Messrs. Bruno Le Maire and Olivier Becht believe that it is essential to ensure the continued protection of the relevant companies. The Ministers have, therefore, requested that this temporary measure, which was to end on December 31, 2022, be maintained until December 31, 2023.

It is important to note that the scope of the measure which lowers the threshold that triggers foreign investment control remains unchanged:

- It does not apply to investors who are nationals of a Member State of the European Union or of a State party to the Agreement on the European Economic Area;
- It applies only to investments in French companies whose shares are admitted to trading on a regulated market;
- it is carried out according to a fast-track procedure: a foreign investor that crosses the threshold of 10% of the voting rights must send a notification to the General Directorate of the French Treasury. The Minister of the Economy, Finance, Industrial and Digital Sovereignty has 10 days to decide whether the investment should be subject to further review and requires a full application for authorization.

Given the weakened economic climate, the issue of foreign investment control remains highly sensitive. This is evidenced by the written question asked by Loire-Atlantique Senator Yannick Vaugrenard to the Minister of

the Economy and published on October 27, 2022^[9]. Senator Vaugrenard expressed his concern about the contemplated purchase of Exxelìa, a French industrial company specialized in the design and manufacture of components for the military aviation and European space industries, by the American defense and electronics company Heico, and recalled the applicability of the foreign investment control procedure. The acquisition of Exxelìa by Heico was eventually completed in early January 2023.

[1] Press release of December 22, 2022 No. 458, *“Extension in 2023 of the measure that temporarily lowers the threshold triggering Foreign Investment Control in French companies whose shares are listed on a regulated market”*

[2] Article L.151-1, paragraph 1 of the French Monetary and Financial Code

[3] Article L.151-3 of the French Monetary and Financial Code

[4] See articles entitled *Screening of foreign direct investments by the European Union, Foreign Investment Control in France: Strengthened rules but greater clarity for investors* and *The measures adopted to adapt the control of foreign investments in France during the health crisis are further extended until December 31, 2022* published on our Blog on September 12, 2019, February 28, 2020 and January 28, 2022

[5] 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

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

[7] 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

[8] Press release of December 22, 2022 No. 458, *“Extension in 2023 of the measure that temporarily lowers the threshold triggering Foreign Investment Control in French companies whose shares are listed on a regulated market”*

[9] Written question No. 03449 from Mr. Yannick Vaugrenard (Loire-Atlantique – SER) published in the Official Bulletin of the French Senate of October 10, 2022 – page 5245

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