2021 CONFIRMED THE TREND INITIATED IN 2020 REGARDING FOREIGN INVESTMENT SCREENING IN FRANCE

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As a matter of principle, financial dealings with foreign countries are unrestricted. An open French market, coupled with a favourable geographical position and the efficiency of the nation's infrastructure, contributes to France's attractiveness on the world stage. This global reach is reflected in the significant contribution that foreign companies make to economic growth and job creation in France. France is home to 16,800 subsidiaries of foreign companies, equating to 2.2 million jobs, 20,1% of the economy's total revenue[1].

Although the pandemic triggered a collapse in global foreign direct investment in 2020, a strong rebound was observed in 2021, up 77% to an estimated $1.65 trillion, from $929 billion in 2020[2]. In this context, according to the EY 2021 Attractiveness Survey, France has retained the position it acquired in 2019 as the leading European host country for foreign investment. Still, it is essential for countries to establish safeguards to protect their national interests. For this reason, the Government may screen foreign investments in sectors or activities deemed essential for public order, public safety or national defence interests. Many countries around the world have thus strengthened and expanded their foreign direct investments (FDI) screening systems since 2018. France's system is characterized by a transparent, efficient and predictable legal framework, which contributes to its appeal for investors.

While 2020 and 2021 were years in which France retained its attractiveness on the global stage, they were also ones in which it displayed heightened vigilance vis-à-vis certain foreign investment transactions liable to jeopardise or threaten national security, particularly amidst the ongoing pandemic and its economic fallout.

The implementation of a stronger foreign investment screening system for France since 2020

The 22 May 2019 "PACTE law"[3], which entered into force in April of 2020, significantly strengthened the pow-

[1] Bilan des investissements internationaux en France 2021, Business France
[2] CNUCED, Global Investment Trend Monitor, No. 40.
[3] Loi n° 2019-486 du 22 mai 2019 relative à la croissance et la transformation des entreprises

ers of French authorities to screen foreign investments. In particular, the law expanded France's screening system by extending the scope of covered investments and of covered sectors requiring screening, to include for example food safety as well as print and digital press. The PACTE law also granted the Minister for the Economy greater powers to impose sanctions for non-compliance with the rules.

In addition to the legislative and regulatory reforms, the Minister for the Economy made changes to France's system for screening foreign investment in response to the economic implications of the COVID-19 pandemic. The pandemic has considerably weakened France's economic fabric and, as a result, some of the country's more vulnerable strategic companies. Businesses are facing increased need for capital, including foreign capital, as well as industry backing critical to their survival. It follows that investments made by foreign entities in French companies whose activities are considered essential for national security may present risks. These risks call for closer scrutiny from the Government.

It is against this backdrop that the foreign investment screening system has played, and continues to play, a full part in protecting sensitive assets. In practice, this protection translates into measures aimed at preserving France's autonomy, in particular by keeping production capacity, know-how and critical skills on French soil. These safeguards, which have proven to be vital during the COVID-19 pandemic, are the very purpose and function of France's foreign investment screening system.

The Minister for the Economy maintains a constant vigilance which could lead to adapt the foreign direct investment system to new risks. For example, to best preserve national interests potentially threatened by the pandemic, France – like other European Union Member States including Italy, Spain and Germany – has taken specific measures to strengthen its screening procedures for foreign investment in its territory. Specifically, France followed the European Commission's recommendations to Member States that they make full use of their foreign investment screening systems.

Accordingly, a temporary measure was adopted in July 2020 to lower the threshold that triggers screening from 25% to 10% for investments by non-EU investors in publicly listed companies. This measure is designed to protect companies with dispersed ownership, in which a minority stake could give the shareholder significant influence over the company and its sensitive activities. As the economic crisis continued into 2021 and 2022, the provision, which was initially scheduled to expire on 31 December 2020, has been extended until 31 December 2022.

In addition, the list of critical technologies subject to screening was expanded twice since 2020 in order to cope with new risks identified for the public security. Foreign investments in R&D activities in biotechnologies are now submitted to the foreign investment screening system. As a result, investments in upstream, forward-looking activities deemed essential to public health protection, such as vaccine research and development, are now subject to screening. This measure has proven its efficiency. Between 2020 and 2021, applications for prior authorisation in the healthcare sector have doubled. More specifically, in 2021, applications in the biotechnologies sector accounted for about 26% of filings related to public health protection. Among applications related to biotechnologies, half of the transactions presented significant risks to public safety and required conditional authorisations by the Minister.

Moreover, to adapt to ongoing developments and challenges in the energy sector, R&D activities in technologies involved in the production of renewable energy were also added to the list of the sectors screened since January 1st 2022.

Furthermore, a European regulation on investment screening entered into force on 11 October 2020, something France had been calling for since September 2017. The regulation highlights the importance of foreign investment screening systems at EU level and encourages better cooperation between Member States and the European Commission to protect the EU against foreign investments that could potentially threaten public safety or public order. The French Treasury was closely involved in the rapid build-up and was very active in driving the cooperation and in sharing its best screening practices with other Member States. The Treasury notified 108 foreign investment transactions on behalf of France in the regulation's first year of application, from 11 October 2020 to 11 October 2021. France was among the five Member States accounting for 90% of all notifications made between 11 October 2020 and 31 June 2021.

2021 confirmed the tighter screening of foreign investment in France

The number of cases reviewed by the French government rose significantly during the year, from 216 in 2019 to 275 in 2020 and 328 in 2021. The increase is mainly due to the expanded scope of transactions and sectors subject to foreign investment screening in France, alongside with M&A market developments.

The main figures of FDI screening in France in 2021 illustrates the constant caution France exercised in 2021 to mitigate risks for public security. In 2021, 124 transactions screened by the French Treasury were found to pose potential risks to public order, public safety or national defence interests. In 54% of those cases, the Minister for the Economy tied specific conditions to investment authorisations in order to safeguard France's national interests.

There was little change from 2020 in the geographic origin of the ultimate investors whose transactions were subject to foreign investment screening. In 2021, most screened investments were made by non-European (non-EU/EEA) ultimate investors, accounting for 58.8% of investments. These investors were mainly out of the United Kingdom, the United States and Canada. Within the European Union (EU) and European Economic Area (EEA), investments were mostly made by ultimate investors located in Germany, Luxembourg and Ireland.. Finally, 2021 confirms the trend observed in 2020 regarding the sectoral distribution of screened FDI: foreign investments in non-defence sectors are still growing, mirroring the gradual extension of the scope of screening from the original defence and security sectors to non-defence sectors since 2014.

In 2021, 13.7% of investments screened fell under the defence and security sectors (e.g. activities relating to war material production, dual-use technology, cryptology activities or R&D activities in such activities[4]), down from 31.5% in 2020.

This figure is up to 56.9 % for investments in strictly non-defence sectors (e.g. activities relating to infrastructure, goods and services that are essential to safeguard the integrity, security and continuity of energy supply, public health, research and development in those activities), compared to 50.5% in 2020.

Some foreign investments fall under both categories (for example, investments in companies that have both civil and military aviation activities). These investments are classified in the "mixed" sector. This is the sector that experienced the strongest growth in 2021, accounting for 29.4% of screened investments compared to 18% in 2020.

Thus, already equipped with one of the most advanced screening systems in the EU, France further strengthened its screening system these past couple of years.

[4] Such as cybersecurity, biotechnology, semiconductors…