

LEGAL NEWS ON FOREIGN INVESTMENTS IN FRANCE

The control of foreign investments in France has been subject to new adjustments since 1 January 2024

Catherine Nommick, Partner at Bremens Avocats

January 10th, 2024

Over the last fifteen years, the legal framework applicable to the control of foreign investments in France has been significantly modified, moving from simplification in order to promote France's attractiveness, to strengthening in order to protect our country's key strategic and technological sectors.

Prior to May 12th, 2017¹, any foreign company wishing to invest in France was required to file an administrative declaration with the Treasury Department upon completion of the investment. Since 2003², France had also put in place a prior authorisation process for any foreign investment made in France in economic sectors considered as sensitive because they affect France's essential public interests.

The administrative declaration formality was terminated in 2017 and, since then, only the prior authorisation process must be fulfilled for foreign investments in activities essential to the protection of the country's interests in terms of public order, public security or national defence.

Controls on foreign investments in these practices areas have recently been considerably tightened, particularly since the health crisis linked to the emergence and spread of the coronavirus.

In that respect, the list of critical technologies was extended in 2019 and thereafter in 2020³ to include activities in biotechnology, cyber security, artificial intelligence and robotics.

The **Decree no. 2023-1293 of 28 December 2023** and an order issued on the same day have amended the rules governing foreign investments in France falling within the scope of prior authorisation process. They are in force since **January 1st, 2024**.

New "sensitive" business sectors are now concerned:

They now include the extraction, processing and recycling of critical raw materials, R&D in photonics, low-carbon energy production and activities essential to the security of prisons.

¹ Entry into force of the Decret n°2017-932 dated May 10, 2017

² Decree n°2003-196 dated March 7, 2003, as amended by Decree n°2014-479 dated May 14, 2014

³ Order dated December 2019 and April 27, 2020 relating to foreign investments in France

Scope of control extended:

On July 2020⁴, in the context to the health crisis, the French government had exceptionally and temporarily reduced the threshold for controlling non-European foreign investments, from 25% to 10% of the voting rights in French companies listed on a regulated market and operating in "sensitive" sectors. This 10% threshold, which was only applicable until 31 December 2023, has now been made permanent⁵.

In addition, acquisitions of control of branches or establishments of foreign companies registered in France and carrying on a "sensitive" business now fall within the scope of the procedure controlling foreign investment in France.

Some exemptions applicable in particular to investments made within groups of companies have been redefined. As such, only investments to be made by an investor which, prior to the investment, already held control (within the meaning of Article L 233-3 of the French Commercial Code) of the entity subject of the investment will now be exempted from authorisation. In addition, the authorisation procedure for intra-group reorganisations is simplified when the contemplated transaction involves one or more investors belonging to a chain of control; the application may be filed by only one of the members of this chain, on behalf of all the investors who are members of it.

Creation of a dedicated platform:

All applications, requests for authorisation or prior examination of foreign investments must now be only submitted online via a dedicated platform, and all declarations, notifications and correspondence must be sent electronically. Postal communications are no longer allowed.

⁴ Decree n°2020-892 dated December 28, 2020

⁵ New article R. 151-2, 4° of the French Financial and Monetary Code