

French Government Extends Its Veto Rights on Foreign Investments in Country's Strategic Sectors

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On May 15, 2014, the French government published a decree extending its veto rights over foreign investments in French strategic sectors (the New Decree). The New Decree has been dubbed the “Alstom Decree” by the media, as it comes in response to the French government’s concerns regarding the \$16.9 billion bid by General Electric for the energy business of Alstom. However, the scope of the New Decree extends the government’s veto rights well beyond the energy sector. It becomes effective on May 16, 2014, and applies to all current transactions.

Background

This New Decree broadens the scope of a 2005 French decree (amended in 2012) listing sensitive business sectors relating mainly to cryptology, intelligence, gaming, IT, and military and defense-related industries, for which direct foreign investments into France must seek prior governmental approval.

Extended List of Business Sectors

The New Decree extends the range of sectors for which direct foreign investments into France must seek prior governmental approval and now includes:

Activities relating to the provision of services, equipment or products essential to guarantee the:

- a) continued supply of electricity, gas, oil or other energy resources;
- b) continued supply of water in accordance with public health standards;
- c) continued operation of transportation networks and services;
- d) continued operation of electronic communications networks and services;
- e) continued operation of facilities, installations or works of critical importance, as defined by the French Defense Code; and,
- f) protection of public health.

This list of new business sectors is applicable to both European Economic Agreement and non-EEA foreign investors.

Grounds for Potential Conditions and Rejection

The New Decree provides that the French government may impose conditions on the proposed investment or, if no condition would be sufficient to safeguard the above-mentioned interests, veto the proposed investment.

Compliance of the New Decree With EU Regulations

Some commentators already have expressed concerns about the conformity of the New Decree with EU regulations. Michel Barnier, European Commissioner for the EU's internal market, said the New Decree would be "thoroughly examined" for compliance with EU law.

The New Decree, as well as the 2005 version, are rather detailed, and their actual wording is not reproduced here. Please contact Pierre Servan-Schreiber (pierre.servan-schreiber@skadden.com), Armand Grumberg (armand.grumberg@skadden.com) or Pascal Bine (pascal.bine@skadden.com) if you have any questions about this new legal development in France.