

# France Extends COVID-19 Interim Rules on Foreign Investments and Vetoes Teledyne's Acquisition of Photonis

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12 / 23 / 20

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On December 18, 2020, French Minister for the Economy (MoE) Bruno Lemaire announced that the COVID-19 interim rules on foreign investment control (interim rules) — which were issued on July 23, 2020, and were set to expire December 31, 2020 — will be extended to December 31, 2021.<sup>1</sup>

The interim rules are part of the French government's policy response to the economic implications of the COVID-19 pandemic for French strategic assets.<sup>2</sup> Earlier this year, the French government adopted two successive measures to strengthen French foreign investment control in the context of the current crisis: (1) it extended the list of in-scope critical technologies to include biotechnology pursuant to an administrative order dated April 27, 2020;<sup>3</sup> and (2) it lowered the applicable triggering threshold to 10% of voting rights for investments by non-European Union (EU) investors in certain French publicly listed corporations pursuant to the interim rules.

In addition, on December 18, 2020, French Minister for the Armed Forces Florence Parly officially stated that Teledyne did not receive the required clearance under French foreign investment rules in connection with its proposed acquisition of Photonis.<sup>4</sup>

## French Foreign Investment Interim Rules Will Remain in Place Until December 31, 2021

### Scope of Covered Investments

Under French foreign investment rules, foreign investors are required to file a request with, and obtain authorization from, the MoE prior to making certain investments (Covered Investments) in business activities in France deemed to be sensitive (Covered Activities). The prior authorization regime applies to the following Covered Investments:

- the acquisition of control over a French company;
- the acquisition, in whole or in part, of a branch of business of a French company; and
- for foreign investors who are not part of the EU or the European Economic Area (EEA), the acquisition of more than 25% of voting rights (directly or indirectly) in a French company (the Threshold Test).

The interim rules extend the Threshold Test to any non-EU or non-EEA foreign investor that crosses — directly or indirectly, acting alone or in concert with any other investor — 10% of voting rights in a French corporation involved in a Covered Activity and whose shares are admitted to trading on a regulated market. The interim rules do not apply to EU or EEA foreign investors, provided that the chain of control of the European foreign investor does not include any non-EU or non-EEA persons or entities.

In his December 18, 2020, press release, the MoE stated that a non-solicited minority investment in a French publicly listed corporation carrying out activities involving public order, public security or national defense may create a risk for national security.

<sup>1</sup> Please see our July 28, 2020, client alert, "[France Issues Interim Rules on Certain Foreign Investments in Response to COVID-19.](#)"

<sup>2</sup> French Ministry for the Economy, *Communiqué de presse* N° 517, December 18, 2020.

<sup>3</sup> Please see our May 1, 2020, client alert, "[France Moves to Protect Strategic Assets Amid Covid-19 Pandemic.](#)"

<sup>4</sup> French Ministry for the Armed Forces, press release, Ms. Parly announced that the State is working on an alternative solution for the acquisition of Photonis, December 18, 2020.

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While a forthcoming decree will extend the interim rules to December 31, 2021, it is expected that the rules will remain the same.

## Notification Requirement and Simplified Review Process

For any Covered Investment that falls within the scope of the interim rules, the rules require that the foreign investor files a prior notification with the MoE.<sup>5</sup> The MoE will then decide within 10 business days if the proposed investment must undergo a standard review process pursuant to French foreign investment rules. If the MoE does not raise any objection within 10 business days following receipt of the prior notification, the proposed investment is deemed authorized, in which case completion of the foreign investment must take place within six months following the notification.

The MoE may, however, reject the exemption and decide that the proposed investment must be subject to a standard review under French foreign investment rules. The French foreign investment review process involves an initial review of up to 30 business days followed, if necessary, by an additional investigation of up to 45 business days. The launch of a standard review process may eventually lead to the MoE denying the authorization and blocking the foreign investor from holding more than 10% of the voting rights in the relevant French corporation.

## French Government Officially Vetoes Teledyne's Proposed Acquisition of Photonis

On December 18, 2020, the French authorities officially vetoed the proposed acquisition of Photonis, a leading French optronic technologies firm, by the U.S. group Teledyne. While Teledyne is an important business partner to France and employs 850 people in the country, Ms. Parly stated that Teledyne did not receive the required clearance under French foreign investment rules.

<sup>5</sup> Please see our July 28, 2020, client alert, "[France Issues Interim Rules on Certain Foreign Investments in Response to COVID-19](#)," which sets forth the information required to be disclosed in the prior notification.

Photonis is a strategic supplier of the French armed forces. In particular, the French company is an exclusive supplier of night vision devices to the French general directorate of the armed forces (*direction générale des armées*). Photonis also provides cutting-edge technological solutions to the French nuclear sector.

Ms. Parly stated that the decision to veto the proposed transaction was motivated by the necessity to protect and guarantee French economic and industrial sovereignty in the defense sector, and that the conditions for the proposed acquisition of Photonis did not address these requirements. She also indicated that French authorities are working on an alternative solution for Photonis involving French industrial and financial players active in the optronic business sector.

This landmark decision sets a precedent for cross-border M&A deals involving French businesses undertaking highly sensitive target activities, especially in the defense sector. The decision came after more than a year of negotiations and twists among the current owner of Photonis, French private equity firm Ardian, Teledyne and French authorities.<sup>6</sup>

The French veto also follows the German government's recent decision to block the takeover of the Institute for Mobile and Satellite Communication Technology, a German satellite and radar technology firm, by the Chinese investor Addisino Co. Ltd, a subsidiary of the Chinese state-owned defense group China Aerospace and Industry Group. The German authorities cited national security concerns as one of the reasons for blocking the transaction.

<sup>6</sup> See [here](#), Teledyne Technologies, Inc., United States Securities and Exchange Commission, Form 8-K, Item 8.01, press release, statement regarding proposed acquisition of Photonis International SAS and affiliates, December 18, 2020; See also Teledyne Technologies, Inc.'s Form 8-K submissions to the SEC on April 3, 2020, and September 28, 2020, on the proposed acquisition of Photonis International SAS and affiliates.