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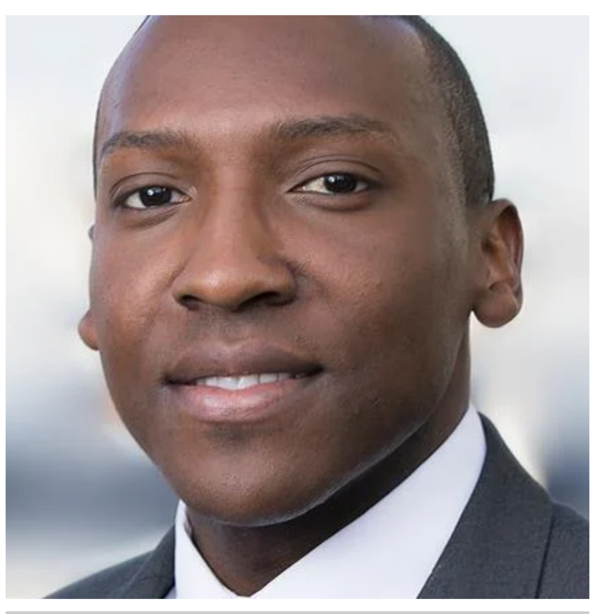
Five things you need to know should France strengthen its FDI regime

Last week, reports emerged that France would tighten its rules for foreign investments, particularly those coming from non-EU sources. In addition to lowering the scrutiny threshold, France is also expected to increase the number of protected areas. For insights and action items, we turned to Wesley Laine, an international trade lawyer based in Paris.


International trade lawyer Wesley Laine

As most Foreign Investment Watch readers know, France is expected to strengthen its foreign investment control regime, joining Canada, Germany, and others. In particular, the proposed measures to reinforce the French FDI rules would expand the scope of investments and business activities subject to French foreign investment control.

Quick Background on French FDI Rules

French FDI rules require a foreign investor to file a request with, and obtain authorization from, the French Minister for the economy prior to making a covered investment in a covered activity. The French foreign investment regime has a two-step review process — including a 30-business day phase I and, when necessary, a 45-business day phase II review.

Proposed French FDI Measures

According to recent media reports, the French Minister for the economy, Bruno Le Maire, has said that the scope of the French FDI regime will likely be extended on three fronts: (i) certain critical materials will be added to the list of covered activities; (ii) for non-European Union and non-European Economic Area investors, the interim rule that lowered the triggering threshold to 10% of voting rights for investments in a French public company involved in a covered activity will be made permanent; and (iii) covered investments will be extended to acquisitions of a French branch of a foreign company.

Five Practical Considerations for Corporate Transactions

Here are five practical implications for corporate transactions that market participants should consider as a result of the proposed measures:

1. **Paradigm Shift —** There appears to be a paradigm shift toward merging economic security and national security, which has set the stage for the proposed FDI measures by French authorities. As *Bloomberg* bluntly put it, French President Macron is prepared to flex protectionist muscle to shield vulnerable firms. Although the foregoing statement may be slightly exaggerated, foreign investors that are considering a corporate transaction involving a French target company whose business activities may at first glance be considered as peripheral to or simply not involved in French national security should take heed and look beyond traditional national security concerns.
2. **Political Considerations —** The proposed measures are part of France's policy response to geopolitical developments and domestic political pressure to address concerns arising from such developments. For instance, concerns regarding supply-side risks and demand-induced pressures with respect to critical raw materials required to fuel the green transition, among others, likely motivated the proposed expansion of French FDI control to this sector. In the same vein, the FDI review process hardly operates in a domestic political vacuum, and personnel at the French FDI office are not divorced from the political environment. Deal parties should therefore perform a holistic assessment that includes political considerations with respect to the business activities of a potential French target company. Strategic communication, including dialogue with French authorities, on the intent and business rationale for the investment may be useful for mitigating political concerns and delivering a successful outcome for all parties.
3. **Caution Flags —** Given the current heightened geo-economic tensions, there is low appetite in France with respect to potential extraterritorial application of foreign regulations on products made on French territory. This is particularly relevant for sensitive products. Therefore, it is reasonable to assess that a proposed acquisition by a foreign investor of a French target company that could potentially cause such company's products to fall within the scope of foreign regulations will highly likely raise some caution flags. This is an important factor that should be assessed early on in a contemplated corporate transaction. Parties should discuss deal structure options and prepare to negotiate mitigation measures for a successful outcome.
4. **Wider Review Net —** The proposed measure to expand covered investments to French branches of foreign companies means that corporate transactions that have only nominal French ties might end up within the French authorities' review net. Deal parties should make sure they account for regulatory considerations associated with a potential filing in France. For instance, deal parties should assess the sensitivity of the business operations of the French branch of the target company.
5. **Mitigation Prevalence —** The French FDI authorities' approach has historically been oriented toward addressing perceived risks or threats arising from FDI through mitigation, rather than blocking corporate transactions. In fact, French FDI authorities imposed mitigation measures in the form of binding commitments in 53% of transactions that it authorized — 76% for defense-related transactions — in 2022. The proposed measures are unlikely to materially impact this approach. Foreign investors should therefore anticipate and prepare to negotiate the conditions for obtaining French FDI clearance.

Conclusion

The proposed measures will inarguably broaden the scope of transactions subject to French FDI control. Moreover, it can be expected that French FDI authorities will perform enhanced risk-based analysis of corporate transactions in their purview. However, investors who understand the broader considerations and prepare accordingly ahead of time are likely to avoid unpleasant surprises.

MORE INFORMATION

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