Want to invest in France?
Pay attention to politics

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Attracting foreign investment and promoting economic sovereignty, a tough balancing act

Since his election, President Macron has made France's attractiveness to foreign investment one of his priorities, most notably by creating the annual *"Choose France"* summit that brings together business leaders from around the world to promote investment in France. The summit is usually held at the Château de Versailles in the days before Davos. The most recent edition, held on January 25, saw one hundred CEOs from major multinational groups, including Nestlé, Ericsson, Snapchat, Ferrero and Solvay, gather by videoconference. The *"Choose France"* initiative, combined with tax cuts, a reduced administrative burden for businesses, and Brexit, have enabled France to become one of Europe's top destination for international investment.

According to an EY study from May 2020, France has overtaken the UK and Germany as Europe's top destination for international investment.

However, that is just one part of the picture. In mid-January, France's Finance and Economy Minister, Bruno Le Maire, made headlines when he strongly opposed the acquisition of French retailer Carrefour, the country's largest private employer, by the Canadian company Alimentation Couche-Tard, citing food sovereignty issues. What was unusual in this case is the way Minister Le Maire made his stance known: he voiced his opposition to the deal in the media before an official FDI review process had even taken place. He then promptly shut down Couche-Tard's attempt at providing additional commitments that the company thought could reassure the French government. His move, amid the global Covid-19 pandemic that highlighted the importance of food retailing, was met with broad support in France, from President Macron himself (both on the timing and rationale), but also from politicians across the spectrum.

Even though companies faced with a negative decision (or even no decision at all) from the French Government do not tend to publicize it, there are a few examples of blocked acquisitions, and the Carrefour case adds to the mounting evidence of increased political intervention in France's foreign direct investment review process. Last year, the acquisition of night-vision specialist Photonis by the American company Teledyne was vetoed due to sovereignty concerns tied to the strategic nature of Photonis' activities. This veto came at the end of a lengthy FDI review process in which the buyer had agreed to a series of French Government demands.

Navigating France's evolving FDI framework is no smooth sailing

Historically, France has been prone to protect businesses and sectors that it deemed to be in the national interest. Recent years have seen the strengthening of French FDI policy, largely due to controversial deals that were perceived as a loss of French know-how and skilled employment, such as the sale of Alstom's energy division to GE in 2014. This event prompted Arnaud Montebourg, then France's economy minister under the previous administration, to expand the scope of the existing (and somewhat limited) FDI framework and the designated strategic sectors it covered, from defence and security only, to energy, health, transportation, and water.

Under President Macron, the French FDI review process has been reinforced further through legislative and regulatory updates and has now become one of the most stringent investment control regimes in the EU:

- In 2018 and 2019, additional enforcement powers on FDI were granted to the Economy Ministry, the list of strategic sectors was further broadened (including by adding the media, agri-food, and some R&D activities), while a new EU FDI framework was transposed into French law. The review process itself was also simplified, virtually giving the decision-making power to the minister only;
- In 2020, in the wake of the COVID-19 pandemic, biotechnology was added to the list of strategic sectors. The size of transaction liable for review was also temporarily expanded as the shareholding threshold triggering the FDI review process for non-EU investors acquiring a stake in French listed companies was lowered from 25% to 10%. Initially meant to last until the end of 2020, this last measure was later extended to the end of 2021.

> **As in any crisis, when our industrial and corporate assets can be under stress, we need to protect our security and economic sovereignty. We have the tools to deal with this situation under European and national law and I want to urge Member States to make full use of them.**
>
> President of the European Commission
> Ursula von der Leyen, March 2020

The French FDI screening process: where policy and politics meet

The French Ministry of the Economy – via the French Treasury Department – has jurisdiction to review foreign investments when a foreign entity plans to acquire or take up a significant stake in a company that operates in a sector deemed *"strategic"* by French law.

Once a formal application has been submitted, the French Treasury Department proceeds with an initial review. Informal exchanges take place between the Treasury Department and the Economy Minister's staff, other French ministries and authorities, relevant EU authorities, counterparts in other EU Member States, etc. The Ministry of the Economy must then respond within 30 business days to approve the transaction unconditionally. If needed, the government can require further examination, for a period up to 45 business days. This will allow the ministry to determine whether the national interest can be safeguarded by approving the transaction under specific conditions (preserving strategic activities in France, protection of French IP rights, etc.).

Ultimately, since the 2019 modifications to the FDI screening process, the Economy Minister has the final say and is no longer bound by the Treasury Department's recommendation. He may oppose the FDI or approve it, possibly under specific conditions. The transaction is also deemed to have been blocked if the Minister of Economy has not issued any decision – an approach that seems to be increasingly favoured by officials. Indeed, the decision on FDI is now entirely political and at the sole discretion of the Government. As the Carrefour/Couche-Tard case has showed, the minister will not hesitate to speak his mind on a potential deal even before the Treasury Department is formally notified. As a result, Minister Le Maire himself has invited potential investors to engage with him prior to any investment project.

> **We have made it possible for companies to check in with us [prior to engaging in a formal process]. I recommend that everyone makes use of this possibility.**
>
> French Finance and Economy Minister
> Bruno Le Maire, January 2021

A successful investment in France requires a robust engagement strategy

The French government's control of FDI is likely to intensify in the run-up to the 2022 presidential election. President Macron will seek to appear as the defender of French sovereignty in the face of rapacious foreigners in order to soften his image as an economically liberal and pro-globalisation president, which harmed him at the national level in the context of the social unrest that culminated in the *"gilets jaunes"* movement. Economic sovereignty has resurfaced as a key political theme in France, and not only when it relates to FDI. Recently, Minister Le Maire commented on the news that Danone, a French agri-food leader, was being targeted by the activist fund Bluebell, stating that state intervention was justified when food sovereignty was at play, despite the fact that the French state is not a shareholder of Danone.

In view of the interventionist climate, potential investors in France must consider the need to obtain the blessing of the French government for any deal relating to sectors considered *"sensitive"*, in the broadest sense of the term. In parallel to the regulatory process with the Treasury, a targeted high-level political engagement programme to explain the rationale of the deal, understand the government's concerns and, if necessary, adapt the project accordingly, has become key to the success of any FDI project in France. Indeed, there is still room for constructive dialogue with the French government because it remains very open to inward investment, which continues to be a top priority for President Macron and will be a key factor in France's post-COVID economic recovery.

Investors must give serious consideration to the development of a coherent narrative supporting their investment, the sequencing of engagement with decision-makers, and the required relationship building with relevant journalists, officials, and politicians. A robust engagement strategy can make the difference between a successful investment and onerous conditions or even a blocked transaction. Local expertise involving a detailed understanding of the French political context and the functioning of political institutions is key to design and execute such strategy.

Whether it is to help you consider the political aspects of mergers and acquisitions, FDI processes, competition or anti-trust processes, investment opportunities or divestment issues, the Brunswick Paris team is available to help you navigate the French ecosystem.

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