Global Public M&A Guide - France

General Legal Framework

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# 2. General Legal Framework

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The main body of the French takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**Takeover Directive**"). The Takeover Directive has harmonized the European public takeover bids legislation applicable to the different Member States of the European Economic Area ("**EEA**"). However, the Takeover Directive still allows Member States to maintain domestic specificities in connection with some important features of a public takeover bid (such as the percentage of shares that, upon acquisition, triggers a mandatory public takeover bid on the remaining shares of the target company, and the powers of the board of directors). Accordingly, there are still relevant differences in the national rules of the respective Member States of the EEA regarding public takeover bids. The Takeover Directive was implemented into French law in 2006.

**2.1 Main legal framework**

The main rules and principles of French law relating to public takeover bids are based on the Takeover Directive and set forth in:

the Monetary and Financial Code;

the Commercial Code;

the *Autorité des marchés* financiers General Regulation (and Implementing Instructions); and

the rules and regulations of the market operator applicable to the relevant financial market (Euronext Paris).

While the aforementioned legislation contains the main legal framework for public takeover bids in France, a number of additional rules and principles must be taken into account when preparing or conducting a public takeover bid, such as:

The rules relating to the disclosure of significant shareholdings in listed companies (the so-called transparency rules). These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004, on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market as amended by Directive 2013/50/EU ("**Transparency Directive**"). For further information, see 3.4 below.

The rules relating to insider dealing and market manipulation (the so-called market abuse rules). These rules are set forth by the Market Abuse Regulation (EU) No 596/2014 as of 16 April 2014 ("**Market Abuse Regulation**"). For further information, see 6.3 below.

The rules relating to the public offer of securities and the admission to trading of these securities on a regulated market. These rules could be relevant if the consideration that is offered in the public takeover bid consists of securities. These rules are based on Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading (“**Prospectus Regulation**”). These rules and regulations are not further discussed herein.

The rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

**2.2 Supervision and enforcement by the *Autorité des marchés financiers* ("AMF")**

Public takeover bids are subject to the supervision and control of the French stock exchange authority, the *Autorité des marchés financiers* ("**AMF**"), which is the principal securities regulator in France.

The AMF has a number of legal tools that it can use to supervise and enforce compliance with public takeover bid rules, including administrative fines (as further described below). The AMF also has the power to grant (in certain cases described below) exemptions from the rules that would otherwise apply to a public takeover bid.

**2.3 General principles**

The following general principles apply to public takeovers in France:

all holders of the securities of a target company of the same class must be afforded equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

the holders of the securities of a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid. Where it advises the holders of securities, the board of the target company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

the board of a target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

false markets must not be created in the securities of the target company, the offeror company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

a bidder must announce a bid only after ensuring that they can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

a target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

Besides these general principles contained in the Takeover Directive, the AMF also refers to the following principles to impose fairness in the offer process. These must be complied with consistently by the bidder(s) throughout the offer process:

equal treatment and information for all shareholders;

market transparency and integrity;

fairness of transactions and competition among bidders; and

a level playing field between competing bidders.

**2.4 Modifications and proposed changes**

Squeeze-out: The "Pacte" Law enacted on 22 May 2019, lowered the squeeze-out threshold from 95% to 90%. Before that, only a shareholder that held, alone or in concert, at least 95% of the share capital and voting rights of a listed company (see 4.3 below) was allowed to squeeze-out minority shareholders. The "Pacte" law lowers this threshold to 90% of the share capital and voting rights of the target company in order to align French law with the laws of other main EU jurisdictions and facilitate public-to-private transactions.

Foreign investments: The “Pacte” Law, Decree 2019-1590 and a related order (*arrêté*) dated 31 December 2019, as well as Decree n°2023-1293 dated 28 December 2023, reinforced French foreign investment regulations (see 2.5 below). The reforms (i) extend the list of industries where acquisitions by non-French investors are subject to the prior approval of the French Ministry of Economy, (ii) change the timeline for obtaining a prior authorization from the French Ministry of Economy, and (iii) substantially increase the list of information and documentation to be provided as part of a prior authorization application.

Independent expertise: In February 2020, the AMF amended its General Regulation with respect to the independent expertise to be issued in negotiated takeovers. The changes are essentially aimed at strengthening the protection of minority shareholders and reinforcing the independence of the independent expert in charge of issuing the fairness opinion. The reform is a response to public takeover offers by controlling shareholders where the diligence procedures of the target's board and the independent expert had been subject to much criticism.

**2.5 Governmental prior approval - Foreign investments regulation**

Foreign investments are not restricted in France and are only subject to reporting upon completion (as opposed to prior authorization), unless they relate to certain specific sensitive activities.

The purchase by a foreign investor of a direct or indirect controlling interest in a French public company conducting sensitive activities requires the prior approval of the French Ministry of Economy, i.e., before completion of the transaction.

In relation to non-French investors incorporated in the EEA, such provision is triggered by the acquisition of the control, alone, jointly or in concert, within the meaning of article L.233-3 of the French commercial code. Pursuant to this provision, acquisition of control includes not only the crossing of the 50% threshold in voting rights but also the acquisition of a “deemed” control pursuant to contractual arrangements and a “de facto” control of the shareholders meetings.

For non-EEA investors, in addition to the foregoing, any crossing, alone or in concert, of the threshold of 10% of the voting rights in a company whose securities are admitted to trading on a regulated market, such as Euronext Paris, is also subject to the prior approval of the French Ministry of Economy.

The following are considered sensitive activities:

gambling sectors (with the exception of casinos);

private security regulated services;

activities aimed at fighting the illegal use, in connection with terrorist activities, of pathogenic and toxic substances and preventing the health consequences of such use;

activities related to equipment used for intercepting communication and remote detection of conversations;

activities relating to evaluation and certification of security of information technology products and systems;

goods or services relating to security in the information systems' security sector;

activities relating to goods and technologies that may have a dual purpose, e.g., civil and military;

activities relating to the means of cryptology and services of cryptology;

company activities related to national defense secrets;

activities relating to research into, production or trade of weapons, ammunition, powder and explosive substances;

activities conducted by a company that has entered into a study agreement or a supply agreement with the French Ministry of Defense (directly or by sub-contracting) in order to conduct activities relating to goods and technologies for dual use or research, manufacture or sale of arms or weapons; and

activities related to data hosting whose jeopardizing or disclosure is likely to harm the exercise of activities or interests;

other activities relating to equipment and products or services that are essential to guarantee French national interests in terms of public policy, public security or national defense, as listed below:

energy;

water supply;

transportation networks and services;

space operations;

electronic communication networks and services;

installations, facilities or structures of vital importance;

public health and biotechnologies;

low-carbon technologies and photonics;

infrastructure, goods and services essential to the extraction, processing and recycling of critical raw material; and

guaranteeing the security of prisons.

activities related to production, processing or distribution of agricultural products when these contribute to national food security;

activities related to editing, printing or distribution of press publications of political and general information relating to the status of group companies and distribution of newspapers and periodical publications, and online press services of political and general information;

activities of research and development of means to be implemented relating to the sectors listed below:

cybersecurity;

artificial intelligence;

robotics;

additive manufacturing;

semiconductors;

quantum technology;

energy storage;

dual-use items and technologies; and

technologies involved in renewable energy production.

The approval process is in two-phases:

an initial phase of up to 30 business days from the receipt by the French Ministry of Economy of the authorization request, during which time the French Ministry of Economy will provide its position on whether the proposed investment is (i) out of scope of the foreign investments regulation, (ii) in scope and unconditionally authorized or (iii) in scope and requiring further analysis to determine under what conditions it could be authorized; and

if during the initial phase the French Ministry of Economy determines that it requires further analysis to ensure that the preservation of national interests may be guaranteed by granting an authorization under condition(s), it will have a further period of up to 45 business days to provide its position.

If the French Ministry of Economy does not provide its position by the expiry of either phase, the prior authorization request will be deemed refused.

**2.6 Information of the target company's employees - the "Hamon Law Information"**

A law of 31 July 2014 ("**Hamon Law**"), revised by a law of 6 August 2015, introduced a "prior information right of the employees in case of sale of business" (*droit d'information préalable des salaries en cas de vente d'une entreprise*) into French law.

The Hamon Law established an obligation for the owner of a block of shares representing more than 50% of the share capital of a target company to notify the management of the target company of its intention to transfer the control of the target company so that each of the employees of the target company (but not of the subsidiaries thereof) is informed of such proposed sale and may bid for the acquisition of the block of shares to be transferred. For the avoidance of doubt, the employees do not have any priority right over the shares to be transferred under the Hamon Law.

The employees must be informed individually of the proposed sale prior to the signing of any share purchase agreement.

Where the proposed sale is subject to prior consultation with the works council (*comité social et économique*) of the target company, the information process is conducted simultaneously with the consultation and cannot adversely affect the timetable of the transaction.

It should be noted that most public M&A transactions involving French target companies are not subject to such an obligation since it is applicable only where (i) the acquired block of shares represents more than 50% of the total number of the shares, and (ii) the target company:

employs less than 250 persons; and

has an annual turnover exceeding EUR 50 million or a balance sheet exceeding EUR 43 million.

In addition, the Hamon Law only applies to public M&A transactions involving the sale of a controlling block of shares. Voluntary public takeover bids are not subject to the Hamon Law.

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