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U.S.-based life sciences companies considering transactions in Europe may easily become overwhelmed with the complexity of Europe's various jurisdictions. In this series, members of our European Life Sciences Transactions Team provide country-specific perspective and guidance to help you navigate the jurisdictional challenges and differences that you may run into when acquiring a European life sciences company.

In this edition, Jean-Marc Franceschi will discuss life sciences transactions in France.

Life sciences transactions in France

France has strong respect for the rule of law. Whilst some other countries use a "common law" system which gives room for interpretation, French law is codified. That provides a measure of security for foreign investors investing in France. In this respect, the French Government enacted a new, quite buyer friendly, piece of legislation in 2016, which focuses on trust and transparency and dramatically increases the level of disclosures required by a seller which, accordingly, increases the level of confidence of buyers.

Until September 2005, foreign investments in France were neither regulated nor restricted. The threat of an alleged hostile take over of a French food leader caused the French Government to adopt new legislation; the spirit of which was deemed to replicate the CFIUS process in France (ie seeking the prior formal approval of the French Government before the completion of a transaction) and provides protection for the 11 sectors classified in 2005 as sensitive:

Gambling; private security services; research, development and production of certain pathogens or toxic substances; wiretapping and communications interception equipment; testing and certification of security for IT products and systems; goods and services related to the information security systems of companies managing critical infrastructure; dual-use (civil and military) items and technologies; encryption services; the activities of firms entrusted with national defense secrets; research, production or trade of weapons, ammunition, and explosive substances intended for military purposes; and any business supplying the Defense Ministry with any of the above goods or services.

The 2014 GE Alstom transaction caused the French Government to add six new sectors to this list:

energy infrastructure; transportation networks; public water supplies; electronic communication networks; public health protection; and installations/works vital to national security.

Five of these six sectors had an obvious connection with the business run by Alstom and, even if a bit broad, their addition did not trigger any specific queries. However, the sixth one (public health protection) did not appear to have any link with the Alstom case and the extent of its scope caused players (investors and lawyers) to question what the exact nature of the investments which were to be subject to the prior approval of the French government was.

Regrettably, no further definition or guidance has been provided since, and when a foreign investor contemplates making an acquisition in the life sciences sector in France, the cumbersome process set out below has to be followed:

The foreign investor submits a formal application for prior authorization to the Minister of the Economy who must make a decision within two months of the date of receipt of a full and complete formal application for authorization. If the Minister of the Economy fails to make a decision, the authorization is deemed granted. The formal review process and communications with the foreign investor are carried out by various departments within the Ministry of Economy in collaboration with other governmental agencies, depending upon the sensitive sector(s) involved.

As a condition of authorization, the French Minister of the Economy may impose certain conditions on the foreign investor to mitigate risks that the contemplated transaction may adversely affect public order, public safety or national security. Foreign investors can contest the conditions imposed for authorization, or the refusal to authorize, before the administrative law courts.

However, it should be noted that when the Minister of the Economy receives the formal application by the Foreign Investor, he may decide that, given the nature of the French target business, the transaction is not subject to any prior approval and this can be freely completed. This notification is communicated by a simple letter.

So as you may notice by now engaging in life sciences transactions in France does not appear to present many challenges for non-French players.

Jean-Marc Franceschi is a partner in a Paris office, he works with public and private companies at all stages of their development from initial establishment to IPO or capital raising for external growth. Jean-Marc has helped clients go public or successfully manage their growth through private purchase or public take over.

Our European Life Sciences Transactions Team

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