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Legal News Alert

Foreign investment controls in the main continental European jurisdictions

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INTRODUCTION

On March 25, 2020, the European Commission adopted a Communication providing guidance to Member States on foreign direct investments and the free movement of capital from third countries. The Communication has been issued in the framework of the initiatives identified by the Commission in the Coordinated economic response to the COVID-19 Outbreak of March 13, 2020.

More specifically, the need for guidance has been driven by the increased vulnerability of European companies and assets operating in key sectors (including, but not limited to, the healthcare and related sectors) and their possible exposure to "*predatory buying*" by foreign investors in the current COVID-19 crisis. It is the European Commission's concern that the risk of foreign takeovers could be further exacerbated by the volatility or the undervaluation of European stock markets.

Thus, the adoption of this Communication seeks to ensure that these companies are properly protected, so calling upon Member States to be particularly vigilant and use all instruments available at EU and national level to prevent the loss of strategic assets and technologies.

The Communication anticipates and accelerates the application of the so-called FDI Regulation (Regulation (EU) No. 2019/452). The FDI Regulation applies to all sectors, regardless of the economic value of the transaction, and covers the screening of all foreign direct investments in strategic EU infrastructures (namely, energy, transport, defence, electoral, financial and others). Although the FDI Regulation is due to apply only as from October 11, 2020, the Communication states that the regime provided by the FDI Regulation could also apply to foreign investments taking place before such date.

The European Commission encourages Member States that have already adopted screening regimes (to this date, only 14) to make use of these instruments, in accordance with the FDI Regulation, in order to take fully into account the risks to critical health infrastructures, supply of critical inputs and other critical sectors. Member States that do not have such regimes in place (or that adopted regimes not covering all relevant transactions) are invited to set up a fully-fledged screening mechanism. In the meantime, they are asked to consider the application of other measures, in compliance with EU and International law, in order to address cases where the acquisition or control of a particular strategic business could entail a risk to security or public order in the EU.

With respect to investments that do not constitute FDI, such as portfolio investments, the Commission observes that they are considered less likely to raise issues in terms of security and public order, unless representing an acquisition of at least a qualified shareholding (e.g. above 5%) conferring certain rights on their holders. In this case, even portfolio investments could be of some relevance and be addressed by Member States.

Finally, as explained in the Communication, Member States are also allowed to tackle FDI by adopting measures restricting free movement of capital, otherwise prohibited under Article 63 of the Treaty on the Functioning of the European Union, provided that such measures are justified, necessary and proportionate. Reference is made inter alia to “golden shares” that may enable Member States to block or set limits on certain types of foreign investments in companies. The European Commission underlines that restrictions on “predatory buying” of strategic assets by foreign investors may rely on public health, public policy, public security and overriding reasons (such as the need to ensure the security of supply or the provision of essential public services and to address possible threats to financial stability, as well as the objective to protect consumers or to preserve the equilibrium of social security systems).

The European Commission is also open to consider as justified national restrictive measures with regard to companies whose current valuation on capital markets is below their true or intrinsic value, in particular in situations where the foreign investor becomes the main provider of essential supplies or services.

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FRANCE

In France, the foreign investment control (FIC) regime has been reinforced progressively over recent years and has been tightened prior to the COVID-19 crisis by (i) the decree n°2019-1590 dated December 31, 2019 and (ii) the Ministry order (*arrêté du Ministre*) dated December 31, 2019. Both texts implement the principles set out in the legislative provisions introduced by the law n°2019/486 dated May 22, 2019 on the Action Plan for Business Growth and Transformation of Companies (the so-called "PACTE Law"). Such new legal

framework started to apply to all applications filed since April 1st, 2020. Although already quite extensive, the regime is currently being strengthened in terms of scope (biotechs are included in the list of sensitive activities since April 27, 2020) and in terms of thresholds, the 25% threshold for non-EU investors being temporarily lowered to 10% as regards investments in listed companies (the legislation is yet to be enacted).

As a result, the scope of the prior authorization regime has been substantially extended (1.) the procedure to obtain the authorization from the French Ministry of the Economy (the French Ministry) has been clarified by using the experience of anti-trust proceedings (2.) and the remedial and sanction powers of the French Ministry have been dramatically reinforced (3.).

1. Expanded Scope of the prior authorization regime

Foreign investments requiring the prior authorization of the French Ministry are those made in respect of any activity which, even if only occasionally, involves or participates in the exercise of public authority or pertains to activities (i) that may jeopardize public order, public safety or national defense interests, or (ii) relate to research in, manufacture or commercialization of weapons, ammunition, gunpowder or explosive substances. French legislation contains a broad list of activities captured by these categories, including activities related to public health or critical infrastructures.

Whereas under the former regime the scope of the prior authorization regime depended on the origin of the investor, such distinction is no longer applicable. Pursuant to the new legal framework, the prior authorization of the French Ministry is required for any "investment" made by an "investor" in an entity operating, or a business relating to, a "sensitive activity" in France.

An "investor" is defined as (i) any non-French citizen individual; (ii) any French citizen individual who is not a resident of France within the meaning of tax regulations; (iii) any legal entity governed by foreign laws; (iv) any legal entity governed by French law which is controlled by one or several person(s) or entity(ies) mentioned in (i), (ii) or (iii) above; it being specified that any person or legal entity belonging to a "chain of control" (as defined below) shall be deemed to constitute an "Investor" within the meaning of FIC regime.

The investments that require the prior authorization of the French Ministry are those made by an Investor and resulting in: (i) the acquisition of control within the meaning of Article L. 233-3 of the French Commercial Code of a legal entity governed by French law; (ii) the acquisition of all or part of a line of business of an entity governed by French law; or, except in certain cases relating to EU citizens, (iii) the crossing (upward), directly or indirectly, alone on in concert, of the threshold of 25% of the voting rights of a legal entity governed by French law.

2. Revised Procedure to Obtain the Authorization

The French Ministry must respond to the investor by notice, within thirty (30) business days of receiving a complete request for authorization. If no response has been received by the end of this 30-business day period, the authorization is deemed rejected. The French Ministry may impose conditions and undertakings on the foreign investor to his/her authorization in order to protect national interests.

3. Reinforcement of Remedial and Sanctions Powers of the Ministry

A transaction completed without the French Ministry's prior authorization is null and void.

In addition, the Ministry may issue three types of orders against the investor: (i) require the submission of a request for authorization; (ii) restore the previous situation at its own expense; (iii) modify the contemplated investment. Sanctions might also be applied in case of breach of the undertakings applying to the investor.

If the French Ministry considers that the protection of national interests is at risk, it may also accompany the order with a daily financial penalty (which shall not exceed EUR 50,000 per day) and/or interim protective measures.

The infringing investor may also incur a fine up to the highest of the following amounts: (i) twice the value of the investment at stake; (ii) 10% of the target company's annual turnover (excluding taxes); (iii) EUR 1,000,000 for individuals or EUR 5,000,000 for companies and criminal sanctions.

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GERMANY

In Germany, the Federal Ministry for Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie* – "**BMWi**") is entitled to review (direct and indirect) acquisitions of voting rights in German target companies by foreign investors, subject to certain thresholds. The German statutory rules on foreign investment control is developing constantly and provides for several categories of transactions which are subject to ministerial review powers (1.). 2020 has been a year of remarkably dynamic development in German foreign investment controls. The German Government has kicked off and has proceeded with a whole series of statutory reforms, which have already led (2.), and will further lead (3.) to a substantial tightening of the German foreign investment control regime with a material impact on cross-boarder M&A involving German target companies (4.).

1. Overview of the current German foreign investment rules

German foreign investment control law generally provides for two control regimes, both governed by the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz* – "**AWG**") and the Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung* – "**AWV**"):

- For particularly sensitive industry sectors, such asmanufacture or development of certain military equipment and development of encryption technology, the so-called **sector specific foreign investment control regime** applies to (direct or indirect) acquisitions of at least 10% of the voting rights in German target companies by any foreign investor. Investments of this kind are subject to a **regulatory approval requirement** and completion of such acquisitions is subject to a statutory condition precedent of BMWi's approval.

- Irrespective of the relevant industry, (direct or indirect) acquisitions of at least 10%/25% (as the case may be) of the voting rights in a German target company by investors with registered office outside the EU or EFTA are subject to the so-called **cross-sector foreign investment control regime**. Under this regime, the BMWi may review, restrict or even prohibit an acquisition if it poses a threat to public order or security. To this end, the transaction agreement is subject to a statutory condition subsequent of the BMWi prohibiting the intended acquisition. A 10% threshold and a statutory notification duty to the BMWi apply to certain **civilian security-relevant industries** such as the operation of so-called critical infrastructures (currently including energy, water, food, telecommunications, transport, finance, insurance, and healthcare) ("**Reportable Acquisitions**"), whereas all other industries are subject to the 25% threshold and no regulatory approval or notification requirement.

2. Substantial tightening in 2020

In 2020, the German Government has kicked off a whole series of statutory reforms aimed at further tightening the German foreign investment control regime, of which the following have already entered into effect:

- In June 2020, the 15th amendment of the AWV, primarily triggered by the COVID-19 pandemic and driven by fears of potential comparable crises in the future, has **expanded the scope of Reportable Acquisitions** to cover foreign investments in a broad range of German target companies active in the **healthcare and infection protection sectors**. In particular, the rules on Reportable Acquisitions now cover acquistions of voting rights in German target companies active in the development and manufacture of certain pharmaceuticals (including the relevant raw materials and active ingredients), certain medical devices and personal protective equipment within the meaning of Regulation (EU) 2016/425.

  Furthermore, the German Government has taken the 15th amendment of the AWV as an opportunity for additional statutory changes not directly relating to the COVID-19 pandemic. In particular, foreign investments in German target companies that provide services in relation to state communication infrastructures (i.e. a digital voice and data transmission system for authorities and organizations with security functions) have been added to the scope of Reportable Acquisitions. In addition, in conducting its review, the BMWi is now explicitly entitled to take into account whether a foreign investor is state-owned or state-controlled or the investment is state-financed.

- Only one month later, in July 2020, the 1st amendment of the AWG introduced a **gun-jumping prohibition for Reportable Acquisitions** by two means: First, the consummation of such transactions is now subject to a condition precedent that the transaction is cleared by the BMWi or the relevant time-periods for its review have expired. Second, the new AWG rules now prohibit certain closing-related activities benefitting the purchaser, namely, any facilitation of the exercise of voting rights or grant of profit distribution claims connected with the acquisition. In addition, and very importantly, before ministerial clearance the provision of company-related information regarding the security-relevant activity of the German target company is prohibited. Furthermore, the gun-jumping prohibition is backed by **criminal sanctions**: Natural persons carrying out prohibited closing-related activities can face a prison sentence of up to five years or a fine.

  The 1st amendment of the AWG has also changed **substantive review standard** of the German cross-sector foreign investment control regime: The BMWi's powers no longer only protect the public order and security of the Federal Republic of Germany; rather, the protection of the public order and security of other EU Member States and projects or programmes of EU interest (e.g. Galileo, Copernicus, Horizon 2020) are now also part of the ministerial screening rationale. In addition, since July 2020, foreign investments may already be restricted or prohibited if the acquisition "*potentially impairs*" public order or security, rather than the BMWi having to establish an *actual* threat to public order or security.

- In October 2020, the amended review standard was transposed into the AWV by way of the 16th amendment of the AWV.

3. Upcoming further tightening in 2021

Currently, the German Government is already preparing the next step of the reform of German foreign investment control law. The upcoming 17th amendment of the AWV will once again concern Reportable Acquisitions and is expected to further expand their scope in order to include foreign investment in companies active in the field of so-called critical technologies. The details of this legislative amendment are not known yet, but the new list of such critical technologies are likely to include in particular artificial intelligence, robotics, semiconductors, biotechnology and quantum technology. The completion of acqusitions in these industry sectors would in future also be subject to a statutory condition precedent of the BMWi's approval; closing-related activities would be prohibited until ministerial clearance and this prohibition would be backed by criminal sanctions. The 17th amendment of the AWV, expected to come into effect in Q1 2021, is intended to protect not only the public order and security of the Federal Republic of Germany, but also its "technological sovereignty" in the future.

4. Material impact on cross-border M&A

The legislative reform series, which was kicked off by the German Government in 2020 and which is expected to continue in 2021 with the upcoming 17th amendment of the AWV, will certainly have a material impact on cross-border M&A involving German target companies.

Not only has the German Government expanded, and will soon further expand, the scope of Reportable Acquisitions leading to more and more foreign investments in German target companies being caught by the lower 10 % voting rights threshold and being subject to a notification duty towards the BMWi. In addition, the growing scope of Reportable Acquisition has been combined with a ministerial approval requirement and a gun-jumping prohibition backed by criminal sanctions. For international investors, a detailed risk analysis under German foreign investment control law will become more crucial than ever in order to avoid obstacles to closing, unexpected delays in the deal schedule and even criminal sanctions. In this context, dealmakers have to take into account the notification duty and the gun-jumping prohibition in the timing, the closing mechanism and the risk assessment of a Reportable Acquisition. In addition, sellers in cross-border M&A transactions have to structure the due diligence process in such a way that no security-relevant information is disclosed to potential purchasers. These enhanced challenges are reinforced by the criminal sanctions attached to violations of the new gun-jumping prohibition.

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ITALY

In order to protect Italian public and private companies from speculative bidders in the current emergency context, the Italian Government and Authorities enacted new laws and regulations aimed at: (a) strengthening the State powers against foreign direct investments in strategic sectors, and (b) enhancing transparency in listed companies.

Please find below a short summary of the main measures adopted as of the date hereof.

1. Increased screening of foreign direct investments

The Law Decree no. 23 dated 8 April 2020 widens the scope of application of the Italian Foreign Direct Investment Screening in order to protect security and public order (so called "Golden Power" regulation).

The main legislative changes include: (i) the immediate and full application of the notification obligations to the economic sectors referred to in EU Regulation no. 452/2019, including finance, banking and insurance; (ii) the lowering of the percentage thresholds triggering the notification obligations especially with reference to non-European transactions; (iii) the partial application of the notification obligations also to European Union investors; (iv) the introduction of new powers enforceable *ex officio* by the Presidency of the Council of Ministers in the event of breach of any notification duty.

In particular, until December 31, 2020, the Italian Government may scrutinize investments in all the economic sectors referred to in EU Regulation no. 452/2019, such as (i) critical infrastructures, including financial institutions as well as energy, transport, water, health, communications, media, aerospace, defense or financial infrastructure, and now also expressly including the credit and insurance sectors; (ii) critical technologies and dual use products; (iii) supply of critical inputs, including energy or raw materials, as well as food security; (iv) access to sensitive information, including personal data; (v) media freedom and pluralism.

The new legal framework provides that the notification *vis-à-vis* the Italian Government is now required either in case of acquisition of a controlling stake, even when by an EU purchaser, or in case of acquisition of a stake exceeding 10% by a non-EU investor.

In brief, until December 31, 2020, whoever intends to acquire a stake in an Italian strategic company, and the strategic company itself with reference to any resolution, act or transaction which implies any change in the ownership, control or free availability of strategic assets or

modification of their allocation, are both required to comply with the notification obligations *vis-à-vis* the Italian Government if the potential acquisition triggers the new thresholds and concerns any company operating in the strategic sectors listed above and, in such cases, to fully explain the terms of the proposed transaction in order to obtain the approval of the Italian Government.

2. Increased transparency in listed companies

The Italian Securities and Markets Authority (Consob) has adopted certain resolutions aimed at temporarily increasing the transparency of Italian listed companies. On the one hand, such resolutions prohibited short selling transactions in the shares of more than 100 Italian listed companies; on the other hand, they reduced the initial threshold which, if exceeded, triggers the obligation to disclose to Consob and the market the stake owned in certain Italian listed companies with a *high current market value or a widely dispersed shareholding structure*.

For such companies, until July 11, 2020 the new initial disclosure threshold drops from 3% to 1%, while in listed SMEs it drops from 5% to 3%. For such purpose, Consob has deemed as companies with "*a particularly widely held shareholder base*" those issuers not controlled by one or more shareholders with a stake higher than 50% of the voting shares.

Consob has also exercised the power to reduce – for companies with a wide shareholder base (as defined above) - the threshold which triggers the obligation for the acquirer to disclose its intention and plans to the market, which was previously set at 10% and has now been reduced, until July 11, 2020, to 5%.

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PORTUGAL

There has been no "COVID-19 specific" foreign investment control legislation in Portugal to date; neither for private, nor for public (listed) companies or other assets.

Actually, there is an existing screening mechanism in Portugal, approved by Decree-Law no. 138/2014, of September 15[1] (the "**Decree-Law 138/2014**"). However, it is limited to strategic assets in particularly sensitive industry sectors, based on reasons of national defense and security and/or security of supply of services fundamental to the national interest, and, to our knowledge, has not been enforced to date.

Indeed, the Portuguese Governments have historically been very supportive and open to foreign investment, with strategic companies and infrastructures being controlled by foreign investors, some of them non-EU or EEA based, and unless some material changes in circumstances occur, we do not foresee a significant change in that political and economic approach.

Having said this, FDI Regulation mentioned in the Introduction above and which technically enters into force on October 11, 2020, establishes a framework relating to the control by Member states of foreign direct investment for security or public policy reasons which will be automatically applicable in Portugal, which may determine some changes in the national screening mechanisms.

1. Overview of existing restrictions on foreign investment

Although differing in design and scope from the mechanism provided in the FDI Regulation, Decree-Law 138/2014 also purports to screen foreign investments in respect of strategic assets, which are defined as the **main infrastructures and assets** related to (i) **national defense and security** and/or (ii) **the supply of essential services in the energy, transport and telecommunications sectors**.

Under this framework, the Portuguese Government may initiate an investigation and, ultimately, oppose a transactions (ex post) regarding strategic assets that (i) directly or indirectly result in **direct or indirect control** by a person or persons from **non-EU or non-EEA third countries** (that is, whose domicile, registered office or headquarters and effective administration is located outside of the EU and the EEA) to the extent that (ii) such transaction represents, in a real and sufficiently serious way, a threat to **(a) national defense and security and/or (b) the security of supply of services fundamental to the national interest**.

Decree-Law 138/2014 has a less comprehensive scope when compared with the FDI Regulation and with screening requirements in other EU countries, as it only applies to

[1] https://dre.pt/pesquisa/-/search/56819089/details/maximized

certain economic sectors or industries and sets specific criteria to assess that there is a threat to national defense and security or to the national interest, namely on the grounds of risks to the international community as a result of the nature of the acquirer's alliances or relations with criminal or terrorist organizations, past uses of the control position to create serious difficulties in the regular provision of essential public services or changes in the destination of the strategic assets.

Where Decree-Law 138/2014 applies, the Portuguese Government may initiate an investigation procedure, within 30 days counted as from the conclusion of the transaction (or from the date the transaction becomes public) to assess the risk of the transaction at stake. In this context, the Portuguese Government may request from the acquirer all information it considers relevant. The Portuguese Government has a 60-day period (counted as from receiving all required information/documents) to adopt a decision. If no decision is taken within this period, a non-opposition decision is deemed to have been taken.

In case an opposition decision is taken, all contracts and legal acts relating to the transaction at stake (including acts regarding the economic exploitation and the exercise of rights over the relevant assets) are null and void.

The acquirers of strategic assets subject to screening may request the Portuguese Government's clearance (confirmation of non-opposition) to a given transaction. If no response is given or no investigation is initiated within 30 days from the request, a confirmation decision is deemed to have been granted.

Until the FDI Regulation is fully applicable in Portugal, the Portuguese Government is only required to comply with Decree-Law 138/2014.

2. Future developments on restrictions on foreign investment

Although Decree-Law 138/2014 appears to be compatible with the FDI Regulation it is certainly less restrictive; thus, it is possible, although not probable as explained above, that screening mechanisms in Portugal may be amended to accommodate the EU guidance on further foreign investment screening as singled out by the COVID-19 emergency, in particular in relation to the following aspects:

a. extension of its scope to include (i) critical infrastructures in other sectors such as healthcare capacities and related industries, water, communications, media, data processing or storage, electoral or financial infrastructure and sensitive facilities, (ii) critical technology, (iii) supply of critical inputs (energy, raw materials and food security), (iv) access to sensitive information or ability to control such information; and expand the screening to monitor health security risks;

b. Inclusion of procedural rules on the exchange of information and collaboration with other Member States and the Commission, as foreseen in the FDI Regulation.

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SPAIN

Within the context of the COVID-19 crisis, Spain has recently enacted new legislation providing for prior authorization by the Spanish Government (*Consejo de Ministros*) of certain foreign direct investments in Spanish public and private companies. Such new legislation aims to further scrutinize certain investments from foreign investors in core strategic sectors in Spain.

The new legal framework in Spain entered into force on March 18, 2020 and it has been enacted in application of the FDI Regulation 2019/452 mentioned in the Introduction above, which established a framework relating to the control by Member states of foreign direct investment for security or public policy reasons.

The new regulations were approved before the European Commission had adopted the communication published on March 25, 2020, providing for guidelines for Member States on foreign direct investments and the free circulation of capital from third countries as well as the protection of European strategic assets. Therefore, such new legal framework might be amended again in the near future, as it is currently under discussion in the Spanish Parliament and the Spanish Government is also working on additional development regulation on this front.

1. Restrictions on foreign investments

Recent legislation in Spain has suspended the system for the liberalization of the so-called "direct foreign investment" as established back in 2003 approving a new regime which provides for a "prior authorization" from the Spanish Government for direct foreign investments under certain circumstances as described below.

For this purpose, "direct foreign investments" mean:

a. those investments made by (i) non-EU/EFTA residents or (ii) EU/EFTA residents where the beneficial owner is a non-resident (i.e., non-resident holding more than 25% of the voting rights or control on the EU/EFTA resident entity); provided that

b. such foreign investors become holders of, at least, a 10% stake in the target company or they play an active role in managing or controlling the company.

   The new legal framework provides for a "prior authorization" from the Spanish Government for such investments in the following cases:

   a. **Based on the target's profile**, when the target operates in one of the "main strategic sectors in Spain", which affect public order, public security, and/or public health. These critical sectors are (i) critical infrastructures, both physical and virtual: energy, transport, water, healthcare, communications, media, data processing and storage, aerospace, defense, electoral, financial, sensitive facilities, and key land and real estate for use of those infrastructures; (ii) critical technologies and dual-use goods: artificial intelligence, robotics, semiconductors, cybersecurity, aerospace technology, defense, quantum and nuclear energy storage, as well as nanotechnologies and biotechnologies; (iii) supply of fundamental inputs: energy, raw materials, and food security; (iv) information: access to or screening of sensitive data and personal data; and (v) media.

   b. **Based on the investor's profile**, when (i) the investor is controlled directly or indirectly by a third-country government (including investments by public or publicly-controlled companies, or sovereign funds in third countries); (ii) it participates in sectors affecting public order, public security, and public health of another Member State; or (iii) it has had administrative or court proceedings brought against it in another State for exercis-ing criminal or unlawful activities.

Investments under EUR 1,000,000 are temporarily exempted from the prior administrative authorization regime.

The process to obtain the prior administrative authorization from the Spanish Government is as follows:

1. Application to be filed before the General Director for Trade and Investments ("*Dirección General de Comercio Internacional e Inversiones*"), attaching a set of required documents providing information about the transaction, investment, investors, management bodies, corporate purpose and annual accounts.

2. The Foreign Investment Board ("Junta de Inversiones Extranjeras") shall draft a report to be submitted to the Ministry of Industry, Trade and Tourism ("*Ministerio de Industria, Turismo y Comercio*"), who shall deliver a proposal of resolution to the Council of Ministers.

3. The Council of Ministers may grant a (conditional or unconditional) authorization or reject the authorization.

4. The decision made by the Council of Ministers shall be notified within 6 months from the date of application. In the absence of such express notification, the potential transaction will be considered as non-authorized.

Moreover, in addition to the above ordinary procedure, the new legal regime establishes a fast-track authorization procedure for certain transactions that are under way and transactions valued between EUR 1,000,000 and EUR 5,000,000 or whose price was fixed before March 18, 2020.

Lastly, any investments executed in Spain without the mandatory prior authorization, shall not be valid and shall have no legal effects, until the relevant authorization is granted.

Moreover, the Administration can impose the following sanctions on the investor:

- A fine, that might reach up to the economic amount of the transaction (and which cannot be lower than EUR 30,000); and

- A public or private reprimand.

2. Listed Companies

The Spanish Securities Market Act limits the bidder's freedom to establish the offering price of a voluntary takeover bid ("ToB") in certain cases to prevent bids from being launched at a price that does not reflect the value of the target company. These cases include, where, in the two years prior to the announcement of the bid, market prices in general or the price of the target company in particular were affected by "extraordinary events" (including situations derived from force majeure). In these cases, the ToB should be formulated at a price calculated under article 137.2 of the Spanish Securities Market Act (i.e. the higher of an equitable price and a multi-criteria pricing methodology including DCF; NAV; comparable transactions and companies, etc.) and should always include, at least as an option, a cash consideration.

Finally, the Spanish Securities and Exchange Commission (CNMV), in coordination with ESMA, has banned short selling until May 18, 2020 (included) in relation to securities listed on the Spanish Stock Exchanges and the Alternative Stock Market (MAB), given the economic uncertainties, the high volatility levels and the risks of disorderly price formation. This ban may be extended for renewable periods of up to three months each or may be withdrawn at any time if deemed appropriate.

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