

NEW FOREIGN INVESTMENT SCREENING RULES IN SLOVENIA

On 31 May 2020, the third Anti COVID-19 legislative package entered into force, introducing, among other a screening instrument for foreign direct investments in Slovenia which is supposed to protect Slovenian strategic assets on the grounds of security and public order. The screening will be carried out by the Ministry of Economic Development and Technology (hereinafter: **Ministry**). The screening mechanism will be applied until 30 June 2023.

The new law transposes the requirements under the EU foreign direct investment Screening Regulation 2019/452 (hereinafter: **Regulation**) providing a framework for structured cooperation process between Members States and the Commission for screening of foreign direct investments into Union likely to affect security or public order (The Regulation shall apply from 11 October 2020).

SUBJECT MATTER AND SCOPE OF THE NEW LAW

Under the new legislation, investment by the non-Slovenian investor (natural person or an undertaking) acquiring an interest or voting rights of at least 10 % in Slovenian company must be notified to the Ministry within 15 days from:

- i. the conclusion of a merger agreement or the announcement of the public bid offer;
- ii. the establishment of a corporate entity; or
- iii. the acquisition of a right to dispose real estate crucial for the use of critical infrastructure or located near such infrastructure,

if the investment concerns:

- critical infrastructure, physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure or located near such infrastructure;
- critical technologies and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No 428/2009 (e.g. software and technology, which can be used for civil and military purposes, and all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices), including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum, nuclear technologies, nanotechnologies, biotechnologies, as well as healthcare, medical or pharmaceutical technologies;
- supply of critical inputs, including energy or raw materials, as well as food security, medical and protective equipment;
- access to sensitive information, including personal data, or the ability to control such information;
- the freedom and pluralism of media; or

- projects or programmes of Union interest listed in Annex I of the Regulation (e.g. including but not limited to European Defence Industrial Development Program, Trans-European Networks for Telecommunications, Energy and Transport).

In determining whether foreign direct investment is likely to affect security or public order, the Ministry will take into account:

- whether the foreign investor is directly or indirectly controlled by the government, including state bodies or armed forces, of a third country, including through ownership structure or significant funding;
- whether the foreign investor has already been involved in activities affecting security or public order in a Member State; or
- whether there is a serious risk that the foreign investor engages in illegal or criminal activities.

PROCEDURAL PROVISIONS AND SANCTIONS

The notification shall *inter alia* include:

- the ownership structure of the foreign investor and of the undertaking in which the foreign direct investment is planned (including information on the ultimate investor);
- the value and source of the funding of the foreign direct investment; and
- the states in which the foreign investor and the undertaking in which the foreign direct investment is planned to conduct relevant business operations.

The Ministry, based on the opinion of special commission, authorises, conditions, prohibits or revokes foreign direct investment on the grounds of security or public order. If the transaction is prohibited or revoked, the respective contract is deemed null and void by law. Ministry must issue a decision within two months. If the decision is not issued within this period, the transaction is not considered approved. Ministry may screen foreign direct investment no later than five years after the foreign direct investment has been completed.

A fine of up to EUR 500,000 may be imposed on corporate entities failing to notify. Representatives of the corporate entities may as well be fined in the amount of up to EUR 10,000.

CONCLUSION

Considering high penalties and the Ministry's ability to screen foreign direct investment within five years of foreign direct investment completion, many transactions are likely to be notified for the sole purpose of eliminating the risk of future screening and thus eliminating great legal uncertainty concerning such transactions.

The rules in question are expected to have a significant impact not only on mergers and acquisitions but also on restructurings, the establishment of new corporate entities and real estate transactions in many economic activities.

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