One year of foreign investment screening in the Czech Republic

August 2022

Last year, the new Czech Act on the Screening of Foreign Investments (the "FDI Act") was enacted. In its first year, no investments were prohibited, but two investors withdrew their applications for approval during the proceedings. These are the two most important takeaways from the first annual report issued by the Ministry of Industry and Trade (the “Ministry”) on 1 August 2022.

FDI screening trends

The relatively small number of proceedings initiated last year reflects the fact that the FDI Act has only been in effect for one year, but the number of proceedings was also significantly impacted by the general downward trend in the market caused by various reasons, from the COVID-19 pandemic to the Russian invasion of Ukraine (the volume of foreign direct investments has fallen by 38% year-on-year, 2020-2021).

Before the FDI Act was in effect, the Ministry stated that the prohibition of an investment would only be applied rarely as well as the ex post review initiated by the Ministry. That was confirmed in practice last year. At the same time, it shows that it is still a significant potential risk which must be assessed by foreign investors in every transaction.

Reminder – what FDI screening applies in the Czech Republic?

The Czech FDI Act introduced a mechanism of foreign investment screening that includes both (i) a preliminary mandatory application for permission of foreign investment in a specified industry, such as the production of dual-use goods or military equipment, or the operation of a critical infrastructure element and (ii) screening proceedings initiated by the Ministry in respect of any investment which might endanger the security of the Czech Republic or its public or internal order.

As the Ministry may initiate a review of any investment before the investment is made or within a period of five years afterwards, the FDI Act also provides for a way to protect an investment by filing a voluntary proposal for consultation. The Ministry must assess the investment within 45 days. Unless further screening proceedings are initiated within this period, the investment is deemed to be approved and may not be reviewed again.

Balance of cases for the past year

In the first year of the Czech FDI Act, 389 notifications from EU Member State partners and the European Commission and 11 filings from investors were received by the Ministry.

Ten of the eleven filings from investors were voluntary proposals for consultations. Three of the consultations resulted in full screening proceedings. Two further screening proceedings were initiated, one of them based on an obligatory application for approval filed by an investor. As we know from another source, the screening of the second investment was triggered due to the notification received from the EU Member State partner.

So far, no investment has been prohibited and no conditions have been imposed. However, two cases are still ongoing, and two investors withdrew their applications and abandoned their intended investments.

Which investors and investments were examined in the past year?

Most of the investments assessed were from the USA (5 cases, 42%) and the UK (2 cases, 17%). This follows trends from other European countries. Other investments examined were from Russia, China, Singapore, Taiwan and Malaysia. In its annual report, the Ministry explicitly referred to the guidance issued by the European Commission on screening Russian and Belarusian foreign investments, according to which Russia's military aggression against Ukraine calls for greater vigilance with respect to Russian and Belarusian direct investments.

The majority of foreign investors were funds (7 cases) and companies (4 cases), and only one of them was a natural person.

The investments examined were for various sectors such as aviation industry, telecommunications, healthcare, the chemical industry, engineering, the biotechnological industry, water supply and IT.

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