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Czech Republic Aims to Strengthen the Control of Foreign Investments

On 6 April 2020, the Czech Government approved a draft law **establishing rules and procedures for the screening of foreign investments in the Czech Republic**. The draft law empowers the Ministry of Industry and Trade to **prohibit the investment or set specific conditions to be fulfilled by the investors**. Even if the investment has already been made, the Ministry has the power **to prohibit continuation of the investment**. Investments are currently only partially controlled in specific business sectors, such as arms and ammunition manufacturing, banking or energy.

The draft legislation is proposed in connection with the EU Regulation 2019/452, which aims to create cooperation mechanisms between EU Member States and also between the Member States and the European Commission in order to control foreign direct investments into vulnerable European business sectors. Similar screening procedures already exist, for example, in Germany, France, Finland or Poland.

The draft law is currently awaiting approval by the Chamber of Deputies and the Senate and if passed, it will be effective three months after the end of month when it is published in the collection of laws. As soon as the draft law is passed, we will provide you with a further update.

Please find a brief summary of the draft law below.

What investments and investors are affected by the draft law?

The draft law provides for **state's control of foreign investors** who intend to make or have made a direct investment which possibly endangers the security of the state or public order - in particular, but not exclusively **in the specified industry sectors**, such as military equipment or critical infrastructure ("specified industry sectors").

For the purposes of the draft law, a **foreign investor** is defined as a natural person from outside the European Union or legal person with a seat located outside of the European Union or a person who is controlled by such a person. A **foreign investment** is defined as an investment of any kind provided by a **foreign investor** in order to pursue economic

activity in the Czech Republic, if it enables a foreign investor to **effectively control** the economic activity. **Effective control** of the economic activity is defined as:

- **disposing of at least 10% of the voting rights or corresponding influence** in a person who conducts the economic activity;
- a **membership** of the foreign investor or a person closely related to him **within an elected body** (e.g. a director) of a person who conducts the economic activity;
- an **ownership right to property through which the economic activity is carried out**; or
- **other level of control** resulting in the foreign investor's ability to gain access to information, systems or technologies that are important for the protection of the security of the Czech Republic or for its internal or public order.

How and when may the competent authority intervene?

The draft law empowers the Ministry of Industry and Trade ("Ministry") **to initiate control/screening proceedings of any foreign investment** which is likely to affect the security or public order of the state and **impose obligations to fulfil specific conditions** related to the investment on the foreign investors during these proceedings.

The Ministry may even **prohibit the investment or its continuation if the investment has already been made**, subject to the condition the Government issues a resolution declaring it as necessary in order to protect the security or internal or public order. However, it has been declared such measure is to be taken as a last resort step which will be taken only exceptionally.

The Ministry may intervene **before the investment is made** or **within the period of 5 years** from the moment the investment is made. The limitation period of 5 years does not apply if the investor breached his obligation to file an application for permission or it is revealed he concealed facts which if disclosed, would allow the Ministry to initiate the respective proceedings within the time limit. In such cases, **the Ministry may intervene without any time limit**.

What obligations do investors have and what are the consequences for infringements of these obligations?

The draft law imposes an obligation on foreign investors who consider a foreign investment in the specified industry sectors **to file an application to the Ministry for permission to make the investment**.¹

¹ The permission is not required if the foreign investment is made as part of recovery procedure or similar procedure under the Act No. 374/2015 Coll, the Financial Market Recovery and Crisis Management Act, or urgently needed to avert the failure of a financial institution.

If the obligation is breached and the investment is made without the required permission, **the Ministry is empowered to prohibit the continuation of the investment**. Consequently, **the investor may be obliged to cease the exercise of the voting rights or to sell the assets** which constitute the investment.

Foreign investors aiming to invest in the **media industry**² are obliged to **propose a so-called consultation** with the Ministry. If the Ministry or other competent authority does not find grounds to initiate the proceedings on the screening of the investment, the investment is deemed to be “approved” and it cannot be reviewed again, unless it is revealed that the investor submitted untrue or incomplete information. The Ministry must notify the foreign investor about it within the period of 45 days from the delivery of his proposal.

A breach of the obligation to file an application for permission or propose a consultation or an infringement of an obligation or condition individually imposed by Ministry is **punishable as an administrative offence** under the draft law and the fine imposed could amount up to EUR 3,7 mil or up to 2% of total annual turnover of the offender for the preceding financial year.

What can investors do in order to protect their investments?

Any foreign investor may propose a consultation to the Ministry, even if he is not obliged to do so. Similarly, as in the case of obligatory consultation procedure, **the investment cannot be reviewed again after the consultation**, unless it is revealed the investor submitted untrue or incomplete information. Therefore, **we recommend filing a voluntary proposal for a consultation** in case any doubts arise in order to protect the investment. However, it must be noted that in the case of such a proposal for a consultation, the investor must provide the Ministry with all relevant information.

² Subject to the condition the media company is a holder of a nationwide radio or television broadcast licence or a publisher of a periodical with minimum average print run of 100 000 copies per day for the last calendar year.

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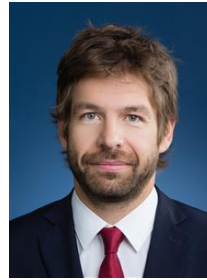


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