

Track Changes

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23 June 2020

WT UPDATE: FURTHER TIGHTENING OF FOREIGN DIRECT INVESTMENT SCREENING IN HUNGARY

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On 17 June 2020, the Hungarian Parliament reconfirmed in a new act the rules adopted by the Hungarian Government earlier in May 2020 which substantially expanded the requirements for all foreign investors to seek prior ministerial approval for their investments in Hungarian companies engaged in certain strategic industries. The strategic industries covered by the screening requirement in the new act are now wide-ranging and go far beyond the previous scope of Hungary's FDI screening requirements.

The activities now covered by the sweeping Hungarian legislation include manufacturing and chemicals, food and agriculture, health and medical, waste and building materials, transport and logistics and even all retail and wholesale activities, as long as the activities are conducted by Hungarian registered legal entities engaged in the energy, transport or communication sectors or are otherwise considered strategic in the context of the framework Regulation (EU) 2019/452 of the European Parliament and the Council.

The new act requires that investors from inside or outside the EU, the EEA and Switzerland file for prior approval if they intend to acquire, directly or indirectly, an "interest" with any of the following parameters:

- of at least 10% with a deal value of at least HUF 350 million (approximately EUR 1 million);
- of at least 15%, 20% or 50%, irrespective of the deal value in any case;
- as the result of which their shareholding combined with stakes already held by other foreign investors would exceed 25%, notwithstanding the size of the "interest" newly acquired or its deal value;
- which will otherwise be sufficient to ensure effective control over any Hungarian legal entity in the industries concerned.

In addition to the straightforward acquisition of shares, the deal structures that will now be under the scope of the new act include the acquisition of convertibles or rights in

usufruct as well as corporate transformations, asset acquisitions, capital injections and even in-kind contributions, irrespective if the deal is for good consideration or for free.

Without the minister's approval, the transaction will be considered null and void under Hungarian law, and no changes can be entered into any relevant public registries (such as the corporate registry), nor will it be permitted that the acquirers are entered in the relevant books of shareholders. Furthermore, the minister can impose administrative fines for any breach of the approval requirements in the amount of at least 1% of the acquirer's annual net turnover and up to an amount of double the transaction value.

With respect to the procedural aspects, the filing must be made within ten days of concluding the relevant agreement. The ministerial decision must be rendered within 30 days thereafter, which if circumstances so require, can be further extended with an additional 15-day review period.

The new act has entered into force for a temporary period expiring at the end of the year (2020). It remains to be seen if any of these additional screening requirements will be more firmly solidified in Hungarian law after such time.

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