

# Track Changes

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22 February 2021

## Foreign investors need to comply with new FDI rules in the Czech Republic as of 1 May 2021

The new Act no. 34/2021 Coll., on the Screening of Foreign Investments (the "new Act") introduces an ordinary mechanism of foreign investment screening including both a preliminary mandatory application for permission (in respect of foreign investments in a "specified industry" and the media) and screening proceedings initiated by the Ministry of Industry and Trade (in respect of any foreign investment which is likely to affect the security or public order of the state).

As the new Act will apply to foreign investments completed after 30 April 2021, non-EU investors should make a preliminary assessment of their intended/planned transactions (both share and asset deals, expansion of existing business and possibly even certain intra-group restructurings) to determine whether they could be subject to the requirements of the new Act. If any doubt arises, they should file a voluntary proposal for a consultation to the Ministry of Industry and Trade, as the investment cannot be reviewed again after the consultation, unless it is revealed the investor submitted false or incomplete information.

For a summary of the major points provided by the new Act, please see [our Client Alert from April 2020](#).

### What types of investments are covered?

The scope of the new Act is very broad, as an investment of any kind intended or made (completed) by a foreign investor which potentially endangers the security of the Czech Republic or its public or internal order, may trigger an investment review. A foreign investor in this context is defined as a natural person or legal entity from outside of the European Union or a legal entity or trust fund directly or indirectly controlled by such a person or legal entity.

The only limitation is that only foreign investments which enable a foreign investor to gain effective control of a respective economic activity may be subject to the investment review. However, the effective control of the economic activity is defined very broadly, as:

- disposing of at least 10% of the voting rights or corresponding influence in a person who conducts the economic activity, i.e. target entity (including the voting rights of persons who are subject to joint management or concerted practices with the foreign investor);
- membership of the foreign investor or a person closely related to him/her in an elected body (e.g. a director) of the target entity;
- 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.

Furthermore, a change in the person of a foreign investor after the investment is made, is deemed to be a new transaction (foreign investment) for the purposes of the Act and therefore, subject to a new review process.

The Act does not provide for any explicit exceptions in order to exclude intra-group restructurings (unlike, for example, the Act No. 143/2001 Coll., the Act on the Protection of Competition, in respect of the merger control) or expansion of existing businesses.

### What are the sectors and activities that are particularly under scrutiny?

Pursuant to the new Act, a review may be initiated in respect of any foreign investment which may endanger the security of the Czech Republic or internal or public order. Nevertheless, the sectors under stricter scrutiny are:

- the manufacture, research, development, innovation or ensuring the life cycle of military equipment;
- the operation of critical infrastructure and services (e.g. energy, telecommunications, transportation, healthcare, the chemical industry, etc.);
- the administration and development of software (information systems) designated for such critical infrastructure and services;
- the manufacture or development of dual-use goods and other goods listed in Annex IV of EU Regulation 428/2009; (each a "specified industry");
- and the media.

Foreign investors who intend to invest in a "specified industry" must apply for the permission of the Ministry of Industry and Trade. The permission is not required if the foreign investment is made as part of a 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. The investment must not be completed without the permission.

Foreign investors aiming to invest in the media (subject to the condition that the media company is a holder of a nationwide radio or television broadcast licence or a publisher of a periodical with a minimum average print run of 100 000 copies per day for the last calendar year) must propose a so-called consultation with the Ministry of Industry and Trade. If the Ministry does not find grounds to initiate the review of the investment, the

investment is deemed approved and it cannot be reviewed again, unless it is revealed the investor submitted false or incomplete information.

Foreign investors aiming to invest in any other sector are not obliged to propose a consultation, but they may propose it voluntarily in order to protect their investments.

### What can foreign investors do now?

The new Act provides for serious consequences if the obligation to apply for permission or propose a consultation is breached, the conditions required by the Ministry are not fulfilled or any other obligation under this Act is breached. For such violations, a fine amounting up to EUR 3,7 million or up to 2% of the total annual turnover of the offender for the preceding financial year may be imposed and the Ministry is empowered to forbid the continuation of the investment which has already been made (the investor may be forced to cease the exercise of the voting rights or to sell the assets which constitute the investment).

Therefore, foreign investors should make a preliminary assessment of their transactions (both share and asset deals, expansion of existing business and possibly even certain intra-group restructurings) to determine whether these could be subject to any obligation under the new Act.

If any doubts arise, foreign investors should file a voluntary proposal for a consultation to the Ministry in order to protect their investments, as the investment cannot be reviewed again after the consultation, unless it is revealed the investor submitted false or incomplete information.

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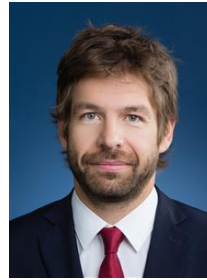


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