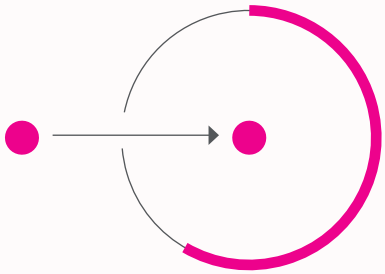


Foreign Direct Investment Screening in CEE

1 July 2022

schönherr

preface

FDI screening was for a long time a blank spot on the regulatory landscape for most countries in Central Eastern Europe (CEE). Unlike Western European Member States, relatively few countries in Central Eastern Europe had instruments to vet foreign investments and those that did exist often were of little practical consequence.

In view of the economic shockwaves from COVID-19, the European Commission (EC) has highlighted the increased risk to strategic industries in the European Union in its Communication of 13 March 2020. It urged Member States "to be vigilant and use tools available to avoid that the current crisis leads to a loss of critical assets and technology" as a result of buyouts from foreign (i.e. non-EU/non-EEA) investors.

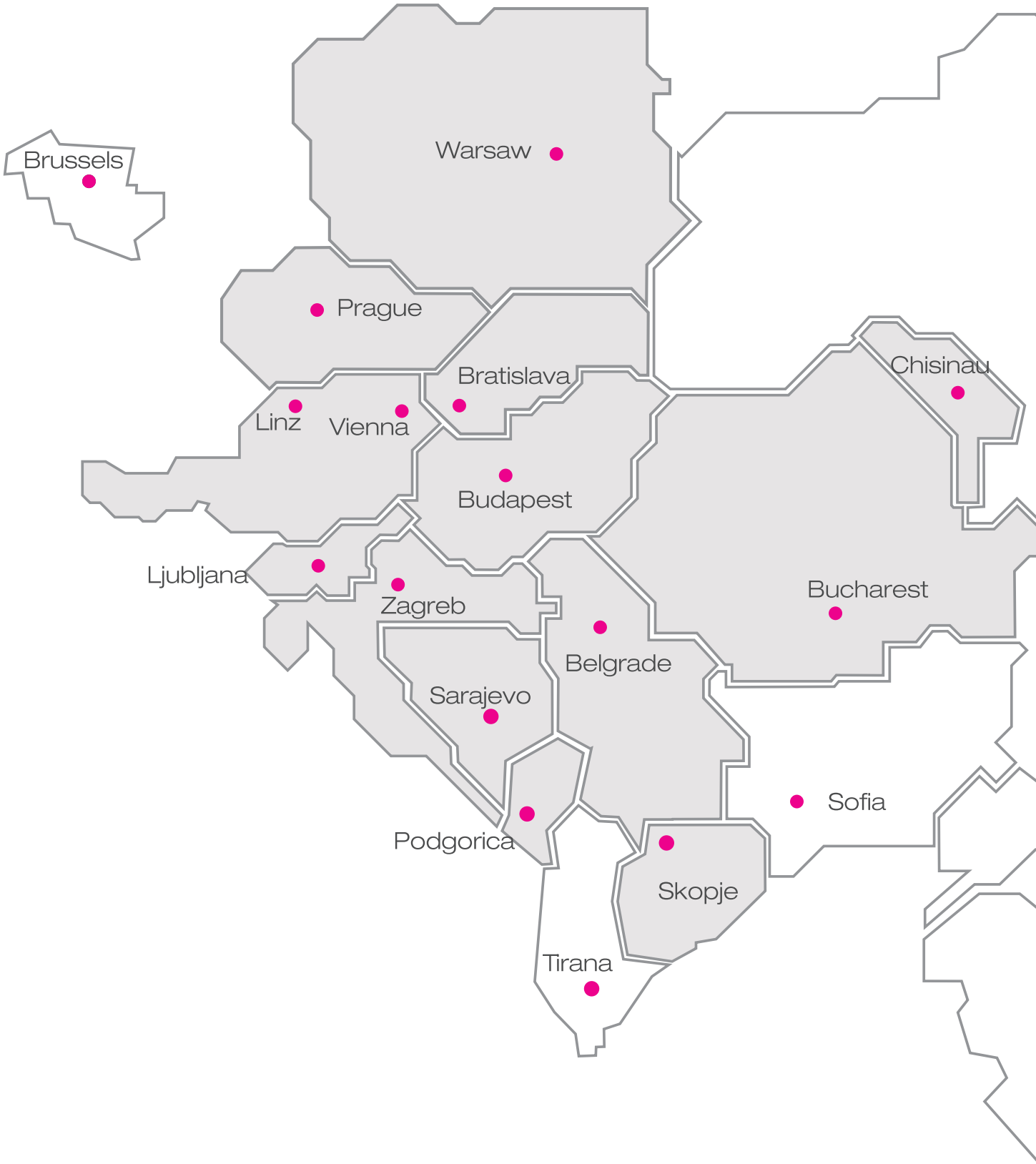
Subsequently and ahead of the application of the EU FDI Screening Regulation, the EC specifically addressed the increased risk of attempts by foreign investors to acquire healthcare capacities. In light of this, the EC encouraged Member States to make full use of their existing FDI screening mechanisms or, where these are unavailable or inadequate, to set up a full-fledged screening mechanism.

National legislators in Central Eastern Europe have heard the wakeup call. Member States across CEE have tightened or enacted new measures or initiated legislative processes to do so. These measures are largely shaped by the EU FDI Screening Regulation. Going forward, many foreign investments in critical sectors will have to undergo a vetting process.

This booklet (now in its 2nd edition) provides an up-to-date overview of the currently existing FDI regimes in CEE. Following the trend to tighten / set up FDI screening mechanisms, this booklet now covers – besides Austria, Croatia, the Czech Republic, Hungary, Poland, Slovakia and Slovenia – also the newly implemented regimes in Moldova and Romania. In addition, we touch upon the investor screening regimes in Bosnia & Herzegovina, Montenegro, North Macedonia and Serbia.

We invite you to visit our *fdi info corner.*

index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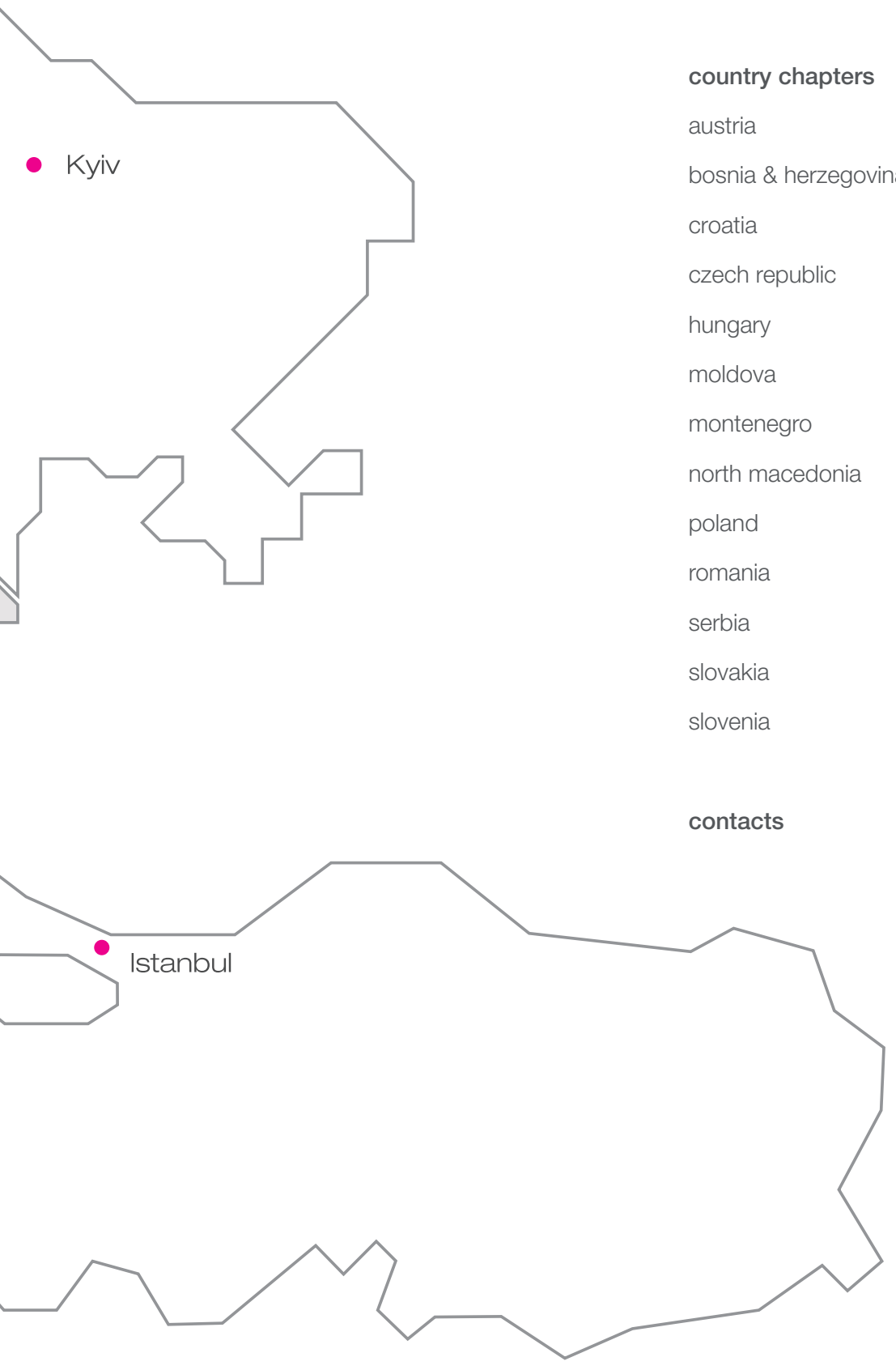

country chapters

austria

Legal basis

Investment Control Act ("ICA"), OJ, I No 87/2020, 24 July 2020.
EU FDI Screening Regulation (Regulation (EU) 2019/452), OJ L 79I, 21 March 2019.
The ICA has entered into force in July 2020.
The cooperation mechanism set out in the ICA is applicable since 11 October 2020 *(Austrian Parliament adopts new FDI screening act).*

Filing requirement

The notification obligation is triggered if a foreign investor, i.e. non-EU, non-EEA, non-Swiss individual/entity, intends to carry out an investment (directly/indirectly) in an Austrian undertaking. This includes:

- the acquisition of shares reaching/ exceeding 10 %*), 25 % and 50 % (voting rights);
- the acquisition of control;
- the acquisition of essential/all assets of an undertaking (asset deals);
- the undertaking is active in a sector listed in an Annex to the ICA; and
- the undertaking is Austrian, i.e. has its seat or its central administration in Austria (local nexus).

No approval is required for an investment in an undertaking with i) fewer than 10 employees and ii) an annual turnover or balance sheet total of less than EUR 2m (start-up exception).

- The 10 % threshold applies for investments in particular highly-sensitive sectors (see below). For investments in other sensitive sectors the triggering threshold is at 25 % and 50 % (voting rights).

Relevant sectors

The ICA applies to an investment in an undertaking which is active in a sector listed in the Annex. Part I of the Annex lists the following particularly sensitive areas for which the 10 % threshold applies. The list is exhaustive:

(i) defence equipment/defence technology;
(ii) critical energy infrastructure;
(iii) critical digital infrastructure (in particular 5G infrastructure);
(iv) water;
(v) systems that enable data sovereignty of the Republic of Austria; and
(vi) research and development in the fields of pharmaceuticals, vaccines, medical devices and personal protective equipment (until 31 December 2022).

Part II of the Annex lists other areas which are critical for public security and/or order and for which the 25 % threshold applies. Besides the above-mentioned, these include investments in the following non-exhaustive areas:

(i) critical infrastructure such as the energy, information technology, transport, health, food, and telecommunications sectors, etc.;
(ii) critical technologies and dual-use items as defined in Regulation (EC) No 428/2009, in particular artificial intelligence, robotics, cyber security, quantum and nuclear technology, nano and biotechnology, etc.;
(iii) supply of critical resources, including energy or raw materials, as well as food security, medicines, vaccines, medical devices and personal protective equipment, etc.;
(iv) access to sensitive information, including personal data, or the ability to control such information; and
(v) the freedom and pluralism of the media.

Note: The sectoral scope criteria are given a wide reach in practice. For instance, undertakings active in one of the above-mentioned sub-infrastructure areas (e.g. in telecom) are presumed by law to be critical infrastructure.

Process and timetable

Competent authority: Federal Ministry of Labour and Economy
Mandatory filing requirement: Yes
Filing deadline: A relevant agreement needs to be reported immediately after the signing of the contract / announcement of the intention of a public offer.
Responsibility for filing: While the notification obligation rests primarily with the foreign investor and its management (i.e. the acquirer), the ICA foresees a subsidiary reporting obligation for the target company. In addition, the relevant Authority can assume jurisdiction ex officio if it becomes aware of a transaction subject to approval that has not been notified.
Sanctions: Implementation ahead of local regulatory clearance is subject to criminal sanctions and/or administrative fines.
Length of the proceedings:
Phase 1: One month after a 35-day period (extendable) within which the EU Commission and/or Member States can comment on the transaction (under the EU FDI Screening Regulation).
Phase 2: Two months.

bosnia & herzegovina

Bosnia and Herzegovina does not have a foreign investment screening regime comparable to those now emerging in the European Union in light of the EU FDI Screening Regulation. However, it operates an authorisation system covering the defence and media sectors.

Legal basis

Regulated on multiple levels, due to the country's political and administrative structure:

- Bosnia and Herzegovina (state level) - Foreign Direct Investments in BiH Policy Act (Official Gazette of BiH, nos. 4/1998, 17/1998, 13/2003, 48/2010 and 22/2015) ("FDI Policy Act"), which sets out rules on the state level;
- FBiH - FBiH Foreign Investments Act (Official Gazette of FBiH, nos. 61/2001, 50/2003 and 77/2015), which sets rules in the entity of FBiH; and
- RS - RS Foreign Investments Act (Official Gazette of RS, no. 21/2018), which sets out rules in the entity of RS.

Filing requirement

Under the FDI Policy Act, a direct foreign investment is an investment into a newly established company/institution or into an existing domestic company/institution, which may be in cash, in-kind and in rights.
In addition, the RS Foreign Investment Act specifies the following forms of foreign investments:
- establishment of a legal entity fully owned by a foreign investor;
- establishment of a legal entity jointly owned by a foreign and domestic investor;
- investing into an existing legal entity;
- special forms of investment.

The filing regime encompasses all transactions in the relevant sectors.

Relevant sectors

The defence sector, and in specific production (and sale in FBiH) of arms, ammunition, explosives for military use and military equipment, as well as the media sector, and in specific media activities (terrestrial broadcasting of TV and radio content).

Process and timetable

Competent authority: Government (on state-level), as well as:
- in the FBiH: Ministry of Energy, Mining and Industry (defence sector) and the FBiH Ministry of Traffic and Communications (media sector);
- in the RS, Ministry of Trade and Tourism and/or the RS Ministry of Energy and Mining (defence sector), and RS Ministry of Transport and Communications (media sector).

Mandatory filing requirement: Yes
Filing deadline: There is no deadline prescribed for the foreign investor to make the filing.
Responsibility for filing: The foreign investor is obliged to notify a foreign investment and procure its approval.
Sanctions: There are no specific penalties within the applicable rules.
Length of the proceedings: The Government is obliged to decide on the proposal no later than 60 days since the date of the receipt of the complete request.

croatia

Legal basis

Regulation on the implementation of the EU FDI Screening Regulation (Regulation (EU) 2019/452), OJ L 79I, 21 March 2019 ("Implementing Regulation"). The Implementing Regulation entered into force on 2 October 2020.

Filing requirement

There is so far no FDI filing screening regime. However, the Implementation Regulation establishes the National Contact Point (Nacionalna kontaktna točka) and the Interdepartmental Commission (Međuresorno povjerenstvo), which will act as a competent authority for the EU cooperation mechanism under the EU FDI Screening Regulation. The regulation does not foresee a (mandatory) screening instrument.

The National Contact Point is vested with the power to request information from a foreign investor making an investment in the Republic of Croatia or an undertaking located in the Republic of Croatia in which an FDI is planned to be made. The foreign investor or Croatian undertaking must submit the requested information to the National Contact Point within seven days of receiving the request.

The main task of the Interdepartmental Commission is to coordinate interdepartmental cooperation and efficient flow of information between state and public administration bodies involved in the implementation of the EU FDI Screening Regulation and to provide expert assistance to the National Contact Point on all issues related to it, in particular through the preparation of proposals, opinions and expert explanations.

In addition, there is a reporting duty to inform the Croatian National Bank of the investment within 30 days from the end of the month in which the investment was made (for statistical purposes).

Process and timetable

Competent authority: National Contact Point and Interdepartmental Commission.
Mandatory filing requirement: No screening mechanism in place.
Filing deadline: No screening mechanism in place.
Responsibility for filing: No screening mechanism in place.
Sanctions: N/A
Length of the proceedings: N/A

czech republic

New FDI legislation entered into force on 1 May 2021. It introduced a mandatory, suspensory, pre-closing notification obligation for acquisitions of "effective control" over companies active in the Czech Republic in industries deemed capable of threatening the security of the Czech Republic and internal or public order by parties resident outside the European Union, or whose ultimate controlling parent is resident outside the European Union.

Mandatory notifications can take the form of either (i) a mandatory FDI filing or (ii) a mandatory FDI consultation. If unclear whether a transaction constitutes a notifiable FDI, the foreign investor can make use of a consulting procedure.

Legal basis

Act No. 34/2021 Coll., on Foreign Investment Screening and Amendments to Related Legislation (the "Act"), which entered into force on 1 May 2021.

EU FDI Screening Regulation (Regulation (EU) 2019/452), OJ L 79I , 21 March 2019

Filing requirement

The notification obligation is triggered if a foreign investor, i.e. a non-EU individual/entity, an individual/entity directly or indirectly controlled by a non-EU individual/entity, or a trustee of a trust fund provided that the person who set up the trust or who in any way actually exercises influence over the trust (i.e. the person appointed by or approved by the trustee) or in whose benefit the trust was established is a non-EU individual/entity or an individual/entity directly or indirectly controlled by a non-EU individual/entity) intends to make an investment of any form with the aim of carrying out economic activity in the Czech Republic, which enables the exercise of an effective degree of control in a target undertaking active in an industry that is important in relation to the security of the Czech Republic or its internal or public order (sensitive sectors). An effective degree of control is to be understood as:

a) acquisition of at least 10 % of voting rights or the possibility to exercise a corresponding influence in the target undertaking;
b) membership in the target undertaking's corporate bodies;
c) ownership of an asset through which the economic activity is performed;
d) ability to gain access to information, systems or technologies that are deemed important in relation to the protection of security of the Czech Republic and internal or public order.

Relevant sectors

Sensitive sectors include:

1. production, research, development, innovation or ensuring the lifecycle of military material;
2. elements of critical infrastructure, such as energy, gas, heat and water management, food and agriculture, healthcare, transportation, communication and IT systems, financial markets, emergency services and public administration;
3. administration of essential information or communication systems;
4. development and production of dual-use products.

Should the investment concern the media sector, the Act provides for a mandatory consultation if the target undertaking holds a licence for nationwide radio or television broadcasting or if the target undertaking is a publisher of periodicals with a minimum daily average of 100,000 printed copies in the last calendar year.

Foreign investments which do not fall within the above categories can be screened ex officio in case they are capable of threatening the security of the Czech Republic or internal or public order. Such ex officio investigations are possible up to five years after closing and under special circumstances even after this five-year period (circumvention of a filing obligation).

Process and timetable

Competent Authority: Ministry of Industry and Trade
Mandatory filing requirement: Yes
Filing deadline: The foreign investment cannot be implemented prior to obtaining the approval.
Responsibility for filing: The foreign investor is responsible for obtaining the necessary approval.
Sanctions: Implementation ahead of local regulatory clearance is subject to administrative fines.
Length of the proceedings:
Consultation: 45 days (obligatory for media sector)
Unconditional approval: 90 days (+30 days)
Conditional approval / Rejection: > 90 days (+30 days)

hungary

Legal basis

Two parallel FDI screening mechanisms now apply in Hungary *(New foreign investments screening rules in Hungary)*:

1. Approval of the Ministry of the Interior
Act No. LVII of 2018 on the Control of Investments Detrimental to the Interests of Hungarian National Security (the "Act").

Government Decree No. 246/2018 (XII. 17.) on the execution of Act No. LVII of 2018 ("Decree 246/2018").

Government Decree No. 532/2020. (XI. 28.) on economic measures during the pandemic ("Decree 532/2020")

Hereinafter referred to as "MI FDI Screening".

2. Approval of the Ministry of National Economy
Act No LVIII of 2020 on "the transitional rules connected to the termination of the emergency situation and pandemic alert" effective until 30 June 2021 ("Act 2020") and Government Decree No 289 of 2020 (VI.17.) on the definition of strategic companies.

Hereinafter referred to as "MNE FDI Screening".
EU FDI Screening Regulation (Regulation (EU) 2019/452), OJ L 79I, 21 March 2019.

Filing requirement

1. MI FDI Screening
MI FDI Screening applies to (i) investors from outside the EU, Switzerland and EEA, and to (ii) any subsidiary of such an investor if the subsidiary is established in the EU, Switzerland or an EEA member state and the investor holds a majority of the voting rights in voting rights in the subsidiary or has a decisive influence in it. Under Decree 532/2020, investors from the EU, Switzerland and EEA must also be regarded as foreign investors until 30 June 2021. The foreign investor must obtain the prior approval of the Ministry of the Interior if it intends to:

- directly or indirectly acquire more than a 25 % interest (in the case of a publicly listed company, a 10 % interest) in an existing or yet to be established company with its registered seat in Hungary, provided this company pursues activities that are deemed to be sensitive for national security

("Hungarian Company");
- acquire decisive influence in a Hungarian Company;
- establish a branch office in Hungary; or
- acquire a right to operate or use sensitive infrastructure or assets in Hungary.

All transactions that result in a foreign investor acquiring more than a 25 % interest in a Hungarian Company are subject to foreign investment screening. Moreover, prior approval is required when a foreign investor acquires an interest of less than 25 % but this acquisition results in more than a 25 % interest in the respective Hungarian Company being held by (several) foreign investors.

2. MNE FDI Screening

Under Act 2020, investments by foreign investors acquiring an interest exceeding (i) 10 % and a value of HUF 350m (approx. EUR 1m), (ii) 15 %, 20 % or 50 % irrespective of its value, or (iii) 25 % if acquired by more than one foreign investor, require the approval of the Ministry. The foreign investor must notify the Ministry if it intends to acquire the right to use or operate infrastructure necessary for pursuing activities in strategic sectors (including using such strategic infrastructure as collateral).

A "foreign investor" is (a) a company or organisation domiciled in, or a citizen of, a state outside of the EU, the EEA or Switzerland, or (b) a company or organisation whose majority owner is domiciled in, or a citizen of, a state outside of the EU, the EEA or Switzerland. However, certain acquisitions of a majority interest require the Ministry's approval if the foreign investor is a company or other organisation domiciled in the EU, the EEA or Switzerland. Act 2020 applies to investments in companies that have their seat in Hungary and:

a) are a limited liability or private limited or public (listed) company; and

b) operate in specified "strategic" sectors.

However, Act 2020 is not applicable if a transaction affects the foreign company directly, if the foreign company has a Hungarian subsidiary that qualifies as a strategic company. Therefore, transactions over the level of a Hungarian subsidiary (qualifying as a strategic company), may not be approved by the Ministry. This exemption applies to asset deals as well. Moreover, Act 2020 is also not applicable in case of intra-group transactions.

Relevant sectors

1. MI FDI Screening

The Act contains a complex system regarding the sectors and activities which are under scrutiny. These activities in the specific sectors include activities that:

1) are traditionally considered sensitive, e.g. manufacturing of arms, dual-use items and secret service equipment;
2) are under the Hungarian Gas Act and Water Supply Act, Electricity Act, Credit Institutions Act and the Electronic Communications Services Act; and
3) involve the creation, development or operation of communication systems of the Hungarian State and Hungarian municipalities.

2. MNE FDI Screening

"Strategic" sectors such as manufacturing of medicines, medical devices or other chemicals, fuel production, telecommunications, retail and wholesale (including motors and cars), manufacturing of electronic devices, machinery, steel and vehicles, defence industry (e.g. manufacturing and trade of arms and ammunition as well as technologies used for military purposes), power generation and distribution, services connected to the state of emergency, financial services (including insurance, brokering and other services), processing of food (including meat, milk, grains, tobacco, fruits and vegetables), agriculture, transport and storage, construction (including the production of building materials), healthcare, tourism (hospitality and cafeteria services) and others (e.g. constructing a dam).

Process and timetable

1. MI FDI Screening

Competent authority: Ministry of the Interior

Mandatory filing requirement: Yes

Filing deadline: The foreign investor must file its request for approval within 10 days from (i) the date of execution of the underlying agreement, preliminary agreement, or undertaking, or (ii) the date of registration of activity change by the respective commercial registry.

Responsibility for filing: The foreign investor and its management (as the acquirer) are responsible for obtaining the necessary approval.

Standstill requirement: Yes

Sanctions: Implementation of the transaction ahead of local regulatory clearance is subject to (i) criminal sanctions, (ii) fines under Decree 246/2018, and if the Ministry of the Interior prohibits the transaction (iii) invalidity of the underlying agreement(s) and corporate actions (e.g. shareholders' resolution). In addition the foreign investor must (iv) sell its shares or eliminate its influence in the Hungarian Company or the Hungarian Company must modify its activity within three months or the foreign investor must close its branch.

Length of the proceedings:

60 days, which may be extended by an additional 60 days.

2. MNE FDI Screening

Competent authority: Ministry of National Economy

Mandatory filing requirement: Yes

Filing deadline: The request for the approval must be made within 10 days from the execution of the underlying agreement.

Responsibility for filing: The foreign investor and its management (as the acquirer) are responsible for obtaining the necessary approval.

Standstill requirement: Yes

Sanctions: Implementation of the transaction ahead of local regulatory clearance is subject to (i) criminal sanctions, (ii) fines under Act 2020, and if the Ministry of National Economy prohibits the transaction (iii) invalidity of the underlying agreement(s) and corporate actions (e.g. shareholders' resolution).

Length of the proceedings:

30 business days, which may be extended once by an additional 15 calendar days.

moldova

Legal basis

Law on the examination mechanism of investments of importance for state security (the "**FDI Law**") No 174/2021 dated 11 November 2021.

Filing requirement

The notification obligation is triggered:

- if any natural or legal person intends to carry out an investment by any means, directly or indirectly, individually or jointly, including as ultimate beneficial owner(s) in a Moldovan area of significance for state security. This includes:
- by the acquisition of control, the acquisition or increase of a "qualified participation", in a company active in (including in a company which invests in companies active in) areas of significance for state security;
- by the entry into certain types of concession agreements, i.e. (i) works concession contract or a service concession contract, and (ii) concessions in the field of defence and state security;
- by the entry into a public-private partnership agreement relating to "assets of national security significance" or falling within areas of significance for state security;
- by the entry into investment agreements with the Moldovan Government relating to "assets of national security significance" or falling within areas of significance for state security;
- by the entry into a sale and purchase agreement in relation to assets representing at least 25 % of the value of the assets of companies already investing in areas of significance for state security; or
- by the entry into financial transactions (loans/credits or subsidies) between a company already investing in areas of significance for state security and persons from other states that are directly or indirectly controlled by the governments of other states.

The FDI Law does not provide for a financial threshold from which the transactions in question would fall within its scope.

No approval is required for an investment carried out by an undertaking from the financial sector as well as those involving international financial institutions.

Relevant sectors

The FDI Law defines the relevant sectors through the following exhaustive list:

(a) hydrometeorological and geophysical field;
(b) radioactive waste management;
(c) operation of energy (including electric energy, natural gas and petroleum products), transport, water and sewerage, aerospace, defence, election infrastructure;
(d) exploitation of artificial intelligence technologies, robotics, semiconductors, cybersecurity, aerospace, defence technologies, quantum and nuclear technologies, nanotechnologies and biotechnologies;
(e) production of means of cryptographic protection for information;
(f) production and acquisition for the purpose of resale of means of protection of information classified as a state secret;
(g) production of explosive materials for industrial use and their distribution activities;
(h) aviation security activities;
(i) design, production, maintenance and operation of aircrafts, including unmanned aircrafts, and of its components;
(j) design, production, maintenance and operation of systems and components used in air traffic management and provision of air navigation services;
(k) design, maintenance and operation of airports and heliports, including the safety-relevant equipment used on them;
(l) management of airports, bus stations, rail traffic, inland waterways, ports and quays for waterway traffic;
(m) television broadcasts/audio-visual services;
(n) provision of fixed or mobile electronic communications networks and/or services;
(o) supply of services in national ports;
(p) geological exploration and/or exploitation of mineral deposits;
(q) production, export, re-export, import of weapons, ammunition and military equipment; products, technologies and services that can be used in the manufacture and use of nuclear, chemical, biological and missile weapons; and
(r) administration of public registers of the state, information security.

Also, the FDI Law provides a filing requirement in relation to assets of national security significance. The list of assets of national security significance is exhaustive and approved by the Government decree.

Process and timetable

Competent authority: Council for the promotion of investment projects of national importance
Mandatory filing requirement: Yes
Filing deadline: Prior to carrying out investment activities in areas of significance for state security.
Responsibility for filing: The responsibility for filing remains with the potential investor or foreign acquirer.
Sanctions: Entering into or carrying out transactions without the prior approval of the Council may lead to the Council's decision to (i) request the termination of the agreement/ transaction and the reparation of the damage caused, regardless of the law applicable to the contract/transaction, (ii) suspend the investor's voting right, right to summon a general meeting of shareholders, right to include questions

on the agenda of the general meeting of shareholders, right to propose members to management bodies, right to receive dividends / net income, etc., and (iii) order the management to annul the target's issued shares and order the issuance of new shares, which will become Moldovan company treasury shares, which would need to be transacted (sold) in line with the applicable legislation (including while observing the FDI Law).
Length of the proceedings: The Council will examine the request within 45 days of the date of its receipt. The term can be suspended within up to 20 days in case the potential investor has to complete the filing with some missing documents.

montenegro

Montenegro does not have a foreign investment screening regime comparable to those emerging now in European Union in light of the EU FDI Screening Regulation. It operates a sector-specific authorisation system covering the defence sector.

Legal basis

The Foreign Investments Act (Official Gazette of Montenegro, nos. 18/11, 45/14 and 73/19) and the Guidance on the content and the manner of submitting information on foreign investments (Official Gazette of Montenegro, no. 19/14).

Filing requirement

A foreign investment is defined by the Foreign Investments Act as an investment in-cash, in-kind, services, property rights and securities (with in cash and in-kind investments qualified as such in accordance with Montenegrin accounting rules).
The Foreign Investments Act explicitly provides that a foreign investor can:
- establish a company (solely or with other investors);
- establish a branch of a foreign company;
- acquire shares and stock in a Montenegrin company; and
- acquire a Montenegrin company.

In addition, the Foreign Investments Act foresees that a foreign investment can be made based on concession agreements, franchising agreements, financial leasing agreements and real estate purchase agreements, as well as other agreements in accordance with applicable laws.
A foreign investment is subject to screening and approval only if it concerns an investment into or the incorporation of a company active in the production and trade of arms and military equipment.

Relevant sectors

Production and trade of arms and military equipment.

Process and timetable

Competent authority: Ministry of Economic Development, Ministry of Defence and Ministry of the Interior.
Mandatory filing requirement: Yes
Filing deadline: There is no deadline prescribed for the foreign investor to make a filing.
Responsibility for filing: The foreign investor is obliged to notify a foreign investment and procure approval for it.
Sanctions: There are no prescribed sanctions under the current framework applicable to foreign investments in the field of production and trade of arms and military equipment. However, approval is mandatory when the conditions are met and closing must be suspended until approval is obtained. Moreover, a Montenegrin company engaged in the production and trade of arms and military equipment cannot negotiate a foreign investment in any of the forms described above before obtaining approval from the Ministry of Economic Development.
Length of the proceedings: There is no deadline prescribed for the Ministry of Economic Development to carry out its review and issue a decision.

north macedonia

North Macedonia does not have a foreign investment screening regime comparable to those now emerging in the European Union in light of the EU FDI Screening Regulation, but operates a single-sector authorisation system specifically covering the defence sector. Additionally, there is mandatory registration of all direct investments made by non-residents.

Legal basis

The Foreign Exchange Operations Act (Official Gazette of RM, nos. 34/2001, 49/2001, 103/2001, 51/2003, 81/2008, 24/2011, 135/2011, 188/2013, 97/2015, 153/2015, 23/2016, and Official Gazette of RNM, no. 110/2021) and the Act on Development, Production and Trade of Military Goods (Official Gazette of RNM, no. 298/21).

Filing requirement

The filing regime in the defence sector encompasses investments into a company active in the development and production of military equipment, by a foreign legal entity.

Regarding the mandatory registration of direct investments, which is administrative / statistical in nature, the following is considered a direct investment as per the Foreign Exchange Operations Act:
- incorporating a company or increasing the registered capital of a company in full ownership of the investor, establishing a subsidiary or acquiring full ownership over an existing company;

- participation in a new or already existing company if the investor holds or acquires more than a 10 % share in the registered capital of the company, exceeding 10 % of the voting rights;
- a long-term loan of five or more years of maturity, if the loan from the investor is intended for a company that it owns in full; and
- a long-term loan with five or more years of maturity, if the loan is intended to establish lasting economic relations if granted among entities associated in a mutual economic venture.

Relevant sectors

Approval is necessary for all foreign investments that concern investments into a company active in the development and production of military equipment.
Registration is mandatory for all direct investments as defined above, as well as for modifications of existing investments.

Process and timetable

Competent authority: Ministry of Economy for investments into the defence sector. Registration is carried out by the Registry for Direct Investments ("RDI").
Mandatory filing requirement: Yes
Filing deadline: There is no deadline prescribed for the submission of a request to the Ministry of Economy. The deadline for notifying a direct investment is 60 days from the date of the transaction which constitutes the legal basis for making the direct investment.
Responsibility for filing: The responsibility for making a filing regarding investments in the field of development and production of military equipment lies with the foreign investor. The obligation to register the foreign direct investment lies upon the resident company in which the foreign investor has invested.
Sanctions: Failure to obtain approval for investments in the field of development and production of military equipment entails the following penalties:
- EUR 4,000 to EUR 8,000 for a resident that enables a foreign investment without previous approval from the Ministry of Economy;
- EUR 500 to EUR 1,000 for the responsible person within the resident company;
- a one- to five-year ban on carrying out production and trade of military equipment for the company, i.e. a one- to five-year ban for the responsible person; and
- confiscation of the objects with which the misdemeanour was committed.

Failure to register a direct investment with the RDI entails the following penalties:
- a fine ranging from EUR 250 to EUR 15,000 for the resident company;
- a fine ranging from EUR 100 to EUR 800 for the manager of the resident company.

Also, the transfer of profit, as well as the transfer of financial resources generated from the sale of shares held in the Macedonian company (or its liquidation), is conditioned by previous appropriate registration of the foreign investment with the RDI.
Length of the proceedings: Regarding investments into the defence sector, the Ministry of Economy is obliged to carry out the review and issue a decision at the latest within 60 days from the date of a complete request. There is no deadline prescribed for the RDI to issue a decision.

poland

Legal basis

Act of 24 July 2015, on Control of Certain Investments (the "Act", OJ 2020, item 117) as amended by the so-called Anti-Crisis Shield Act 4.0 (OJ 2020, item 1086).
The Act provides for two separate sets of rules related to different investors, with other companies/sectors protected, different competent authorities, separate procedural rules and fines. Both sets of rules are presented below as "FDI 1" and "FDI 2".

Filing requirement

FDI 1:
The notification obligation is triggered if an investor (regardless of its nationality or place of registered seat) intends to carry out an investment (i.e. acquisition of an undertaking or its organisational part, acquisition of shares in an undertaking or acquisition of control over an undertaking) in an undertaking that is active in a sector affecting the public security and/or public order of Poland.
FDI 1 covers the acquisition of a "significant participation", which is defined as a shareholding conferring at least 20 %, 25 % or 33 % of the voting rights in the target entity.

FDI 2:
The notification obligation is triggered if a foreign investor (non-EU, non-EEA, non-OECD individual/entity) intends to carry out an investment (i.e. acquisition of an undertaking or its organisational part, acquisition of shares in an undertaking or acquisition of control over an undertaking) in an undertaking with its registered seat in Poland that achieved domestic revenues exceeding EUR 10m in any of last two years and is covered by FDI 2.
Under FDI 2 a minority shareholding that does not confer control can be subject to investment screening, though acquisitions of a shareholding below 20 % are exempted.

Relevant sectors

FDI 1:
The Act can be applied to companies operating in 15 strategic sectors of the Polish economy, for instance:
- power generation and distribution;
- gasoline and diesel production, transport and storage;

- production of chemicals and fertilisers;
- telecommunications;
- manufacture and trade of arms, ammunition and military technologies, etc.

A list of companies active in strategic sectors covered by the regulation is published by the Council of Ministers and currently includes nine companies.

FDI 2:
FDI 2 applies to targets which:
- are public (listed) companies; or
- own assets defined as critical infrastructure under Polish law; or
- develop or modify software for specific sensitive use, such as to control power plants or networks, to operate facilities or systems for the supply of utilities, to operate equipment or systems used for voice and data transmission or for storage and processing, to operate or manage facilities or systems used for cash supply, card payments, conventional transactions, securities settlement and derivative transactions, to provide insurance services, or to operate transport systems or facilities ;or
- operate in selected sensitive sectors, such as telecommunications, power generation and distribution, fuel production, transport and storage, production of chemicals, manufacturing of medicines or medical devices, processing of meat, milk, grains, fruits and vegetables, manufacturing and trade of arms and ammunition as well as technologies used for military purposes, etc.

Process and timetable

Competent authority: Ministry of State Treasury, Ministry of Defence or Ministry of Maritime Economy (depending on the sector in which the protected undertaking operates) for FDI 1 and the President of the Office for Competition and Consumer protection for FDI 2.
Mandatory filing requirement: Yes (for both FDI 1 and FDI 2)
Filing deadline: A relevant agreement needs to be reported prior to the signing of a contract / publication of a public offer to the relevant authority (for both FDI 1 and FDI 2).
Responsibility for filing: The investor (as the acquirer) is responsible for obtaining the necessary approval. In certain cases the protected undertaking is obliged to submit the notification (e.g. if the acquisition of significant participation is a result of redemption of shares of the protected entity, demerger or amendments to the agreement or statutes of the protected entity with respect to the preference of shares) (for both FDI 1 and FDI 2).
Sanctions: Implementation ahead of local regulatory clearance is subject to criminal sanctions, i.e. a fine of up to PLN 100m (approx. EUR 24m) and/or imprisonment of six months to five years for FDI 1. For FDI 2 the respective sanctions are a fine of up to PLN 50m (approx. EUR 12m) or imprisonment of six months to five years.
Length of the proceedings: 90 days (FDI 1).

FDI 2:
Phase 1: 30 business days.
Phase 2: 120 calendar days.

romania

Legal basis

Emergency Government Ordinance No. 46/2022 on measures to implement Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the examination of foreign direct investment in the Union, as well as for the amendment and completion of Competition Law No. 21/1996.
National Defence Council Decision No. 73/2012.
Competition Law No. 21/1996; Regulation on Economic Concentrations, as approved by Order of the Romanian Competition Council Chairman No. 431/2017.
EU FDI Screening Regulation (Regulation (EU) 2019/452), OJ L 79I, 21 March 2019.

Filing requirement

Criteria for triggering the FDI filing:
- the investment needs to be made by a non-EU investor*);
- the investment must occur in certain sectors deemed sensitive from a national security standpoint; and
- the investment must have a value exceeding EUR 2m, although screening can occur even for transactions below this value if they are likely to trigger potential risks or effects for national security or public order.

*) Note: A newly tabled bill envisage to extend the scope to EU investments, i.e. EU investors will need to file their investments in sensitive sectors.
(EU investments now also covered by FDI regime)

Foreign direct investments can consist in:
- changes in control in the ownership structure of a company;
- an investment of any kind made by a foreign investor for the purpose of establishing or maintaining long-lasting and direct links between the investor and an undertaking and/or a separate unit of an undertaking, via (a) funds which are made available for carrying out an economic activity in Romania, and (b) which allow the foreign investor to exercise control over the management of the business;
- greenfield investments and/or extensions of current capacity productions, diversifying the production or otherwise making significant changes to the current production processes (i.e. "new" investments).

Exclusions from the scope:
- portfolio investments, consisting in (a) acquisitions of shares on stock exchanges which (b) do not lead to any direct

involvement in the management of the company.
- purely EU investments.

Relevant sectors

The investment must take place in one of the following domains (deemed of strategic importance for national security):

a) security of citizens and communities;
b) border security;
c) energy security;
d) transport security;
e) supply of vital resources security;
f) critical infrastructure security;
g) security of IT and communication systems;
h) security of financial, tax, banking and insurance activities;
i) security of weapons, munitions, explosives, toxic substances manufacturing and circulation;
j) industrial security;
k) protection against disasters;
l) protection of agriculture and environment;
m) protection of state-funded companies or of their management during privatisation.

The above sectors will be reviewed in conjunction with the sensitive areas defined by the EU FDI Regulation.

Investments in media companies

Transactions concerning companies (i) with audio-visual licences or that (ii) issue publications with an average of at least 5,000 printed copies per day in the last calendar year or that (iii) have a web portal with a minimum of 10,000 views per month are bound to special transparency rules. Such transactions will be subject to a public consultation process of a minimum 30 calendar days.

Process and timetable

Competent authority: FDI Screening Commission (via the Romanian Competition Council)
Mandatory filing requirement: Yes
Filing deadline: N/A (from a practical perspective, filing should occur as close as possible to the transaction signing date). The FDI regime applies to all “ongoing transactions”, including investments in relation to which the parties announced their intention to conclude an agreement (e.g. via a preliminary agreement, MoU or LoI).
Responsibility for filing: Investor(s) gaining sole or joint control, or making a "new" investment.
Standstill requirement: Yes
Sanctions: Fines of up to 10 % of the total worldwide turnover for (i) gun-jumping, (ii) providing inaccurate or misleading information, or (iii) failure to observe the commitments set in a conditional clearance decision. The new fining regime entered into force on 18 May 2022.
Length of the proceedings: Non-conditional clearance is expected in principle within 135 calendar days as of the date when filing is deemed complete (requests for information stop the clock). The timeline applicable in case of conditional clearances or rejection decisions is not transparent as these can only be made via a Government decision.

serbia

Serbia does not have a foreign investment screening regime comparable to European regimes shaped by the EU FDI Screening Regulation. Rather, Serbia operates a single-sector authorisation system covering the defence sector.

Legal basis

The Production and Trade of Arms and Military Equipment Act (Official Gazette of Serbia no. 36/2018).

Filing requirement

A foreign investment in the field of arms and military equipment manufacturing is defined by the Arms Act as an investment of capital by a foreign investor by way of:

- establishing a company active in the manufacturing of arms and military equipment, either independently or with another domestic or foreign natural or legal person or with the Republic of Serbia;
- recapitalisation of a company active in the manufacturing of arms and military equipment; or
- purchase of capital of a company active in the manufacturing of arms and military equipment.

In this sense, a company active in the manufacturing of arms and military equipment means a company incorporated in Serbia and holding an appropriate licence to produce these items.

All transactions falling under the above criteria need to be notified for foreign investment screening and approval.

Relevant sectors

The current foreign investment screening regime in Serbia is limited to the defence sector, specifically to foreign investments in the production of arms and military equipment.

Process and timetable

Competent authority: Ministry of Defence and the Serbian Government
Mandatory filing requirement: Yes
Filing deadline: There is no filing deadline, but the process of the change of ownership over a company active in the production of arms and military equipment cannot be initiated without prior approval.
Responsibility for filing: The foreign investor is obliged to notify

a foreign investment and procure its approval.
Sanctions: The Arms Act provides for penalties if a change of ownership is initiated without the required approval. The range of penalties is approximately EUR 4,200 – 6,000 (RSD 500,000 – 750,000) for companies and EUR 420 – 600 (RSD 50,000 – 75,000) for responsible individuals.
Length of the proceedings: Upon receipt of the request (by the Ministry of Denfence), the Government must issue its decision (which will be based on a proposal of the Ministry of Defence) within 120 days from the date of receipt of the request.

slovakia

New investment screening legislation entered into force on 1 March 2021. Under the new FDI regime the acquisition of a shareholding in certain designated entities or of the business of these entities needs to be reported and may be subject to approval of the Slovak Government.

This obligation applies regardless of whether the acquirer is a Slovak or foreign entity and also applies to indirect transactions, i.e. a change in the persons having a direct or indirect participation in the operator of critical infrastructure exceeding a 10 % shareholding or voting rights is eligible to be screened.

Legal basis

Legal basis and status of the FDI regime Act No. 45/2011 Coll., on Critical Infrastructure, as amended by Act No. 72/2021 Coll., as entered into force on 1 March 2021.

Filing requirement

The notification obligation is triggered upon the acquisition of a shareholding in certain designated entities (share deal) or the business of these entities (asset deal).

With respect to share deals, the law applies to investments exceeding 10 % (voting rights/equity) and investments that allow for the exercise of influence over the management of an operator, which is comparable to a 10 % share. In addition, the law applies to indirect acquisitions. This means that, for instance, a change in the persons having a direct or indirect participation in the operator of critical infrastructure exceeding a 10 % shareholding or share in voting rights is eligible to be screened.

Relevant sectors

The new law only applies to businesses designated as part of the critical infrastructure in the following industries:
- mining;
- electric power engineering;
- gas;
- petroleum and petroleum products;
- pharmaceutical;
- metallurgical; and
- chemical.

The secondary law names such specific companies (currently there are around 20 entities falling under this regime).

Process and timetable

Competent authority: Ministry of Economy and the Slovak Government
Mandatory filing requirement: Yes
Filing deadline: The notification must be filed without undue delay. Until the review process is finalised, the exercise of rights and obligations under this transaction related to Slovak critical infrastructure is prohibited.
Responsibility for filing: Depending on the circumstances, the operator of the critical infrastructure itself, pledgee, liquidator, insolvency administrator, enforcement officer or other person authorised to transfer the business, or the person who is to acquire the critical infrastructure.
Sanctions: No specific sanction mechanism.
Length of the proceedings: The Ministry of Economy has 60 days to review the transaction, after which it will prepare a motion to the Slovak Government on whether to grant consent, to grant consent subject to conditions (like in the case of competition law proceedings related to merger control) or to prohibit the transaction. The Slovak Government does not have a specific time limit to adopt its decision.

slovenia

Legal basis

Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic (Zakon o interventnih ukrepih za omilitev in odpravo posledic epidemije COVID-19; "ZIUOOPE"), Official Gazette of the Republic of Slovenia, No. 80/20.
EU FDI Screening Regulation (Regulation (EU) 2019/452), OJ L 79I, 21 March 2019.
ZIUOOPE was published in the Official Gazette of the Republic of Slovenia on 30 May 2020 and came into force one day later. FDI screening provisions will be in force until 30 June 2023 *(Slovenia introduces foreign investments screening rules).*

Currently, the FDI Commission (a special body within the Ministry of Economic Development and Technology) is working on a new draft law that will establish a permanent legal basis for FDI screening.

Filing requirement

The notification obligation under ZIUOOPE is triggered if a

foreign investor (i.e. non-Slovenian individual/entity) intends to carry out or has carried out a foreign direct investment (i.e. merger or acquisition of an undertaking, investment in tangible and intangible assets, acquisition of the right to dispose of land and real estate essential to critical infrastructure / located near such infrastructure), which aims to establish or to maintain lasting and direct links between the foreign investor and an undertaking active in a sector affecting the security and public order of Slovenia and is seated in Slovenia, and the investment concerns at least 10 % of the capital or voting rights.

Relevant sectors

Relevant sectors include:

1. critical infrastructure (such as 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 land and real estate located near such infrastructure);
2. critical technologies and dual-use items (such as artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies, nanotechnologies, biotechnologies as well as health, medical and pharmaceutical technology);
3. supply of critical inputs (such as energy or raw materials, food security as well as medical and protective equipment);
4. access to sensitive information (such as personal data or the ability to control such information);
5. the freedom and pluralism of the media; and
6. projects or programmes of EU interest as listed in Annex 1 of Regulation (EU) 2019/452.

Process and timetable

Competent authority: Ministry of Economic Development and Technology

Mandatory filing requirement: Yes

Filing deadline: 15 days from:

- the conclusion of a share purchase agreement or a public takeover bid (merger or acquisition of an undertaking);
- the establishment of a corporate entity in Slovenia (investment in tangible or intangible assets);
- the conclusion of an agreement (acquisition of the right to dispose of land and real estate essential to critical infrastructure / located near such infrastructure).

The FDI Commission also confirmed in its decisions that it is possible to file the notification early and obtain clearance upfront, prior to the occurrence of any filing triggers (e.g. in case of stock exchange acquisitions).

Responsibility for filing:

- the foreign investor, target company or acquired company (merger or acquisition of an undertaking);
- the foreign investor or its Slovenian subsidiary (investment in tangible or intangible assets or acquisition of the right to dispose of land and real estate essential to critical infrastructure / located near such infrastructure).

Standstill requirement: No

Sanctions: Failure to notify a foreign direct investment is subject to monetary penalties.

Length of the proceedings:

Two months from filing of the notification with the Ministry (a special FDI Commission will decide whether an in-depth screening is to be carried out once the notification is filed with the Ministry). The Ministry can initiate the screening within five years after the contract has been concluded.

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