

Screening of foreign investments in Slovakia

- mitigating measures

Overview

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1. Legal basis

- Act No. 497/2022 Coll. on the screening of foreign investments and on amendments to certain acts
- Does not contain list of mitigating measures, only their definition
- A measure imposed in a decision on conditional authorisation of a foreign investment to ensure that the identified negative impact is eliminated
- Concerns the foreign investment, the foreign investor or the target, in particular their conduct, ownership structure or the organizational structure
- Mainly in the form of an obligation to act or refrain from acting, an obligation to waive some rights or assets, or an obligation to preserve them
- Several mitigating measures may be imposed simultaneously in a single decision



2. Conditions for imposing mitigating measures

- Conditions required by the law and the essence of mitigating measures
- Mitigating measure must be
 - Justified risk to the security or public order of SK and/or the security or public order of the EU
 - Effective negative impact can be eliminated by mitigating measures
 - Proportionate mitigating measures must be proportionate to identified risk and negative consequences
 - Accepted in case of unjustified disagreement of the foreign investor or target / lack of will to follow mitigating measures, the MoE issues a decision on the prohibition of the foreign investment



3. Process of imposing mitigating measures

Statement of the MoE on the impact of foreign investment on the security and public order Statements of the consulting authorities on the impact of foreign investment on the security and public order

Information provided by the Police and agencies

Data from available administrative IS, information acquired within cooperation with other state, regional and local public authorities, public institutions etc.

Justified comments provided by the EU MS / opinion issued by the EC

If statements and information gathered confirm the negative impact on the security or public order which may be mitigated

*if contradictory or inconclusive \rightarrow consultations with the stakeholders

The draft statement that the foreign investment has a negative impact which might be mitigated

*protection of sensitive and classified information is quaranteed

Draft statement is sent to the foreign investor and the target; they have the right to submit their statements

*foreign investor / target may be invited to explain their statements

Justified objections / propositions are taken into account; if needed, consultations with stakeholders take place



Statement that the FI does not have a negative impact on security or public order

Statement that the FI does have a negative impact on security or public order which might be mitigated

Statement that the FI does have a negative impact on security or public order which might not be mitigated



Decision on authorisation of the foreign investment

Decision on conditional authorisation of the foreign investment

Decision on the prohibition of the foreign investment



4. Monitoring of compliance

- If needed, the MoE may impose an obligation for the foreign investor to appoint an independent third-party
- Administrator assists the MoE with the supervision over the compliance with the mitigating measures
- Notifies the MoE of any incompliance with the imposed mitigating measures
- Either an individual or a legal entity with relevant expertise specified in the decision on conditional authorisation
- The MoE defines the administrator's competences, supervision methods, and required qualification
- Selected by the foreign investor, approved by the MoE



4. Monitoring of compliance

- Administrative control
- On-site control
 - Both may be initiated also in case of justified petition of a consulting authority, information from police or agencies, or qualified petition submitted by any third party
 - The MoE may request any necessary explanations, additional information, documents or other evidence
 - On-site control includes access to land, business premises and vehicles used for economic activities
 - Investor has right to be notified of the findings and submit objections
 - In case of violation, foreign investor must rectify the situation by implementing mitigating measures



5. Cooperation with other stakeholders

- The MoE cooperates with the consulting authorities, police and the agencies
- Similarly to screening procedure, they are notified of the start of the control; may provide statements and information; consult ongoing cases; may suggest the need to commence control when needed
- the MoE may invite one or more consulting authorities to designate an employee for the purpose of their participation on the on-site control as part of the control team
- Police is obliged to provide protection and assistance to the control team during the on-site control
- the MoE may also request necessary assistance from other stakeholders, i.e. regional and local authorities,
 and public institutions
- Mostly in form of provision of certain information



6. Misconduct, legal consequences, penalties

- Violation of mitigating measures constitutes an administrative offense
- An administrative offence is subject matter of a separate proceeding
- The separate proceeding focuses on assessment of circumstances and consequences of the administrative offence, including their severity
- Foreign investor is requested to rectify the non-compliance and pay the fine
- Fine may rise up to the value of investment, or 2% of total net turnover of the group of foreign investor
 - whichever value is higher; in case these values are impossible to determine, up to €1 000 000
- If non-compliance persists, a decision on prohibition of the foreign investment is issued



Thank you for your attention.

