

Estonia

Foreign Investment Reliability Assessment Act (2023)

Official translation

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Foreign Investment Reliability Assessment Act

Passed 25.01.2023

Chapter 1 General Provisions

§ 1. Scope and purpose

(1) This Act provides for the conditions and procedure for the foreign investment authorisation obligation, for assessing the reliability of foreign investments and for exercising state supervision of compliance with corresponding requirements.

(2) The purpose of this Act is to ensure the security and public order of Estonia and other Member States of the European Union by assessing the reliability of foreign investments.

(3) The Administrative Procedure Act applies to the authorisation procedure prescribed in this Act, taking into account the specifications provided for in this Act.

§ 2. Foreign investment

(1) For the purposes of this Act, a foreign investment means a transaction or linked transactions through which a foreign investor: 1) acquires direct or indirect qualifying holding in the target undertaking; 2) achieves direct or indirect control over the target undertaking; or 3) acquires a part of the target undertaking.

(2) Qualifying holding is deemed to have the meaning assigned to it in § 9 of the Securities Market Act.

(3) The definition of control and a controlled undertaking specified in this Act is based on the provisions of § 10 of the Securities Market Act.

(4) For the purposes of this Act, an undertaking is deemed to have the meaning assigned to it in the Competition Act.

§ 3. Foreign investor

(1) For the purposes of this Act, a foreign investor means: 1) a natural person who holds the citizenship of a third country; a natural person who holds several citizenships, at least one of which is the citizenship of a third country; and a natural person who is a stateless person; 2) an undertaking established on the basis of the law of a third country; 3) an undertaking controlled by the natural person specified in clause 1 or by the undertaking specified in clause 2 of this subsection, regardless of their place of establishment.

(2) For the purposes of this Act, third country means a country other than a Member State of the European Union.

§ 4. Target undertaking and part of target undertaking

(1) For the purposes of this Act, a target undertaking means: 1) a provider of a vital service; 2) a company in which the state has a qualifying holding; 3) an undertaking which manufactures or, on the basis of a valid contract, supplies goods provided for in the list of military goods or dual-use items specified in the Strategic Goods Act or provides technical assistance related to such goods and/or items to state authorities, except for an undertaking engaged in handling the military weapons, ammunition and munition specified in Subchapter 2 of Chapter 111 of the Weapons Act; 4) a provider of national television or radio service and provider of on-demand audiovisual media service within the meaning of the Media Services Act, as well as a publisher of news, newspapers and magazines in the print media and on the internet whose turnover in Estonia in the previous calendar year in relation to the relevant activity was at least three million euros; 5) an undertaking holding a geological exploration or extraction permit for the exploration or extraction of oil shale or a raw material found in Estonia and included in the List of Critical Raw Materials for the European Union as prepared by the European Commission; 6) an undertaking with whom the state's operation stockpile contract or agreement for delegated stocks has been entered into; 7) an undertaking that owns a permanent national defence object within the meaning of the National Defence Act; 8) an undertaking that owns the infrastructure of masts with a height of at least 200 metres ensuring the operation of national communications or necessary for transmitting broadcasting programmes; 9) a railway infrastructure manager who operates a public railway within the meaning of the Railways Act; 10) a certified aerodrome or heliport operator who operates an aerodrome or heliport which is open for international scheduled air traffic and the air navigation service provider within the meaning of the Aviation Act who ensures servicing air traffic in the Tallinn Flight Information Region; 11) an operator of an Estonian maritime port belonging to the trans-European transport network in accordance with the list of ports specified in Annex II to Regulation (EU) No 1315/2013 of the European Parliament and of the Council on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1–128).

(2) For the purposes of this Act, a part of a target undertaking means the assets of the target undertaking or an organisationally independent part of the target undertaking, including an enterprise or installation, serving as a basis for the relevant economic activities and necessary for operation for the target undertaking specified in subsection 1 of this section.

Chapter 2 Foreign Investment Authorisation Procedure

§ 5. Foreign investment authorisation obligation

(1) A foreign investment requires an authorisation from the Consumer Protection and Technical Regulatory Authority (hereinafter foreign investment authorisation), which is granted by assessing the impact of the foreign investment on the security and public order of Estonia or another Member State of the European Union.

(2) The completion of a foreign investment subject to an authorisation obligation on the basis of this Act is prohibited before the foreign investment authorisation is obtained.

(3) The provisions of subsection 2 of this section do not prohibit the conduct of a transaction to offer securities to the public or the conduct of securities transactions as a series, including the conduct of transactions with securities to be converted into other securities listed on the stock exchange, if an application for obtaining a foreign investment authorisation is immediately submitted to the Consumer Protection and Technical Regulatory Authority and, until obtaining the foreign investment authorisation, the foreign investor does not exercise the rights, in particular the voting rights, that the qualifying holding to be acquired or the control to be achieved entails.

§ 6. Application for foreign investment authorisation

(1) In order to obtain a foreign investment authorisation, a foreign investor (hereinafter also applicant) submits an application with additional documents electronically to the Consumer Protection and Technical Regulatory Authority through the information system specified in § 13 of this Act after entry into the contract or conduct of another transaction serving as a basis for the foreign investment but before completing the foreign investment. If the information system is inaccessible for reasons beyond the control of the applicant, the application may be submitted electronically to the e-mail address prescribed to this end and published on the website of the Consumer Protection and Technical Regulatory Authority.

(2) If the target undertaking or another party to the foreign investment becomes aware that the foreign investor has not applied for a foreign investment authorisation, they will notify the Consumer Protection and Technical Regulatory Authority thereof as soon as possible, submitting the data that are available to them and have been specified in § 7 of this Act.

(3) A foreign investor, a target undertaking and another party to a foreign investment may, prior to applying for a foreign investment authorisation or in the authorisation procedure, seek clarification from the Consumer Protection and Technical Regulatory Authority, as well as seek advice from the Authority as to whether the foreign investment is subject to an authorisation obligation.

§ 7. Data to be set out in application

(1) An application sets out a description of the foreign investment and the data of the foreign investor, the target undertaking, a part of the target undertaking, their ownership structure, beneficial owner and economic activities as well as the value of the foreign investment, the source of financing and the time schedule.

(2) The applicant immediately notifies the Consumer Protection and Technical Regulatory Authority of any changes in the data set out in the application or in the documents appended thereto.

(3) The Consumer Protection and Technical Regulatory Authority, the Foreign Investment Committee (hereinafter also Committee) and a member thereof may process data relating to an application only for the purpose of assessing the reliability of the foreign investment and to the extent necessary for verifying the data submitted by the target undertaking or the foreign investor on the basis of this Act.

(4) The data to be set out in an application, the list of the documents to be appended thereto and the procedure for the submission of the application are established by a regulation of the minister in charge of the policy sector.

§ 8. Requesting information

(1) The Consumer Protection and Technical Regulatory Authority has the right to request that the applicant submit, in addition to the data and documents specified in § 7 of this Act, additional data and documents if these are necessary for assessing the reliability of the foreign investment.

(2) The Consumer Protection and Technical Regulatory Authority has the right to request that the target undertaking, another party to the foreign investment, a person and a state or local government authority submit the data and documents necessary for assessing the reliability of the foreign investment.

§ 9. Processing of applications and time limits for processing

(1) The Consumer Protection and Technical Regulatory Authority forwards the application and the documents appended thereto to the Committee for approving the grant of the foreign investment authorisation, setting a time limit of at least 21 calendar days.

(2) Within 30 calendar days of the submission of an application without any shortcomings, the Consumer Protection and Technical Regulatory Authority: 1) grants a foreign investment authorisation; 2) refuses to grant a foreign investment authorisation; or 3) notifies the applicant that the foreign investment is not subject to an authorisation obligation on the basis of this Act.

(3) In order to assess the impact of a foreign investment, the Consumer Protection and Technical Regulatory Authority may extend the time limit provided for in subsection 2 of this section once by up to 90 calendar days.

(4) If another Member State of the European Union or the European Commission has notified of their intention to provide comments or an opinion on the basis of Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, p. 1–14), the Consumer Protection and Technical Regulatory Authority may extend the time limit provided for in subsection 2 of this section once by up to 90 calendar days.

§ 10. Assessment of foreign investment

(1) Upon assessing the impact of a foreign investment on the security and public order of Estonia or another Member State of the European Union, the Consumer Protection and Technical Regulatory Authority and the Committee consider in particular the circumstances relating to the foreign investor as well as to the economic activities and the relevant economic sector of the target undertaking or a part of the target undertaking.

(2) In relation to a foreign investor, particular account is taken of: 1) in which countries and economic sectors the foreign investor operates; 2) what the ownership structure of the foreign investor is, including whether it is transparent and understandable; 3) from which source the foreign investment is financed and whether the origin of the funds is clearly identifiable; 4) whether the foreign investor is directly or indirectly controlled by the government, including a state authority or armed forces, of a third country; 5) whether the foreign investor or its beneficial owner is or has been involved in activities that endanger the security or public order of Estonia or another Member State of the European Union; 6) whether the foreign investor or its beneficial owner is or has been engaged in, or there is a reasonable doubt that it will engage in, illegal activities; 7) whether the foreign investor or its beneficial owner is or has been a subject of an international sanction.

(3) In relation to the economic activities of a target undertaking or a part of a target undertaking, particular account is taken of: 1) the economic sector in which the target undertaking or the part of the target undertaking operates and their importance in that sector; 2) the extent to which the target undertaking is financed by the European Union funds or other public funds; 3) whether the foreign investor intends to make a change in the economic activities of the target undertaking or the part of the target undertaking or in the management of the target undertaking; 4) whether the target undertaking is engaged in research and development activities and which intellectual property rights it owns; 5) whether the part of the target undertaking comprises intellectual property rights.

(4) In relation to the relevant economic sector of a target undertaking or a part of a target undertaking, particular account is taken of: 1) what the overall competitive situation is and who the competitors of the target undertaking are; 2) availability of substitute products or services; 3) what the impact of the foreign investment on the activities of the target undertaking or the part of the target undertaking in the economic sector, including on their relations with suppliers, providers and customers, is.

§ 11. Approving grant of foreign investment authorisation, grant of authorisation, grant of authorisation with secondary condition and refusal to grant authorisation

(1) The Committee approves the grant of a foreign investment authorisation and the Consumer Protection and Technical Regulatory Authority grants a foreign investment authorisation if the foreign investment does not endanger the security and public order of Estonia or another Member State of the European Union.

(2) The Committee does not approve the grant of a foreign investment authorisation and the Consumer Protection and Technical Regulatory Authority refuses to grant a foreign investment authorisation if the foreign investment may endanger the security or public order of Estonia or another Member State of the European Union.

(3) A foreign investment authorisation may contain a secondary condition which obliges a foreign investor or a target undertaking to take measures to avoid endangering the security or public order of Estonia or another Member State of the European Union, including to transfer holding of a certain size in the target undertaking or continue effective contracts for the supply of products or provision of services.

(4) If negotiations must be held with a foreign investor over the measures specified in subsection 3 of this section, the Consumer Protection and Technical Regulatory Authority may extend the time limit provided for in subsection 2, 3 or 4 of § 9 of this Act by up to 60 calendar days.

(5) The Consumer Protection and Technical Regulatory Authority may refuse to grant a foreign investment authorisation if: 1) there is good reason to doubt the authenticity of the data and documents submitted or the accuracy of the content thereof; 2) the applicant has not submitted additional data requested on the basis of subsection 1 of § 8 of this Act, which may have an impact on the grant of a foreign investment authorisation or refusal to grant the same; 3) the foreign investment may have an impact on projects or programmes of interest to the European Union within the meaning of Article 8 of Regulation (EU) 2019/452 of the European Parliament and of the Council.

(6) The reasons serving as a basis for the administrative act issued pursuant to subsections 2 and 5 of this section as well as the information and evidence collected in the procedure are not disclosed, including to the applicant, to the extent in which it may endanger the security or the protection of public order of Estonia or another Member State of the European Union or in which it is subject to the restriction on access provided for in law.

§ 12. Revocation of foreign investment authorisation and restoration of situation prior to foreign investment

(1) The Consumer Protection and Technical Regulatory Authority may revoke a foreign investment authorisation if: 1) the foreign investor or the target undertaking does not comply with the secondary condition imposed pursuant to subsection 3 of § 11 of this Act; 2) the foreign investor has submitted incorrect or misleading data or documents which were of decisive importance upon making the decision.

(2) Upon revoking a foreign investment authorisation, the foreign investor, the target undertaking and another party to the foreign investment is required to immediately perform necessary acts to restore the situation prior to the foreign investment to the greatest extent possible.

§ 13. Entry of data in supervision information system of Consumer Protection and Technical Regulatory Authority and time limit for storage thereof

(1) Data and documents of the foreign investment authorisation procedure are entered in the supervision information system of the Consumer Protection and Technical Regulatory Authority.

(2) Data and documents of the foreign investment authorisation procedure are stored in the supervision information system of the Consumer Protection and Technical Regulatory Authority for seven years as of the termination of the procedure.

Chapter 3 Foreign Investment Committee

§ 14. Membership and rules of procedure of Committee

(1) The Foreign Investment Committee operates at the Consumer Protection and Technical Regulatory Authority and consists of representatives of the Ministry of Defence, Ministry of Economic Affairs and Communications, Ministry of Finance, Ministry of the Interior, Ministry of Foreign Affairs, Estonian Internal Security Service, Police and Border Guard Board, Financial Intelligence Unit, Consumer Protection and Technical Regulatory Authority, Estonian Foreign Intelligence Service and Government Office.

(2) The rules of procedure of the Committee are established by a regulation of the Government of the Republic.

§ 15. Competence

(1) The Committee performs the following functions: 1) assesses the impact of a foreign investment on the security and public order of Estonia or another Member State of the European Union and approves the grant of a foreign investment authorisation or refuses to approve the same; 2) makes a proposal for imposing a secondary condition of a foreign investment authorisation and gives an assessment of the secondary condition; 3) decides on the provision of comments on the basis of Regulation (EU) 2019/452 of the European Parliament and of the Council and prepares the comments.

(2) Upon performing its functions, the Committee has the right to: 1) obtain information from a foreign investor, another person and authority as well as databases about the circumstances necessary for assessing the reliability of a foreign investment; 2) cooperate with competent authorities of other countries, the European Commission and international organisations, including obtain information from competent authorities of other countries, the European Commission and supervisory authorities.

(3) A member of the Committee provides the Committee with information or a threat assessment to the extent necessary for assessing the reliability of a foreign investment only within the limits of the competence of the member. A member of the Committee has the right to make queries to databases in order to perform the function assigned on the basis of this Act.

Chapter 4 Cooperation in European Union on Processing Foreign Investments

§ 16. Contact point

(1) The functions of the national contact point specified in Article 11 of Regulation (EU) 2019/452 of the European Parliament and of the Council are performed by the Consumer Protection and Technical Regulatory Authority who cooperates, on the grounds and under the conditions specified in the Regulation, with the European Commission and other Member States of the European Union.

(2) The Consumer Protection and Technical Regulatory Authority collects the data specified in Article 5(1) and (2) of Regulation (EU) 2019/452 of the European Parliament and of the Council and forwards the data to the European Commission.

§ 17. Cooperation in authorisation procedure

(1) The Consumer Protection and Technical Regulatory Authority immediately notifies, pursuant to Regulation (EU) 2019/452 of the European Parliament and of the Council, the European Commission and other Member States of the European Union of a foreign investment of a natural person or an undertaking of a third country which is undergoing the authorisation procedure, providing the information specified in Article 9(2) of the Regulation.

(2) The Consumer Protection and Technical Regulatory Authority immediately responds to a request for additional information from the European Commission or another Member State of the European Union concerning a foreign investment, requesting, where necessary, information from the foreign investor, the target undertaking or another party to the foreign investment. The foreign investor, the target undertaking or another party to the foreign investment is required to provide the requested information immediately, but no later than on the tenth calendar day after receiving the request from the Consumer Protection and Technical Regulatory Authority.

§ 18. Cooperation upon absence of authorisation procedure

(1) If the European Commission or another Member State of the European Union submits a request for information about a foreign investment which is not subject to the authorisation procedure provided for in this Act, the Consumer Protection and Technical Regulatory Authority asks that the foreign investor, the target undertaking or another party to the foreign investment provide the information necessary for responding to the request and specified in Article 9(2) of Regulation (EU) 2019/452 of the European Parliament and of the Council and immediately forwards it to the European Commission and the Member State of the European Union that submitted the request.

(2) The foreign investor, the target undertaking or another party to the foreign investment is required to provide the requested information immediately, but no later than on the tenth calendar day after receiving the request from the Consumer Protection and Technical Regulatory Authority.

(3) Justified comments are prepared by the Committee on the grounds and pursuant to the procedure provided for in Article 7 of Regulation (EU) 2019/452 of the European Parliament and of the Council.

§ 19. Cooperation in foreign investment authorisation procedure of another Member State

(1) If the Consumer Protection and Technical Regulatory Authority receives a notification of a foreign investment authorisation procedure commenced in another Member State of the European Union, it will immediately forward the information to the Committee.

(2) The Committee submits to the Consumer Protection and Technical Regulatory Authority an assessment of whether there are grounds for providing justified comments on the foreign investment specified in subsection 1 of this section no later than on the tenth calendar day of receiving the information. The assessment sets out whether it is necessary to request additional information on the foreign investment in order to better assess the threat to the security or public order of Estonia or the extent thereof and to provide justified comments. Justified comments are prepared by the Committee on the grounds and pursuant to the procedure provided for in Article 6 of Regulation (EU) 2019/452 of the European Parliament and of the Council.

Chapter 5 State Supervision

§ 20. State supervisory authority

The Consumer Protection and Technical Regulatory Authority is competent to exercise state supervision of compliance with the requirements provided for in this Act.

§ 21. Special measure of state supervision

The Consumer Protection and Technical Regulatory Authority may apply the special measures of state supervision provided for in §§ 30–32 and 49–51 of the Law Enforcement Act on the basis and pursuant to the procedure provided for in the Law Enforcement Act in order to exercise the state supervision provided for in this Act. The special measures of state supervision provided for in §§ 49–51 of the Law Enforcement Act may not be applied for preventing the threat of a disturbance specified in subsection 2 of § 5 of the Law Enforcement Act.

§ 22. Requesting information for verifying compliance with secondary condition of foreign investment authorisation

The Consumer Protection and Technical Regulatory Authority has the right to request information and documents from a foreign investor and a target undertaking for verifying compliance with a secondary condition of a foreign investment authorisation.

§ 23. Precept upon making foreign investment without authorisation and upon breach of conditions of authorisation

(1) If a foreign investment subject to an authorisation obligation has been made without a foreign investment authorisation, the Consumer Protection and Technical Regulatory Authority may issue a precept to the foreign investor, the target undertaking and another party to the foreign investment, obliging them to transfer the holding or a part of the target undertaking, reverse the transaction or perform other acts to restore the situation prior to the foreign investment.

(2) If a foreign investor, a target undertaking or another party to the foreign investment does not comply with a secondary condition imposed pursuant to subsection 3 of § 11 or the obligation specified in subsection 2 of § 12 of this Act, the Consumer Protection and Technical Regulatory Authority may issue a precept to them, obliging them to comply with the secondary condition, transfer the holding or a part of the target undertaking, reverse the transaction or perform other acts to restore the situation prior to the foreign investment.

§ 24. Upper limit of non-compliance levy

In the event of a failure to observe a precept issued on the basis of this Act, the Consumer Protection and Technical Regulatory Authority may impose non-compliance levy pursuant to the procedure provided for in the Substitutional Performance and Non-Compliance Levies Act. The upper limit of non-compliance levy is 100,000 euros.

Chapter 6 Implementing Provisions

§ 25. – § 31. [Provisions amending other Acts have been omitted from the translation.]

§ 32. Entry into force of Act

Sections 1–27, clauses 2 and 4 of § 28 and §§ 29–31 of this Act enter into force on 1 September 2023.

Jüri Ratas President of the Riigikogu

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