

## Austria

### Article 1 Federal Act on the Control of Foreign Direct Investments (Investment Control Act – ICA) (2020)

#### Note

The Investment Laws Navigator is based upon sources believed to be accurate and reliable and is intended to be up-to-date at the time it was generated. It is made available with the understanding that UNCTAD is not engaged in rendering legal or other professional services. To confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate. While every effort is made to ensure the accuracy and completeness of its content, UNCTAD assumes no responsibility for eventual errors or omissions in the data.

The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

## Contents

- Chapter 1 General Provisions
- Chapter 2 Test Procedure in Austria
- Chapter 3 Cooperation in the European Union
- Chapter 4 Monitoring
- Chapter 5 Establishment of a Committee for Investment Control
- Chapter 7 Criminal and Civil Law Provisions
- Chapter 8 Final Provisions
- Definitions
- Authorisation obligation
- Threat to security or public order
- Minimum share of voting rights
- Special rules for the determination of voting rights
- Application for authorisation
- Authorisation procedure
- Initiation of an ex officio authorisation procedure
- Definitions related to the cooperation mechanism
- National contact point
- Cooperation on direct investments undergoing screening in Austria
- Cooperation on direct investments not undergoing screening in Austria
- Cooperation on direct investments undergoing screening in another EU Member State
- Cooperation on direct investments not undergoing screening in another EU Member State
- Information requests addressed to Austria by other EU Member States concerning direct investments in their national territory
- Empowerment to process data
- General control provisions
- Establishment of a Committee for Investment Control
- Tasks and activities of the Committee
- Contact points of the Committee members
- Activity report
- Measures to protect confidential information
- Activities punishable by law
- Administrative penal provisions
- Invalidity of legal transactions
- Relationship to other Federal Acts
- Entry into force and transitional provisions
- Enforcement clause
  - Van der Bellen
  - Kurz

FEDERAL LAW GAZETTE

FOR THE REPUBLIC OF AUSTRIA

Volume 2020 Issued on 24 July 2020 Part I

87th Federal Act, enacting an Investment Control Act and amending the Foreign Trade Act 2011

The National Council has concluded:

# Article 1 Federal Act on the Control of Foreign Direct Investments (Investment Control Act – ICA)

Table of Contents

# Chapter 1 General Provisions

- Section 1. Definitions
- Section 2. Authorisation obligations
- Section 3. Threat to security or public order
- Section 4. Minimum share of voting rights
- Section 5. Special rules for the determination of voting rights

# Chapter 2 Test Procedure in Austria

- Section 6. Submission of applications
- Section 7. Authorisation procedure
- Section 8. Official initiation of an authorisation procedure
- Section 9. Clearance certificate

# Chapter 3 Cooperation in the European Union

- Section 10. Definitions related to the cooperation mechanism
- Section 11. National contact point
- Section 12. Cooperation on direct investments undergoing screening in Austria
- Section 13. Cooperation on direct investments not undergoing screening in Austria
- Section 14. Cooperation on direct investments undergoing screening in another EU Member State
- Section 15. Cooperation on direct investments not undergoing screening in another EU Member State
- Section 16. Information requests addressed to Austria by other EU Member States concerning direct investments in their national territory
- Section 17. Authorisation to process data

# Chapter 4 Monitoring

- Section 18. General control provisions
- Section 19. Recording and storage obligations

# Chapter 5 Establishment of a Committee for Investment Control

- Section 20. Establishment of a Committee for Investment Control
- Section 21. Tasks and activities of the Committee
- Section 22. Contact points of the Committee Members
- Section 23. Activity report

# Chapter 6 Treatment of Confidential Information

- Section 24. Measures to protect confidential information

# Chapter 7 Criminal and Civil Law Provisions

- Section 25. Activities punishable by law
- Section 26. Administrative penal provisions
- Section 27. Invalidity of legal transactions

# Chapter 8 Final Provisions

- Section 28. Relationship to other Federal Acts
- Section 29. Entry into force and transitional provisions
- Section 30. Enforcement clause

# Chapter 1 General Provisions

## Definitions

- Section 1. For the purposes of this Federal Act:
  1. "Austrian undertaking": an undertaking within the meaning of Section 1 Para 2 of the Austrian

Corporate Code (UGB), German Imperial Law Gazette p. 219/1897, having its registered office or headquarters in Austria;

2. Foreign person:

a) a natural person without Union citizenship or citizenship of an European Economic Area state or Switzerland or

b) a legal entity with its registered office or headquarters outside the EU, the European Economic Area, and Switzerland;

3. "Direct investment": the direct or indirect acquisition of

a) an Austrian undertaking or

b) voting right shares in such an undertaking or

c) a controlling interest in such an undertaking

d) substantial assets of such an undertaking;

4. "Acquiring person": a natural person or legal entity carrying out a process pursuant to Item 3;

5. "Target undertaking": an Austrian undertaking within the meaning of Item 1 in which a direct investment has been or is to be made;

6. "Foreign direct investment": a process within the meaning of Item 3 in which at least one of the acquiring persons is a foreign person;

7. "Acquisition of a controlling interest": the possibility of exercising a decisive influence on the activity of the target undertaking, either individually or jointly, through rights, contracts or other means, taking into account all circumstances, even if the minimum share of voting rights pursuant to Sections 4 and 5 is not reached; a controlling interest may be exercised in particular by

a) ownership or right of use of all or substantially all of the tangible or intangible assets of a target undertaking or

b) rights or contracts which confer a decisive influence within the meaning of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (EC Merger Regulation), OJ No L 24 from 29 January 2004, p. 1, on the composition, deliberations or decisions of the organs of that undertaking.

## Authorisation obligation

Section 2. (1) A foreign direct investment shall require the approval of the Federal Minister for Digital and Economic Affairs, hereinafter referred to as the "leading responsible Member of the Federal Government", if

1. the target undertaking is active in one of the areas listed in the Annex and

2. Union and international legal provisions do not preclude an obligation to obtain authorisation and

3. by direct investment

a) within the meaning of Section 1 Item 3 lit. b, a minimum share of the voting rights pursuant to Sections 4 and 5 is reached or exceeded,

b) a controlling interest within the meaning of Section 1 Item 3 lit. c is attained irrespective of specific shares of voting rights or

c) a controlling interest on substantial assets of the undertaking within the meaning of Section 1 Item 3 lit. d is acquired.

(2) Foreign direct investments in which the target undertaking is a micro enterprise, including start-up enterprises, with fewer than ten employees and an annual turnover or an annual balance sheet total of less than two million Euros shall not be subject to any authorisation requirement.

(3) This Federal Act shall not affect the provisions of the land transfer laws of the federal provinces.

## Threat to security or public order

Section 3. (1) When assessing whether a foreign direct investment may lead to a threat to security or public order, including crisis management and services of general interest within the meaning of Article 52 and Article 65 TFEU, its effects in the areas listed in the Annex shall be examined.

(2) Moreover, when assessing a possible threat within the meaning of Para 1, particular account shall be taken of

1. whether an acquiring person is controlled directly or indirectly by the government, including government agencies or the armed forces, of a third country, inter alia by means of ownership structure or in the form of substantial financial resources,

2. whether an acquiring person, or a natural person who holds a senior position in an acquiring legal entity, is or has been involved in activities that have or have had an impact on security or public order in another EU Member State, and

3. whether there is a significant risk that an acquiring person, or a natural person who holds a management position in an acquiring legal entity, is or has been involved in illegal or criminal activities.

## Minimum share of voting rights

- Section 4. The relevant shares of voting rights within the meaning of Section 2 Para 1 Item 3 lit. a are:
1. if the target company carries out an activity in one of the areas listed in Part 1 of the Annex: 10%, 25% and 50% and
  2. in all other cases: 25% and 50%.

## **Special rules for the determination of voting rights**

Section 5. (1) If an acquisition is carried out jointly by several foreign persons, their shares of voting rights in the target undertaking are to be added together.

(2) In calculating the minimum share of voting rights pursuant to Section 4, the shares of each other foreign person in the target undertaking shall be added if at least one of the following conditions is met:

1. an acquiring person holds at least the relevant share of voting rights of this other foreign person in accordance with Section 4 or exercises a controlling interest over this other foreign person,
2. this other foreign person holds at least the share of voting rights in an acquiring person as specified in Item 1 or exercises a controlling interest over such person,
3. a third foreign person holds at least the share of voting rights specified in Item 1 in both an acquiring person and in this other foreign person or
4. an acquiring person has concluded an agreement with this other foreign person on the joint exercise of voting rights.

(3) The relevant share of voting rights in the target undertaking in accordance with Section 4 is also deemed to be reached by:

1. an agreement between two or more foreign persons participating in the target undertaking regarding the joint exercise of voting rights, if they jointly hold at least this share of the voting rights or
2. the termination of an agreement on the joint exercise of voting rights between two or more such foreign persons, if at least one of them then holds at least this share of the voting rights.

## **Chapter 2 Authorisation Procedures for foreign direct investments in Austria undergoing screening and clearance procedures without screening**

### **Application for authorisation**

Section 6. (1) If there is an authorisation obligation in accordance with Section 2, the following person or persons are obliged to submit a written application to the responsible Member of the Federal Government for authorisation:

1. if a direct acquisition transaction is taking place: the directly acquiring person or persons ;
2. if the acquisition transaction is exclusively an indirect acquisition transaction: the indirectly acquiring person or persons.

The leading responsible Member of the Federal Government must inform the target undertaking of this application.

(2) If the target undertaking becomes aware of an intended acquisition transaction requiring approval and has not been provided with any information pursuant to Para 1 about an application for approval, it is obliged to notify the leading responsible Member of the Federal Government in writing of this process immediately after becoming aware of it.

(3) An application for authorisation shall be submitted

1. immediately after conclusion of the contract under the law of obligations for the acquisition of the undertaking or the participation or upon conclusion of the legal transaction(s) necessary to acquire the controlling influence or the assets or
2. in the case of a public offer, immediately after the announcement of the intention to make an offer.

(4) The application for authorisation shall contain:

1. the name, address and, if available, telephone number and e-mail address of each acquiring person,
2. the name, address and, if available, telephone number and e-mail address of the target undertaking,
3. a precise description of the business activities (including products, services and business transactions) of the persons and undertakings mentioned in Items 1 and 2, including a description of the market in which these business activities are carried out (competitors, market share).

4. an indication of the natural or legal person in whose ownership or under whose control each acquiring person is ultimately located, whereby the criteria in Section 2 of the Beneficial Owners Register Act (WiEReG), Federal Law Gazette I No 136/2017, shall be applied,
  5. a detailed description of the planned transaction and the detailed ownership- and shareholding structure in the target undertaking, including the information specified in Section 4 and 5,
  6. the other EU Member States in which each acquiring person and the target undertaking conduct relevant business operations,
  7. the funding of direct investment and the source of this funding,
  8. the date on which the direct investment is planned to be completed or on which it was completed,
  9. the notification of whether the process must also be reported under the EU Merger Regulation,
  10. the naming of one or more persons with power of attorney in Austria for each acquiring person and
  11. the notification of whether the process has or may have an impact on a project or programme of Union interest within the meaning of Section 10 Item 3, if this is known to an acquiring person.
- (5) A notification pursuant to Para 2 shall contain all information in accordance with Para 4 which is known to the target undertaking at the time of the notification. The acquiring person or persons shall be requested to provide all further information pursuant to Para 4 Items 1 to 10 without delay.

## Authorisation procedure

Section 7. (1) After receipt of the complete application pursuant to Section 6 Para 4 Items 1 to 10, the leading responsible Member of the Federal Government shall without delay notify the European Commission pursuant to Section 12 Para 1.

(2) Within one month after expiry of all relevant deadlines within the meaning of Section 12 Para 5, or in cases of extreme urgency within the meaning of Section 12 Para 9, after receipt of the complete application pursuant to Para 1, the leading responsible Member of the Federal Government shall either

1. determine by decision that

a) an authorisation procedure is not initiated because such procedure would be contrary to obligations under Union or international law, or

b) there are no objections to the acquisition because there is no well-founded suspicion of a threat to security or public order within the meaning of Section 3, or

2. give notification that an in-depth investigation will be initiated because a more detailed examination of the impact on security or public order is required.

If neither a decision pursuant to Item 1 is served nor a notification pursuant to Item 2 is delivered within this period, the authorisation shall be deemed to have been granted. All parties to the proceedings shall be notified of the beginning of the one-month period.

(3) Within two months from notification within the meaning of Para 2 Item 2, an administrative decision shall either

1. approve of the process if it does not pose the risk of a threat to security or public order within the meaning of Section 3, or

2. if such a hazard is to be feared as a result of the process,

a) grant the authorisation subject to the conditions necessary to eliminate that risk, or

b) refuse the authorisation if conditions are not sufficient to eliminate that risk.

If no administrative decision is received within this period, the authorisation shall be deemed to have been granted.

(4) Upon request, a confirmation by administrative decision shall be issued that authorisation for a process is deemed to have been granted by the expiry of the time limit in Para 2 or Para 3.

(5) If delivery is not possible to any of the persons specified in Section 6 Para 4 Item 10, it may also be effected by deposit in accordance with Section 23 of the Service of Documents Act (ZustG), Federal Law Gazette No. 200/1982.

(6) The process may not be carried out before service of a notice pursuant to Para 2 Item 1 or Para 3 or expiry of the time limits pursuant to Para 2 or Para 3.

## Initiation of an ex officio authorisation procedure

Section 8. (1) If the leading responsible Member of the Federal Government becomes aware of a process subject to authorisation obligation pursuant to Section 2 for which no application for authorisation pursuant to Section 6 has been submitted, s/he shall request the acquiring person or persons to submit such an application within three working days.

(2) If none of the acquiring persons complies with this request within this period, the leading responsible Member of the Federal Government shall initiate an ex officio authorisation procedure and inform the acquiring person or persons of this initiation.

(3) The acquiring person or persons shall be obliged to provide the information pursuant to Section 6 Para 4 Items 1-10 without delay.

(4) Section 7 shall apply to the ex officio authorisation procedure

(5) If the process has already been completed in whole or in part and if it is established in the authorisation procedure that there is a well-founded suspicion of a threat to security or public order within the meaning of Section 3, the administrative decision pursuant to Section 7 Para 3 shall prescribe subsequent conditions which lead to the elimination of such threat. If such conditions are not sufficient to eliminate the threat, the notice shall order the unwinding of the entire process or the completed parts thereof.

## Clearance certificate

Section 9. (1) Any acquiring person or the target undertaking may submit an application for a clearance certificate for a specific direct investment to the leading responsible Member of the Federal Government before the process is carried out.

(2) The application shall contain all information pursuant to Section 6 Para 4 Items 1 through 10.

(3) Within two months of receipt of the complete application, the leading responsible Member of the Federal Government shall issue a clearance certificate by administrative decision if it is established that the direct investment is not subject to an authorisation obligation. Otherwise, the applicant(s) must be notified that the application will be treated as an application for authorisation, and Section 7 shall apply.

(4) If within two months of receipt of the complete application neither an administrative decision nor a notification pursuant to Para 3 is served, the clearance certificate pursuant to Para 3 shall be deemed to have been granted.

## Chapter 3 Cooperation in the European Union

### Definitions related to the cooperation mechanism

Section 10. For the purposes of this section:

1. "screened direct investment":

a) a process within the meaning of Section 1 Item 3 which has been subject to a screening procedure in Austria pursuant to Sections 7 or 8 or

b) an investment process in another EU Member State which has been subject to a formal screening or investigation under the legislation of that EU Member State;

2. "non-screened direct investment": a process within the meaning of Section 1 Item 3 which has not been subject to any of the screening procedures mentioned in Item 1 and

3. "project or programme of Union interest": a project granted this status on the basis of directly applicable EU legislation.

### National contact point

Section 11. The tasks of the national contact point within the framework of cooperation with the European Commission and the other EU Member States shall be carried out by the leading responsible Member of the Federal Government.

### Cooperation on direct investments undergoing screening in Austria

Section 12. (1) The leading responsible Member of the Federal Government shall notify the European Commission without delay of the initiation of an authorisation procedure pursuant to Sections 7 or 8. If the leading responsible Member of the Federal Government has information to this effect, this notification shall also indicate whether the process

1. may concern a project or programme of Union interest within the meaning of Section 10 Item 3,

2. could lead to a threat to security or public order within the meaning of Section 3 in certain other EU Member States and

3. is subject to the EU Merger Regulation.

(2) Requests for information from the European Commission or another EU Member State on a direct investment undergoing screening must be answered without delay.

(3) Unless the requested information is already contained in the application for authorisation, each

(3) Unless the requested information is already contained in the application for authorisation, each acquiring person and the target undertaking shall, upon request of the leading responsible Member of the Federal Government, provide one, several or all of the following pieces of information within five calendar days:

1. the ownership structure of each acquiring person and the target undertaking, including information on the person or persons ultimately owning or controlling each acquiring person and the equity capital
2. the approximate value of the direct investment,
3. the products, services and business transactions of each acquiring person and the target undertaking,
4. the other EU Member States in which each acquiring person and the target undertaking carry out significant business transactions,
5. the funding of the direct investment and the source of this funding, and
6. the date on which the direct investment is planned to be completed or on which it was completed.

(4) If, despite all of the steps taken to this end, including a request pursuant to Para 3, the leading responsible Member of the Federal Government is unable to obtain the information requested within two weeks, s/he shall notify the European Commission accordingly, indicating all of the steps taken to obtain the information.

(5) Comments from one or more EU Member States and an opinion issued by the European Commission shall be taken into due consideration in the procedure under Sections 7 and 8 if they are submitted within 35 calendar days of the notification under Para 1 and within 20 calendar days of receipt of additional information under Para 3 or a notification under Para 4. An opinion of the European Commission issued after comments from other EU Member States shall also be taken into account if it is received no later than five calendar days after expiry of these deadlines.

(6) If a timely opinion by the European Commission pursuant to Para 5 refers to a process that may have an impact on projects or programmes of Union interest and if this opinion is not fully taken into account in the decision, a written justification for this action shall be submitted to the European Commission without delay.

(7) If the leading responsible Member of the Federal Government is aware that the European Commission or another EU Member State has information on a direct investment undergoing screening in Austria which is relevant to the assessment of a possible threat to security or public order within the meaning of Section 3, s/he must request the submission of an opinion or comments.

(8) If the European Commission or at least one other EU Member State has notified its intention to issue an opinion or comments within 15 calendar days of the notification pursuant to Para 1, a decision in proceedings pursuant to Sections 7 or 8 may be issued only after expiry of all deadlines for the submission of opinions and comments pursuant to Para 5.

(9) In cases of exceptional urgency, particularly if a potential threat within the meaning of Section 3 requires immediate action or the process must be carried out quickly for important economic interests, an administrative decision may be issued before expiry of the time limits specified in Para 5. The European Commission and the other EU Member States must be informed immediately after the exceptional urgency has been established and the reasons for the urgency must be explained to them.

## **Cooperation on direct investments not undergoing screening in Austria**

Section 13. (1) If the European Commission or one or more other EU Member States submit a request for information on a direct investment not undergoing screening, the leading responsible Member of the Federal Government shall request each acquiring person and the target undertaking to provide the information in accordance with Section 12 Para 3 necessary to reply to the request. This information shall be provided within five calendar days of receipt of the request and shall be forwarded to the European Commission without delay. Section 12 Para 4 shall apply.

(2) If comments from at least one other EU Member State are provided or an opinion of the European Commission is issued within 35 calendar days of the transmission of the information pursuant to Para 1 or a notification pursuant to Para 1 and Section 12 Para 4, they shall be taken into account. An opinion of the European Commission which is issued after comments of at least one other EU Member State must also be taken into account if it is received no later than 15 calendar days after the expiry of the period pursuant to the first sentence. This does not apply to comments and opinions relating to a direct investment that was completed more than 15 months before the date of their receipt.

(3) If, on the basis of a request for information pursuant to Para 1, it emerges that an application for authorisation pursuant to Section 6 would have had to be submitted, the procedure to be followed in this case shall be that the procedure set out in Section 8. Opinions and comments pursuant to Para 2 shall be taken into account in the authorisation procedure.

(4) If a timely opinion of the European Commission pursuant to Para 2 refers to a process which may



have an impact on projects or programmes of Union interest and this opinion is not fully taken into account in the decision, a written justification for this action shall be submitted to the European Commission without delay. This shall also apply if there is no authorisation obligation pursuant to Section 2.

(5) If the leading responsible Member of the Federal Government is aware that the European Commission or another EU Member State has information on a direct investment pursuant to Para 1 that is relevant to the assessment of a potential threat within the meaning of Section 3, it must request the submission of an opinion or comments.

(6) The provisions of Paras 1 to 5 shall not apply to direct investments concluded before 10 April 2019.

## **Cooperation on direct investments undergoing screening in another EU Member State**

Section 14. (1) If a notification is received from the European Commission concerning the initiation of a procedure by another EU Member State to screen a direct investment, the leading responsible Member of the Federal Government shall immediately refer the matter to the Committee for Investment Control.

(2) The Members of the Committee for Investment Control shall submit an opinion within eight calendar days if they consider that the direct investment concerned could lead to a threat to security or public order in Austria within the meaning of Section 3. This opinion must also state whether additional information on the direct investment is considered necessary in order to better assess the existence and extent of the threat and to be able to make well-reasoned comments.

(3) If either an opinion pursuant to Para 2 is received or if the leading responsible Member of the Federal Government is of the opinion that the process could lead to a threat to Austrian security or public order within the meaning of Section 3, which is to be assessed within the sphere of action of his/her Federal Ministry, s/he shall notify the European Commission within 15 calendar days of receipt of the notification pursuant to Para 1 that Austria intends to provide comments on the direct investment.

(4) This notification shall be accompanied by requests for information if such information is necessary to assess the potential threat and to submit substantiated comments. Such requests shall be duly justified, shall be proportionate to the purpose of the request and shall not impose an undue burden on the other EU Member State to which the request is addressed.

(5) If, on the basis of the information on the initiation of a screening procedure, alone or together with the additional information submitted, it emerges that the process could lead to a threat within the meaning of Section 3, the leading responsible Member of the Federal Government shall, after consulting with the Committee for Investment Control, submit comments to the other EU Member State concerned. These comments must also be sent to the European Commission simultaneously. They must be submitted at the latest within 35 calendar days of receipt of the notification pursuant to Para 1 and within 20 calendar days of receipt of additional information based on a request pursuant to Para 4.

## **Cooperation on direct investments not undergoing screening in another EU Member State**

Section 15. (1) If the leading responsible Member of the Federal Government becomes aware of a direct investment not undergoing screening in another EU Member State which could have an impact on security or public order in Austria within the meaning of Section 3, s/he shall immediately refer the matter to the Committee for Investment Control.

(2) All Members of the Federal Government shall be obliged to inform the leading responsible Member of the Federal Government without delay of any events within the meaning of Para 1 of which they become aware.

(3) The other EU Member State in which the direct investment is planned or has been completed is to be requested to provide additional information on the process, if such information is necessary to assess the potential threat and to submit substantiated comments. Such requests shall comply with the requirements set out in Section 14 Para 4, second sentence.

(4) If it emerges from the original information about the direct investment alone or in connection with additional information based on a request pursuant to Para 3 that this direct investment could lead to a threat to security or public order within the meaning of Section 3 in Austria, the leading responsible Member of the Federal Government shall, after consulting with the Committee for Investment Control, submit comments to the other EU Member State concerned. These comments must also be submitted

to the European Commission simultaneously. They must be submitted within 35 calendar days at the latest from the receipt of additional information from the other EU Member State.

(5) Paras 1 to 4 shall not apply to direct investments not undergoing screening in another EU Member State that were concluded before 10 April 2019. Comments pursuant to Para 4 may be submitted no later than 15 months after the completion of such direct investment.

## **Information requests addressed to Austria by other EU Member States concerning direct investments in their national territory**

Section 16. (1) If a request for information is received from another EU Member State concerning a direct investment in its national territory, the leading responsible Member of the Federal Government shall refer the matter to the Committee for Investment Control and request information on the direct investment from its Members. If such information is available, it must be provided within eight calendar days.

(2) The leading responsible Member of the Federal Government shall without delay forward to the other EU Member State all information which it has received pursuant to Para 1 or which is available to it, or indicate that such information is not available in Austria.

## **Empowerment to process data**

Section 17. (1) The leading responsible Member of the Federal Government may transmit data pursuant to Section 6 Para 4 and Section 12 Para 3 on direct investments in Austria to the institutions of the European Union and to the national contact points of the other EU Member States established in accordance with directly applicable EU law. Such transmission may take place only if

1. it is necessary for the implementation of the cooperation mechanism under this Chapter and
2. the confidential treatment of personal data is guaranteed in compliance with the basic General Data Protection Regulation of the EU, Regulation (EU) 2016/679, OJ No. L 119 of 4 May 2016 p. 1 and the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999.

(2) The leading responsible Member of the Federal Government may process data on direct investments from publicly-accessible registers and specialist publications to the extent necessary

1. to determine whether a process is subject to an authorisation obligation pursuant to Section 2, or
2. to prepare the activity report pursuant to Section 23.

(3) The data traffic in accordance with Para 1 may be entirely in electronic form.

## **Chapter 4 Monitoring**

### **General control provisions**

Section 18. (1) In order to monitor compliance with the provisions of this Federal Act, the leading responsible Member of the Federal Government may at any time demand reports and evidence from each acquiring person and the target undertaking and set a reasonable deadline for their submission and, if effective control cannot be carried out in any other way, may also have the books and storage facilities of such persons inspected by suitable experts.

(2) Within the framework of the monitoring activity pursuant to Para 1, the leading responsible Member of the Federal Government may in particular

1. enter the facilities to be inspected,
2. request the necessary data and information,
3. interview the staff of the entity subject to investigation and,
4. have documents and records presented to him/her, inspect them and make copies thereof.

(3) If monitoring activities are to be carried out at the site of an establishment or other facility, the person who owns or controls the facility shall be notified at least one week before these activities are to be carried out, stating that it is a matter of checking compliance with this Federal Act.

(4) Notification in accordance with Para 3 may be omitted only if there is reason to believe that there may be a violation of this Federal Act. In this case, the person mentioned in Para 3 or another person representing him/her shall be notified immediately upon entering the facility or establishment. If there is imminent danger and none of the persons mentioned can be reached, subsequent notification shall be sufficient. The notification shall state the reasons which led to the assumption of a legal violation.

(5) In relation to the monitoring activities within the meaning of the preceding paragraphs, a disruption of business operations and any undue attention must be avoided to the extent possible.

(6) Insofar as it is necessary to enforce the provisions of Para 1, the persons mentioned in Paras 3 and

4 shall enable the bodies mentioned in Para 1 to enter and inspect the properties and buildings. Furthermore, the persons mentioned must provide the necessary information, submit the necessary documents and, if required, grant access to records and comply with other requests of the leading responsible Member of the Federal Government within the scope of his/her powers under Paras 1 and 2.

(7) A record shall be kept of each monitoring action under Paras 1 to 6 in accordance with Sections 14 and 15 of the General Administrative Procedure Act 1991 (AVG), Federal Law Gazette No 51/1991.

**Recording and storage obligations**

Section 19. (1) All acquiring persons and the target undertaking shall make records regarding a foreign direct investment in the meaning of Section 1 Item 6 for which

1. an authorisation obligation is required pursuant to Section 2 or
2. an application for a clearance certificate pursuant to Section 9 has been submitted or
3. a request for information has been sent by the European Commission or by another EU Member State in accordance with Section 13 Para 1,

. These records must include all business documents from which the information specified in Section 6 Para 4 and Section 12 Para 3 can be derived.

(2) The persons mentioned in Para 1 shall keep the documents mentioned in Para 1 for the purpose of monitoring. The period of storage obligation begins with an application for approval in accordance with Section 6 Para 1 or the application for a clearance certificate in accordance with Section 9 Para 1, the initiation of an ex officio authorisation procedure in accordance with Section 8 Para 2 or a request for information in accordance with Section 13 Para 1 and ends five years after completion of the process.

## **Chapter 5 Establishment of a Committee for Investment Control**

### **Establishment of a Committee for Investment Control**

Section 20. (1) An advisory council, the Committee for Investment Control, hereinafter referred to as "Committee", shall be established at the Federal Ministry to advise the leading responsible Member of the Federal Government.

(2) The Committee shall consist of:

1. one Member each, one representing the leading responsible Member of the Federal Government, who also chairs the Committee, one representing the Federal Ministers for European and International Affairs, one for Finance, one for Climate Action, Environment, Energy, Mobility, Innovation and Technology and one for Social Affairs, Health, Care and Consumer Protection,
2. in matters under Section 21 Para 1 Item 1, one Member representing each other Member of the Federal Government whose sphere of activity is affected by a direct investment, in matters under Section 21 Para 1 Items 2 to 4, one Member representing each other Member of the Federal Government, and
3. in matters pursuant to Section 21 Para 1 Item 1, one Member representing each province affected by a direct investment in its area of activity, in matters pursuant to Section 21 Para 1 Items 2 to 4, one Member representing each province.

(3) One or more substitute Members must be appointed for each Member.

(4) The Members mentioned in Para 2 Items 1 and 2 and their substitute Members shall be appointed by the responsible Member of the Federal Government and notified to the leading responsible Member of the Federal Government. The Members and their alternate Members referred to in Para 2 Item 3 shall be appointed by the leading responsible Member of the Federal Government on the recommendation of the competent provincial governors.

(5) The Members and substitute Members shall perform their duties on an honorary basis.

## **Tasks and activities of the Committee**

Section 21. (1) The Committee has the following tasks:

1. deal with all matters which are to be submitted to it under this Federal Act,
2. advise on reports pursuant to Section 23,
3. advise on developments in foreign direct investment at international, European and national level and
4. advise on fundamental questions of the implementation of this Federal Act and of Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investment into the Union, OJ No L 70 I of 21 March 2019, p. 1, hereinafter referred to as the "EU FDI Screening Regulation" if this is

LE 1910121 March 2019 p. 1, hereinafter referred to as the "EU FDI Screening Regulation", if this is appropriate in view of the particular importance of the subject matter.

(2) The Committee shall be chaired and managed by the leading responsible Member of the Federal Government, who may be represented by employees of his/her Federal Ministry.

(3) The leading responsible Member of the Federal Government shall in any event convene a meeting of the Committee for discussion before notification pursuant to Section 7 Para 2 Item 2 and before the issue of decisions pursuant to Section 7 Para 3. Meetings shall be convened at regular intervals to discuss matters within the meaning of Para 1 Items 2 to 4.

(4) The presence of at least half of the Members is required for the Committee's advisory activities. If, however, the required number of members is not present at the beginning of the meeting, the Committee shall meet again one hour after the date and time stated in the invitations and shall deal with the agenda without regard to the number of Members present.

(5) Each Member of the Committee may call upon experts within his/her area of competence and responsibility. Each Member of the Committee shall be responsible for the correct handling of confidential information pursuant to Section 24 by the experts called in within his/her area of responsibility. In particular, the Federal Minister of Finance may call in experts from Österreichische Beteiligungs AG (ÖBAG), if they could neither gain an unjustified competitive advantage nor have any grounds for bias on their part.

(6) Before the Committee makes recommendations for a decision, a proposal shall be submitted to its Members, and they shall be given an appropriate period of at least five and at most ten working days to submit a reasoned opinion as to whether an acquisition transaction screened in accordance with Sections 7 or 8 gives rise to reasonable suspicion of a threat to security or public order within the meaning of Section 3. If a Member does not submit an opinion by the end of this period, this shall be deemed to constitute approval of the proposal. If a Member submits a statement that deviates from the adopted recommendation for a decision, it shall be submitted to the leading responsible Member of the Federal Government for the matter together with the recommendation for the decision as a basis of information. However, the leading responsible Member of the Federal Government is not bound in his/her decision either by the Committee's recommendations for decision or by any deviating statements.

(7) The Members of the Committee and their alternate members pursuant to Section 20 Paras 2 and 3 shall be transmitted without delay:

1. authorisation applications pursuant to Section 6 Para 4,
2. information on the initiation of ex officio authorisation procedure pursuant to Section 8 Para 2,
3. comments from EU Member States provided and opinions of the European Commission issued pursuant to Section 12 Para 5 and Section 13 Para 2,
4. requests for information from the European Commission or other EU Member States pursuant to Section 13 Para 1,
5. notifications from the European Commission pursuant to Section 14 Para 1,
6. notifications pursuant to Section 15 Para 1 and
7. requests for information pursuant to Section 16 Para 1.

(8) The leading responsible Member of the Federal Government shall, in agreement with the Federal Ministers for European and International Affairs, for Finance, for Climate Action, Environment, Energy, Mobility, Innovation and Technology and for Social Affairs, Health, Care and Consumer Protection, issue rules of procedure. These rules of procedure shall also specify the intervals at which the Committee is to be convened for regular meetings within the meaning of Para 3, second sentence.

## Contact points of the Committee members

Section 22. (1) Each Member of the Federal Government shall establish a contact point for the implementation of this Act and notify the leading responsible Member of the Federal Government thereof no later than one month after the entry into force of this Act.

(2) Any change in a contact point shall be notified without delay to the leading responsible Member of the Federal Government.

## Activity report

Section 23. (1) The leading responsible Member of the Federal Government shall, in agreement with the Federal Ministers for European and International Affairs, for Finance and for Climate Action, Environment, Energy, Mobility, Innovation and Technology, report in an appropriate manner and in accordance with the obligations under directly applicable EU law on the implementation of this Act and on current developments in the field of foreign direct investment.

(2) The report pursuant to Para 1 shall contain in particular:

1. the total number of procedures carried out, as distinguished by  
a) proceedings on application pursuant to Section 7 or Section 9 and

- b) ex officio authorization procedures pursuant to Section 8 Para 2;
  - 2. information on the nature of the decision, as distinguished by
    - a) authorisations with administrative decision
    - b) authorisations by time lapse,
    - c) authorisations with conditions,
    - d) refusals of authorisation,
    - e) administrative decisions pursuant to Section 7 Para 2 Item 1 lit. a and
    - f) clearance certificates in accordance with Section 9 Para 3;
  - 3. number of comments and opinions on direct investments screenedSection;
  - 4. number of comments and opinions pursuant to Section 13 Para 2 on non-screened direct investments;
  - 5. number of Austrian comments pursuant to Section 14 Para 5 and Section 15 Para 4;
  - 6. statistical data on foreign direct investment in Austria pursuant to Section 1 Item 3 lit. a to d, broken down by country of origin, enterprise size, sector and type of acquisition and
  - 7. presentation of current developments in the field of foreign direct investment at international, European and national level.
- (3) In addition, the report shall contain statistical data on investment flows to and from Austria as well as on stocks of foreign direct investment in Austria and stocks of Austrian direct investment in other countries.
- (4) In drawing up the activity report, the report shall be referred to institutions with extensive experience in the field of foreign direct investment in Austria, in particular the Austrian National Bank (OeNB), Österreichische Beteiligungs AG (ÖBAG) and the Austrian Business Agency (ABA-Invest in Austria).
- (5) The annual report pursuant to Para 1 shall be transmitted to the National Council and made public in an appropriate manner.
- (6) If conclusions can be drawn about individual companies from the figures pursuant to Para 2, these figures may not be included in the public announcement pursuant to Para 5 and must also be treated confidentially within the Committee.

## **Chapter 6 Treatment of Confidential Information**

### **Measures to protect confidential information**

Section 24. (1) Employees who are entrusted with the tasks of the national contact point pursuant to Section 11 or the contact points of the Committee Members pursuant to Section 22, Members and substitute Members of the Committee as well as experts who are called upon in meetings of the Committee or in the course of the examination of matters subject to this Federal Act may not disclose or exploit official, business or trade secrets which have been entrusted to them or which have become accessible to them in this capacity during the term of their activity or appointment and also after their function has ceased.

(2) All persons pursuant to Para 1 must fulfil the requirements pursuant to Section 3 Para 1 of the Information Security Act (InfoSiG), Federal Law Gazette I No. 23/2002.

## **Chapter 7 Criminal and Civil Law Provisions**

### **Activities punishable by law**

Section 25. (1) Who

- 1. carries out a direct investment subject to an authorisation obligation pursuant to Section 2 Para 1 without authorisation pursuant to Section 7 or
  - 2. infringes a condition in an administrative decision pursuant to Section 7 Para 3 Item 2 lit. a or pursuant to Section 8 Para 5 or
  - 3. through incorrect or incomplete information
    - a) obtains by fraud an authorisation in accordance with Section 7 Para 2 or 3 or a clearance certificate in accordance with Section 9 Para 3 or
    - b) hinders conditions pursuant to Section 7 Para 3 Item 2 lit. a or subsequent conditions pursuant to Section 8 Para 5 from being stipulated in an authorisation notice,
- is punishable by the court with imprisonment of up to one year.
- (2) Whoever commits one of the acts punishable under Para 1

(2) Whoever commits one of the acts punishable under Para 1

1. commercially or

2. by factual deception such as using a false or falsified document, false or falsified data or any other similar means of evidence

is punishable by the court with imprisonment of up to three years.

(3) Anyone who negligently commits one of the acts specified in Para 1 Item 1 or 2 shall be punished with imprisonment of up to six months or a fine of up to 360 daily rates.

(4) Punishment under Paras 1 to 3 shall not be imposed if the act is punishable by a more severe penalty under another provision.

(5) The regional court shall have jurisdiction for criminal proceedings regarding the activities punishable by a penalty referred to in Paras 1 to 3.

(6) Austrian criminal laws shall also apply to offences committed abroad, irrespective of the criminal laws of the location of the offence.

## Administrative penal provisions

Section 26. (1) Anyone who wilfully contravenes the notification obligation under Section 6 Para 2 or the inform obligation under Section 12 Para 3 or Section 13 Para 1 shall be guilty of an administrative offence and shall be liable to imprisonment of up to six weeks or a fine of up to EUR 40,000.

(2) Whoever

1. negligently commits one of the criminal acts mentioned in Para 1 or

2. wilfully violates one of the obligations specified in Section 18 Para 6 or violates the obligation to make records pursuant to Section 19 Para 1 or the obligation to store records pursuant to Section 19 Para 2,

commits an administrative offence and is punishable by a fine of up to EUR 25,000.

(3) In the cases of Para 1 and Para 2 Item 2, the attempt shall also be punishable.

(4) In the cases of Paras 1 and 2, the district administrative authority shall be responsible for conducting the administrative penal proceedings in the first instance, but in the territory of a municipality, for which the State Police Directorate is also the security authority of the first instance, the State Police Directorate shall be responsible.

## Invalidity of legal transactions

Section 27. Legal transactions concerning processes for which authorisation is required under this Act shall be deemed to have been concluded under the condition precedent that the authorisation is granted.

## Chapter 8 Final Provisions

### Relationship to other Federal Acts

Section 28. (1) Insofar as this Federal Act refers to provisions in other Federal Acts or in directly applicable law of the European Union, these provisions shall apply in their currently valid version.

(2) In Federal Acts, the reference to "Section 25a of the AußWG, Federal Law Gazette I No. 26/2011 as amended, shall apply" shall be replaced by the reference to "The Investment Control Act, Federal Law Gazette I No. 87/2020 as amended, shall apply".

### Entry into force and transitional provisions

Section 29. (1) Chapter 3 as well as Section 19 Para 1 Item 3 and Section 19 Para 2, insofar as it relates to Section 19 Para 1 Item 3, shall enter into force on 11 October 2020.

(2) All other provisions of this Federal Act and the Annex shall enter into force at the end of the day of release for search in the Federal Law Gazette.

(3) Part 1 Item 6 of the Annex shall cease to be in force on 31 December 2022.

(4) The provisions of this Federal Act shall apply to direct investments for which authorisation is required after its entry into force.

### Enforcement clause

Section 30. (1) The Federal Minister for Digital and Economic Affairs shall be entrusted with the implementation of this Federal Act and the EU FDI Screening Regulation, unless the following paragraphs stipulate otherwise.

(2) The following shall be entrusted with the corresponding provisions:

1. with regard to Sections 14 Para 2, 15 Para 2, 16 Para 1 second sentence, 20 Para 4 first sentence, 21 Para 5, 22 and 24, the competent member of the Federal Government within his/her area of responsibility,

2. with regard to Section 21 Para 8, the Federal Minister for Digital and Economic Affairs in agreement with the Federal Ministers of European and International Affairs, of Finance, for Climate Action, Environment, Energy, Mobility, Innovation and Technology and for Social Affairs, Health, Care and Consumer Protection,
3. with regard to Section 23 Part 1, the Minister for Digital and Economic Affairs in agreement with the Federal Ministers of European and International Affairs, of Finance and for Climate Action, Environment, Energy, Mobility, Innovation and Technology,
4. with regard to Section 25 and 27, the Federal Minister of Justice.

## **Annex**

### **Part 1 Especially sensitive areas to which the voting rights shares apply pursuant to Section 4 Item 1 (exhaustive list)**

1. defence equipment and technologies
2. operation of critical energy infrastructure
3. operation of critical digital infrastructure, in particular 5G infrastructure
4. water
5. operation of systems that guarantee the data sovereignty of the Republic of Austria
6. research and development in the fields of pharmaceuticals, vaccines, medical devices and personal protective equipment (Note: Z 6 expired at the end of 31.12.2023)

### **Part 2 Other areas in which a threat to security or public order including crisis management and services of general interest within the meaning of Articles 52 and 65 TFEU may arise**

1. critical infrastructure (institutions, systems, facilities, processes, networks or parts thereof); these include in particular:
  - 1.1. energy
  - 1.2. information technology
  - 1.3. traffic and transport
  - 1.4. health
  - 1.5. food
  - 1.6. telecommunications
  - 1.7. data processing or storage
  - 1.8. defence
  - 1.9. constitutional institutions
  - 1.10. finance
  - 1.11. research institutions
  - 1.12. social and distribution systems
  - 1.13. chemical industry
  - 1.14. investment in land and buildings essential for the use of the infrastructures referred to in points 1.1 to 1.13
2. critical technologies and dual-use goods as defined in Article 2 Para 1 of Council Regulation (EC) No. 428/2009, including
  - 2.1. artificial intelligence
  - 2.2. robotics
  - 2.3. semiconductors
  - 2.4. cyber security

- 2.5. defence technologies
- 2.6. quantum and nuclear technologies
- 2.7. nanotechnologies
- 2.8. biotechnologies
- 3. security of the supply of critical resources, including
  - 3.1. energy supply
  - 3.2. supply of raw materials
  - 3.3. food supply
  - 3.4. supply of medicines and vaccines, medical devices and personal protective equipment, including research and development in these areas
- 4. access to sensitive information, including personal data, or the ability to control such information
- 5. freedom and plurality of the media.

"Critical" are infrastructures within the meaning of Item 1, technologies within the meaning of Item 2 and resources within the meaning of Item 3 that are of essential importance for the maintenance of important social functions because their disruption, destruction, failure or loss would have serious effects on the health, safety or economic and social well-being of the population or the effective functioning of government institutions.

The Foreign Trade Act 2011 (AußWG 2011), Federal Law Gazette I No. 26/2011, last amended by Federal Law Gazette I No. 104/2019, is amended as follows:

1. In the 3rd main part, the 4th section shall be omitted.
2. In Section 79 Para 1, Items 25 and 26 shall be omitted.
3. In Section 79 Para 3, the comma between the numbers 17 and 19 shall be replaced by the word "or" and the words "or 25" shall be omitted.
4. In Section 87, Para 6 shall be omitted.
5. In Section 93, the existing text of Para 14 shall contain the designation "(13)" and the following Para 14 shall be added:

"(14) Section 79 Para 3 as amended by Federal Act, Federal Law Gazette I No. 87/2020 shall enter into force at the end of the day on which the data are released for search in the Federal Law Gazette; at the same time, Chapter 4 of the third main section of Section 79 Para 1 Items 25 and 26 and Section 87 Para 6 shall cease to apply. Section 79 Para 1 Items 25 and 26 and Para 3 in the version of Federal Act, Federal Law Gazette I No. 104/2019 shall continue to apply to criminal offences committed prior to this date, subject to the proviso that the levels of penalties are in accordance with Section 25 Investment Control Act (InvKG)."

## Article 2 Amendment of the Foreign Trade Act 2011

The Foreign Trade Act 2011 (AußWG 2011), Federal Law Gazette I No. 26/2011, last amended by Federal Law Gazette I No. 104/2019, is amended as follows:

1. In the 3rd main part, the 4th section shall be omitted.
2. In Section 79 Para 1, Items 25 and 26 shall be omitted.
3. In Section 79 Para 3, the comma between the numbers 17 and 19 shall be replaced by the word "or" and the words "or 25" shall be omitted.
4. In Section 87, Para 6 shall be omitted.
5. In Section 93, the existing text of Para 14 shall contain the designation "(13)" and the following Para 14 shall be added:

"(14) Section 79 Para 3 as amended by Federal Act, Federal Law Gazette I No. 87/2020 shall enter into force at the end of the day on which the data are released for search in the Federal Law Gazette; at the same time, Chapter 4 of the third main section of Section 79 Para 1 Items 25 and 26 and Section 87 Para 6 shall cease to apply. Section 79 Para 1 Items 25 and 26 and Para 3 in the version of Federal Act, Federal Law Gazette I No. 104/2019 shall continue to apply to criminal offences committed prior to this date, subject to the proviso that the levels of penalties are in accordance with Section 25 Investment Control Act (ICA)."

**Van der Bellen  
Kurz**