

## Poland

### LAW of 24 July 2015 on the control of certain investments (2015)

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Journal of Laws

Journal of Laws 2023.415, consolidated text.Binding act

Version from: July 1, 2024 until: 24 July 2025

# LAW of 24 July 2015 on the control of certain investments

## Article 1. [Subject of the regulation]

The Act specifies:

- 1) the rules and procedure for the control of certain investments consisting in the acquisition of:
  - (a) shares,
  - (b) all the rights and obligations of a partner who has the right to manage the company's affairs or the right to represent the partnership,
  - (c) an undertaking or an organised part thereof - resulting in the acquisition or achievement of a significant stake or the acquisition of dominance over the company which is subject to protection;
- 2) sanctions for breach of obligations under the Act.

## Article 2 [Purpose of the control]

The control referred to in Article 1(1) shall be aimed at the protection of public policy or public security referred to in Articles 52(1) and 65(1) of the Treaty on the Functioning of the European Union, taking into account Article 4(2) of the Treaty on European Union.

## Article 3 [Definitions]

1. Whenever the Act refers to:

- 1) parent entity – means an entity:
  - a) who holds, directly or indirectly through other entities, a majority of the total number of votes in the bodies of another entity, also on the basis of agreements with other persons, or
  - b) who has the power to appoint or dismiss a majority of the members of the management or supervisory bodies of another entity, or
  - c) in the case of which more than half of the members of the management board of another entity are at the same time members of the management board, proxies or persons performing managerial functions of the first entity or another entity in a relationship of dependency with the former, or
  - d) who holds a capital participation in a partnership with a value equal to at least 50% of the value of all contributions made to this partnership, or
  - e) who has the capacity to decide in any other way on the directions of activity of another entity, in particular on the basis of an agreement providing for the management of this entity or the transfer of profit by this entity;
- 2) subsidiary – means an entity in relation to which another entity is the parent entity, and all subsidiaries of this subsidiary are also considered to be subsidiaries of this parent entity;
- 3) total number of votes – it shall be understood as the sum of votes attributable to all shares or shares of the entity;
- 4) significant participation – it means a situation that allows exerting influence on the entity's operations by:
  - a) holding shares or stocks giving in the last 2 years at least 20% of the total number of votes, calculated as a weighted average in this period, in the decision-making body of the entity, in particular at the general meeting or shareholders' meeting, where changes in the number of shares held or stocks, including the sale of all shares in this period and their acquisition do not affect the determination of a significant shareholding, or
  - b) holding a capital share in a partnership with a value equal to at least 20% of the value of all contributions made to this partnership;
- 5) entity subject to protection – means an entity included in the list referred to in the regulations issued on the basis of Article 4(2);
- 6) control body – it shall be understood as:

a) the minister competent for state assets – to the extent specified in Article 4(1)(1)-(6), (8)-(10), (11)-(13), b) (repealed),

c) the Minister of National Defence – to the extent specified in Article 4(1)(7) and (14),

d) the minister competent for maritime economy – to the extent specified in Article 4(1)(10a).

2. Whenever the Act refers to a company, dominance over the company and significant participation in the company, it should also be understood as a general partnership, partnership, limited partnership, limited joint-stock partnership, dominance over such a company and significant participation in such a company. In such a case, the relationship of dominance and significant participation is also established by stating that the parent company is entitled to decide on the company's affairs alone or jointly with other persons.

3. Acquisition of dominance is understood as achieving or exceeding 50% of the total number of votes in the decision-making body of the protected entity, in particular at the general meeting or shareholders' meeting, or a share in the share capital, and in the case of a simple joint-stock company – the total number of shares in that company, by acquiring shares or rights from shares or stocks, or taking up shares.

4. Acquisition or achievement of a significant participation shall be understood as the acquisition of shares or rights from shares or stocks, or the acquisition of shares or stocks, in a number ensuring the achievement or exceeding of 20%, 25%, 33% of the total number of votes at the general meeting or shareholders' meeting or a share in the share capital, and in the case of a simple joint-stock company – the total number of shares of this company, obtaining a significant share at the end of the period referred to in paragraph 1(4)(a), as well as acquisition of an enterprise or an organized part thereof from a protected entity.

5. The acquisition or achievement of a significant stake or the acquisition of dominance shall also be understood as cases where:

1) the acquisition or achievement of a significant stake in a protected entity or the acquisition of dominance over such an entity is made by a subsidiary, including on the basis of agreements concluded with the parent entity or a subsidiary of such entity,

2) the acquisition or achievement of a significant stake in a protected entity or the acquisition of dominance over such an entity is made by an entity whose statute or other act regulating its operation contains provisions concerning the right to its assets in the event of dissolution of the entity or any other form of its termination, including the right to dispose of such assets without acquiring them,

3) the acquisition or achievement of a significant stake in a protected entity or the acquisition of dominance over such an entity is made in its own name, but at the request of another entity, including as part of the performance of a portfolio management agreement within the meaning of the provisions of the Act of 29 July 2005 on Trading in Financial Instruments (Journal of Laws of 2022, item 1500, 1488, 1933, 2185 and 2640),

4) the acquisition or achievement of a significant stake in a protected entity or the acquisition of dominance over such an entity is made by an entity with which another entity has concluded an agreement the subject of which is the transfer of voting rights or other rights to shares or rights from shares or stocks of a company which is subject to protection,

5) the acquisition or achievement of a significant stake or the acquisition of dominance over a company which is a protected entity is made by a group of two or more persons, if at least one of these persons is an entity with which another entity has concluded an agreement concerning the acquisition of shares in a company which is a protected entity, or even the acquisition of shares in companies with their registered office in the Republic of Poland, if the subject of the agreement is the transfer of voting rights or other rights to shares or rights from shares or stocks of a company which is a protected entity,

6) the acquisition or achievement of a significant share in a company which is a protected entity or the acquisition of dominance over such a company is made by an entity acting on the basis of a written or oral agreement concerning the acquisition by the parties to such an agreement of shares in a company which is a subject to protection or the acquisition of shares in companies with its registered office in the Republic of Poland - hereinafter referred to as "indirect acquisition".

6. Indirect acquisition shall also be understood as cases where, as a result of a transaction not mentioned in sections 3-5, the entity obtains the status of a parent entity in relation to an entity holding at least 20% of the total number of votes at the general meeting or shareholders' meeting or a share in the share capital of the company, and in the case of a simple joint-stock company – the total number of shares of this company, which is a protected entity or is the parent entity of a company which is an entity subject to protection or having a significant participation in it, or an entity having a legal title to the enterprise of such a company or an organized part thereof. If the indirect acquisition took place as a result of an action carried out on the basis of the laws of a country other than the Republic of Poland, in particular as a result of a merger of companies whose registered offices are located outside the territory of the Republic of Poland, or the acquisition or subscription of shares in a company with its registered office outside the territory of the Republic of Poland, which is the parent company of a company which

office outside the territory of the Republic of Poland, which is the parent company of a company which is a protected entity, the provisions of the Act shall apply to the effects specified in the sentence.

7. The acquisition or achievement of a significant stake or the acquisition of dominance referred to in paragraph 3 shall also be understood as cases where the entity will hold shares or rights from shares in a company which is subject to protection, including in the cases referred to in paragraph 5, in a number ensuring that it achieves or exceeds 20%, 25%, respectively. 33%, 50% of the total number of votes at the general meeting or shareholders' meeting or a share in the share capital, and in the case of a simple joint-stock company – in the total number of shares of this company, will either be the parent entity of the company being a protected entity or will acquire a significant share, in the event of:

- 1) redemption of shares in a company which is an entity subject to protection, or acquisition of own shares in that company,
- 2) division of the company which is a protected entity or its merger with another company,
- 3) amendment of the articles of association or articles of association of a company which is subject to protection, with regard to the preference of shares or stocks, establishment, amendment or abolition of rights vested in individual partners or shareholders of this company,
- 4) annulment of shares in a company which is a protected entity  
- hereinafter referred to as "subsequent acquisition".

8. Significant participation, within the meaning of paragraph 1(4)(a), shall also be determined if it occurs as a result of the holding of shares or rights from shares by the entities referred to in paragraph 5, regardless of the number and type of transactions made between them.

#### **Article 4. [Protected entities]**

1. An entity conducting business activity, the subject of which is:

- 1) electricity generation or
- 2) production of motor gasoline or diesel oil, or
- 3) pipeline transport of crude oil, motor gasoline or diesel oil, or
- 4) storage and storage of motor gasoline, diesel oil, natural gas, or
- 5) underground storage of crude oil or natural gas, or
- 6) production of chemicals, fertilizers and chemical products, or
- 7) production and trade in explosives, weapons and ammunition as well as products and technology for military or police purposes, or
- 8) regasification or liquefaction of natural gas, or
- 9) transshipment of crude oil and its products in seaports, or
- 10) distribution of natural gas or electricity, or
- 10a) transshipment in ports of fundamental importance to the national economy within the meaning of Article 2(3) of the Act of 20 December 1996 on Ports and Harbours (Journal of Laws of 2022, item 1624), or
- 11) telecommunications activities, or
- 12) transmission of gaseous fuels, or
- 13) production of rhenium, or
- 14) extraction and processing of metal ores used for the production of explosives, weapons and ammunition as well as products and technologies for military or police purposes  
- can be considered a protected entity.

2. The Council of Ministers may determine, by way of a regulation, a list of entities subject to protection, as well as the control authority competent for each of the entities included in the list, taking into account the significant market share of the entity concerned, the scale of its activities, the actual and sufficiently serious threats to the fundamental interests of society related to the conduct of activities by the entity to be protected, as well as the impossibility of introducing a measure less restrictive and the necessity, with respect to an entity operating in a given sector, to apply investment control in accordance with the rules set out in the Act to ensure the protection of public order or public security, as referred to in Article 52(1) and Article 65(1) of the Treaty on the Functioning of the European Union, as well as the time justifying the application of these measures.

#### **Article 5. [Notification of the intention to acquire or achieve a significant stake or acquisition of dominance in certain entities]**

1. An entity that intends to acquire or achieve a significant stake or acquire dominance is obliged to submit a notification to the control authority of its intention to do so each time, unless this obligation rests with other entities, in accordance with sections 2-5.

2. In the case of an indirect acquisition, the notification shall be submitted by the entity referred to in Article 3(5) which carried out the transaction specified in this provision.

3. In the case of an indirect acquisition referred to in the second sentence of Article 3(6), the notification shall be submitted by the subsidiary referred to in the first sentence of Article 3(6).

4. In the case of acquisition or achievement of a significant share, as referred to in Article 3(1)(4) and (4), in a company which is subject to protection, the inspection authority shall be notified thereof. The

notification is submitted by an entity that has acquired or achieved a significant participation.

5. In the case of subsequent acquisition, the notification shall be submitted by the company which is the entity subject to protection.

6. In the cases referred to in paragraph 1 or 2, the notification shall be made:

1) before the conclusion of any agreement giving rise to the obligation to acquire or before the performance of another legal transaction or legal transactions leading to the acquisition, or

2) in the case of a tender offer to subscribe for the sale or exchange of shares in a public company within the meaning of the Act of 29 July 2005 on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies (Journal of Laws of 2022, item 2554) – before the tender offer is published.

6a. If the acquisition or achievement of a significant stake or the acquisition of dominance occurs as a result of the conclusion of more than one agreement or the performance of another legal transaction, the notification shall be made before the conclusion of the last agreement or the performance of the last other legal transaction leading to the acquisition or achievement of a significant share or the acquisition of dominance.

7. In the cases referred to in paragraph 3 or 4, the notification shall be made within 7 days from the date of acquisition or achievement of a significant stake or acquisition of dominance over the company which is the subject of protection, and if this effect cannot be determined, in particular if the provisions applicable to the transaction referred to in Article 3(6), second sentence, do not provide for entry in the relevant register - within 30 days from the date of this action.

8. In the case referred to in paragraph 5, the notification shall be made:

1) before the general meeting or shareholders' meeting of the company which is subject to protection, or before the adoption of a resolution of the shareholders, or

2) before performing another action having the effects referred to in Article 3(7).

9. In the event that two or more entities act in concert, the notification shall be submitted jointly by all parties to the agreement.

#### **Article 6. [Information to be provided when submitting a notice of intention to acquire a significant stake or dominance]**

1. When submitting a notification, the entity shall provide information on:

1) shares or rights held directly or indirectly from shares or stocks of a company which is a protected entity, as well as about the parent entities of this entity and agreements concluded by this entity, and about the fact that this entity remains in factual or legal situations allowing other entities to exercise rights from shares of a company which is an entity subject to protection, or exercising the rights of the parent company of a company which is a protected entity or which gives other entities the right to acquire or subscribe for shares in a company which is subject to protection;

2) the manner of implementation of the intention to which the notification relates;

3) professional, business or statutory activity of the entity submitting the notification, and in particular about the subject of this activity, the scope and place of its conduct and its course to date, as well as the education possessed by the entity submitting the notification, which is a natural person, or persons who are members of the management and supervisory bodies, if the entity is not a natural person;

4) the capital group to which the entity submitting the notification belongs, and in particular its structure, entities belonging to it, legal and factual capital, financial and personal connections with other entities; and if the entity submitting the notification is not a commercial company – data on entities authorized to decide on the composition of its management and supervisory bodies, entities authorized to receive payments from its assets and on entities entitled to its assets in the event of its dissolution or other form of its termination;

5) the economic and financial situation of the entity submitting the notification;

6) conviction for a crime or fiscal offence, proceedings conditionally discontinued and disciplinary proceedings ended with punishment, as well as other completed administrative and civil proceedings concerning the entity submitting the report or persons referred to in points 3 and 4;

7) pending criminal proceedings, proceedings for fiscal offences, proceedings for imposing penalties for breach of obligations provided for in the regulations on the capital market or environmental protection, tax proceedings conducted against the entity submitting the notification or persons referred to in points 3 and 4, or against these persons, or proceedings related to the activity of this entity or these persons, as well as the extradition requests and European arrest warrants issued against these entities and individuals;

8) actions taken, before the date of submission of the notification, aimed at the acquisition of shares or rights from shares or stocks or taking up shares of a commercial company with its registered office in the territory of the Republic of Poland, the related rights, manner and sources of financing the acquisition of shares or rights from shares or stocks or taking up shares, agreements concluded in connection with these activities and on activities in concert with other entities;

9) the intentions of the notifying entity in relation to the protected company, regarding its investment

plans, long-term plans of its operations, anticipated changes in its organization, in particular the merger with another company, financing of its operations, dividend policy and employment policy.

2. The Council of Ministers shall determine, by way of a regulation, the documents to be attached to the notification in order to confirm the information specified in paragraph 1, with a view to ensuring the need for detailed verification of the information provided by the entity submitting the notification.

3. In justified cases, in particular where the applicable law does not provide for the preparation of the documents referred to in paragraph 2, the entity submitting the notification or the person concerned may, in place of these documents, submit an appropriate statement containing the required information and submit documents which, in accordance with the applicable law, constitute their confirmation, together with an appropriate explanation.

4. In the case of subsequent acquisition, the provisions of paragraph 1 shall not apply. The company referred to in Article 5(5), when submitting a notification, shall provide information on:

- 1) all partners or shareholders known to it;
- 2) the manner of implementation of the intention to which the notification relates.

#### **Article 7. [Language of the notification and the documents submitted with it]**

1. The notification and attached documents shall be drawn up in Polish or a foreign language together with an official translation into Polish made by:

- 1) a sworn translator entered on the list kept by the Minister of Justice;
- 2) a sworn translator authorised to perform such translations in the Member States of the European Union or the European Economic Area (EEA);
- 3) the consul, and the following are also considered to be documents translated by the consul:
  - a) documents in a foreign language translated into Polish by an interpreter in the host country and certified by the consul,
  - b) documents translated from a rare language into a language known to the consul and then translated by the consul into Polish.

2. Foreign official documents should be legalized by the consul of the Republic of Poland before translation, unless an international agreement to which the Republic of Poland is a party provides otherwise.

#### **Article 8. [Obligation to appoint an attorney for service in the Republic of Poland]**

1. An entity submitting a notification not having a place of residence or habitual residence or registered office in the Republic of Poland or another Member State of the European Union, if it has not appointed an attorney residing in the Republic of Poland to conduct the proceedings on the notification, is obliged to indicate an attorney for service in the Republic of Poland.

2. In the event of failure to comply with the obligation referred to in paragraph 1, documents in the course of the proceedings shall be left in the case file with the effect of service, with the exception of the decision closing the proceedings on the notification, which should be instructed to the entity submitting the notification when it performs its first action.

#### **Article 9 [Notification procedure]**

1. Proceedings are initiated as a result of filing a notification. In the cases referred to in Article 3(6) and (7) and Article 5(4), the inspection authority may initiate proceedings ex officio.

2. In the event of formal deficiencies in the notification or if the required information or documents have not been attached to it, the inspection authority shall call upon the entity submitting the notification to supplement these deficiencies within the specified period, not shorter than 7 days.

3. In the event of initiating proceedings ex officio and in the cases referred to in Article 3(6), the inspection authority shall request the competent entity to submit the information or documents referred to in Article 6. The entity to which the summons is addressed becomes a party to the proceedings upon its delivery. The provisions of Articles 7 and 8 shall apply mutatis mutandis.

4. Refusal to initiate proceedings on the grounds that the activity covered by the notification is not subject to the Act shall be made by way of a decision of the inspection authority. A request for reconsideration of the case and a complaint to the administrative court may also be appealed against by the supervisory authority's decision refusing to initiate proceedings, which is the subject of the notification to the subject of protection. The decision is served on that company.

5. A decision in a case initiated in accordance with paragraph 1 shall be issued no later than within 90 days from the date of receipt of the notification or initiation of proceedings ex officio, and shall be delivered no later than within 2 working days from the date of its issuance, except for the case referred to in Article 8 paragraph 2. These deadlines are considered to have been met if, before their expiry, the decision was posted at the post office of the operator designated within the meaning of the Act of 23 November 2012 – Postal Law (Journal of Laws of 2022, items 896, 1933 and 2042).

6. If the administrative court repeals the decision on the merits of the case or the decision closing the proceedings in the case, the 90-day period referred to in paragraph 5 shall run from the date on which the final judgment of the administrative court was delivered to the control authority.

7. The time limits specified in paragraph 5 shall be suspended in the period from the date on which the

7. The time limits specified in paragraph 5 shall be suspended in the period from the date on which the summons referred to in paragraph 2 or 3 was delivered to the date of submission of all required information and documents.

8. The entity submitting the notification is obliged to refrain from performing the action covered by the notification until the deadline for the decision to be issued has expired.

9. A legal action covered by the notification may be performed provided that no objection is raised.

#### **Article 10. [Decision on the notification]**

1. Before issuing the decision referred to in Article 9(5), the inspection authority shall:

- 1) applies to the Consultative Committee referred to in Article 13 to present a recommendation within the specified period, including factual and legal justification as to the legitimacy of issuing the decisions referred to in Article 11 or Article 12(6);
  - 2) may request the entity submitting the notification to present additional written explanations regarding the information or documents referred to in Article 6 within the specified period, not shorter than 7 days.
2. The period referred to in Article 9(5) shall be suspended until the date of receipt by the inspection authority of the explanations referred to in paragraph 1(2).

#### **Article 11 [Objection to the acquisition of shares or rights from shares or to the acquisition of shares]**

1. The inspection authority, by way of a decision, raises an objection to the acquisition of shares or rights from shares or stocks, or to the acquisition of shares in a company which is a protected entity, resulting in the acquisition or achievement of a significant stake or the acquisition of dominance over a company which is a protected entity, or to the acquisition from a company which is a protected entity, an enterprise or an organised part thereof, including in the case of subsequent acquisition if:

- 1) the entity submitting the notification has not completed formal deficiencies in the notification or documents or information attached to the notification within the prescribed period, or the requested entity has not submitted information or documents at the request of the inspection authorities, or
  - 1a) the entity submitting the notification did not provide additional written explanations within the time limit set by the inspection authority, or
  - 2) it is justified by the purpose of:
    - a) ensuring the fulfilment of the obligations of the Republic of Poland to guard the independence and inviolability of the territory of the Republic of Poland, to ensure freedom and human and civil rights, the security of citizens and the protection of the environment,
    - b) prevent social or political actions or phenomena that prevent or hinder the Republic of Poland from performing its obligations under the North Atlantic Treaty, signed in Washington on 4 April 1949, as well as the Republic of Poland's participation in the North Atlantic Treaty Organization,
    - c) prevent social or political actions or phenomena that may disrupt the foreign relations of the Republic of Poland,
    - d) ensuring, without prejudice to the provisions of letter a, public order or security of the Republic of Poland, as well as covering the needs necessary for the population in order to protect the health and life of the population
- having regard to Articles 52(1) and 65(1) of the Treaty on the Functioning of the European Union and Article 4(2) of the Treaty on European Union.

2. In the case of a notification referred to in Article 5(3), the inspection authority shall, by way of a decision, declare inadmissible the exercise of rights attached to the shares of a company which is a protected entity, acquired in the cases referred to in Article 3(6), second sentence, if the condition or conditions set out in paragraph 1 are met.

3. The inspection authority, in the event of initiating proceedings ex officio, by way of a decision, shall determine the admissibility of exercising the rights attached to the shares of the company which is the subject of protection in a manner not exceeding the significant participation, in the case of achieving a significant participation in the company which is the subject of protection, in the cases specified in Article 3(1)(4) and (4), if in the course of the proceedings it could not be established that on the basis of which activities the subject achieved material participation.

4. When issuing the decisions referred to in paragraphs 1-3, the controlling body shall take into account the assumptions of the state policy in the areas of social or economic life which are of significant importance for the achievement of the objectives specified in paragraph 1. The decision of the controlling body cannot be based on the economic interest of the state.

5. To the proceedings conducted on the basis of the provisions of the Act, to the extent not regulated by this Act, the provisions of the Act of 14 June 1960 – the Code of Administrative Procedure (Journal of Laws of 2022, items 2000 and 2185) shall apply.

#### **Article 12. [Consequences of acquiring or achieving a significant stake or acquiring dominance contrary to the provisions of the Act]**

1. Acquisition or achievement of a significant stake or acquisition of dominance made:

- 1) without submitting the notification referred to in Article 5(1), (2), (4) or (5), or
- 2) despite the objection referred to in Article 11(1) of the Civil Code,

- is invalid, unless the decision referred to in Article 11(3) has been issued.

2. In the case of:

1) failure to submit the notification referred to in Article 5(3), or

2) issue a decision referred to in Article 11(2) of the

- shares in a company which is subject to protection, acquired in the cases referred to in Article 3(6), may not exercise voting rights or other rights, except for the right to dispose of these shares.

3. In the event of failure to submit the notification referred to in Article 5(4), the voting rights and other rights, except for the right to dispose of, may not be exercised in relation to all shares held by the entity obliged to make the notification. In the event of issuance of a decision referred to in Article 11(3), voting rights and other rights may be exercised from the shares of a company which is a protected entity, with the exception of the right to dispose of shares which give the entitled person less than 20% of the total rights vested in the partners, without taking into account the privileges or rights vested in individual partners or shareholders.

4. Resolutions of the general meeting or the shareholders' meeting of a company which is a protected entity, adopted in violation of the provisions of sections 1-3 are invalid, unless they meet the requirements of quorum and the majority of votes cast without taking into account invalid votes. The right to bring an action for declaring a resolution of the general meeting or the shareholders' meeting invalid is also vested in the supervisory authority. The provisions of Article 252 and Article 425 of the Act of 15 September 2000 – the Code of Commercial Companies (Journal of Laws of 2022, items 1467, 1488, 2280 and 2436) shall apply accordingly. The time limit for challenging a resolution shall be suspended for the duration of the proceedings ending with the issuance of the decision referred to in Article 11(2) or (3).

5. If the invalidity of the transaction referred to in paragraph 1 concerns transactions performed in the cases referred to in Article 3 section 6, the registry court competent for the company being the subject of protection, ex officio deletes the entries based on the invalid transaction in the relevant register. If, as a result of making these entries, other entries have been made, the court or registry courts take appropriate actions for entries that are inadmissible due to the applicable regulations, in accordance with the provisions of the Act of 20 August 1997 on the National Court Register (Journal of Laws of 2022, items 1683 and 2436).

6. In the case referred to in paragraph 2, the inspection authority may, by way of a decision, order the sale of shares in the company which is subject to protection within a specified period.

7. If the shares are not sold within the period referred to in paragraph 6, the control authority may appoint a share administrator who is obliged to take steps to dispose of the shares or redeem them. The administrator acts on his own behalf and on behalf of a partner or shareholder who cannot exercise voting rights. With regard to the adoption of resolutions on the redemption of shares and the related reduction of the share capital, the administrator is entitled to exercise the voting rights attached to the shares, however, voting by the administrator on the remuneration for the redeemed shares requires the consent of the control body.

#### **Art. 12a.**

1. In connection with the situation caused by COVID-19 or the international situation distorting the market or competition, the provisions of Articles 12b-12k and Articles 16a and 16b specify:

1) the principles and procedure for the control of investments resulting in the acquisition or achievement of a significant stake or the acquisition of dominance over a protected entity within the meaning of Article 12d by an entity which:

a) does not have the nationality of a Member State - in the case of natural persons, or

b) does not have or has not had for at least two years from the day preceding the notification of the registered office in the territory of a Member State – in the case of entities other than natural persons;

2) sanctions for violation of obligations under the provisions of Articles 12b-12k.

2. The provisions of Articles 12b-12k shall not apply to cases concerning an entity subject to protection referred to in Article 3(1)(5), conducted by the inspection authority referred to in Article 3(1)(6).

#### **Art. 12b.**

The purpose of the investment screening mechanism relating to protected entities is to protect public policy, public security or public health as referred to in Articles 52(1) and 65(1) of the Treaty on the Functioning of the European Union, taking into account Article 4(2) of the Treaty on European Union.

#### **Art. 12c.**

1. Whenever the provisions of Articles 12a-12k refer to:

1) significant participation – it is understood as a situation that allows exerting influence on the entity's operations by:

a) holding shares representing at least 20% of the total number of votes, or

b) holding a capital share in a partnership with a value equal to at least 20% of the value of all contributions made to this partnership, or

c) having a share in the profits of another entity amounting to at least 20%;



2) entrepreneurs – means an entrepreneur within the meaning of the Act of 6 March 2018 – Entrepreneurs' Law (Journal of Laws of 2021, items 162 and 2105 and of 2022, items 24, 974 and 1570), a research institute within the meaning of the Act of 30 April 2010 on Research Institutes (Journal of Laws of 2022, item 498) and a Network institute within the meaning of the Act of 21 February 2019 on the Łukasiewicz Research Network (Journal of Laws No. of 2020, item 2098);

3) protected entity – means an entrepreneur with its registered office in the Republic of Poland, which on the date of acquisition or achievement of a significant stake or acquisition of dominance meets the conditions set out in Article 12d(1), (2) or (3);

4) control body – means the President of the Office of Competition and Consumer Protection;

5) Member State – means a country which is a member of the European Union or a party to the Agreement on the European Economic Area, or a country belonging to the Organisation for Economic Co-operation and Development.

2. Whenever the provisions of sections 4-8, Article 12g(1)(1) and (3), Article 12j(2) and (3) and Article 12k(2) and (3) refer to shares or rights from shares, it should also be understood as follows:

1) a share in the profits of another entity, or

2) a capital share in a partnership, or

3) the right to participate in the decision-making body of an entrepreneur other than a company.

3. Whenever the provisions of sections 4-8 and Article 12g(1)(3) refer to the acquisition of shares or rights from shares or the acquisition of shares, it should also be understood as:

1) obtaining or increasing a share in the profits of another entity by way of an agreement or amendment to the statute of that entity, or

2) joining a partnership or increasing the capital share in the partnership by amending the articles of association or the articles of association of the partnership, or

3) joining an entrepreneur other than a company or increasing the share in the decision-making body of an entrepreneur other than a company by way of an agreement or amendment to the statute of this entrepreneur.

4. The acquisition of dominance is understood as obtaining the status of a parent entity within the meaning of Article 3(1)(1)(e) in relation to a protected entity by:

1) acquisition of shares or rights from shares or stocks, or acquisition of shares, or

2) conclusion of an agreement providing for the management of this entity or transfer of profit by this entity.

5. The acquisition or achievement of a significant participation shall be understood as:

1) obtaining a significant share within the meaning of section 1 item 1 in the protected entity by acquiring shares or rights from shares or stocks, or taking up shares, or

2) reaching or exceeding, respectively, the threshold of 20% and 40% of the total number of votes in the decision-making body of the protected entity, a share in the profits of the protected entity or a capital share in a partnership which is a protected entity in relation to the value of all contributions made to that company by acquisition of shares or rights from shares or stocks, or acquisition of shares, or

3) purchase or lease of an enterprise or its organized part from a protected entity.

6. The acquisition or achievement of a significant stake or the acquisition of dominance shall also be understood as cases where:

1) the acquisition or achievement of a significant stake in a protected entity or the acquisition of dominance over such an entity is made by a subsidiary, including on the basis of agreements concluded with the parent entity or a subsidiary of such entity,

2) the acquisition or achievement of a significant stake in a protected entity or the acquisition of dominance over such an entity is made by an entity whose statute or other act regulating its operation contains provisions concerning the right to its assets in the event of the dissolution of the entity or any other form of its cessation, including the right to dispose of such assets without acquiring them,

3) the acquisition or achievement of a significant stake in a protected entity or the acquisition of dominance over such an entity is made in its own name, but at the request of another entity, including as part of the performance of a portfolio management agreement within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments,

4) the acquisition or achievement of a significant stake in a protected entity or the acquisition of dominance over such an entity is made by an entity with which another entity has concluded an agreement the subject of which is the transfer of voting rights or other rights to shares, stocks or other share rights or rights from shares, stocks or other share rights of the protected entity,

5) the acquisition or achievement of a significant stake or the acquisition of dominance over a protected entity is made by a group of two or more persons, if at least one of these persons is an entity with which another entity has concluded an agreement concerning the acquisition of shares or stocks of a protected entity, or even the acquisition of shares or stocks or assets of entrepreneurs with their registered office in the Republic of Poland, if the subject of this agreement is the transfer of voting rights or other rights to shares or rights from shares or stocks of entrepreneurs with their registered office in

or other rights to shares or rights from shares or stocks of entrepreneurs with their registered office in the Republic of Poland,

6) the acquisition or achievement of a significant stake in a protected entity or the acquisition of dominance over such an entity is made by an entity acting on the basis of a written or oral agreement concerning the acquisition by the parties to such an agreement of shares or stocks or assets of the protected entity or the acquisition of shares or stocks or assets of entrepreneurs with its registered office in the Republic of Poland

- hereinafter referred to as "indirect acquisition".

7. Indirect acquisition shall also be understood as cases where, as a result of a transaction or event not referred to in sections 4-6, the entity obtains the status of a parent entity in relation to an entity with a significant participation in the protected entity or a parent entity in relation to a protected entity or an entity having a legal title to an enterprise or an organised part of the enterprise of a protected entity. If the indirect acquisition took place as a result of an action carried out on the basis of the laws of a country other than the Republic of Poland, in particular as a result of a merger of companies whose registered offices are located outside the territory of the Republic of Poland, or the acquisition or subscription of shares in an entity with its registered office outside the territory of the Republic of Poland, which is an entity with a significant stake in a protected entity or a parent entity of a protected entity, The provisions of Articles 12a-12k shall apply within the scope of the effects specified in the first sentence.

8. The acquisition or achievement of a significant stake or the acquisition of dominance shall also be understood as cases where the entity acquires or achieves a significant stake or acquires dominance over a protected entity or achieves or exceeds 20% or 40% of the total number of votes in the decision-making body of the protected entity, a share in the profits of the protected entity or a capital interest in a partnership which is a protected entity in respect of to the value of all contributions made to this company, as a result of:

- 1) redemption of shares in a protected entity or acquisition of own shares of that entity,
- 2) division of the protected entity or its merger with another entity,
- 3) amendment of the articles of association or statute of the protected entity with respect to the preference of shares or stocks, participation in profits, establishment, amendment or abolition of rights vested in individual partners, shareholders or participants of this entity - hereinafter referred to as "subsequent acquisition".

#### **Art. 12d.**

1. An entity covered by the protection is an entrepreneur with its registered office in the Republic of Poland, which is a public company within the meaning of the Act of 29 July 2005 on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading, and Public Companies.

2. An entity covered by protection is an entrepreneur with its registered office in the Republic of Poland, which:

1) has property that has been disclosed in the uniform list of facilities, installations, equipment and services included in critical infrastructure, referred to in Article 5b(7)(1) of the Crisis Management Act of 26 April 2007 (Journal of Laws of 2023, item 122), or

2) develops or modifies software:

a) to control power plants, networks or the operation of facilities or systems for the supply of electricity, gas, fuel, heating oil or district heating, or

b) to manage, control and automate drinking water supply or waste water treatment installations, or

c) used to operate devices or systems used for voice and data transmission or for data storage and processing, or

d) to operate or manage equipment or systems used for the supply of cash, card payments, conventional transactions, securities settlement and derivative transactions or for the provision of insurance services, or

e) to operate hospital information systems, to operate devices and systems used in the sale of prescription drugs and to operate the laboratory information system or laboratory tests, or

f) to operate equipment or systems used for the transport of passengers or goods by air, rail, sea or inland waterways, road transport, public transport or logistics, or

g) to operate equipment or systems used in the supply of food, or 3) provides services of collecting or processing data in cloud computing.

3. An entity covered by protection is an entrepreneur with its registered office in the Republic of Poland, which conducts business activity the subject of which is:

1) electricity generation, or

2) production of motor gasoline or diesel oil, or

3) pipeline transport of crude oil, motor gasoline or diesel oil, or

4) storage and storage of motor gasoline, diesel oil, natural gas, or

- 5) underground storage of crude oil or natural gas, or
- 6) production of chemicals, fertilizers and chemical products, or
- 7) production and trade in explosives, weapons and ammunition as well as products and technology for military or police purposes, or
- 8) regasification or liquefaction of natural gas, or
- 9) transshipment of crude oil and its products in seaports, or
- 10) distribution of natural gas or electricity, or
- 11) transshipment in ports of fundamental importance to the national economy within the meaning of Article 2(3) of the Act of 20 December 1996 on ports and harbours, or
- 12) telecommunications activities, or
- 13) transmission of gaseous fuels, or
- 14) production of rhenium, or
- 15) extraction and processing of metals used for the production of explosives, weapons and ammunition as well as products and technologies for military or police purposes, or
- 16) production of devices, instruments and medical devices, or
- 17) manufacture of medicines and other pharmaceutical products, or
- 18) foreign trade in gaseous fuels and gas, or
- 19) generation, transmission or distribution of heat, or
- 20) transshipment in inland ports, or
- 21) processing of meat, milk, cereals, fruit and vegetables.

4. An entity covered by the protection is an entrepreneur referred to in sections 1, 2 or 3, if the revenue from sales and services exceeded the equivalent of EUR 10,000,000 in the territory of the Republic of Poland in any of the two financial years preceding the notification.

5. The conversion of the value of the euro and other foreign currencies into PLN and the value of the Polish zloty into the euro is made according to the average exchange rate of foreign currencies announced by the National Bank of Poland on the last business day of the month preceding the month in which the notification obligation arose.

6. The Council of Ministers may, by way of a regulation, after consulting the President of the Office of Competition and Consumer Protection, determine further exemptions from protection of the entities referred to in paragraphs 1-4, taking into account the situation caused by COVID19 or the international situation distorting the market or competition and the objectives of the control mechanism set out in Article 12b.

#### **Art. 12e.**

1. The obligation to notify referred to in Article 12f(1)-(4) arises in the case where the entity referred to in Article 12a(1)(a) or (b):

- 1) intends to acquire or achieve a significant participation, or
- 2) intends to acquire dominance, or
- 3) has acquired or achieved a significant participation, or
- 4) acquired dominance.

2. The inspection authority may initiate preliminary verification proceedings ex officio in the case of an intention to acquire or achieve or to acquire or to achieve a significant stake or an intention to acquire dominance or dominance by an entity holding the nationality of a Member State - in the case of natural persons, or having its registered office in the territory of a Member State - in the case of entities other than natural persons, if there are indications of abuse or circumvention of the law, in particular in order to avoid the obligation to notify referred to in Article 12f(1)-(4) or to avoid the initiation of proceedings referred to in Article 12h(1). Ex officio proceedings are not initiated if 5 years have passed since the acquisition or achievement of a significant stake or the acquisition of dominance.

3. Indications of abuse or circumvention of the right referred to in paragraph 2 may include, in particular, cases in which the entity acquiring or achieving a significant stake or acquiring dominance:

- 1) does not actually conduct business activity in its own name to the extent other than activities related to the acquisition or achievement of a significant stake or the acquisition of dominance, or
- (2) does not have a permanent establishment, office or staff in the territory of a Member State.

4. Subsidiaries of the entity referred to in Article 12a(1) or its branches or representative offices shall be considered as entities not established in the territory of a Member State.

5. The notification obligation referred to in Article 5 does not arise if the intention or acquisition or achievement of a significant stake or the acquisition of dominance results in the notification obligation referred to in Article 12f(1)-(4).

#### **Art. 12f.**

1. An entity that intends to acquire or achieve a significant stake or acquire dominance is obliged to submit a prior notification of its intention to do so to the inspection authority each time, unless this obligation rests with other entities, in accordance with paragraphs 2-4. 2. In the case of an indirect acquisition, a prior notification shall be submitted by the entity referred to in Article 12c(6) which intends

to carry out the transaction specified in this provision.

3. In the case of an indirect acquisition referred to in the second sentence of Article 12c(7), a follow-up notification shall be submitted by the subsidiary referred to in the first sentence of Article 12c(7).

4. In the case of subsequent acquisition, a prior notification shall be submitted by the protected entity.

5. In the cases referred to in paragraphs 1 and 2, the notification shall be made:

1) before concluding any agreement giving rise to an obligation to acquire or achieve a significant stake or to acquire dominance, or before performing any other legal transaction or legal transactions leading to the acquisition or achievement of a significant stake or the acquisition of dominance, or

2) in the case of a tender offer to subscribe for the sale or exchange of shares in a public company within the meaning of the Act of 29 July 2005 on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies – before the tender offer is published.

6. If the acquisition or achievement of a significant stake or the acquisition of dominance occurs as a result of the conclusion of more than one agreement or the performance of another legal transaction, the notification shall be made before the conclusion of the last agreement or the performance of the last legal transaction leading to the acquisition or achievement of a significant share or the acquisition of dominance.

7. In the case referred to in paragraph 3, the notification shall be made within 7 days from the date of acquisition or achievement of a significant stake or acquisition of dominance over the protected entity, and if this effect cannot be determined, in particular if the provisions applicable to the activity referred to in Article 12c(7), second sentence, do not provide for entry in the relevant register – within 30 days from the date of this action.

8. In the case referred to in paragraph 4, the notification shall be made:

1) before holding a meeting of the constituent body of the protected entity or before adopting a resolution of the shareholders or participants, or

2) before performing another action having the effects referred to in Article 12c(8).

9. In the case where at least two entities act in concert, the notification is submitted by all parties to the agreement jointly.

#### **Art. 12g.**

1. When submitting the notification referred to in Article 12f(1)-(3), the entity shall provide information on:

1) shares or rights held directly or indirectly from shares or stocks of a protected entity, as well as about the parent entities of that entity and agreements concluded by that entity, and about the entity's remaining in factual or legal situations allowing other entities to exercise rights from shares in a protected entity or to exercise the rights of the parent entity over the protected entity or giving other entities the right to acquire or subscribe for shares in a protected entity;

2) referred to in Article 6(1)(2)-(7);

3) actions taken, prior to the date of submission of the notification, aimed at the acquisition of shares or rights from shares or stocks or the acquisition of shares or stocks of entrepreneurs with their registered office in the territory of the Republic of Poland, related to these shares or stocks, rights, manner and sources of financing the acquisition of shares or rights from shares or stocks or the acquisition of shares, agreements concluded in connection with these activities and activities in concert with other entities;

4) the intentions of the entity submitting the notification referred to in Article 12f(1)-(3) with respect to the protected entity, regarding investment plans, long-term business plans, anticipated changes in the organization of the protected entity, financing of its activities, dividend policy and employment policy.

2. In the case of subsequent acquisition, the provisions of paragraph 1 shall not apply. When submitting the notification referred to in Article 12f(4), the protected entity shall provide:

1) detailed information on the shareholding structure of this entity, in particular on all partners, shareholders or other participants known to it, and

2) detailed information on the structure of the share in the profits of this entity;

3) information on the manner of implementation of the intention to which the notification relates.

3. To the notification referred to in Article 12f(1)-(4), the provisions of Article 6(3), Article 7 and Article 8 and the regulations issued on the basis of Article 6(2) shall apply *mutatis mutandis*.

#### **Art. 12h.**

1. Preliminary verification proceedings shall be initiated as a result of submitting a notification referred to in Article 12f(1)-(4).

2. In the cases referred to in Article 12c(7) and (8), the inspection authority may initiate preliminary verification proceedings *ex officio*. *Ex officio* proceedings are not initiated if 5 years have passed since the acquisition or achievement of a significant stake or the acquisition of dominance. In the case of initiating proceedings *ex officio*, the inspection authority shall call on the competent entity to submit the information referred to in Article 12a(1) within the specified period of not less than 7 days. The entity to

information referred to in Article 12g(1) within the specified period of not less than 7 days. The entity to which the summons is addressed becomes a party to the proceedings upon its delivery. The provisions of Article 6(3), Article 7 and Article 8 and the provisions issued on the basis of Article 6(2) shall apply *mutatis mutandis*.

3. In the event of formal deficiencies in the notification referred to in Article 12f(1)-(4) or if the required information or documents have not been attached to it, the inspection authority shall call on the entity submitting the notification to supplement these deficiencies within the specified period, not shorter than 7 days.

4. Refusal to initiate preliminary verification proceedings justified by the fact that the activity covered by the notification referred to in Article 12f(1)-(4) is not subject to the provisions of Articles 12a-12k, is made by way of a decision of the inspection authority, which may not be appealed.

5. Within 30 working days from the date of initiating the preliminary verification procedure, the inspection authority shall issue:

1) a decision on refusal to initiate control proceedings and no objection to the acquisition or achievement of a significant stake or the acquisition of dominance, or

2) a decision on the initiation of control proceedings if:

a) the entity submitting the notification referred to in Article 12f(1)-(4) has not completed formal deficiencies in the notification or documents or information attached to the notification within the prescribed period, or the requested entity has not submitted information or documents at the request of the inspection authority, or

b) there are grounds justifying further examination of the notified intention to acquire or attain a significant stake or to acquire dominance or to acquire or to attain a significant stake or to acquire dominance from the point of view of public security or public policy.

6. The decision referred to in section 5 point 2 may not be appealed.

7. In the case referred to in paragraph 5(2)(a), in the course of the control proceedings, paragraph 3 shall apply accordingly.

8. A decision in a case initiated in accordance with paragraph 5 point 2 shall be issued no later than within 120 days from the date of initiation of the inspection proceedings, and shall be delivered no later than within 7 working days from the date of its issuance, except for the case referred to in Article 8 paragraph 2. The provision of Article 9(5), second sentence, shall apply *mutatis mutandis*.

9. The time limit for issuing the decision referred to in paragraph 8 shall be suspended until the date on which the deficiencies referred to in paragraph 3 have been remedied.

10. If the administrative court annuls the decision on the merits of the case decided in the control proceedings or the decision ending the control proceedings, the time limit for issuing the decision referred to in paragraph 8 runs from the date on which the final judgment of the administrative court was delivered to the control authority.

11. The entity submitting the notification referred to in Article 12f(1) and (2) shall be obliged to refrain from performing the action covered by the notification until the expiry of the period within which the decision should be issued. A legal act covered by the notification referred to in Article 12f(1)-(4) may be performed provided that no objection is raised.

#### **Art. 12i.**

1. Before issuing the decision referred to in Article 12h(8), the inspection authority may request the entity submitting the notification referred to in Article 12f(1)-(4) to provide additional written explanations regarding the information or documents referred to in Article 12g within a specified period, not shorter than 7 days.

2. The time limit for issuing the decision referred to in Article 12h(8) shall be suspended until the date of receipt by the inspection authority of the explanations referred to in paragraph 1.

#### **Art. 12j.**

1. The inspection authority, by way of a decision, shall object to the acquisition or achievement of a significant stake or the acquisition of dominance over a protected entity within the meaning of Article 12d, including in the case of indirect or subsequent acquisition, if:

1) the entity submitting the notification referred to in Article 12f(1)-(4) has not completed formal deficiencies in the notification or documents or information attached to the notification within the prescribed period, or the requested entity has not submitted information or documents at the request of the inspection authority, or

2) the entity submitting the notification referred to in Article 12f(1)-(4) has not provided additional written explanations within the time limit set by the inspection authority, or

3) in connection with the acquisition or achievement of a significant stake or the acquisition of dominance, there is at least a potential threat to public order or public security of the Republic of Poland or public health in the Republic of Poland – taking into account Article 52(1) and Article 65(1) of the Treaty on the Functioning of the European Union and Article 4(2) of the Treaty on European Union, or

4) it is not possible to determine whether the buyer has the citizenship of a Member State - in the case of natural persons or has held or has had for at least two years from the day preceding the notification

or natural persons or has held or has had for at least two years from the day preceding the notification of the registered office in the territory of a Member State - in the case of entities other than natural persons, or

(5) the acquisition or achievement of a significant stake or dominance may have a negative impact on projects and programmes of interest of the European Union.

2. In the case of a notification referred to in Article 12f(3), the inspection authority shall, by way of a decision, declare inadmissible the exercise of the rights attached to the shares of the protected entity acquired in the cases referred to in Article 12c(7), second sentence, if the condition or conditions specified in paragraph 1 are met.

3. The inspection authority, in the event of initiating proceedings ex officio, by way of a decision, shall determine the admissibility of exercising the rights attached to the shares of the protected entity in a manner not exceeding significant participation, in the case of achieving a significant participation in the protected entity, if in the course of the proceedings it was not possible to determine on the basis of which activities the entity achieved a significant participation.

4. The decision of the inspection authority may be appealed to the administrative court.

#### **Art. 12k.**

1. Acquisition or achievement of a significant stake or acquisition of dominance accomplished:

1) without submitting the notification referred to in Article 12f(1), (2) or (4), or

2) despite the issuance of the decision on objection referred to in Article 12j(1) – is invalid, unless the decision referred to in Article 12j(3) has been issued.

2. In the case of:

1) failure to submit the notification referred to in Article 12f(3), or

2) issue a decision referred to in Article 12j(2) of the - shares of a protected entity acquired in the cases referred to in Article 12c(7) may not be used to exercise voting rights or other rights, except for the right to dispose of such shares.

3. In the event of issuance of a decision referred to in Article 12j(3), voting rights and other rights may be exercised from the shares of a protected entity, except for the right to dispose of shares which give the entitled person less than 10% of the total rights vested in the partners, shareholders or other participants of the protected entity.

4. Resolutions of shareholders or shareholders' meetings or the general meeting of a company which is a protected entity, adopted in violation of the provisions of sections 1-3 are invalid, unless they meet the requirements of a quorum and a majority of votes cast without taking into account invalid votes. The right to bring an action for declaring invalid a resolution of shareholders or a meeting of shareholders or a general meeting is also vested in the supervisory authority. The provisions of Article 252 and Article 425 of the Act of 15 September 2000 – the Code of Commercial Companies shall apply accordingly. The deadline for challenging a resolution is suspended for the duration of the proceedings ending with the issuance of the decision referred to in Article 12j(2) or (3).

5. If the invalidity of the transaction referred to in paragraph 1 concerns transactions performed in the cases referred to in Article 12c(7), the registry court competent for the protected entity shall ex officio delete the entries in the relevant register based on the invalid transaction. If, as a result of making these entries, other entries have been made, the court or registry courts shall take appropriate actions for entries inadmissible due to the applicable regulations, in accordance with the provisions of the Act of 20 August 1997 on the National Court Register.

6. In the case referred to in paragraph 2, the provisions of Article 12(6) and (7) shall apply mutatis mutandis.

#### **Article 13 [Tasks and members of the Consultative Committee]**

1. A Consultative Committee shall be established as an advisory body to the controlling body.

2. The tasks of the Consultative Committee include providing advice to the controlling body in the scope covered by the Act, in particular:

1) presenting, within the time limit specified by the inspection body, a recommendation including factual and legal justification for the legitimacy of issuing the decisions referred to in Article 11 or Article 12(6);

2) presentation of opinions on matters specified by the inspection body.

3. The Consultative Committee is composed of representatives of:

1) the Prime Minister;

2) the minister competent for public administration;

2a) the minister competent for state assets;

3) the minister competent for energy;

4) the minister competent for economy;

5) the minister competent for maritime economy;

6) (1) minister competent for the management of energy resources;

7) the minister competent for computerization;

7a) the minister in charge of climate;

- 8) the minister competent for culture and protection of national heritage;
- 9) the Minister of National Defence;
- 10) the minister competent for agriculture;
- 11) the minister competent for the environment;
- 12) the minister competent for transport;
- 13) the minister competent for internal affairs;
- 14) the minister competent for foreign affairs;
- 15) the minister competent for inland navigation;
- 16) the Head of the Internal Security Agency;
- 17) the Head of the Foreign Intelligence Agency;
- 18) the Head of the Military Counterintelligence Service;
- 19) the Head of the Military Intelligence Service;
- 20) the President of the Office of Electronic Communications;
- 21) the President of the Energy Regulatory Office;
- 22) Director of the Government Centre for Security.

4. A member of the Consultative Committee may be a person who has a security clearance authorizing access to classified information with the "secret" clause.

5. Members of the Consultative Committee are appointed and dismissed by the Prime Minister, at the same time indicating the Chairman of the Consultative Committee.

#### **Article 14 [Organisation of the work of the Consultative Committee]**

1. The work of the Consultative Committee is managed by the Chairman of the Consultative Committee.

2. The Consultative Committee adopts resolutions in order to carry out the tasks specified in the Act. In the event of an equal number of votes cast for and against the resolution, the vote of the Chairman of the Consultative Committee is decisive.

3. The costs of the Consultative Committee are covered from the state budget, the part of which is managed by the control body.

4. The Consultative Committee adopts in the form of a resolution the organizational regulations specifying the manner of its work.

5. The organizational service of the Consultative Committee is provided by the Chancellery of the Prime Minister.

#### **Article 14a. [Contact Point for the Implementation and Application of EU Rules on the Screening of Foreign Direct Investment into the Union]**

1. A contact point for the implementation and application of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union is hereby established (OJ L 2019, p. EU L 79, 21.03.2019, p. 1), hereinafter referred to as the "contact point".

2. The minister competent for economy runs a contact point and is responsible for providing an annual report and information on the application of the Act, prepared on the basis of information provided by the control authorities.

3. The minister competent for economy shall determine, by way of a regulation, the detailed scope of tasks of the contact point and the manner of their implementation, as well as the manner of providing substantive, organizational and legal, technical, office and office services to the contact point, taking into account the need to ensure effective transmission of notifications, explanations, information, opinions and comments, and the obligation to timely submit the annual report and information on application of the law.

#### **Article 14b. [Information provided through the contact point]**

1. The inspection authority shall provide notifications, explanations and information and receive opinions and comments through the contact point.

2. An annual report and information on the application of the law shall be provided through the contact point.

#### **Art. 14c.**

(repealed).

#### **Art. 14d.**

(repealed).

#### **Art. 14e.**

(repealed).

#### **Art. 14f.**

(repealed).

#### **Art. 14g.**

(repealed).

#### **Art. 14h.**

(repealed).

**Art. 14i.**

(repealed).

**Article 15 [Financial penalty for acquisition or achievement of a significant stake or acquisition of dominance without filing a notification]**

1. Whoever, without lodging a notification, acquires or achieves a substantial participation or an - is subject to a fine of up to PLN 100,000,000 or imprisonment from 6 months to 5 years, or both of these penalties together.

2. The penalty specified in paragraph 1 shall be imposed on anyone who commits an act specified in paragraph 1, acting on behalf or in the interest of a legal person or an organizational unit without legal personality.

**Article 16 [Financial penalty for failure to submit a notification of indirect acquisition and for failure to notify of a significant stake in a company]**

1. Whoever, being obliged by statute or contract to deal with the affairs of a subsidiary, knowing about the acquisition made in the cases referred to in Article 3(6), fails to submit a notification - is subject to a fine of up to PLN 10,000,000 or imprisonment from 6 months to 5 years, or both of these penalties together.

2. The same penalty shall be imposed on whoever, acting at the general meeting or the meeting of shareholders of a company which is a protected entity, exercises the rights attached to shares on behalf of an entity which, despite the obligation, has not notified about the achievement of a significant stake in the company, if the person knew or could have learned about this circumstance on the basis of the data made available under the Act.

**Article 16a.2 [Penalty for the acquisition or achievement of a significant stake or the acquisition of dominance over a protected entity made without filing a notification]**

1. Whoever, without submitting the notification referred to in Article 12f(1)-(4), acquires or achieves a significant participation or acquires dominance, shall be subject to a fine of up to PLN 50,000,000 or imprisonment from 6 months to 5 years, or both of these penalties jointly.

2. The same penalty shall be imposed on anyone who commits an act referred to in paragraph 1, acting on behalf of or in the interest of a legal person or an organizational unit without legal personality.

**Article 16b.3 [Penalty for failure to submit a notification on behalf of a subsidiary and for failure by the entity exercising the rights attached to the shares of a protected entity to notify on the achievement of a significant participation]**

1. Whoever, being obliged by statute or contract to deal with the affairs of a subsidiary, knowing about the acquisition made in the cases specified in Article 12c(7), fails to submit a notification, shall be subject to a fine of up to PLN 5,000,000 or imprisonment from 6 months to 5 years, or both of these penalties jointly.

2. The same penalty shall be imposed on whoever, acting at a meeting of the decision-making body of a protected entity or when adopting resolutions of shareholders of a protected entity, exercises rights from shares or stocks on behalf of an entity which, despite the obligation, has not notified about achieving a significant share in a protected entity, if it knew about this circumstance or could have learned about it on the basis of data made available under the Act.

**Art. 17.**

The Act of 2 July 2004 on the freedom of economic activity (Journal of Laws of 2015, item 584, as amended) is amended as follows: (amendments omitted).

**Art. 18.**

The Act of 9 June 2011 – Geological and Mining Law (Journal of Laws of 2015, item 196) is amended as follows: (amendments omitted).

**Art. 19.**

The Act enters into force 30 days after the date of publication (4) .

(1) Article 13(3)(6) amended by Article 40 of the Act of 15 May 2024 (Dz.U.2024.834) amending this Act as of 1 July 2024.

(2) Article 16a applies to acts committed within 60 months from 25 July 2020, in accordance with Article 89(3) of the Act (Journal of Laws 2020.1086).

(3) Article 16b applies to acts committed within 60 months from 25 July 2020, in accordance with Article 89(3) of the Act (Dz.U.2020.1086).

(4) The Law was promulgated on 31 August 2015.