

Hungary

Act LVII of 2018 on the control of foreign investments detrimental to the security interests of Hungary (1) (2018)

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Act LVII of 2018 on the control of foreign investments detrimental to the security interests of Hungary (1)

Effective 01/12/2021

1. Interpretative provisions

1. §

For the purposes of this Act

1. foreign investor:

(a) nationals of States outside the European Union, the European Economic Area and the Swiss Confederation, or legal persons or other entities incorporated in such States;

b) A legal entity registered in Hungary, in another member state of the European Union, in another member state of the European Economic Area, or in the Swiss Confederation that acquires ownership or influence as defined in Section 2 (1) in an economic company with a registered office in Hungary that engages in activities as defined in Section 2 (4), if the person who has majority influence in the legal entity, as defined by the Civil Code (hereinafter: Civil Code), is a citizen of a state outside the European Union, the European Economic Area, and the Swiss Confederation, or a legal entity or other organization registered in such a state.

2. acquisition: acquisition of ownership or influence, as defined in Section 2(1) and (2), in a business company with a registered office in Hungary that engages in the activities specified in Section 2(4), either by establishing a business association or through the acquisition of shares, as well as the establishment of a branch pursuant to Section 2(3).

2. Notification obligation of the foreign investor

2. §

(1) A foreign investor, in a business company with a registered office in Hungary that engages in the activities specified in Paragraph (4), may acquire ownership or influence either by establishing a business association or through the acquisition of shares:

(a) a direct or indirect ownership share exceeding 25% – or 10% in the case of a publicly traded company – or

(b) a controlling influence as defined by the Civil Code;

only after notifying the minister designated by government decree (hereinafter: minister) and receiving confirmation of acknowledgment of the notification.

(2) The notification obligation under paragraph (1) shall also apply if the acquisition of less than 25% by the foreign investor would result in the combined ownership of foreign investors exceeding 25% in the Hungarian company carrying out the activities specified in paragraph (4), with the exception of a public limited liability company.

(3) A branch may be established in Hungary by a foreign investor for the activity specified in paragraph (4) if the foreign investor

a) complies with the conditions laid down by law for the establishment of a branch in Hungary, and

(b) b) before establishing the branch, the foreign investor has fulfilled the notification obligation as per Paragraph (1) and the minister has confirmed acknowledgment of the notification.

- (4). The activities subject to notification pursuant to paragraphs 1 to 3 shall be:
- (a) manufacture of arms and ammunition and military equipment subject to authorisation;
 - (b) dual-use production,
 - (c) production of secret service equipment specified in the Government Decree on the detailed rules for licensing military technical activities and certifying enterprises,
 - (d) the provision of financial services as defined in the Act on Credit Institutions and Financial Enterprises and the operation of the payment system among ancillary financial services,
 - (e) services covered by the Electricity Act,
 - (f) services covered by the Natural Gas Supply Act,
 - (g) services covered by the Water Utility Act,
 - (h) services covered by the Electronic Communications Act,
 - (i) the establishment, development or operation of electronic information systems covered by the Act on Electronic Information Security of State and Local Government Bodies
 - (j) (2) insurance and reinsurance activities under Act LXXXVIII of 2014 on insurance activities and activities directly related to insurance activities subject to notification within the fields of activity, certain activities defined in the Government decree.
- (5)(3) Pursuant to subsection (4)(e) to (h), the Government may, in a decree issued under the authority of this Act, define activities carried out through the direct use of a national vital system component or a European vital system component as defined under the Act on the Identification, Designation and Protection of Vital Systems and Facilities.

3. § (4)

A foreign investor may acquire the right to use or operate (hereinafter collectively: operational rights) the infrastructures, equipment, and assets essential for carrying out the activities specified in points e)–h) of Section 2(4) only after notifying the minister and receiving confirmation of acknowledgment of the notification.

4. §

(1) The ownership of a foreign investor reaching the level specified in Paragraph 2(1)(a) or (2) or a business association operating under its influence as defined in Paragraph 2(1)(b) shall carry out the activities referred to in Paragraph 2(4) (hereinafter referred to as 'newly recruited activity') subject to notification to the Minister and acknowledgement of the notification after confirmation.

(2) The obligation under Paragraph (1) shall arise upon the registration in the commercial register of the activity specified in Paragraph 2(4) as the main activity or further field of activity of the company.

5. §

(1) The foreign investor shall notify the Minister in writing of the conclusion of a legal transaction for the acquisition of ownership or the right to operate, or the registration of the newly added activity in the commercial register, within the deadline specified in a government decree.

(2) In the notification, the foreign investor shall describe his or her economic activity and attach all documents establishing the ownership structure of the foreign investor and the legal persons holding shares in the foreign investor, as well as the beneficial owner as defined in accordance with the Act on the Prevention and Combating of Money Laundering and Terrorist Financing.

(3) The foreign investor shall provide data to the Minister within the deadline specified in a government decree on changes in data subject to notification.

(4) The Government shall lay down the detailed rules for notification, in particular the mandatory content and annexes of the notification, the deadline for filing and the detailed rules related to the obligation to provide data pursuant to Paragraph (3).

3. Procedure of the Minister

6. §

(1) The Government shall lay down the detailed rules of the Minister's procedure not regulated by this Act, in particular procedural deadlines.

(2) The Minister shall notify the foreign investor of the receipt of the notification immediately, but within a maximum of 8 days.

(3) Based on the notification, the minister examines whether the acquisition of ownership, operational rights, or the continuation of the newly undertaken activity by the foreign investor violates Hungary's security interests.

(4) (5) Upon receiving the notification, the minister promptly checks whether the notification complies with the requirements set out in Section 5 and, taking into account the observations of Member States under Article 6 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 (hereinafter: EU Regulation), as well as the opinion of the European Commission under Articles 6 or 8 of the EU Regulation, examines whether the circumstances specified in Paragraph (3) exist in relation to the foreign investor's acquisition of ownership, acquisition of operational rights, or the continuation of newly undertaken activities. The minister, no later than 60 days after receiving the notification — or within the timeframe specified in Paragraph (5), where applicable — shall:

(a) if the circumstances specified in Paragraph (3) do not exist, confirm acknowledgment of the notification in writing, or

(b) if the circumstances specified in Paragraph (3) do exist, prohibit the acquisition of ownership, the acquisition of operational rights, or the commencement of the newly undertaken activity by the foreign investor (hereinafter collectively: prohibitory decision).

(5) (6) In particularly justified cases, or if necessary for fulfilling the obligations defined in the EU Regulation, the minister may extend the duration of the review period specified in Paragraph (4) by up to 60 days. The foreign investor will be notified in writing of this extension before the initial 60-day period expires.

(6) (7) A prohibitory decision may be made in the case of a foreign investor as defined in Section 1, point 1(b), if it is established that the legal entity acquiring the ownership or influence specified in Section 2(1) or (2) in a business company with a registered office in Hungary, which engages in the activities specified in Section 2(4), was established or serves to conceal the circumstances specified in Paragraph (3), to hinder the review, or to circumvent the procedure defined in this law. This particularly applies if the legal entity does not carry out actual economic activities in the state where it is registered, and no evidence can be provided for the existence of sustained economic activities, such as economic facilities or employees.

(7) The Minister shall communicate its prohibition decision containing simplified justification to the foreign investor in writing.

(8) (8) A foreign investor and a business association established in Hungary pursuant to Paragraph 2(1) and (2) may challenge the prohibition decision in administrative proceedings on the grounds of violation of the essential rules of the procedure and in connection with the classification pursuant to Paragraph (6). The Budapest Regional Court has exclusive jurisdiction for the lawsuit.

(9) The court decides on the statement of claim in a simplified procedure. If the court finds that a violation has occurred, it annuls the decision and orders the minister to conduct a new procedure. Immediate legal protection is not available in such cases.

(10) The minister processes the foreign investor's personal data during the procedure and for the purpose of verifying the notification:

(a) In the case of a prohibitory decision, for 5 years following the submission of the notification, or for 5 years from the final conclusion of a judicial remedy procedure;

b) In the case of confirmation of acknowledgment of the notification, for the duration of the ownership share specified in Section 2(1)(a) or (3), the influence specified in Section 2(1)(b), the branch specified in Section 2(3), the operational rights specified in Section 3, or until the newly undertaken activity is deleted from the company register.

(11) Personal data processed pursuant to Paragraph (10) may be transferred by the Minister to bodies involved in accordance with the Government decree in order to carry out the procedure.

4. Relationship of the Minister's procedure with administrative procedures

7. §

(1) In procedures related to the authorization of the acquisition of ownership, as defined by government decree pursuant to Section 2(4), which fall under the obligation of notification according to this law, the condition for making a decision is the confirmation of acknowledgment of the notification according to this law.

(2) In the absence of the procedure specified in Paragraph (1), the condition for making a decision in procedures related to the authorization of activities, as defined by government decree pursuant to Section 2(4) and falling under the obligation of notification according to this law, is the confirmation of acknowledgment of the notification by the minister according to this law.

(3) The Government determines by decree the scope of procedures — related to the authorization of certain activities — for which the notification according to this law must be submitted.

(4) The minister communicates the prohibitory decision and the decision regarding the extension of the review period to the authority proceeding in the procedure specified in Paragraph (1) or (2), as indicated in the notification.

5. Certain legal consequences related to the Minister's action

8. §

(1) In the case specified in Section 2, a request for registration in the shareholder register or the member register of a business company with a registered office in Hungary can be submitted only with the confirmation of acknowledgment of the notification. In the case specified in Section 3, the contract regarding operational rights—unless otherwise provided by legislation related to activities subject to notification under this law—becomes effective on the day of acknowledgment of the notification.

(2) If the foreign investor has not fulfilled the notification obligation under this law, the minister has not confirmed acknowledgment of the notification, or the minister has issued a prohibitory decision, the contracting party cannot be registered in the shareholder register or listed in the member register, and cannot exercise any rights against the business company with respect to their shares.

(3) If the circumstances described in Paragraph (2) come to the attention of the business company with a registered office in Hungary after registration in the shareholder or member register, the foreign investor may no longer exercise their membership rights against the company after the company becomes aware of the situation.

(4) Any legal transaction aimed at acquiring operational rights that is concluded without fulfilling the notification requirement under this law, without the confirmation of acknowledgment of the notification, or in connection with which the minister has issued a prohibitory decision, is null and void. Legal proceedings related to the invalidity of such a transaction may be initiated by the minister or anyone with a legal interest in the matter.

(5) The newly undertaken activity affected by a prohibitory decision must be deleted from the company register.

9. §

(1) The fulfillment of the notification obligation under this law is monitored by the authority designated by government decree.

(2) If during the inspection under Paragraph (1), it is established that the foreign investor has not fulfilled their obligations under this law — including the failure to report changes in the prescribed data of the notification — the minister shall impose the fine specified in Section 10, and:

a) if the circumstances defined in Section 6(3) do not exist in relation to the foreign investor's acquisition of ownership, acquisition of operational rights, or continuation of the newly undertaken activity, the minister shall confirm acknowledgment of the notification in writing;

b) if the circumstances defined in Section 6(3) exist in relation to the foreign investor's acquisition of ownership, acquisition of operational rights, or continuation of the newly undertaken activity, and the provisions of Section 6(6) do not prevent it, the minister shall issue a prohibitory decision.

(3) In the case referred to in Paragraph 2, the Minister shall, in its decision pursuant to Paragraph (2)(b), give the foreign investor a maximum period of 3 months to sell its share in the company with its registered office in Hungary, to terminate its influence, to close the branch or to modify its field of activity. During the sale, the Hungarian state has a right of pre-emption.

(4) If the period specified in subsection (3) has expired without result, the Minister shall adopt a decision appointing the public body which, by the deadline specified in the decision, shall arrange for and on behalf of the foreign investor to sell the investor's share. During the sale, the Hungarian state has a right of pre-emption.

(5) In the case referred to in Section 3, the Minister shall, at the same time as his decision under subsection (2)(b), initiate legal proceedings concerning the invalidity of the legal transaction for the acquisition of operating rights.

(6) In the case referred to in Paragraph 4, the Minister shall, in his decision pursuant to Paragraph (2)(b), provide a period of 30 days for the deletion of the newly added field of activity affected by the prohibition decision from the scope of activities of the company established in Hungary.

(7) The provisions of Paragraph 6(4) and (5) shall apply mutatis mutandis to the time limit for verification under Subsection (1).

(8) (9) No administrative inspection or procedures aimed at establishing a violation due to failure to submit a notification under this law may be conducted if:

(a) 18 months have passed since the authority entitled to carry out the inspection became aware of the acquisition of ownership or operational rights,

b) 18 months have passed since the finalization of a decision that can be made in a procedure concerning the authorization of activities defined by government decree under Section 2(4) and falling under the notification obligation of this law, or

c) 18 months have passed since the registration of the newly undertaken activity in the company register, but no later than 5 years from the occurrence of the circumstances specified in points a) and b).

(9) In the case specified in Paragraph (2)(a), the provision in Section 6(10)(b) must be applied appropriately. Furthermore, in the case specified in Paragraph (2)(b), the deadline mentioned in the first sentence of Section 6(10)(a) shall be counted from the initiation of the inspection.

6. Obligation to pay fines

10. § (10)

(1) If a person fails to fulfill their obligations related to the notification under this law or the provision of data as specified in Section 5(3), the minister — after examining all the circumstances of the case — shall impose a fine:

a) in the case of a natural person foreign investor, from HUF 100,000 to HUF 1,000,000,

b) in the case of a legal person from HUF 1,000,000 to HUF 10,000,000 in case of a foreign investor to pay a fine.

2. No reduction in payment of the fine shall be granted.

(3) The fine shall constitute revenue for the State Budget.

6/A. (11) Financial commitment by the Government

10/A. § (12)

The Government may authorize the assumption of financial obligations, in a manner compatible with state aid rules, for the acquisition of ownership in a business company with a registered office in Hungary that engages in the activities defined in Section 2(4) by a citizen of a state within the European Union, the European Economic Area, or the Swiss Confederation, or by a legal entity or other organization registered in such a state — with particular regard to ownership acquisition directly or indirectly by an executive officer or employee of such a legal entity or other organization, or through an employee ownership program. Such financial obligations may include, in particular, state guarantees, sureties, state budget support, or loans provided under the Civil Code.

6/B. (13) Rules relating to the implementation of the EU Regulation

10/B. §

(1) The Minister shall take measures pursuant to Article 9(3) to (6) if justified pursuant to Article 7 of the EU Regulation.

(2) The body designated by the EU Regulation to exercise the rights and fulfil the obligations specified for the Member States shall exercise the personal data of a foreign investor or a person participating in a business association with its registered office in Hungary pursuant to Section 2(1) or (2) related to the control of foreign investments harming the security interests of the Hungary in accordance with the exercise of the rights specified in the EU Regulation for the Member States, or until the procedure under Articles 6 to 8 of the EU Regulation has been completed.

3. Personal data processed pursuant to paragraph 2 may be transferred to the national contact point referred to in Article 11(1) of the EU Regulation (hereinafter referred to as the national contact point).

4. Personal data processed pursuant to paragraph 2 shall be erased without delay after completion of the procedure pursuant to Articles 6 to 8 of the EU Regulation.

7. Final provisions

11 §

This Act enters into force on 1 January 2019.

12 §

The Government is authorized to lay down by decree

(a) provisions for the appointment of a Minister,(14)

b) within the scope of activities specified in Paragraph 2(4), activities subject to notification under this Act,(15)

c) the detailed rules regarding the notification of the acquisition of ownership by a foreign investor, the acquisition of operational rights by a foreign investor, the notification of newly undertaken activities, the minister's procedure in relation to the notification, the range of authorities that may be involved in the procedure, the procedure of the involved authorities, the data provision obligations of the foreign investor as specified in Section 5(3), as well as the authorities conducting the inspection and the detailed rules for the inspection (16)

d) The procedures for the authorization of activities for which the application of Section 7(2) is applicable. (17)

(e) the criteria for determining the fine referred to in Article 10 and the detailed rules for the procedure for imposing it. (18)

(f) (19) the body designated for the purposes of this law to carry out the tasks of the national contact point and the detailed procedural rules governing the implementation of Articles 6 to 10 of the EU Regulation for the purposes of this law.

13 §

The provisions of this law shall apply following the entry into force of this law to:

- a) legal transactions established in accordance with Section 2(1)–(3) and Section 3,
- (b) business companies intending to engage in newly undertaken activities, and
- (c) ongoing administrative procedures and initiated inspections.

14. §(20)

This law establishes the provisions necessary for the implementation 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.

1- A törvényt az Országgyűlés a 2018. október 2-i ülésnapján fogadta el. A kihirdetés napja: 2018. november 11.

2- A 2. § (4) bekezdés j) pontját a 2021: XCIX. törvény 299. §-a iktatta be.

3- A 2. § (5) bekezdése a 2020: CXXI. törvény 104. §-ával megállapított szöveg.

4- A 3. § a 2020: CXXI. törvény 110. § a) pontja szerint módosított szöveg.

5- A 6. § (4) bekezdése a 2020: CXXI. törvény 110. § b) pontja szerint módosított szöveg.

6 - A 6. § (5) bekezdése a 2020: CXXI. törvény 110. § c) pontja szerint módosított szöveg.

7- A 6. § (6) bekezdése a 2020: CXXI. törvény 110. § d) pontja szerint módosított szöveg.

8- A 6. § (8) bekezdése a 2020: CXXI. törvény 110. § e) pontja szerint módosított szöveg.

9 - A 9. § (8) bekezdése a 2020: CXXI. törvény 105. §-ával megállapított szöveg.

10- A 10. § (1) bekezdése a 2020: CXXI. törvény 106. §-ával megállapított szöveg.

11- A 6/A. alcímet (10/A. §) a 2018: CXXI. törvény 153. §-a iktatta be.

12- A 10/A. §-t a 2018: CXXI. törvény 153. §-a iktatta be.

13- A 6/B. alcímet (10/B. §) a 2020: CXXI. törvény 107. §-a iktatta be.

14- Lásd a 246/2018. (XII. 17.) Korm. rendeletet.

- 15- Lásd a 246/2018. (XII. 17.) Korm. rendeletet.
- 16- Lásd a 246/2018. (XII. 17.) Korm. rendeletet.
- 17- Lásd a 246/2018. (XII. 17.) Korm. rendeletet.
- 18 - Lásd a 246/2018. (XII. 17.) Korm. rendeletet.
- 19- A 12. § f) pontját a 2020: CXXI. törvény 108. §-a iktatta be.
- 20- A 14. §-t a 2020: CXXI. törvény 109. §-a iktatta be.

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