

Hungary

Government Decree No 561/2022 of 23 December 2022 on the different application of certain provisions necessary for the protection of Hungarian companies for economic purposes during the state of emergency (2022)

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Government Decree No 561/2022 of 23 December 2022 on the different application of certain provisions necessary for the protection of Hungarian companies for economic purposes during the state of emergency

Effective 13/01/2024 –

The Government, acting within its original legislative competence defined in Article 53(1) of the Fundamental Law, taking into account Sections 80 and 81 of Act XCIII of 2021 on the Coordination of Defence and Security Activities, within its competence defined in Article 15(1) of the Fundamental Law, shall order the following:

1. §

In view of the armed conflict and humanitarian catastrophe in Ukraine, and in order to prevent and manage their consequences in Hungary, during the state of emergency declared by Government Decree 424/2022 (X. 28.) on the declaration of a state of emergency and certain emergency regulations:

- a) Sections 276–292 of Act LVIII of 2020 on transitional rules related to the end of the state of emergency and on epidemiological preparedness,
- b) Paragraphs (1) and (2) of Section 160 of Act XCIX of 2021 on transitional rules related to the state of emergency, and
- c) Government Decree 289/2020 (VI. 17.) on the determination of activities necessary for the economic protection of business companies with a registered office in Hungary, shall be applied differently, according to the provisions of this decree.

§ 2

For the purposes of this Regulation

1. State interest: A public interest related to the safety and operability of networks and equipment, as well as the continuity of supply, or an economic-strategic interest that is essential from a national economic perspective, which is not regulated by sectoral European Union and national law;

2. foreign investor:

(a) A legal entity or other organization registered in Hungary, another member state of the European Union, a state party to the Agreement on the European Economic Area (hereinafter: EEA Agreement), or the Swiss Confederation, that acquires ownership or influence as specified in the strategic company defined in point 3, provided that the person with majority influence in the legal entity or organization, as defined by the Civil Code (Act V of 2013, hereinafter: Civil Code), is a citizen of a state outside the European Union, the European Economic Area, or the Swiss Confederation, or a legal entity or other organization registered in such a state. b) A citizen of a state outside the European Union, the European Economic Area, or the Swiss Confederation, or a legal entity or other organization registered in such a state.

(b) is a national of a State outside the European Union, the European Economic Area and the Swiss Confederation, or a legal person or other entity incorporated in such a State.

Confederation, or a legal person or other entity incorporated in such a State,

3. strategic company: A limited liability company, a privately held joint-stock company, a publicly held joint-stock company, or a higher education institution with a registered office in Hungary, whose main or additional activity falls within a sector of strategic significance as defined in Annex 1, particularly in the energy, transportation, or communication sectors, as well as sectors defined under Article 4(1)(a)–(e) of Regulation (EU) 2019/452 of the European Parliament and Council of 19 March 2019, which establishes a framework for the screening of foreign direct investments into the Union.

3. §

(1) In the case of a strategic company, if the contract, the unilateral legal declaration, or the company's resolution (hereinafter collectively: legal transaction) results in the circumstances specified in Paragraphs (2)–(4), a notification to the minister responsible for domestic economy (hereinafter: minister) is required in connection with the concluded legal transactions:

(a) the transfer, free of charge or for consideration, of ownership interests in a strategic company by any title of transfer of ownership, including contributions;

(b) capital increase in a strategic company,

(c) transformation, merger or division of a strategic company,

(d) the issue of bonds convertible, eligible for subscription or convertible by a strategic company; (e) establishment of usufruct rights on shares or shares of strategic companies.

(2) In the sectors specified in Paragraph 2, point 3, a notification is required if the total value of the investment reaches or exceeds 350 million forints for:

(a) the foreign investor as defined in Paragraph 2, point 2(a), as well as a legal entity or other organization registered in another member state of the European Union, a state party to the EEA Agreement, or the Swiss Confederation, or a citizen of another member state of the European Union, a state party to the EEA Agreement, or the Swiss Confederation, if:

(aa) the acquisition, directly or indirectly, of a holding in the strategic company on the basis of an operation referred to in points (a) to (c) of paragraph 1 (hereinafter referred to as 'acquisition'),

(ab) acquiring, directly or indirectly, on the basis of a unilateral legal declaration pursuant to paragraph 1(d), ownership of a bond the conversion, conversion or subscription of shares pursuant thereto (hereinafter referred to as 'acquisition of ownership of a debenture'), or

(ac) the acquisition, directly or indirectly, of usufruct of shares or shares constituting an equity pursuant to a contract or unilateral legal declaration pursuant to point (e) of paragraph 1 (hereinafter collectively referred to as 'the acquisition of usufruct') directly or indirectly acquires a majority influence in the strategic company in accordance with the Civil Code, or

(b) a foreign investor within the meaning of Paragraph 2(2)(b) acquires, directly or indirectly a shareholding of at least 5% in the strategic company, or at least 3% in the case of a public limited liability company, as a result of the acquisition, acquisition of ownership of the bond or the acquisition of usufruct.

(3) The notification obligation also applies if the foreign investor as defined in Section 2, point 2(b) acquires a 10%, 20%, or 50% stake in a strategic company operating in the sector specified in Section 2, point 3, as a result of the acquisition of ownership, acquisition of bond ownership, or acquisition of usufruct rights. Additionally, the notification obligation applies if, as a result of the foreign investor's acquisition of ownership, bond ownership, or usufruct rights, the combined shareholding of foreign investors in the strategic company operating in the sector specified in Section 2, point 3 — excluding publicly traded joint-stock companies — exceeds 25%.

(4) A notification to the minister and the approval of the notification are required in the case of the transfer, granting of usage or operational rights, or the pledging of infrastructures, equipment, and assets essential for the activities specified in Section 2, point 3 (hereinafter collectively referred to as operational rights), if the operational rights are acquired by a foreign investor or a legal entity or organization in which the foreign investor directly or indirectly holds majority influence as defined by the Civil Code.

(5) (1) The provisions of this decree do not apply if the legal transaction specified in Paragraph (1), which involves a legal entity or other organization with a foreign-registered office, simultaneously results in the circumstances specified in Paragraphs (2)–(4) indirectly for a subordinate, related enterprise of the foreign-registered legal entity or other organization, as defined by Act C of 2000 on accounting, where the subordinate related enterprise qualifies as a strategic company.

4. §

(1) The minister conducts the procedure under this section based on a notification in Hungarian or a certified Hungarian translation. In case of a violation of the notification obligation, the procedure may also be conducted based on a subsequent notification or ex officio.

2. The notification must be submitted to the minister within 10 days of the conclusion of the legal transaction for:

(a) the acquisition of ownership,

- (b) the acquisition of bond ownership,
- (c) the acquisition of usufruct rights, or
- (d) the acquisition of operational rights.

3. The notification must be submitted by:

- (a) the foreign investor,
 - (b) legal entity or other organization registered in another member state of the European Union, a state party to the EEA Agreement, or the Swiss Confederation,
 - (c) a citizen of another member state of the European Union, a state party to the EEA Agreement, or the Swiss Confederation,
 - (d) in the case of Paragraph (2)(d), if the operational rights are not acquired by the foreign investor, the legal entity or organization acquiring the operational rights and the foreign investor jointly (hereinafter collectively: notifier).
- (4) Legal representation shall be compulsory in proceedings before the Minister.
- (5) The notification, signed by the notifier and accompanied by an electronic signature by the legal representative as required by law, must be submitted electronically, addressed to the minister.
- (6) The notification obligation does not affect other notification or authorization obligations related to the acquisition of ownership, acquisition of usufruct rights, acquisition of bond ownership, or acquisition of operational rights as defined by other laws.

5. §

(1) The notification must include:

(a) For the notifier who is a natural person:

(aa) personal identification data and their address in Hungary, or in the absence of a Hungarian address, their foreign residential or contact address,

(ab) nationality, and

(ac) contact details for electronic or postal communication,

(b) For the notifier who is a legal entity or other organization:

(ba) name, registered office, and—if applicable—the address of its branch in Hungary,

(bb) the state responsible for its official registration,

(bc) contact details for electronic or postal communication, and

(c) The details of the legal representative acting on behalf of the notifier.

2. The following must be electronically attached to the notification:

(a) A detailed description of the legal transaction,

(b) A detailed description of the legal transaction related to the acquisition of ownership, acquisition of bond ownership, acquisition of usufruct rights, acquisition of operational rights, and all relevant and material circumstances,

(c) Documents generated in connection with the legal transaction, including the document containing the legal transaction and related corporate documents, which allow for the determination of the ownership structure of the foreign investor and the legal entities holding a share in the foreign investor, as well as the ultimate beneficial owner as defined by the law on the prevention of money laundering and terrorist financing. All documents forming the basis of the legal transaction related to the acquisition of ownership, acquisition of bond ownership, acquisition of usufruct rights, and acquisition of operational rights, as well as related corporate documents and resolutions, must also be included.

§ 6

In connection with the notification, the Minister shall communicate electronically with the legal representative of the applicant and, if necessary, with the applicant at the contact details indicated in the notification. If neither the legal representative nor the applicant can be reached at the contact details indicated in the application, the consequences shall be borne by the applicant.

§ 7

The Minister shall send a written notification of receipt of the notification without delay, but not later than within eight days, by electronic means, which shall include:

(a) the date of receipt of the notification,

(b) the name and legal representative of the applicant,

(c) whether ownership of a bond, usufruct or right to operate has been acquired, and

(d) A notice indicating that the acknowledgment only concerns the receipt of the notification and cannot be considered as acknowledgment of the notification itself.

8. §

(1) After receiving the notification, the minister shall immediately examine whether:

(a) whether the application satisfies the conditions laid down in paragraph 5,

(b) whether, in the event of the acquisition of property, ownership of the bond, usufruct or acquisition of the right to operate, there is a prejudice or threat to Hungary State interest, public security or public order, or the possibility of their occurrence, in particular with regard to security of supply of basic social needs, in accordance with Article 36 of the Treaty on the Functioning of the European Union; Article

52(1) and Article 65(1),

(c) whether the reporting person is controlled, directly or indirectly, by any government, including public bodies or the armed forces, of a Member State which is not a member of the European Union, either through its ownership structure or through substantial funding;

(d) whether the reporting person has been involved in any activity threatening security or public order in any Member State of the European Union, or

(e) whether there is a serious risk that the reporting person will engage in activities that constitute a criminal offence.

(2) On the basis of the examination referred to in subsection (1)(a), the Minister may request the applicant, a natural person other than the notifier for at least 3 days, a maximum of 10 days, or a natural person other than the notifier to provide additional data and information not provided in the application and its annexes, or to submit the original or certified copies of the additional documents not annexed to the application, together with a certified translation into Hungarian in the case of a foreign language document; a legal person or other entity, subject to a time limit of not more than 20 days.

(3) If the request under subsection (2) fails, the Minister shall examine the application on the basis of the documents submitted.

9 §

(1) No later than 30 working days from the receipt of the notification — or within the deadline specified in Paragraph (2) — if the circumstances defined in Section 8(1)(b)–(e):

(a) do not exist, the minister shall confirm acknowledgment of the notification in writing, or

b) do exist, the minister shall prohibit the acquisition of ownership, the acquisition of bond ownership, the acquisition of usufruct rights, or the acquisition of operational rights (hereinafter collectively: prohibitory decision).

(1a) In the case described in Section 10/A, and contrary to Paragraph (1), the minister, no later than 60 working days from the day the information in Section 10/A(4) is sent to the notifier — or within the deadline specified in Paragraph (2):

a) if the Hungarian state does not exercise its preemptive right and the circumstances defined in

Section 8(1)(b)–(e) do not exist, the minister shall confirm acknowledgment of the notification in writing,

b) if the Hungarian state does not exercise its preemptive right and the circumstances defined in

Section 8(1)(b)–(e) do exist, the minister shall issue a prohibitory decision,

c) if the Hungarian state exercises its preemptive right, the minister shall terminate the procedure related to the notification in accordance with Section 10/A(7).

(2) (3) In particularly justified cases, the minister may extend the review period defined in Paragraph (1) and in Paragraphs (1a)(a) and (b) by up to 15 days, and shall notify the notifier in writing before the 15-day period expires.

10. §

(1) The Minister is required to provide justification for the prohibitory decision. The justification must indicate which interest specified in Section 8(1)(b) is harmed or endangered by the acquisition of ownership, acquisition of bond ownership, acquisition of usufruct rights, or acquisition of operational rights, and which point of Section 8(1) was violated. The justification must also inform the applicant about the rules for legal remedies against the prohibitory decision as specified in this decree.

2. The justification for the prohibitory decision must not contain classified information.

10/A. § (4)

(1) If the sale and purchase transaction specified in Section 3(1)(a) and resulting from Section 3(2) and (3) involves a strategic company registered under the TEÁOR code 3511'08 for electricity generation — as either a main or additional activity — related to solar power plants within the sector specified in row 8 of the table in Annex 1, the provisions in Paragraphs (2)–(8) must also be applied for evaluating the notification of the transaction.

(2) For the transactions specified in Paragraph (1), the Hungarian state has a preemptive right ahead of all other eligible parties, which is exercised through the Hungarian National Asset Management Company (MNV Zrt.) within 60 working days from the date of sending the notification specified in Paragraph (4) to the notifier.

(3) In addition to the contents specified in Section 5(1), the notification must indicate that it falls under the scope of Paragraph (1).

(4) If the minister determines during the review of the notification that the transaction in question requires notification under this decree and qualifies as a sale and purchase transaction under Paragraph (1), and if the annexes specified in Section 5(2) — including the sale and purchase agreement conditional on the exercise of the preemptive right — are fully available, the minister shall inform the notifier that the transaction qualifies as a sale and purchase transaction under Paragraph (1), and thus the Hungarian state has a preemptive right under Paragraph (2).

(5) Simultaneously with informing the notifier under Paragraph (4), the minister shall forward the documentation received during the notification process to the minister responsible for energy policy

documentation received during the notification process to the minister responsible for energy policy, with a response deadline of 15 working days, for a review of whether the exercise of the preemptive right under Paragraph (2) is justified.

(6) In the response, the minister responsible for energy policy shall make a recommendation regarding the exercise or waiver of the preemptive right and shall inform both the minister and the MNV Zrt. within the deadline specified in Paragraph (5), attaching the necessary documentation for exercising the preemptive right to the recommendation sent to MNV Zrt.

(7) If the minister receives a recommendation to exercise the preemptive right, the minister shall terminate the procedure related to the notification of the transaction, explicitly stating that the minister responsible for energy policy deems the exercise of the preemptive right justified.

(8) If the minister responsible for energy policy recommends waiving the preemptive right within the deadline specified in Paragraph (5), or if no recommendation is made within the specified deadline, the minister shall proceed to evaluate the notification on its merits.

(9) The provisions of Paragraphs (1)–(8) do not apply to solar power plants classified as household-size small power plants as defined in Section 3, point 24 of Act LXXXVI of 2007 on Electricity.

11. §

(1) The applicant may challenge the prohibition decision on the grounds of violation of the essential rules of the procedure and in connection with the classification pursuant to Section 10 in non-contentious administrative proceedings. The Budapest Regional Court has exclusive jurisdiction for the proceedings.

2. Legal representation shall be compulsory in proceedings.

3. The court shall decide on the application within 30 days of receipt of the application. If the court finds that there has been an infringement, it sets aside the decision and orders the Minister to take new action. There is no place for immediate legal protection in the proceedings.

(4) The minister processes the personal data of the notifier 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 any judicial remedy procedure.

(b) In the case of confirmation of acknowledgment of the notification, for the duration of the foreign investor's ownership rights, usufruct rights, or bond ownership, but for no longer than 5 years.

12. §

(1) The Minister shall monitor compliance with the notification obligation.

(2) If it is determined during the inspection specified in Paragraph (1) that the party obligated to notify has not fulfilled the notification obligation under this decree, the minister shall impose a fine in accordance with Section 13, and if:

a) the circumstances specified in Section 8(1)(b)–(e) are not present in connection with the acquisition of ownership, acquisition of bond ownership, acquisition of usufruct rights, or acquisition of operational rights, the minister shall confirm acknowledgment of the transaction in writing,

b) the circumstances specified in Section 9(1)(b)–(e) are present in connection with the acquisition of ownership, acquisition of bond ownership, acquisition of usufruct rights, or acquisition of operational rights, the minister shall issue a prohibitory decision.

(3) The deadline for the inspection specified in Paragraph (1) shall be governed by the provisions of Section 9(1) and (2), with the modification that the deadline shall be calculated from the date the minister becomes aware of the transaction, rather than from the date of the notification.

(4) No administrative inspection or procedure aimed at determining a violation due to failure to notify may be conducted if more than 6 months have passed since the minister became aware of the acquisition of ownership, acquisition of usufruct rights, acquisition of bond ownership, or acquisition of operational rights, but no later than 5 years after the occurrence of the circumstances.

13. §

(1) Anyone who violates their obligations related to the notification, if their action does not constitute a criminal offense, and in addition to the invalidity specified by this decree, may be subject to an administrative fine imposed by the minister, taking into account all the circumstances of the case, up to twice the value of the transaction, but:

a) in the case of a foreign investor who is a natural person, the fine must exceed 100,000 forints,

(b) in the case of a foreign investor who is a legal entity or other organization, the fine must exceed 1% of the net revenue of the strategic company involved in the acquisition of ownership, bond ownership, usufruct rights, or operational rights in the last financial year.

2. No payment relief may be granted for the payment of the fine.

14. §

The provisions of Act CL of 2016 on General Administrative Procedure concerning language use and the use of interpreters, inquiries, data management, general rules of communication, representation, documents, the calculation of deadlines, applications, requests for justification, objections to deemed receipt of notification, and cost exemptions shall apply to the notification, with the exceptions specified in

receipt or service, and cost exemptions shall apply to the notification, with the deviations specified in this decree. Additionally, where the General Administrative Procedure Act refers to the "client," it shall be understood to mean the "notifier" for the purposes of applying this decree.

15. §

(1) The Minister shall keep a register of confirmations of acknowledgement of the notification and of prohibition decisions.

(2) The data recorded in the register referred to in Subsection (1) shall be deleted after the expiry of the period specified in Paragraph 11(4).

§ 16

In the performance of his or her duties under Sections 8(1) and 12(1), the Minister may address a request to any state body which is obliged to comply with the request within 5 days.

17. §

(1) In the cases specified in Section 3(1)(a)–(c) and Section 3(2) and (3), a request for registration in the shareholder register or member register of the strategic company can only be submitted if the confirmation of acknowledgment of the notification is obtained. In the absence of the confirmation of acknowledgment or if the minister has issued a prohibitory decision, the contracting party cannot be entered into the shareholder register or the member register, and no rights can be exercised in the strategic company based on the shares involved in the transaction.

(2) In connection with the legal transaction specified in Section 3(1), the strategic company is required to submit a statement in the form of a private document with full probative force, declaring that it qualifies as a strategic company, and must attach the confirmation of acknowledgment of the notification to the application for company registration or change registration, in accordance with Act V of 2006 on Public Company Information, Company Registration, and Voluntary Dissolution (hereinafter: Ctv.). In the case specified in this paragraph, the deadlines for submitting the application specified in Section 50(5) and Section 57(3) of the Ctv. shall begin on the day following the receipt of the confirmation of acknowledgment of the notification by the minister.

(3) If any data is entered in the company register concerning the strategic company or the affected company in the absence of the confirmation of acknowledgment of the notification or despite the minister's prohibitory decision—including cases where the prohibitory decision is made after the data has been entered based on a subsequent notification or an investigation initiated ex officio within the time frame specified in Section 12(4)—such data shall be deleted by the court of registration in the course of a legality supervision procedure.

18. §

(1) A contract, unilateral legal declaration, or company resolution is null and void if:

- (a) it violates the provisions of this decree, or
- (b) the minister has issued a prohibitory decision regarding it.

(2) In the case specified in Paragraph (1)(a), the contract, unilateral legal declaration, or company resolution becomes valid retroactively to the time of its issuance if, as a result of the review under Section 12, the minister determines that the contract, unilateral legal declaration, or company resolution would not have been prohibited, thereby eliminating the cause of invalidity with a subsequent decision.

3. In the event that the cause of invalidity is eliminated retroactively, the parties are obliged to act as if the contract, unilateral legal declaration, or company resolution had been valid from the time of its issuance.

19 §

This decree shall enter into force on the day following its promulgation.

20. §

(1) The provisions of this decree shall apply to the legal transactions specified in Section 3(1) that are concluded after the entry into force of this decree.

(2) Ongoing procedures concerning notifications submitted before the entry into force of this decree shall be conducted according to the provisions in effect on the day before the entry into force of this decree.

(3) During the minister's subsequent review of the notification obligation under Section 12, compliance with the regulations in effect at the time of the transaction's conclusion shall be examined.

(4) For determining the legal consequences under Section 18(1)(a), the regulations in effect at the time of the transaction's conclusion shall apply.

Annex 1 to Government Decree No 561/2022 of 23 December 2022

1 Sector/Branch

2. Chemical sector:

-Coke production, petroleum processing

-Manufacture of chemicals and products

-Pharmaceutical manufacturing

3 Commercial facilities:

3. Commercial activities:

- Trade and repair of motor vehicles and motorcycles
- Retail trade (except motor vehicles, motorcycles)
- Wholesale trade services (except vehicles, motorcycles)

4. Communication sector:

- Publishing activities
- Production of films, videos, television programmes, sound recordings
- Programming, broadcasting
- Telecommunications

5. Critical industrial sector (including electronics, mechanical engineering, steel and transport equipment):

- Manufacture of computer, electronic and optical products
- Manufacture of electrical equipment
- Manufacture of machinery and equipment
- Manufacture of road vehicles
- Manufacture of other vehicles
- Production of basic metal
- Manufacture of fabricated metal products

6. Defence industry: Manufacture of weapons and ammunition; Manufacture of military fighting vehicles

7. Dams: Construction of an aquatic installation

8. Energy sector: Electricity, gas, steam supply, air conditioning

9. Emergency services: National defense; Public security, public order; Fire protection

10. Financial sector: Financial intermediation; Insurance, reinsurance, pension funds

11. Food and agriculture: Food production; Beverage industry; Manufacture of tobacco products; Crop production, animal husbandry, wildlife management and related services: Sylviculture: Fisheries, fisheries; Leasing and operating owned, rented real estate – only if it is also carried out in relation to agricultural and forestry land according to Section 5, Section 17 of Act CXXII of 2013 on the Turnover of Agricultural and Forestry Lands

12. Government facilities: Public administration, defence; compulsory social security

13. Health:

- Human health care
- Residential, non-hospitalization
- Social work without residential accommodation

14. Information technology:

- Information technology services
- Information service

15. Nuclear sector: Manufacture of nuclear fuel

16. Building industry:

- Construction of buildings
- Construction of other structures
- Special construction

17. Water supply and sewage supply:

- Water production, treatment and supply
- Wastewater collection and treatment

18. Waste management: Waste management, Remediation, other waste treatment

19. Building materials industry: Manufacture of non-metallic mineral products

20. Transport, transport, logistics

- Land and pipeline transport
- Water transport
- Air transport
- Storage and transport ancillary activities
- Postal, courier activities

21. Medical device manufacturing: Medical device manufacturing

22. Tourism: Accommodation services, Hospitality

23. Administrative and service support activities: Temporary work

24. Critical raw material:

- Coal mining
- Oil and gas extraction
- Mining of metallic ore
- Other mining
- Mining service

25. Education: Tertiary education; Activities complementary to education

1- A 3. § (5) bekezdése az 566/2023. (XII. 14.) Korm. rendelet 1. §-ával megállapított szöveg.

2- A 9. § (1a) bekezdését az 566/2023. (XII. 14.) Korm. rendelet 2. §-a iktatta be.

3 - A 9. § (2) bekezdése az 566/2023. (XII. 14.) Korm. rendelet 4. §-a szerint módosított szöveg.

4- A 10/A. §-t az 566/2023. (XII. 14.) Korm. rendelet 3. §-a iktatta be.