

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
INVESTMENT COMMITTEE**

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FREEDOM OF INVESTMENT PROCESS:

Poland's Act on the control of certain investments

(Notification by Poland)

15 March 2016

In late 2015, Poland has notified the Organisation of the introduction of a measure concerning the monitoring of certain investment operations, including investment operations by foreigners [DAF/INV/RD(2016)1]. In March 2016, Poland notified the Organisation of changes to this legislation, which are reflected in this revised version of the notification.

This notification will support discussions of the measure at Freedom of Investment Roundtable 24 on 15 March 2016 under item 7 of agenda DAF/INV/A(2016)1/REV1.

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**POLAND'S ACT ON THE CONTROL OF CERTAIN INVESTMENTS
– NOTIFICATION BY POLAND –**

1. On 1st October 2015, the Act of 24th July 2015 *on Control of Certain Investments* announced in the Journal of Laws of the Republic of Poland on 31st August 2015 under item 1272 entered into force. This law introduces to the Polish legal system a mechanism of State control of investments concerning transactions of acquiring shares and property rights, as well as acquiring enterprises or organised parts thereof, in entities subject to protection. This Act was amended by the Act of 22 December 2015 amending the Government Administration Branches Act and certain other laws (Journal of Laws of 2015, item 2281) and subsequently by the Act of 29 January 2016 amending the Act on the Control of Certain Investments (Journal of Laws of 2016, item 149) and by the Act of 11 February 2016 amending the Government Administration Branches Act and certain other laws (the Act of 11 February 2016 was passed by the Parliament, and is awaiting the signature of the President of the Republic of Poland and the publication in the Journal of Laws).

2. The Act specifies:

1. the principles and mode of control of certain investments consisting in the acquisition of:

- a. shares,
- b. rights and responsibilities of a partner entitled to manage the affairs of a partnership or the right to represent a partnership,
- c. an enterprise or an organised part thereof

that results in acquiring or gaining significant participation, or acquiring a dominant stake in a company/partnership being an entity subject to protection;

2. sanctions for non-compliance with the obligations arising out of the Act.

3. The protection provided for in the Act may be applied to an entity involved in economic activity the objects of which are:

- a. generation of electric energy,
- b. production of motor gasoline or diesel fuel,
- c. pipeline transportation of petroleum, motor gasoline, or diesel fuel,
- d. warehousing and storage of motor gasoline, diesel fuel, natural gas,
- e. underground storage of petroleum or natural gas,
- f. production of chemicals, fertilisers and chemical products,
- g. production of and trade in explosives, weapon and ammunition, as well as products and technology for military or Police purposes,
- h. regasification or liquefaction of natural gas,

- i. handling of petroleum and products thereof in sea ports,
 - j. distribution of natural gas, or electric energy,
 - k. telecommunications activity, or
 - l. transmission of gaseous fuels. or
 - m. production of rhenium, or
1. extraction and processing of metal ores used in the manufacture of explosives, weapons and ammunition, as well as products and technologies used by Armed Forces and Police.

4. The list of entities subject to protection may be determined by the Council of Ministers by a regulation (until the regulation enters into force the restrictions arising out of the Act do not apply). In drafting such a list, the Council of Ministers will have to take into account the market share of a given entity, the scale of the business activity carried out, the actual and sufficiently serious threats to the fundamental interests of the society associated with the carrying out of activity by the entity subject to protection, and the lack of possibility to introduce a less restrictive measure, and the necessity, with regard to an entity operating in a given sector, to apply investment control on the principles set out in the Act in order to ensure the protection of public policy or public security referred to in Art. 52(1) and Art. 65(1) of the Treaty on the Functioning of the European Union, as well as the time reasonable for applying those measures.

5. The substantive scope of the Act primarily includes the control of transactions consisting in acquiring or gaining significant participation or a dominant stake in entities subject to protection (both indirectly and directly), and as a result of consequential acquisition whose effects are tantamount to the effects of the acquisition of significant participation or a dominant stake. The Act provides for a list of situations in which an obligation will arise to notify the control body (the minister competent for the matters of the State Treasury or the minister competent for energy) of the intent to perform activities subject to control, as well as formal and substantive prerequisites for the control body to submit an objection to the planned transaction. The validity of the objection submitted due to the application of a specific prerequisite (one or several prerequisites) will be subject to control of an administrative court within the examination of a complaint against the decision concerning the objection.

6. The obligations arising out of the Act apply to all entities acquiring or gaining significant participation or a dominant stake in entities subject to protection, regardless of their nationality (both domestic and foreign entities, including entities from EU Member States).

7. The legislator provides for the establishment of a Consulting Committee acting as an advisory body to the control body. The task of the Consulting Committee will be to provide the control body with recommendations concerning the validity of objections and to present opinions on matters determined by the control authority. The Consulting Committee will be composed of representatives of: the Minister competent for foreign affairs, the Minister of National Defence, the Minister competent for the interior, the Minister competent for the economy, the Minister competent for the matters of the State Treasury, the Minister competent for the environment, the Minister competent for agriculture, the Minister competent for public administration, the Minister competent for transportation, the minister competent for digitization, the minister competent for mineral deposit management, the minister competent for energy, the minister competent for maritime economy, the Head of the Internal Security Agency, the Head of the Foreign Intelligence Agency, the Head of the Government Security Centre, the Head of the Military Counter-Intelligence Service, the Head of the Military Intelligence Service, the President of the Energy Regulatory Office, and the President of the Office of Electronic Communications. The unit supporting the minister competent for the State Treasury will provide organisational support for the Consulting Committee.

8. By introducing the mechanism of the control of investments concerning transactions of acquiring shares and property rights in entities subject to protection, the *Act on Control of Certain Investments* aims to reinforce the protection of public policy and public security within the meaning of Art. 52(1) and Art. 65(1) of the Treaty on the Functioning of the European Union, through introducing information obligations and control tools with respect to entities operating in the strategic sectors of the economy of the Republic of Poland. So far, there have been no regulations in the Polish legal system providing for the control of acquiring shares of companies/partnerships with respect to the impact on public policy and public security. Such regulations are in force in a number of states including Germany, Austria, or the United States.

9. The inclusion in the internal law of regulations enabling the control of purchasing assets and shares of companies operating in economic sectors which are key due to the public order and public security is dictated by the state's obligation to have legal instruments providing for the possibility of interference in situations where there is a risk of losing control over entities necessary to provide security in the country. The Act on the control of certain investments does not discriminate against any investors. The Act secures the interests of the Polish state in the protected entities, which influence the public order and public security. It is particularly important in the light of the Russian-Ukrainian conflict, which is under way in a country neighbouring with the Republic of Poland.

10. The control of acquiring shares and property rights, and acquiring enterprises or organised parts thereof in entities subject to protection operating in economy sectors of vital importance for public policy and public security provided for in the aforesaid Act, is a measure proportionate to and appropriate for the intended purpose. The control is to apply only to selected entities of a given industry, and the intent to carry out ownership changes of considerable importance.

11. The overriding requirement to protect public policy and public security provides grounds for the State's measures interfering with the free market mechanism in the form of free trade of shares and property rights, as well as enterprises or organised parts thereof in entities subject to protection. The interests of the State and the common good require that control measures be undertaken in the case of individually specified entities operating in strategic sectors of the economy.

12. It should be emphasised however that the control mechanisms provided for in the aforesaid Act do not preclude the freedom of contract and the freedom of economic activity. Only the performance of certain activities without required notification to the public authorities, or the submission of an objection to a transaction by a public body will result in precluding the freedom of contract.

13. The introduction of the *Act on Control of Certain Investments* is reasonable due to the matters related to public policy and public security. The measure is proportionate to and appropriate for the purpose of its application, and is non-discriminatory. The introduction of a less restrictive measure is not possible in the present economic reality.

14. Since December 2015, as indicated in point 1, three amendments have been introduced to the Act on the Control of Certain Investments, including two which have entered into force, and one which is awaiting the signature of the President of the Republic of Poland and the publication in the Journal of Laws.

- a. The Act of 22 December 2015 amending the Government Administration Branches Act and certain other laws (Journal of Laws of 2015, item 2281) introduced a change of one of the representatives in the Consultation Committee resulting from changes in the government administration branches, i.e. the Minister competent for communications has been replaced by the Minister competent for digitization.

- b. The most important changes introduced by the second amendment, i.e. by the Act of 29 January 2016 included:
- the extension of the scope of industries in which entities subject to protection operate to industries indicated in point III sections 13 to 14 of this material. The lack of these industries in the original text of the Act did not allow for extending protection to entities which are crucial to the security of supplies of materials in the production chain of arms and military equipment and, in particular used in the manufacture of aircrafts, as well as various types of ammunition and combat measures;
 - the extension of competencies of the Consultation Committee, which is primarily aimed at providing the control authority with the possibility of obtaining advice in the scope covered by the Act and the extension of the catalog of cases in which the Consultation Committee is to provide its opinion, along with a factual and legal justification;
 - the extension of the composition of the Consultation Committee to branches included in the amended law, i.e. the minister competent for energy, the minister competent for maritime economy and the minister competent for mineral deposit management.

15. It should be noted that the above amendments to the Act did not change the basic model, objectives and the justification for the introduction of the mechanism of control of investments, and therefore the arguments and opinions in favour of the introduction of the Act on the Control of Certain Investments remain valid.

- c. The most important changes which are to be introduced by the Act of 12 February 2016 (the Act will enter into force 14 days after its publication in the Journal of Laws, which will take place after it is signed by the President of the Republic of Poland):
- the introduction of a second control authority in the form of the minister competent for energy. After this Act enters into force, there will be a duality in terms of control authorities, i.e. the minister competent for the State Treasury will be the control authority for the entities operating in the sectors indicated in point III sections 6, 7, 11, 13 and 14 of this material, while the minister competent for energy will be the control authority for the entities operating in the sectors indicated in point III sections 1-5 , 8-10 and 12 of this material. This change results from the creation of a new branch in the Government Administration Branches Act (the minister competent for energy). The consequence of this was the necessity of introducing appropriate changes transferring the tasks and competencies related to energy and energy resources to the minister competent for energy;
 - indication that it is the minister competent for the State Treasury who appoints the members of the Consultation Committee and that this body ensures the organisational support of the Consultation Committee. This change stems from the fact that after the creation of a second control authority in the form of the minister competent for energy it was necessary to indicate a specific body responsible for the appointment of the members and ensuring the organisational support of the Consultation Committee.

16. As in the case of the changes introduced by the Act of 29 January 2016 the above amendments of the Act did not change the basic model, objectives and the justification for the introduction of the mechanism of control of investments, and therefore the arguments and opinions in favor of the introduction of the Act on the Control of Certain Investments remain valid.

ANNEX: ACT OF 24 JULY 2015 ON THE CONTROL OF CERTAIN INVESTMENTS (AS AMENDED) – UNOFFICIAL TRANSLATION¹

Article 1. The Act defines:

- 1) the rules and procedures related to the control of some investments subject to the acquisition of:
 - a) shares or stocks,
 - b) overall rights and obligations of a shareholder authorised to run a company or to represent a partnership,
 - c) an enterprise or its organised part– resulting in the purchase or gaining the significant participation, or acquiring the domination over a company representing an entity subject to protection;
- 2) sanctions for the infringement of the obligations arising from the Act.

Article 2. The aim of the control referred to in Article 1 paragraph 1 is to protect the public order or public security referred to in Article 52 paragraph 1 and Article 65 paragraph 1 of the Treaty on the Functioning of the European Union, taking into consideration Article 4 paragraph 2 of the Treaty on the European Union.

Article 3.1. Whenever in the Act reference is made to:

- 1) parent undertaking – it shall mean an entity:
 - a) holding, directly or indirectly through other entities, the majority of the total number of votes in the governing bodies of other entity, inter alia, pursuant to agreements with other persons; or
 - b) that is authorised to appoint or dismiss the majority of members of the governing bodies or supervisory boards of other entity; or
 - c) in case of which more than a half of management board members of other entity simultaneously act as members of the management board, proxies or persons holding managerial positions of the first entity, or other subsidiary of such first entity; or
 - d) that holds equity share in a partnership with the value of at least 50% of the value of all the contributions paid to this company; or
 - e) that has the capacity to decide on the directions of other entity's activity, in particular, under the agreement providing for the management of such an entity or transfer of profit by such an entity;
- 2) subsidiary – it shall mean an entity in relation to which other entity is the parent undertaking, whereas all subsidiaries of such a subsidiary shall be also considered as subsidiaries of such a parent undertaking;
- 3) total number of votes – shall mean the total number of votes attached to all stocks or all shares of the entity;
- 4) significant participation – shall mean the situation making influence on the activities of an entity possible, through:
 - a) holding shares or stocks carrying, in the period of the last 2 years, at least 20% of the total number of votes, calculated as the weighted average in this period, in the decision-making authority of the entity, in particular, at the general meeting or meeting of shareholders, whereas the changes in the shareholding, including the disposal of a part of shares or stocks in this period and their acquisition, shall not affect defining of the significant participation; or
 - b) holding equity share in a partnership with the value of at least 20% of the value of all the contributions paid to this company;

¹ Journal of Laws of the Republic of Poland, Warsaw, 31 August 2015, Item 1272; amendments Journal of Laws of the Republic of Poland of 2015, item 2281.

- 5) entity subject to protection – shall mean an entity included in the specification referred to in the regulations issued pursuant to Article 4 paragraph 2;
 - 6) control authority – shall mean:
 - a) the minister competent for Energy - to the extent specified in Article 4 paragraph 1 points 1-5, 8-10 and 12,
 - b) the minister competent for the State Treasury - to the extent specified in Article 4 paragraph 1 points 6, 7, 11, 13 and 14.
2. Whenever in the Act reference is made to a company, domination over a company and significant participation in a company, it shall also mean, respectively, a general partnership, a partnership, a limited partnership, a limited joint-stock company, the domination over any such company and the significant participation in any such company. In such as case, the domination relationship and the significant participation shall be also determined through ascertaining that the parent undertaking is authorised to make decisions on the company-related issues independently or jointly with other persons.
3. The acquisition of the domination shall mean achieving or exceeding 50% of the total number of votes in the decision-making authority of the entity subject to protection, in particular, at the general meeting or the meetings of shareholders, or the interest in the share capital, through the purchase of stocks or shares, or rights attached to stocks or shares, or the acquisition of stocks or shares.
4. The acquisition or gaining of the significant participation shall mean the purchase of shares or stocks, or rights attached thereto, or the acquisition of stocks or shares, in the number providing for achieving or exceeding, respectively, 20%, 25%, 33% of the total number of votes in the general meeting or meetings of shareholders, or interest in the share capital, gaining of the significant participation upon the lapse of a period referred to in paragraph 1 (4)(a), as well as the purchase of an enterprise or its organised part.
5. The acquisition or gaining of the significant participation, or the acquisition of the domination shall also mean cases when:
- 1) the acquisition or gaining of the significant participation in an entity subject to protection, or the acquisition of the domination over such an entity is executed by the parent undertaking, including, inter alia, pursuant to agreements concluded with the parent undertaking or the subsidiary of such an entity,
 - 2) the acquisition or gaining of the significant participation in an entity subject to protection, or the acquisition of the domination over such an entity is executed by the entity whose articles of association or other act regulating its functioning contains provisions related to the right to its assets in case of winding-up of the entity, or other form of its liquidation, including the right to dispose of such assets without their acquisition,
 - 3) the acquisition or gaining of the significant participation in an entity subject to protection, or the acquisition of the domination over such an entity is executed on one's own behalf, but also on instructions of other entity, including, under the execution of the 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 2014 paragraph 94, as amended²),
 - 4) the acquisition or gaining of the significant participation in an entity subject to protection, or the acquisition of the domination over such an entity is executed by the entity with which other entity concluded the agreement whose subject is the transfer of powers to exercise the voting right or other rights to stocks or shares, or rights arising from stocks or shares of an entity subject to control,
 - 5) the acquisition or gaining of the significant participation in an entity subject to protection is executed by a group of two or more persons, if at least one of these persons is the entity with whom other entity concluded the agreement related to the acquisition of stocks or shares of a company subject to protection, or at least the acquisition of stocks or shares of companies established in the Republic of Poland, if the subject of such an agreement is the transfer of powers to exercise the voting right or other rights to stocks or shares, or rights arising from stocks or shares of an entity subject to control,
 - 6) the acquisition or gaining of the significant participation in a company being an entity subject to protection, or the acquisition of the domination over such a company is executed by an entity acting pursuant to a written or oral agreement related to the acquisition by the parties to such an agreement of stocks or shares in

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The amendments to the uniform text to the aforementioned Act were announced Journals of Laws of 2014 items 586 and of 2015 items 73, 978, 1045, 1223 and 1260.

an entity subject to control, or the acquisition of stocks or shares of companies established in the Republic of Poland – hereinafter referred to as an "indirect acquisition".

6. The indirect acquisition shall also mean cases when, as a result of a transaction other than specified in paragraphs 3–5 the entity acquires the status of a parent undertaking towards an entity holding at least 20% of the total number of votes at the general meeting or the meetings of shareholders, or the interest in the share capital of a company being an entity subject to protection, or being a parent undertaking towards a company being an entity subject to protection, or holding the significant participation therein, or towards an entity holding a legal title to an enterprise of such a company or its organised part. If the indirect acquisition takes place as a result of regulation of a state other than the Republic of Poland, in particular, as a result of the merger of companies established outside the territory of the Republic of Poland, or the purchase, or acquisition of stocks or shares of a company established outside the territory of the Republic of Poland, being a parent undertaking towards a company being an entity subject to protection, the provisions of the Act shall apply in the scope of the effects defined in the first sentence.

7. The acquisition or gaining of the significant participation, or the acquisition of the domination referred to in paragraph 3 shall also mean cases when an entity holds stocks or shares, or rights arising from stocks or shares of a company being an entity subject to protection, including also in cases defined in paragraph 5, in the number providing for reaching or exceeding, respectively, 20%, 25%, 33%, 50% of the total number of votes in the general meeting or meetings of shareholders, or interest in the share capital, or being a parent undertaking towards a company being an entity subject to protection, or acquires the significant participation, in the case of:

- 1) the redemption of shares or stocks of a company being an entity subject to protection, or the acquisition of treasury shares or stocks of such a company,
- 2) the division of a company being an entity subject to protection, or its merger with other company,
- 3) the amendments to the company deed or articles of association of a company being an entity subject to protection, in the scope of privileged shares or stocks, establishing or abolishing of entitlements allocated to individual partners or shareholders of such a company,
- 4) the cancellation of stocks or documents of stocks of a company being an entity subject to protection – hereinafter referred to as a "consequential acquisition".

8. The significant participation within the meaning of paragraph 1 (4)(a) shall be also determined if it occurs as a result of holding shares or stocks, or rights arising from the stocks or shares referred to in paragraph 5, irrespective of the number and type of transactions concluded between them.

Article 4.1. An economic operator engaged in economic activity in the scope of:

- 1) generation of electricity; or
- 2) production of motor gasoline or diesel fuel; or
- 3) pipeline transport of oil, motor gasoline or diesel fuel; or
- 4) warehousing and storage of motor gasoline, diesel fuel, natural gas; or
- 5) underground storage of oil or natural gas; or
- 6) production of chemicals, fertilisers and chemical products; or
- 7) manufacturing and trade of explosives, weapons and ammunition as well as products and technologies used by Armed Forces and Police; or
- 8) regasification or liquefaction of natural gas; or
- 9) transshipment of oil and its products in sea ports; or
- 10) distribution of natural gas or electricity; or
- 11) telecommunication services; or
- 12) transmission of gaseous fuel; or
- 13) production of rhenium, or
- 14) extraction and processing of metal ores used in the manufacture of explosives, weapons and ammunition, as well as products and technologies used by Armed Forces and Police;

– may be recognised as an entity subject to protection.

2. The Council of Ministers may define, by regulation, a list of entities subject to protection, taking into consideration the significant market share of a given entity, the scale of activity conducted, the real and sufficiently serious threats to the fundamental social interests, associated with conducting of activity by the entity to be covered by protection, as well as the lack of the possibility to introduce a less restrictive measure and the requirement, in relation to the entity operating in a given sector, to apply the control of the investment under the rules defined in the Act, for the purpose of ensuring the protection of public order or public security referred to in Article 52 paragraph 1 and Article 65 paragraph 1 of the Treaty on the functioning of the European Union, as well as the time justifying the application of such measures.

Article 5.1. An entity intending to acquire or gain the significant participation, or acquire the domination, shall be bound to notify the control authority, on a case by case basis, of its intention to do so, unless such an obligation lies with other entities, in accordance with paragraphs 2-5.

2. In case of indirect acquisition the notification shall be lodged by an entity referred to in Article 3 paragraph 5 that has exercised the transaction defined in this provision.

3. In case of indirect acquisition referred to in the second sentence of Article 3 paragraph 6, the notification shall be lodged by a subsidiary referred to in the first sentence of Article 3 paragraph 6.

4. In case of acquisition or gaining the significant participation referred to in Article 3 paragraph 1(4) and paragraph 4 in the company being subject to protection, the notification of the control authority is required. The notification shall be submitted by the entity that has acquired or gained the significant participation.

5. In case of the consequential acquisition, the notification shall be submitted by the company being the entity subject to protection.

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

- 1) prior to concluding any agreement generating the obligation to acquire, or prior to exercising any other legal act, or legal acts, leading to the acquisition; or
- 2) in case of the call to subscribe for shares of a public company within the meaning of the provisions of the Act of 29 July 2005 on public offering and conditions governing the introduction of financial instruments to the organised trading, and on public companies (Journal of Laws of 2013 item 1382 and of 2015 item 978 and 1260), being the entity subject to protection – prior to the announcement of the call.

7. In cases referred to in paragraph 3 or 4, the notification shall be given within 7 days following the day of acquiring or gaining the significant participation, or acquiring the domination over a company being the entity subject to protection, and if such an effect cannot be defined, in particular, if the provisions relevant for the activity referred to in the second sentence of Article 3 paragraph 6 do not stipulate the entry to the relevant register - within 30 days following the date of such an activity.

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

- 1) prior to holding the general meeting or the meeting of shareholders of the company being the entity subject to protection, or prior to adopting the shareholders' resolution; or
- 2) prior to exercising of other activity generating the effects referred to in Article 3 paragraph 7.

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

Article 6.1. While lodging the notification, the entity provides information concerning:

- 1) directly or indirectly held shares or stocks, or rights arising from shares or stocks of a company being subject to protection, as well as parent undertakings of such an entity and agreements concluded by such an entity as well as on factual or legal status applicable to such an entity, enabling other entities to exercise their rights arising from the shares or stocks of a company being subject to protection, or to exercise the rights of the parent entity of the company being subject to protection, or providing other entities with the right to acquire or take up shares of stocks of the company being subject to protection;
- 2) the method of execution of the intention referred to in the notification;
- 3) the professional, economic or statutory activity of the entity submitting the notification, in particular, the subject of such activity, its scope and site, as well as its progress hitherto, and the education of the entity

submitting the notification if such an entity is a natural person, or the education of persons included in the management and supervisory bodies, in case of an entity other than a natural person;

- 4) the capital group the entity submitting the notification belongs to, in particular, its structure, entities included therein, legal and factual capital, financial and personal relations with other entities; and in case the entity submitting the notification is not a commercial company – information on entities authorised to decide on the composition of its management and supervisory bodies, entities authorised to receive payment from its assets and entities authorised to its assets in case of its winding up or other form of its liquidation;
- 5) the economic and financial situation of the entity submitting the notification;
- 6) the conviction for an offence or fiscal offence, proceedings conditionally discontinued and disciplinary proceedings concluded with penalty, as well as other concluded administrative and civil proceedings concerning the entity submitting the notification, or persons referred to in paragraphs 3 and 4;
- 7) pending penal proceedings, proceedings in cases related to fiscal offence, proceedings on imposing sanctions for the infringement of the obligations related to the capital market or environmental protection, tax proceedings conducted against the entity submitting the notification, or persons referred to in paragraphs 3 and 4, or against such persons, or proceedings connected with the activity of such an entity or such persons, as well as on the lodged motions for extradition and the European Arrest Warrants issued against such entities and persons;
- 8) measures undertaken prior to the submission of the notification, aimed at acquiring shares or stocks, or rights arising from shares or stocks, or taking up shares or stocks of a commercial company established on the territory of the Republic of Poland, powers connected with such share, methods and sources of financing the acquisition of shares or stocks, or rights arising from shares or stocks, or taking up shares or stocks, agreements concluded in connection with such measures and activities undertaken in agreement with other entities;
- 9) intention of the entity submitting the notification with respect to the company being the entity subject to protection, its related investment plans, its long-term activity plans, foreseen changes in its organisation, in particular, a merger with other company, financing of its activity, its dividend policy and employment policy.

2. The Council of Ministers shall define, by regulation, the documents to be attached to the notification in order to confirm the information specified in paragraph 1, taking into consideration ensuring the requirement of detailed verification of the information provided by the entity submitting the notification.

3. In justified cases, in particular, if the governing law does not provide for the execution of documents referred to in paragraph 2, the entity submitting the notification or a person the case refers to may submit, to replace such documents, the relevant declaration containing the required information, and provides documents constituting its confirmation in accordance with the governing law, including the relevant explanation.

4. In case of the consequential acquisition, the provisions of paragraph 1 shall not apply. The company referred to in Article 5 paragraph 5, while submitting the notification, provides information concerning:

- 1) all partners or shareholders known to it;
- 2) the method of execution of the intention referred to in the notification.

Article 7.1. The notification and the documents attached thereto shall be prepared in Polish or in a foreign language, including the official translation into Polish executed by:

- 1) a sworn translator entered to the list maintained by the Minister of Justice;
- 2) a sworn translator authorised to execute such translations in member states of the European Union or the European Economic Area (EEA);
- 3) a consul, whereas the following documents shall be also recognised as documents translated by the consul:
 - a) documents in a foreign language translated into Polish by a translator in the host country and authenticated by the consul,
 - b) documents translated from a rare language to a language known to the consul, and subsequently translated by the consul into Polish.

2. Foreign official documents should be validated by a consul of the Republic of Poland prior to the translation unless otherwise provided in the relevant international agreement where the Republic of Poland is a party.

Article 8.1. The entity submitting the notification not domiciled or habitually resident, or established in the Republic of Poland, or other European Union member state, if it has not appointed a proxy domiciled in the Republic of Poland to conduct the procedure related to the notification, shall be bound to indicate the agent for service in the Republic of Poland.

2. In case of failure to fulfil the obligation referred to in paragraph 1, any written submissions during the course of the proceedings shall be put on file of the case with the effect of having been served, excluding the decision concluding the proceedings concerning the notification, of which the entity submitting the notification should be instructed prior to its exercising of the first activity.

Article 9.1. The proceedings shall be initiated as a result of lodging the notification. In cases referred to in Article 3 paragraphs 6 and 7 and Article 5 paragraph 4, a control authority may institute the proceedings ex officio.

2. In case of identifying any formal shortages in the notification, or in case of failure to attach the required information or documents thereto, the control authority shall summon the entity submitting the notification to supplement any such shortages within the time limit indicated, not shorter than 7 days.

3. Should the ex officio proceedings be initiated and in cases referred to in Article 3 paragraph 6, the control authority shall summon the relevant entity to submit information or documents referred to in Article 6. The entity receiving the summons, shall become a party to the proceedings upon its delivery. The provisions of Article 7 and Article 8 shall apply accordingly.

4. The refusal to initiate the proceedings justified by the fact that the activity covered by the notification is not subject to the act, shall be effected by means of the decision of the control authority. The right to apply for re-examination of the case and the right to appeal against the decision of the control authority to the administrative court is also granted to the company being the subject to protection, the notification refers to. The decision shall be served upon such a company.

5. The decision concerning the case initiated in accordance with paragraph 1 shall be issued, at the latest, within 90 days following the receipt of the notification or initiation of the ex officio proceedings, whereas it shall be delivered, at the latest, within 2 business days following its issuance, excluding the case referred to in Article 8 paragraph 2. The aforementioned time limits shall be deemed maintained if, prior to their expiry, the decision is dispatched in the post office of the operator appointed within the meaning of the Act of 23 November 2012 - the Postal Law (Journal of Laws item 1529).

6. In case of waiver of the decision by the administrative court on account of the essence of the case or pursuant to the provision concluding the proceedings in the case, the time limit of 90 days, referred to in paragraph 5, shall run from the day on which the legally effective judgement of the administrative court was served upon the control authority.

7. The time limits defined in paragraph 5 shall be suspended in the period running from the day on which the summons referred to in paragraphs 2 or 3 is served until the day of submission of all required information and documents.

8. The entity submitting the notification shall be bound to refrain from exercising the activity covered by the notification until the lapse of the time limit within which the decision should be issued.

9. The legal act covered by the notification may be exercised provided that no objection has been raised.

Article 10.1. Prior to issuing of the decision referred to in Article 9 paragraph 5 the control authority:

1) shall address the Consultation Committee referred to in Article 13, to issue, within the prescribed time-limit, a recommendation in the scope of the legitimacy of the decisions referred to in Article 11 or Article 12 paragraph 6;

2) may apply to the entity submitting the notification, to provide additional written explanations with regard to the information or documents referred to in Article 6, within the prescribed time-limit of no less than 7 days.2. The time limit referred to in Article 9 paragraph 5 shall be suspended until the day of receipt of the explanations referred to in paragraph 1(2) by the control authority.

Article 11.1. The control authority, by the relevant decision, shall raise the objection against the acquisition of shares or stocks, or rights arising from shares or stocks, or taking up the stocks or shares of a company being the entity subject to protection, resulting in the acquisition or gaining the significant participation, or acquisition of the domination over a company being the entity subject to protection, or against the acquisition

of an enterprise or its organised part from a company being the entity subject to protection, including, in case of the consequential acquisition, if

- 1) the entity submitting the notification failed to supplement, within the determined time limit, formal shortages in the notification or the documents or information attached thereto, or the entity summoned by the control authority failed to submit the requested information or documents, or
- 1a) the entity submitting the notification failed to provide additional written explanations within the time limit set by the control authority, or
- 2) it is justified by the goal of:
 - a) ensuring the implementation of obligations imposed on the Republic of Poland related to safeguarding the independence and integrity of the territory of the Republic of Poland, assuring the freedom and human and civil rights, citizens' security and environmental protection,
 - b) preventing social or political activities or phenomena making it impossible or difficult for the Republic of Poland to fulfil its obligations arising from the North Atlantic Treaty, executed in Washington D.C. on 4 April 1949, as well as to participate in the North Atlantic Treaty Organisation,
 - c) preventing social or political activities or phenomena that may potentially distort the foreign relations of the Republic of Poland,
 - d) ensuring, without prejudice for the provisions of letter a, public order or security of the Republic of Poland, as well as covering the indispensable needs of the population, in order to protect population health and life

– considering Article 52 paragraph 1 and Article 65 paragraph 1 of the Treaty on the Functioning of the European Union and Article 4 paragraph 2 of the Treaty on the European Union.

2. The control authority, in case of the notification referred to in Article 5 paragraph 3, by the relevant decision, determines the inadmissibility of exercising the rights arising from shares or stocks of a company being the subject to protection, acquired in cases defined in the second sentence Article 3 paragraph 6, in case of the fulfilment of the condition or conditions defined in paragraph 1.

3. The control authority, in case of initiating the ex officio proceedings, by the relevant decision, determines the admissibility of exercising the rights arising from shares or stocks of a company being the subject to protection, in the manner which would not go beyond the significant participation, in case of gaining the significant participation in a company being the subject to protection, in cases defined in Article 3 paragraph 1(4) and in paragraph 4, if in the course of the proceedings it was impossible to determine the activities based on which the entity gained the significant participation.

4. By issuing the decisions referred to in paragraphs 1-3, the control authority takes into account the assumptions of the state policy in areas of social or economic life with significant importance for the implementation of the goals defined in paragraph 1. The economic interest of the state may not provide basis for the decision of the control authority.

5. To proceedings conducted pursuant to the provisions of the Act, to the extent not settled herein, the provisions of the Act of 14 June 1960 – Code of Administrative Procedure shall apply (Journal of Laws of 2013 item 267, as amended³);

Article 12.1. The acquisition or gaining of the significant participation exercised:

- 1) under the failure to submit the notification referred to in Article 5 paragraphs 1, 2, 4 or 5; or
- 2) despite raising of the objection referred to in Article 11 paragraph 1

– shall be invalid unless the decision referred to in Article 11 paragraph 3 has been issued.

2. In case of:

- 1) failure to submit the notification referred to in Article 5 paragraph 3; or
- 2) issuing the decision referred to in Article 11 paragraph 2

³

The amendments to the uniform text to the aforementioned Act were announced Journals of Laws of 2014 items 183 and 1195 and of 2015 items 211 and 702.

– neither the voting right nor other rights may be exercised based on shares or stocks of a company being the subject to protection, acquired in cases defined in Article 3 paragraph 6, excluding the right to dispose of such shares or stocks.

3. In case of failure to submit the notification referred to in Article 5 paragraph 4, neither the voting right nor other rights may be exercised, excluding the right to dispose in relation to all shares or stocks to which the entity bound to submit the notification is entitled. In case of issuing the decision referred to in Article 11 paragraph 3, neither the voting right nor other rights may be exercised based on shares or stocks of a company being the subject to protection, excluding the right to dispose of such shares or stocks providing the authorised person with less than 20% of the total rights allocated to partners or shareholders, without considering the privileges or rights granted to individual partners of shareholders.

4. The resolutions of the general meeting or the meetings of shareholders of a company being the subject to protection, adopted with the infringement of the provisions of paragraphs 1-3 shall be invalid, unless they fulfil the requirements related to the quorum and the majority of votes cast, without considering any invalid votes. The right to bring a legal action to state the invalidity of the resolution adopted by the general meeting or the meetings of shareholders is also granted to the control authority. The provisions of Article 252 and Article 425 of the Act of 15 September 2000 - Code of Commercial Companies (Journal of Laws of 2013 item 1030, as amended⁴) shall apply accordingly. The deadline for appealing against the Act shall be suspended over a period of the proceedings concluded by issuing of the decision referred to in Article 11 paragraph 2 or 3.

5. If the invalidity of the action referred to in paragraph 1 relates to actions performed in cases defined in Article 3 paragraph 6, the registry court relevant for a company being the subject to protection, shall delete, on an ex officio basis, the entries based on the invalid action in the relevant register. If, a consequence of such entries, other entries were made, a registry court or registry courts undertake actions relevant for the entries unacceptable 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 2015 item 1142).

6. In the case referred to in paragraph 2, the control authority may, by the relevant decision, order the disposal of the shares or stocks of a company being the subject to protection, within the time limit determined.

7. If shares or stocks are not disposed within the time limit referred to in paragraph 6, the control authority may appoint the administrator of shares or stocks, who shall be bound to undertake measures aimed at the disposal of the shares or stocks or their redemption. The administrator shall act on his/her own behalf, but on account of the partner or the shareholder who must not exercise the voting right. In the scope of adopting the resolutions on the redemption of shares or stocks and the associated reduction of the share capital, the administrator shall be authorised to exercise the voting right arising from shares and stocks, however, the voting through the administrator in the scope of remuneration for the redeemed shares or stocks shall require the approval of the control authority.

Article 13. 1. The Consultation Committee is established as the advisory body of the control authority.

2. The task of the Consultation Committee is to provide advice to the control authority in the scope covered by the act, and in particular:

- 1) to issue, within the time-limit prescribed by the control authority, a recommendation including factual and legal justification, in the scope of the legitimacy of the decisions referred to in Article 11 or Article 12 paragraph 6;
- 2) to present opinions on matters determined by the control authority.

3. The Consultation Committee comprises representatives of:

- 1) the minister competent for foreign affairs;
- 2) the Minister of Defence;
- 3) the minister competent for internal affairs;
- 4) the minister competent for economy;
- 5) the minister competent for State Treasury affairs;

⁴

The amendments to the uniform text to the aforementioned Act were announced Journals of Laws of 2014 items 265 and 1161 and of 2015 items 4 and 978.

- 6) the minister competent for environmental affairs;
- 7) the minister competent for agriculture;
- 8) the minister competent for public administration;
- 9) the minister competent for transport;
- 10) the minister competent for digitization;
- 10a) the minister competent for mineral deposit management;
- 10b) the minister competent for energy;
- 10c) the minister competent for maritime economy;
- 11) the Head of Internal Security Agency;
- 12) the Head of Intelligence Agency;
- 13) Director of the Government Centre for Security;
- 14) the Head of the Military Counterintelligence Service;
- 15) the Head of the Military Intelligence Service;
- 16) the President of the Energy Regulatory Office;
- 17) the President of the Office of Electronic Communications.

4. A person holding the security clearance authorising the access to classified information with the "top secret" clause may be a member of the Consultation Committee.

5. Members of the Consultation Committee are appointed and dismissed by the minister competent for the State Treasury, who simultaneously indicates the Chairman of the Consultation Committee.

Article 14.1. The Chairman of the Consultation Committee shall lead the activities of the Consultation Committee.

2. The Consultation Committee shall adopt resolutions in order to carry out the tasks specified in the Act. In case of an equal number of votes for and against the resolution, the Chairman of the Consultation Committee shall have the casting vote.

3. Costs of activities of the Consultation Committee shall be paid from the state budget, from the part at the disposal of the control authority.

4. The Consultation Committee shall adopt the by-laws defining its way of operation in the form of a resolution.

5. The organizational support of the Consultation Committee shall be ensured by the minister competent for the State Treasury.

Article 15.1. Any person acquiring or gaining the significant participation without the submission of the relevant notification

– shall be subject to a fine of up to PLN 100,000,000 or the penalty of deprivation of liberty from 6 months to 5 years, or both those sanctions jointly.

2. Any person committing the act defined in paragraph 1, acting on behalf of or for the benefit a legal person or a non-corporate entity shall be subject to the sanctions defined in paragraph 1.

Article 16.1. Any person bound to deal with the affairs of the subsidiary pursuant to the Act or a contract, who fails to submit the notification being aware of the acquisition performed in cases defined in Article 3 paragraph 6

– shall be subject to a fine of up to PLN 10,000,000 or the penalty of deprivation of liberty from 6 months to 5 years, or both those sanctions jointly.

2. The same sanctions shall apply to a person who, acting at the general meeting or the meetings of shareholders of a company being the entity subject to protection, exercises the rights arising from shares and stocks on behalf of the entity that, despite the obligation, did not notify of having gained the significant participation in the company, if it was aware of such circumstances or could have learnt based on the data made available pursuant to the agreement.

Article 17. In the Act of 2 July 2004 on the freedom of economic activity (Journal of Laws of 2015 item 584, as amended⁵), the following amendments shall be introduced:

- 1) in Article 56 subparagraph 3a is added in paragraph 1 which shall read as follows
"3a) if the decision stating the unacceptability of exercising the rights arising from shares or stocks of an economic operator has been issued, pursuant to the provisions of the Act of 24 July 2015 on the control of certain investments (Journal of Laws item 1272), if it lies in the public interest;"
- 2) in Article 58 paragraph 3 shall read as follows:
"3. The concession authority may withdraw the concession or change its scope due to the threat to the state defence or security, or the security of citizens, as well as if the decision on stating the unacceptability of exercising the rights arising from shares or stocks of an economic operator has been issued, pursuant to the provisions of the Act of 24 July 2015 on the control of certain investments, or in case of declaring the bankruptcy of the economic operator".

Article 18. In the Act of 9 June 2011 - Geological and Mining Law (Journal of Laws of 2015 item 196), the following amendments shall be introduced:

- 1) in Article 29 paragraph 3 is added which shall read as follows:
"3. The concession authority may refuse granting the concession if the decision on stating the unacceptability of exercising the rights arising from shares or stocks of an economic operator has been issued, pursuant to the provisions of the Act of 24 July 2015 on the control of certain investments (Journal of Laws item 1272), if it lies in public interest, in particular, associated with the state security or environmental protection including the reasonable management of fossil deposits.";
- 2) in Article 37 paragraph 4 is added which shall read as follows:
"4. The concession authority may withdraw without compensation, the concession if the decision on stating the unacceptability of exercising the rights arising from shares or stocks of an economic operator has been issued, pursuant to the provisions of the Act of 24 July 2015 on the control of certain investments if it lies in public interest, in particular, associated with the state security or environmental protection including the reasonable management of fossil deposits.".

Article 19. The Act shall enter into force following 30 days as of the date of its announcement.

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⁵ The amendments to the uniform text to the aforementioned Act were announced Journals of Laws of 2015 items 699, 875, 978, 1197 and 1268.