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15 March 2023

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

**Investment policy related to national security**

**Notification by the Czech Republic**

On 15 November 2022, the Czech Republic notified the OECD of an investment policy related to national security pursuant to its obligations under the Codes of Liberalisation and the National Treatment instrument. This document reproduces the notification

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**JT03514365**

## *Investment policy related to national security Notification by the Czech Republic*

### 1. Introduction

On 1 May 2021, the Act No. 34/2021 Coll. on screening of foreign investments (hereinafter referred to as “the Law”) entered into force. The Law implements the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 and establishes a legal framework for foreign investment screening.

The Law introduces a screening mechanism for monitoring potentially risky capital flows into the Czech Republic, investigation of suspicious transactions and possible restriction of those investments that are assessed as a risk to the security of the Czech Republic or its internal or public order. The Law determines which foreign investments are subject to approval by the State and which are subject to voluntary or mandatory consultation. The screening process is an administrative proceeding that can result in the prohibition of the investment or other restrictions regarding the investment. In those cases, the Czech Government decides in the form of a Resolution.

An unofficial English translation of the Law is available as Annex A of this document.

### 2. Scope

The Law focuses on foreign investors from non-EU countries and foreign investors whose ultimate beneficial owner comes from non-EU countries. At the same time the Law applies only to those investments by a foreign investor through which the foreign investor obtains an effective degree of control over the conduct of economic activity in the Czech Republic (hereinafter referred to as “foreign investment”). Effective degree of control, according to the Law, means:

- the possibility for the foreign investor to dispose of at least 10% of the voting rights or to exercise a corresponding influence in the target person through which the economic activity is performed;
- membership of the foreign investor or a person close to them in the body of the target person;
- the foreign investor's ability to dispose of ownership rights in the target asset through which the economic activity is performed; or
- other degree of control resulting in the ability of the foreign investor to gain access to information, systems or technologies that are important in terms of protecting the security of the Czech Republic or internal or public order.

The implementation of the Law is entrusted to the Ministry of Industry and Trade, which cooperates closely with the Ministries of the Interior, Defense, and Foreign Affairs, the Police of the Czech Republic, intelligence services and, when deemed necessary, other state authorities such as the Czech National Bank, National Cyber and Information Security Agency and other state institutions providing unique insights into specific areas of expertise (Sections 6, 10, 11 of the Law).

### 3. Procedure

The Law differentiates between two general categories of investments and consequently introduces two regimes. The first regime defines a narrow group of the most sensitive areas: production of military material, selected dual-use goods or critical information infrastructure (Section 7). Foreign investors, who would like to invest in these areas need to obtain approval from the Ministry of Industry and Trade before the completion of the transaction (Section 11). The review of these investments takes no longer than 90 days, with the possibility of a 30-day extension if the case is complex. If any of the above-mentioned cooperating institutions deems the investment may threaten the security, public or internal order of the country, or that it cannot be approved unconditionally, the Ministry of Industry and Trade will refer the entire case to the Government, which alone can prohibit the investment or approve it with negotiated conditions (Section 12-15).

All other investments, which have the potential to endanger the state security or its internal and public order (Section 8), can be conducted without previous approval. However, the Law allows for *ex officio* screening of these cases for up to five years since the transaction.

If the Government decides that the foreign investment poses a security threat, the Ministry issues a decision:

- on conditional approval of foreign investment (with regards to the investment under Section 7);
- not to authorise a foreign investment (with regards to the investment under Section 7);
- on conditional admissibility of a foreign investment (with regards to the investment under Section 8);
- on prohibition of foreign investment (with regards to the investment under Section 8);
- on prohibition of further continuation of the foreign investment (with regards to the investment under Section 8).

To gain legal certainty that their investment does not pose danger to the security of the Czech Republic or its internal and public order and that it will not be reviewed retrospectively by administrative authority, foreign investors can voluntarily opt for the fast-track review mode called „consultation“, which is set to conclude within 45 days after the filing by the investor (Section 10). Consultations are mandatory if the acquisition target holds a national radio or television broadcasting license or is the publisher of a periodical with an average aggregate minimum circulation of 100,000 print copies per day. If the Ministry of Industry and Trade or any of the above-mentioned cooperating institutions does not identify any risk, the investment will not be examined in the future. (Section 10).

The screening procedure is a single-instance procedure without appellate mechanism. It is possible to file a lawsuit to the administrative courts; the lawsuit does not have suspensory effect.

If a foreign investor fails to comply with its obligations under the Law, it commits an offence, which, depending on the type of offence, may amount to a fine of up to 1% or 2% of the total net turnover of the foreign investor for the last completed accounting period.

#### 4. Proposed entry in the list of measures reported for transparency under the National Treatment instrument

The Czech Republic proposes that the entry under item A. of the list of measures reported for transparency under the National Treatment instrument be framed as follows:

##### **A. Measure reported for Transparency at the Level of National Government**

###### ***I. Measures based on public order and essential security considerations***

###### ***a. Investment by established foreign controlled enterprises***

According to Act No. 34/2021 Coll. on screening of foreign investments (in force since 1 May 2021), a foreign investor must obtain prior approval by the Ministry of Industry and Trade to conduct investment if the target person or target object is listed in Section 7 of the Act and if the foreign investor obtains an effective degree of control over the conduct of economic activity. The sectors concerned are military material, dual use goods, critical infrastructure and administration of communication system belonging to the critical information infrastructure or essential service. All other investments can be conducted without previous approval; however, the Act allows for ex officio screening of investment for up to five years since the transaction.

Authority: Act No. 34/2021 Coll. on screening of foreign investments

## Annex A.

**Disclaimer: This translation is not an authentic legal document or source of obligations. Binding and legally effective is only the authentic version of the regulation in the Czech language as proclaimed in the official Collection of laws of the Czech Republic (the act No. 34/2021 Coll., as amended).**

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ACT

of 19 January 2021

**on the screening of foreign investments and amendment of related laws (Foreign Investments Screening Act)**

The Parliament has adopted the following Act of the Czech Republic:

### PART ONE

### FOREIGN INVESTMENTS SCREENING

#### DIVISION I

#### GENERAL PROVISIONS

##### Section 1

##### Subject of legislation

Following up on the directly applicable regulation of the European Union, this Act stipulates<sup>1)</sup>

- a) the rules for screening of certain foreign investments in order to protect the security of the Czech Republic and internal or public order
- b) and certain obligations of foreign investors.

##### Section 2

##### Foreign investor

(1) For the purposes of this Act, foreign investor refers to anyone who has made or intends to make a foreign investment in the Czech Republic and

- a) is not a national of the Czech Republic or of another EU Member State,
- b) does not have a registered office in the Czech Republic or in another EU Member State, or
- c) is directly or indirectly controlled by a person meeting the conditions under point (a) or (b).

(2) For the purposes of this Act, foreign investor also refers to the trustee of a trust fund who has made or intends to make a foreign investment in the Czech Republic on the account of this trust fund, if the founder or trustee of the trust fund, person authorised to oversee management of the trust fund, who can appoint or dismiss the trustee or beneficiary, or whose consent is required for such appointment or dismissal, the beneficiary of the trust fund or the person in whose main interest the trust fund has been established or is managed, if that person is not beneficiary, meets the requirements pursuant to Subsection 1(a), (b) or (c).

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<sup>1</sup> 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.

(3) For the purposes of this Act, trust fund also refers to any similar legal arrangement established under foreign legislation and trustee refers to any person in a similar position.

### **Section 3**

#### **Foreign investment**

For the purposes of this Act, foreign investment refers to assets in any form, which the foreign investor has provided or shall provide for the purpose of conducting economic activity in the Czech Republic, and which allows the foreign investor to exercise an effective degree of control over the performance of this economic activity.

### **Section 4**

#### **Changes in the person controlling the foreign investor**

If, after the foreign investment was made, there is a change in the person controlling the foreign investor and if this change allows for the foreign investor to be controlled by a person pursuant to Section 2 (1)(a) or (b), the procedure stipulated in Section 7 or 8 shall apply as appropriate.

### **Section 5**

#### **Effective degree of control over the performance of economic activity**

For the purposes of this Act, an effective degree of control over the performance of economic activity refers to

- a) the possibility for the foreign investor to dispose of at least 10% of the voting rights and/or the possibility to exert a corresponding influence in a person, through which the economic activity is performed (hereinafter referred to as “target person”); this share also includes shares of persons subject to single management with the foreign investor, and shares of persons acting in concert with the foreign investor,
- b) membership of the foreign investor or a person closely related to the foreign investor in a target person’s body;
- c) the possibility of the foreign investor to dispose of ownership rights to an object through which the economic activity is performed (hereinafter referred to as “target object”), or
- d) other degree of control that allows the foreign investor to gain access to information, systems or technologies that are important with respect to protection of the security of the Czech Republic or internal or public order.

## **DIVISION II**

### **FOREIGN INVESTMENTS SCREENING PROCEDURES**

#### **Chapter 1**

#### **Competences of the Ministry of Industry and Trade**

### **Section 6**

- (1) The Ministry of Industry and Trade (hereinafter referred to as “Ministry”)
  - a) screens foreign investments,
  - b) conducts consultations,
  - c) conducts negotiations on conditions,
  - d) decides on foreign investments,
  - e) inspects compliance with the obligations laid down by this Act and with the decisions issued pursuant to it.
- (2) The Ministry is the contact point and cooperates with relevant contact points of the European Commission and EU Member States, provides comments on behalf of the Czech Republic on foreign investments in other EU Member States, takes account of comments of other EU Member States and opinions of the European Commission, and fulfils obligations towards the European Commission.
- (3) When exercising the competences pursuant to this Act, the Ministry also cooperates with bodies of other states responsible for foreign investments screening, and with relevant international organisations and institutions.

## Chapter 2

### Investments undergoing screening

#### Section 7

Without permission pursuant to Section 14 (1) or conditional permission pursuant to Section 15 (3), no foreign investment can be made into

- a) a target person that performs production, research, development, innovation<sup>2)</sup> or provides the life cycle of military material pursuant to the act governing foreign trade with military material<sup>3)</sup>, or into a target object through which those activities are performed,
- b) a target person that operates a critical infrastructure element determined by the relevant central administrative authority<sup>4)</sup>,
- c) a target person that is the administrator of a critical information infrastructure information system, administrator of a critical information infrastructure communication system, administrator of an information system of essential service or operator of an essential service<sup>5)</sup>, or
- d) a target person that develops or manufactures items listed in Annex IV to Council Regulation (EC) 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, as amended, or into a target object through which such items are developed or manufactured.

#### Section 8

(1) For foreign investments which are not foreign investments pursuant to Section 7 and are capable of threatening the security of the Czech Republic or internal or public order, the Ministry may initiate proceedings on foreign investment screening ex officio

- a) based on the results of consultation, proposed to the Ministry by the foreign investor pursuant to Section 10(1), or
- b) within 5 years from the completion of the foreign investment, if the foreign investor did not file a proposal for consultation pursuant to Section 10(1).

(2) The date of completion of the foreign investment pursuant to Subsection 1(b) is the

- a) date of conclusion of the contract or of the last of the contracts, the purpose of which is to make the foreign investment,
- b) the date of acquisition of an effective degree of control over the performance of economic activity, or
- c) the date of commencement of economic activity,

whichever is the latest.

(3) Together with the notice on initiation of proceedings ex officio pursuant to Subsection 1(b), the Ministry shall set a time limit not exceeding 15 days from the date of delivery of the notice, during which the foreign investor is obliged to provide the Ministry with the information pursuant to Section 9.

(4) The Ministry initiates proceedings on foreign investment screening ex officio,

- a) if the foreign investor fails to file a request to permit the foreign investment pursuant to Section 7, or
- b) if, after 5 years from the completion of the foreign investment pursuant to Subsection 1, it transpires that the foreign investor acted so as to conceal facts based on which proceedings on foreign investment screening could otherwise have been initiated pursuant to Subsection 1(b).

<sup>2</sup> Act No. 130/2002 Coll., on the support of research and development from public funds and on the amendment of certain related laws (The Act on Support of Research and Development), as amended.

<sup>3</sup> Act No. 38/1994 Coll., on foreign trade with military material, as amended.  
Decree No. 210/2012 Coll., implementing certain provisions of Act No. 38/1994 Coll., on foreign trade with military material, as amended.

<sup>4</sup> Act No. 240/2000 Coll., on crisis management and on the amendment of certain laws (The Crisis Act), as amended.

<sup>5</sup> Section 3 of Act No. 181/2014 Coll., on cyber security and on the amendment of related laws (The Act on Cyber Security), as amended.

## Chapter 3

### Information and consultations

#### Section 9

##### Required information

- (1) In the request to permit the foreign investment and in the proposal for consultation, the foreign investor shall state
- a) the trade name or name, registered office and law under which the legal person was established, if it is a legal person, or the name(s) and surname, registered office and address of residence, and domicile (if different from the address of residence), if it is a natural person, and the identification number, if assigned,
  - b) the name(s) and surname, address of residence and domicile (if different from the address of residence), telephone number, electronic mail address and date and place of birth of the members of the statutory and supervisory bodies of the legal person or of other bodies of the legal person's business management,
  - c) information about the ownership structure, including information about the ultimate investor and the person controlling the ultimate investor, value of the ultimate investor's share and changes in these facts in the past year,
  - d) information about the products or services and commercial and business activity, including information about selected economic indicators, and, as appropriate, about sector regulation and special legal regulation applicable to the foreign investor's business in the country of the foreign investor's registered office, based on which the foreign investor obtained a business permit in the business field in that country, if such permit is required in that country,
  - e) EU Member States in which the foreign investor conducts business activity, including information about subsidiaries and branches in these states,
  - f) the source of funding of the foreign investment,
  - g) the value of the foreign investment,
  - h) the date of completion or planned completion of the foreign investment,
  - i) the trade name or name, registered office and identification number of the target person, if assigned, or name and address of the target object,
  - j) information about the ownership structure of the target person or of the owner of the target object before the foreign investment was made, including information about the ultimate investor and the person controlling the target person or owner of the target object, and value of the ultimate investor's share,
  - k) information about the products produces or services provided by the target person or at the target object, and about the commercial and business activity of the target person or owner of the target object, including information about selected economic indicators,
  - l) list of EU Member States in which the target person or owner of the target object conducts business activity, including information about subsidiaries and branches in these states,
  - m) information about involvement of the target person in projects or programmes of Union interest<sup>6</sup>) and
  - n) the direct or indirect share of the foreign investor in the ownership and voting rights in the target person or corresponding influence before and after the foreign investment was made, including information about the shares of persons subject to single management and persons acting in concert.
- (2) The Ministry may request
- a) from the foreign investor other documentary materials not specified in Subsection 1, if needed to assess or screen the foreign investment,
  - b) from the target person or owner of the target object, information pursuant to Subsection 1(j), (k) and (l), if it is not available to the foreign investor, as well as other documentary materials not specified in Subsection 1, if needed to assess or screen the foreign investment.

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<sup>6</sup> Art. 8 and Annex I to Regulation (EU) 2019/452 of the European Parliament and of the Council.



(3) From the date when the Ministry requests the documentary materials pursuant to Subsection 2 until their submission, the time limit pursuant to Section 10(5) and (6) shall not run; the Ministry may suspend the proceedings on foreign investment screening for this period.

(4) The request and proposal pursuant to Subsection 1 are submitted using the stipulated form. Details of the data and model of its form shall be set out in a government decree.

(5) Insufficient provision of information or insufficient submission of documentary materials or provision of misleading or false information by the foreign investor may be a reason to initiate proceedings on foreign investment screening, or to not grant a permit, to prohibit implementation or prohibit further existence of the foreign investment.

## **Section 10**

### **Consultation**

(1) If the target person holds a licence for nation-wide radio or television broadcasting or publisher of periodical press, the aggregate minimum average print run of which amounts to 100,000 copies per day in the past calendar year, the foreign investor must, before completing the investment, file to the Ministry a proposal for consultation on whether the foreign investment can threaten the security of the Czech Republic or internal or public order. In other cases, the foreign investor may file to the Ministry a proposal for consultation on whether the foreign investment can threaten the security of the Czech Republic or internal or public order.

(2) The Ministry shall, without undue delay, provide the data received under Section 9 and any other findings, along with the request for an opinion or information justifying an initiation of proceedings on foreign investment screening, to the Ministry of Interior, Ministry of Defence, Ministry of Foreign Affairs, Police of the Czech Republic and the intelligence services of the Czech Republic (hereinafter referred to as “intelligence services”), and if the foreign investment concerns their competences, also to other state bodies and the Czech National Bank.

(3) The bodies and persons pursuant to Subsection 2 shall provide the Ministry with the opinion, which must include a reasoning, or with the information within 30 days from the date of delivery of the Ministry’s request. If the body or person pursuant to Subsection 2 does not provide the Ministry with the opinion or information within this time limit, it is presumed that it finds no reason to initiate proceedings on foreign investment screening. Opinions and information provided after the lapse of this time limit are disregarded.

(4) If none of the bodies or persons under Subsection 2 or the Ministry finds any reason to initiate proceedings on foreign investment screening, the foreign investment is presumed not to pose a threat to the security of the Czech Republic or internal or public order. The proceedings on foreign investment screening cannot be conducted in the future; this shall be without prejudice to the provision of Section 9(5).

(5) The Ministry shall send a notice of the fact pursuant to Subsection 4 at latest within 45 days from the date of delivery of the proposal for consultation to the foreign investor and target person or owner of the target object.

(6) If any of the bodies or persons pursuant to Subsection 2 or the Ministry deems it justified to initiate proceedings on foreign investment screening, the Ministry shall send a notice of its initiation within 45 days from the date of delivery of the proposal for consultation to the foreign investor.

## **Chapter 4**

### **Conducting proceedings on foreign investment screening**

#### **Section 11**

##### **Proceedings on foreign investment screening**

(1) If the proceedings on foreign investment screening are initiated, the Ministry shall, without undue delay, provide the data received pursuant to Section 9 and any other findings, unless they have already been provided pursuant to Section 10(2)

- a) to the Ministry of Interior, Ministry of Defence, Ministry of Foreign Affairs and the Police of the Czech Republic, and if the foreign investment also concerns their competences, to other state bodies and the Czech National Bank, along with the request for an opinion,
- b) to the Ministry of Finance, along with the request for an opinion, and

- c) to the intelligence services and other state bodies, whose competences the foreign investment concerns and which by law do not provide opinions, along with the request for information.
- (2) The bodies and persons pursuant to Subsection 1 shall provide the Ministry with the opinion, which must include a reasoning, or with the information within 60 days from the date of delivery of the Ministry's request; the Ministry shall extend the time limit as appropriate based on a justified request from the relevant body or person.
- (3) If the body or person pursuant to Subsection 1(a) does not, within the time limit pursuant to Subsection 2), provide the opinion to the Ministry or deliver a justified request to the Ministry to extend the time limit, or if it does not provide the opinion within the extended time limit, its consent to the issuing of a decision on permission of the foreign investment or decision on permissibility of the foreign investment without stipulating conditions is presumed to have been granted. If the Ministry of Finance does not, within this time limit, provide the opinion to the Ministry or deliver a justified request to the Ministry to extend the time limit, or if it does not provide the opinion within the extended time limit, it is presumed that it does not consider it necessary to comment on the foreign investment. If the body pursuant to Subsection 1(c) does not, within this time limit, provide the information to the Ministry or deliver a justified request to the Ministry to extend the time limit, or if it does not provide the information within the extended time limit, it is presumed not to dispose of relevant information.

## **Section 12**

### **Negotiations on conditions**

- (1) If in the proceedings on foreign investment screening the Ministry receives an opinion or information pursuant to Section 11(2) indicating that the implementation or existence of the foreign investment should be conditional, or if the Ministry has reason to believe so, it shall conduct negotiations on the conditions with the foreign investor, before submitting the case for deliberation to the government pursuant to Section 13(1).
- (2) The reason for conducting the negotiations on conditions pursuant to Subsection 1 may also be the comments of EU Member States or opinion of the European Commission, which the Ministry receives on the foreign investment pursuant to Regulation (EU) 2019/452.
- (3) The conditions pursuant to Subsection 1 amend the original project of the foreign investor, so that the foreign investment does not threaten the security of the Czech Republic or internal or public order. These conditions may include the foreign investor's obligation to propose consultations again at every later increase of foreign investor's share in voting rights or corresponding increase of influence in the target person, or at any change or extension of the object of activity of the foreign investor or target person.
- (4) The conditions pursuant to Subsection 1 shall not apply to the period before issuing the decision pursuant to Section 15(3).
- (5) Insufficient cooperation of the foreign investor during negotiations on conditions may be a reason for not granting permission, prohibiting the implementation or prohibiting further existence of the foreign investment.

## **Section 13**

### **Deliberation on the case by the government**

- (1) If in the proceedings on foreign investment screening the Ministry receives an opinion or information pursuant to Section 11(2) indicating that the foreign investment may pose a threat to the security of the Czech Republic or internal or public order, or if the Ministry has reason to believe so, it shall, before issuing a decision and within 90 days from initiation of the proceedings on foreign investment screening, submit the case for deliberation to the government.
- (2) The time limit pursuant to Subsection 1 shall be extended by 30 days in the event of a particularly complex case.
- (3) The Ministry shall suspend proceedings on foreign investment screening for the period that is necessary for the negotiations between the Ministry and the foreign investor on conditions pursuant to Section 12.
- (4) The government shall, within 45 days from the date when the case was submitted for deliberation, adopt a resolution as to whether the foreign investment may pose a threat to the security of the Czech Republic or internal or public order. When assessing the case, the government shall take account of the potential impact of the foreign investment on the principles of democracy and of rule of law, protection of the life and health of the population, defence of the state, foreign political or security interests of the state, economic security of the state and, as

appropriate, other facts which are important with respect to the protection of the security of the Czech Republic or internal or public order.

## **Chapter 5**

### **Decisions**

#### **Section 14**

##### **Decisions not conditioned by government resolution**

- (1) If in the proceedings on screening of the foreign investment pursuant to Section 7 the Ministry does not receive an opinion or information pursuant to Section 11(2) indicating that the foreign investment may pose a threat to the security of the Czech Republic or internal or public order, and if the Ministry has no reason to believe so, it shall issue a decision on permission of the foreign investment.
- (2) If in the proceedings on screening of the foreign investment pursuant to Section 8 the Ministry does not receive an opinion or information pursuant to Section 11(2) indicating that the foreign investment may pose a threat to the security of the Czech Republic or internal or public order, and if the Ministry has no reason to believe so, it shall issue a decision on permissibility of the foreign investment without stipulating conditions.
- (3) The Ministry shall issue the decision within 90 days from initiating the proceedings on foreign investment screening.
- (4) The time limit pursuant to Subsection 3 shall be extended by 30 days in the event of a particularly complex case.

#### **Section 15**

##### **Decisions conditioned by government resolution**

- (1) In the proceedings on screening of the foreign investment pursuant to Section 7 the Ministry shall, without undue delay, issue a decision on conditional permission of the foreign investment or on not granting permission of the foreign investment, and in proceedings on screening of the foreign investment pursuant to Section 8 a decision on conditional permissibility of the foreign investment, on prohibition of implementation of the foreign investment or on prohibition of further existence of the foreign investment, if the government decides that such decision is necessary to protect the security of the Czech Republic or internal or public order.
- (2) In proceedings on screening of the foreign investment pursuant to Section 7 the Ministry shall, without undue delay, issue a decision on permission of the foreign investment, and in the proceedings on screening of the foreign investment pursuant to Section 8 a decision on permissibility of the foreign investment without stipulating conditions, if the government decides that the foreign investment does not pose a threat to the security of the Czech Republic or internal or public order.
- (3) The decision on conditional permission of the foreign investment and decision on conditional permissibility of the foreign investment also contain the conditions agreed upon pursuant to Section 12.
- (4) If the conditions stipulated in the decision on conditional permission or decision on conditional permissibility of the foreign investment were breached, or if the foreign investment was made contrary to the decision on not granting permission or on prohibition of the implementation of the foreign investment, in consequence of which the security of the Czech Republic or internal or public order may be threatened, the Ministry may decide on prohibition of further existence of the foreign investment.
- (5) The decision on prohibition of further existence of the foreign investment also contains
  - a) prohibition of or restriction to the exercise of ownership or voting rights of the foreign investor in the target person or an order to sell the target person or target object or a share in the target person, if this is necessary to ensure the security of the Czech Republic or internal or public order, and
  - b) a time limit within which the sale pursuant to letter (a) must be completed.
- (6) If the foreign investor does not complete the sale of the target person or target object or share in the target person within the time limit pursuant to Subsection 5(b), the Ministry may arrange such a sale in a public auction or without public auction through a securities trader or foreign person authorised to provide investment services in the Czech Republic. The costs of the sale are covered from the proceeds of the sale.

(7) An administrative appeal may not be filed against a decision conditioned by government resolution, and it may not be reviewed in review proceedings. An action brought against such decision or request to renew the proceedings, in which such decision was adopted, does not have a suspensory effect.

(8) If a decision, the illegality of which is related to the content of the government resolution by which such decision was conditioned, is annulled, the state may not demand regressive compensation from an official directly involved in issuing the decision.

### **DIVISION III**

#### **USE OF DATA FROM THE PUBLIC ADMINISTRATION INFORMATION SYSTEMS**

##### **Section 16**

(1) When exercising the competences pursuant to this Act, the Ministry uses data from the base registry of inhabitants in the scope of:

- a) surname,
- b) name(s),
- c) address of residence,
- d) date, place and district of birth; for a natural person born abroad, date, place and country of birth,
- e) date, place and district of death; if the death occurred outside of the Czech Republic, the date of death, place and country in which the death occurred; if a court decision is issued declaring the person deceased, the date indicated in the decision as the date of death or date which the natural person did not outlive, and the date of legal force of this decision, and
- f) state citizenship, or multiple state citizenships.

(2) When exercising the competences pursuant to this Act, the Ministry uses data from the information system of the records of population in the scope of:

- a) name(s), surname, maiden surname,
- b) date, place and district of birth; for a citizen born abroad, the date, place and country of birth,
- c) gender,
- d) state citizenship, or multiple state citizenships,
- e) address of permanent residence, as well as, where relevant, the address to which correspondence should be delivered pursuant to another legal act, and
- f) date, place and district of death; if the death occurred outside of the Czech Republic, the date of death, place and country in which the death occurred; if a court decision is issued declaring the person deceased, the date indicated in the decision as the date of death or date which the natural person did not outlive, and the date of legal force of this decision.

(3) When exercising the competences pursuant to this Act, the Ministry uses data from the foreigners information system in the scope of:

- a) name(s) and surname,
- b) date of birth,
- c) type and address of residence, and
- d) date, place and district of death; if the death occurred outside of the Czech Republic, the date of death, place and country in which the death occurred; if a court decision is issued declaring the person deceased, the date indicated in the decision as the date of death or date which the natural person did not outlive, and the date of legal force of this decision.

(4) When exercising the competences pursuant to this Act, the Ministry uses data from the base registry of agendas, public authorities, private users of data and certain rights and duties, in the scope of:

- a) name of the public authority that issued the data about decisions or other acts of public authorities, including public contracts and measures of general nature, and the identifier of this public authority,

- b) number and name of the legal act and specification of the provision thereof according to which the decision was issued,
  - c) name(s), surname, address of residence, date of birth of the natural person in the form of a reference link to the reference data in the base registry of inhabitants, or trade name or name, registered office of the legal person in the form of a reference link to the reference data in the basic register of legal persons, entrepreneurial natural persons and public authorities, for which a right or duty has arisen,
  - d) name and code of the agenda in the discharge of which the decision was issued,
  - e) specification of the right or duty of the persons under letter (c) to whom or to which the decision pertains,
  - f) data assigned by decision of the public authority, which issued the decision, based on registration of the decision in the records of documents, and
  - g) date of legal force, enforceability or other legal effects of the decision.
- (5) When exercising the competences pursuant to this Act, the Ministry uses data from the basic register of legal persons, entrepreneurial natural persons and public authorities in the scope of:
- a) name(s) and surname of the entrepreneurial natural person and foreign person,
  - b) agenda identifier of the natural person for the agenda of the basic register of legal persons, entrepreneurial natural persons and public authorities, and
  - c) address of residence in the Czech Republic in the form of a reference link (address code) to the reference data on the address in the base registry of territorial identification, addresses and real estates, or place of residence abroad of the entrepreneurial natural person or foreign person.
- (6) When exercising the competences pursuant to this Act, the Ministry uses data about the beneficial owner from the register of beneficial owners in the scope of:
- a) name and address of residence and domicile (if different from the address of residence),
  - b) date of birth and national identification number, if assigned,
  - c) state citizenship and
  - d) data about
    1. share in voting rights, if the position of beneficial owner is based on direct participation in the legal person,
    2. share in distributed funds, if the position of beneficial owner is based on the fact that they are a recipient thereof, or
    3. other facts, if the position of beneficial owner is determined otherwise.
- (7) The data which are listed as reference data in the base registry of inhabitants or in the basic register of legal persons, entrepreneurial natural persons and public authorities, shall be used from the information system of the records of population and from the foreigners information system, only if they are in a form preceding the current state.
- 8) Of the data pursuant to Subsections 1 through 6, only the data which is essential to fulfil a given task may be used in a specific case.

## **DIVISION IV**

### **COOPERATION WITHIN THE EUROPEAN UNION**

#### **Section 17**

- (1) The Ministry shall provide comments on behalf of the Czech Republic on foreign investment in another EU Member State, if it deems such procedure justified. The bodies and persons pursuant to Section 10(2) may be involved in this assessment and in the preparation of comments.
- (2) The bodies and persons pursuant to Section 10(2) shall propose to the Ministry the provision of comments pursuant to Subsection 1. If this proposal is submitted in connection with notification pursuant to Subsection 4, it must be submitted within a time limit of 10 days from the date when the notification was issued by the EU Member State.

- (3) The Ministry shall, without undue delay, provide the bodies and persons pursuant to Section 10(2) with the comments of EU Member States and opinions of the European Commission, which it receives.
- (4) The Ministry shall provide the bodies and persons pursuant to Section 10(2) with the notification on foreign investment screening, which it receives from other EU Member States, if it assesses that such procedure is justified.
- (5) The Ministry shall notify the European Commission and other EU Member States of the initiation of proceedings on foreign investment screening.

## **DIVISION V**

### **PROTECTION OF CLASSIFIED AND SENSITIVE INFORMATION**

#### **File**

##### **Section 18**

- (1) The documents containing classified information or confidential information pursuant to Regulation (EU) 2019/452 shall be, in the proceedings pursuant to this Act, kept separately from the file.
- (2) If some of the documentary materials for the decision pursuant to this Act are classified information or confidential information pursuant to Regulation (EU) 2019/452, the reasoning of the decision shall contain only a reference to the documentary materials for issuing the decision, and their degree of classification or information on their confidentiality. The considerations guiding the Ministry in the evaluation thereof and the reasoning of the decision shall be specified only to the extent to which they do not constitute classified information or confidential information pursuant to Regulation (EU) 2019/452.

##### **Section 19**

- (1) Those parts of the file that contain business secret, bank secret or a similar classified information protected by law are exempted from the access to the file. In addition to documents containing such classified information, the file must contain documents from which data containing this secret have been removed or a sufficiently detailed extract, which does not contain the secret.
- (2) At the request of the Ministry, the person enjoying the protection of business secret, bank secret or other similar classified information protected by law is obliged, in addition to the documents containing such secrets, to also submit documents from which data containing these secrets have been removed, or to procure a sufficiently detailed extract from such documents, which does not contain the secrets. If the person fails to do so, the documents submitted by the person are deemed not to contain business secret, bank secret or any other classified information protected by law.

##### **Section 20**

#### **Obligation of confidentiality**

Persons who, in connection with the proceedings or consultations pursuant to this Act, learned about facts which must remain secret in the interest of protection of the security of the Czech Republic or internal or public order or in the interest of other persons or other EU Member States, are bound by the obligation of confidentiality regarding these facts.

##### **Section 21**

#### **Restriction of access to information**

The opinions and information provided pursuant to this Act, documents containing confidential information pursuant to Regulation (EU) 2019/452, and documents that are based on these opinions and information, are not provided under the act on free access to information.

**DIVISION VI**  
**JUDICIAL REVIEW**  
**AND EXEMPTIONS FROM APPLICATION OF THE ACT**

**Judicial proceedings**

**Section 22**

- (1) In judicial proceedings based on an action brought against a decision issued pursuant to this Act, the presiding judge shall decide to grant, to the extent necessary, the participant in the proceedings access to the part of the file that contains classified information, if this cannot threaten the security of the state, its sovereignty, territorial integrity, democratic foundations, the lives and health of people or the activities of the intelligence services or Police of the Czech Republic; before making the decision, the presiding judge shall request a statement from the body that provided the classified information.
- (2) The classified information which served as documentary materials for the decision pursuant to this Act are heard so as to preserve the obligation of confidentiality with respect to the classified information, while the range of persons who shall participate in the hearing of the classified information shall be decided by the presiding judge.
- (3) The provisions of Subsection 1 and 2 shall, in judicial proceedings based on an action against a decision issued pursuant to this Act, apply to confidential information pursuant to Regulation (EU) 2019/452 as appropriate.

**Section 23**

- (1) The evidence in judicial proceedings conducted on the basis of an action against the decision issued pursuant to this Act is carried out so as to preserve the nondisclosure obligation to maintain confidentiality of classified information. Evidence in the form of testimony with respect to these facts may be carried out only if the person bound by the obligation of confidentiality has been released from this obligation by the relevant authority. Release from the obligation confidentiality may not be possible where the activities of the intelligence services or the Police of the Czech Republic may be compromised or seriously disrupted. A similar procedure is applied in cases where evidence is carried out in a form other than testimony.
- (2) The authority that provided the information shall mark the facts pursuant to Subsection 1, with respect to which it claims that release from the obligation of confidentiality is not possible, and the presiding judge shall decide that the parts of the file to which these facts are connected shall be separated, if, otherwise, the activities of the intelligence services or the Police of the Czech Republic may be compromised or seriously disrupted.

**Section 24**

**Exemptions from the application of Section 7**

- (1) As concerns a foreign investment which is implemented as a part of recovery, early intervention measures or resolution pursuant to the act regulating recovery and resolution on the financial market, or which is urgently needed to avert failing of a target person that is a financial services provider, the provisions of Section 7 shall not apply.
- (2) In the case pursuant to Subsection 1, the Ministry may screen the foreign investment ex officio pursuant to Section 8(1)(b).
- (3) The Czech National Bank shall, with the consent of the target person, provide the Ministry with the information as to whether the situation pursuant to Subsection 1 has arisen. The Czech National Bank shall provide this information also to the foreign investor.
- (4) If the foreign investment pursuant to Section 8 becomes a foreign investment pursuant to Section 7 after its implementation has started, Section 8 shall apply to the screening of this foreign investment as appropriate.

## DIVISION VII

### ADMINISTRATIVE OFFENCES

#### Section 25

- (1) The foreign investor commits an administrative offence by
  - a) failing to fulfil the obligation imposed by a decision on prohibition of further existence of the foreign investment,
  - b) failing to fulfil the conditions imposed by a decision on conditional permission of the foreign investment or decision on conditional permissibility of the foreign investment,
  - c) making a foreign investment pursuant to Section 7 without filing a request to permit the foreign investment, or
  - d) failing to file a proposal for consultation, if the target person is a holder of a licence for nation-wide radio or television broadcasting or publisher of periodical press with a total minimum average circulation of 100,000 copies per day in the past calendar year.
- (2) For the administrative offence pursuant to Subsection 1(a) and (b), a fine may be imposed of up to 2% of the total net turnover achieved by the foreign investor in the past concluded accounting period, or a fine from CZK 100,000 to CZK 100,000,000, if the value of total net turnover achieved by the foreign investor in the past concluded accounting period cannot be determined. For the administrative offence pursuant to Subsection 1(c) and (d), a fine may be imposed of up to 1% of the total net turnover achieved by the foreign investor in the past concluded accounting period, or a fine from CZK 50,000 to CZK 50,000,000, if the value of total net turnover achieved by the foreign investor in the past concluded accounting period cannot be determined.

#### Section 26

The administrative offences pursuant to Section 25 shall be heard by the Ministry.

## DIVISION VIII

### TRANSITIONAL AND FINAL PROVISIONS

#### Section 27

- (1) With the exception of Section 4 and Section 17(3) and (4), this Act shall not apply to foreign investments completed before the entry into force effective date of this Act.
- (2) The provision of information by the intelligence services is governed by the act on the intelligence services<sup>7</sup>).
- (3) The Ministry may use the opinions and information obtained pursuant to this Act only to exercise the competences pursuant to this Act. The bodies and persons pursuant to Section 11(1) may determine the opinion or information as opinion or information the misuse of which could threaten the security of the Czech Republic or internal or public order. Further handling of an opinion or information determined as such is possible only with the consent of this body or person, including access by a foreign state or international organisation or institution to the determined opinion or information.

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<sup>7</sup> Section 8(3) of Act No. 153/1994 Coll., on the intelligence services of the Czech Republic, as amended.



## PART TWO

### AMENDMENT OF THE ACT ON ESTABLISHMENT OF MINISTRIES AND OTHER CENTRAL STATE ADMINISTRATIVE BODIES OF THE CZECH REPUBLIC

#### Section 28

In Section 13(1) of Act No. 2/1969 Coll., on establishment of ministries and other state central administrative bodies of the Czech Republic, as amended by Act No. 575/1990 Coll., Act No. 474/1992 Coll., Act No. 272/1996 Coll., Act No. 47/2002 Coll. and Act No. 110/2007 Coll., a new letter (d) is inserted after letter (c) and it reads:

“d) foreign investments screening.”

The existing letters (d) through (g) are marked as letters (e) through (h).

## PART THREE

### AMENDMENT OF THE ACT ON SELECTED MEASURES AGAINST LEGITIMISATION OF PROCEEDS OF CRIME AND FINANCING OF TERRORISM

#### Section 29

Act No. 253/2008 Coll., on selected measures against legitimisation of proceeds of crime and financing of terrorism, as amended by Act No. 227/2009 Coll., Act No. 281/2009 Coll., Act No. 285/2009 Coll., Act No. 199/2010 Coll., Act No. 139/2011 Coll., Act No. 420/2011 Coll., Act No. 428/2011 Coll., Act No. 457/2011 Coll., Act No. 18/2012 Coll., Act No. 377/2012 Coll., Act No. 399/2012 Coll., Act No. 241/2013 Coll., Act No. 303/2013 Coll., Act No. 257/2014 Coll., Act No. 166/2015 Coll., Act No. 377/2015 Coll., Act No. 188/2016 Coll., Act No. 243/2016 Coll., Act No. 368/2016 Coll., Act No. 183/2017 Coll., Act No. 371/2017 Coll., Act No. 35/2018 Coll., Act No. 94/2018 Coll., Act No. 111/2019 Coll., Act No. 49/2020 Coll., and Act No. 527/2020 Sb., are amended as follows:

1. In Section 39 at the end of Subsection (1), the period is replaced with a comma and the letter (q) is added, which reads:

“q) to the Ministry of Industry and Trade when conducting proceedings on foreign investment screening pursuant to the act governing foreign investments screening.”

2. In Section 39(4) in the initial part of the provision, the text “(p)” is replaced with the text “(q)”.

## PART FOUR

### EFFECTIVENESS

#### Section 30

This Act enters into force on the first day of the third calendar month following the date of its promulgation, with exception of the provisions of Part One, Section 6(2) and Section 17(3) and (4), which come into effect on 11 October 2020.

**Vondráček**, undersigned

**Zeman**, undersigned

**Babiš**, undersigned

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