

Covid-19

Extraordinary Newsletter

Dear Clients,

The Hungarian Government – on the 25th of May 2020 adopted Government Decree No. 227/2020 (V.25.) on the economic protection of Hungarian enterprises. The new Government Decree (Foreign Investment Regulation – “**FIR**”) is issued to regulate foreign investment in connection with “strategic” Hungarian firms. The following newsletter intends to summarize the most relevant provisions of the FIR as well as raise some questions in relation to some of its provisions.

Scope:

The FIR covers the acquisition of shares, capital increases, divestitures, the issuance of bonds and the constitution of beneficiary rights in, and the merger and restructuring of, strategic Hungarian companies (“**transaction**”) by companies that are controlled by companies / natural persons from non-EU countries (“**buyer**”) if the buyer is to acquire over 10% of the shares and the value of the investment exceeds € 1 million.

Such transactions must be notified to the Minister for Innovation and Technology (“**minister**”), who may approve or prohibit such transactions.

Furthermore, the states that EU-based companies (no matter where their owners are from) also need the approval of the minister if the transaction would result in the

acquisition of majority control over a strategic Hungarian company.

Strategic companies:

Strategic companies are companies operating in the following sectors:

1. Energy
2. Transport
3. Communications and media
4. Finance
5. Insurance
6. Water supplies
7. Healthcare
8. Data processing or storage
9. Aerospace
10. Defence
11. Dual use items
12. Food security.

We must add that the wording of the FIR seems ambiguous at the moment as several other sectors are also listed in its Annex, but it is yet to be seen, how the minister will interpret the FIR. Taking into account the official statements from politicians in this topic, our educated guess that the minister will use a broad interpretation, and as a

consequence, even more sectors might be labelled as “strategic”.

Procedure:

The minister has 45 days to make a decision on the application, which might be prolonged by 15 days. The minister takes into account the following factors when making its decision:

- ❖ the national interests and the public order of Hungary (with special attention paid to the safety of the essential services to the public)
- ❖ whether the buyer is directly or indirectly controlled or funded by the government of a non-EU country or an organisation owned by such government
- ❖ previous cases in which the buyer endangered public interest in other EU countries
- ❖ the risk that the buyer is engaged in illegal / criminal activities.

An appeal against a decision that prohibits the transaction may be filed with the Metropolitan Court of Budapest. The Court will decide the case within 30 days in a non-litigious procedure.

Non-compliance:

The failure to give notification about the transaction may lead to a fine. The maximum amount of the fine is twice the value of the transaction, whereas the minimum amount is 1% of the net revenue of the target company.

Any contract, statement, declaration or company resolution which infringes FIR is considered to be null and void.

Remaining questions:

As the FIR is a governmental decree issued during a state of emergency (established in connection with the coronavirus crisis), it is only applicable in connection with transactions where the acquisition takes place between 26 May 2020 and 31 December 2020.

Remains to be seen, how the FIR will affect existing regulation. Act LVII of 2018 on the supervision of foreign investments jeopardizing the national security interests of Hungary is still in place, regulating the same issue in quite a different manner.

Furthermore, on one hand, some might argue, that the provisions of the FIR which requires EU companies (with an owner from an EU country) to submit a request to the minister for approval are against EU law principles (the freedom to establish and provide services and the free movement of capital) as they are making an unjustified distinction between companies based in Hungary and in other member states. On the other hand, others might argue that these provisions are justified on grounds of public order and public security, pursuant to Article 65 (1) b), of the Treaty on the Functioning of the European Union.

In the light of the introduction to this newsletter, we would note that proper legal advice on specific situations can only be provided in full knowledge of the relevant circumstances, and the terms of the relevant contracts or, as the case may be, other agreements. If you have any questions or would like engage our services, please contact us, as we continue to offer our services without any disruptions.

Kind regards

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