

Global Foreign Direct Investment

Czech Republic

Foreign direct investment screening procedures in the Czech Republic are governed by the Czech Act No. 34/2021 Coll. on the Screening of Foreign Investments (the "Czech FDI Act"). Under the Czech FDI Act, a mandatory screening requirement applies to certain categories of foreign investments. For transactions not fulfilling the mandatory screening criteria, the Ministry of Industry and Trade of the Czech Republic (the "Ministry") may nevertheless initiate a review on its own initiative and voluntary consultation proceedings with the Ministry are possible.

Who is a Foreign Investor?

The definition of a foreign investor is quite broad and encompasses any person or entity implementing a foreign investment (see definition below) who either (i) is domiciled or incorporated in a non-EU country; or (ii) is directly or indirectly (at any point in the holding chain) controlled by any person or entity domiciled or incorporated in a non-EU country. Notably, the Czech FDI Act does not provide for exemptions for EEA countries or Switzerland, which are thus treated as any other third country for the purposes of the assessment.

What constitutes a Foreign Investment?

Foreign Investments are defined very broadly by the Czech FDI Act as providing any item of value in any form (monetary or non-monetary) for the purpose of gaining an "effective degree of control" in a target entity or target asset performing economic activity in the Czech Republic (the "Target").

An Effective Degree of Control as required by the Czech FDI Act is obtained if

- the Foreign Investor acquires (directly or via affiliates) 10 percent or more of the voting rights in the Target (or an equivalent influence);
- the Foreign Investor or its nominee is appointed to any corporate body of the Target;
- the Foreign Investor gains rights to dispose over ownership of key material assets used to perform the Target's economic activity in the Czech Republic;

- the Foreign Investor obtains other means of control or influence and thereby gains access to information, systems or technologies which are important for the protection of the national security interests of the Czech Republic.

As there is no specific monetary threshold, most acquisitions of a shareholding in the Target will generally satisfy this definition (even if the investment is made at a non-Czech holding level).

Transactions requiring a mandatory screening

The Czech FDI Act requires a mandatory screening process if the Target is active in any of the following businesses:

- manufacturing, research, development, innovation, or organization of the lifecycle of military material according to legislation concerning foreign trade in military material;
- operation of a critical infrastructure element designated as such by relevant public authorities according to Czech laws;
- acting as administrator of an information system belonging to the critical information infrastructure, administrator of a communication system belonging to the critical information infrastructure, administrator of an information system belonging to an essential service, or operator of an essential service as defined in the Czech Cybersecurity Act;

- development or manufacturing of goods listed in Annex IV to Council Regulation (EC) 428/2009; or
- operating a media business holding a national radio or television license or publishing periodicals with a total average daily production exceeding 100,000 copies in the past calendar year. In this case the foreign investor is not obliged to file for the full FDI screening procedure, but rather a simplified consultation procedure (see below).

Voluntary consultations

For transactions where a mandatory FDI filing is not required, the Ministry has broad powers to initiate a screening itself, if it considers the transaction has a capacity to endanger national security, internal order or public order. The Ministry may initiate such screenings even retrospectively, up to five years after completion of a transaction. The only way to pre-empt such a retrospective screening is to conduct a voluntary “consultation” process, which essentially amounts to a voluntary FDI filing with shorter time periods for approval.

The Notification Process

Both mandatory and voluntary screenings are initiated by supplying a designated form to the Ministry. The form requires information on the Foreign Investor and its ownership structure as well as the details of the contemplated Foreign Investment.

As a rule, the Ministry has 90 days to either (i) issue an unconditional clearance or (ii) refer the matter to the Czech Government, recommending either conditional clearance or a prohibition. If the matter is referred to the Czech Government, it should issue a decision within an additional 45 days. The transaction is not automatically considered cleared even if the minister misses the extended deadline.

Fines amounting to up to CZK50m (ca. EUR 2m) or 1 percent of worldwide turnover (whichever is higher) may be imposed for the failure to notify. Additionally, the Ministry may prohibit the transaction or order its unwinding (where already implemented).

Authored by

KINSTELLAR

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