

# Global Foreign Direct Investment

## Hungary

Currently, there are two different sets of foreign direct investment control (“FDI”) screening mechanisms in effect in Hungary:

- the “2018 FDI Regime,” centred around Act no. LVII of 2018 and applicable from the beginning of 2019; and
- the “2020 FDI Regime,” centred around Act LVIII of 2020, which was introduced with reference to the COVID-19 pandemic and has also become generally applicable.

The two regimes now apply in parallel, with different scope, rules, sanctions and authority enforcing them.

### Who is a Foreign Investor?

Under both FDI regimes, the definition of a foreign investor is quite broad.

Under the 2018 FDI Regime, currently only for a temporary period until June 1, 2023, investors from the EU, the EEA and from the Swiss Confederation also qualify as foreign investors. It is currently foreseen that after such date, the 2018 FDI Regime will not apply to EU, EEA and Swiss investors, unless they are controlled by a person who is not a citizen of these countries or, if a legal person, is not registered there.

The 2020 FDI Regime differentiates between various subcategories of foreign investors, but acquisitions of a majority interest in a Hungarian strategic company are notifiable even if they are undertaken by investors from the EU, the EEA or the Swiss Confederation, provided that the value of the investment is over HUF350m (ca EUR 884,000).

### What Type of Transactions must be Notified?

The filing triggers under both regimes are quite complex. Essentially, a filing is required if one of the following type of transactions is undertaken by a foreign investor with regards to a Hungarian-registered company that is active in a sensitive sector:

- the acquisition of a certain stake in (or otherwise control over) the company, the degree of which differs by investor and company type;
- in some cases other corporate transactions such as a capital increase, a merger, bond issue or the creation of a beneficial interest over shares;
- new, sensitive activity of an already existing company;
- the acquisition of rights over essential assets, infrastructure or equipment used for a strategic activity.

Under the 2018 FDI Regime, the scope of sensitive sectors is fairly limited. It includes, amongst others, the manufacture of arms and ammunition, dual-use items, the provision of financial and insurance services, certain critical energy-related and electronic communication services.

By contrast, however, under the 2020 FDI Regime, the list of “sensitive” sectors is very broad: amongst many other examples, it includes many retail and wholesale activities, as well as manufacturing activities.

However, under the 2020 FDI Regime, a foreign-to-foreign exemption exists, essentially meaning that the transaction is not notifiable if the direct shareholders of the Hungarian company do not change, even if there is a change of control higher up in the ownership chain.

The 2020 FDI Regime also includes an intra-group exemption, but the interpretation of its scope is unclear, with the competent authority inclined to apply it to only foreign-to-foreign transactions (such as upstream intra-group restructurings).

### **The Notification Process**

The 2018 FDI Regime provides a 10-day deadline for notification to the competent minister (currently the minister leading the Prime Minister's Office). In addition to supplying information on the transaction, the foreign investor and its ownership structure must be described and the transaction documents must be filed, in many cases with a Hungarian translation. In practice, this means that filing is possible only after signing.

As a rule, the deadline for the minister's proceedings is 60 days, but it may be extended by another 60 days and the transaction is not automatically considered cleared even if the minister misses the extended deadline.

The investor may request the judicial review of a prohibition decision from Hungarian courts.

Fines amounting up to HUF10m (ca. EUR 25,000) may be imposed for the failure to notify, and notifiable transactions are not considered valid without a clearance decision, thus, for instance, the change in ownership will not be entered into the Hungarian company registry without the necessary approval.

The process under the 2020 FDI regime is similar, but the notification must be filed with a different minister (currently the minister for economic development) and the deadline for the process is only 30 business days, with a possible 15-day extension. However, again there is no presumption of approval if the minister fails to adopt a decision within the deadline. The fines which may be imposed for failure to notify can reach up to twice the transaction value.

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