

Global Foreign Direct Investment

Slovenia

In 2020, the Slovenian Parliament adopted rules regarding foreign direct investments. The topic was included in the Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic¹, that entered into force on May 31, 2020. The provisions regarding foreign direct investments are currently applicable until June 30, 2023. It is expected that the current foreign direct investments framework will be replaced with a separate legal act, that will ensure a permanent legal basis for foreign direct investments screening.

Foreign Investor & Foreign Direct Investment

The Slovenian definition of a foreign investor is very broad. A foreign investor is any individual or legal entity that intends to make a direct foreign investment in Slovenia, or has already done so, regardless of whether they are from EU member countries or non-EU countries. According to that, a foreign investor is any individual or legal entity outside of Slovenia that carried out an investment whose purpose is to establish or maintain permanent and direct links between the foreign investor and an economic entity based in the Republic of Slovenia, with the acquisition of at least 10 percent participation in the capital or in voting rights.

Notification Requirement

Notification of the foreign direct investment needs to be submitted to the Slovenian Ministry of Economic Development and Technology within 15 days after:

- the conclusion of a merger agreement or from the announcement of a takeover offer (any agreement by which a foreign investor acquires at least 10 percent of the capital or voting rights in a Slovenian company);
- the incorporation of a company in Slovenia (foreign direct investment in this sense is any investment in tangible and intangible assets

related to the setting-up of a new establishment, extension of the capacity of an existing establishment, diversification of the output of an establishment into products not previously produced in the establishment or a fundamental change in the overall production process of an existing establishment);

- conclusion of a sales contract, with which the foreign investor (or its subsidiary) acquires the right to dispose of land and real estate that are essential to critical infrastructure or land and real estate located near such infrastructure.

Not every foreign investment is subject to screening, since notifying obligation is limited to investments which could pose a threat to the security and public order of Slovenia (investments affecting critical infrastructure, critical technology, dual-use goods, supply of critical resources, access to sensitive information, freedom, and plurality of media) and projects or programs in the interest of the European Union. The mentioned sectors are largely consistent with the ones in Article 4 of the EU Regulation².

Documents and information submitted must be in Slovenian language and must include, among other things, the corporate name and seat of the foreign investor and the target company, their annual turnover, their ownership structure, the value of the foreign direct investment and the source of funding

¹ Official Gazette of the Republic of Slovenia, no. 80/20 (Zakon o interventnih ukrepih za omilitve in odpravo posledic epidemije COVID-19, Ur. L. RS, št. 80/20)

² 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, OJ L 79 I, 21.3.2019 (EU FDI Screening Regulation)

and the date when the foreign direct investment is planned to be completed or has been completed.

The fine for not notifying a direct foreign investment may reach up to EUR 250,000 for small companies and even EUR 500,000 for medium and large companies. The fine can be also imposed on a responsible person of a legal entity and can be as high as EUR 10,000. The amount of the fine for a self-employed person can reach up to EUR 150,000 and for individuals up to EUR 5,000.

Ministry's Decision

The Ministry is the one that decides whether direct foreign investment represents a threat to security or public order of the country and consequently approves the investment, sets conditions for its implementation, prohibits, or cancels it. If the Ministry prohibits or cancels a foreign direct investment in the screening, this decision results in the annulment of the merger agreement or the contract by which the foreign investor acquired the

right to dispose of land and real estate, or the decision to enter in the court register or takeover bid.

The Ministry is supposed to issue the decision in two months since notification. This timeframe is only a guideline and if the decision is not issued within this timeframe, there is no presumption of approval. There is a possibility of an appeal to the Government against the decision of the Ministry.

The Ministry also has the possibility to screen the investment within five years after the conclusion of the merger agreement or from the announcement of the takeover offer; from the establishment of a company in Slovenia, in which a foreign investor has 10 percent of the capital or voting rights; or from the conclusion of the contract by which he acquired the right to dispose of land and real estate. As a result of such screening, the Ministry can still annul its previous decision.

Authored by

KINSTELLAR

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