

FDI SCREENING IN HUNGARY

Hungary has a complex FDI screening system, consisting of two parallel and independently functioning regimes, as summarized in the chart below. Transactions caught under either regime require the acknowledgement of the relevant authority as a precondition of implementation.

The first regime, the so called „**General FDI Regime**”, was introduced on 1 January 2019 to basically implement EU Regulation no. 2019/452. It has a relatively narrow scope regarding the sectors covered (defense, national security, public utility services, certain financial services, IT security, telecommunications and insurance). The declared aim of the FDI review is to protect Hungary’s security interests.

The second effective FDI regime is the “**Special FDI Regime**” was originally adopted because of the Covid-19 pandemic. It currently applies with slightly amended rules under Ukraine war related emergency regime (the amendments are currently applicable until 25 November 2023). It covers a wide scope of sectors and activities. The declared aim of the FDI review is to protect Hungary’s sovereign interest in (a) the security and functionality of networks and systems not governed by sectoral legislation, (b) supply security related public interest and (c) public interest relating to fundamental economic interests from a national economy perspective.

OUR INSIGHTS

FDI screening rules are very complicated (below is a simplified summary only), and screening under both regimes is non-transparent. There is no public register on FDI filings and decisions, and there are no published statistics.

The Special FDI Regime leaves some room for maneuver in transaction structuring to avoid FDI screening. Based on our practice, most transactions pass the review. Increased scrutiny is expected if natural resources are concerned by a transaction, and where the energy sector or national security linked activities are concerned. Veto decisions known to us concerned an acquisition where the target owned a mineral water spring, and the acquisition of Aegon insurance business by Vienna Insurance Group. The legality of the Hungarian FDI regimes has been challenged by the [European Commission](#) and by market players ([Xella](#), pending before the CJEU).

	GENERAL FDI REGIME	SPECIAL FDI REGIME
REVIEWING AUTHORITY	Minister leading the Prime Minister’s Cabinet Office	Minister of Economic Development
WHO MUST FILE?	Foreign investor: (i) non-EU/EEA/Swiss nationals or entities or (ii) an EU/EEA/Swiss entity controlled by a non-EU/EEA/Swiss national or entity.	Foreign investor: (i) non-EU/EEA/Swiss nationals or entities or (ii) an EU/EEA/Swiss entity under the majority control of non-EU/EEA/Swiss national(s) or entity(ies). Note: though not „foreign investors”, EU/EEA/Swiss investors can also be caught by FDI screening, see below.
DEAL TYPE	(1) A foreign investor establishes a new Hungarian company or acquires in an existing Hungarian company solely or together with other foreign investor(s) a stake exceeding 25% (for privately held companies) or 10% (in publicly listed companies); or acquires a ‘dominant influence’ in such company.	(1) acquisition of ownership interest; (2) capital increase; (3) mergers, demergers, transformations to another company form; (4) issuance of bonds which are convertible or convert to equity or provide preferential subscription rights;



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	GENERAL FDI REGIME	SPECIAL FDI REGIME
DEAL TYPE	<p>(2) Foreign investor(s) acquire(s) a stake of less than 25% in a privately held company registered in Hungary, but the total stake held by foreign investor(s) exceed 25% as a result.</p> <p>(3) A foreign investor registers a branch office in Hungary for the purpose of carrying out listed strategic activities.</p> <p>(4) A foreign investor acquires a right to operate or use infrastructure or assets that are indispensable for carrying out listed strategic activities.</p> <p>(5) A company registered in Hungary in which foreign investor(s) hold a stake equivalent to that in point (1) or (2) above takes up a listed strategic activity.</p>	<p>(5) establishing usufruct right over equity. EU/EEA/Swiss entity under the majority control of non-EU/EEA/Swiss national(s) or entity(ies) and EU/EEA/Swiss investors must notify the above transactions if the investment value reaches or exceeds HUF 350 million (approx. EUR 880,000) and the transaction leads to the acquisition directly or indirectly of majority control.</p> <p>Non-EU/EEA/Swiss investors must notify (i) the direct and indirect acquisition of at least 5% ownership interest (or 3% in public companies), if the investment reaches or exceeds HUF 350 million (approx. EUR 880,000); or (ii) the acquisition of an ownership interest reaching 10%, 20% or 50% in a strategic company or any level of interest which, if computed together with any other foreign investors' interest, exceeds 25%, regardless of deal value.</p> <p>(6) acquisition of right of use / operational rights of infrastructures and assets that are 'indispensable for the operation of strategic companies' (including the pledging of these assets and infrastructures) must be notified regardless of investment value if such right is acquired by a foreign investor or an entity under its (in)direct majority control.</p> <p>Important exceptions: (a) indirect acquisitions and (b) higher level intragroup restructurings fall outside FDI screening, provided in both cases that there is no direct ownership change over the Hungarian strategic company.</p>
SECTORS/ ACTIVITIES COVERED BY STRATEGIC COMPANIES	Entities active in the defense, national security, public utility services, certain financial services, IT security, telecommunications and insurance sector (in line with EU legislation).	Entities with a registered activity included in the very extensive list of relevant economic activities (identified by statistic nomenclature codes in the legislation).
ASSESSMENT	<p>If the triggering event "harms Hungary's security interests", which is not defined in legislation. The minister's discretion is wide.</p> <p>However, if the foreign investor is an EU/EEA/Swiss entity controlled by a non-EU/EEA/Swiss national or entity, the transaction can be blocked only if it is established that the involvement of the EU/EEA/Swiss entity in the deal aims to circumvent the screening rules. This could be the case, in particular, if the EU/EEA/Swiss entity controlled by a non-EU investor does not carry out any actual economic activities or has no real presence in EU Member States.</p>	<p>The Minister can block the transaction if</p> <p>a) If the proposed transaction endangers or threatens to endanger the national interest, public order, public security of Hungary with particular attention to the security of supply relating to the basic needs of the society, in accordance with TFEU Art. 36 (public policy), 52(1) (public security) and 65(1), (public health).</p> <p>b) If the foreign investor is directly or indirectly under the control of the government of any non-EU Member State (including its ownership structure or financing).</p> <p>c) If the foreign investor was involved in any activity threatening public security or public order in any other EU Member State.</p> <p>d) If there is substantial risk that the applicant will commit any criminal offence.</p>
NOTIFICATION DEADLINE	<p>Before implementation, within 10 calendar days from</p> <p>(1) signing the contract, in the event of stake acquisitions and operation right acquisitions;</p> <p>(2) the registration of the newly subscribed strategic activity in the company registry, in the event of the new pursuit of strategic activities.</p>	Before implementation, within 10 calendar days from signing the transaction documents
AUTHORITY REVIEW DEADLINE	60 calendar days (extendable by 60 calendar days) from filing. Delays may occur and there are no effective remedies against such delays.	30 business days (extendable by 15 calendar days) from filing. Delays may occur and there are no effective remedies against such delays.
CONSEQUENCES OF FAILURE TO NOTIFY OR AUTHORITY VETO	Shareholdings, operation rights or assets cannot be acquired, new strategic activity cannot be taken up.	Nullity of legal instrument purporting the deal.
REMEDY AGAINST VETO	<p>The foreign investor or the affected company can challenge the veto decision only on procedural grounds before court.</p> <p>Exception: the minister's opinion whether an EU entity controlled by a non-EU investor carries out actual economic activities or has real presence in the EU Member States can be challenged on the merits.</p>	The foreign investor or the affected company can challenge the veto decision before court.
APPLICABLE LEGISLATION	Act LVII of 2018, Government Decree 246/2018	Act LVIII of 2020 and Government Decree 289/2020, temporarily overruled by Government Decree no. 561/2022 until 25 November 2023