

Foreign Direct Investment Screening in the Czech Republic



MINISTERSTVO
PRŮMYSLU A OBCHODU

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fdi-screening@mpo.cz



Foreign Direct Investment Screening Act No. 34/2021 Coll.

➔ Main goal:

- ▶ to prevent risky foreign investments that could endanger the security, internal or public order of the Czech Republic
- ▶ strengthen open investment environment

➔ Effective since May 1, 2021

Scope

- ➔ FDI conducted by a third-country investor (ultimate owner), which may negatively effect Czech national security, public order or internal security
- ➔ trigger: 10% of voting rights or substantial control over the enterprise
- ➔ 2 pillars: sector specific (ex ante screening) and cross-sectoral (ex post screening)

Process

- ➔ screening conducted by MoIT
- ➔ application form to be issued by Gov. Decree (in CZ)
- ➔ consulted institutions:
 - ▶ mandatory: MoD, MFA, MI, MF, Police, intelligence services
 - ▶ ad hoc basis: other relevant institutions consulted (CNB, MT, NCISA)
 - ▶ no risk identified -> MoIT issues a positive decision

Possibility of a negative decision

- ➔ if MoIT or any of the mandatory consulted institutions assesses the FDI as high-risk
 - ▶ Risk can be substantially reduced by mitigating measures
 - ▶ No agreement on mitigating measures
 - ➔ No permission granted (for screening before the FDI is completed)
 - ➔ Order to divest (for FDI already existing)
- ➔ Such a case is referred to the Czech government which makes the ultimate decision

Ex ante pillar: sector specific

- ➔ mandatory screening prior to FDI's completion
- ➔ sector specific:
 - ▶ arms industry (Act No. 130/2002 Coll., Act No. 38/1994 Coll., Decree 210/212 Coll.)
 - ▶ critical infrastructure (Act No. 240/2000 Coll.)
 - ▶ critical information infrastructure (Act 181/2014 Coll.)
 - ▶ selected dual-use manufacturing (Annex IV to Council Regulation (EC) 428/2009)

Ex post pillar: cross-sectoral

- ➔ ex officio screening possible up to 5 years after the FDI completion
- ➔ cross-sectoral (security relevant):
 - ▶ manufacturing/services not included in the ex ante pillar
 - ▶ emerging and foundational technologies

Examples of security-relevant sectors

- ➔ infrastructure: including energy, transport, water, medical, data processing or storage infrastructure, aeronautical and space infrastructure, defence, as well as access to land and real estate essential for the use of such infrastructure
- ➔ critical technologies and dual-use items: including artificial intelligence, robotics, semiconductors, cyber security, aerospace, defence, chemical, energy storage, quantum, and nuclear technologies as well as nanotechnology and biotechnology
- ➔ access to supplies: energy, raw material or food security

- ➔ access to, or the ability to control, information relevant for the protection of the security of the Czech Republic or internal or public order, including personal data;
- ➔ media
- ➔ non-military objects of importance for the defence of the State

Consultations/fast track

➔ 45 days deadline

➔ voluntary:

▶ to provide the investor with the certainty that the MoIT will not ever launch the ex post screening

➔ mandatory:

▶ TV or radio broadcasters with national broadcasting license

▶ Media houses with daily volume of 100.000 (combined)

Maximal statutory time periods*

- ➔ Consultation: 45 days
- ➔ Screening of the FDI not assessed to be risky: 90 days
- ➔ Screening of the FDI assessed to be risky and referred to the government: 135 days

* screening (not the consultations) of complex cases can be prolonged for 30 days. The screening can be also put on hold for the negotiations about the mitigation measures.

Further Information

- ➔ MoIT Website/Foreign Trade/Investment Screening
- ➔ unofficial translation of the Act
- ➔ inquiries: fdi-screening@mpo.cz

Thank you.



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