

Hungary

Government Decree 246/2018 (XII. 17.) on the Implementation of Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests (2018)

Unofficial translation

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Government Decree 246/2018 (XII. 17.) on the Implementation of Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests

(unofficial translation)

The Government based on the authorization given in Section 12 (a) of Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests, with respect to Subtitle 2 and Annex 1, based on the authorization given in Section 12 (b) of Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests, with respect to Subtitles 3-7, based on the authorization given in Section 12 (c) of Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests, with respect to Subtitle 8 and Annex 2, based on the authorization given in Section 12 (d) of Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests, with respect to Subtitle 9, based on the authorization given in Section 12 (e) of Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests, acting within the scope of its functions laid down in Article 15 (1) of the Fundamental Law of Hungary, orders the following:

1. Designation of the Minister authorized to perform the procedure related to the notification

Section 1

The Government designates the Minister in charge of civil national security services (hereinafter: Minister) to conduct the procedure related to the notification laid down in Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests (hereinafter: Act), (hereinafter: notification).

2. The scope of activities subject to notification obligation

Section 2

The activities subject to the notification obligation specified in the Act – within the scopes of activity laid down in Section 2 (4) of the Act – shall be the activities specified in Annex 1.

3. Detailed rules on the notification and the ministerial procedure related to the notification

Section 3

The legal transaction targeting the acquisition of ownership or the right of operation shall be notified to the minister within ten days from signing the contract or pre-contract targeting the former or the agreement on signing these; the registration of a newly adopted activity in the company registry shall be notified to the minister within ten days from its registration, unless provided by the law otherwise, in the Hungarian language.

Section 4

(1) The notification shall include

a) the following data of the foreign investor natural person:

aa) their natural personal identification data, residence or accommodation in Hungary or – lacking a place of residence or accommodation in Hungary – place of permanent or temporary residence abroad,

ab) nationality,

ac) contact details for written communication;

b) the following data of the foreign investor legal person or other organization

ba) name, seat and seat of branch in Hungary,

bb) specification of the state performing the duties related to their official registration,

bc) contact details for written communication;

c) the data of a natural person acting on behalf of the foreign investor specified under a), and

d) the data of a legal entity or other organization acting on behalf of the foreign investor specified under b).

(2) The following shall be enclosed in the notification: the documents specified under Section 5 (2) of the Act and – unless specified otherwise by the legal provisions – the documents arising in relation to the legal transaction targeting the ownership acquisition or the right of operation, or the registration of the newly adopted activity in the company registry, including the contract, pre-contract or the agreement on signing these targeting the acquisition of ownership or the right of operation.

(3) The original or certified copies of all documents to be enclosed by virtue of the provisions of this decree as well as – unless provided otherwise by legal provisions – the certified Hungarian translations of documents issued in languages other than Hungarian, shall be enclosed in the notification.

Section 5

In the course of the procedure related to the notification the minister shall communicate with the foreign investor and the entity acting on behalf of the former via the contact details specified in the notification. If the foreign investor or the entity acting on his behalf are not available via the contact details specified in the notification, the consequences thereof – unless specified otherwise in the legal provisions – shall be borne by the foreign investor.

Section 6

Except for the derogations provided for in the Act or this Decree, the provisions of the Act on General Public Administration Procedures on language use and the use of interpreters, the treatment of data, the general rules on communication, representation, documents, the calculation of time limits, application, application for justification, objections against being considered as served as well as exemption from costs, shall be duly applicable to the notification, noting that where the Act on General Public Administration Procedures mentions “client”, the foreign investor making the notification shall be understood instead.

Section 7

(1) The minister shall send a written confirmation of the receipt of the notification which, also considering the provisions of (2), shall specify

a) the day the notification was received,

b) the name of the foreign investor making the notification,

c) the specification of whether the notification was of an ownership acquisition, the acquisition of a right of operation or a newly adopted activity, as well as

d) a note that the confirmation only confirms the receipt of the notification and should not be considered as an acknowledgement of the notification as required by the Act.

(2) If the minister establishes in relation to the notification that it does not comply with the requirements laid down in the Act or in this Decree, he shall inform the foreign investor of this fact and the reasons thereof in the confirmation under (1) and where required call for remedying deficiencies.

Section 8

(1) In the course of his procedure related to the notification the minister may call the foreign investor for communicating additional data and information not specified in the notification and enclosing further documents not enclosed in the notification but required for conducting the procedure related to the notification, by giving a deadline of maximally 45 days.

(2) If the call under (1) has no results, the minister shall repeat the call once. If the second call has no results, either, the minister shall terminate the procedure related to the notification after the termination

of the deadline without results, by avoiding the confirmation of acknowledgement or the decision-making laid down in Section 6 (4) of the Act.

(3) The termination of the procedure related to the notification outlined under (2) shall not prevent performing the control under Section 9 (1) of the Act.

(4) If the procedure related to the notification is terminated as outlined under (2), the provision under Section 5 shall be duly applicable for informing the foreign investor.

Section 9

(1) If the foreign investor withdraws their notification in a written application filed with the minister before receiving confirmation of the acknowledgement of the notification or a prohibiting decision, the minister shall avoid applying Section 6 (4) of the Act and terminate the procedure related to the notification or the acknowledgement specified under Section 6 (4) (a) of the Act, or withdraw the prohibiting decision of under Section 6 (4) (b) of the Act. The termination of the procedure related to the notification shall be no obstacle to performing the control of under Section 9 (1) of the Act.

(2) If the procedure related to the notification is terminated as specified under (1), the provision of under Section 5 shall be duly applicable.

Section 10

(1) The minister shall keep records of the confirmations of acknowledgement of the notifications as well as of the prohibiting decisions.

(2) The data entered in a registry as specified under (1) shall be deleted after the deadline specified under Section 6

(10) of the Act has expired.

4. The range of organs to be involved in the procedure related to the notification and detailed rules on the procedures of the organs involved

Section 11

(1) Depending on the minister's decision, budget organs concerned according to their scope of duties laid down in the law may be involved in the procedure related to the notification (hereinafter: organs involved in the procedure).

(2) In a request to be addressed to the organ involved in the procedure, data and information relevant for the proposal under (3), as well as the deadline of response shall be specified.

(3) In their response to be made to the request under (2), the organ involved in the procedure shall make a proposal, providing duly detailed justification, for acknowledging the notification or making a prohibiting decision, which proposal shall not be binding for the minister.

(4) If in order to make the proposal under (3) further data or information not specified in the request are required, or the involvement of an organ concerned according to its scope of duties laid down in the law in the procedure related to the notification becomes necessary, the organ involved in the procedure shall notify the minister of the former without delay.

(5) The failure of compliance with the deadline for response or the lack of response by the organ involved in the procedure shall be no obstacle to the acknowledgement of the notification or the prohibiting decision.

5. Detailed rules on the foreign investor's data provision obligation

Section 12

(1) During the term of the procedure related to the notification or after the acknowledgement of the notification, the foreign investor shall report any changes in the data specified in the notification or the documents enclosed therein, to the minister within five days of learning about the change concerned.

(2) The data provision obligation shall be performed by duly applying the provisions under Section 4, noting that in addition to the data serving identification, the foreign investor shall report all data concerned by a change and shall enclose the documents related to the change in the data.

6. Requirements for the simplified justification for prohibiting decisions

Section 13

(1) The simplified justification to be given to the prohibiting decision under Section 6 (4) (b) of the Act shall include

a) the specification of the parties concerned in the acquisition of ownership or right of operation, or in the performance of a newly adopted activity, subject to notification obligation (for the purposes of this Section, hereinafter together: legal transaction),

b) the specification of the activity concerned in the legal transaction according to Annex 1,

c) the specification of the security interest or scope of interest violated by the legal transaction,

d) the description of the circumstances requiring the prolongation of the term of control in the case under Section 6 (5) of the Act,

e) where required, the description of the circumstances justifying the qualification of under Section 6 (6) of the Act and alluding to misuse as specified therein, as well as

f) reference to the legal provisions applied in the course of the procedure in relation to the notification

1) references to the legal provisions applied in the course of the procedure in relation to the notification.

(2) If the prohibiting decision is made by virtue of Section 9 (2) (b) of the Act, the simplified justification shall include

a) the circumstances determining the qualification of foreign investor and those underlying the notification obligation by virtue of Section 2 (1) or (2) or Section 4 (1) of the Act, as well as

b) the items specified under (1)(a)-(f).

(3) The simplified justification of the prohibition decision shall not include any classified information.

7. Detailed rules on the control laid down under Section 9 (1) of the Act

Section 14

(1) The control under Section 9 (1) of the Act (for the purposes of this Chapter, hereinafter: control) shall be carried out by the Constitution Protection Office.

(2) Depending on the decision of the Constitution Protection Office, an organ concerned according to its scope of duties laid down in the law may be involved in the control.

Section 15

The scope of control shall also cover the monitoring of data in the company registry and the share register.

Section 16

(1) If the performance of the control is requested by the client, the request for this (for the purposes of this act, hereinafter: request) shall be filed with the Constitution Protection Office, in writing exclusively.

(2) The request may not be filed with the government customer service.

Section 17

Where required for exercising the authorities delegated to the minister's competence by virtue of the Act, the Constitution Protection Office shall without delay inform the minister of the facts revealed during the control in writing and, where necessary, propose taking the measures laid down in Section 9 (2), (3) and (5) of the Act. The proposal by the Constitution Protection Office shall not be binding for the minister.

Section 18

The minister shall keep a record of the confirmations or decisions made as a result of the control, by virtue of Section 9 (2) (a) or (b) of the Act. After the expiration of the deadline specified under Section 6 (10) of the Act, the data in the records shall be deleted.

Section 19

Unless it otherwise follows from the provisions of the act, the provisions of this decree with reference to the confirmation of the acknowledgement of the notification or the prohibiting decision shall be duly applicable also with reference to the confirmations or decisions following from Section 9 (2) (a) or (b) of the Act as well.

8. Procedures targeting licensing the activities concerned in Section 7 (2) of the Act

Section 20

The procedures targeting licensing the activities concerned in Section 7 (2) are included in Annex 2.

9. Detailed rules on the criteria for establishing a fine and the procedure of imposing the fine

Section 21

When establishing the amount of the fine laid down in Section 10 (1) of the Act, a)

aa) the gravity of the legal violation involving the fine,

ab) its impact on Hungarian security, as well as

b) as regards the person obliged to the payment of the fine

ba) the nature of his activity under the scope of Annex 1, and

bb) his financial and property conditions revealed in the course of procedures laid down in the Act or this Decree or from other official sources shall be considered.

10. Closing provisions

Section 22

This Decree shall enter into force as of 1 January 2019.

Annex 1 to Government Decree 246/2018. (XII. 17.) – ACTIVITIES SUBJECT TO NOTIFICATION OBLIGATION WITHIN THE SCOPES OF ACTIVITY LAID DOWN IN THE ACT

1. Activities subject to notification in the scope of manufacture of weapons and ammunition as well

as or military equipment and devices subject to licence

1. The manufacture of firearms, pieces of firearms, ammunition – with the exception of museal ammunition – and Flobert ammunition laid down in Act XXIV of 2004 on Firearms and Ammunition (hereinafter Arms Act) according to Section 2 (20) of the Arms Act.
2. The manufacture of device specified in Annex 1 of Government Decree 156/2017 (VI.16.) on the detailed regulations of the licensing of defence industry & amp, trade activity and the certification of enterprises (hereinafter: DI Decree) – not governed by (1) or by Chapter 3 (1) – in compliance with Section 1 (d) of Act CIX of 2005 on the authorization of the manufacturing of military equipment and the provision of military services (hereinafter: ME Act), not including the manufacture of the devices listed under Chapter XXV (1) “Coercive devices”.

2. Activities subject to notification obligation within the scope of the manufacture of dual use products

1. The manufacture of products specified in ANNEX 1 of Regulation 428/2009/EC setting up a Community regime for the control of exports, transfer, brokering and transit of dual use items.

3. Activities subject to notification obligation in the scope of the manufacture of intelligence devices specified in the government decree on the detailed regulations of the licensing of defence industry, trade activity and the certification of enterprises

1. The manufacture of devices specified in CHAPTER XXVI of Annex 1 of the DI Decree in compliance with Section 1 (d) of Act CIX of 2005 on the authorization of the manufacturing of military equipment and the provision of military services.

4. Activities subject to notification obligation in the scope of the operation of the payment system from the financial services and financial auxiliary services specified in the Act on Credit Institutions and Financial Services

1. From the credit reference services specified under Section 3 (1) (k) of Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (hereinafter CI Act), data processing by the financial enterprise operating the central credit information system defined by the Act on the Central Credit Information System as laid down under Section 6 (1) (42) (b) of the CI Act.
2. The operation of payment systems laid down under Section 3 (2) (b) of the CI Act, not including operation by cash-substitute payment instruments exclusively.

5. Activities subject to notification obligation within the scope of services governed by the Act on Electric Energy

The activity specified under this subtitle shall be subject to notification only if by virtue of Section 1 (f) of Act CLXVI of 2012 on the identification, designation and protection of critical infrastructures (hereinafter: Act CI) it concerns an activity that is of vital importance for the performance of a social duty – thus especially for health care, the personal and property security of the population, the provision of economic and social public services – or the non-performance of which would have significant consequences due to the disruption in the continuous performance of these duties.

1. The transmission of electric energy as laid down under Section 3 (1) of Act LXXXVI of 2007 on Electric Energy (hereafter EE Act).
2. The distribution of electric energy as laid down under Section 3 (8) of the EE Act.
3. System control as laid down under Section 3 (51) of the EE Act.
4. The production of electric energy by a production licence holder with a production licence for a power plant with a nominal performance capacity of at least 50 MW as laid down in Section 3 (57) of the EE Act.

6. Activities subject to notification obligation within the scope of the Act on Natural Gas Supply

The activity specified under this subtitle shall be subject to notification only if by virtue of Section 1 (f) of Act CLXVI of 2012 on the identification, designation and protection of critical infrastructures it concerns an activity that is of vital importance for the performance of a social duty – thus especially for health care, the personal and property security of the population, the provision of economic and social public services – or the non-performance of which would have significant consequences due to the disruption in the continuous performance of these duties.

1. The distribution of natural gas in compliance with Section 3 (24) of Act XL of 2008 (hereinafter GET Act).
2. The storage of natural gas in compliance with Section 3 (31) of the GET Act.
3. The delivery of natural gas in compliance with Section 3 (34) of the GET Act.
4. System supervision in compliance with Section 3 (52) of the GET Act.

7. Activities subject to notification obligation within the scope of the act on water public utility services

The activity specified under this subtitle shall be subject to notification only if by virtue of Section 1 (f) of Act CI) it concerns an activity that is of vital importance for the performance of a social duty – thus especially for health care, the personal and property security of the population, the provision of economic and social public services – or the non-performance of which would have significant consequences due to the disruption in the continuous performance of these duties.

1. Outsourcing as laid down under Section 2 (13) of Act CCIX of 2011 on Water Utility Supply (hereinafter: WUS Act).

2. The development of water utilities as specified under Section 2 (21) of the WUS Act.

8. Activities subject to notification obligation within the scope of services governed by the Act on Electronic Communications

1. The provision of electronic communication services – defined under Section 188 (13) of Act C of 2003 on Electronic Communications – for the provision of which services the electronic communication network operated includes system elements of vital national or European importance designated by virtue of Government Decree 249/2017 (IX.5.) on the Identification and Protection of Critical Assets and Infrastructure in the Infocommunications Sector.

9. Activities subject to notification obligation within the scope of the establishment, development or operation of electronic information systems governed by the Act on the Electronic Security of State and Local Government Organizations

1. Cooperation in the establishment, operation, auditing, maintenance or repair of electronic information systems specified in Section 1 (1) (14 b) of Act L of 2013 on the Electronic Security of State and Local Government Organizations (hereinafter: IS Act), as laid down under Section 11 (1) (k) of the IS Act.

2. Participation in an investigation into a security event specified under Section 1 (1)(9) of the IS Act as laid down under Section 11 (6) of the IS Act.

3. The performance of a fragility test specified under Section 1 (1) (41) of the IS Act as laid down under Section 18 (3) of the IS Act.

Annex 2 to Government Decree 246/2018 (XII. 17.) – PROCEDURES TARGETING LICENSING ACTIVITIES CONCERNED IN SECTION 7 (2) OF THE ACT

1. In relation to activities subject to notification obligation in the scope of the manufacture of weapons and ammunition as well as of military equipment and devices subject to licence

1. The procedure targeting licensing the manufacture of firearms as laid down under Section 3 (1) of the Act on Firearms and Ammunition.

2. The procedure targeting licensing the manufacture of pieces of firearms as laid down under Section 3 (1) (a) of the Act on Firearms and Ammunition.

3. The procedure targeting the licensing of ammunition, within the exception of museal ammunition, as laid down under Section 3 (1) (a) of the Act on Firearms and Ammunition.

4. The procedure targeting the licensing of Flobert ammunition as laid down under Section 3 (1) (a) of the Act on Firearms and Ammunition.

5. The manufacture of device specified in Annex 1 of the DI Decree) – not governed by Subtitle 2 (1) – as laid down under Section 1 (d) of Act CIX of 2005 on the authorization of the manufacturing of military equipment and the provision of military services (hereinafter: ME Act), not including the manufacture of the devices listed under Chapter XXV (1) “Coercive devices”.

2. In relation to activities subject to notification obligations in the scope of the manufacture of intelligence devices specified in the government decree on the detailed regulations of the licensing of defence industry & amp, trade activity and the certification of enterprises

1. The procedure targeting the licensing of the manufacture of devices specified in Chapter XXVI of Annex 1 of the DI Decree, not governed by Subtitle 1 (1), under Section 2 (1) of the ME Act.

3. In relation to activities subject to notification obligation in the scope of services governed by the act on water public utility services

1. Approval of the merger or division of the water public utility service or the reduction of its share capital or initial capital by at least one quarter as laid down in the Act on the Civil Code.

2. Approval of the acquisition of interest in the water public utility service exceeding twenty-five or fifty percent of the votes or reaching seventy-five percent of the votes and of exercising the rights related thereto.

3. Preliminary approval of outsourcing.