

1 MARCH 2023 – 31 DECEMBER 2023

**First summary information on
the application of Act
No. 497/2022 Coll. on the
screening of foreign
investments and on
amendments and supplements
to certain acts**

MINISTRY OF ECONOMY OF THE SLOVAK REPUBLIC

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1. BASIC INFORMATION

The legislative package regulating the screening of foreign investments entered into force on 1 March 2023. It is based on Act No. 497/2022 Coll. on the screening of foreign investments and on amendments to certain acts, which introduces a comprehensive mechanism for the screening of foreign investments for the protection of security and public order of the Slovak Republic and the EU.

The reasons for the introduction of a comprehensive foreign investment screening mechanism were mainly the developments and trends in the global economic space and the mutual openness of EU economies, which have contributed to the fact that despite the prevailing positive impact of incoming foreign investments, it became necessary to increase attention to it and identify its potential to negatively affect security or public order. This need was further reinforced by the negative consequences of the COVID-19 pandemic, the Russia's aggression in Ukraine, numerous cyber-attacks, hybrid actions, and other geopolitical circumstances that contribute to the escalation of tensions, which justify the requirement for increased vigilance in relation to foreign investments from third countries

The introduction of a comprehensive mechanism for screening foreign investments for the protection of security and public order reflects the Security Strategy of the Slovak Republic, as well as the Action Plan for Coordinated Countering of Hybrid Threats for 2022 to 2024. An effective screening mechanism allows the Slovak Republic not only to monitor security risks, but also to eliminate them by setting conditions for specific foreign investments or prohibiting them, if necessary.

Act No. 497/2022 Coll. also regulates certain aspects of the cooperation of the Slovak Republic with other EU Member States and with the European Commission on the basis of 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 investment into the Union, as amended. This includes the Regulation of cooperation between state and other authorities at the national level, which is a desirable basis for the exhaustive implementation of the said Regulation.

2. TERMINOLOGY

- Foreign investment – an investment planned or completed by a foreign investor, regardless the application of Slovak law, which enables the foreign investor to directly or indirectly acquire¹ the Target or a part of it, hold effective participation² in the Target, increase effective participation³ in the Target, exercise control⁴ over the Target, or acquire ownership rights or other rights⁵ to substantial assets⁶ of the Target, provided it is considered a critical foreign investment.
- Critical foreign investment – a foreign investment which, due to the importance of the Target or its activities from the point of view of essential state functions, poses an increased risk of negative impact on the security or public order of the Slovak Republic. Critical foreign investments are further defined by the Regulation of the Government of the Slovak Republic No. 61/2023 Coll., laying down the critical foreign investments.
- Target – an entity based in the Slovak Republic that exists or is to be established in connection with a foreign investment, regardless of its legal form, legal personality, method of financing, and focus of activity, including profit-oriented activities.
- Foreign investor – any person who has made a foreign investment or plans to make such an investment and is not a national of the Slovak Republic or another EU Member State or does not have a place of business or registered office in the Slovak Republic or another EU Member State. Under certain conditions set out in § 4(2) through (4) of Act No. 497/2022 Coll., a foreign investor is also a person who is a national of the Slovak Republic or of another EU Member State or who has a place of business or registered office in the Slovak Republic or in another EU Member State, and a legal arrangement of property with a foreign element.

¹ § 476 through 488 of the Commercial code.

² § 2(4) of Act No. 497/2022 Coll.

³ § 2(5) of Act No. 497/2022 Coll.

⁴ § 7(4) of Act No. 187/2021 Coll.

⁵ According to § 2(1), letter e) of Act No. 497/2022 Coll., 'other rights' refers to the right to use and the right to dispose of.

⁶ § 2(7) of Act No. 497/2022 Coll.

- Screening mechanism – system of screening foreign investments from third countries to protect security and public order.
- Risk of negative impact – a situation where it can be reasonably assumed that a foreign investment may threaten or disrupt the security or public order of the Slovak Republic, or the security or public order of the EU.
- Negative impact – a situation where a foreign investment threatens or disrupts the security or public order of the Slovak Republic or the security or public order of the EU.
- Screening – a statutory process that assesses the risk of negative impact of a foreign investment⁷ and/or the negative impact of a foreign investment on security and public order⁸.

⁷ Procedure under § 15 of Act No. 497/2022 Coll.

⁸ Procedure under § 16 and subsequent sections of Act No. 497/2022 Coll.

3. LEGISLATION REGULATING THE SCREENING OF FOREIGN INVESTMENTS

- 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 investment into the Union, as amended;
- Act No. 497/2022 Coll. on the screening of foreign investments and on amendments and supplements to certain acts, as amended;
- Regulation of the Government of the Slovak Republic No. 61/2023 Coll., laying down the critical foreign investments;
- Decree of the Ministry of Economy of the Slovak Republic No. 64/2023 Coll. laying down the application for screening of foreign investment, the form for screening of a foreign investment, the request for modification of a decision on conditional authorisation of a foreign investment, the report on the execution of a foreign investment and the monitoring report.

4. EU COOPERATION

The basic framework for the screening of foreign direct investments in the EU for the protection of security and public order is established by 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 investment into the Union, which has been in effect since October 2020.

The Regulation primarily focuses on the cooperation between EU Member States and the European Commission in the screening of foreign direct investments from third countries. The essence of this cooperation is in particular the exchange of information on planned and completed foreign direct investments from third countries in order to increase the vigilance of the individual EU Member States and the European Commission and potentially coordinate actions to mitigate identified threats. Despite its title, the Regulation does not establish unified EU-level screening mechanism, nor does it require the EU Member States to adopt national screening mechanisms.

The aim of the European Regulation is to ensure that the EU is resilient against security and public order threats associated with foreign direct investments from third countries, while remaining to be one of the most open economies in the world.

In 2023, 23 out of the 27 EU Member States had implemented foreign investment screening mechanisms. Bulgaria, Croatia, Cyprus, and Greece are in the process of developing their national mechanisms.

Basic statistics on EU cooperation

The total number of foreign direct investments notified to the EU cooperation mechanism in 2023 reached 484. In 2022, there were 423 cases, representing a year-over-year increase of 12.61 %. This increase is partly due to the growing number of EU Member States that have implemented national foreign investment screening mechanisms.

In 2023, the Ministry of Economy of the Slovak Republic analysed within the EU cooperation a total of 473 cases of notified foreign investments, which were screened by other EU Member

States. Approximately 80% of these notifications came from five EU Member States, i.e. Denmark, France, Italy, Austria, and Spain.

The Slovak Republic contributed to the cooperation mechanism by notifying 11 foreign direct investments.

Out of these 11 cases, in 4 cases the Slovak Republic received additional questions from the European Commission and the EU Member States, the answering of which was necessary for the assessment of the potential impact of the notified foreign investments on the security and public order of the concerned EU Member States, as well as for the assessment conducted by the European Commission.

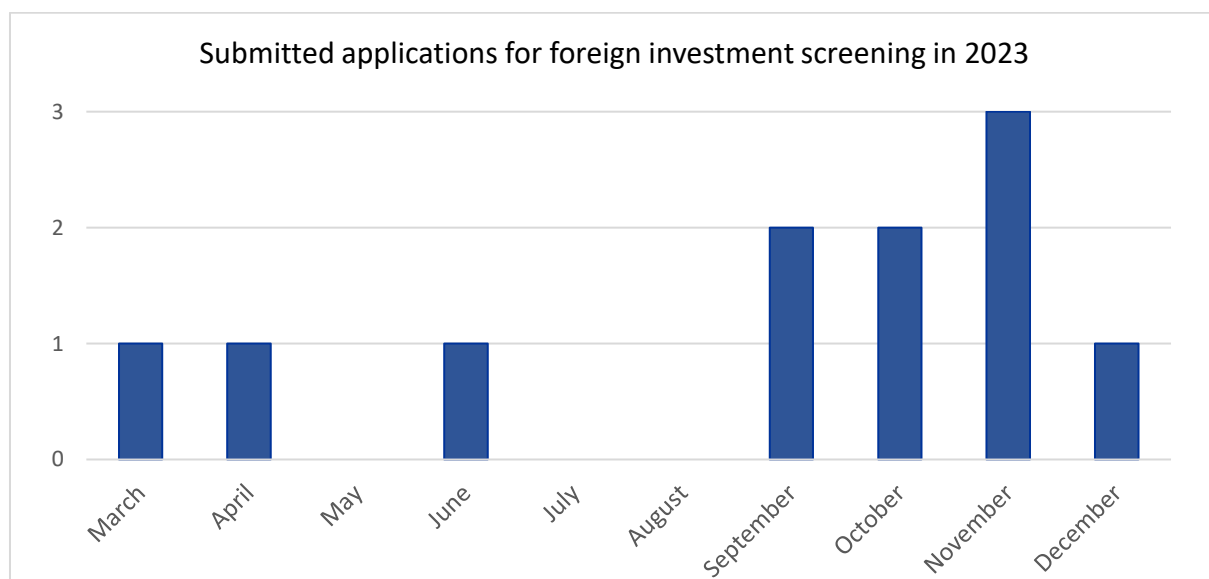
More data on the EU cooperation mechanism for 2023 can be found in the annual report on the implementation of the Regulation on foreign direct investments, which the European Commission prepares in accordance with Article 5(3) of the Regulation on regular basis for the preceding calendar year, and publishes it on its website.⁹

⁹ The website where the European Commission publishes the annual report on the implementation of the Regulation on foreign direct investments: https://policy.trade.ec.europa.eu/enforcement-and-protection/investment-screening_en

5. BASIC STATISTICS ON LEGAL ENFORCEMENT

The Ministry of Economy of the Slovak Republic is obliged under § 67(1) of Act No. 497/2022 Coll. to prepare a summary information on the application of the Act for the preceding calendar year and to publish it on its website by the end of June at the latest. The summary information for the period from 1 March 2023 to 31 December 2023 contains the information required by the Act and includes also additional statistics beyond the scope set by the Act. The aim is to make available as much data as possible in order to increase transparency in the application of the Act.

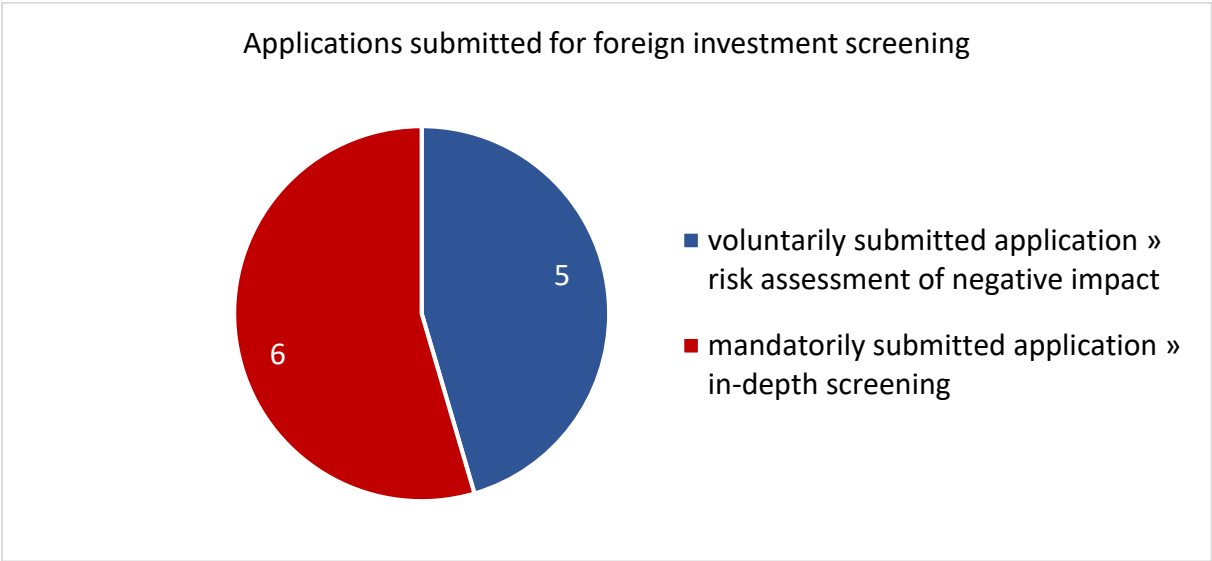
In the first year of the application of Act No. 497/2022 Coll., i.e. the period from 1 March 2023 to 31 December 2023, the Ministry of Economy of the Slovak Republic received a total of 11 applications for screening of foreign investment. Among the 11 applications, 6 concerned the screening of a critical foreign investment¹⁰, i.e., 6 foreign investors were obliged to submit application for screening of a foreign investment pursuant to § 11(1) of Act No. 497/2022 Coll., and 5 applications for the screening of a foreign investment were submitted voluntarily, i.e., 5 foreign investors were not obliged to submit the application for screening of their planned foreign investment, yet they exercised their right to do so. The Ministry of Economy of the Slovak Republic did not initiate any ex officio foreign investment screening procedure in 2023.



¹⁰ § 3 of Act No. 497/2022 Coll.

In accordance with the above, the Ministry of Economy of the Slovak Republic

- assessed the risk of negative impact of 5 foreign investments on the security and public order of the Slovak Republic and the EU pursuant to § 9(a) and § 15 of Act No. 497/2022 Coll. The aim of the procedure pursuant to § 15 of Act No. 497/2022 Coll. is to assess the potential of the foreign investment to threaten or disrupt the security and public order of the Slovak Republic and other EU Member States. As such, it focuses exclusively on assessing whether there is a reasonable presumption that the foreign investment may threaten or disrupt the security or public order of the Slovak Republic or another EU Member State. In the event of an affirmative finding, the foreign investment will be subject to an in-depth screening pursuant to § 9(b) and § 16 et seq. of Act No. 497/2022 Coll.
- in-depth screened negative impact of 6 critical foreign investments on the security and public order of the Slovak Republic and the EU pursuant to 9(b) and § 16 et seq. of Act No. 497/2022 Coll.. This in-depth screening determined whether the previously identified or generally assumed risk of negative impact (in the case of a critical foreign investment) actually exists. It focused on whether the foreign investment truly threatens or disrupts the security or public order of the Slovak Republic or another EU Member State by identifying and defining the risk, vulnerability, and negative consequences, including their severity. If the negative impact is confirmed, it is assessed to what extent it can be mitigated or whether there is no other means of protection than the prohibition of the foreign investment.



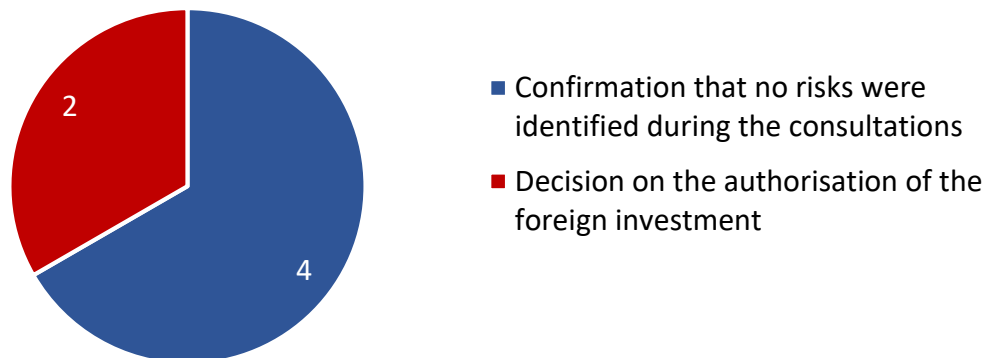
In total, out of the 11 cases in which the Ministry of Economy of the Slovak Republic conducted foreign investment screening procedures, 6 were closed in 2023. The remaining 5 were closed in 2024.

In 4 foreign investment screening procedures, in which the risk of negative impact on the security and public order of the Slovak Republic and the EU was assessed and which were completed in 2023, the Ministry of Economy of the Slovak Republic issued 4 confirmations pursuant to § 15(6) of Act No. 497/2022 Coll. i.e., in these cases, consultations did not identify any risk of negative impact that would justify the commencement of an in-depth screening of the foreign investment. The Ministry of Economy of the Slovak Republic sent a confirmation to the foreign investor and the Target. The remaining 1 procedure in which the risk of negative impact started to be assessed in 2023 was also concluded by the Ministry of Economy of the Slovak Republic by issuing a confirmation pursuant to 15(6) of Act No. 497/2022 Coll. later in 2024.

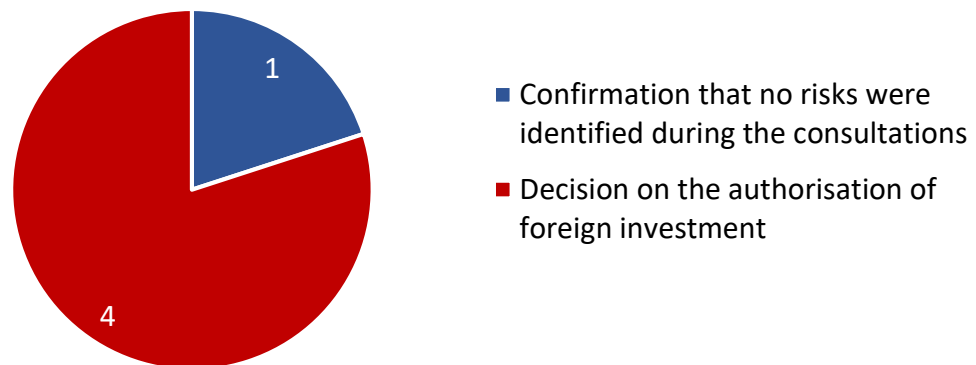
Additionally, in 2 foreign investment screening procedures, where an in-depth screening of the foreign investment was carried out and completed in 2023, the Ministry of Economy of the Slovak Republic issued 2 decisions on the authorisation of the foreign investment. Regarding the remaining 4 foreign investment screening procedures, where the in-depth screening began in 2023, the Ministry of Economy of the Slovak Republic issued 4 decisions on the authorisation of the foreign investment later in 2024.

The Ministry of Economy of the Slovak Republic did not issue any decision on the conditional authorisation of the foreign investment or decision on the prohibition of the foreign investment in 2023.

Number of the foreign investment screening procedures completed in 2023



Number of the foreign investment screening procedures completed in 2024

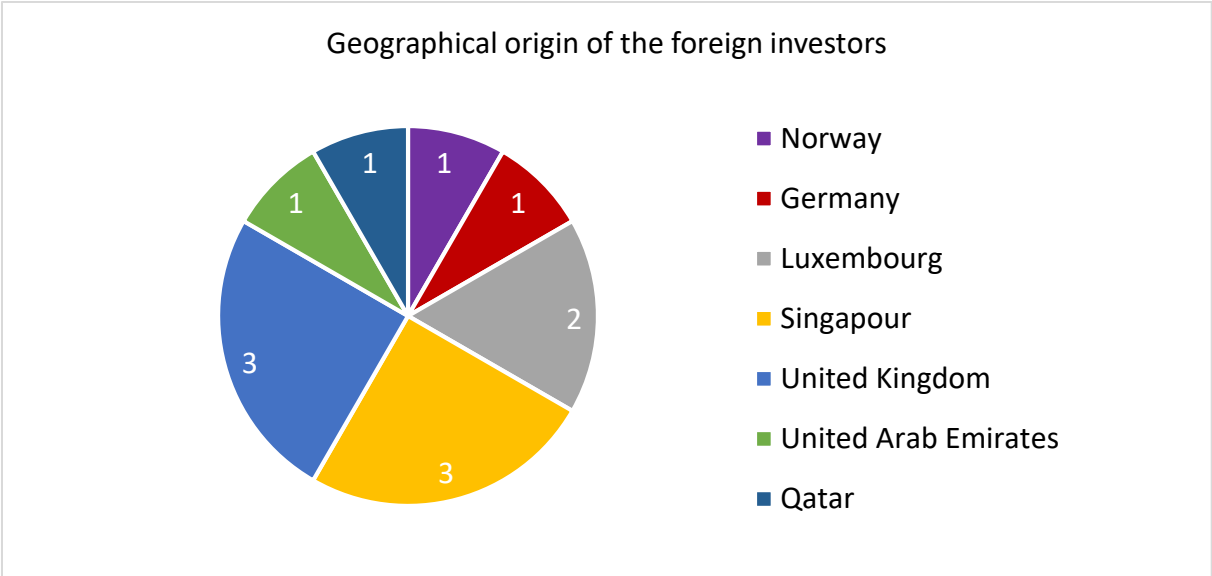


For the sake of completeness, it is important to note that none of the foreign investment screening procedures were concluded by applying the legal fiction pursuant to § 15(7) of Act No. 497/2022 Coll., which presumes that the consultations did not identify the risk of a negative impact of the foreign investment, nor by the legal fiction pursuant to § 21(2) and (3) of Act No. 497/2022 Coll., which presumes that a decision on the authorisation of the foreign investment has been issued. Despite the fact that the Act recognizes the institute of legal fiction as one of the ways of concluding foreign investment screening procedure, its practical application is undesirable as it may naturally raise doubts about whether the risk assessment of the negative impact, or the subsequent in-depth screening of the foreign investment, was thorough.

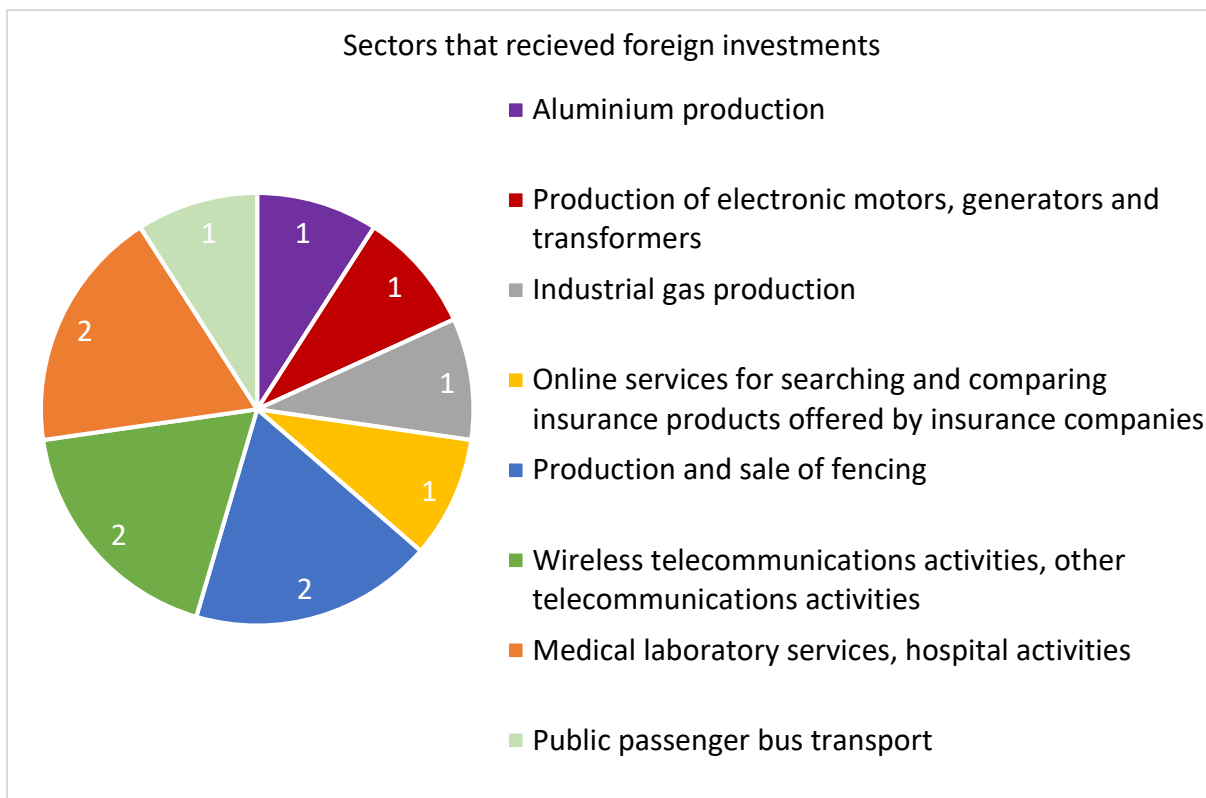
The Ministry of Economy of the Slovak Republic also did not suspend any foreign investment screening procedure without a decision on the merits, i.e. no foreign investment screening procedure has been suspended pursuant to § 23 of Act No. 497/2022 Coll.

The average length of the risk assessment of the negative impact of the foreign investment was 58.8 days, and the average length of the in-depth screening procedure was 94.75 days.

Most foreign investors originated from the United Kingdom and Singapore. The geographical origin of foreign investments directed to Slovak target companies is illustrated in the following chart:



The sectors most commonly entered by foreign investors were ICT (wireless telecommunications activities, other telecommunications activities); the health sector (medical laboratory services, hospital activities); and the industrial sector (production and sale of fencing).



In most cases, these transactions were substantial and involved a more complex implementation scheme, with multiple foreign investors acquiring the Target.

The total value of transactions involving foreign investments assessed under Act No. 497/2022 Coll. in 2023 amounted to almost €3.95 billion. This amount represents the total value of transactions directed to groups of Target entities, meaning that it is not exclusively the sum of the assessed foreign investments corresponding to the consideration for acquiring a Slovak Target or a share in a Slovak Target.

Control

The legislation in force also grants the Ministry of Economy of the Slovak Republic competences and duties in the field of control. The Ministry of Economy of the Slovak Republic carries out administrative control pursuant to § 32 of Act No. 497/2022 Coll. and on-site control pursuant to § 33 of Act No. 497/2022 Coll.

The Ministry of Economy of the Slovak Republic conducted two administrative controls in 2023. Both administrative controls began with the submission of the report on the completion

of the foreign investment and were completed by the Ministry of Economy of the Slovak Republic with no deficiencies found, i.e., no infringements were identified.

Administrative offenses and other administrative offences

Regarding its regulatory powers, the Ministry of Economy of the Slovak Republic is also responsible for conducting administrative offence procedures pursuant to § 39 et seq. of Act No. 497/2022 Coll., as well as other administrative offence procedures pursuant to § 48 et seq. of Act No. 497/2022 Coll. In 2023, no administrative offence or other administrative offence procedures were initiated.

Qualified motions

In the implementation of the agenda of screening foreign investments from third countries, the institution of the so-called qualified motion is of irreplaceable importance.

The procedure for submitting a qualified motion is laid down in § 63 of Act No. 497/2022 Coll., allowing any third party to make a motion. Such motions are taken into account when assessing the risk of a negative impact of the foreign investment, assessing the commencement of ex officio screening procedure, conducting the screening itself, performing controls, renewing the screening procedure, and changing the decision on the conditional authorisation of the foreign investment.

The purpose of this mechanism is to utilize the vigilance of third parties to support the application of the legislation on the screening of foreign investments and thereby protect security and public order as effectively as possible. However, in 2023, no substantiated qualified motions were submitted to the Ministry of Economy of the Slovak Republic.

6. OUTLOOK FOR THE YEAR 2024

- The Ministry of Economy of the Slovak Republic expects an increase in the number of applications for screening of foreign investment in 2024 due to projections of economic growth in the Slovak Republic and the EU. Heightened awareness of the foreign investment screening agenda within the Slovak Republic, coupled with the implementation of additional screening mechanisms by other EU Member States, is expected to further contribute to the increase in the number of applications for screening of foreign investment, which will also lead to more notified cases within the framework of European cooperation.
- Reflecting the EU's Economic Security Strategy amid escalating geopolitical tensions, third-country actors, and significant technological advancements, the European Commission adopted on 24 January 2024 five initiatives to bolster economic security. One of these initiatives focuses on enhancing the protection of EU security and public order through more sophisticated and effective screening of foreign investments in the EU. Consequently, an ordinary legislative process was initiated in early 2024 with a Proposal for a Regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council. This legislative proposal aims to replace the existing Regulation (EU) 2019/452, established on 19 March 2019, to create a more efficient and effective cooperation framework between EU Member States and the European Commission for screening of foreign investments, ultimately ensuring greater harmonisation of screening rules and procedures across the Union.
- In response to the new EU Regulation on the screening of foreign investments, the Ministry of Economy of the Slovak Republic will initiate preparations for an amendment to Act No. 497/2022 Coll. and its implementing regulations. The specific legislative changes required will become clear only after the new Regulation is adopted by the European Parliament and the Council of the EU. The planned amendment will also provide an opportunity to enhance national legislation based on practical experiences gained.

7. USEFUL LINKS

Website of the Ministry of Economy of the Slovak Republic

- <https://www.mhsr.sk/podnikatelske-prostredie/preverovanie-zahranicnych-investicii>

Act No. 497/2022 Coll. on the screening of foreign investments and on amendments to certain acts

- <https://www.mhsr.sk/uploads/files/BpxQxdnI.pdf?csrt=1253223355432027192>

Regulation of the Government of the Slovak Republic No. 61/2023 Coll., establishing critical foreign investments

- <https://www.mhsr.sk/uploads/files/FGMaN8KG.pdf?csrt=1253223355432027192>

Decree of the Ministry of Economy of the Slovak Republic No. 64/2023 Coll., laying down the application for screening of foreign investment, the form for screening of a foreign investment, request for modification of a decision on conditional authorisation of a foreign investment, the report on the execution of a foreign investment and the monitoring report

- <https://www.mhsr.sk/uploads/files/lzjPdm1E.pdf?csrt=1253223355432027192>

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