



MINISTRY  
OF ECONOMY  
OF THE SLOVAK REPUBLIC

# Screening of foreign investments in Slovakia - mitigating measures

# Overview

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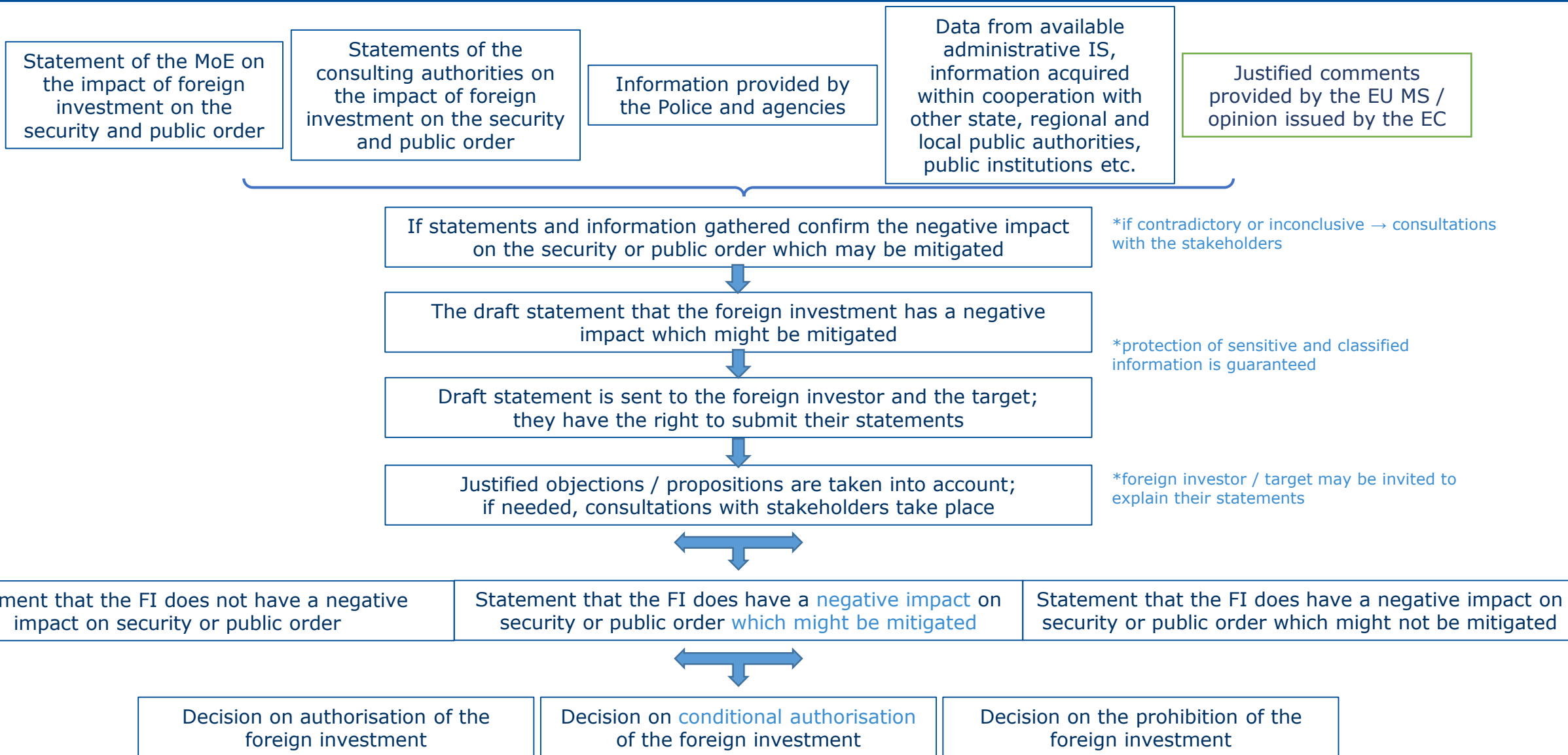
# 1. Legal basis

- Act No. 497/2022 Coll. on the screening of foreign investments and on amendments to certain acts
- Does not contain list of mitigating measures, only their definition
- A measure imposed in a decision on conditional authorisation of a foreign investment to ensure that the identified negative impact is eliminated
- Concerns the foreign investment, the foreign investor or the target, in particular their conduct, ownership structure or the organizational structure
- Mainly in the form of an obligation to act or refrain from acting, an obligation to waive some rights or assets, or an obligation to preserve them
- Several mitigating measures may be imposed simultaneously in a single decision

## 2. Conditions for imposing mitigating measures

- Conditions required by the law and the essence of mitigating measures
- Mitigating measure must be
  - Justified – risk to the security or public order of SK and/or the security or public order of the EU
  - Effective – negative impact can be eliminated by mitigating measures
  - Proportionate – mitigating measures must be proportionate to identified risk and negative consequences
  - Accepted – in case of unjustified disagreement of the foreign investor or target / lack of will to follow mitigating measures, the MoE issues a decision on the prohibition of the foreign investment

# 3. Process of imposing mitigating measures



## 4. Monitoring of compliance

- If needed, the MoE may impose an obligation for the foreign investor to appoint an independent third-party
- Administrator assists the MoE with the supervision over the compliance with the mitigating measures
- Notifies the MoE of any incompliance with the imposed mitigating measures
- Either an individual or a legal entity with relevant expertise specified in the decision on conditional authorisation
- The MoE defines the administrator's competences, supervision methods, and required qualification
- Selected by the foreign investor, approved by the MoE

## 4. Monitoring of compliance

- Administrative control
- On-site control
  - Both may be initiated also in case of justified petition of a consulting authority, information from police or agencies, or qualified petition submitted by any third party
  - The MoE may request any necessary explanations, additional information, documents or other evidence
  - On-site control includes access to land, business premises and vehicles used for economic activities
  - Investor has right to be notified of the findings and submit objections
  - In case of violation, foreign investor must rectify the situation by implementing mitigating measures

## 5. Cooperation with other stakeholders

- The MoE cooperates with the consulting authorities, police and the agencies
- Similarly to screening procedure, they are notified of the start of the control; may provide statements and information; consult ongoing cases; may suggest the need to commence control when needed
- the MoE may invite one or more consulting authorities to designate an employee for the purpose of their participation on the on-site control as part of the control team
- Police is obliged to provide protection and assistance to the control team during the on-site control
- the MoE may also request necessary assistance from other stakeholders, i.e. regional and local authorities, and public institutions
- Mostly in form of provision of certain information



## 6. Misconduct, legal consequences, penalties

- Violation of mitigating measures constitutes an administrative offense
- An administrative offence is subject matter of a separate proceeding
- The separate proceeding focuses on assessment of circumstances and consequences of the administrative offence, including their severity
- Foreign investor is requested to rectify the non-compliance and pay the fine
- Fine may rise up to the value of investment, or 2% of total net turnover of the group of foreign investor
  - whichever value is higher; in case these values are impossible to determine, up to €1 000 000
- If non-compliance persists, a decision on prohibition of the foreign investment is issued

Thank you for your attention.