



MINISTRY  
OF ECONOMY  
OF THE SLOVAK REPUBLIC

# Screening of foreign investments in Slovakia

# Overview

1. Legislation
2. Foreign investment
3. Critical foreign investment
4. Foreign investor
5. Screening authorities
6. Screening procedure
  - Assessment of the risk
  - In depth screening
  - In-depth screening decisions

# 1. Legislation

March 2021 – February 2023

- Partial screening mechanism
- Elements of critical infrastructure within the competence of the Ministry of Economy (industry, energy)
- Act No. 45/2011 Coll. on the critical infrastructure as amended

March 2023

- Complex screening legislation
- Replaced partial screening mechanism
- Act No. 497/2022 Coll. on the screening of foreign investments and implementing legislation

## 2. Foreign investment

An investment (planned or completed) if it enables the foreign investor to directly or indirectly

- acquire the SK target or a part of it
  - agreement on the sale of an enterprise (or a part of it) pursuant to the Commercial Code
- acquire an effective participation in the SK target
  - $\geq 25\%$  share capital or voting rights;  $\geq 10\%$  in case of critical foreign investment
- increase an effective participation in the SK target
  - $\geq 50\%$  share capital or voting rights;  $\geq 20\%$ ,  $33\%$ ,  $50\%$  in case of critical foreign investment
- acquire a controlling interest in the SK target; irrespective of the shares
  - competition law; the possibility of exercising decisive influence on the target's operations
- acquire an ownership or other right to substantial assets of the SK target
  - in case of critical foreign investment; assets essential for the critical operations of the target

## 3. Critical foreign investment

- Specific category of foreign investments
- An increased risk of negative impact on the security or public order, more serious consequences
- Mandatorily screened before their completion
- E.g. a foreign investment in a target that is the operator of a critical infrastructure element / a manufacturer of a dual-use item / a news agency etc.
- The list is laid down in the Regulation of the Government of the Slovak Republic No. 61/2023 Coll.
- Necessary amount of flexibility

## 4. Foreign investor

- A person, who is not a national of the Slovak Republic or any other EU MS
- A person, which does not have a registered office or place of business in SK or any other EU MS
- For the purposes of the Act a foreign investor also a person, who is a national of the Slovak Republic or another EU MS / a person, which has a registered office or place of business in SK or another EU MS, if there is a certain link to the third country, i.e.
  - the financing of the foreign investment originates in a third country
  - the investor acts in consistency with a person "from" a third country
  - the investor is controlled by a person "from" a third country
  - beneficial owner of the investor is "from" a third country
- The legal arrangement of assets with a foreign element, e.g. trusts

*"A person from a third country" is a national of the third country, a person with a registered office or a place of business in a third country, a public authority of a third country, or an entity with a participation of a public authority of a third country*

## 5. Screening authorities

- the Ministry of Economy of the Slovak Republic
  - national screening authority
  - coordinates the agenda of foreign investments screening
  - conducts the screening procedure, cooperates with other stakeholders
  - cooperates with other EU MS and the EC
  - contact point for implementation of the FDI Screening Regulation
  - assesses the security risk associated with the foreign investments
- Consulting authorities
  - permanent – the Ministry of the Interior, Ministry of Defence, Ministry of Foreign and European Affairs
  - ad hoc – other ministries according to the circumstances of the case
  - close cooperation with the Ministry of Economy
- Police, agencies
  - provide information

# Assessment of the risk

~ upon an application for an authorisation of a "non-critical" foreign investment

the Ministry of Economy assesses the application

Ministry of Economy shares the application with the consulting authorities, the Police, agencies

the Ministry of Economy notifies the FDI to other EU MS and the EC

Statement of the Ministry of Economy on the risk of negative impact

Statements of the consulting authorities on the risk of negative impact

Information provided by the Police and agencies

Data from available administrative information systems, information acquired within cooperation with other state, regional and local public authorities, public institutions etc.

Justified comments provided by other EU MS / opinion issued by the EC

The result of assessment

Risk not identified  
=>  
Ministry of Economy authorises the foreign investment; the assessment ends without proceeding to an in-depth screening

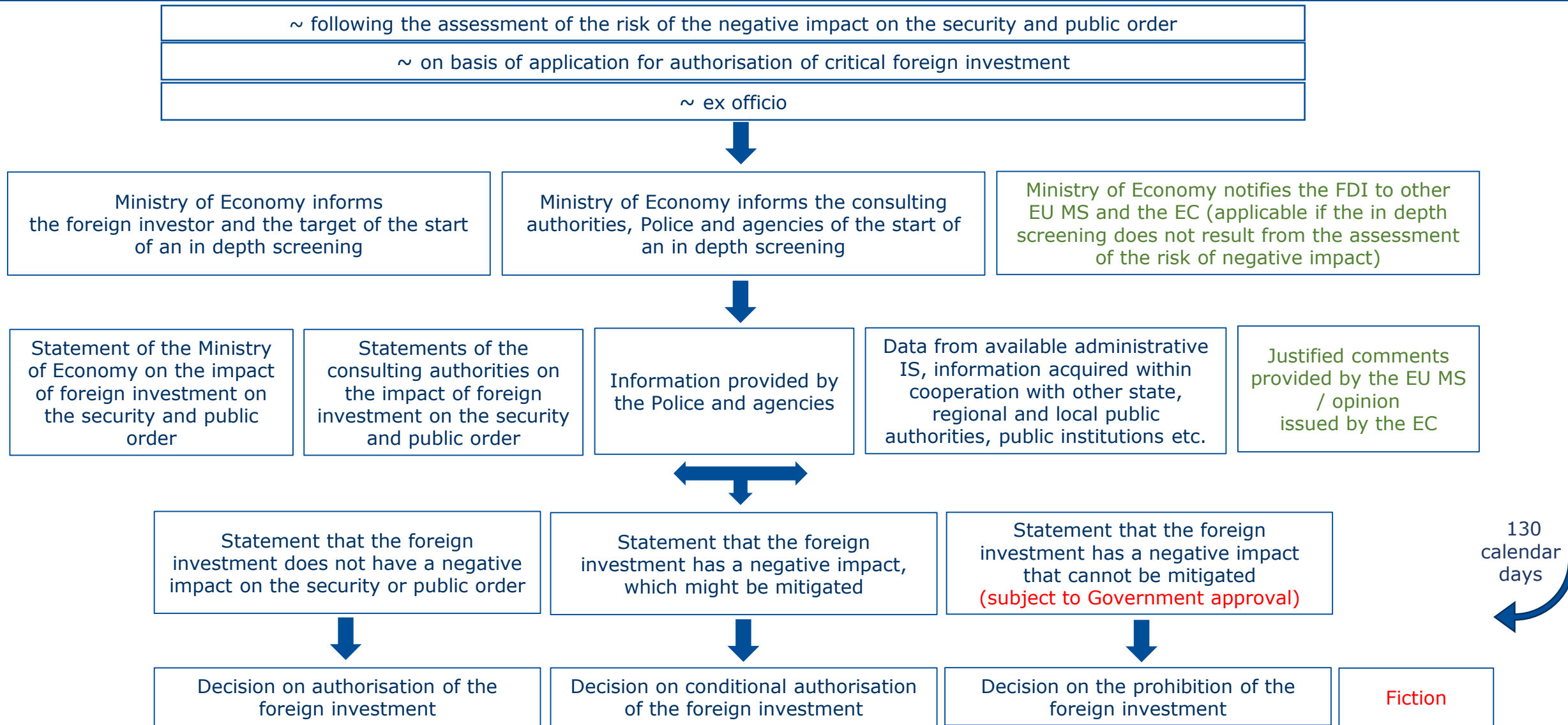
Risk identified  
=>  
Ministry of Economy proceeds to an in depth screening of the foreign investment

The foreign investment not authorised and the in depth screening not commended within 45 calendar days  
=>  
It is presumed that the risk was not identified; the assessment ends without proceeding to an in-depth screening

45 calendar days



# In-depth screening



# In-depth screening decisions

## Decision on authorisation of the foreign investment



- foreign investment is authorised entirely without any conditions/limitations.
- in case the authorisation of the planned foreign investment, a foreign investor is obliged to submit the report on its completion.
- other obligations of a foreign investor – an obligation to submit a monitoring report, registration in the Register of Partners of the Public Sector (for 3 years).

## Decision on conditional authorisation of the foreign investment



- foreign investment is authorised under certain conditions.
- foreign investor has the same obligations as in case of authorisation without conditions,
- plus the foreign investor has to ensure a compliance with the mitigating measures and related obligations.
- if necessary, an obligation to appoint an independent third party, which assists the Ministry with the supervision over compliance with a decision on the conditional authorisation of the foreign investment.

## Decision on the prohibition of the foreign investment



- **subject to Government approval**
- completion of the foreign investment is prohibited.
- in case the prohibition concerns an investment which is already completed, the foreign investor is obliged to reverse it.
- if necessary, a restriction or prohibition of exercise of the rights acquired through the investment.
- foreign investor is obliged to appoint an independent third party, which will assist the Ministry with the supervision over compliance with a decision.

## Fiction on the decision on authorisation of the foreign investment



- **in case the Government does not approve of the statement that the foreign investment has a negative impact that cannot be mitigated**
- **in case the decision on authorisation (or conditional authorisation is not issued or statement which is subject to Government approval is not submitted to the Government within the period of 130 calendar days.**
- it is presumed that the foreign investment is authorised entirely without any conditions/limitations.

