

Screening of foreign investments in CEE

Practical Guide for Austria, Bulgaria, Czechia, Germany, Hungary, Poland, Romania, and Slovakia

Are foreign investments into CEE subject to screening on the grounds of security or public order?

Which investors are subject to screening of foreign investments?

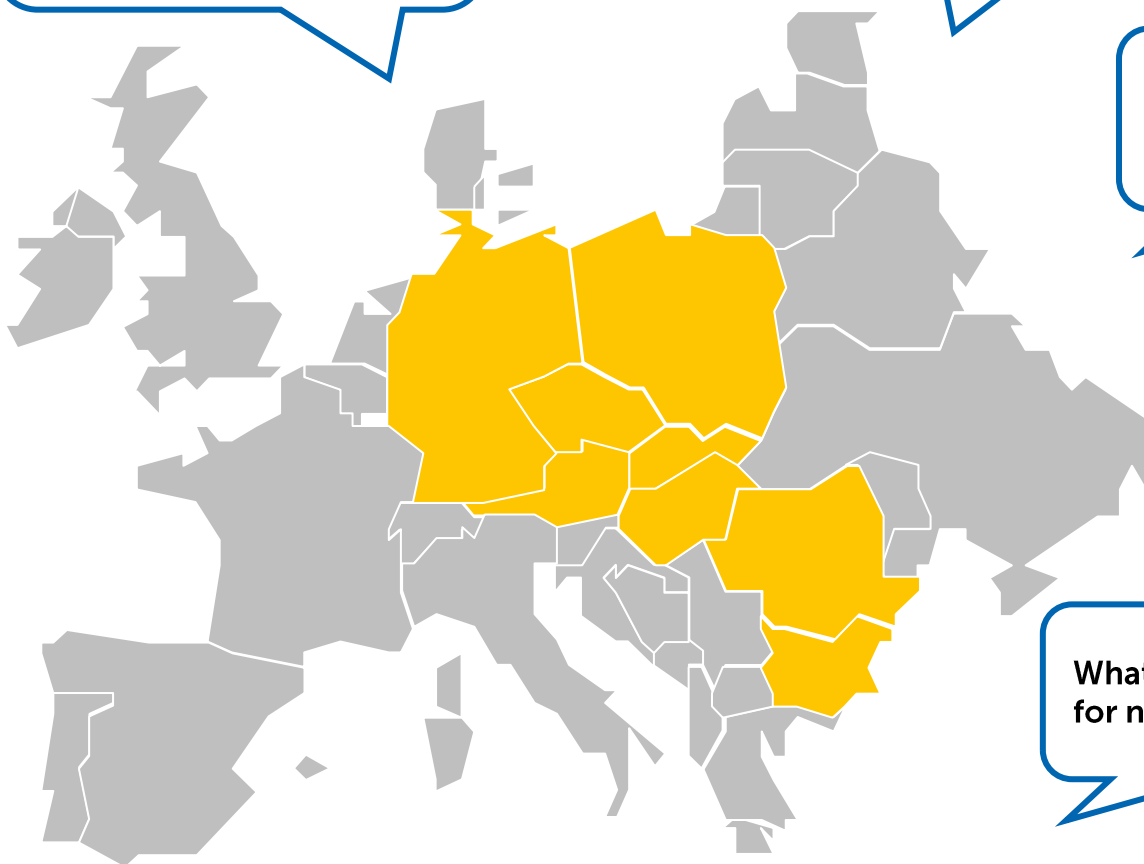
What is considered a foreign investment?

Does foreign investment screening apply to both direct and indirect investors?

Which sectors are subject to investment screening?

Can the regulator also review already completed transactions?

What are the sanctions for non-compliance?



Austria

Are foreign investments into Austria subject to screening on the grounds of security or public order?

Yes.

Which investors are subject to screening of foreign investments?

- Non-EU/EEA or non-Switzerland citizens, or
- legal entities with a seat outside the EU/EEA or Switzerland.

What is considered a foreign investment?

Direct or indirect acquisition of:

- Austrian target entity,
- > 25% or 50% of voting rights in the target entity (> 10% in particularly sensitive areas),
- controlling influence over the target entity, or
- significant assets of an entity which enables control over the target entity.

Screening rules do not apply to small companies and start-ups with < 10 employees and a yearly turn-over < EUR 2,000,000.

Does foreign investment screening apply to both direct and indirect investors?

Yes.

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Which sectors are subject to investment screening?

Consultation and permit are required for investments into:

- critical infrastructure (e.g., energy, information technology, traffic, and transportation),
- supply of critical resources (e.g., energy supply, supply of pharmaceuticals and vaccines, medical devices),
- critical technologies and dual-use items (e.g., artificial intelligence, cybersecurity),
- access to sensitive information, including personal data,
- media.

Can the regulator also review already completed transactions?

Yes.

What are the sanctions for non-compliance?

Criminal offence punishable by up to three years of imprisonment and/or a fine of up to EUR 550,000.

The target entity may be punished by a fine of up to EUR 40,000.

Investments without the necessary permits are null and void.



Dr. Georg Röhsner

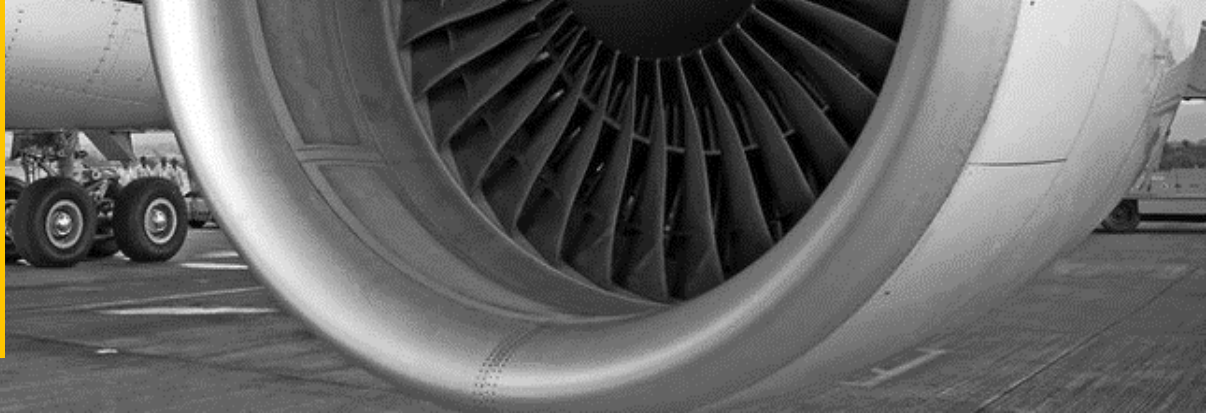
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Bulgaria



Are foreign investments into Bulgaria subject to screening on the grounds of security or public order?

No.

Is a mechanism for screening of foreign investments being prepared? What is the expected timeframe?


No. In February 2023, a Decision determining the procedure for the fulfilment of obligations arising from the EU Investment Screening Regulation was adopted by the Council of Ministers.

The Decision is not yet publicly available. However, the Minister of Innovation and Growth should organize the activity of the contact point for the implementation of the EU Investment Screening Regulation.

We're monitoring the implementation of the foreign investments screening procedure and will keep you informed of developments.



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Czechia

Are foreign investments into Czechia subject to screening on the grounds of security or public order?

Yes.

Which investors are subject to screening of foreign investments?

- Non-EU citizens, or
- legal entities with a seat outside the EU, or
- entities directly or indirectly controlled by either one,
- under certain conditions trustee of a trust fund.

What is considered a foreign investment?

Any form of investment which enables effective control over a business activity, which is defined as:

- 10 % of voting rights in the target entity,
- membership in a corporate body of the target entity,
- ownership of assets used for the economic activity, or
- other form of control allowing access to information, systems, or technologies important for protecting the security or public order.

Does foreign investment screening apply to both direct and indirect investors?

Yes.



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Which sectors are subject to investment screening?

Permit is required for investments into:

- defence equipment, dual-use goods,
- critical infrastructure (e.g., energy distribution, large scale agricultural operation, healthcare industry, data centres, networks),
- information or communication systems of critical information infrastructure.

Consultation is required for investments into:

- nationwide radio or television broadcasting,
- publication of a periodical press with an aggregate minimum average circulation of 100,000 copies.

Voluntary consultation is also possible.

Can the regulator also review already completed transactions?

Yes. The review applies to investments completed after 1 May 2021.

What are the sanctions for non-compliance?

Prohibition / restriction on exercise of ownership / voting rights in the target entity, ordering sale of the target entity. Fine of up to 2% of the total net turnover.



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Germany



Are foreign investments into Germany subject to screening on the grounds of security or public order?

Yes.

Which investors are subject to screening of foreign investments?

- Sector-specific assessment:
 - non-German citizens,
 - legal entities with a seat outside Germany.
- Cross-sectoral assessment:
 - non-EU / non-EFTA citizens,
 - legal entities with a seat outside EU / EFTA.

What is considered a foreign investment?

- Sector-specific assessment:
 - acquisition of $\geq 10\%$ of voting rights.
- Cross-sectoral assessment (depending on the affected sector):
 - acquisition of $\geq 10\%$, 20% or 25% of voting rights

Does foreign investment screening apply to both direct and indirect investors?

Yes.

Which sectors are subject to investment screening?

- Sector-specific assessment covers highly sensitive sectors, i.e.:
 - manufacturing and development of weapons,
 - military equipment,
 - encryption technology.
- Cross-sectoral assessment covers 27 different sectors, such as:
 - critical infrastructure operators and software developers,
 - cloud computing providers, media, and telecom services,
 - production of pharmaceuticals and medical products,
 - advanced technologies (satellites, tracking, IT security, AI, quantum computing, microchip production).

Can the regulator also review already completed transactions?

Yes.

What are the sanctions for non-compliance?

Transactions within the scope of review are subject to a condition subsequent.

Violations can carry severe sanctions, such as imprisonment of up to 5 years. Investment violating prohibition is null and void.



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Hungary

Are foreign investments into Hungary subject to screening on the grounds of security or public order?

Yes. Hungary operates a general mechanism and a temporary mechanism which was introduced due to the armed conflict in Ukraine. This guide focuses only on the general mechanism.

Which investors are subject to screening of foreign investments?

- Non-EU/EEA or non-Switzerland citizens, or
- non-EU/EEA or non-Switzerland legal entities, or
- entities controlled by either one.

What is considered a foreign investment?

- Establishment of an entity important to national security, or
- acquiring a shareholding interest in an entity important to national security which:
 - > 25% (10% in case of a public company), or
 - leads to a controlling interest, or
 - results in > 25% combined shareholding interest of foreign investors in the target entity.

Does foreign investment screening apply to both direct and indirect investors?

Yes.



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Which sectors are subject to investment screening?

Permit is required for investments into:

- firearms and military equipment, dual-use goods,
- electricity, gas, and water supplies,
- financial and insurance services, credit institutions,
- electronic communication and information systems of government agencies.

Can the regulator also review already completed transactions?

Yes.

What are the sanctions for non-compliance?

Fine of up to EUR 2,500 for natural persons / up to EUR 25,000 for legal entities.

In the case of a threat to national security: unwinding of the acquisition.

Investment without notification / violating prohibition is null and void.



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Poland

Are foreign investments into Poland subject to screening on the grounds of security or public order?

Yes.

Which investors are subject to screening of foreign investments?

- Non-EU/EEA and non-OECD citizens, or
- legal entities with a seat outside EU, EEA, or OECD within a specific time period.

What is considered a foreign investment?

- Acquisition of significant participation in a target entity, i.e.:
 - > 20% of voting rights,
 - > 20% of equity participation,
 - > 20% of profits,
 - reaching or exceeding a certain threshold of the total number of votes in a decision-making body / share in profits / equity participation,
 - acquisition of or lease from the target entity of an enterprise or an organised part of an enterprise,
- acquisition of dominance (control) over target entity.

Does foreign investment screening apply to both direct and indirect investors?

Yes.

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Which sectors are subject to investment screening?

Permit is required for investments into target entities conducting specific business activities, e.g.:

- electricity generation,
- production, transport, and storage of fuel,
- manufacturing and trade in explosives, weapons, and ammunition,
- telecommunications activities,
- production of drugs and other pharmaceutical products,
- production of medical instruments and devices,
- investment into publicly traded companies,
- investment into companies owning critical infrastructure.

Can the regulator also review already completed transactions?

Yes. Ex post notification may be required as well.

What are the sanctions for non-compliance?

Fine of up to approx. EUR 10,500,000 and/or imprisonment from 6 months to 5 years.

Investment without notification / despite objection of the regulator is null and void.



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Romania



Are foreign investments into Romania subject to screening on the grounds of security or public order?

Yes.

Which investors are subject to screening of foreign investments?

- Non-EU citizens, or
- legal entities with a seat outside EU, or
- entities controlled by either one,
- under certain conditions trustee of a trust fund.

What is considered a foreign investment?

- Establishment or acquisition of the target entity which enables control over the management of the target entity.
- Screening rules do not apply to investments of < EUR 2,000,000.

Does foreign investment screening apply to both direct and indirect investors?

Yes.

Which sectors are subject to investment screening?

Permit is required for investments into sectors important to national security, e.g.:

- production and trade of arms, ammunition, explosives, and toxic substances,
- energy, industry, transport,
- critical infrastructure,
- electricity, gas, and water supplies,
- information and communication systems,
- financial, fiscal, banking and insurance activity,
- agriculture and environment.

Can the regulator also review already completed transactions?

No.

What are the sanctions for non-compliance?

Fine of up to 10% of the worldwide turnover and annulment of the investment.



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Slovakia

Are foreign investments into Slovakia subject to screening on the grounds of security or public order?

Yes.

Which investors are subject to screening of foreign investments?

- Non-EU citizens, or
- legal entities with a seat outside EU, or
- entities directly or indirectly controlled by either one or by a national authority of a non-EU state or by an entity with equity participation of a non-EU state,
- under certain conditions trustee of a trust fund.

What is considered a foreign investment?

- Investment that enables the foreign investor to directly or indirectly:
 - acquire the target person or its part,
 - exercise or increase effective participation in the target person,
 - exercise control in the target person; or
 - acquire ownership or other rights in the substantial assets of the target person while this being a critical foreign investment.

Does foreign investment screening apply to both direct and indirect investors?

Yes.



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Which sectors are subject to investment screening?

Permit is required for investments into:

- defence and dual use equipment,
- biotechnology,
- critical infrastructure,
- digital services and data encryption,
- media (TV, press, news platforms, platforms for sharing of content, press agencies).

Can the regulator also review already completed transactions?

Yes.

What are the sanctions for non-compliance?

Fine imposed on the investor of up to the value of the investment or up to 2% of the total net turnover, or up to EUR 1,000,000.

The target entity may be punished by a fine of up to EUR 50,000. Investment without the necessary permit may be declared null and void.



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