

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
INVESTMENT COMMITTEE****Investment policy related to national security****Notification by Hungary****19 February 2019**

On 19 February 2019, Hungary notified the OECD of a new investment policies related to national security pursuant to its obligations under the Codes of Liberalisation and the National Treatment instrument. This document reproduces the notification; the revised version now also contains an unofficial translation of the implementation decree to the act establishing the policy.

[investment@oecd.org](mailto:investment@oecd.org).

**JT03446069**

## *Investment policy related to National Security Notification by Hungary*

On 1 January 2019 the new *Law on the Control of the Foreign Investments Offending the National Security of Hungary* (hereinafter referred to as ‘the Law’) entered into force. The Law was created to establish an efficient control procedure of investors’ conformity to national security interests (pre-screening procedure) in specific, defined activities.

The Law establishes safeguards to prevent national security threats associated with investments in enterprises important to national security and economic sectors important to national security. *The Article 2 (4)* of the Law introduces a list of activities important to national security, where the establishment or reorganisation of some enterprises is obliged to follow a pre-screening procedure.

An unofficial English translation of the Law is available as [Annex A](#) of this document, and [Annex B](#) contains an unofficial translation of the implementing decree.

### 1. Scope

According to the new Law, the pre-screening procedure is based on a preliminary obligation of notification, regarding to the establishment or to the change in the ownership of the enterprises related to the activities listed in the *Article 2 (4)*.

It should be noted that the pre-screening procedure is applicable only for the activities in the economic sectors important to national security as follows:

- weapon and ammunition production, production of military technology, equipment subject to authorization;
- dual-use product production;
- production of intelligence tools;
- provision of financial services and functioning of payment systems;
- services falling within the scope of the Law on electricity;
- services falling within the scope of the Law on supply of natural gas;
- services falling within the scope of the Law on water utility services;
- services falling within the scope of the Law on electronic communications;
- special activities foreseen by the Government Decree related to the electronic information systems falling within the scope of the Law on electronic information security of state bodies and municipalities.

## 2. Pre-Screening procedure

While mandatory notification is required, the Law establishes the corresponding procedure. The pre-screening procedure starts with this mandatory notification after the establishment of a new enterprise or acquiring ownership listed in the *Article 2 (1)-(3)*.

A mandatory pre-screening procedure is carried out in cases when an investor seeks to establish an enterprise or acquire (*Article 2(1)-(3)*) ownership or possession of any other rights in enterprises important to national security:

- in case of these rights are higher than 25 per cent; or
- exceeding the 10 per cent in the case of a public limited liability company;
- in case of acquiring dominant influence according to the Hungarian Civil Code; or
- if the targeted property rights are less than 25 per cent, but the acquisition results that the foreign investors' ownership collectively would exceed the 25 per cent.

The basis for the procedure is establishing whether the activities carried out by such investor may pose a real threat to national security interests (*Article 6(3)*).

The Minister responsible for the governance of the civil national security services (hereinafter referred to as 'the Minister') shall forthwith – within 8 days at most – communicate the arrival of the notification to the applicant. Based on the notification, the Minister shall monitor whether the activities carried out by such an investor may pose a real threat to national security interests. After concluding the investor's conformity to national security interests, the Minister must submit this conclusion within 60 days after the arrival of the notification. This time limit is extensible for additional 60 days under certain circumstances (*Article 6(5)*). If the Minister concludes on the investor's non-conformity to national security interests, the Minister prohibits the acquisition of the rights or pursuing the new activity (*Article 6(4)*). Detailed steps of the screening procedure are provided in *Articles 6 to 9*. The criteria for the assessment of an investor's conformity to national security interests are laid down in the *Government Decree No. 246 of 2018. (XII. 17.)*.

Decisions adopted by the Minister pursuant to the Law may be appealed to the Budapest Municipal Court (Fővárosi Törvényszék) in accordance with the procedure laid down in the Act No. CL of 2016 on the General Administrative Process (*Article 6(8)*).

## 3. Proposed amendment to the entry in the list of measures reported for transparency under the National Treatment instrument

Hungary proposes that the entry under item A. of the list of measures reported for transparency under the National Treatment instrument be framed as follows:

### “A. Measures Reported for Transparency at the Level of National Government

#### *I. Measures based on public order and essential security considerations*

##### *a. Investment by established foreign controlled enterprises*

Investments concerned: establishing enterprises or acquire (*Article 2(1)-(3)*) ownership or possession of any other rights in enterprises important to national

security are subject to mandatory review and approval. Investments in economic sectors important to national security or protection zones may be subject to review.

*Authority: Law on the Control of the Foreign Investments Offending the National Security of the Republic of Hungary*

## Annex A. : Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests

(unofficial translation)

### 1. Interpretative provisions

**Section 1** For the purposes of this act

1. *foreign investor* shall mean:

- a) a national of a state outside the European Union, the European Economic Area and the Swiss Confederation or a legal entity or other organization registered in such a state,
- b) a legal entity registered domestically, in another Member State of the European Union, another member state of the European Economic Area or the Swiss Confederation acquiring ownership or interest as specified under Section 2 (1) in an economic entity registered in Hungary, with activities laid down under Section 2 (4), if the person with controlling interest in the legal entity as specified in the Act on the Civil Code (hereinafter: ACC) is a national of a state outside the European Union, the European Economic Area or the Swiss Confederation, or a legal entity or other organization registered in such a state;

2. *acquisition of ownership* shall mean the acquisition of ownership share or interest as specified under Sections 2 (1) and (2) in an economic entity registered in Hungary with activities laid down under Section 2 (4), by establishing an economic entity or by acquisition, as well as establishing a branch as specified under Section 2 (3).

### 2. Foreign investors' notification obligations

**Section 2** (1) Foreign investors may acquire, in an economic entity registered in Hungary with activities specified under (4), by establishing an economic entity or by acquisition

a) directly or indirectly ownership share beyond 25% - in the case of public limited companies, ownership share beyond 10% - or

b) controlling interest as specified in the ACC

after notifying the minister designated in the Government decree (hereinafter: Minister) and receiving confirmation of the acknowledgement of this notification.

(2) The notification obligation under (1) holds also where the foreign investor's acquisition of under 25% would result in the total share of foreign investors in an economic entity registered in Hungary and with activities specified under (4) – with the exception of public limited companies – exceeding 25% altogether.

(3) Foreign investors may establish a branch in Hungary for activities specified under (4) provided that the foreign investors

a) comply with the conditions required for establishing a branch in Hungary laid down under the law and

b) have met the notification obligation specified under (1) and received the minister's confirmation of acknowledging the notification.

(4) The activities subject to the notification obligation as specified under (1)-(3) are the following:

a) manufacture of weapons and ammunition as well as of military equipment and devices subject to licence,

b) manufacture of dual use products,

c) manufacture of intelligence devices and equipment specified in the government decree on the detailed rules of obtaining a licence for military activity and certifying businesses,

d) provision of financial services specified in the act on credit institutions and financial enterprises and from among auxiliary financial services, the operation of a payment system,

e) services governed by the act on electricity,

- f)* services governed by the act on natural gas supply,
- g)* services governed by the act on water public utility services,
- h)* services governed by the act on electronic communications,
- i)* the set-up, development and operation of electronic information systems governed by the act on the electronic information security of central and local government agencies.

(5) By virtue of (4) *(e)-(h)* the Government may specify in its decree issued based on authorization by this act the activity directly affecting a system element of national or European importance specified on the basis of the act on the identification, designation and protection of systems and facilities of vital importance.

**Section 3** The foreign investor may acquire the right of use or operation of infrastructures, facilities and assets essential for the activity specified under Section 2 (4) (hereinafter together: right of operation) after the notification of the minister and the confirmation of the acknowledgement of the notification.

**Section 4** (1) The economic entity operating with the foreign investor's share of the percentage specified under Section 2 (1) (a) or 2 (2) or interest specified under Section 2 (1) (b) may start conducting the activities specified under Section 2 (4) (hereinafter: newly adopted activities) after notifying the minister and receiving the confirmation of the acknowledgement of the notification.

(2) The obligation under (1) arises by the registration of the activity specified under Section 2 (4) as the main activity or further scope of activity of the economic entity in the company registry.

**Section 5** (1) The foreign investor shall notify the minister of the completion of the legal transaction targeting the acquisition of ownership or the right of operation as well as of the registration of the newly adopted activities in the company registry in writing, within the deadline set in the government decree.

(2) In the notification the foreign investor shall outline their business activity so far and enclose all documents on the basis of which the ownership structure of the foreign investor and the legal entities having a share therein, as well as the beneficial owner as specified in the act on the prevention and combating of money laundering and terrorist financing can be established.

(3) The foreign investor shall notify the minister of any changes in the data subject to notification obligation within the deadline set by the government decree.

(4) The detailed rules on the notification and thus specifically the obligatory content elements of the notification, its annexes, the deadline of notification, as well as the detailed rules related to the data provision obligation laid down under (3) shall be established by the Government in a decree.

### 3. The ministerial procedure

**Section 6** (1) The detailed rules on the ministerial procedure not settled in this act – thus specifically the procedural deadlines – shall be established by the Government in a decree.

(2) The minister shall inform the foreign investor of receiving the notification without delay, within a maximum of 8 days.

(3) On the basis of the notification the minister shall examine if the acquisition of ownership or the acquisition of the right of operation by the foreign investor or the conduction of newly adopted activities violate Hungary's security interests.

(4) After receiving the notification the minister shall check without delay if the notification complies with the requirements set under Section 5 and examine whether a circumstance outlined under (3) in relation to the foreign investor's acquisition of ownership or acquisition of the right of operation, or in relation to conducting the newly adopted activity exists. The minister shall, within 60 days following the receipt of the notification – or in the case outlined under (5), within the deadline specified therein – and if a circumstance specified under (3)

*a)* does not exist, confirm the acknowledgement of the notification in writing, or if

*b)* it exists, the minister shall prohibit the acquisition of ownership, the acquisition of the right of operation or shall prohibit starting the newly adopted activity (hereinafter: prohibiting decision).

- (5) In especially justified cases the minister may prolong the term of control specified under (4) by 60 days at the maximum, of which the minister shall notify the foreign investor, before the completion of the 60-day deadline, in writing.
- (6) By virtue of Section 1 (1) (b), a prohibiting decision with reference to a foreign investor may be made if it can be reasonably assumed that the legal entity acquiring ownership or interest as specified under Section 2 (1) or (2) in the economic entity registered in Hungary with activities specified under Section 2 (4) was established for or serves the purpose of concealing a circumstance specified under (3), making control difficult and circumventing the procedure laid down in this act. The latter can be assumed especially if the legal entity does not pursue actual economic activity in the state of their registration; there are no verifiable circumstances indicating permanent economic activity such as, specifically, business facilities or employees.
- (7) The minister shall communicate their prohibiting decision including a simplified justification to the foreign investor in writing.
- (8) The foreign investor may contest the prohibiting decision for the violation of essential procedural rules or in relation to the qualification under (6) in public administration proceedings. Budapest Capital Regional Court shall have exclusive jurisdiction in the case.
- (9) The court shall decide on the application in simplified proceedings. If the court establishes that the law was violated, they shall repeal the decision and oblige the minister to launch a new procedure. There is no room for immediate legal protection in the proceedings.
- (10) The minister shall manage the foreign investor's personal data in the course of the procedure as well as for the purpose of checking the notification
- a) for 5 years after the notification is filed in the case of a prohibiting decision; in the case of appeal proceedings, for 5 years after the final decision made therein,
  - b) in the case of confirming the acknowledgement of the notification, as long as the ownership share specified under Section 2 (1) (a) or (3), the interest specified under Section 2 (1) (b), the branch specified under Section 2 (3) or the right of operation specified under Section 3 exist or until the newly adopted activities are cancelled from the company registry.
- (11) The minister may forward the personal data managed under (10) for the purpose of performing the procedure to organs involved according to the Government decree.

#### **4. The relation of the ministerial procedure to administrative procedures**

**Section 7** (1) The condition for making a decision in the procedures targeting the acquisition of ownership in relation to activities specified in a government decree as laid down under Section 2 (4), subject to notification by virtue of this act, shall be the confirmation of the acknowledgement of the notification required by this act.

- (2) Lacking a procedure specified under (1), the condition for making a decision in the procedures targeting the acquisition of ownership in relation to activities specified in a government decree as laid down under Section 2 (4), subject to notification by virtue of this act, shall be the confirmation of the acknowledgement of the notification by the minister, required by this act.
- (3) The Government shall establish in a decree the range of procedures – targeting the licensing of certain activities – in the case of which the notification laid down in this act shall be required to be made.
- (4) The minister shall communicate the prohibiting decision or the decision prolonging the deadline for control to the authority specified in the notification, responsible for administration in the procedure under (1) or (2).

#### **5. Certain legal consequences related to the ministerial procedure**

**Section 8** (1) In the case under Section 2, the request for registration in the share register and the register of members of the economic entity registered in Hungary can be filed after the acknowledgement of the notification has been confirmed. In the case under Section 3, the scope of the agreement on the right of operation – unless otherwise provided by the act on the activities subject to notification under this act – shall commence on the day the notification was acknowledged.

- (2) If the foreign investor failed to comply with the notification obligation laid down in this act, the minister failed to confirm the acknowledgement of the notification or the minister made a prohibiting decision, the acquiring party shall not be entered in the share register or the register of members and shall not exercise their rights with reference to their shares against the economic entity.
- (3) If the economic entity registered in Hungary learns about the circumstance laid down in (2) after registration in the share register or register of members, the foreign investor shall be deprived of exercising their membership rights against the economic entity registered in Hungary after the economic entity has learned about the circumstance concerned.
- (4) The legal transaction targeting the acquisition of the right of operation that was made lacking the notification required by this act or lacking the confirmation of the acknowledgement of the notification, or in relation to which the minister made a prohibiting decision, shall be invalid. Civil proceedings related to the invalidity of the legal transaction can be initiated by the minister or a person with legal interest in the case.
- (5) The newly adopted activity of the economic entity affected by the prohibiting decision shall be cancelled from the company registry.

**Section 9** (1) Compliance with the notification obligation required by this act shall be controlled by the organ designated in the Government decree.

- (2) If it is established during the control under (1) that the foreign investor failed to perform his obligations laid down in this act – including the case that the foreign investor failed to notify about a change in the data required in the notification – the minister shall impose a fine specified under 10, and if
  - a) the circumstance specified under Section 6 (3) in relation to the foreign investor’s ownership acquisition, acquisition of the right of operation or the performance of the newly adopted activity does not exist, the minister shall confirm the acknowledgement of the notification in writing;
  - b) if the circumstance specified under Section 6 (3) in relation to the foreign investor’s ownership acquisition, acquisition of the right of operation or the performance of the newly adopted activity exists and the provision under Section 6 (6) does not exclude this, the minister shall make a prohibiting decision.
- (3) In the case under Section 2 the minister shall give the foreign investor in their decision under (2) (b) a deadline of maximally 3 months for selling their ownership share and ending their interest in the economic entity registered in Hungary, for closing the branch or modifying its scope of activity. In the sale, the Hungarian state shall have pre-emption rights.
- (4) If the deadline specified under (3) passes without results, the minister shall designate in a decision the state organ that will take measures instead and on behalf of the foreign investor for selling the foreign investor’s share. In the course of the measure the Hungarian state shall have a pre-emption right.
- (5) In the case under Section 3, the minister shall, concurrently with their decision made by virtue of 2 (b), launch the legal proceedings targeting the invalidity of the acquisition of operation right.
- (6) In the case under Section 4 the minister shall, in their decision specified under (2) (b) give a deadline of 30 days for cancelling from the activities of the economic entity registered in Hungary the range of newly adopted activities affected by the prohibiting decision.
- (7) For the deadline of the control according to (1), the provisions of Sections 6 (4) and (5) shall be duly applicable.
- (8) No administrative control or proceedings targeting establishing the violation of law may be conducted for failure to comply with the notification under this act if 6 months have passed since the organ authorized for control was notified of
  - a) the date of acquisition of ownership or operation right,
  - b) the date the decision on licensing the activity specified in a government decree in compliance with Section 2 (4), subject to notification under this act, became final, or
  - c) the newly adopted activities were entered in the company registry,or maximally 5 years have passed since the circumstances laid down under (a) and (b).

- (9) In the case outlined in (2) (a) the provision under Section 6 (10) (b) shall be duly applicable and furthermore in the case under (2) (b) the deadline specified under the first part of Section 6 (10) (a) shall be calculated from the date of launching the control.

## 6. Fine payment obligation

**Section 10** (1) The entity who violates their obligation, laid down in this act, of notification or data provision as specified under Section 5 (3) shall be obliged by the Minister – after the due consideration of all circumstances in the case – to pay a fine specified in the Government decree of maximally HUF 1,000,000 if the foreign investor is a natural person and maximally HUF 10,000,000 if the foreign investor is a legal entity.

- (2) Fine payment facilities shall not be allowed.  
 (3) The fine shall constitute public finance revenues.

## 6/A. Financial commitment by the Government

**Section 10/A** For a national of a state in the European Union, the European Economic Area or the Swiss Confederation or a legal entity or other organization registered in such a state, the Government may give authority, in order to facilitate ownership acquisition in an economic entity registered in Hungary with activities specified under Section 2 (4) – especially ownership acquisition by a senior official or employee of such a legal entity or other organization that is direct or indirect or is performed within the framework of employee stock ownership plan – for assuming financial commitment in compliance with state aid rules. Such financial commitment may include specifically state guarantee, warranty, public finance subsidies or cash loan on the Civil Code.

## 7. Closing provisions

**Section 11** This act shall take effect as of 1 January 2019.

**Section 12** The Government shall be authorized to specify in a decree

- a) the provisions for designating the minister,
- b) the activities subject to notification obligation under this act, within the scopes of activity listed under Section 2 (4),
- c) the detailed rules on notification about ownership acquisition by the foreign investor, the acquisition of the right of operation by the foreign investor and the newly adopted activity, on the ministerial procedure in relation to the notification, the range of organs to be involved in the procedure and the procedure of the organs involved, on the foreign investor's data provision obligations specified under Section 5 (3) as well as the organs to carry out the control and the detailed rules on the control,
- d) the procedures for licensing the activities in the case of which Section 7 (2) is applicable,
- e) the set of aspects of establishing a fine as specified under Section 10 and the detailed rules on imposing this fine.

**Section 13** The provisions of this act shall be applied, after this act has become effective

- a) in the case of concluded legal transactions according to Section 2 (1)-(3) and Section 3,
- b) with reference to economic entities wishing to pursue newly adopted activities, and
- c) in the course of authority proceedings, in the course of control already launched.

## **Annex B. : 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,

- b*) 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)* 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 of 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 with 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.

—