

ACT

of 19 June 2020

on Subsidies on Interest on Bank Loans Granted to Entrepreneurs Affected by COVID-19 and on the Simplified Procedure for the Approval of Arrangements in Connection with COVID-19¹⁾

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¹ The following acts shall be amended by this Act: the Act of 20 May 1971 – The Delinquency Code, the Foundation Act of 6 April 1984, the Association Law Act of 7 April 1989, the Surveying and Cartographic Law Act of 17 May 1989, the Act of 26 July 1991 on the Personal Income Tax, the Act of 19 October 1991 on the Management of Agricultural Property of the State Treasury, the Act of 15 February 1992 on the Corporate Income Tax, the Building Law Act of 7 July 1994, the Special Economic Zone Act of 20 October 1994, the Sea Port and Harbour Act of 20 December 1996, the Energy Law Act of 10 April 1997, the Act of 8 May 1997 on Sureties and Guarantees Granted by the State Treasury and Certain Legal Persons, the Act of 6 June 1997 – The Criminal Code, the Act of 6 June 1997 – The Code of Criminal Procedure, the Tax Ordinance Act of 29 August 1997, the Banking Law Act of 29 August 1997, the Act of 20 November 1998 on the Flat-rate Income Tax on Certain Revenues of Natural Persons, the Industrial Property Law Act of 30 June 2000, the Technical Supervision Act of 21 December 2000, the Measurement Law Act of 11 May 2001, the Common Court System Law Act of 27 July 2001, the Spatial Planning and Management Act of 27 March 2003, the Act of 13 November 2003 on the Income of Local Government Units, the Public Procurement Law Act of 29 January 2004, the Stamp Duty Act of 16 November 2006, the Competition and Consumer Protection Act of 16 February 2007, the Act of 24 April 2009 on Investments Concerning the Re-Gasification Terminal for Liquefied Natural Gas in Świnoujście, the Polish Academy of Sciences Act of 30 April 2010, the National Judiciary Council of 12 May 2011, the Act of 8 March 2013 on Counteracting Excessive Delays in Commercial Transactions, the Renewable Energy Source Act of 20 February 2015, the Consular Law Act of 25 June 2015, the Act of 24 July 2015 on the Control of Certain Investments, the Act of 24 July 2015 on the Preparation and Implementation of Strategic Investments Concerning Transmission Networks, the Act of 5 August 2015 on Free Legal Aid, Free Citizen Counselling and Legal Education, the Revitalisation Act of 9 October 2015, the Act of 13 April 2016 on Compliance Assessment and Market Supervision Systems, the Electromobility and Alternative Fuel Act of 11 January 2018, the Act of 1 March 2018 on Counteracting Money Laundering and Terrorism Financing, the Entrepreneur Law Act of 6 March 2018, the Act of 10 May 2018 on Support for New Investments, the Act of 3 July 2018 – Provisions Implementing the Higher Education and Science Law Act, the Higher Education and Science Law Act of 20 July 2018, the Act of 13 September 2018 on the Postgraduate Medical Education Centre, the Act of 4 October 2018 on Employee Capital Plans, the Act of 4 July 2019 on Amendments to the Act – The Code of Civil Procedure and to Certain Other Acts, the Act of 4 July 2019 on Amendments to the Act on the Tax on Goods and Services and to Certain Other Acts, the Act of 30 August 2019 on Amendments to the Act – The Code of Commercial Companies and Partnerships and to Certain Other Acts, the Act of 30 August 2019 on the State Commission for Investigating Cases of Acts Against Sexual Liberty and Decency in Respect of a Minor under 15 Years of Age, the Act of 30 August 2019 on Amendments to the Environmental Protection Law Act, the Act of 11 September 2019 – Provisions Implementing the Public Procurement Law Act, the Act of 2 March 2020 on Special Solutions Related to Preventing, Counteracting, and Combating COVID-19, Other Infectious Diseases, and Crisis Situations Arising Therefrom, the Act of 31 March 2020 on Amendments to the Act on Special Solutions Related to Preventing, Counteracting, and Combating COVID-19, Other Infectious Diseases, and Crisis Situations Arising Therefrom and to Certain Other Acts, the Act of 16 April 2020 on Special Support Instruments Related to the Spreading of SARS-CoV-2, and the Act of 14 May 2020 on Amendments to Certain Acts Concerning Protective Measures Related to the Spreading of SARS-CoV-2.

Article 40. The following amendments shall be introduced to the Tax Ordinance Act of 29 August 1997 (Journal of Laws 2019, item 900, as amended²):

1) in Article 297, in § 1, in subparagraph (10), the full stop shall be replaced with a semicolon and subparagraph (11) shall be added in the following wording:

“11) the President of the Office of Competition and Consumer Protection – in connection with ongoing:

- a) investigation proceedings, antitrust proceedings, proceedings relating to deeming the provisions of an agreement model illicit, and proceedings concerning practices harmful to the collective interests of consumers, as referred to in Article 47.1 of the Competition and Consumer Protection Act of 16 February 2007 (Journal of Laws 2020, items 1076 and 1086),
- b) proceedings concerning practices involving unfair use of contractual advantage and investigation proceedings, as referred to in Article 9.1 and Article 9.2 of the Act of 15 December 2016 on Counteracting Unfair Use of Contractual Advantage in Trade in Agricultural and Food Products (Journal of Laws 2019, items 517, 1649, and 1667),
- c) proceedings concerning an excessive delay in payment, as referred to in Article 13c Act of 8 March 2013 on Counteracting Excessive Delays in Commercial Transactions (Journal of Laws 2020, items 935 and 1086),
- d) preliminary examination proceedings and control proceedings, as referred to in the Act of 24 July 2015 on the Control of Certain Investments (Journal of Laws 2020, items 117, 284, and 1086).”;

2) in Article 299f:

a) § 4 shall have the following wording:

“§4. Information on the determination of the likelihood of delays shall contain the identification data of the entity and other data necessary to perform the likelihood analysis referred to in Article 13c.3 of the Act of 8 March 2013 on Counteracting Excessive Delays in Commercial Transactions, including data arising from the records sent by taxpayers referred to in Article 109.3 of the Act of 11 March 2004 on the Tax on Goods and Services, from the information and lists referred to in Article 119zq, and from the Central Entity Register – the National Taxpayer Records [*Centralny Rejestr Podmiotów - Krajowa Ewidencja Podatników (CRP KEP)*]. The detailed scope of the data shall be specified in the agreement referred to in § 9.”,

b) § 5 shall be repealed,

c) § 9 shall have the following wording:

“§ 9. The detailed scope of the data referred to in § 4 and the manner of providing the information and data referred to in § 1 and § 7 shall be specified in an agreement concluded between the Head of the National Tax Administration and the President of the Office of Competition and Consumer Protection.”.

² Amendments to the consolidated text of the said Act were published in the Journal of Laws 2019, items 924, 1018, 1495, 1520, 1553, 1556, 1649, 1655, 1667, 1751, 1818, 1978, 2020, and 2200, and in the Journal of Laws 2020, items 285, 568, 695, and 1065.

Article 58. The following amendments shall be introduced to the Act of 24 July 2015 on the Control of Certain Investments (Journal of Laws 2020, items 117 and 284):

1) after Article 12, Articles 12a to 12k shall be added in the following wording:

“Article 12a. 1. In connection with the situation caused by COVID-19, the provisions of Articles 12b to 12k and Article 16a and Article 16b shall specify:

- 1) the rules and the procedure for controlling investments resulting in the acquisition or reaching of a significant participation in or the acquisition of domination over a protected entity within the meaning of Article 12d by an entity that:
 - a) has no citizenship of a Member State – in the case of natural persons or
 - b) does not have its registered office within the territory of a Member State or has not had a registered office within the territory of a Member State for at least two years from the day preceding the notification – in the case of entities other than natural persons;
- 2) sanctions for failure to comply with the obligations arising from the provisions of Articles 12b to 12k.

2. The provisions of Articles 12b to 12k shall not apply to cases concerning an entity subject to protection, as referred to in Article 3.1 (5), conducted by the control authority referred to in Article 3.1 (6).

Article 12b. The purpose of the mechanism for controlling investments concerning protected entities is to protect public policy, public security or public health, as referred to in Article 52 (1) and Article 65 (1) of the Treaty on the Functioning of the European Union, taking into account Article 4 (2) of the Treaty on European Union.

Article 12c. 1. Whenever the provisions of Articles 12a to 12k refer to:

- 1) significant participation – this shall be understood as a situation where it is possible to exert influence on the operations of an entity by:
 - a) holding shares representing at least 20% of the total number of votes or
 - b) having a capital share in a partnership amounting to at least 20% of the value of all contributions made to that partnership, or
 - c) having a share in the profits of another entity amounting to at least 20%;
- 2) entrepreneur – this shall be understood as an entrepreneur within the meaning of the Entrepreneur Law Act of 6 March 2018 (Journal of Laws 2019, items 1292 and 1495, and Journal of Laws 2020, items 424 and 1086), a research institute within the meaning of the Research Institute Act of 30 April 2010 (Journal of Laws 2019, items 1350 and 2227, and Journal of Laws 2020, item 284), and a Network Institute within the meaning of the Act of 21 February 2019 on the Łukasiewicz Research Network (Journal of Laws 2019, items 534 and 2227, and Journal of Laws 2020, items 284, 695, and 875);
- 3) protected entity – this shall be understood as an entrepreneur with the registered office in the Republic of Poland that meets the conditions specified in Article 12d.1, 12d.2 or 12d.3 on the date of the acquisition or reaching a significant participation or the acquisition of domination;
- 4) control authority – this shall be understood as the President of the Office of Competition and Consumer Protection;
- 5) Member State – this shall be understood as a state being a Member State of the European Union or a party to the Agreement on the European Economic Area, or a state being a member of the Organisation for Economic Cooperation and Development.

2. Whenever the provisions of paragraphs 4 to 8, Article 12g.1 (1) and (3), Article 12j.2 and 12j.3, and Article 12k.2 and 12k.3 refer to shares or rights attached to shares, this shall also be understood as:

- 1) a share in the profits of another entity or
- 2) a capital share in a partnership, or

3) the right to participate in the decision-making body of an entrepreneur other than a company or partnership.

3. Whenever the provisions of paragraphs 4 to 8 and Article 12g.1 (3) refer to the acquisition of shares or rights attached to shares or the taking up of shares, this shall also be understood as:

- 1) obtaining or increasing a share in the profits of another entity under an agreement or through a change in the articles of association of that entity or
- 2) joining a partnership or increasing one's capital share in a partnership through a change in the partnership's foundation deed or articles of association, or
- 3) joining an entrepreneur other than a company or partnership or increasing one's share in the decision-making body of an entrepreneur other than a company or partnership under an agreement or through a change in the articles of association of that entrepreneur.

4. The acquisition of domination shall be understood as gaining the status of dominant entity within the meaning of Article 3.1 (1) (e) in respect of a protected entity by:

- 1) acquiring shares or rights attached to shares or by taking up shares or
- 2) concluding an agreement providing for the management of that entity or the provision of profits by that entity.

5. The acquisition or reaching of a significant participation shall be understood as:

- 1) obtaining a significant participation within the meaning of paragraph 1 (1) in a protected entity by acquiring shares or rights attached to shares or by taking up shares, or
- 2) reaching or exceeding the threshold of 20% and 40%, respectively, of the total number of votes in the decision-making body of a protected entity, reaching or exceeding a share of 20% and 40%, respectively, in the profits of a protected entity, or reaching or exceeding a capital share of 20% and 40%, respectively, in a partnership being a protected entity in relation to the value of all contributions made to that partnership by acquiring shares or rights attached to shares or by taking up shares, or
- 3) acquiring or leasing an enterprise or an organised part thereof from a protected entity.

6. The acquisition or reaching of a significant participation or the acquisition of domination shall also include cases where:

- 1) the acquisition or reaching of a significant participation in a protected entity or the acquisition of domination over such an entity is effected by a subsidiary, including on the basis of agreements concluded with the dominant entity or a subsidiary of such an entity,
- 2) the acquisition or reaching of a significant participation in a protected entity or the acquisition of domination over such an entity is effected by an entity whose articles of association or another deed governing its operation contain provisions concerning the rights to its assets in the case of such an entity being dissolved or ceasing to exist in any other way, including the right to dispose of those assets without purchasing them,
- 3) the acquisition or reaching of a significant participation in a protected entity or the acquisition of domination over such an entity is effected in one's own name but on the order of another entity, including as part of the performance of a portfolio management agreement within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments,
- 4) the acquisition or reaching of a significant participation in a protected entity or the acquisition of domination over such an entity is effected by an entity that entered into an agreement with another entity concerning a transfer of rights to exercise the right to vote or other rights to shares or rights attached to shares in a protected entity,
- 5) the acquisition or reaching of a significant participation or the acquisition of domination over a protected entity is effected by a group of two or more persons, where even one of those persons is an entity that entered into a contract with another entity concerning the acquisition of shares in a protected entity or even concerning the acquisition of shares or assets of entrepreneurs having their registered offices in the Republic of Poland, where the object of that contract is a transfer of rights to exercise the right to vote or other rights to shares or rights attached to shares in entrepreneurs having their registered offices in the Republic of Poland,

6) the acquisition or reaching of a significant participation in a protected entity or the acquisition of domination over such an entity is effected by an entity acting under an oral or written agreement concerning the acquisition by the parties to that agreement of shares or assets of a protected company or the acquisition of shares or assets of entrepreneurs having their registered offices in the Republic of Poland

– hereinafter referred to as “indirect acquisition”.

7. Indirect acquisition shall also be understood as cases where as a result of a transaction or an event not specified in paragraphs 4 to 6, an entity achieves the status of dominant entity in relation to an entity holding a significant participation in a protected entity or the status of dominant entity in relation to a protected entity or an entity having a legal title to the enterprise or an organised part of the enterprise of a protected entity. Where indirect acquisition results from an action taken on the basis of legal provisions of a state other than the Republic of Poland, in particular as a result of a merger of companies whose registered offices are located outside the Republic of Poland or the acquisition or taking up of shares in an entity having its registered office outside the Republic of Poland and being an entity holding a significant participation in a protected entity or being a dominant entity for a protected entity, the provisions of Articles 12a to 12k shall apply within the scope of the effects specified in the first sentence.

8. The acquisition or reaching of a significant participation or the acquisition of domination shall also include cases where an entity acquires or reaches a significant participation or acquires domination over a protected entity or reaches or exceeds 20% or 40%, respectively, of the total number of votes in the decision-making body of a protected entity, or reaches or exceeds a share of 20% or 40% in the profits of a protected entity, or reaches or exceeds a capital share of 20% or 40% in a partnership being a protected entity in relation to the value of all contributions made to that partnership, as a result of:

- 1) the redemption of shares in the protected entity or the acquisition of that entity’s own shares,
- 2) a division of the protected entity or its merger with another entity,
- 3) a change in the foundation deed or the articles of association of the protected entity concerning preferential rights attached to shares, participation in profits or the establishment, modification or abolition of rights of particular shareholders or participants of that entity

– hereinafter referred to as “consequential acquisition”.

Article 12d. 1. A protected entity shall be an entrepreneur with the registered office in the Republic of Poland being a public company within the meaning of the Act of 29 July 2005 on Public Offering, on the Conditions for Introducing Financial Instruments into an Organised Trading System, and on Public Companies.

2. A protected entity shall be an entrepreneur with the registered office in the Republic of Poland that:

- 1) holds assets that have been entered in the uniform list of structures, systems, devices, and services being part of critical infrastructure referred to in Article 5b.7 (1) of the Crisis Management Act of 26 April 2007 (Journal of Laws 2019, item 1398, and Journal of Laws 2020, items 148, 284, 374, and 695), or
- 2) develops or modifies software:
 - a) for controlling power plants, networks, structures or systems used to supply electric energy, gas, fuel, heating oil or network heat, or
 - b) for managing, controlling, and automating systems used to supply drinking water or to treat wastewater, or
 - c) for controlling devices or systems used to transmit voice and data or to store and process data, or
 - d) for controlling devices or systems used to supply cash, make card payments, make conventional transactions, settle securities and derivative transactions or manage them, or to provide insurance services, or
 - e) for controlling hospital information systems, for controlling devices and systems used in the sale of prescription medicines, and for controlling laboratory information systems or laboratory tests, or
 - f) for controlling devices or systems used in the transport of passengers or goods by air, rail, sea, inland waterway, road or public transport or in logistics, or
 - g) for controlling devices or systems used in the supply of food, or

3) provides cloud computing services consisting in gathering or processing data.

3. A protected entity shall be an entrepreneur with the registered office in the Republic of Poland that conducts economic activity consisting in:

- 1) the generation of electricity, or
- 2) the manufacture of engine petrols or diesel oil, or
- 3) the pipeline transport of oil, engine petrols or diesel oil, or
- 4) the warehousing and storage of engine petrols, diesel oil, natural gas, or
- 5) the underground warehousing of oil or natural gas, or
- 6) the manufacture of chemicals, fertilisers, and chemical products, or
- 7) the manufacture and trading in explosives, weapons, and ammunition and products and technologies for military or police use, or
- 8) the re-gasification or liquefaction of natural gas, or
- 9) the handling of oil and oil products at sea ports, or
- 10) the distribution of natural gas or electricity, or
- 11) handling at ports of critical importance for the national economy within the meaning of Article 2 (3) of the Sea Port and Harbour Act of 20 December 1996, or
- 12) telecommunications activities, or
- 13) the transmission of gaseous fuels, or
- 14) the production of rhenium, or
- 15) the mining and processing of metal ores used for manufacturing explosives, weapons, and ammunition and products and technologies for military or police use, or
- 16) the manufacture of medical devices, instruments and products, or
- 17) the manufacture of medicines and other pharmaceutical products, or
- 18) trading in gaseous fuels and gas with foreign countries, or
- 19) the generation, transmission or distribution of heat, or
- 20) handling at inland ports, or
- 21) the processing of meat, milk, cereals, and fruit and vegetables.

4. A protected entity shall be an entrepreneur referred to in paragraph 1, 2 or 3 if their turnover from sales and services exceeded, within the territory of the Republic of Poland, the equivalent of EUR 10,000,000 in any of the two financial years preceding the notification.

5. Amounts expressed in EUR and other foreign currencies shall be converted to PLN and amounts expressed in PLN shall be converted to EUR at the average exchange rate announced by the National Bank of Poland on the last working day of the month preceding the month in which the notification obligation arose.

6. The Council of Ministers may, by way of a regulation, having consulted the President of the Office of Competition and Consumer Protection, specify further exclusions of the entities referred to in paragraphs 1 to 4 from protection, taking into account the situation caused by COVID-19 and the purposes of the control mechanism specified in Article 12b.

Article 12e. 1. The notification obligation referred to in Articles 12f.1 to 12f.4 shall arise where the entity specified in Article 12a (1) (a) or (b):

- 1) intends to acquire or reach a significant participation or
- 2) intends to acquire domination, or

- 3) has acquired or reached a significant participation, or
- 4) has acquired domination.

2. The control authority may instigate preliminary examination proceedings *ex officio* in the case of an intention to acquire or reach a significant participation or the acquisition or reaching of a significant participation, or an intention to acquire domination, or the acquisition of domination by an entity having the citizenship of a Member State – in the case of natural persons, or having its registered office within the territory of a Member State – in the case of entities other than natural persons, if there are indications of abuse or circumvention of law, in particular in order to avoid the arising of the notification obligation referred to in Articles 12f.1 to 12f.4 or in order to avoid the instigation of the proceedings referred to in Article 12h.1. No proceedings shall be instigated *ex officio* if 5 years has passed since the acquisition or reaching of a significant participation or the acquisition of domination.

3. Indications of the abuse or circumvention of law referred to in paragraph 2 may include, in particular, cases where the entity acquiring or reaching a significant participation or acquiring domination:

- 1) conducts no actual economic activity in their own name other than the activities related to the acquisition or reaching of a significant participation or the acquisition of domination, or
- 2) has no permanent enterprise, office or personnel within the territory of a Member State.

4. Subsidiaries of the entity referred to in Article 12a (1) or its branches or agencies shall be deemed to be entities having no registered office within the territory of a Member State.

5. The notification obligation referred to in Article 5 shall not arise where the acquisition or reaching of a significant participation or the acquisition of domination, or an intention to do so, gives rise to the notification obligation referred to in Articles 12f.1 to 12f.4.

Article 12f. 1. An entity that intends to acquire or reach a significant participation or to acquire domination shall each time give the control authority a prior notification of this intention, unless this obligation applies to other entities, in accordance with paragraphs 2 to 4.

2. In the case of indirect acquisition, a prior notification shall be given by the entity referred to in Article 12c.6 that intends to conclude a transaction specified in that provision.

3. In the case of the indirect acquisition referred to in Article 12c.7, second sentence, a subsequent notification shall be given by the subsidiary referred to in Article 12c.7, first sentence.

4. In the case of consequential acquisition, a prior notification shall be given by the protected entity.

5. In the cases referred to in paragraphs 1 and 2, the notification shall be given:

- 1) before any agreement giving rise to an obligation to acquire or reach a significant participation or to acquire domination is concluded or before any other legal act or legal acts leading to the acquisition or reaching of a significant participation or to the acquisition of domination is or are performed, or
- 2) in the case of a call to subscribe for the sale or exchange of shares in a public company within the meaning of the Act of 29 July 2005 on Public Offering, on the Conditions for Introducing Financial Instruments into an Organised Trading System, and on Public Companies – before the publication of the call.

6. Where the acquisition or reaching of a significant participation or the acquisition of domination is effected as a result of the conclusion of more than one agreement or the performance of another legal act, the notification shall be given before the conclusion of the last agreement or before the performance of the last legal act leading to the acquisition or reaching of a significant participation or the acquisition of domination.

7. In the case referred to in paragraph 3, the notification shall be given within 7 days of the date of the acquisition or reaching of a significant participation or the acquisition of domination over a protected entity, and where this effect cannot be determined, in particular where provisions governing the act referred to in Article 12c.7, second sentence, do not provide for an entry in the relevant register – within 30 days of the date of the performance of that act.

8. In the case referred to in paragraph 4, the notification shall be given:

- 1) before a meeting of the decision-making body of the protected entity is held or before a resolution of shareholders or participants is adopted or
- 2) before another act causing the effects referred to in Article 12c.8 is performed.

9. Where at least two entities act in agreement, a notification shall be given jointly by all parties to the agreement.

Article 12g. 1. When giving a notification referred to in Articles 12f.1 to 12f.3, an entity shall provide information:

- 1) on directly or indirectly held shares or rights attached to shares in a given protected entity, as well as on entities dominant in relation to that entity and agreements concluded by that entity, and on the actual or legal circumstances of that entity that enable other entities to exercise rights attached to shares in the protected entity or to exercise the rights of an entity dominant in relation to the protected entity, or that give other entities the right to acquire or take up shares in the protected entity;
- 2) referred to in Article 6.1 (2) to (7);
- 3) on any actions, taken before the date of the notification, aimed at acquiring shares or rights attached to shares or at taking up shares in entrepreneurs with the registered office within the territory of the Republic of Poland, on any rights related to those shares, on the manner and sources of financing for the acquisition of the shares or rights attached to shares or for the taking up of shares, any agreements concluded in connection with those actions, and on any actions in agreement with other entities;
- 4) on the intentions of the entity giving a notification referred to in Articles 12f.1 to 12f.3 with regard to the protected entity concerning any investment plans, long-term operating plans, anticipated changes in the organisation of the protected entity, the financing of its operations, the dividend policy, and the employment policy.

2. In the case of consequential acquisition, the provisions of paragraph 1 shall not apply. When giving the notification referred to in Article 12f.4, a protected entity shall provide:

- 1) detailed information on the shareholding structure of that entity, in particular on all known shareholders or other participants, and
- 2) detailed information on the structure of participation in the profits of that entity;
- 3) information on the manner of realising the intention to which the notification pertains.

3. The provisions of Article 6.3, Article 7, and Article 8 and regulations issued on the basis of Article 6.2 shall apply accordingly to the notifications referred to in Articles 12f.1 to 12f.4.

Article 12h. 1. Preliminary examination proceedings shall be instigated as a result of the submission of a notification referred to in Articles 12f.1 to 12f.4.

2. In the cases referred to in Article 12c.7 and 12c.8, the control authority may instigate preliminary examination proceedings *ex officio*. No proceedings shall be instigated *ex officio* if 5 years has passed since the acquisition or reaching of a significant participation or the acquisition of domination. In such proceedings are instigated *ex officio*, the control authority shall request the relevant entity to submit the information referred to in Article 12g.1 within a specified time limit, not shorter than 7 days. The entity to which the request has been addressed shall become a party to the proceedings upon the service of that request. The provisions of Article 6.3, Article 7, and Article 8 and regulations issued on the basis of Article 6.2 shall apply accordingly.

3. If any formal defects are identified in a notification referred to in Articles 12f.1 to 12f.4 or if the required information or documents have not been enclosed with it, the control authority shall request the notifying entity to remedy such defects within a specified time limit, not shorter than 7 days.

4. Refusal to instigate preliminary examination proceedings, justified by the fact that the given act covered by a notification referred to in Articles 12f.1 to 12f.4 is not subject to the provisions of Articles 12a to 12k, shall occur by way of a decision of the control authority, which decision may not be appealed against.

5. Within 30 working days of the date of the instigation of preliminary examination proceedings, the control

authority shall issue:

- 1) a decision on refusal to instigate examination proceedings and on the absence of objections against the acquisition or reaching of a significant participation or the acquisition of domination, or
- 2) a decision on the instigation of examination proceedings, where:
 - a) the entity giving a notification referred to in Articles 12f.1 to 12f.4 has failed to remedy any formal defects in the notification or to complete the documents or information enclosed with the notification within the specified time limit, or where the requested entity has failed to submit information or documents at the request of the control authority, or
 - b) there are reasons justifying further examination of the notified intention to acquire or reach a significant participation or to acquire domination or the notified acquisition or reaching of a significant participation or acquisition of domination from the point of view of public security or public policy.

6. The decision referred to in paragraph 5 (2) may not be appealed against.

7. In the case referred to in paragraph 5 (2) (a), paragraph 3 shall apply accordingly in the course of the examination proceedings.

8. A decision on a case instigated in accordance with paragraph 5 (2) shall be issued not later than within 120 days of the date of the instigation of the examination proceedings and shall be delivered not later than within 7 working days of the date of its issuance, except for the case referred to in Article 8.2. The provision of Article 9.5, second sentence, shall apply accordingly.

9. The running of the time limit for the issuance of a decision, as referred to in paragraph 8, shall be suspended until the day on which the defects referred to in paragraph 3 have been remedied.

10. If the administrative court overturns a decision on a matter settled in control proceedings or a decision concluding control proceedings, the time limit for the issuance of a decision referred to in paragraph 8 shall run starting from the date on which the final and binding judgement of the administrative court is served on the control authority.

11. An entity giving a notification referred to in Articles 12f.1 or 12f.2 shall be obliged to refrain from performing the act covered by that notification until the expiry of the time limit within which a decision should be issued. A legal act covered by a notification referred to in Articles 12f.1 to 12f.4 may be performed on condition that no objections have been raised.

Article 12i. 1. Before issuing the decision referred to in Article 12h.8, the control authority may request the entity giving a notification referred to in Articles 12f.1 to 12f.4 to provide additional written explanations concerning the information or documents referred to in Article 12g, within a specified time limit, not shorter than 7 days.

2. The running of the time limit for the issuance of a decision, as referred to in Article 12h.8, shall be suspended until the day on which the control authority receives the explanations referred to in paragraph 1.

Article 12j. 1. The control authority shall, by way of a decision, object to the acquisition or reaching of a significant participation in or to the acquisition of domination over a protected entity within the meaning of Article 12d, also in the case of indirect or consequential acquisition, where:

- 1) the entity giving a notification referred to in Articles 12f.1 to 12f.4 has failed to remedy any formal defects in the notification or to complete the documents or information enclosed with the notification within the specified time limit, or where the requested entity has failed to submit information or documents at the request of the control authority, or
- 2) the entity giving a notification referred to in Articles 12f.1 to 12f.4 has failed to provide additional written explanations within the time limit set by the control authority, or
- 3) the acquisition or reaching of a significant participation or the acquisition of domination involves at least a potential risk to the public policy or the public security of the Republic of Poland or to public health in the Republic of Poland – taking into account Article 52 (1) and Article 65 (1) of the Treaty on the Functioning of the European Union and Article 4 (2) of the Treaty on European Union, or

- 4) it is impossible to determine whether the acquiring party has the citizenship of a Member State – in the case of natural persons, or has its registered office within the territory of a Member State or has had its registered office within the territory of a Member State for at least two years from the day preceding the notification – in the case of entities other than natural persons, or
- 5) the acquisition or reaching of a significant participation or the acquisition of domination may have a negative impact on projects and programmes being in the interest of the European Union.

2. In the case of the notification referred to in Article 12f.3, the control authority shall, by way of a decision, deem it impermissible to exercise rights attached to shares in a protected entity acquired in the cases specified in Article 12c.7, second sentence, if one or more of the conditions set out in paragraph 1 are met.

3. In the case of the instigation of proceedings *ex officio*, the control authority shall, by way of a decision, deem it permissible to exercise rights attached to shares in a protected entity in a manner not going beyond a significant participation if the entity concerned has reached a significant participation and where it has been impossible to determine, in the course of the proceedings, based on what acts the entity concerned has reached a significant participation.

4. The decision of the control authority may be complained against to the administrative court.

Article 12k. 1. The acquisition or reaching of a significant participation or the acquisition of domination effected:

- 1) without giving a notification referred to in Article 12f.1, 12f.2 or 12f.4, or
- 2) despite the issuance of a decision on objection, as referred to in Article 12j.1 – shall be ineffective, unless the decision referred to in Article 12j.3 has been issued.

2. In the case of:

- 1) failure to give the notification referred to in Article 12f.3, or
- 2) the issuance of the decision referred to in Article 12j.2

– no right to vote or any other right may be exercised under shares in the protected entity concerned that were acquired in the cases specified in Article 12c.7, except for the right to dispose of those shares.

3. If the decision referred to in Article 12j.3 is issued, the rights to vote and other rights attached to shares in the protected entity concerned may be exercised, except for the right to dispose of shares that give the entitled party less than 10% of all rights of shareholders or other participants of the protected entity.

4. Resolutions of shareholders, a meeting of shareholders or a general meeting of a company being a protected entity that were adopted in violation of the provisions of paragraphs 1 to 3 shall be invalid unless they meet the quorum requirement and the requirement of the majority of votes, without taking into account invalid votes. The control authority shall also have the right to bring an action for the declaration of the invalidity of a resolution of shareholders, a meeting of shareholders or a general meeting. The provisions of Article 252 and Article 425 of the Act of 15 September 2000 – the Code of Commercial Companies and Partnerships shall apply accordingly. The time limit for filing a complaint against a resolution shall be suspended for the period of duration of proceedings concluded with the issuance of the decision referred to in Article 12j.2 or 12j.3.

5. If the ineffectiveness of an act referred to in paragraph 1 concerns acts performed in the cases specified in Article 12c.7, the registry court having jurisdiction over the protected entity concerned shall delete from the relevant register, *ex officio*, entries based on that ineffective act. If other entries have been made as a result of those entries having been made, the registry court or the registry courts concerned shall take actions appropriate in the case of entries inadmissible due to the applicable provisions, in accordance with the provisions of the National Court Register Act of 20 August 1997.

6. In the case referred to in paragraph 2, the provisions of Article 12.6 and Article 12.7 shall apply accordingly.”;

2) after Article 14, Articles 14a to 14i shall be added in the following wording:

“Article 14a. 1. A contact point for the implementation and application 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

investments into the Union (OJ L 79, 21.03.2019, p. 1), hereinafter referred to as “contact point”, shall be established.

2. The minister responsible for economy shall run the contact point and shall be responsible for the submission of an annual report and information on the application of this Act, drawn up based on information provided by control authorities.

3. The minister responsible for economy shall define, by way of a regulation, the detailed scope of the tasks of the contact point and the manner of their fulfilment, as well as the manner in which the contact point is to be provided with substantive, organisational, legal, technical, and secretarial and office services, having regard to the need to ensure the effective transmission of notifications, explanations, information, opinions, and comments and the obligation to submit an annual report and information on the application of this Act in a timely manner.

Article 14b. 1. The control authority shall transmit notifications, explanations, and information and shall receive opinions and comments via the contact point.

2. Annual reports and information on the application of this Act shall be submitted via the contact point.

Article 14c. Whenever the provisions of Articles 14d to 14i refer to:

- 1) foreign investment – this shall be understood as any investment of a foreign investor made in order to establish or maintain permanent and direct links between that foreign investor and an entrepreneur or an enterprise to whom or to which capital is made available for the purpose of conducting economic activity in a given Member State, including investments that enable effective participation in the management or controlling of a company conducting economic activity, in particular an investment subject to control pursuant to this Act;
- 2) foreign investor – this shall be understood as a natural person from a third country or an enterprise from a third country that intends to make or has made a foreign investment.

Article 14d. 1. The control authority shall immediately notify the European Commission and other Member States of instigated proceedings concerning a foreign investment and of:

- 1) the ownership structure of the investor and of the enterprise or an organised part thereof in respect of which the foreign investment is being planned or has been completed, including information on the ultimate investor and the share of capital;
- 2) the approximate value of the foreign investment;
- 3) the products, services, and economic activity of the investor and the enterprise or an organised part thereof in respect of which the foreign investment is being planned or has been completed;
- 4) the Member State in which the investor and the entrepreneur in respect of which the foreign investment is being planned or has been completed conduct relevant economic activity;
- 5) the financing of the foreign investment and the source of that financing, based on the best available information;
- 6) the planned date of the completion of the foreign investment or the date on which it was completed.

2. In justified cases, the control authority shall inform about the possibility of the application of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.01.2004, p. 1).

3. The notification may include a list of Member States for which it is deemed that the foreign investment is highly likely to affect their security or public policy.

4. If the foreign investment concerned may affect the security or the public policy of the Republic of Poland or if the control authority has important information, it may provide comments to the Member State competent in the given case. Such remarks shall at the same time be sent to the European Commission.

5. If the control authority deems that a foreign investment may affect the security or public policy of the Republic of Poland, it may request the European Commission to give an opinion or other Member States to provide comments.

6. Within 15 days of the date of the receipt of the information referred to in paragraphs 1 to 5, the Member State competent in the given case shall be notified of the intention to provide comments. Such a notification may contain a

request for additional information.

7. The control authority shall duly take into consideration any comments of other Member States and any opinions of the European Commission.

8. If the control authority deems that the security or the public policy of the Republic of Poland requires immediate action, it shall notify other Member States and the European Commission of its intention to issue a decision before 35 days have passed from the date of the provision of the information referred to in paragraphs 1 to 5. Such a notification shall contain a statement of reasons.

9. The control authority may request a foreign investor or an entrepreneur in whose enterprise or an organised part thereof a foreign investment is being planned or has been completed to provide the information referred to in paragraph 1.

10. The control authority shall immediately notify the European Commission and other interested Member States if, in exceptional circumstances, it is unable – despite its best efforts – to obtain the information referred to in paragraph 1, duly stating the reasons for which it has failed to provide such information, and shall explain what best efforts it has expended in order to obtain the requested information, including information requested pursuant to paragraph 8.

Article 14e. 1. If the control authority deems that a foreign investment not covered by monitoring in another Member State may affect the security or the public policy of the Republic of Poland or if the control authority has important information, it may provide comments to that Member State. Such remarks shall at the same time be sent to the European Commission.

2. If the Member State concerned or the European Commission deems that a foreign investment not covered by monitoring may affect security or public policy, it will request the Republic of Poland to provide information. The control authority shall provide the information referred to in Article 14d.1. Information provided to a Member State shall at the same time be sent to the European Commission.

3. If a foreign investment implemented in another Member State and not covered by monitoring may affect the security or the public policy of the Republic of Poland, the control authority may request the information referred to in Article 14d.1. A request for information shall at the same time be sent to the European Commission.

Article 14f. The control authority may provide comments not later than within 15 months of the completion of a given foreign investment.

Article 14g. 1. A notification or comments may indicate that a foreign investment may affect projects and programmes being in the interest of the European Union.

2. If the European Commission deems that a foreign investment implemented within the territory of the Republic of Poland may affect projects or programmes being in the interest of the European Union for reasons of security or public policy, the control authority shall take the utmost account of the opinion of the European Commission and shall provide the European Commission with an explanation if it does not take an action recommended in the opinion.

Article 14h. 1. Notifications, opinions, comments, explanations, and information shall be used for the purposes for which they were requested.

2. Notifications, opinions, comments, explanations, and information containing confidential information, including business secrets, shall be protected in accordance with European Union law and the relevant provisions of national law.

3. The control authority shall ensure that the classified information provided or exchanged via the contact point is not downgraded or declassified without the prior written consent of the originator.

4. Personal data shall be processed in accordance with regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.05.2016, p. 1, as amended³) and regulation (EU) 2018/1725 of the European Parliament and of the Council of 23

³ An amendment to the said regulation was published in OJ EU L 127, 23.05.2018, p. 2.

October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39), and only to the extent necessary for the monitoring of foreign investments by Member States and for ensuring effective cooperation between Member States. Personal data shall be stored for the time necessary to achieve the purposes for which they were collected.

Art 14i. The provisions of Articles 14b to 14h shall not apply to investments completed before 10 April 2019.”;

3) after Article 16, Article 16a and Article 16b shall be added in the following wording:

“Article 16a. 1. Whoever acquires or reaches a significant participation or acquires domination without giving a notification referred to in Articles 12f.1 to 12f.4 shall be subject to a fine of up to PLN 50,000,000 or to imprisonment of from 6 months to 5 years, or to both these penalties.

2. The same penalty shall apply to whoever commits the act specified in paragraph 1 acting in the name or in the interest of a legal person or an organisational unit without legal personality.

Article 16b. 1. Whoever, being obliged under the statute or under an agreement to handle the matters of a subsidiary and being aware of an acquisition effected in the cases specified in Article 12c.7, fails to give a notification, shall be subject to a fine of up to PLN 5,000,000 or to imprisonment of from 6 months to 5 years, or to both these penalties.

2. The same penalty shall apply to whoever, acting at a meeting of the decision-making body of a protected entity or when resolutions of shareholders in a protected entity are being adopted, exercises rights attached to shares in the name of an entity that, despite being obliged to do so, has failed to give a notification of the reaching of a significant participation in the protected entity, where that person was aware of that circumstance or could have learnt about it based on data made available on the basis of this Act.”.

Article 59. In the Act of 24 July 2015 on the Preparation and Implementation of Strategic Investments Concerning Transmission Networks (Journal of Laws 2020, items 191 and 284), in Article 19, paragraph 6 shall have the following wording:

“6. On the day of the issuance of a decision determining the location of a strategic investment concerning a transmission network, the investor shall gain the right to administer the real property referred to in Article 8.1 (7) and (8) for building purposes necessary to implement and use the strategic investment concerning a transmission network.”.

Article 89. 1. The provisions of Articles 12a to 12k and Article 16a and Article 16b added in the act amended in Article 58 shall not apply to cases where a significant participation was achieved or reached or where domination was acquired before their entry into force.

2. The provisions of Articles 12a to 12k added to the act amended in Article 58 shall become ineffective after 24 months have passed from the date of their entry into force.

3. The provisions of Articles 16a and 16b added to the act amended in Article 58 shall apply to acts committed within 24 months of the date of their entry into force.

4. If the provisions of Articles 12a to 12k added in the act amended in Article 58 become ineffective, proceedings conducted by the control authority referred to in Article 12c.1 (4) of that act that were instigated and have not been concluded before the date on which those provisions become ineffective shall be conducted by that authority based on those provisions.

5. The provisions of Articles 14c to 14i of the act amended in Article 58 shall become ineffective as of 11 October 2020.

Article 103. This Act shall come into force on the day following the date of its publication, except for:

- 1) Article 50, Article 58, and Article 89, which shall enter into force after 30 days from the date of its publication;
- 2) Article 70 (1) and Article 76, which shall enter into force on 1 January 2021;
- 3) Article 75, which shall enter into force on the day following the date of its publication, with effect from 14 November 2019;
- 4) Article 77:
 - a) subparagraph (3) (a), (b), and (e), subparagraph 4 (a) to (c), and subparagraphs (5) and (10), which shall enter into force on the day following the date of its publication, with effect from 25 May 2020,
 - b) subparagraphs 34 to 36, which shall enter into force after 30 days from the date of its publication,
 - c) subparagraph 58 within the scope of Article 31q.8, which shall enter into force on the day following the date of its publication, with effect from 1 April 2020,
 - d) subparagraphs 27 and 60, which shall enter into force on the day following the date of its publication, with effect from 31 March 2020;
- 5) Article 77 (24) and Article 93, which shall enter into force after 7 days from the date of its publication.