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BULGARIA'S FOREIGN DIRECT INVESTMENT SCREENING MECHANISM, EFFECTIVE AS OF JULY 22nd, 2025



Introduction

On 22 February 2024 Bulgarian Parliament amended and supplemented the *Investments Promotion Act* (the “**Law**”) to establish a foreign direct investment screening mechanism (“**FDI Screening**”) in line with *Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union* (the “**FDI Regulation**”). However, the entry into effect of the new mechanism was postponed until the Council of Ministers adopts procedural rules for FDI Screening. Following several delays, the rules were finally adopted by way of amendments to the *Regulation for Implementation of the Investments Promotion Act* (the “**Regulation**”). The Regulation was promulgated on 22 July 2025 and as of that date all in-scope investments are now subject to Bulgaria’s FDI Screening regime.

Who is a Foreign Investor

Pursuant to the Law a Foreign Investor is:

- any individual who has made, or intends to make, an FDI in Bulgaria, provided such individual is not a national of an EU Member State;
- any legal entity that has made, or intends to make, an FDI in Bulgaria, provided such legal entity’s seat is outside an EU Member State (each, a “**Non-EU Person**”) or although seated in an EU Member State, the latter is controlled by a Non-EU Person;
- legal entities and non-incorporated persons seated in an EU Member State whose internal governance rules or existing agreement(s) allow a Non-EU Person to exercise direct or indirect control over specific investment or which intend to make an investment in their own name, but on the basis of an agreement or multi-stage transaction, the investment appears to be made on behalf of or at the expense of (i) a Non-EU Person, or (ii) a legal entity controlled by a Non-EU Person.

What is a Foreign Direct Investment

“Foreign Direct Investment” or “FDI” is an investment of any kind made by a Foreign Investor aimed at establishing or maintaining lasting and direct links between the Foreign Investor and the entrepreneur or enterprise to which or to which the capital has been made available to carry on business in Bulgaria, including an investment which enables effective participation in the management or control of a company carrying on business. FDI also includes the expansion of an existing investment, including the expansion of the capacity of an existing enterprise, the diversification of the production of an enterprise with products that have not been produced before, and the establishment of a new place of business.

The definition of FDI clarifies that a portfolio (passive) investment is not a foreign direct investment. “Portfolio (passive) investment”, however, is not specifically defined.

Types of FDI Subject to Review

To qualify for FDI Screening, the FDI's subject matter should fall within the areas covered by Article 4, para. 1 of the Regulation, and should meet at least one out of the following three conditions:

- the investment results in the acquisition of at least 10% of the capital of an undertaking which operates in Bulgaria, or the amount of the investment exceeds the threshold of EUR 2,000,000;
- the investment results in the acquisition of at least 10% of the capital of an undertaking which operates in Bulgaria and performs high-tech activities (regardless of its turnover, the number of its employees or the investment amount);
- the investment classifies as a "new investment" (initial investment in tangible and intangible assets related to the start of activity of a new enterprise, expansion of the capacity of an existing enterprise, diversification of an enterprise's production through products not previously produced, or a significant change in the general production process of an existing enterprise) and the amount of such investment exceeds EUR 2,000,000;

In addition, certain FDIs, which do not meet the criteria described above, will nevertheless trigger the FDI Screening requirement where:

- the FDI is made by a Foreign Investor from Russia or Belarus;
- the FDI is in the production of oil-derived energy products and other oil-derived products at critical infrastructure facilities which are strategically important for the national security;
- the FDI does not reach the EUR 2,000,000 threshold, however a member of the Screening Council competent in the relevant area in which the investment will be implemented, proposes that such FDI should undergo FDI Screening. Such proposal should be coordinated with the State Agency for National Security and the State Intelligence Agency;
- the State Agency for National Security or the State Intelligence Agency has submitted to the Screening Council a motivated request that an FDI, which otherwise does not qualify, should undergo FDI Screening because of indications suggesting that the relevant FDI may have an impact on security and public order.

All FDIs that qualify under Article 4, para. 1 of the FDI Regulation, regardless of their amount, shall undergo FDI Screening when a state outside the EU is a direct or indirect shareholder or significant financing on behalf of a third-country state authority is made available to the Foreign Investor. The above shall not apply when the Foreign Investor is publicly traded, and the respective foreign state holds shareholding below 5%.

The Law provides an exemption from this obligatory filing obligation for certain non-EU states, which currently are the United States, the United Kingdom, Canada, Australia, New Zealand, Japan, South Korea, the United Arab Emirates and Saudi Arabia ("**Exempted Non-EU States**").

However, the full implication of this exemption from the scope of FDI Screening remains somewhat ambiguous. Interpretation aligned with the legislative history of the Regulation suggests that the exemption applies only to the obligatory filing for “small” investments (i.e. investments under 2 million EUR or as result of which is acquired shareholding below 10%), which shall be subject to filling when the involved state authorities are not from the Exempted Non-Eu States.

Another interpretation suggests that the rule is meant to exempt from FDI Screening all FDIs made by sovereign entities from the above listed countries or their instrumentalities. Some commentators go as far as to suggest that the exemption extends more broadly to all Foreign Investors based in Exempted Non-EU States. Hopefully, after the Screening Council starts work, it shall provide guidance.

FDI Screening

The Law provides that any Foreign Investor who intends to make a FDI should, prior to implementation, file FDI screening application (“**FDI Application**”) and receive clearance by an inter-agency council (the “**Screening Council**”). The Law introduces a standstill obligation so that a Foreign Investor may not proceed with implementation of an FDI until it receives a clearance decision from the Screening Council. The Regulation sets out rules for the screening process:

- **Review Process, Timeline and Closure**

The timeline of review is 45 calendar days as of registration of the application. There is an option for one-time extension by 30 additional days. No further extensions of the review period are possible. If the Screening Council does not issue a decision within this timeframe, the FDI is deemed approved, and the investor may proceed with implementation.

The review process is divided into several standalone stages, each one with its own timeline. Thus, depending on the development of each of the stages, an FDI may be cleared even before the expiry of the 45 days period.

- **Pre-Registration**

An FDI Screening application must be submitted to the Investment Promotion Agency (the “**Investment Agency**”). It has 3 days to complete formality check, and up to 7 days to request additional documents/ corrective steps, if necessary. When complete, the Investment Agency transfers the application to the administrative personnel supporting the activity of the Screening Council (the “**Secretariat**”).

- **Substantive Review**

The Secretariat registers an FDI Screening application and carries the first stage of the

substantive review. Within 14 days of registration of the screening application and commencement of review the Secretariat prepares and submits a reasoned proposal to the Screening Council. The Secretariat may propose one of two options:

- (i) There is no ground for objection of the FDI; or
- (ii) The Screening Council should commence complex assessment of the FDI (“**Complex Assessment**”).

The next stage of the review is carried out by the Screening Council. Within 10 days of receipt of the reasoned proposal by the Secretariat, it adopts one of the following two resolutions:

- (a) To allow the FDI without Complex Assessment; or
- (b) To commence Complex Assessment.

If the Secretariat has submitted a reasoned proposal under item (i) above (recommending no-objections decision) and none of the members of the Screening Council has raised objections within 7 days as of receipt of the reasoned proposal, **the Screening Council, following the adoption of a resolution under item (a) above, issues a clearance decision permitting the implementation of the FDI.**

- **Complex Assessment**

Complex Assessment is a distinct stage of the review. It is conducted by the Screening Council upon a proposal by the Secretariat under item (ii) above (recommending Complex Assessment) or in case an objection by an institutional member of the Screening Council has been raised. Complex Assessment must be completed within the 45 + 30 day review timeline.

Following the conclusion of the Complex Assessment, the Screening Council issues one of the following final decisions:

- (i) Permits the FDI;
- (ii) Permits the FDI under conditions (see below); or
- (iii) Rejects the screening application (i.e. prohibits the FDI).

- **Negotiation of Conditions**

Where the Complex Assessment has led the Screening Council to believe that the FDI may be implemented only subject to conditions, it commences negotiations with the Foreign Investor. Negotiations must be completed no later than 10 days before the expiry of the review timeline (45 + 30 days from registration). The negotiations are conducted in written form and conclude with execution of a written document either (i) setting out the terms of the agreed conditions, or (ii) setting out the lack of agreement on appropriate

conditions. If an agreement setting out the terms of the agreed conditions is reached out, the Screening Council issues permission for implementation of the FDI with conditions.

The Law provides that the following conditions may be adopted:

- Restriction of the equity participation of the Foreign Investor to a threshold of 20 percent (10 percent if the target is involved in high-tech industries);
- Implementation of measures aimed at the protection of personal data, the security of information or otherwise (upon proposal by a relevant regulator);
- Introduction of special voting or management rights in favour of the state (applicable in the context of privatizations only).

If negotiations conclude without agreement on conditions, the Screening Council issues final decision rejecting the FDI screening application.

Scope of the review

When assessing an FDI, the Secretariat considers:

- whether the FDI is likely to affect security or public order, with respect to its potential to impact any of the areas covered by Article 4, para. 1 of EU Regulation 2019/452; and
- whether the FDI is likely to affect security or public order, due to:
 - The exercise of direct or indirect control over the Foreign Investor by non-EU government, including via public authorities or armed forces. Control may be exercised through equity or financing.
 - Past involvement of the Foreign Investor in activities considered to have affected security or the public order in a EU Member State; or
 - High level of risk of the Foreign Investor being involved in illegal or criminal activities.

However, the Regulation does not seem to limit the grounds for objections to the above-mentioned criteria. Thus, it seems that the Screening Council and its members may object and FDI based on any other concern they may have with respect to a particular FDI.

The Screening Council has broad discretion to request information and documents, to appoint experts and solicit opinions from third parties and governmental agencies.

If a FDI is likely to affect a project or a program of interest to the EU, the Screening Council shall request an opinion of the European Commission provided in compliance with Article 8 of the Regulation. In such a case, the review period shall be stopped until an opinion of the European Commission is received.

Penalties

Where a qualifying FDI has been implemented without a prior clearance, the Screening Council may impose a fine to the respective Foreign Investor equal to 5% of the amount of the investment, but not less than BGN 50,000 (approx. EUR 25,000). In such cases, the Screening Council may also impose appropriate corrective measures such as unwinding of control, termination of activity, termination of the FDI, or other measures that may be deemed appropriate.

The Screening Council may also impose pecuniary fines of up to 5% of the amount of the investment where the Foreign Investor:

- has provided inaccurate, incomplete or misleading information;
- has not implemented corrective measures imposed by the Screening Council with an approval or a fining decision.

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