

Government Decree 227/2020 (25 May)

on measures required for the economic protection of companies having their seats in Hungary with a view to preventing the human epidemic endangering life and property and causing massive disease outbreaks and eliminating its consequences

The Government,
acting within its original legislative power laid down in Article 53 (2) of the Fundamental Law, having regard to the provisions of Act XII of 2020 on the containment of coronavirus,
acting, with respect to section 18, within its original legislative power laid down in Article 53 (3) of the Fundamental Law, on the basis of authorisation by the National Assembly under section 3 (1) of Act XII of 2020 on the containment of coronavirus,
acting within its function laid down in Article 15 (1) of the Fundamental Law,
decrees as follows:

1. Interpretative provisions

Section 1 For the purposes of this Decree

1. *foreign investor* means

a) also a legal person or other organisation registered in Hungary, in another Member State of the European Union, in another Member State of the European Economic Area or in the Swiss Confederation that acquires a specific share of ownership or control in a company having its seat in Hungary and pursuing an activity specified under section 2 (2), provided that the person having majority control under the Act on the Civil Code over the legal person or other organisation is a citizen of, or a legal person or other organisation registered in, a state outside the European Union, the European Economic Area and the Swiss Confederation,

b) a citizen of, or a legal person or other organisation registered in, a state outside the European Union, the European Economic Area and the Swiss Confederation;

2. *strategic company* means a limited liability company, private company limited by shares or public company limited by shares having its seat in Hungary whose activity pursued as a main activity under Annex 1 or as a further activity falls within the energy, transport or communication division or a division of strategic importance, including the finance, credit and insurance division, under Article 4 (1) a) to e) of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for screening of foreign direct investments into the Union.

2. Conditions for investments made by foreign investors regarding strategic companies

Section 2 (1) In case of a strategic company, if concluding a contract, making a unilateral juridical act, or adopting a corporate resolution (hereinafter jointly “legal transaction”) leads to a result specified in paragraphs (2) to (4), the notification of the Minister responsible for internal economy (hereinafter “the Minister”) and the acknowledgement of this notification shall be required in connection with the following legal transactions:

a) transfer, for or without consideration, of an ownership share in a strategic company in full or in part, based on any legal title for transfer of ownership, including in-kind contribution,

b) increasing the capital of a strategic company,

c) the transformation, merger or division of a strategic company,

d) issuing convertible bonds, bonds with subscription rights or converting bonds by a strategic company

e) establishing a right of usufruct over a share or business share of a strategic company.

- (2) In any of the divisions specified in point 2 of section 1,
- a) a foreign investor within the meaning of point 1 a) of section 1 or a legal person or other organisation registered in another Member State of the European Union, another Member State of the European Economic Area or the Swiss Confederation acquires, directly or indirectly, majority control within the meaning of the Act on the Civil Code over a strategic company as a result of
 - aa) acquiring, directly or indirectly, an ownership share of a strategic company on the basis of a legal transaction under paragraph (1) a) to c) (hereinafter “acquiring ownership”),
 - ab) converting a convertible or converting bond, or subscribing shares based on a bond, the ownership of which was acquired, directly or indirectly, on the basis of a unilateral juridical act under paragraph (1) d) (hereinafter “acquiring the ownership of a bond”), or
 - ac) acquiring, directly or indirectly, a right of usufruct over a business share, or share, representing ownership share on the basis of a contract or unilateral juridical act under paragraph (1) e) (hereinafter jointly “acquiring a right of usufruct”),
 - b) a foreign investor within the meaning of point 1 of section 1 acquires, directly or indirectly, at least 10 per cent share in a strategic company as a result of acquiring ownership, acquiring the ownership of a bond or acquiring a right of usufruct, provided that the total value of acquisition reaches or exceeds 350 million forints.
- (3) The notification obligation shall also apply if a foreign investor within the meaning of point 1 of section 1 acquires 15 per cent, 20 per cent or 50 per cent ownership of a strategic company in a division specified in point 2 of section 1 as a result of acquiring ownership, acquiring the ownership of a bond or acquiring a right of usufruct, or if acquiring ownership, acquiring the ownership of a bond or acquiring a right of usufruct by a foreign investor within the meaning of point 1 of section 1 would result in a total share of foreign investors in the strategic company in a division specified in point 2 of section 1 in excess of 25 per cent.
- (4) The notification of the Minister and the acknowledgment of such notification shall also be required for transferring the infrastructure or equipment essential for pursuing any activity in the divisions specified in point 2 of section 1, or relinquishing the right to use or operate such instruments, or provide such instruments as security (hereinafter jointly “right to operate”), provided that the right to operate is acquired by a foreign investor or a legal person or organisation in which a foreign investor has, directly or indirectly, controlling share.

3. Proceeding by the Minister

Section 3 (1) The Minister’s proceeding under this Decree shall be based on a notification in the Hungarian language or a certified Hungarian translation of a notification; in the case of the violation of the notification obligation, the Minister may also proceed on the basis of an *ex post* notification or *ex officio*.

- (2) The notification shall be submitted to the Minister within 10 days after
- a) a legal transaction aimed at acquiring ownership,
 - b) a legal transaction aimed at acquiring ownership of a bond,
 - c) a legal transaction aimed at acquiring a right of usufruct,
 - d) a legal transaction aimed at acquiring a right to operate is effectuated.
- (3) The notification shall be submitted by the foreign investor or, in a situation under paragraph (2) d), if the right to operate is acquired by a person other than the foreign investor, by the legal person or organisation acquiring the right to operate and the foreign investor jointly (for the purpose of this subtitle hereinafter “notifier”).
- (4) Legal representation shall be mandatory in a proceeding before the Minister under this Decree.

(5) A notification signed by the notifier and affixed with an electronic signature by the legal representative as required by an Act for the activities of the legal representative, shall be submitted in writing, in an electronic form addressed to the Minister, to the customer service contact address specified on the website of the Ministry led by the Minister.

(6) The notification obligation under this Decree shall be without prejudice to any other notification or authorisation obligation set out in another law in connection with acquiring ownership, acquiring a right of usufruct, acquiring ownership of a bond or acquiring a right to operate.

Section 4 (1) A notification shall include the following:

a) if the foreign investor is a natural person:

aa) natural identification data and Hungarian address data or, in the absence of Hungarian address data, foreign domicile or place of residence,

ab) nationality, and

ac) contact details for electronic communication or communication by mail,

b) if the foreign investor is a legal person or other organisation,

ba) name, seat and, if available, the address of branch in Hungary,

bb) the designation of the State performing the tasks relating to official registration,

bc) contact details for electronic communication or communication by mail, and

c) data of the legal representative representing the foreign investor.

(2) To a notification, the following shall be attached in an electronic form:

a) a detailed description of the legal transaction,

b) a detailed description of the legal transaction aimed at acquiring ownership, acquiring ownership of a bond, acquiring a right of usufruct, acquiring a right to operate and of the relevant and substantial circumstances therefor,

c) documents generated in connection with the legal transaction, including all documents suitable for determining the ownership structure of the foreign investor and the legal persons with shares in the foreign investor, or the beneficial owner within the meaning of the Act on the prevention and combating of money laundering and terrorism financing, all documents serving as basis for a legal transaction aimed at acquiring ownership, acquiring ownership of a bond or acquiring a right of usufruct, and all company documents and resolutions generated in connection therewith.

Section 5 In connection with a notification, the Minister shall communicate with the legal representative of the notifier or, if necessary, with the notifier, in an electronic form using the contact details specified in the notification. If neither the legal representative, nor the notifier can be reached under the contact details specified in the notification, the applicable consequences shall be borne by the notifier.

Section 6 The Minister shall send a written notice in an electronic form of the receipt of a notification without delay, but no later than within eight days of receipt; the notice shall include the following:

a) the day of receipt of the notification,

b) the name and legal representative of the notifier,

c) the indication of whether ownership, ownership of a bond, a right of usufruct or a right to operate was acquired, and

d) reference to the fact that the notice concerns the receipt of the notification only and is not to be considered an acknowledgment of the notification.

Section 7 (1) On the basis of an examination under section 8 (1) *a)*, the Minister may request the provision of further data or information not included in the notification or its attachments or the submission of further original documents, or certified copies thereof, not attached to the notification from the notifier setting a time limit of not less than 3, and not

more than 10 days, or from a natural person, legal person or other organisation other than the notifier setting a time limit of not more than 20 days.

(2) If a notice under paragraph (1) remains unsuccessful, the Minister shall examine the notification on the basis of the submitted documents.

Section 8 (1) After the receipt of a notification, the Minister shall examine, without delay, whether

- a) the notification meets the conditions set out in section 4,
- b) a violation or compromise of State interest, public security or public policy of Hungary, or the possibility thereof, arises, with particular regard to the security of meeting fundamental social needs, in accordance with Article 36 and Articles 51 (1) and 65 (1) of the Treaty on the Functioning of the European Union in the case of acquiring ownership, acquiring ownership of a bond, acquiring a right of usufruct or acquiring a right to operate by the notifier.
- c) the notifier is controlled, directly or indirectly, by an administrative organ of a State not belonging to the European Union, including also state organs and armed forces, either due to its ownership structure or as a result of significant funding,
- d) the notifier was already involved in an activity concerning security or public policy in a Member State of the European Union,
- e) there is a serious risk that the notifier will perform an illegal activity or an activity constituting a criminal offence.

(2) No later than within forty-five days after receipt of notification or, in a situation under paragraph (3), within the time limit specified therein, the Minister

- a) shall confirm in writing the acknowledgement of the notification if no, or
- b) shall prohibit acquiring ownership, acquiring ownership of a bond, acquiring a right of usufruct or acquiring a right to operate (hereinafter jointly “prohibiting decision”) if any circumstance specified in paragraph (1) b) to e) exists.

(3) In particularly justified cases, the Minister may extend the period of an examination under paragraph (2) by up to fifteen days; the Minister shall notify the notifier of such extension in writing before the expiry of the fifteen-day time limit.

Section 9 (1) The Minister shall provide reasons for a prohibiting decision. In the statement of reasons, the interest under section 8 (1) b) violated or compromised by acquiring ownership, acquiring ownership of a bond, acquiring a right of usufruct or acquiring a right to operate, or the point of section 8 (1) with which a conflict was established, shall be specified. In the statement of reasons the applicant shall be informed about the rules on legal remedy against a prohibiting decision in accordance with this Decree.

(2) The statement of reasons of a prohibiting decision shall not include any classified data.

Section 10 (1) The notifier may challenge a prohibiting decision in a non-contentious administrative proceeding on the basis of a violation of the substantive rules of the procedure or in connection with the findings under section 9. The proceeding shall fall within the exclusive territorial jurisdiction of Budapest-Capital Regional Court.

(2) Legal representation shall be mandatory in the proceeding.

(3) The court shall pass a decision on the application within 30 days of receipt. If the court establishes a violation, it shall set aside the decision and oblige the Minister to conduct a new proceeding. Interim relief may not be granted in the proceeding.

(4) The Minister shall process personal data of the notifier during the proceeding and, for auditing the notification,

- a) for 5 years after the submission of the notification if a prohibiting decision is passed or for 5 years after the conclusion with final and binding effect of a legal remedy proceeding before a court,

b) for the period of ownership, right of usufruct or ownership of a bond by the foreign investor if acknowledgement of the notification is confirmed.

Section 11 (1) The Minister shall audit compliance with a notification obligation under this Decree.

(2) If it is established, in the course of audit under paragraph (1), that the notifier failed to comply with an obligation under this Decree, the Minister shall impose a fine under section 12 and

a) shall confirm the acknowledgement of the notification in writing if no circumstance under section 8 (1) *b)* to *e)* exists in connection with acquiring ownership, acquiring ownership of a bond, acquiring a right of usufruct or acquiring a right to operate by the notifier,

b) shall pass a prohibiting decision if any circumstance under section 8 (1) *b)* to *e)* exists in connection with acquiring ownership, acquiring ownership of a bond, acquiring a right of usufruct or acquiring a right to operate by the notifier.

(3) Section 8 (2) and (3) shall apply accordingly to the time limit of an audit under paragraph (1).

(4) No administrative audit and no proceeding for establishing a violation may be conducted due to a failure to notify under this Decree if 6 months have passed since the Minister became aware of acquiring ownership, acquiring a right of usufruct, acquiring ownership of a bond or acquiring a right to operate, or 5 years have passed after the occurrence of the circumstances, whichever is earlier.

Section 12 (1) The Minister, examining all circumstances of the case, may impose on a person who violates his obligation relating to a notification under this Decree an administrative fine of up to two times the value of the transaction, but

a) at least exceeding 100 000 forints for a foreign investor that is a natural person,

b) at least exceeding 1 per cent of the net turnover in the last business year of the strategic company affected by acquiring ownership, acquiring ownership of a bond, acquiring a right of usufruct, acquiring the right to operate for a foreign investor that is a legal person or another organisation,

provided that the act of that person does not constitute a criminal offence and any invalidity under this Decree applies.

(2) No payment concession shall be permitted for the payment of the fine.

Section 13 Subject to derogations laid down in this Decree, the provisions of the Act on the Code of General Administrative Procedure on language use and using an interpreter, data processing, general rules on communication, representation, documents, calculation of time limits, applications, applications for excuse, objections against considering a document served and cost exemption shall apply accordingly to a notification, with the proviso that references to the parties in the Act on the Code of General Administrative Procedures shall be construed to mean references to the notifier.

Section 14 The Minister shall maintain a register of confirmations of acknowledgment of notification and of prohibiting decisions.

(2) Data recorded in the register under paragraph (1) shall be deleted after the expiry of the time limit specified in section 11 (4).

4. Legal consequences relating to the proceeding by the Minister

Section 15 (1) In a case under section 2 (1) *a)* to *c)* and section 2 (2) to (4), an application for registration in the register of shareholders, or register of members, of a strategic company may be submitted only after acquiring the confirmation of the acknowledgement of the notification. In the absence of a confirmation of the acknowledgement of the notification, or if

the Minister passed a prohibiting decision, the acquiring party shall not be registered in the register of shareholders or the register of members and may not exercise any rights in the strategic company on the basis of the shares that are subject of the legal transaction.

(2) In a case under section 2 (1) *a)* to *c)* and section 2 (3), an application for registration in the register of shareholders, or register of members, of a strategic company may be submitted only after acquiring the confirmation of the acknowledgement of the notification. In the absence of a confirmation of the acknowledgement of the notification, or if the Minister passed a prohibiting decision, the acquiring party shall not be registered in the register of shareholders or the register of members and may not exercise any rights in the strategic company on the basis of the shares subject to the legal transaction.

(3) In the case of a strategic company, in a proceeding for registration of changes under Act V of 2006 on public company information, company registration and winding-up (hereinafter “Ctv.”) in connection with a legal transaction specified in section 2 (1) or, in a situation under section 2 (1) *c)*, in company registration proceeding, a statement drawn up as a private deed of full probative value shall be attached to the application for company registration, or for the registration of changes, regarding the fact that the company qualifies as a strategic company; the confirmation of the acknowledgement of a notification submitted under this Decree shall also be attached. In the situation specified in this paragraph, the time limits for the submission of applications set out in section 50 (5) and 57 (3) of the Ctv. shall commence on the day following the receipt of the confirmation of the acknowledgement by the Minister of the notification.

(4) The company registration court shall delete, in a proceeding for supervision of legality, data registered in the company register relating to a strategic company, or the company concerned, that have been registered in the absence of a confirmation of the acknowledgement of a notification or in violation of a prohibiting decision by the Minister.

Section 16 (1) A contract, unilateral juridical act or corporate resolution adopted

- a)* in violation of the provisions of this Decree or
 - b)* ignoring a prohibiting decision by the Minister
- shall be null and void.

(2) In a situation under paragraph (1) *a)* the contract, unilateral juridical act or corporate resolution shall become valid retroactively to the date of its adoption if as a result of an audit under section 11, the Minister establishes that he would not have prohibited the adoption of the contract, unilateral juridical act or corporate resolution and by adopting a decision to that effect, he remedies the ground for invalidity subsequently.

(3) If a ground for invalidity is remedied subsequently, the parties shall be obliged to proceed as if the contract, unilateral juridical act or corporate resolution would have been valid from the date of its adoption.

5. Final provisions

Section 17 (1) With the exception specified in paragraph (2), this Decree shall enter into force on the day following its promulgation.

(2) Section 18 shall enter into force on the fifteenth day following the promulgation of this Decree.

Section 18 The Government extends the temporal scope of this Decree until 31 December 2020.

Section 19 The provisions of this Decree shall apply to legal transactions under section 2 (1) effectuated after the entry into force of this Decree.

Section 20 Transfers of ownership in enforcement or liquidation proceedings and transfers of ownership of shares that are subject to collateral security at the time of entry into force of

this Decree as a result of the enforcement of collateral security shall not fall within the scope of this Decree.

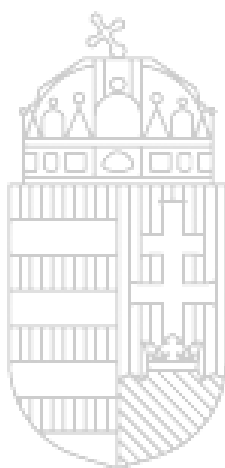
Annex 1 to Government Decree 227/2020 (25 May)

Divisions under point 2 section 1

	A	B	C
	Sector	TEÁOR code	Division
1	Chemical sector	19	Coke and refined petroleum products
		20	Chemicals and chemical products
		21	Basic pharmaceutical products and pharmaceutical preparations
2	Commercial facilities	45	Wholesale and retail trade and repair services of motor vehicles and motorcycles
		47	Retail trade services, except of motor vehicles and motorcycles
		46	Wholesale trade services, except of motor vehicles and motorcycles
3	Communications sector	61	Telecommunications services
4	Critical industrial sectors (including electronics, mechanical engineering, steel production and production of means of transport)	26	Computer, electronic and optical products
		27	Electrical equipment
		28	Machinery and equipment n.e.c.
		29	Motor vehicles, trailers and semi-trailers
		30	Other transport equipment
		24	Basic metals
		25	Fabricated metal products, except machinery and equipment
5	Defence industry	254	Weapons and ammunition
		304	Military fighting vehicles
6	Dams	4291	Constructions and construction works for water projects
7	Energy sector	35	Electricity, gas, steam and air conditioning
8	Emergency-related services	8422	Defence services
		8424	Public order and safety services
		8425	Fire brigade services
9	Financial sector	64	Financial services, except insurance and pension funding
		65	Insurance, reinsurance and

			pension funding services, except compulsory social security
		66	Other financial services, except insurance and pension funding
10	Food sector and agriculture	10	Food products
		11	Beverages
		12	Tobacco products
		1	Products of agriculture, hunting and related services
		2	Products of forestry, logging and related services
		3	Fish and other fishing products; aquaculture products; support services to fishing
11	Governmental facilities	84	Public administration and defence services; compulsory social security services
12	Healthcare	86	Human health services
		87	Residential care services
		88	Social work services without accommodation
13	Information technology	62	Computer programming, consultancy and related services
		63	Information services
14	Nuclear sector	2446	Processed nuclear fuel
15	Construction industry	41	Buildings and building construction works
		42	Constructions and construction works for civil engineering
		43	Specialised construction works
16	Water supply and sewerage services	36	Natural water; water treatment and supply services
		37	Sewerage services; sewage sludge
17	Waste management	38	Waste collection, treatment and disposal services; materials recovery services
		39	Remediation services and other waste management services
18	Building materials industry	81	Stone, sand and clay
		23	Other non-metallic mineral products
19	Traffic, transport and logistics	49	Land transport services and transport services via pipelines

		50	Water transport services
		51	Air transport services
		52	Warehousing and support services for transportation
		53	Postal and courier services
20	Medical and dental instruments and supplies	325	Medical and dental instruments and supplies
21	Tourism	55	Accommodation services
		56	Food and beverage serving services



MINISTRY OF JUSTICE
 HUNGARY