

LAW ON STRATEGIC INVESTMENTS IN THE REPUBLIC OF NORTH MACEDONIA (*)

(*) This Law is harmonized with Regulation (EU) no. 347/2013, of the European Parliament CELEX number 320013R0347 and the Council of 17 April 2013 concerning the trans-European energy infrastructure and repealing Decision no. 1364/2006/EC as well as the amendment of Regulation (EU) no. 713/2009, Regulation (EU) no. 714/2009 and Regulation (EU) no. 715 / 2009.

Subject

Article 1

This Law regulates the criteria, conditions and procedure for application, determination of status, selection, preparation and implementation of investment projects of the highest strategic priority for the country (hereinafter: strategic investment projects).

Aims

Article 2

This Law aims to encourage, attract and create conditions for implementation of strategic investments in the Republic of North Macedonia, increase economic growth, employment and application of new technologies and innovations, increase the competitive economic opportunities of the Republic of North Macedonia, increase exports and reduce the trade deficit and improvement of the welfare and living conditions of the citizens of the Republic of North Macedonia.

Principles

Article 3

This Law is based on the principles of free movement of goods, services and capital, free competition and equal treatment, non-discrimination and transparency.

Strategic investment project

Article 4

Strategic investment project is a project that fulfills one or more aims from Article 2 of this Law, and which implements an investment in the amount of at least 100 million euros on the territory of at least two or more municipalities, at least 50 million euros in the municipalities based in the city, the municipalities in the City of Skopje and the City of Skopje and at least 30 million euros in municipalities based in the countryside.

As an exception to paragraph 1 of this Article, strategic investment projects are projects implemented within the framework of agreements between countries, projects implemented and financed in cooperation with the European Union, the Council of Ministers of the Energy Community (PECI - Project of Energy Community Interest; PMI - Project of Mutual Interest; PCI - Project of Common Interest), as well as, those with international financial institutions, where the bearer of the investment is a state administration body, public enterprises established by the state or municipalities, as well as, companies that are fully or owned by the state and the municipalities, the municipalities in the City

of Skopje and the City of Skopje and other legal entities whose founder is the Republic of North Macedonia or the municipalities.

Conditions for obtaining the status of a strategic investment project

Article 5

The implementation of strategic investment projects shall be in public interest.

The strategic investment project should cumulatively meet the following conditions:

- the proposed investments must comply with the environmental standards set out in the laws of the Republic of North Macedonia,
- the proposed investments must not be contrary to the Constitution of the Republic of North Macedonia, the laws and obligations arising from international agreements ratified in accordance with the Constitution,
- the public strategic projects must be in accordance with the strategic priorities of the Government of the Republic of North Macedonia.

The status of a strategic investment project could be determined according to the conditions and procedures determined by this Law for projects in the following areas:

- 1) Energy with infrastructure;
- 2) Transport and telecommunications;
- 3) Tourism;
- 4) Manufacturing industry;
- 5) Agriculture, forestry and water economy;
- 6) Food industry;
- 7) Health;
- 8) Industrial and technology parks;
- 9) Wastewater and waste management;
- 10) Information-technological zones;
- 11) Sports;
- 12) Science and education;
- 13) Construction of large multifunctional construction complexes of buildings that have in their composition more than one area from the areas listed in this Article.

As an exception to paragraph 3 of this Article, projects in the areas not covered in paragraph 3 of this Article shall also have the status of strategic investment project, when the investment exceeds the amount of 150 million euros in denar equivalent.

Regulations

Article 6

The regulations in the areas of state aid, public financial management and public debt shall apply to the implementation of the strategic investment projects determined in accordance with this Law.

Issuance of state guarantees contrary to public finance and public debt regulations shall be prohibited.

The proclamation of the project as strategic shall not represent an obligation for the Republic of North Macedonia or the local self-government units to provide public funds, a loan or a state guarantee for its implementation.

Definitions

Article 7

Certain terms used in this Law have the following meaning:

- 1) **A state body** is a body of the state administration and legal entities established by the state;
- 2) **Strategic investor** is a domestic legal entity or a subsidiary of a foreign legal entity, registered for performing activity on the territory of the Republic of North Macedonia in accordance with the law;
- 3) **Strategic investment project** is a private, public-private strategic investment project or a fully public project that meets the criteria prescribed by this Law;
- 4) **Private strategic investment project** is a project that is financed by investment by domestic or foreign legal entities;
- 5) **Public-private strategic investment project** is a project implemented according to the model of public-private partnership in accordance with the regulations for public-private partnership;
- 6) **Public strategic investment project** is a project whose bearer is a state administration body, public enterprises established by the state or the municipalities, as well as trade companies that are in full or dominant ownership of the state and the municipalities, the municipalities in the City of Skopje and the City of Skopje and other legal entities established by the Republic of North Macedonia or the municipalities;
- 7) **Large multifunctional construction complex** are buildings on one or more construction plots, single or connected.

Procedure for determining the status of a strategic investment project

Article 8

The Government of the Republic of North Macedonia (hereinafter: the Government) shall, no later than 31 January of the current year, announce a public call for applications for determining the status of a strategic investment project, which is published in the "Official Gazette of the Republic of North Macedonia" and in at least three renowned international economic journals.

The projects referred to in Article 4 paragraph 2 of this Law shall acquire the status of a strategic investment project automatically, upon a proposal of the Commission referred to in Article 9 of this Law.

Commission for strategic investment projects

Article 9

The Government shall establish a Commission for strategic investment projects (hereinafter: the Commission).

Permanent members of the Commission shall be:

- The Prime Minister of the Republic of North Macedonia,

- The Deputy Prime Minister in charge of economic affairs and coordination with the economic departments,
- The Minister of Finance,
- The Minister of Environment and Physical Planning,
- The Minister of Agriculture, Forestry and Water Economy,
- The Minister of Economy,
- The Minister of Transport and Communications,
- The Secretary General of the Government of the Republic of North Macedonia and
- The Minister without portfolio in charge of foreign investments.

Temporary members of the Commission shall be:

- The Minister/s in the field in which the strategic investment project shall be implemented,
- The Mayor/s of the municipality in which the strategic investment project shall be implemented,
- A representative of a competent regulatory body.

The Commission shall decide by a majority vote of the total number of permanent and temporary members.

Article 10

The Government of the Republic of North Macedonia shall appoint a coordinator responsible for the strategic investment project, which has a status determined in accordance with this Law, among the members of the Commission.

Scope of work of the Commission

Article 11

The Commission shall perform the following activities:

- 1) Review and evaluate the requests for determining the status of a strategic investment project, evaluate its strategic potential and operational risk;
- 2) Form an Operational group for each individual project for strategic investment project whose members shall be elected among the employed administrative servants from the institutions members of the Commission, as well as, experts in the field of the respective strategic investment project;
- 3) Monitor the implementation of strategic investment projects;
- 4) Negotiate with the strategic investor regarding the conditions for obtaining the status of a strategic investment project;
- 5) Recommend to the Government to adopt a decision determining the status of a strategic investment project;
- 6) Give an opinion on the draft law which regulates the implementation of strategic investment projects;
- 7) Adopt a Plan for preparation and implementation of strategic investment projects proposed by the Operational group;
- 8) Present the strategic investment project in the state and abroad;
- 9) Coordinate activities of the state bodies for preparation and planning of the necessary documentation for implementation of the strategic investment project in order to observe its implementation in accordance with the competencies of the respective institutions;

- 10) Analyze the portfolio of the investing entity and therefore has the right to request from the investor information regarding its financial capacity and ability to generate sufficient funds to finance the investment, its financial statements, management structure, ownership, market position, previous experience related to the field of investments, similar projects and other elements necessary to prove the ability of a strategic investor according to the conditions determined by this Law;
- 11) Publish reports on the Government's website for strategic investment projects every 6 (six) months;
- 12) Give an opinion on the act which regulates the manner of preparation and implementation of the strategic investment projects.

The Government shall regulate the manner of preparation and implementation of strategic investment projects.

Manner of work of the Commission

Article 12

The manner of work of the Commission shall be determined by the Rules of procedure of the Commission.

The General secretariat of the Government shall perform all operational-technical work for the preparation and work of the Commission.

Tasks of the Operational group

Article 13

The Operational group shall provide expert and professional support to the Commission and shall support it in carrying out the activities within its scope provided by this Law.

Within 15 working days after submitting the request, the Operational group shall prepare a Plan for preparation and implementation of strategic investment projects containing an overview of all necessary procedures for obtaining permits, licenses, concessions, consents and other documentation necessary for starting and implementation of each individual strategic investment project, as well as, the deadlines for their issuance.

The Operational group shall coordinate all activities related to the implementation of the strategic investment project and shall monitor the strategic investment project until its final realization.

The Operational group shall be obliged to monitor the implementation of strategic investment projects supported by the Republic of North Macedonia.

The Operational group is the competent body for coordination of the entire process until the issuance of a building permit, for the projects that have acquired the status of a strategic investment project based on this Law.

Request and necessary documentation for obtaining the status of a strategic investment project

Article 14

The form and content of the application form for obtaining the status of a strategic investment project shall be determined by the Government.

The request referred to in paragraph 1 of this Article shall be accompanied in particular by:

- An investment business plan or feasibility study for public strategic projects that include a risk analysis, an investment financial plan, a work program for implementation of the strategic investment project during the duration of the investment,
- Consent for loaning in terms of the Law on Public Debt for public strategic investment project,
- Micro and macro location conditions of the investment,
- An audit report on the investing entity for a certain time period and audit report on the company that owns the investing entity,
- A detailed portfolio of the investing entity, including its subsidiaries,
- A reference list of investor experiences in similar projects,
- A description of the manner and sources of project financing,
- Proof of financial ability for the implementation of the strategic investment project, which obligatorily contains an audited annual financial report for the year preceding the year in which the request is submitted, i.e. annual reports on prescribed forms for investors that are not subject to audit, business reports for the quarter preceding the submission of the request, creditworthiness forms not older than 30 days,
- Consent of the strategic investor authorizing the Commission to make checks and controls on the data presented in the portfolio of the strategic investor,
- Annual accounts (balance sheet, income statement and cash flow statement) for the last three financial years of the strategic investor and the company that owns the strategic investor,
- A bank guarantee for realization of the strategic investment project in the amount of 3% of the value of the private investment,
- Confirmation that the investor has paid all due liabilities, liabilities for pension and health insurance and other public duties, not older than 30 days,
- Confirmation that no bankruptcy or liquidation procedure has been initiated.

Determining the status of a strategic investment project

Article 15

The Commission shall evaluate the submitted documents and shall perform technical, financial and legal assessment of the project file within 30 working days from the day of submitting the entire documentation for obtaining the status of strategic investment project.

If it is determined that the documentation is incomplete, the Commission shall request, in writing or electronically, from the strategic investor to supplement all the necessary documents and data. The applicant must complete the documentation within ten days from the date of receipt of the notification.

If the strategic investor does not act within the deadline from paragraph 2 of this Article, the Commission shall inform them, within five days from the expiration of the deadline for supplementing the documentation, that the request shall not be subject to consideration in the procedure for obtaining the status of strategic investment project.

If the Commission assesses that the project proposal meets the requirements of this Law, it shall make a recommendation to the Government within seven working days from the submission of the recommendation to make a decision on determining the status of a strategic investment project.

After making the decision from paragraph 4 of this article, the Commission shall submit the draft contract for strategic investment project to the competent ministry, as well as, the draft law that regulates the implementation of the strategic investment project, except for the projects from Article 4 paragraph 2 of this Law, which the competent ministry, within seven working days from the

submission by the Commission, shall submit to the Government and the State Attorney's Office of the Republic of North Macedonia, which is obliged, within seven working days from the day of the submitted request, to give an opinion on the draft agreement and the draft law of this Article.

The Government shall decide on determining the status of strategic investment project and shall approve the draft agreement on strategic investment project and shall determine the text of the draft law which regulates the implementation of the strategic investment project after previously having received a positive opinion by the State Attorney's Office of North Macedonia.

The Government shall make the decision on determining the status of a strategic investment project within seven days from the day of receiving the proposal by the Commission.

The Government shall conclude the Strategic Investment Project Agreement within three days after the entry into force of the law governing the implementation of the strategic investment project, i.e. after the entry into force of the decision on determining the status of strategic investment project referred to in Article 4 paragraph 2 of this Law.

The agreement for implementation of a public strategic investment project that will be financed by borrowing a loan with or without a state guarantee is null and void if at the moment of borrowing the loan, the consent for the loan cannot be renewed in terms of the Law on Public Debt.

Strategic Investment Project Agreement

Article 16

The strategic investment project agreement shall contain in particular the following elements:

- name and seat of the strategic investor,
- name of the strategic investment project,
- determined value of capital to be invested,
- type of strategic investment project,
- the location where the strategic investment project will be realized,
- description of the real estate on which the strategic investment project will be realized,
- deadlines for realization of the undertaken rights and obligations,
- manner of action in case of untimely issuance of documents in accordance with law,
- deadlines and conditions for activating the bank guarantee,
- legal protection of the rights and obligations of the contracting parties,
- provisions for resolving disputes,
- provisions for termination of the contract,
- provisions for cancellation of the contract.

The agreement that does not contain the elements from paragraph 1 of this Article shall be deemed null and void.

Deadlines for implementation of strategic investment projects

Article 17

For the implementation of strategic investment projects, the necessary approvals, permits, consents, licenses, authorizations, certificates and other documents issued in accordance with special laws shall

be issued within deadlines determined by law governing the implementation of the strategic investment project.

The deadline for obtaining a building permit for the strategic investment projects referred to in Article 4 paragraph 2 of this Law must not be longer than 36 months from the day of acquiring the status of a strategic investment project.

As an exception to paragraph 2 of this Article, if the Commission deems that the deadline will not be sufficient for obtaining a building permit, the Commission may extend the deadline for a period not exceeding nine months in a manner determined in the act referred to in Article 11 paragraph 2 of this Law.

Transparency and public participation

Article 18

The implementation of this Law, as well as, the procedure for acquiring the status of strategic investment project, by all parties, shall be implemented in a fair, transparent and non-discriminatory manner, with active participation of the professional and general public in a manner determined in Article 11 paragraph 2 of this Law.

List of projects with determined status of strategic investment project

Article 19

The list of projects that have been granted the status of strategic investment project shall be published on the Government's website.

Transitional provision

Article 20

The Government shall establish a Commission for strategic investment projects within ten days from the day this Law enters into force.

Article 21

The bylaws whose adoption is determined by this Law, shall be adopted within seven days from the day this Law enters into force.

Article 22

The provisions of Article 4 paragraph 2, Article 8 paragraph 2, Article 15 paragraphs 5 and 8 in the part that refers to the strategic investment projects referred to in Article 4 paragraph 2 of this Law and Article 16 paragraphs 2 and 3 of this Law shall cease to apply after the accession of the Republic of North Macedonia to the European Union.

Entry into force

Article 23

This Law shall enter into force on the day of its publication in the "Official Gazette of the Republic of North Macedonia".