Summary of Commission Decision

of 21 February 2022

relating to Article 21, paragraph 4, of Council Regulation (EC) No 139/2004

(Case M.10494 – VIG/AEGON CEE (Art. 21 Procedure))

(Only the English version is authentic)

(C/2024/578)

On 21 February 2022 the Commission adopted a Decision under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ([1]), and in particular Article 21(4) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=2

I. THE PARTIES AND THE OPERATION

(1) Vienna Insurance Group AG Wiener Versicherung Gruppe ('VIG') is the holding company of the Vienna Insurance Group, an international insurance group headquartered in Austria. It conducts its business through subsidiaries and branches in 30 countries, mainly in the Central and Eastern Europe region (including in Hungary through its local subsidiaries). It offers life and non-life insurance services.

(2) AEGON N.V. ('AEGON') is an insurance group headquartered in the Netherlands. Its Hungarian, Polish, Romanian and Turkish businesses ('AEGON CEE') are active in the fields of life and non-life insurance, pension fund business, asset management services and related ancillary services. AEGON's Hungarian subsidiaries forming part of AEGON CEE are referred to as 'AEGON Hungary'.

(3) VIG intends to acquire sole control over AEGON CEE (the 'Transaction'). VIG and AEGON signed a Sale and Purchase Agreement to this effect on 29 November 2020 (the 'SPA').

(4) The acquisition constitutes a concentration with a Union dimension in the meaning of the Merger Regulation. VIG notified the proposed acquisition to the Commission on 15 July 2021. Following its review, the Commission unconditionally cleared the Transaction on 12 August 2021.

II. SUMMARY

A. Article 21 of the Merger Regulation

(5) Article 21 of the Merger Regulation grants to the Commission sole jurisdiction to examine concentrations with a Union dimension and provides that Member States shall not apply their national competition laws to such concentrations. Whereas Member States can take appropriate measures to protect legitimate interests, such measures must be necessary and proportionate, and compatible with the general principles and other provisions of EU law.

(6) Public security, alongside plurality of the media and prudential rules, are interests recognised as being legitimate under Article 21(4) of the Merger Regulation ('recognised interests'). Measures aimed at protecting these recognised interests that are liable to prohibit, submit to conditions or prejudice a concentration with Union dimension can be adopted and enter into force without prior communication to, and approval by the Commission, provided that they genuinely aim at protecting a recognised interest and are in clear compliance with the principles of proportionality and non-discrimination.

([1]) OJ L 24, 29.1.2004, p. 1.

(7) National measures aimed at protecting interests other than the above-mentioned 'recognised interests' must be communicated to the Commission prior to their entry into force, so that the Commission can exercise a control before their entry into force (the 'Communication and Standstill Obligations').

(8) According to the established practice of the Commission, in order to ensure the *effet utile* of Article 21 of the Merger Regulation, read in conjunction with Article 4(3) of the Treaty on European Union ('TEU') which imposes on the EU and the Member States an obligation of sincere cooperation, the Communication and Standstill Obligations also apply whenever to national measures aims at protecting a recognised interest when there are reasonable doubts as to whether these measures genuinely aim to protect a 'recognised interest' and/or comply with the principles of proportionality and non discrimination ([2]).

B. **The Veto Decision adopted by Hungary**

(9) On 28 November 2020, the Hungarian government adopted a decree, extending the scope of application of the Hungarian Foreign Direct Investment ('FDI') Legislation as part of the state of emergency that had been declared in the context of the coronavirus pandemic. This extension means that acquisitions by an undertaking from any EU Member State other than Hungary, of Hungarian undertakings active in the insurance sector are covered by the Hungarian FDI legislation and are thus liable to an examination by the Hungarian Government, which can ultimately oppose them.

(10) On the basis of this amended FDI legislation, VIG notified its acquisition of AEGON Hungary to the Hungarian Ministry for the Interior. On 6 April 2021, Hungary's Minister for the Interior adopted a decision prohibiting VIG's proposed acquisition of AEGON Hungary (the 'Veto Decision'), without providing any justification other than that the Transaction violates the national security interest of Hungary.

(11) On 5 May 2021, VIG submitted an appeal against the Veto Decision to the Metropolitan Court of Budapest. AEGON was subsequently admitted to the proceedings as an interested party. On 31 August 2021, the Metropolitan Court of Budapest dismissed VIG's appeal. On 19 October 2021, VIG and AEGON filed an appeal against the judgment of the Metropolitan Court of Budapest to the Hungarian Supreme Court. The proceedings before the Hungarian Supreme Court are ongoing.

C. **The Commission's investigation**

(12) On 29 October 2021, the Commission opened an investigation regarding the compatibility of the Veto Decision with Article 21 of the Merger Regulation.

(13) On 20 January 2022, the Commission informed Hungary of its preliminary conclusion that the Veto Decision was incompatible with Article 21 of the Merger Regulation and requested Hungary to provide its observations on this preliminary conclusion.

(14) On 10 February 2022, Hungary responded to the Commission's preliminary conclusion. The Commission reviewed Hungary's arguments and took them into due consideration in forming its conclusions reflected in the Decision.

([2]) See the Commission's past practice in Commission decision of 20 December 2006 in Case M.4197 *E.ON / Endesa*, paragraph 27; Commission decision of 26 September 2006 in Case M.4197 *E.ON / Endesa*, paragraph 24; and Commission decision of 20 July 1999 in Case M.1616 *BSCH / Champalimaud* (interim measures), paragraphs 65-67. The Court of Justice considered that a Commission decision following this approach did not contain any manifest errors of judgment - judgment of 6 March 2008 in Case C-196/07 *Commission v Spain*, C-196/07, ECLI:EU:C:2008:146, paragraphs 35-36.

D. **The Commission's assessment**

(15) The Commission found that:

(a) Hungary has not established why the profile of the new investor in AEGON Hungary, i.e. VIG, an Austrian insurance company, would entail an increased risk to public security compared to the current owner of AEGON Hungary, i.e. AEGON, a Dutch insurance company;

(b) the Commission regularly assesses concentrations with a Union dimension in the insurance sector, without Member States raising public security concerns; and

(c) Hungary has not provided any substantive reasoning to the Commission (or to VIG or AEGON), that would justify the adoption of the Veto Decision, beyond the mere assertion that the Transaction would threaten public security in Hungary.

(16) Therefore, the Commission concluded that there were reasonable doubts as to whether the Veto Decision genuinely aims to protect a legitimate interest (public security) and is compatible with the general principles and provisions of EU law. As a result, the Veto Decision should have been communicated to (and approved by) the Commission prior to its implementation and there has thus been an infringement of the Communication and Standstill Obligations.

(17) In addition, the Commission investigated the compatibility of the Veto Decision with the general principles and other provisions of EU law and in particular with the freedom of establishment under Article 49 of the Treaty on the Functioning of the European Union ('TFEU').

(18) The Veto Decision restricts VIG's freedom of establishment. Hungary has not proven to the requisite standard that the Veto Decision was taken to protect from a genuine and sufficiently serious threat to public security, such that this restriction could be justified as a derogation from the freedom of establishment Moreover, Hungary has failed to show that the Veto Decision is suitable and proportionate to its aim of safeguarding public security.

(19) Consequently, the Veto Decision is incompatible with the freedom of establishment. Therefore, the Veto Decision is not compatible with the general principles and other provisions of EU law, and so infringes Article 21(4) of the Merger Regulation.

III. **CONCLUSION**

(20) For the reasons mentioned above, the Decision concludes that Hungary infringed Article 21 of Regulation (EC) No 139/2004 by adopting, without prior communication to and approval by the Commission, the decision of the Hungarian Minister for the Interior of 6 April 2021 prohibiting VIG's acquisition of AEGON Hungary, which is incompatible with Article 49 of the Treaty on the Functioning of the European Union, and therefore unduly interferes with the Commission's exclusive competence to decide on a concentration with a Union dimension.

(21) Therefore, the Decision orders Hungary to withdraw the Veto Decision by 18 March 2022.