



# Inspection visits in dual-use cases and EU sanctions



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On 1 January 2021, new rules come into force entitling the Danish Business Authority to carry out inspection visits in enterprises running activities covered by the Danish Act on the use of certain EU legal documents concerning economic and financial relations with third countries etc. Especially Danish export and transportation enterprises are covered by the new amended rules, but other enterprises, for instance production enterprises exporting their products, may, according to the circumstances, also become affected.

These amendments come with a significant tightening of the current legal rights as regards the rules on dual-use export controls and EU sanctions on third countries and follow from the recent cases, including one where the Danish company Terma had been notified to the police for having provided equipment to the civil war in Yemen. Approximately 10 annual inspection visits are expected.

## Inspection visits without prior court order

The amendments entitle the Danish Business Authority to carry out unannounced inspection visits without prior court orders, the so-called dawn raids, like those applied by the competition authorities. Such inspection visits

include access to an enterprise's commercial premises and means of transport as well as request for the handing out of information and documents.

It appears from the explanatory notes to the draft bill that, since they are so radical, the inspection visits are generally to be announced beforehand. As a result, unannounced inspection visits are for special cases where the purpose of a control visit is lost if announced beforehand. Access to carry out unannounced inspection visits are not expected to be applied if the Business Authority has reason to believe that an enterprise has committed a criminal offence, because in such a case the matter will be referred to the police. The planning of the inspection will take a risk and theme-based approach.

## The Danish Business Authority's request for information

The Business Authority is entitled to request any information necessary, including commercial documents, customer files, product lists, etc., to be used for the Authority's audit and inspection tasks. Meanwhile, we expect that documentation and correspondence between the enterprise in question and its attorney will be covered by legal professional privilege, and that the Business Authority will apply the same approach as the competition authorities. The inspection visits must comply with the general principles of due process, including that of prohibition against self-incrimination, which means that any person suspected of a criminal offence has a right to remain silent as regards the alleged offence, and the person in question may not be forced to contribute to resolve the alleged offence.

## Penalty fines

Enterprises and natural persons whose activities are covered by the Act are under an obligation to provide the Business Authority with the assistance necessary for carrying out the inspection, including to hand over the information required and give access to the commercial premises and means of transport. Any intentional or grossly negligent non-compliance with this obligation is punishable by a fine.

In view of the heavy consequences entailed by non-compliance with the rules, the enterprises in question should consider how to ensure that they comply with legislation, including that preparations have been made regarding

- policies in the event of inspection visits by the Danish Business Authority,
- business policies for handling export controls and sanctions,
- storage of invoices, cargo manifests, and other transport and shipping documents, and
- registration of all necessary information on customers, end users, products, and the countries with which the enterprise trades.

It is vital that all the staff members know how to handle the situation. At DLA Piper, we have a team of skilful professionals to advise enterprises on the complex set of rules and the issues in this relation.

Read the draft bill (in Danish) [here](#)

## Background to the new rules

Pursuant to Council Regulation (EC) No 428/2009 of 5 May 2009, Denmark is responsible for controlling its exports of dual-use items and technology (EU Dual-Use Regulation). The purpose of these export controls is to prevent the proliferation as well as the development of weapons of mass destruction and exports of items to be used for war crimes. The Danish enabling Act (Act on the use of certain EU legal documents concerning economic and financial relations with third countries etc.) provides for the use of the EU regulations which regulate trade in Denmark.

The Danish Business Authority focuses on the duty to comply with these rules and therefore takes the necessary steps to determine whether violation has taken place. In November 2020, the Business Authority made two notifications to the police and issued two warnings. One of the enterprises, which the Business Authority had under the spotlight during 2020, is the Danish enterprise Terma, which manufactures defence equipment. The reason was that, in 2018, the Ministry of Foreign Affairs of Denmark started the blocking of exports of military equipment for use in the war in Yemen. Despite the export ban, Terma continued to provide spare parts for equipment that was used in the war. Based on the investigation thereof, which was carried out by the Business Authority, Terma was notified to the police for having provided equipment for use in the civil war in Yemen.

## Dual-use export controls

Products that can be used for both civil and military purposes are referred to as dual-use products. These products are considered critical, and are listed in the control list, which is a list of the items, technology, and software that require export authorisation. Enterprises dealing with dual-use items must keep records that contain trade documents in the form of invoices, cargo manifests, and other transport and shipping documents to enable identification of the dual-use items in question, the quantity thereof, the name and address of the exporter and the recipient, the end use of the items, and the identity of the end users of the items where relevant.

## Sanctions

Sanctions may be used against countries, businesses, and natural persons, and they will be listed on the so-called sanction lists. EU sanctions on third countries usually include restrictions, for instance in the form of implementing an arms embargo, trade restrictions in form of different import or export bans or authorisation requirements for imports and exports of different items or services, etc., financial constraints or restrictions on movement of persons, such as restrictions on admission and visas, the freezing of funds and economic resources. The Danish Business Authority is responsible for the areas of the sanctions concerning such as ban on exports of dual-use items, authorisation for exports of dual-use items not included in the control list of the Dual-Use Regulation, ban on exports of key technology and provisions on freezing of property.

Where an enterprise exports to countries where sanctions have been imposed, such enterprise and the carrier may incur liability for non-compliance with the sanctions and export controls.

A list (in Danish) of the current sanctions to be enforced by Denmark is available at the [website of the Ministry of Foreign Affairs of Denmark](#).

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