



Bill on act on screening of foreign direct investments in Denmark



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A bill on a Danish act on screening of certain foreign direct investments in Denmark has been made and published. The title of the bill is "Bill on Act on screening of certain foreign direct investments etc. in Denmark (Investment Screening Act)". The bill is expected to enter into force on 1 July 2021. The purpose of the bill is to ensure that foreign direct investments etc. do not constitute a threat to national security or the public order in Denmark. Among other matters, this is to be ensured through screening of and possible intervention in such investments etc.

Introduction to the Bill on Act on screening of foreign direct investments in Denmark

Danish legislation does not contain a general legal basis for screening of foreign direct investments in Denmark. Accordingly, there is no general Danish legal framework specifically addressing foreign direct

investments. As a state with a small national economy and relatively large international trade and investments, Denmark is generally positive and supportive as regards foreign investments.

On 19 March 2019, EU adopted a new regulation on a regulatory framework for the screening of foreign direct investment in EU (Regulation 2019/452/EU). The regulation establishes a regulatory framework for Member States' screening of foreign direct investment in EU for reasons of security or law and order. The regulation does not seek to harmonize national foreign direct investment (FDI) screening rules and does not create an obligation to introduce a screening mechanism. The regulation introduces minimum requirements for countries willing to adopt an FDI mechanism. If an EU member state chooses to adopt an act specifically addressing foreign investments, the act must meet the minimum requirements set out in the EU regulation. The regulation entered into force on 11 October 2020.

A bill on a Danish act on screening of certain foreign direct investments in Denmark has been made and published. The title of the bill is "Bill on Act on screening of certain foreign direct investments etc. in Denmark (Investment Screening Act)". The bill has not yet been proposed to the Danish Parliament by the Danish Government. On 9 December 2020, the bill was submitted for consultation which will end on 6 January 2021. The bill is expected to enter into force on 1 July 2021.

Screening mechanism under the bill

Under the Danish bill on an act on screening of certain foreign direct investments in Denmark, a standard procedure for the authorities to actively screen the market for relevant FDI's will be established. Under the bill, such procedures shall apply to all FDI's made by foreign citizens, except for FDI's made by foreign citizens from other EU member states or EFTA states. Under the bill, such procedures shall also apply to FDI's made by a company which (1) is not resident in the Kingdom of Denmark, including does not have a permanent establishment in Denmark, (2) is resident in Denmark, if the company is a subsidiary or a branch of a company which is resident outside the Kingdom of Denmark, (3) is resident in Denmark, if a foreign citizen or company, which is not resident in the Kingdom of Denmark, has control over or significant influence in the company. Under the bill, a company is resident in a state (country) or jurisdiction in which the company is registered or has its registered domicile (office). Under the bill, the Minister for Industry, Business and Financial Affairs may, after negotiations with other relevant ministers, set rules to the effect that the bill also shall apply to FDI's made by legal entities other than those mentioned above which may constitute a threat to national security or public order.

Among other matters, the bill proposes a licence scheme for investments within certain critical sectors. The critical sectors include the national defence, IT security functions, processing of classified information, production of dual-use products, other critical technology and critical infrastructure. The licence scheme entails that a foreign investor who intends to acquire at least 10 percent of the ownership interests or voting rights or equivalent control by other means in a Danish company within a critical sector must apply for a licence for the investment granted by the Danish Business Authority.

The bill also, among other matters, proposes a voluntary notification scheme where investors outside the EU and EFTA may submit a notification to the Danish Business Authority of an intended or completed investment, if the investment constitutes or may constitute a threat to national security or public order in Denmark, and the

foreign investor directly or indirectly acquire at least 25 percent of the ownership interests or voting rights or equivalent control by other means in a company in Denmark.

Moreover, the bill proposes that both the licence scheme and the notification scheme apply to certain special financial agreements if such agreements entail that a foreign investor acquires financial control or significant impact on business matters which may constitute a threat to national security or public order in Denmark. The bill defines such financial agreements to include joint ventures, acquisitions of assets, service provider agreements and operating agreements which are entered into between a foreign investor and a Danish company.

Examination of foreign direct investments

Under the bill, the Danish Business Authority examines whether an FDI or a financial agreement constitutes a threat to the national security or public order. This applies to all FDI's or financial agreements no matter whether they are subject to the licence scheme or the notification scheme.

If an FDI does not constitute a threat to national security or public order, the Danish Business Authority grants a licence for investment in or a financial agreement with the Danish company to the foreign investor. The licence may be granted on specific terms.

In relation to setting terms in licences, the Danish Business Authority may negotiate with foreign investors and set terms in licences to mitigate potential threats, such as terms to the effect that the possibility of acquiring financial control or significant impact on business matters is limited.

For investments which may constitute a threat to national security or public order, but have not been notified with the Danish Business Authority, it is proposed that the Danish Business Authority is given authority to examine such investments for up to 5 years after the implementation of the investment, and issue orders to liquidate such investments if they have been completed and are regarded to be threats to the national security and public order.

In relation to its examinations, the Danish Business Authority may request a foreign investor planning to invest in or enter into a financial agreement with a Danish company to provide all information which is necessary to assess whether an investment or a financial agreement constitutes a threat to national security or public order. The Danish Business Authority may also obtain information from the Danish company to verify information from the foreign investor or obtain information about the Danish company, including information on management structure, business area etc. Furthermore, the Danish Business Authority may require that the provided information from the foreign investor or the Danish company is accompanied by a statement from an auditor approved in accordance with the Danish Audit Act.

The authority of the Danish Business Authority

Under the bill, the Danish Business Authority may choose to grant or not to grant a licence for foreign investments, prohibit the implementation of investments and issue orders to liquidate completed investments. The Danish Business Authority may do so after negotiations with other relevant ministries.

The Danish Business Authority may in some situations change or withdraw a licence under the bill. This includes, among others, situations where the granting of the licence was based on incorrect or misleading information or where the parties to which the licence was granted do not act in accordance with licence terms. The Danish Business Authority may also withdraw a licence under the bill if change in circumstances result in threats to the national security or public order.

It is proposed that cases processed under the bill are exempted from the rules of the Access to Public Administration Files Act. This is to ensure that information in a case may not be handed over to the parties of the case if this is necessary for reasons of national security or public order. Therefore, Danish Business Authority may not hand over such information to the parties of a case processed under the bill.

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