



## Increased focus on Foreign Direct Investments in Denmark

Focus on regulation of foreign direct investments (FDI) has become a relevant topic for all stakeholders involved in the Danish M&A market since the European FDI Regulation came into effect on 11 October 2020. The Regulation concerns foreign direct investment into a relevant market subject to a screening mechanism on the grounds of security or public order to protect critical sectors, technologies and infrastructure, such as energy, transport, data and finance (see further below). National rules are often aimed at specific sectors, such as forestry, mining, oil and gas, aircraft and pharmaceuticals, which may vary from country to country.

## What does the new FDI Regulation mean?

The new FDI Regulation establishes a European framework for the screening of FDI into the European Union motivated by closer cooperation between the EU Member States and the European Commission. However, the individual Member States' national regulations are not directly affected by the FDI Regulation, as the Member States remain solely responsible for their national security and are free to decide whether to lay down national rules on screening of FDI under the FDI Regulation.

If a Member State implements rules on FDI, such rules must comply with the framework of the FDI Regulation and fulfil the following overall requirements:

1. The rules laid down must be transparent and may not discriminate between third countries. The Member State must set out the circumstances triggering the screening, the grounds for screening and the applicable detailed procedural rules (Art. 3(2)).
2. The screening mechanism must be subject to timeframes, and the Member States must consider any comments from other Member States and opinions from the European Commission (Art. 3(3)).
3. Confidential information, including commercially-sensitive information, made available to the Member State undertaking the screening, must be protected (Art. 3(4)).
4. Foreign investors and the relevant undertakings concerned must have the possibility to seek recourse against screening decisions of the national authorities (Art. 3(5)).
5. Member States which have a screening mechanism in place must maintain, amend or adopt measures necessary to identify and prevent circumvention of the screening mechanisms and screening decisions (Art. 3(6)).

Further, the Member States must notify the European Commission and the other Member States of any foreign direct investment in their territory that is undergoing screening.

The process will most likely be comparable to a process on merger control, however, the FDI screening will also involve comments from other Member States and opinions from the European Commission, which should be taken into account as part of the screening.

## Sectors affected by the FDI Regulation

In determining whether an FDI is likely to affect security or public order, Member States and the European Commission may consider its potential effects on critical sectors (Art. 4(1)):

1. **Infrastructure**, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure.
2. **Technologies and dual use items** (items subject to export control and sanctions regimes), such as artificial intelligence, robotics, cybersecurity, aerospace, defence, energy storage and biotechnologies.
3. **Supply of critical inputs**, including energy or raw materials, as well as food security.
4. **Access to sensitive information**, including personal data, or the ability to control such information.
5. **Media**, meaning the freedom and pluralism of the media.

Further, due to COVID-19, we may also see that the **pharmaceutical** sector will be subject to national rules on FDI.

## Which investments and/or investors are subject to the FDI Regulation?

Member States and the European Commission will focus on foreign investors:

1. that are directly or indirectly controlled by the government, including state bodies or armed forces, of a third country, including through ownership structure or significant funding;
2. that have been involved in activities affecting security or public order in a Member State; or
3. where there is a serious risk of them engaging in illegal or criminal activities.

More information about the FDI Regulation is available [here](#). As well as in the guide from the European Commission [here](#).

## FDI Regulation in Denmark

Denmark does not have any FDI screening system, but the Danish Government has stressed the importance of the new FDI Regulation (especially in light of COVID-19 where the Member States may want to protect pharmaceutical companies).

Denmark has legislation on merger control, undertakings manufacturing weapons and certain other equipment designed for warfare (e.g. firearms, ammunition, gunpowder and explosives) and regulation regarding sanctions and export control.

DLA Piper Denmark expects that an introduction of national FDI rules will focus on sectors within infrastructure, technology, supply of energy, oil and raw materials and pharma.

### DLA Piper and FDI in a global context

Many jurisdictions, such as the US, the UK, Australia, Canada and Japan, have FDI screening systems in place, whereas less than half of the EU Member States currently have foreign investment legislation in place, allowing them to review investments on the grounds of national security or public order. Thus, the adoption of the FDI Regulation will enhance cooperation and the focus on these investments.

DLA Piper has issued the multi-jurisdiction guide for screening of foreign investments.

An FDI screening is not only a legal exercise, it also requires guidance and advice from competent advisors familiar with the international landscape. The guide focuses on foreign investment regulation in over 40 jurisdictions where DLA Piper is present and has multidisciplinary teams with substantial experience in sector-specific legal frameworks.

Undertaking foreign investments and cross-border transactions means that the involved parties have a variety of risk elements to consider, and it is even more challenging when target is situated in different jurisdictions.

DLA Piper Denmark's specialist team on Foreign Direct Investments is here to assist.

## Contact

You are more than welcome to contact our team.



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