



# Law Gazette A

25 June 2021.

## Executive Order on the delimitation of the scope of application of the Act on screening of certain foreign direct investments, etc. in Denmark (Investment Screening Act)

Pursuant to section 2 (5), section 3 (3), section 5 (6), section 6 (2), section 7 (2), and section 11 of Act no. 842 of 10 May 2021 on screening of certain foreign direct investments etc. in Denmark (Investment Screening Act) and after negotiation with the Minister of Finance, the Minister of Foreign Affairs, the Minister of Justice, the Minister of Climate, Energy and Supply and the Minister of Defence:

### Chapter 1

#### *Scope etc.*

**Section 1.** The Executive Order applies to foreign investors pursuant to section 4, no. 3, of the Investment Screening Act.

**Section 2.** The Executive Order applies to foreign direct investments and special financial agreements made or entered into by foreign nationals pursuant to section 2 (1) 1st paragraph of the Investment Screening Act.

*Subsection (2).* The Executive Order also applies to foreign direct investments and special financial agreements made or entered into by companies pursuant to section 2 (2) of the Investment Screening Act.

*Subsection (3).* In addition to foreign nationals and companies pursuant to subsections (1) and (2), the Investment Screening Act and this Executive Order also apply to the following legal persons:

- 1) National authorities and government bodies outside the EU and EFTA, including public institutions and state-owned investment funds that make direct foreign investments in companies or entities domiciled in Denmark.
- 2) National authorities and government bodies outside the EU and EFTA, including public institutions and state-owned investment funds, which enter into special financial agreements with companies or entities domiciled in Denmark within particularly sensitive sectors and activities pursuant to section 6 of the Act.

Non-profit associations, non-profit-making funds and similar legal entities outside the EU and EFTA that make direct foreign investments or enter into special financial agreements in companies or entities domiciled in Denmark within particularly sensitive sectors and activities pursuant to section 6 of the Act.

**Section 3.** The Executive Order applies to foreign direct investments in and special financial agreements with companies domiciled in Denmark pursuant to section 3 (1) of the Investment Screening Act.

*Subsection (2).* The Executive Order also applies to the establishment of new companies in Denmark, pursuant to section 3 (2) of the Investment Screening Act, with the exceptions that follow from section 5 (1) of this Executive Order.

*Subsection (3).* In addition to companies covered by subsections (1) or (2), the Investment Screening Act and this Executive Order also apply to the following Danish entities:

- 1) Public and private non-profit research institutions with regard to joint ventures after section 12 when they relate to the defence sector, IT security, critical technology or critical infrastructure pursuant to sections 7 and 8 and sections 10 and 11. Public limited companies established or owned by one or more public research institutions pursuant to the Act on Public Research Institutions' Commercial Activities and Cooperation with Funds are covered in accordance with section 3 (1) or (2) of the Investment Screening Act.
- 2) Public authorities and institutions within critical infrastructure pursuant to section 6 (1) no. 5 of the Investment Screening Act, cf. section 11 of this Executive Order.

**Section 4.** For the purposes of this Executive Order, a public research institution is defined as universities covered by the Act Relating to Universities and Sector Research Institutions in accordance with the Act on Sector Research Institutions.

### Chapter 2

#### *Establishment of new companies which are exempt from the Investment Screening Act*

**Section 5.** Notwithstanding section 5 (5) of the Investment Screening Act, the Act does not apply to foreign direct investments in newly established companies in particularly sensitive sectors and activities pursuant to section 6 of the Act, cf. sections 7-11 of this Executive Order, if the foreign investor's capital injection into the new business does not in total exceed DKK 75 million for up to three financial years from establishment, and if the newly established company is not a subsidiary of a foreign investor.

'Capital injection' is defined as the inflow of equity and long-term non-cancellable loan financing. The same applies to special financial agreements, cf. section 17. If a foreign investor has investments in and agreements with a newly established company, the exception in the first sentence only applies if the total value of investments and agreements does not exceed DKK 75 million.

*Subsection (2).* If foreign direct investment or special financial agreements exceed the amount in subsection (1) during the specified period, the foreign investor must apply for authorisation for investments or agreements that exceed that amount. Investments already made or agreements under the stated amount remain unaffected by this.

*Subsection (3).* If the Danish Business Authority becomes aware that a foreign investor has established a new company without authorisation pursuant to section 5 (5) of the Investment Screening Act, the Authority may, pursuant to section 29 (1) and (2), require information on whether the conditions in subsection (1) are met.

### Chapter 3

#### *Prescreening*

**Section 6.** A foreign investor may request the Danish Business Authority to assess whether an intended foreign direct investment or special financial agreement relates to critical technology or critical infrastructure pursuant to sections 10 or 11. A Danish company which is the subject of an intended foreign direct investment or special financial agreement, may, on behalf of the foreign investor, request a similar assessment.

*Subsection (2).* Within three years of the establishment of a company domiciled in Denmark, the founders or the company may, by contacting the Danish Business Authority, assess whether an intended foreign direct investment or special financial agreement relates to critical technology or critical infrastructure pursuant to sections 10 or 11 or is covered by the exception in section 5 (1).

*Subsection (3).* In the event of pre-screening according to subsection (1), the Danish Business Authority may issue confirmation that the intended foreign direct investment or special financial agreement, based on the available information, does not relate to critical technology or critical infrastructure pursuant to sections 10 or 11. In the case of prescreening pursuant to subsection (2), the Danish Business Authority may issue confirmation that the investment in or the agreement with the new company based on the available information either does not relate to critical technology or critical infrastructure pursuant to sections 10 or 11 or will be exempt pursuant to section 5 (1).

*Subsection 4.* The Danish Business Authority may require an application for authorisation for the intended foreign direct investment or special financial agreement if it finds that information is needed in addition to that provided in the request for prescreening. If a Danish company has requested assessment on behalf of the foreign investor, the Danish Business Authority may inform the company that it will be necessary for the foreign investor to apply for authorisation.

### Chapter 4

#### *Delimitation of particularly sensitive sectors and activities covered by the Investment Screening Act*

**Section 7.** Companies and entities pursuant to section 3 (1) and (2) and (3) no. 1, within the defence sector pursuant to section 6 (1) no. 1 of the Investment Screening Act include the following:

- 1) Companies and entities developing or producing weapons, ammunition or other technology for military use on the EU Common Military List.
- 2) Companies and entities not covered by no. 1 and that provide services to Danish Defence that are of particular importance to the operations of Danish Defence.

*Subsection (2).* Subsection (1) and sections 5, 10 and 14 of the Investment Screening Act do not apply to foreign direct investments covered by the War Material Act, cf. section 1 (2) of the Investment Screening Act.

**Section 8.** Companies and entities pursuant to section 3 (1) and (2) and (3) no. 1, within IT security functions or processing of classified information pursuant to section 6 (1) no. 2 of the Investment Screening Act includes the following:

- 1) Companies and entities that either themselves or as a subcontractor develop or produce IT products and components used to protect classified systems or information, or
- 2) companies providing products or services for the processing of classified information.

**Section 9.** Companies pursuant to section 3 (1) and (2), which produce products with dual use in accordance with section 6 (1) no. 3 of the Investment Screening Act includes all companies producing products covered by Annex I to Council Regulation (EC) No 428/2009, as amended.

**Section 10.** Companies and entities pursuant to section 3 (1) and (2) and (3) no. 1, within other critical technology according to section 6 (1) no. 4 of the Investment Screening Act includes companies and entities that develop or manufacture the following technologies:

- 1) Artificial intelligence and machine learning for autonomous vessels, human imitation, analysis of positioning data and biometric identification.
- 2) Advanced industrial robot technology, including for production robots or for use in the healthcare sector, as well as advanced drone technology.
- 3) Semiconductors for use in integrated circuits, including technologies that support their production.
- 4) Technologies for the protection of cyber and information security with regard to accessibility, integrity or confidentiality in IT systems, as well as defence against IT attacks.
- 5) Space technology for launching satellites, personnel and communication technology that supports the same.
- 6) Technologies for industrial energy storage, energy conversion and energy transport.

- 7) Quantum technology in connection with quantum computers, quantum sensors, quantum cryptography and quantum communication.
- 8) Nuclear technology, excluding products for use in the healthcare sector.
- 9) Nanotechnology, including advanced graphene materials.
- 10) Biotechnology in synthetic biology.
- 11) 3D printing for the manufacture of components for industrial use.

*Subsection (2).* Notwithstanding subsection (1), companies that develop or manufacture technologies are not covered if the technology is developed or manufactured for the purpose of consumer products and such products are widely available, including toys and consumer products for home use.

**Section 11.** Critical infrastructure pursuant to section 6 (1) no. 5 of the Investment Screening Act is defined as "infrastructure, including facilities, systems, processes, networks, technologies, assets and services necessary to maintain or restore socially important functions". Concrete assessment of what is to be considered critical infrastructure is determined on the basis of a division of society into socially important sectors, which further includes a number of underlying socially important functions. Infrastructure is deemed to be critical if it is necessary to maintain or restore the socially important functions pursuant to subsection (3).

*Subsection (2).* A foreign investor or entity pursuant to sections 1 and 2 must apply in advance to the Danish Business Authority for authority if the latter intends to make a foreign direct investment or enter into a special financial agreement with a company or entity pursuant to section 3 that directly or indirectly owns, by agreement operates (outsourcing) or is a public authority responsible for critical infrastructure as mentioned in subsection (3). The same applies to investments in or agreements with a company or entity pursuant to section 3 which develops or manufactures technology that constitutes critical infrastructure as mentioned in subsection (3).

*Subsection (3).* Critical infrastructure according to subsection (1) includes companies and entities pursuant to section 3 that are necessary to maintain or restore the socially important functions that follow under nos. 1-11, within the socially important sectors that follow from nos. 1-11:

- 1) In the energy sector:
  - a) Electricity production, electricity storage capacity, transport and supply of electricity.
  - b) Production, transport and storage of heating and cooling.
  - c) Production and storage capacity as well as transport and delivery of gas.
  - d) Production, storage and transport of crude oil as well as oil products for transport and the petrochemical industry.
- 2) In the field of information and communication technology (ICT):
  - a) Publicly accessible electronic communications networks and services, as defined by the Act on Security in Networks and Services, section 2 (1), nos. 3-4

- (cf. Statutory Order no. 153 of 1 February 2021).
- b) Central data storage (data storage centers).
  - c) Satellite, radio and television transmission.
  - d) Common public master data, including geodata, personal registration and central business registration.
  - e) Domain name functions, which are covered by Executive Order no. 453 of 8 May 2018 on network security and information systems for operators of essential services in the domain name area.
  - f) News coverage covered by a public service broadcaster pursuant to the Radio and Television Broadcasting Act.
  - g) Central public digital identification and communication.
  - h) IT and communication solutions to support crisis preparedness.
  - i) Classified government communications.
  - j) Closed communication networks and services between authorities covered by section 3 (3), no. 1, not covered by subsection (3), no. 2, letters h and i, and no. 11, letter a.
- 3) In transport:
    - a) Central traffic control units within public transport, passenger and freight transport (road, rail, air and sea).
    - b) Central ports, fixed links, airports, train stations, road and rail networks, combined terminals and transport centres as well as metro and light rail.
    - c) Central monitoring units and units for infrastructure maintenance (bridges, tunnels, train stations, airports, etc.).
    - d) Maritime surveying.
    - e) Post and courier service.
  - 4) In the field of contingency planning and civil defence:
    - a) Alarm and alert services.
    - b) Fire and rescue services.
  - 5) In healthcare:
    - a) Hospital system.
    - b) Pre-hospital care.
    - c) Monitoring and warning of infectious diseases.
    - d) Purchase, storage, distribution and supply of vaccines.
    - e) Purchase, storage, distribution and supply of protective equipment and equipment for testing to the health and care sector in connection with epidemic/pandemic management.
    - f) Production, registration, distribution and monitoring of prescription drugs.
  - 6) In the field of drinking water and food:
    - a) Extraction, production, storage, control and supply of clean drinking water and monitoring of groundwater.
    - b) Monitoring and control of food safety with the exception of companies' own control.
  - 7) In wastewater and waste disposal:
    - a) Wastewater management and treatment.

- 8) In finance and economics:
  - a) Payment solutions and financial market infrastructures, including clearing and settlement of payments and securities trading.
  - b) Banking and insurance.
  - c) Marketplaces, cf. section 3, no. 5, of the Capital Markets and Securities Depositaries (CSDs) Act, cf. section 3, no. 10, of the Capital Markets Act.
  - d) Joint data centers as defined in section 343 q, of the Financial Business Act.
- 9) In meteorology:
  - a) Meteorological service, advice and warning for society, defence, contingency planning and civil aviation with knowledge and data about weather, climate and sea.
- 10) In the exercise of authority in general:
  - a) Systems for conducting elections.
  - b) Supporting functions for law enforcement, crime protection and police preparedness (communication, logistics and IT).
  - c) Support functions for the criminal case chain and execution of sentences (logistics, etc.).
- 11) In interdepartmental crisis management:
  - a) Supporting functions for interdepartmental and coordinating crisis preparedness and management within the government.

#### Chapter 5

##### *Delimitation of special financial agreements covered by the Investment Screening Act*

**Section 12.** In the case of joint ventures covered by the Investment Screening Act, section 7 (1) and section 11 is defined as a special financial agreement on cooperation regarding research and development activities between a foreign investor pursuant to section 1 and section 2 (1) and (2) and (3) nos. 2 and 3, and a company or entity pursuant to section 3 (1) and (2) and (3) no. 1, if the foreign investor gains control of or significant influence over the Danish company or entity pursuant to subsection (3).

*Subsection (2).* Joint ventures according to subsection (1) is covered by the requirement for authorisation pursuant to section 7 (1) of the Investment Screening Act if they relate to particularly sensitive sectors and activities pursuant to section 6 of the Act, cf. sections 7-11 of this Executive Order. Other joint ventures pursuant to subsection (1) may be covered by the provision on notification pursuant to section 11 of the Act.

*Subsection (3).* Control or significant influence pursuant to subsection (1) refers to cooperation agreements which cover all or a significant part of the research and development activities in a Danish company or entity, and where the agreement contains provisions or conditions on one or more of the following matters:

- a) The foreign investor will have the right to decide on how research and development activities covered are conducted.
- b) The foreign investor will be granted a veto in relation to decisions on the implementation of the research and development activities covered.

- c) The foreign investor will be guaranteed the same influence as the Danish company in relation to decisions about research and development activities.
- d) The foreign investor may decide to extend a joint venture to areas other than originally agreed.
- e) The foreign investor will be guaranteed in advance the rights to exploit the results of the research and development activities.

**Section 13.** Supplier agreements covered by section 7 (1) and section 11 of the Investment Screening Act are defined as agreements that a foreign investor pursuant to section 1 and section 2 (1) and (2) and (3) nos. 2 and 3, shall supply raw materials, products, plant or semi-finished products and components, including software, to a company or entity pursuant to section 3 (1) and (2) and (3) no. 2, if the foreign investor thereby gains control of or significant influence on the company or the Danish entity pursuant to subsection (3). Agreements on individual deliveries are not covered by the first subsection, with the exception of delivery of plant.

*Subsection (2).* Supplier agreements according to subsection (1) are covered by the requirement for authorisation pursuant to section 7 (1) of the Investment Screening Act if they relate to particularly sensitive sectors and activities pursuant to section 6 of the Act, cf. sections 7-11 of this Executive Order. Other supplier agreements pursuant to subsection (1) may be covered by the provision on notification pursuant to section 11 of the Act.

*Subsection (3).* Control or significant influence according to subsection (1) exists if the supplier agreement covers all or a significant part of the activities in the Danish company or entity, and one or more of the following conditions exist:

- a) The supplier agreement contains provisions or conditions stipulating that it will be valid for a period over 24 months, or is irrevocable for a period over 12 months, including if agreements without a time limit are irrevocable for a period over 12 months.
- b) The agreement contains terms or conditions which give the foreign investor the right to make decisions about the use of the raw materials, products, plant or semi-finished products and components, including software covered, or unsupervised access to the buildings, plants, installations or systems covered in a company or entity according to section 3 (1) and (3), no. 2.
- c) The foreign supplier can only be replaced by another supplier with significant risk to the company's continued operation or the implementation of business-critical development projects.

**Section 14.** Operating or service agreements covered by section 7 (1) and section 11 of the Investment Screening Act are defined as agreements that a foreign investor according to section 1 and section 2 (1) and (2) and (3), nos. 2 and 3, shall handle the operation or maintenance of buildings, plant, installations or systems in a company or entity pursuant to section 3 (1) and (2) and (3), no. 2, or must make such buildings, plant, installations or systems available to the company or entity, and the foreign investor thereby gains control of or significant influence on the Danish company or entity pursuant to subsection (3). Agreements on individual services are not covered by subsection (1).

*Subsection (2).* Operating or service agreements according to subsection (1) are covered by the requirement for authorisation pursuant to section 7 (1) of the Investment Screening Act if they relate to particularly sensitive sectors and activities pursuant to section 6 of the Act, cf. sections 7-11 of this Executive Order. Other operating or service agreements pursuant to subsection (1) may be covered by the provision on notification pursuant to section 11 of the Act.

*Subsection (3).* Control or significant influence according to subsection (1) exists if the buildings, plant, installations or systems concerned cover all or a significant part of the activities in the Danish company or entity, and one or more of the following conditions exist:

- a) The operating or service agreement contains provisions or conditions stipulating that it will be valid for a period over 24 months, or is non-cancellable for a period over 12 months, including if agreements without a time limit are non-cancellable for a period over 12 months.
- b) The agreement contains provisions or terms which give the foreign investor control over the use of or unsupervised access to the buildings, plant, installations or systems covered in a company or entity according to section 3 (1) and (3) no. 2.
- c) The foreign supplier can only be replaced by another supplier with significant risk for the company's continued operation, or for conducting business-critical development projects.

**Section 15.** Joint ventures, supplier agreements and operating or service agreements which have in all material respects been entered into in accordance with commonly used standard agreements are not covered by sections 12-14.

*Subsection (2).* The Danish Business Authority publishes an overview of standard agreements covered by subsection 81) on its website at [www.erst.dk](http://www.erst.dk).

**Section 16.** Joint ventures, supplier agreements and operating or service agreements entered into between group companies, cf. the definition in the international accounting standard IFRS 10 with subsequent amendments, are not covered by sections 12-14. The same applies to subsequent amendments to such agreements.

**Section 17.** Joint ventures, supplier agreements and operating or service agreements with newly established companies pursuant to section 5 (1) of this Executive Order are not covered by sections 12-14.

## Chapter 6

### *Entry into force*

**Section 18.** The Executive Order enters into force on 1 July 2021.

*The Ministry of Industry, Business  
and Financial Affairs, 25 June 2021*

SIMON KOLLERUP

/Torsten A. Andersen