

Screening of foreign direct investments

April 2023

On 16 March 2023, the Swedish Government referred a proposal to the Swedish Council on Legislation (Sw. *Lagrådet*) regarding the implementation of a new regime for the screening and notifying of foreign direct investments. The purpose of the new regime is to prevent foreign direct investments that could harm the security of or public order in Sweden.

An immediate effect of the proposal is that new factors must be considered in connection with the preparation, negotiation and execution of transactions including in relation to *inter alia* due diligence, responsibility and risk allocation of the new approval process and the transaction timeline. The proposal follows the EU Commission's request since 2019 to the member states to introduce harmonized and coordinated screening systems for investments in sensitive operations throughout the EU.

The Swedish screening system is proposed to cover a wide range of operations and investments and goes far beyond the existing regulatory framework regarding screening of transfers of security sensitive operations under the Swedish Protective Security Act (2018:585) (Sw. *Säkerhetsskyddslagen*). The Swedish Protective Security Act will apply in parallel with the new regime.

The proposal introduces a notification obligation regarding investments in, and acquisitions of, certain operations. Furthermore, the competent authority, which is expected to be the Swedish Inspectorate of Strategic Products (ISP) (Sw. *Inspektionen för Strategiska Produkter (ISP)*), is authorised to set conditions for, or ultimately prohibit, an investment in such operations. Violation of the new regime can result in a penalty fee of up to SEK 100,000,000 as well as the invalidation of any investments made in violation of the regime. In certain situations, such as in the event of an acquisition of shares on a regulated market, the investor may be required to divest such shares instead of the transaction being invalidated. ISP is also authorised to initiate investigations on its own initiative without prior notification. Furthermore, any notifications made to ISP will be communicated to the EU Commission as well as the competent authorities in the other member states for further review and questioning.

The regulation is proposed to enter into force on 1 December 2023, and will apply to transactions closed after this date. No transitional provisions have been proposed.

What types of investors and investments are covered?

The notification obligation is proposed to apply to both Swedish and foreign investors. Thus, it is not limited to purely foreign direct investments, despite the underlying purpose of the regulation. However, in the event that it is possible to establish that the investor does not have any connections to a country outside of the EU, the matter shall, as a main rule, be written off without the initiation of a review and neither a prohibition nor any conditions may be imposed on the investment. With regard to investments in limited liability companies, both complete acquisitions and other investments that result in that the investor's holding after the investment corresponds to or exceeds one of the thresholds of 10, 20, 30, 50, 65 or 90 per cent of the votes in the limited liability company, are covered. Investments in both public and private limited liability companies are covered, as well as the formation of a new limited liability company or investments in a limited liability company that intends to conduct operations that fall within the scope of the regime. However, the acquiring of shares as a result of a new share issue with preferential rights for existing shareholders is not covered.

The obligation to notify is, unlike the notification under the Protective Security Act, proposed to be the investor's responsibility. However, the target company shall have an obligation to inform the investor.

Which operations are covered?

The regulation is intended to apply to a wide range of protected operations (Sw. *skyddsvärd verksamhet*) in line with the EU Commission's regulation, but with certain deviations. For example, investments in media companies are excluded from the regime. Protected operations are further defined in the proposal as follows.

Essential services

An essential service refers to an operation, service or infrastructure that maintains or ensures societal functions that are vital to the society's basic needs, values or safety (Sw. *samhällsviktig verksamhet*). Examples of such services are infrastructure for energy, transport, healthcare and communication. The intention is that regulations that further

define the scope of the term shall be issued.

Security sensitive operations

Security sensitive operations (Sw. *säkerhetskänslig verksamhet*) are operations which are already subject to restrictions on transfers covered by the Swedish Protective Security Act. The term refers to military as well as civilian operations that are of fundamental importance to Sweden at the national level and includes airports, energy facilities and information systems for electronic communication. As mentioned above, the new screening system is proposed to apply in parallel with the separate assessment that already follows from the Swedish Protective Security Act, and the assessments could in theory produce different outcomes.

Operations handling critical raw materials and other metals and minerals

The screening system is proposed to cover operations that entails the prospecting for or extracting, enriching or selling of critical raw materials or metals or minerals that are otherwise strategically critical for Sweden's supply. The intention is that regulations that further define the scope of the raw materials covered shall be issued.

Operations processing sensitive personal data or location data

The term refers to operations that includes extensive processing of special categories of personal data, as defined in Article 9(1) of the General Data Protection Regulation (2016/679), or location data, as defined in the Swedish Electronic Communications Act (2022:482) (Sw. *lagen om elektronisk kommunikation*), in or through a product or service. Operations that may fall under the scope includes data brokers, cloud service and mobile application providers and healthcare companies.

Military equipment and dual-use products

The screening system is proposed to cover operations that entail the manufacture, development, research into or supply of military equipment in accordance with the Military equipment Act (1992:1300) (Sw. *lag om krigsmateriel*) or dual-use

products in accordance with Annex I to the EU's Dual-Use Regulation (EU) 2021/821 on dual-use products. The above includes a large number of products such as weapons and ammunition but also certain software and technology that can be used for both civilian and military purposes.

Emerging technologies and other strategic protected technologies

Lastly, it is proposed that the screening system covers operations that includes research in or provision of products or technology in emerging technologies or other strategic technologies. The screening system is also proposed to cover companies that do not conduct such operations at the moment but have capabilities to do so in the future. The intention is that regulations that further define the scope of the technologies to be covered shall be issued.

What are the proposed timelines?

According to the proposal, the competent authority shall be required to resolve on whether or not to initiate a screening process within 25 working days from the date that the notification is complete. The competent authority is thereafter required to adopt a final decision on whether to approve or prohibit the investment within three months, if there are special circumstances, six months. Thus, a process can take up to almost eight months from the date that the notification is complete. Furthermore, as the proposal is currently drafted, it will not be possible to notify the competent authority until the regulation enters into force on 1 December 2023. Accordingly, the notification obligation may cause significant delays for investments that are to be completed after such date and must be taken into consideration already now.

Enters into force: 1 December 2023
Transitional provisions: No
Sanction: Up to SEK 100 million and invalidation

Please find the proposal [here](#)

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