

Latvia

National Security Law (2000)

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The Saeima has adopted and
the President has proclaimed the following Law:

National Security Law

Chapter I

General Provisions

Section 1. National Security

(1) National security is a state, attained as a result of joint, purposeful measures implemented by the State and society, in which the independence of the State, its constitutional structure and territorial integrity, the prospect of free development of society, welfare and stability are guaranteed.

(2) Guaranteeing of national security is a basic obligation of the State.

Section 2. Purpose of this Law

This Law prescribes the national security system and tasks of such, the competence of the persons or institutions responsible for the national security system and the principles and procedures of co-ordination, implementation and control of their activities.

[...]

Chapter II

Competence of Persons or Institutions Responsible for the National Security System

[...]

Section 10. Competence of the Cabinet

(1) The Cabinet shall:

[...]

9) take a decision on retaining the influence of a person or a permission to obtain influence in commercial companies of significance to national security, as well as on a permission to transfer the critical infrastructure into possession or ownership of another person.

[...]

Chapter IV

Suppression of Danger to the State

[...]

Section 22.2 Critical Infrastructure

(1) Critical infrastructure is objects, systems or parts thereof located in the Republic of Latvia, which are of significance for ensuring the implementation of important public functions, as well as human health protection, security, economic or social welfare and destruction of or interferences in the operation of which would significantly affect the implementation of State functions.

(2) Critical infrastructure shall be classified as follows:

1) especially important critical infrastructure of State level (Category A critical infrastructure), destruction of or reduction of operational capabilities of which significantly endangers State administration and national security;

2) important critical infrastructure of State level (Category B critical infrastructure), destruction of or reduction of operational capabilities of which hinders State administration and endangers public and national security;

3) critical infrastructure of local governments and sectors (Category C critical infrastructure), destruction of or reduction of operational capabilities of which hinders administration of local government activities or sectors, as well as endangers public security.

(3) A separate critical infrastructure, destruction of or reduction of operational capabilities of which would significantly affect at least two European Union Member States, may also be determined as a European critical infrastructure.

(4) The owner or legal possessor of critical infrastructure, including European critical infrastructure, shall ensure planning and implementation of security measures.

(5) The owner or legal possessor of critical infrastructure, including European critical infrastructure, shall determine the status of restricted access information for documents governing internal security measures.

(6) The Cabinet shall determine the procedures for surveying critical infrastructure, including European critical infrastructure, and for planning and implementation of security measures.

(7) A permission from the Cabinet shall be required for transfer of the critical infrastructure referred to in Paragraph two, Clause 1 or 2 or Paragraph three of this Section into possession or ownership of another person.

[...]

Chapter VI

Restrictions on Commercial Companies of Significance to National Security

Section 37. Commercial Companies of Significance to National Security

The restrictions specified in this Chapter shall apply to a commercial company registered in the Republic of Latvia which conforms to at least one of the following conditions:

1) is an electronic communications merchant with a significant market power which has been imposed liabilities for tariff regulation and cost accounting in accordance with the procedures provided for in the Electronic Communications Law;

- 2) is an audible electronic mass medium the coverage zone of the programme of which, using technical means for terrestrial broadcasting, according to the broadcasting permit issued by the National Electronic Mass Media Council is Latvia or at least 60 per cent of its territory, or is an audio-visual electronic mass medium the coverage zone of the programme of which, using technical means for terrestrial broadcasting, according to the broadcasting permit issued by the National Electronic Mass Media Council is Latvia or at least 95 per cent of its territory;
- 3) has received a licence in the Republic of Latvia for transmission, distribution, storage of natural gas or has, in its ownership, a liquefied natural gas facility connected to a transmission system;
- 4) is an electricity or thermal energy producer the installed actual capacity of which exceeds 50 megawatts;
- 5) is a thermal energy transmission and distribution operator which has heat supply networks in its ownership in length of at least 100 kilometres;
- 6) has received a licence for electricity transmission in the Republic of Latvia.

Section 38. Restrictions on Obtaining Influence

(1) In order to preclude an influence endangering or potentially endangering national security in a commercial company of significance to national security, the Cabinet shall determine the obligations referred to in this Chapter for commercial companies of significance to national security and decide on permission for the following activities:

- 1) in relation to capital companies:
- a) obtaining of qualifying holding,
 - b) obtaining of decisive influence,
 - c) transition of an undertaking,
 - d) preservation of the status of a stockholder or shareholder or preservation of the right to exercise indirect holding (right to vote), if the beneficial owner changes;
- 2) in relation to partnerships:
- a) joining of a new member,
 - b) preservation of the status of a member if the beneficial owner changes.

(2) The concept “qualifying holding” used in this Law conforms to the concept of qualifying holding within the meaning of the Financial Instrument Market Law, if a smaller proportion of holding or other additional conditions have not been specified in another law; the concept “decisive influence” conforms to the concept of decisive influence within the meaning of the Group of Companies Law; the concept “beneficial owner” conforms to the concept of the beneficial owner within the meaning of the Law on the Prevention of Money Laundering and Terrorism Financing.

Section 39. Legal Consequences of Obtaining the Status of a Company of Significance to National Security

(1) A commercial company shall, within five working days from the day when it conforms to any of the conditions referred to in Section 37 of this Law:

- 1) submit a notification to the Commercial Register Office regarding its conformity with the conditions for a commercial company of significance to national security;
- 2) make an entry in the register of stockholders or shareholders regarding the status of the capital company;
- 3) inform the shareholders or stockholders of the relevant capital company and persons who exercise indirect holding (right to vote), or members of the partnership regarding its conformity with the conditions for a commercial company of significance to national security;
- 4) inform the institution stipulated by the Cabinet regarding its shareholders, stockholders and persons who exercise indirect holding (right to vote), or regarding members, as well as beneficial owners – natural persons who directly or indirectly have qualifying holding in this commercial company.

(2) The Commercial Register Office shall publish the information regarding conformity of the commercial company with the conditions for a commercial company of significance to national security on the website of the Commercial Register Office.

(3) If beneficial owners are:

- 1) a financial institution supervised by the competent financial and capital market supervisory institution of the relevant state, an alternative investment fund, and investors in foundations equivalent thereto – information regarding beneficial owners may contain only information regarding the relevant financial institution and its operational policy;
 - 2) an association or foundation – information regarding the beneficial owner shall contain information regarding the relevant association or foundation and its purpose of operation;
 - 3) stockholders of such joint stock company the stocks of which are included in a regulated market – information shall be provided only regarding such stockholders which exceed 10 per cent of the total number of voting stocks of the relevant joint stock company.
- (4) The Cabinet shall determine the institution to which the information specified in Paragraph one, Clause 4 of this Section shall be submitted, the amount of the information to be submitted, and the procedures for submitting it.

Section 40. Receipt of a Permit for Obtaining Qualifying Holding or Decisive Influence

(1) A permit of the Cabinet shall be necessary before a person or several persons who act in a co-ordinated manner obtain qualifying holding or decisive influence in a commercial company of significance to national security or become a member of such commercial company, or also obtain influence in a capital company registered in the Republic of Latvia which is a member of a commercial company of significance to national security.

(2) If a direct prohibition is imposed in another law on specific legal subjects in relation to obtaining holding of specific type in any of the commercial companies of significance to national security, such prohibition shall be applicable regardless of a permit of the Cabinet.

(3) An application for the receipt of a permit shall be submitted by a person who wishes to obtain qualifying holding or decisive influence in a commercial company of significance to national security.

Section 41. Change of a Beneficial Owner

- (1) A shareholder, stockholder in a commercial company of significance to national security, a person who exercises indirect holding (right to vote), or a member must receive a permit to retain holding or to remain a member in the commercial company if its beneficial owner changes.
- (2) An application for the receipt of a permit shall be submitted by the relevant shareholder, stockholder in a commercial company of significance to national security, person who exercises indirect holding (right to vote), or member within five working days from the day when change of the beneficial owner occurred.
- (3) The Cabinet is entitled to take a decision by which an obligation is imposed on the person referred to in Paragraph two of this Section to alienate shares or stocks of the share capital accordingly within a specific period of time or to terminate indirect holding (right to vote), or to leave the commercial company.
- (4) If the person has not carried out the activities which are specified in the decision referred to in Paragraph three of this Section, it is not entitled to exercise the right to vote in the relevant capital company or is not entitled to represent the partnership and to manage record-keeping on the following day after the specified period of time.

Section 42. Transition of an Undertaking

- (1) A permit of the Cabinet shall be required for each transition of an undertaking as a result of which a person obtains such undertaking in its ownership from a capital company of significance to national security which has assets that are used for carrying out the activity referred to in Section 37 of this Law.
- (2) A commercial company of significance to national security shall submit an application for the receipt of a permit in accordance with the procedures stipulated by the Cabinet.

Section 43. Exceptions for Restrictions on Obtaining Influence

A permit of the Cabinet shall not be required if:

- 1) the same capital company obtains shares or stocks of the share capital in the cases specified in the law;
- 2) shares or stocks of a State capital company and State capital are managed in accordance with the Law on Governance of Capital Shares of a Public Person and Capital Companies;
- 3) an undertaking, shares or stocks of the share capital are transferred into the ownership of a public person, capital company of a public person, or a public private capital company;
- 4) in accordance with the procedures laid down in the Criminal Procedure Law the person directing the proceedings decides on returning the shares or stocks of the share capital to the lawful owner;
- 5) in accordance with the procedures laid down in the Criminal Procedure Law the court decides on confiscating the shares or stocks of the share capital.

Section 44. Procedures for Taking and Appealing a Decision of the Cabinet

(1) In the cases referred to in Section 22.2, Paragraph seven, Section 40, Paragraph one, Section 41, Paragraph three, and Section 42, Paragraph one of this Law a decision of the Cabinet is taken within one month from the day of receiving an application. This time period may be extended up to four months.

(2) Upon taking a decision in the cases referred to in this Chapter, the Cabinet shall evaluate the restriction on the rights of the person, its commensurability with the national security interests, and the opinion of a State security institution, as well as the conformity with the principle of legitimate expectations.

(3) The decision referred to in Section 22.2, Paragraph seven, Section 40, Paragraph one, Section 41, Paragraph three, and Section 42, Paragraph one of this Law shall be notified to the addressee, and a notification on the decision taken shall be sent to the relevant commercial company of significance to national security, if it is not the addressee of the decision.

(4) The decision of the Cabinet may be appealed to the Administrative District Court. The appeal of the decision shall not suspend the operation thereof.

(5) The court shall examine the case as the court of first instance. The case is examined in the composition of three judges. A judgement of the Administrative District Court may be appealed by submitting a cassation complaint.

(6) If for objective clarification of circumstances of the case the court needs to examine information containing an official secret, then only the court shall be become acquainted with such information and evaluate it. The court shall indicate in the ruling that such information has been evaluated.

(7) If the Cabinet has not taken a decision within the time period specified in this Section, it shall be deemed that a permit has been granted after expiry of the time period.

(8) The Cabinet shall determine the institution to which the application for the receipt of the permits referred to in Section 22.2, Paragraph seven, Section 40, Paragraph one, Section 41, Paragraph one, and Section 42, Paragraph one of this Law should be submitted, the amount of the information to be submitted, the procedures for submitting and evaluating it, as well as for taking a decision to issue a permit or to refuse to issue a permit and for taking and notifying a decision to specify the obligations referred to in Section 41, Paragraph three of this Law, and the information to be included in the notification regarding the decision taken.

Section 45. Legal Consequences of Non-conformity with the Restriction

(1) If a person or several persons who act in a co-ordinated manner, obtain qualifying holding or decisive influence in a commercial company of significance to national security or become a member of such commercial company without receiving the permit referred to in Section 40 of this Law, then a transaction concluded or action carried out in Latvia which was the grounds for obtaining the abovementioned rights is not valid from the moment of concluding or carrying out. Regardless of the place of concluding the transaction or the action the commercial company of significance to national security is not entitled to make changes in the register of stockholders or shareholders, if the permit specified in Section 40 of this Law has not been received.

(2) If as a result of transition of an undertaking another person obtains such undertaking into its ownership from a capital company of significance to national security which holds assets that are used for carrying out the activity referred to in Section 37 of this Law, without receiving the permit referred to in Section 42 of this Law, the transition is not valid.

(3) Decisions of a meeting of shareholders or stockholders of a commercial company of significance to national security voted by shareholders and stockholders for holding or change of the beneficial owner of which the Cabinet has not given a permission, or decisions taken in violation of the prohibition of the right to vote specified in this Chapter shall not be valid. Also any action of a member which has been carried out thereby on behalf of the commercial company of significance to national security, thus violating the restrictions on representation and record-keeping specified in this Law, shall not be valid.

(4) In the cases specified in Paragraph one of this Section the Cabinet shall take a decision by which the following obligation is imposed:

1) on shareholders or stockholders of capital companies to alienate shares or stocks of the share capital or to terminate indirect holding (right to vote), and prohibits to exercise the right to vote in the relevant capital company until fulfilment of the abovementioned obligation;

2) on members of partnerships to leave the company, and prohibits to represent the company and to manage its record-keeping until fulfilment of the abovementioned obligation.

[...]

This Law has been adopted by the Saeima on 14 December 2000.

President V.Vīķe-Freiberga

Rīga, 29 December 2000

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