

## Denmark

### Promulgation of the Act on the screening of certain foreign direct investments etc. in Denmark (the Investment Screening Act) (2023)

*Official translation*

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# Promulgation of the Act on the screening of certain foreign direct investments etc. in Denmark (the Investment Screening Act)

Act no. 842 of 10 May 2021 on the screening of certain foreign direct investments etc. in Denmark (the Investment Screening Act) is hereby promulgated, with amendments arising from Section 1 of Act no. 736 of 13 June 2023.

## Chapter 1

### Purpose, scope and definitions Purpose

Section 1. The purpose of this Act is to prevent foreign direct investments, special financial agreements and contracts pertaining to the establishment, co-ownership and operation of the energy island in the North Sea from posing a threat to national security or public order in Denmark through screening and potential intervention against such investments and agreements.

Subsection 2. The Act shall not apply if other legislation lays down rules on the screening of and potential intervention against foreign direct investments, special financial agreements and contracts pertaining to the establishment, co-ownership and operation of the energy island in the North Sea for reasons of national security or public order.

### Scope of foreign direct investments and special financial agreements

Section 2. This Act shall apply to foreign direct investments and special financial agreements made or entered into by foreign nationals. However, sections 7, 10 and 11 shall not apply to citizens of EU and EFTA countries.

Subsection 2. This Act shall also apply to foreign direct investments and special financial agreements made or entered into by the following, cf. however subsections (3) and (4):

- 1) Companies not domiciled in the Kingdom of Denmark. This shall also apply even if the company has permanent premises in Denmark.
- 2) Companies that are domiciled in Denmark where the company is a subsidiary or branch of a company domiciled outside the Kingdom of Denmark.
- 3) Companies domiciled in Denmark where a foreign national covered by subsection (1) or a company that is not domiciled in the Kingdom of Denmark has control of or significant influence over the company.

Subsection 3. Notwithstanding subsection (2), sections 7, 10 and 11 shall not apply to companies domiciled in an EU or EFTA country, provided that the company is not controlled or significantly influenced by nationals of a country outside the EU or EFTA or by companies domiciled in a country outside the EU or EFTA.

Subsection 4. Notwithstanding subsection (2), the Act shall apply to foreign direct investments and special financial agreements made or entered into by a company domiciled in Greenland or the Faroe Islands where foreign nationals or companies domiciled outside the Kingdom of Denmark have control of or significant influence over the company.

Subsection 5. The Minister for Industry, Business and Financial Affairs may, following negotiation with the Minister for Finance, the Minister for Foreign Affairs, the Minister for Justice, the Minister for Climate, Energy and Utilities and the Minister for Defence, lay down rules to the effect that this Act shall apply to foreign direct investments and special financial agreements made by legal persons other than those referred to in subsections (2)-(4) where the investment or agreement may pose a threat to national security or public order.

Section 3. This Act shall apply to foreign direct investments in and special financial agreements with companies domiciled in Denmark.

Subsection 2. In addition, the Act shall apply to the establishment of new companies in Denmark within particularly sensitive sectors or activities covered by section 6.

Subsection 3. The Minister for Industry, Business and Financial Affairs may, following negotiation with the Minister for Finance, the Minister for Foreign Affairs, the Minister for Justice, the Minister for Climate, Energy and Utilities and the Minister for Defence, lay down rules to the effect that this Act shall apply to foreign direct investments in and special financial agreements with Danish entities other than those referred to in subsection (1) where the investment or agreement may pose a threat to national security or public order.

## **Scope of contracts pertaining to the establishment, co-ownership and operation of the energy island in the North Sea**

Section 3 a. The Act shall apply to contracts pertaining to the establishment, co-ownership and operation of an energy island located in the exclusive economic zone in the North Sea entered into in connection with certain tenders pursuant to the Act on the design and construction of an energy island in the North Sea, cf. however subsection (2).

Subsection 2. Sections 2 and 3 and chapters 2 and 3 shall not apply to contracts covered by subsection (1).

## **Definitions**

Section 4. For the purposes of this Act, the following definitions shall apply:

- 1) National security: Matters relating to Denmark's territorial integrity and the survival of its population. Threats to national security include actions that constitute or could constitute a risk of disruption of international relations, the peaceful coexistence of nations or threats to Danish military interests, as well as actions intended to cause damage to Denmark, including crimes against the state's independence or crimes against the constitution and the supreme government authorities.
- 2) Public order: Matters relating to Denmark's ability to maintain an independent, democratic and secure society without the matters thereby affecting national security.
- 3) Foreign investor: A natural person or company covered by section 2 (1)-(4) or an entity covered by rules laid down in pursuance of section 2 (5) which intends to make or has made a foreign direct investment or which intends to enter into or has entered into a special financial agreement.
- 4) Foreign direct investment: Acquisition of control of or significant influence over a company domiciled in Denmark through direct or indirect possession or control of ownership shares or voting rights in the company or equivalent control by other means, including the purchase of assets and long-term loans. This also covers the establishment of a new company in Denmark in a particularly sensitive sector with equivalent control or significant influence.
- 5) Special financial agreement: A joint venture or an operating, supplier or service agreement entered into with a company domiciled in Denmark covered by section 3 (1) or another entity covered by rules laid down in pursuance of section 3 (3) where a foreign investor thereby gains control of or significant influence over the company or entity.
- 6) Control or significant influence: Controlling influence over decisions on managerial, financial, developmental or operational matters in a company or in business-critical areas in a company.
- 7) Company: All commercial companies regardless of organisational form.

## Chapter 2

# Authorisation for foreign direct investments and special financial agreements within particularly sensitive sectors and activities

Section 5. A foreign investor intending to make a foreign direct investment by acquiring a qualifying holding in a company domiciled in Denmark within particularly sensitive sectors and activities covered by section 6 must apply in advance to the Danish Business Authority for authorisation for the investment.

Subsection 2. Direct or indirect possession or control of at least 10 per cent of the ownership interests or voting rights or equivalent control by other means shall be considered a qualifying holding.

Subsection 3. When calculating ownership interests or voting rights, shares from group-affiliated companies or closely related persons shall be included, as well as subscription rights and call options for shares that are currently exercisable or convertible.

Subsection 4. Subsections (1)-(3) shall apply mutatis mutandis to an increase in the holding if, after the acquisition, the holding constitutes or exceeds a limit of 20 per cent, a third, 50 per cent, two thirds or 100 per cent of the ownership interests or voting rights in the Danish company.

Subsection 5. Subsections (1)-(3) shall apply mutatis mutandis to the establishment of new companies.

Subsection 6. The Danish Business Authority may lay down more detailed rules concerning the application of subsections (1)-(3) in the event of the establishment of new companies pursuant to subsection 5, concerning equivalent control by other means pursuant to subsection 2 and concerning the calculation of ownership interests or voting rights pursuant to subsections (3) and (4).

Section 6. Particularly sensitive sectors and activities in relation to national security or public order as referred to in section 5 (1) and section 7 (1) include:

- 1) Companies in the defence sector.
- 2) Companies in the field of IT security or the processing of classified information.
- 3) Companies producing dual-use items as defined in Article 2 (1) of Regulation (EU) No 2021/821 of the European Parliament and of the Council.
- 4) Critical technology companies other than those under nos. 1-3.
- 5) Critical infrastructure companies.

Subsection 2. The Minister for Industry, Business and Financial Affairs may, following negotiation with the Minister for Finance, the Minister for Foreign Affairs, the Minister for Justice, the Minister for Climate, Energy and Utilities and the Minister for Defence, lay down more detailed rules on particularly sensitive sectors and activities covered by subsection (1).

Section 7. A foreign investor who is not covered by the exceptions in section 2 (1), second clause, and (3) and who intends to enter into a special financial agreement within a particularly sensitive sector or activity covered by section 6 with a company domiciled in Denmark or an entity covered by rules laid down in pursuance of section 3 (3) must apply in advance to the Danish Business Authority for authorisation for the agreement.

Subsection 2. The Minister for Industry, Business and Financial Affairs may, following negotiations with the Minister for Finance, the Minister for Foreign Affairs, the Minister for Justice, the Minister for Climate, Energy and Utilities and the Minister for Defence, lay down more detailed rules on which agreements are covered by subsection (1).

Sections 8-9. (Repealed)

## **Chapter 2 a**

# **Application for authorisation for contracts pertaining to the establishment, co-ownership and operation of the energy island in the North Sea**

Section 9 a. Prior to entering into a contract with a contracting entity, a contracting party must apply to the Danish Business Authority for authorisation to enter into the contract where the contract concerns the establishment, co-ownership and operation of an energy island located in the exclusive economic zone in the North Sea and is entered into pursuant to the Act on the design and construction of an energy island in the North Sea.

Section 9 b. The Minister for Industry, Business and Financial Affairs may, at the request of the Minister for Climate, Energy and Utilities, decide that all participants in an invitation to tender for a contract pursuant to section 9 a must apply to the Danish Business Authority for authorisation to enter into the contract.

Subsection 2. The Minister for Industry, Business and Financial Affairs shall determine the date for submission of applications pursuant to subsection (1).

## **Chapter 3**

# **Notification of other foreign direct investment and special financial agreements relevant to national security or public order**

Section 10. A foreign investor who is not covered by the exceptions in section 2 (1), second clause, and (3) may submit a notification to the Danish Business Authority of an intended or completed foreign direct investment if the investment might pose a threat to national security or public order and the foreign investor directly or indirectly gains possession or control of at least 25 per cent of the ownership interests or voting rights in a company domiciled in Denmark or equivalent control by other means.

Subsection 2. When calculating ownership interests or voting rights, shares from group-affiliated companies or closely related persons shall be included, as well as subscription rights and call options for shares that are currently exercisable or convertible.

Subsection 3. The Danish Business Authority may lay down more detailed rules concerning equivalent control by other means pursuant to subsection (1) and concerning the calculation of ownership interests or voting rights pursuant to subsection (2).

Section 11. A foreign investor who is not covered by the exceptions in section 2 (1), second clause, and (3) may submit a notification to the Danish Business Authority of an intended or completed special financial agreement with a company domiciled in Denmark or an entity that is covered by rules laid down in pursuance of section 3 (3) if the agreement might pose a threat to national security or public order. Section 7 (2) shall apply mutatis mutandis.

Sections 12-13. (Repealed)

Section 14. If the Danish Business Authority suspects that a foreign direct investment or special financial agreement which is covered by section 10 or 11, but which has not been notified to the Danish Business Authority, may pose a threat to national security or public order, the Authority may decide to initiate an investigation for up to five years from the completion of the investment or agreement. Section 14 c (1), (2), (4) and (5) shall apply mutatis mutandis.

## **Chapter 3 a**

# **Procedures for applying for authorisation for foreign direct investments and special financial agreements and notification of foreign direct investments and special financial agreements**

Section 14 a. The Danish Business Authority shall decide on authorisation in cases submitted pursuant to sections 5, 7, 9 a or 9 b and approval of notifications in cases submitted pursuant to section 10 or 11 where the matter applied for or notified cannot pose a threat to national security or public order. Authorisation or approval pursuant to the first clause may be granted on more detailed terms, cf. section 16 (1).

Subsection 2. If an application pursuant to sections 5, 7, 9 a or 9 b or a notification pursuant to section 10 or 11 has been submitted to the Minister for Industry, Business and Financial Affairs pursuant to section 32 (1), the Minister may grant authorisation or approval pursuant to subsection (1).

Subsection 3. Authorisation for applications pursuant to section 9 a or 9 b may be conditional on the approval of selected subcontractors used for the performance of the contract after the authorisation has been granted where these are not known at the time for an application declared as complete, cf. section 14 b (2), second clause, or (3), third clause. The phased processing of cases and the associated deadlines in section 14 b (2)-(6) shall apply mutatis mutandis to the approval of subcontractors pursuant to the first clause.

Subsection 4. The obligation to apply for approval pursuant to subsection (3) shall be incumbent on the contracting party or participant who has obtained a conditional authorisation pursuant to section 14 a (1) or (2).



Section 14 b. Based on a phased processing of cases, the Danish Business Authority shall investigate whether the project applied for or notified under this Act may pose a threat to national security or public order.

Subsection 2. Phase 1 shall be initiated on the basis of an application for authorisation pursuant to sections 5, 7, 9 a or 9 b or notification for authorisation pursuant to section 10 or 11. The Danish Business Authority shall notify the applicant or notifying party when the application is declared complete for phase 1 screening. Phase 1 screening may be completed with a decision on authorisation or approval pursuant to section 14 a (1) or by transferring the case to phase 2 screening pursuant to subsections (3) and (4).

Subsection 3. If the application or notification cannot be authorised or approved pursuant to subsection (2), phase 2 screening shall be initiated. The Danish Business Authority may request additional information from the applicant or notifying party for phase 2 screening. The Danish Business Authority shall notify the applicant or notifying party when the application or notification is declared complete for phase 2 screening.

Subsection 4. Phase 2 screening pursuant to subsection (3) may be completed with a decision pursuant to section 14 a (1), first clause, with a notification from the Danish Business Authority to enter into negotiations with the applicant or notifying party on terms pursuant to section 16 (1) or with the application or notification having to be submitted to the Minister for Industry, Business and Financial Affairs pursuant to section 32 (1).

Subsection 5. Phase 1 must be completed no later than 45 calendar days after the Danish Business Authority's notification to the applicant or notifying party that the application or notification is complete, cf. subsection (2), second clause.

Subsection 6. Phase 2 must be completed no later than 125 calendar days after the Danish Business Authority's notification to the applicant or notifying party that phase 2 screening has been initiated, cf. subsection (3), third clause. In cases where the Danish Business Authority requests supplementary information from the applicant or notifying party pursuant to subsection 3, second clause, the 125 calendar days shall be counted from the Danish Business Authority's notification to the applicant or notifying party that the supplementary information is complete.

Section 14 c. The Danish Business Authority may require all information from the applicant or notifying party that is necessary in order to assess whether the project applied for or notified may pose a threat to national security or public order. If the required information is not provided to the Danish Business Authority or is not confirmed by an authorised auditor in accordance with subsection (5), the Authority may notify the applicant or notifying party that the application or notification cannot be processed on this basis.

Subsection 2. The Danish Business Authority may also obtain information from relevant parties, including from the Danish company or entity covered by rules laid down in pursuance of section 3 (3), with a view to, inter alia, verifying information from the applicant or notifying party or obtaining information about the Danish company or entity, including about management structure and business areas.

Subsection 3. When applying for authorisation pursuant to sections 9 a and 9 b, the Danish Business Authority may require information about the name, contact details and legal representative of any subcontractors who are expected to be used in the performance of the contract.

Subsection 4. Other information received or obtained by the Danish Business Authority may be included in investigations pursuant to section 14 b (2)-(4), including information received in connection with the coordination of screening of foreign investments into the EU pursuant to Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 on a framework for screening foreign direct investments into the Union, as amended, cf. section 23 (1).

Subsection 5. The Danish Business Authority may require that information submitted in accordance with subsections (1) and (3) or rules issued in pursuance of this Act should be accompanied by a declaration from an auditor approved under the Danish Act on Approved Auditors and Audit Firms on the accuracy of such information. The person making a declaration pursuant to the first clause must confirm in the declaration that they are independent of the applicant or notifying party.

Subsection 6. The Danish Business Authority may lay down more detailed rules on procedures for application and notification.

Subsection 7. The Danish Business Authority may lay down rules on the payment of fees for the administration of the rules on application for authorisation and notification for authorisation pursuant to the Act.

Section 14 d. If a company under section 2 (2)-(4) or an entity covered by rules laid down in pursuance of section 2 (5) has been authorised for a foreign direct investment or a special financial agreement pursuant to section 14 a (1) and (2), and if there are subsequent changes to who has control of or significant influence over the company or entity, the company or entity must obtain a new authorisation.

Subsection 2. The Danish Business Authority may amend or revoke a decision pursuant to section 14 a (1) or (2) in the following cases:

- 1) The decision was made on the basis of incorrect or misleading information provided by the parties to the case.
- 2) The parties to the decision fail to comply with agreed or established terms.
- 3) The parties to the decision fail to comply with the obligation to apply for authorisation in the event of an increase in the shareholding in the company pursuant to section 5 (4).
- 4) The parties to the decision fail to comply with the obligation to submit an annual statement, cf. section 16 (2) or section 17 (2).
- 5) The parties to the decision fail to comply with the obligation to apply for approval of subcontractors who are added after the authorisation has been granted, cf. section 14 a (4).

Subsection 3. In the event of changed circumstances entailing serious threats to national security or public order, the Minister for Industry, Business and Financial Affairs may revoke an authorisation or approval pursuant to section 14 a (1) or (2).

## **Chapter 4**

# **Decision criteria**

Section 15. When assessing whether a foreign direct investment or a special financial agreement pursuant to this Act and rules issued in pursuance thereof may pose a threat to national security or public order, all relevant circumstances and available information must be taken into account with respect to the Danish company to which the investment or agreement relates, including the following criteria:

- 1) Whether the Danish company operates within or impacts critical infrastructure.
- 2) Whether the Danish company processes or has access to classified information or sensitive personal data.
- 3) The Danish company's position in the Danish market, including opportunities for substitution.
- 4) Whether the Danish company is part of the defence industry or produces dual-use products or other critical technology of importance to national security or public order.
- 5) Whether the Danish company deals with the supply of critical raw materials, including energy, and food safety.

Subsection 2. In assessing whether a foreign direct investment or a special financial agreement under this Act and regulations issued in pursuance thereof may pose a threat to national security or public order, all relevant circumstances and available information must be taken into account with respect to the foreign investor, including the following criteria:

- 1) Whether the foreign investor is directly or indirectly controlled by a foreign government, foreign government agencies or foreign armed forces, including through ownership or substantial financing.
- 2) Whether the foreign investor is or has been involved in activities affecting security or public order in an EU Member State or in other friendly and allied countries.
- 3) Whether there is a serious risk that the foreign investor participates in or has relationships to illegal or criminal activities that are significant in terms of national security or public order.
- 4) Whether there are indications that the foreign investor is deliberately trying to circumvent the screening rules, for example through the use of front company structures.

Subsection 3. The Minister for Industry, Business and Financial Affairs may, following negotiation with the Minister for Finance, the Minister for Foreign Affairs, the Minister for Justice, the Minister for Climate, Energy and Utilities and the Minister for Defence, lay down more detailed rules on the criteria pursuant to subsections (1) and (2) and other criteria for assessing whether a foreign direct investment or special financial agreement may pose a threat to national security or public order.

## **Chapter 5**

### **Commitment to terms (agreed terms)**

Section 16. Following negotiation with the Danish Business Authority, a foreign investor may undertake to comply with more detailed terms agreed for the implementation of a foreign direct investment or special financial agreement covered by section 5 or 7 or section 10 or 11 in order to prevent the investment or agreement from posing a threat to national security or public order.

Subsection 2. If an application for or a notification of a foreign direct investment or special financial agreement has been submitted to the Minister for Industry, Business and Financial Affairs pursuant to Section 32 (1), a foreign investor may, following negotiations with the Minister, undertake to comply with more detailed terms agreed for the investment or agreement pursuant to subsection (1).

Subsection 3. Commitments to terms pursuant to subsection (1) or (2) must be honoured for as long as the foreign direct investment or special financial agreement is maintained. The foreign investor must submit an annual statement on how it has been ensured that the agreed terms have been complied with during the year. The statement must be accompanied by a declaration on the accuracy of the information from an auditor authorised pursuant to the Danish Act on Approved Auditors and Audit Firms.

## **Chapter 6**

# **Orders, prohibitions and refusals**

Section 17. The Minister for Industry, Business and Financial Affairs may lay down more detailed terms as a condition for authorisation or approval of a foreign direct investment or special financial agreement covered by section 5 or 7 or section 10 or 11.

Subsection 2. Terms established pursuant to subsection (1) must be complied with for as long as the relevant foreign direct investment or special financial agreement is maintained. Section 16 (3) shall apply *mutatis mutandis*.

Section 18. The Minister for Industry, Business and Financial Affairs may refuse or prohibit the implementation of a foreign direct investment or special financial agreement covered by section 5 or 7 or section 10 or 11 where the investment or agreement poses a threat to national security or public order and it has not been possible to mitigate this through more detailed terms for the implementation of the investment or agreement pursuant to section 16 or 17.

Section 19. The Minister for Industry, Business and Financial Affairs may order the termination of a foreign direct investment or special financial agreement covered by section 10 or 11 if the Minister decides that the investment or agreement poses a threat to national security or public order.

Section 20. The Danish Business Authority may impose a temporary prohibition on the implementation of a foreign direct investment or special financial agreement which has been notified pursuant to section 10 or 11 but not finally implemented until such time as the Danish Business Authority has made a decision pursuant to section 14 a (1).

Subsection 2. If the Danish Business Authority has imposed a temporary prohibition pursuant to subsection (1) and the matter has been submitted to the Minister for Industry, Business and Financial Affairs pursuant to section 32 (1), the temporary prohibition shall apply until such time as the Minister has made a decision pursuant to section 32 (2).

## Chapter 7

# Expropriation

Section 21. The Minister for Industry, Business and Financial Affairs may, to the extent necessary for the implementation of measures pursuant to this Act, initiate expropriation of private property.

Subsection 2. If the implementation of measures under this Act constitutes expropriation, full compensation shall be awarded to the owner or owners concerned.

Subsection 3. The Minister for Industry, Business and Financial Affairs may lay down more detailed rules on the procedure for expropriation pursuant to subsection (1).

## Chapter 8

# Monitoring of foreign direct investments and special financial agreements General Provision on monitoring by the Danish Business Authority

Section 22. The Danish Business Authority shall be responsible for monitoring foreign direct investments and special financial agreements in Denmark that are covered by this Act.

Subsection 2. Monitoring shall include the following:

- 1) Checking the accuracy of information in applications for authorisation.
- 2) Checking compliance with terms agreed or established in authorisations or approvals pursuant to this Act.
- 3) Foreign direct investments and special financial agreements notified pursuant to this Act.
- 4) Foreign direct investments and special financial agreements covered by this Act that have not been notified.
- 5) Foreign direct investments and special financial agreements where, contrary to this Act, no application for authorisation has been submitted.

Subsection 3. In special cases, monitoring may be carried out on a random basis.

Subsection 4. Monitoring by the Danish Business Authority pursuant to this Act may be carried out in connection with checks or investigations in pursuance of other legislation within the Authority's remit. The Danish Business Authority may organise its monitoring activities in cooperation with other authorities that carry out checks in accordance with legislation within their remit.

Subsection 5. If deemed necessary, the Danish Business Authority may gain access to business premises and means of transport upon presentation of proper identification and without a court order for the purpose of its monitoring and checking activities pursuant to this Act or rules laid down in pursuance of this Act. The same shall apply to other authorities that are involved in monitoring together with the Danish Business Authority pursuant to subsection (4) and in accordance with rules laid down in pursuance of subsection (7). Inspection visits pursuant to the first clause must take the form of preannounced visits.

Subsection 6. Companies covered by this Act must provide the Danish Business Authority with the necessary assistance for the effective implementation of the monitoring and checking activities pursuant to subsection (5), including providing relevant information, granting access to business premises and means of transport, and assisting with inspection visits.

Subsection 7. The Danish Business Authority may lay down more detailed provisions on the cooperation with other authorities pursuant to subsections (4) and (5) following negotiation with these authorities.

## **Coordination of monitoring of foreign direct investments in the EU**

Section 23. The Danish Business Authority shall be the national contact point for matters relating to the implementation of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 on a framework for the screening of foreign direct investments into the Union. As the national contact point, the Danish Business Authority shall fulfil the obligations arising from the Regulation's cooperation mechanism in connection with the screening of foreign direct investments.

Subsection 2. The Danish Business Authority may lay down rules on cooperation with other authorities on the fulfilment of tasks as the national contact point pursuant to subsection (1) following negotiation with these authorities.

## **Checks on receipt of applications for authorisation of foreign direct investments and special financial agreements**

Section 24. The Danish Business Authority shall check the accuracy of information in connection with applications for authorisation for foreign direct investments or special financial agreements pursuant to section 5 or 7.

Subsection 2. The Danish Business Authority may reject applications for authorisation that include material errors and omissions.

# The Danish Business Authority's subsequent checking of foreign investments and special financial agreements

Section 25. The Danish Business Authority shall carry out a risk-based check of compliance with the terms for authorisation of foreign direct investments and special financial agreements agreed or established pursuant to section 16 or 17.

Section 26. The Danish Business Authority shall carry out a risk-based check of foreign direct investments or special financial agreements notified pursuant to section 10 or 11 to prevent them from posing a threat to national security or public order.

Section 27. If the Danish Business Authority suspects that a foreign direct investment or special financial agreement covered by this Act which has not been notified in accordance with sections 10 or 11 may pose a threat to national security or public order, the Authority may conduct a more detailed investigation of the investment or agreement. The same shall apply if the Danish Business Authority becomes aware that, contrary to section 5 or 7, an investment has been made or an agreement entered into without authorisation.

Section 28. In special cases, the Danish Business Authority may use external assistance to carry out a check of a foreign direct investment or special financial agreement covered by this Act.

Section 29. In connection with checks pursuant to sections 25-27, the Danish Business Authority may require the foreign investor to provide the information necessary to determine whether the Act and rules laid down in pursuance of the Act have been complied with, or whether the foreign direct investment or special financial agreement may pose a threat to national security or public order. The Danish Business Authority may also obtain information from the Danish company or entity in order, inter alia, to verify information from the foreign investor or obtain information about the Danish company or entity, including information about the management structure and business areas.

Subsection 2. In connection with the Danish Business Authority's requirement for information pursuant to subsection (1), first clause, the Authority may require the foreign investor to obtain a declaration from an auditor on the accuracy of certain information. The party submitting a declaration pursuant to the first clause must confirm in its declaration that it is independent of the foreign investor. Only auditors who are authorised in accordance with the Danish Act on Approved Auditors and Audit Firms may submit a declaration pursuant to the first clause.

Subsection 3. The Danish Business Authority may lay down more detailed rules on declarations from authorised auditors pursuant to subsection (2), section 14 b (5) and section 16 (3).

Section 30. If deemed appropriate, the Danish Business Authority may announce that a check or investigation pursuant to sections 25-27 is being or has been initiated. The Authority may also publish the results of the check/inspection.

Subsection 2. If a foreign investor fails to comply with an order to terminate a foreign direct investment or special financial agreement pursuant to section 19 or section 31 (2) within the stipulated time limit, the Danish Business Authority may publish this and provide information about it through the cooperation mechanism pursuant to section 23.

Subsection 3. Publication pursuant to subsections (1) and (2) shall be on the Danish Business Authority's website. The Danish Business Authority shall determine what is published.

Subsection 4. Publication pursuant to subsections (1)-(3) may not occur if the disclosure is deemed to jeopardise an ongoing investigation or if the disclosure would cause disproportionate harm to the foreign investor.

Section 31. In connection with a check or inspection pursuant to this Act or rules issued in pursuance of this Act, the Danish Business Authority may cite an infringement or order the cessation of an infringement.

Subsection 2. The Danish Business Authority may also order the termination of a foreign direct investment or special financial agreement covered by section 5 or 7 or section 10 or 11 in the following cases:

- 1) The terms of an investment or agreement established pursuant to section 17 (1) are not honoured while the relevant investment or agreement is maintained.
- 2) An investment or agreement, contrary to a revocation pursuant to section 14 d (2) or (3), is not terminated.
- 3) Contrary to section 5 or 7, no application has been made for authorisation for the investment or agreement.
- 4) The foreign investor fails to provide to the Authority the information requested by the Authority pursuant to section 29.

Subsection 3. The Danish Business Authority shall set a deadline for compliance with an order pursuant to subsection (1) to put an end to an infringement and an order pursuant to subsection (2) to terminate a foreign direct investment or special financial agreement.

## **Chapter 9**

# **Competent authority and decision-making power**



Section 32. The Danish Business Authority is the competent authority and shall make decisions pursuant to this Act and rules issued in pursuance thereof, cf. however subsection (2). If the Danish Business Authority assesses that a foreign direct investment or special financial agreement for which an application has been received pursuant to section 5 or 7, or a foreign direct investment or special financial agreement which has been notified pursuant to section 10 or 11, may pose a threat to national security or public order and that the threat cannot be mitigated by agreed terms for the implementation of the investment or agreement pursuant to section 16, the Authority shall submit the application or notification to the Minister for Industry, Business and Financial Affairs pursuant to subsections (2) and (3).

Subsection 2. In cases submitted to the Minister for Industry, Business and Financial Affairs pursuant to subsection (1), the Minister for Industry, Business and Financial Affairs shall enter into negotiations with the Minister for Finance, the Minister for Foreign Affairs, the Minister for Justice, the Minister for Defence and other relevant government departments. On the basis of the negotiations, the Minister for Industry, Business and Financial Affairs shall decide on the following:

- 1) Authorisation pursuant to section 14 a (2) for an application for a foreign direct investment or special financial agreement pursuant to section 5 or 7 or approval pursuant to section 14 a (2) of a foreign direct investment or special financial agreement notified pursuant to section 10 or 11.
- 2) Authorisation pursuant to section 17 (1) for a foreign direct investment or special financial agreement for which an application has been received pursuant to section 5 or 7, or approval pursuant to section 17 (1) of a foreign direct investment or special financial agreement notified pursuant to section 10 or 11 on more detailed terms.
- 3) Refusal pursuant to section 18 to authorise a foreign direct investment or special financial agreement pursuant to section 5 or 7 or prohibition pursuant to section 18 of a foreign direct investment or special financial agreement notified pursuant to section 10 or 11.
- 4) Order pursuant to section 19 to terminate a foreign direct investment or special financial agreement covered by section 10 or 11 that poses a threat to national security or public order, regardless of whether or not the investment or agreement has been notified.

Subsection 3. Decisions pursuant to subsection (2), no. 1, shall be notified by the Danish Business Authority.

Subsection 4. The Minister for Industry, Business and Financial Affairs may authorise the Danish Business Authority to exercise the specific powers assigned to the Minister in subsection (2).

## **Chapter 10**

### **Communication etc.**

Section 33. The Minister for Industry, Business and Financial Affairs may lay down rules requiring that written communication to and from the Danish Business Authority on matters covered by this Act or by rules issued in pursuance of this Act should be carried out digitally.

Subsection 2. The Minister for Industry, Business and Financial Affairs may lay down more detailed rules on digital communication, including the use of specific IT systems, special digital formats and electronic signatures, etc.

Subsection 3. A digital message shall be considered received when it is available to the addressee of the message.

Section 34. The Minister for Industry, Business and Financial Affairs may lay down rules enabling the Danish Business Authority to issue decisions and other documents in pursuance of this Act or rules issued in pursuance of this Act without a personal signature, with signatures produced mechanically or in a similar manner or using a technique that ensures unambiguous identification of the person who issued the decision or document. Such decisions and documents shall be equivalent to decisions and documents with personal signatures.

Subsection 2. The Minister for Industry, Business and Financial Affairs may lay down rules to the effect that decisions and other documents made or issued solely on the basis of electronic data processing may only be issued with the Danish Business Authority cited as the sender.

Section 35. Where this Act or rules issued in pursuance of this Act require that a document issued by a party other than the Danish Business Authority must be signed, this requirement may be met by using a technique that ensures unambiguous identification of the issuer of the document, cf. however subsection (2). Such documents shall be equivalent to documents with a personal signature.

Subsection 2. The Danish Business Authority may lay down more detailed rules on waiving signature requirements. In connection with this, it may be decided that the personal signature requirement cannot be departed from for particular types of documents.

## **Chapter 11**

### **Language requirements**

Section 36. The Danish Business Authority may process cases and make decisions in English if the foreign investor so wishes. If the Danish Business Authority has made a decision in English, a Danish summary of the decision must be available.

Section 37. Applications for authorisations, notifications, commitments to terms, etc. that are submitted to the Danish Business Authority must be written in Danish or English. The Danish Business Authority may require that documents are submitted as a certified translation into Danish or English.

## **Chapter 12**

# Duty of confidentiality and disclosure

Section 38. The rules on access to documents and personal access in the Danish Public Information Act shall not apply to cases processed in accordance with this Act.

Subsection 2. Notwithstanding the rules on access to documents in the Danish Public Information Act, the Danish Business Authority and the Minister for Industry, Business and Financial Affairs may, after consultation with relevant authorities, decide that information involved in a decision case pursuant to section 14 a (1) or (2), section 14 d (2) or (3), section 17 (1), section 18 or 19, section 20 (1) and section 31 may not be disclosed to the parties to whom the decision relates if this is necessary for reasons of national security or public order.

Section 39. Employees of the Danish Business Authority and the Ministry of Industry, Business and Financial Affairs shall be obliged, pursuant to sections 152-152 e of the Danish Criminal Code, to keep secret confidential information that they become aware of through the performance of their official duties pursuant to this Act, cf. however, section 30. The same shall apply to persons performing service tasks as part of the operations of the Danish Business Authority and the Ministry of Industry, Business and Financial Affairs, and to experts acting on behalf of the Authority or the Ministry. This shall also apply after the termination of the employment contract or any other contract.

Subsection 2. The consent of whoever the duty of confidentiality aims to protect shall not entitle any person referred to in Subsection (1) to disclose confidential information.

Subsection 3. Notwithstanding subsection (1), the Minister for Industry, Business and Financial Affairs may lay down rules to the effect that confidential information may be disclosed to specified authorities.

Subsection 4. Anyone who receives confidential information from the Danish Business Authority or the Ministry of Industry, Business and Financial Affairs in accordance with rules laid down in pursuance of subsection (3) shall be subject to the duty of confidentiality as referred to in subsection (1) with regard to such information.

## Chapter 13

### Judicial review

Section 40. The decisions of the Minister for Industry, Business and Financial Affairs and the Danish Business Authority pursuant to this Act may not be challenged before any other administrative authority.

Section 41. Legal actions against refusals, orders, prohibitions or terms pursuant to sections 17-20 and section 31 (2) may be challenged before the courts by bringing an action against the Minister for Industry, Business and Financial Affairs; however, for decisions made pursuant to section 20 or section 31 (2) against the Danish Business Authority, at the Copenhagen City Court. A panel of three judges shall sit to judge cases at the district court.

Subsection 2. Legal actions against refusals, orders, prohibitions or terms pursuant to sections 17-20 and section 31 (2) must be brought within six months after the decision has been notified to the party concerned.

Subsection 3. In special cases, the Minister for Justice or their authorised representative may allow persons employed by the Danish Security and Intelligence Service to appear in court on behalf of the Minister for Industry, Business and Financial Affairs or the Danish Business Authority as legal representatives.

Section 42. The Minister for Industry, Business and Financial Affairs, or their authorised representative, shall be deemed to be a party to the case in the public service, except for decisions made pursuant to section 20 and section 31 (2), when it shall be the Danish Business Authority.

Subsection 2. The court shall appoint a special counsel to represent the interests of the party who has brought the case before the court or who has become a party to the case, and, on behalf of this party, to exercise power as a party with regard to information covered by a provision pursuant to section 38 (2). The same rules shall apply to fees and reimbursement for expenses to the special counsel as in cases where legal aid has been granted, cf. chapter 31 of the Danish Administration of Justice Act.

Subsection 3. The special counsel referred to in subsection (2) must be notified of all hearings in the case and shall be entitled to attend them. The special counsel must be made aware of and be provided with a copy of the materials that are pertinent to the case before the court, cf., however, subsection (4).

Subsection 4. However, the Minister for Industry, Business and Financial Affairs, or their authorised representative, may decide that, in the interests of national security or public order, a copy may not be provided to the special counsel. The same shall apply to the Danish Business Authority in relation to decisions made pursuant to section 20 and section 31 (2). The special counsel may challenge the decision before the court.

Section 43. Information covered by a provision pursuant to section 38 (2) shall not be disclosed to the party, but only to the special counsel appointed pursuant to section 42 (2). Once such information has been disclosed to the special counsel, the special counsel may not discuss the case with the party or its legal counsel and may not speak at court hearings where the party or its legal counsel are present. The party and its legal counsel may provide written details about the case to the special counsel at any time.

Subsection 2. The court may, of its own motion or at the request of the special counsel appointed pursuant to section 42 (2), decide that information involved in the decision of the Minister for Industry, Business and Financial Affairs pursuant to section 17 (1) or sections 18 or 19 or the decision of the Danish Business Authority pursuant to section 20 (1) or section 31 (2) shall be disclosed to the party or its legal counsel if security considerations cannot justify the decision of the Minister for Industry, Business and Financial Affairs or the Danish Business Authority pursuant to section 38 (2). The decision shall be taken by order and after the special counsel and the Minister for Industry, Business and Financial Affairs, or its authorised representative, or, for decisions made pursuant to section 20 or section 31 (2), the Danish Business Authority, have had the opportunity to comment. The ruling may be appealed by the parties or authorities referred to in the second clause. Appeals against a decision to disclose information shall have a suspensive effect.

Subsection 3. If the court has made a decision pursuant to subsection (2), first clause, the Minister for Justice, or their authorised representative, may decide that the information in question shall not be included in the case before the court.

Subsection 4. No one may sit as a judge in a case if they have made a decision pursuant to subsection (2), first clause, or have otherwise had access to information covered by such a decision, and the Minister for Justice, or their authorised representative, has made a decision pursuant to subsection (3) that the information in question shall not be included in the case before the court.

Section 44. The part of a court hearing that concerns, or during which is presented or considered, information covered by a decision pursuant to section 38 (2) and which is not covered by a decision pursuant to section 43 (2) shall be held in camera. The special counsel appointed pursuant to section 42 (2) may attend this part, but the party and its legal counsel may not.

Subsection 2. The court shall decide how court hearings held in whole or in part in camera pursuant to subsection (1) are to be conducted.

Section 45. The court shall make its decision after the parties and the special counsel appointed pursuant to section 42 (2) have had an opportunity to comment.

Section 46. The Minister for Justice shall approve a number of lawyers who can be appointed as legal counsel pursuant to section 42 (2), first clause.

Subsection 2. The Minister for Justice may lay down more detailed rules regarding the respective lawyers, including on duty rosters, remuneration for being on-call and security issues.

Section 47. The rules in this chapter on conducting a case in the district court shall apply mutatis mutandis to the conducting of cases in the High Court and Supreme Court.

## **Chapter 14**

# Provisions on the termination of foreign direct investments and the invalidity of special financial agreements

Section 48. In the event of failure to comply with an order to terminate a foreign direct investment pursuant to section 19 or section 31 (2) within the stipulated time limit, the Danish Business Authority may revoke the voting rights attached to ownership shares in the Danish company belonging to the foreign investor. If the Danish Business Authority has revoked the voting rights, the ownership interests may not be included in the calculation of interests with voting rights.

Subsection 2. Special financial agreements that are contrary to a refusal or prohibition pursuant to section 18 or an order to terminate a special financial agreement pursuant to section 19 or section 31 (2) shall be null and void between the parties.

## Chapter 15

### Entry into force

Section 49. The Act shall enter into force on 1 July 2021.

Subsection 2. The Act shall not apply to foreign direct investments and special financial agreements implemented before 1 September 2021.

## Chapter 16

### Territorial provisions

Section 50. This Act shall not apply to the Faroe Islands and Greenland.

Act no. 736 of 13 June 2023 (Extended screening of contracts pertaining to the establishment, coownership and operation of the energy island in the North Sea, extension of the competence of the Danish Complaints Board for Public Procurement and introduction of an enabling clause concerning the administration of EU economic sanctions against third countries regarding public contracts)<sup>1)</sup> contains the following provision on entry into force:

Section 3.

Subsection 1. The Act shall enter into force on 1 July 2023.

Subsection 2. Section 1, no. 10, shall not apply to applications and notifications received by the Danish Business Authority before the entry into force of the Act. The prior rules shall apply to these applications and notifications.

Subsection 3. Rules laid down in pursuance of section 8 (5) and section 12 (6) of the Investment Screening Act, Act no. 842 of 10 May 2021, shall remain in force until they are repealed or replaced by rules issued in pursuance of section 14 c (6) of the Investment Screening Act, as amended by section 1, no. 10, of this Act.

Danish Business Authority, 27 October 2023

Torsten A. Andersen

/ Signe Flege

1) The amendment pertains to the heading before section 1, section 1 (1) and (2), the heading before section 2, the heading after section 3, section 3 a, section 6

(1), no. 3, sections 8-9, chapter 2 a, sections

12-13, section 14, second clause, chapter 3 a, the heading to chapter 5, section 20 (1), first clause, section 20 (1), second clause, section 29 (3), section 31 (2), no. 2, section 32 (2), no. 1, section 38

(2) and section 41 (1), first clause, and (2).

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