



## **EXECUTIVE ORDER REGARDING THE SCOPE OF THE DANISH ACT ON SCREENING OF FOREIGN INVESTMENTS**

*10 June 2021*

### **Introduction**

Shortly after the Danish Act on Screening of Foreign Investments (the “Act”) was adopted, the Danish Business Authority submitted a proposal for an executive order (the “Executive Order”) for consultation. The Executive Order provides more detailed rules on the scope of application of the Act.

As mentioned in our previous [newsletter](#), the Act introduces a mandatory notification scheme applicable to any foreign direct investments or special financial arrangements pertaining to enterprises operating within particularly sensitive sectors in Denmark. According to the Act, the following sectors are considered particularly sensitive:

- (i) Enterprises within the defense sector;
- (ii) Enterprises within IT security functions or the processing of classified information;
- (iii) Enterprises producing dual-use items as defined in Council Regulation No. 428/2009 of 5 May 2009;
- (iv) Enterprises involved with other critical technology than nos. 1-3 above;
- (v) Enterprises involved with critical infrastructure.

### **Critical Technology and Infrastructure**

The Executive Order proposes that other critical technology must encompass any entity that develops or manufactures the following technologies:

- (i) Artificial intelligence and machine learning for autonomous vessels, imitation of humans, analysis of positioning data, and biometric data;
- (ii) Industrial robot technology;
- (iii) Semiconductors for use in integrated circuits, including technologies supporting the production hereof;
- (iv) Technologies for the protection of information security for the purpose of accessibility, integrity or confidentiality in IT systems, as well as defense against IT attacks;
- (v) Space technology for launching satellites, people and other, as well as communication technology that supports this;
- (vi) Technologies for industrial energy storage, energy conversion and energy transport;
- (vii) Quantum technology in connection with quantum computers, quantum sensors, quantum cryptography and quantum communication;
- (viii) Nuclear technology, except products which are used in the health sector;
- (ix) Nanotechnology;
- (x) Biotechnology within synthetic biology;

- (xi) 3D printing for the manufacture of components for industrial use.

The above-mentioned do not apply if the products are targeted at consumers or if the products are available to the public in general, e.g. toys.

The proposed Executive Order further contains a definition of “critical infrastructure”. Critical infrastructure is defined as “infrastructure, including facilities, systems, processes, networks, technologies, assets and services that are necessary to maintain or restore essential societal functions.” Such essential societal functions are categorized into 11 main sectors:

- (i) Energy
- (ii) Information and communication technology
- (iii) Transportation
- (iv) Contingency arrangements and civil protection
- (v) Health
- (vi) Drinking water and food
- (vii) Waste water and renovation
- (viii) Finance and economy
- (ix) Meteorology
- (x) Exercise of authority
- (xi) Cross-disciplinary crisis management

If an enterprise supports an essential societal function contained in any of the 11 sectors mentioned above, the enterprise will be deemed as being involved with critical infrastructure.

Examples of essential societal functions within the 11 sectors are post and courier services within the transportation sector, central data storage (data storage centers) within the information and communication technology sector, and payment solutions and financial market infrastructure within the finance and economy sector.

### **Certain Green-Field Investments**

It is proposed in the Executive Order that the Act and the Executive Order will not be applicable to any foreign direct investments in newly established companies within particularly sensitive sectors, if the foreign investor’s total capital injection does not exceed DKK 75m for up to 3 accounting years from the date of establishment, and if the newly established

company is not a subsidiary of the foreign investor. This will not apply for special financial arrangements.

### **Pre-Screening**

The proposed Executive Order introduces a pre-screening scheme, whereby a foreign investor can request the Danish Business Authority to assess whether a contemplated foreign direct investment or special financial arrangement concerns critical technology or critical infrastructure. The Danish Business Authority may then confirm whether or not such contemplated investment or financial arrangement falls within the areas of critical technology or critical infrastructure.

The consultation deadline is 15 June 2021, and it is proposed that the Executive Order will enter into force on 1 July 2021 but not apply to investments or certain special financial arrangements that have been completed before 1 September 2021.

**If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:**



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