CELIS Issue Note

on

Informal Guidance

Denmark, 2025

by

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Abstract

The Danish Business Authority provides informal guidance and pre-filing dialogue is commonly used to clarify mainly procedural matters. Guidance is also available at the authority's webpage and in the application forms.

In the pre-notification phase, the Danish Business Authority provides for so-called "pre-screening" with the purpose of stating whether an intended investment falls within the scope of the mandatory screening requirement of investments in entities within "critical technology" or "critical infrastructure". Based on the information provided for the pre-screening, the Danish Business Authority can issue a confirmation that the intended investment does not relate to "critical technology" or "critical infrastructure". It is not a (pre-)screening of neither the investor nor the investment, but merely a measure to clarify whether the Danish target company is active within sectors that fall within the notions of "critical technology" or "critical infrastructure". This pre-screening is not available to other sensitive sectors and activities such as the defence sector.

The Danish Business Authority can also be requested to issue a confirmation on whether an intended investment is covered by the exemption for Start Ups which exempts certain investments in Start Ups within three years from the incorporation from the otherwise mandatory approval requirement.

Authors

Rebecca Vikjær-Andresen has extensive experience in the Danish FDI rules and has dealt with the rules from many different angles, including the application process, pre-screening, risk assessments, drafting contract clauses to handle FDI related issues, handling of approval requirement in public tender procedures as well as planning internal procedures at enterprises and authorities to identify transactions that could be subject to screening requirements. Besides the Danish FDI regime, Rebecca has extensive experience in EU state aid law includes handling of notification and complaint procedures involving the European Commission and assistance with legal proceedings before the Court of Justice of the European Union (CJEU). Rebecca has further assisted Danish authorities with comprehensive reviews of national regulation with a focus on compliance with EU law and potential supererogatory implementation of EU law, among others.

Hussain Raja Abdullah as a young academic has garnered extensive knowledge into the field of international investment law, as part of his studies. Having a natural interest in international trade and investor protection, Hussain has had a substantial academic interest to further his acumen of FDI related issues. Furthermore, Hussain has worked intensively in various compliance functions handling interpretation and implementation of EU law both in private practice and in the public sector.

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1. Pre-notification guidance

A foreign investor intending to make a foreign direct investment in a Danish company as well as a Danish company which is subject to an intended foreign direct investment may request the Danish Business Authority to assess whether the intended investment relates to critical technology or critical infrastructure[1] with the aim of knowing whether the investment falls within the scope of the mandatory screening requirement of investments in entities within critical technology or critical infrastructure.[2] This procedure is called “pre-screening”. It is, however, not a screening of neither the investor nor the investment, but merely a measure to clarify whether the Danish company is active within sectors that fall within the notions of “critical technology” or “critical infrastructure”.

Based on the information provided for the pre-screening, the Danish Business Authority can issue a confirmation that the investment does not relate to critical technology or critical infrastructure.[3] If the Danish Business Authority cannot issue such confirmation, e.g., if the information provided is not sufficient to issue a confirmation, it will expect the foreign investor to apply for approval of the investment.[4]

The pre-screening procedure is not available in relation to the other particularly sensitive sectors and activities covered by the mandatory screening requirement in the Investment Screening Act (i.e. the defence sector, IT-security functions, processing of classified information, and production of dual-use items).[5] This also means that a confirmation by the

[1] Article 6(1) of Executive Order no. 1491 of 25 June 2021 on the delimitation of the scope of application of the Act on screening of certain foreign direct investments etc. in Denmark.
[2] See also Section 2.2 of the CELIS Country Note on Denmark, 2023.
[3] Article 6(3) of Executive Order no. 1491 of 25 June 2021. The wording of the provision is that the Danish Business Authority will ”require” that the investor applies for authorisation. It is uncertain what the legal basis for such requirement would be based upon.
[4] Article 6(4) of Executive Order no. 1491 of 25 June 2021.
[5] Article 6(1) in Act no. 842 of 10 May 2021 on screening of certain foreign direct investments etc. in Denmark (Investment Screening Act).

Danish Business Authority under the pre-screening procedure only relates to the notions of critical technology or critical infrastructure and does not exclude that the investment in question may relate to one or more of the other sensitive sectors and activities.

Under the pre-screening procedure, the foreign investor, or the Danish company subject to an intended investment, must provide some basic details about the investor, the intended investment, and the intended timing. The target company must be described in more elaborate details, including business areas and considerations in relation to whether the company is within critical infrastructure or produces or develops technologies that relate to critical technology.[6]

It should be noted that there are no time limits on the duration of the pre-screening procedure for the Danish Business Authority. Usually, the procedure can be completed within a month and often less.

2. Special procedure for Danish Start-Up companies

As an exemption to the mandatory screening requirement under the Investment Screening Act, the mandatory screening does not apply to foreign direct investments in newly established Danish companies (Start Ups) if the foreign investor's capital injection in the newly established company does not exceed DKK 75 million in the first three financial years following the establishment and provided that the company is not a subsidiary of a foreign investor.[7]

A Danish company and its founders can within three years from the incorporation of the company request the Danish Business Authority to assess whether the company fulfils the conditions for being exempted as a Start Up company in relation to an intended foreign investment.[8] The company or the founders will have to submit details on the capital injection, including a financing plan.[9]

Based on the information provided, the Danish Business Authority may issue a confirmation that the intended investment is covered by the exemption for Start Ups.

Further, the company and its founders may within three years from the incorporation of the company request the Danish Business Authority to assess whether an intended foreign

[6] The Danish Business Authority: https://businessindenmark.virk.dk/authorities/stat/ERST/self-service/Screening_of_foreign_investments_and_special_financial_agreements/.
[7] Cf. Article 5(1) of Executive Order no. 1491 of 25 June 2021.
[8] Cf. Article 6(2) of Executive Order no. 1491 of 25 June 2021.
[9] The Danish Business Authority: https://businessindenmark.virk.dk/authorities/stat/ERST/self-service/Screening_of_foreign_investments_and_special_financial_agreements/.

investment relates to critical technology or critical infrastructure like the regular pre-screening described above.[10]

3. Other guidance and informal procedures

There are no other formal consultation services from the Danish Business Authority or any other public authority than described above.

The Danish Business Authority provides informal guidance and pre-filing dialogue is an option that is commonly used to clarify mainly procedural matters. Guidance may also be found of the authority's webpage in Danish[11] and more limited in English.[12] This guidance on the webpage tends to be very general and often with reservations. The application forms also include certain limited guidance.[13]

Government relations are usually not made use of to support the review of a transaction. A flexible and smooth dialogue with the Danish Business Authority may potentially facilitate the screening process, but it cannot be expected to expedite clearance.

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[10] Cf. Article 6(2) of Executive Order no. 1491 of 25 June 2021.
[11] https://erhvervsstyrelsen.dk/screening-af-udenlandske-investeringer.
[12] https://businessindenmark.virk.dk/guidance/Screening-of-investments-Danish_companies/.
[13] https://businessindenmark.virk.dk/authorities/stat/ERST/self-service/Screening_of_foreign_investments_and_special_financial_agreements/.

Annex 1: Relevant laws, ordinances, regulatory guidelines

- Act no. 842 of 10 May 2021 on screening of certain direct investments etc. in Denmark (the Investment Screening Act) as amended by Section 1 in Act no. 736 of 13 June 2023:
    - https://www.retsinformation.dk/eli/lta/2023/1256.
    - Unofficial English translation by the Danish Business Authority.
- Executive Order no. 1491 of 25 June 2021 on the delimitation of the scope of application of the Act on screening of certain foreign direct investments etc. in Denmark:
    - https://www.retsinformation.dk/eli/lta/2021/1491.
    - Unofficial English translation by the Danish Business Authority.
- Executive Order No. 958 of 26 June 2023 on procedures for applications for authorisation of foreign direct investments and special financial agreements and notification of foreign direct investments and special financial agreements, etc.:
    - https://www.retsinformation.dk/eli/lta/2023/958.
    - Unofficial English translation by the Danish Business Authority.
- Guidance from the Danish Business Authority on the Investment Screening Act:
    - https://businessindenmark.virk.dk/topics/Economy/Investments/ (in English).
    - https://erhvervsstyrelsen.dk/screening-af-udenlandske-investeringer (in Danish)

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