



# Norway strengthens the control of acquisitions to protect national security from 1 July 2023



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**On March 31, 2023, the Norwegian government proposed to amend Chapter 10 of the Norwegian Security Act to ensure increased scrutiny of acquisitions of undertakings relevant to national security interests (Prop. 95 L (2022-2023)). Parts of the proposal which was passed mid-June enters into force on 1 July 2023 and entails, inter alia, that the scope of application of the Security Act shall be expanded so that undertakings that are of significant importance for fundamental national functions or security interests may be subject to the provisions of the Act on ownership control, and that the threshold for the obligation to notify acquisitions is lowered.**

The Norwegian Security Act may be made wholly or partly applicable to undertakings that (i) handle classified information, (ii) have control of information, information systems, objects or infrastructure which are of vital importance for fundamental national functions, or (iii) engage in activities that are of vital importance for fundamental national functions. Typically, this may apply to undertakings that play a particularly important role in maintaining key societal functions and interests, such as infrastructure for central utilities such as water and power, electronic communications, defense, health, etc.

The purpose of the Act is, among other things, to protect Norway's sovereignty, territorial integrity and democratic system of government and other national security interests, as well as to prevent, detect and

counter activities which present a threat to security. A key element in ensuring this is ownership control enshrined in the Security Act, where the intention is to prevent unwanted parties from gaining insight, influence and/or control over values and functions that are of importance to national security. Ownership control pursuant to the Security Act entails that there is a duty to notify when acquiring a qualified ownership interest in undertakings subject to the Act. The control mechanism inherent in ownership control is often referred to as Foreign Direct Investment (FDI) screening.

At the same time, it is important not to impose disproportionate burdens on undertakings and the industry, or to restrict trade with other countries, which entails a need to limit the scope to undertakings already identified as having a value of importance to national security. Which undertakings are covered by the Act is determined by decisions from the respective ministries and entails that these are obliged to establish a proper level of safety.

If an acquisition of an undertaking covered by the Act entails a not insignificant risk to national security interests, the Norwegian authorities may intervene and stop the relevant transaction. The purpose of the right to stop acquisitions is to give the authorities an opportunity to control ownership in strategically important businesses.

The main amendments are:

1. The ministries are provided with greater opportunities to make the Security Act, including the provisions on ownership control in Chapter 10 of the Security Act, applicable to more undertakings than today;
2. The threshold of when acquisitions must be notified to the authorities is lowered in cases where the acquirer indirectly or directly collectively obtains 10% of the share capital, share or votes in the undertaking (previously one-third), with subsequent cut-off points and notification duty where a company later acquires one-third, 50%, two-thirds, and 90%;
3. Both the seller and the undertaking, in addition to the acquirer, are obliged to file a notification to the relevant ministry;
4. There is a prohibition on sharing information that could be used for security-threatening activities;
5. There is a prohibition on carrying out and complete the acquisition before the authorities have processed the notification (stand-still obligation); and
6. The authority is provided with the right to impose fines for breaches of the notification obligation and to impose penalties for breaches of a prohibition or order in a decision.

It is still not specified when the Chapter 10 obligations will enter into force, but it is expected to happen in Q4 2023 or Q1 2024. The government is of the view that amendments will contribute to increasing national resilience to the complex threats to security and global challenges of today. It is particularly noted that the so-called Bergen Engines case illustrated the need to have well-functioning mechanisms and instruments to ensure control over and security of national interests.

The Bergen Engines case related to Rolls Royce's decision in February 2021 to sell the engine factory Bergen Engines AS to the Russian company Transmashholding Group (TMH). Bergen Engines manufactures, among other things, engines for Norwegian and US military vessels, which led to discussions on potential consequences such a sale could have for national security interests. The Government decided to stop the sale pursuant to the Security Act, partly because information and technology could help strengthen Russian military

capabilities and exports without Norwegian export control authorities being able to uncover it. In addition, such a sale would include a large property with significant buildings strategically located in Bergen and defence installations of security importance. In the proposal for the amendments, the government pointed out that the Bergen Engines case illustrated how challenging it is to get an overview of potential risks in a complex value chain with businesses, suppliers and subcontractors across sectors and national borders.

The EU adopted Regulation (EU) 2019/452 on foreign direct investment entered into force in 2020. It facilitates the exchange of information and coordination between EU Member States, and between Member States and the European Commission, on the screening and possible prohibition of acquisitions from third countries. The regulation is not marked as "EEA relevant text" and is based on the EU's common trade policy, which is not part of the EEA Agreement. Since an internal market binds the EEA states together through, inter alia, cross-border infrastructure such as transport, energy and electronic communications networks, the Norwegian government has nevertheless considered it relevant for Norway to seek cooperation with EU in this area. It is therefore assumed that Norway's cooperation with EU member states will lead to increased control of prohibitions on acquisitions of third countries, also detached from the new amendments to the Security Act.

If you have any questions related to ownership control/FDI or the new changes in the Security Act, please contact [our EU/EEA team](#).

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