



Norwegian Foreign Direct Investment screening is changing - Separate Investment Control Act and new authority on the way?



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The advise in the committee report [NOU 2023: 28 Investment control - An open economy in uncertain times of 4 December 2023](#) to investigating the need for screening of foreign direct investments (FDI) that are not subject to the Security Act is clear - we need a separate investment control act and authority in Norway.

The committee's assessment is that the current Norwegian system and regulations for controlling foreign direct investment does not work well enough. They propose that a new investment control act be drawn up and that closer cooperation with neighboring countries and the EU should be established. In addition, they propose a Norwegian notification scheme for foreign direct investment in security-sensitive sectors and that a dedicated investment control authority must be put in place.

Norwegian law atypical in Europe

The current Norwegian scheme is atypical in Europe. The report committee believes that Norway should have a regulatory framework that is designed in line with the main features of the EU Regulation on the control of

foreign direct investment. The main problems with the current Norwegian legislation, where the most relevant part is Chapter 10 of the Security Act on ownership control, is that it is too narrow and fragmented. In summary, the criticism is that:

- Relevant cases are not captured in a systematic way or to a sufficient extent.
- There is a lack of transparency about which investments can be subject to control.
- There is no suitable legal basis for intervening in investments that threaten security.
- The application of the sector principle may prevent uniform treatment of investment control cases.
- The assessment basis in cases is not sufficiently standardized.
- Investment control is not in line with international principles.

What needs to change - increased predictability for investors

In the Committee's view, investment control should meet the following criteria:

- Businesses need to know in advance which investments to report, who to report them to, and which investments may be subject to further assessment.
- Cases must be handled efficiently, confidentially and according to pre-established deadlines.
- The authorities must systematically identify and assess investments that may pose a risk to national security interests.
- The authorities must be able to intervene in investments that pose a significant risk to national security interests.
- The legal certainty of the actors involved in the business community must be safeguarded, including through access to appeal.
- Any intervention by the authorities must be proportionate and in line with Norway's international obligations.
- Norway must cooperate with other countries on the exchange of information in specific cases and on general experiences.

The Committee therefore proposes that the rules on ownership control in the Security Act and the Petroleum Act should be incorporated into a new Investment Control Act, and that transitional arrangements should be established to handle investments that fall under existing rules. Furthermore, it is proposed that investment control cases should be handled by a single authority and that case processing and decision-making authority should be organized at agency level and that the investment control authority must be able to draw on information from relevant agencies, such as the EOS services. [1]

Sectors affected

The proposal is that the new law will only apply to investments in security-sensitive sectors: companies that are suppliers to important societal functions, companies that produce or possess critical technology and companies that produce or possess certain critical raw materials. It is not proposed to include sectors such as media companies or companies that hold large amounts of personal data or location data. Foreign investments in real estate are also not included in the proposal, as it needs to be further investigated whether investment control is the right tool for managing such risks.

The Committee believes that there is a need to distinguish between foreign investors from EEA countries and investors from third countries.

Thresholds

With regard to reporting thresholds, it is proposed that reporting is mandatory when the investment exceeds the thresholds of 10 percent, one third and two thirds. A threshold of 25 percent is also proposed for voluntary notifications. This is slightly different from what is currently proposed in the new section 10-1 in chapter 10, where the notification obligation also applies where the acquirer's qualified ownership interest is increased to at least 20%, 1/3, 50%, 2/3 or 90% of the share capital, shares or votes in the company.

Case management

Two phases are proposed for the case processing. A phase in which the investor will be informed within 25 working days of the notification being sent whether the investment has been approved or whether the authority must assess the case further in a second phase. After phase two, where the assessment process should not last more than 90 days from the receipt of the notification, the investor will receive a response as to whether the investment has been approved, or approved with conditions, or whether the investment will be stopped.

What's next?

The report will now be sent out for public and business consultation, before a legislative proposal is prepared and subsequently considered by the Norwegian Parliament. There is currently no timeline for the expected progress of the further processing. Based on the report, the appropriateness of implementing the adopted Chapter 10 provision (which has not yet entered into force) is questioned if the rules are soon to be amended and incorporated into a new law. It is therefore a question of whether the adopted amendments to chapter 10 will enter into force first and that we will then have a new law. In this connection, it is worth noting that the thresholds adopted of 10%, 1/3, 50%, 2/3 and 90% deviate from the Committee's recommendations in Table 15.1 of 10%, 1/3 and 2/3, and it seems a little unnecessarily confusing if Norway's adopted but not enacted thresholds are to apply, only to be changed shortly afterwards.

If you have any questions about Norwegian investment control and the current rules or this proposal, please do not hesitate to contact us.

See also our article on changes to the Security Act from April 2023 [here](#) and our Nordic comparative article [here](#).

[1] The Norwegian Intelligence Service (NIS), the Police Security Service (PST), the National Security Authority (NSM) and the Norwegian Defence Security Department (FSA)