

**Unclassified****English text only****28 January 2021****DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
INVESTMENT COMMITTEE****Investment policy related to national security****Notification by Sweden**

On 16 December 2020, Sweden notified the OECD of an investment policy related to national security pursuant to its obligations under the Codes of Liberalisation and the National Treatment instrument. This document reproduces the notification.

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## *Investment policy related to national security – notification by Sweden*

### 1. Introduction

New legislation on transfer of security-sensitive activities and certain property will enter into force in Sweden on 1 January 2021. The recently passed legislation will amend the current Protective Security Act, thus placing new obligations on operators of security-sensitive activities who are considering such a transfer. The legislation is nationality neutral. The Act is described in further detail below. An unofficial English translation of the Act can be found in the Annex.

### 2. Transfer of security-sensitive activities and certain property

According to the new legislation, any operator of security-sensitive activities must conduct a *specific protective security assessment*, a *suitability examination* and a *consultation* with the Armed Forces or the Swedish Security Service if the operator intends to transfer:

1. all or any part of its security-sensitive activities; or
2. property that is of significance to Sweden's security or an international protective security commitment that is binding on Sweden.

The new obligations do not apply to transfers of real property. The Government may also issue regulations on further exemptions or order such exemptions in individual cases.

Through the *specific protective security assessment*, the operator must identify any classified information or other security-sensitive activities to which the transferee may gain access and that require protective security. The operator must then conduct a *suitability examination*, based on the specific protective security assessment and other circumstances, to examine whether the transfer is appropriate from a protective security standpoint. If the suitability examination leads to the assessment that the transfer is inappropriate from a protective security standpoint, the transfer must not be undertaken.

If the operator's suitability examination leads to the assessment that the transfer is not inappropriate from a protective security standpoint, the operator must *consult* with the Armed Forces or the Swedish Security Service. The consultation will address the question of whether the transfer is appropriate from a protective security standpoint. The consultation may also include the question of whether the transfer should be restricted in some way to avoid it being inappropriate. The consultation authority's examination may also include a forward-looking assessment of the implications a transfer may have in the longer term. The consultation authority may require the operator to take measures to fulfil its obligations under the Protective Security Act and the regulations issued in connection with the Act. An injunction could, for example, specify matters of information security, personnel security or physical security that the operator must improve if the transfer is to be considered appropriate. The obligation to consult and the consultation authority's powers outlined above also apply to anyone who intends to transfer shares in security-sensitive activities, except for shares in limited companies that are public under the Swedish Companies Act.

Furthermore, the Armed Forces or the Swedish Security Service may decide that a transfer must not be undertaken – i.e. is prohibited – if an injunction is not complied with or if the transfer is not appropriate from a protective security standpoint, even if additional measures are taken. A transfer in contravention of a prohibition is invalid. If a transfer is invalid the consultation authority may impose any injunctions that are necessary in order to prevent damage to Sweden’s security.

Decisions to impose injunctions during the consultation proceedings may be appealed to the Stockholm Administrative Court. Decisions to impose prohibitions or injunctions in case of invalidity may be appealed to the Government.

### 3. Proposed entry in the list of measures reported for transparency under the National Treatment instrument

Sweden proposes to amend the current entry under item A. of the list of measures reported for transparency under the National Treatment instrument – shown in light grey below and updated to reflect rules as of December 2020 – by adding the text shown in black:

#### “A. Measures Reported for Transparency at the Level of National Government

##### *I. Measures based on public order and essential security considerations*

###### *a. Investment by established foreign-controlled enterprises*

Defence: A license is required to manufacture military equipment in Sweden and to operate activities in Sweden relating to supplying military equipment and technical assistance. The license requirement applies regardless of the nationality of the manufacturer or supplier. Regarding Swedish limited companies, it is possible to attach conditions to the license that only a certain proportion of the shares, directly or indirectly, may be owned by foreign legal entities and/or that board members and deputies for them, as well as the managing director of the company, must be Swedish citizens and residents of Sweden. For companies operated as partnerships, it is possible to attach conditions to the license regarding ownership.

Civil and defence: Operators of security-sensitive activities must carry out a *protective security assessment*, a *suitability examination* and a *consultation* with the Armed Forces or the Swedish Security Service if the operator intends to transfer all or any part of its security-sensitive activities; or property that is of significance to Sweden’s security or an international protective security commitment that is binding on Sweden, with the exception of transfers of real property.

Authority: *Protective Security Act*

## Annex A. Extract from the Protective Security Act

(Unofficial translation)

### Transfer of security-sensitive activities and certain property

#### Section 7

An operator must conduct a specific protective security assessment and suitability examination in accordance with Section 8 and a consultation in accordance with Section 9 if the operator intends to transfer:

1. all or any part of its security-sensitive activities; or
2. property that is of significance to Sweden's security or an international protective security commitment that is binding on Sweden.

The first paragraph does not apply to transfers of real property.

The Government may issue regulations on further exemptions from the first paragraph. If there are special grounds to do so, the Government may also order such exemptions in individual cases.

### Specific protective security assessments and suitability examinations

#### Section 8

Before proceedings for a transfer referred to in Section 7 are initiated, the operator must, through a specific protective security assessment, identify any classified information or other security-sensitive activities to which the transferee may gain access and that require protective security.

Based on the specific protective security assessment and other circumstances, the operator must examine whether the transfer is appropriate from a protective security standpoint.

The specific protective security assessment and suitability examination must be documented.

If the suitability examination leads to the assessment that the transfer is inappropriate from a protective security standpoint, the transfer must not be undertaken.

### Consultation, injunctions and prohibitions

#### Section 9

If the suitability examination under Section 8 leads to the assessment that the transfer is not inappropriate from a protective security standpoint, the operator must consult with the public authority designated by the Government (consultation authority).

The consultation authority may decide to impose injunctions on the operator to take measures to fulfil its obligations under this Act and regulations issued in connection with it.

The obligation to consult and what is stated about the operator in the second paragraph also apply to anyone who intends to transfer shares in security-sensitive activities, except for shares in limited companies that are public under the Swedish Companies Act (2005:551).

#### Section 10

If the transferor does not consult with the consultation authority despite being obliged to do so, the authority may initiate the consultation.

### *Section 11*

If a decision to impose injunctions under section 9 is not complied with or if the transfer is inappropriate from a protective security standpoint even if additional measures are taken, the consultation authority may decide that the transfer must not be undertaken (prohibition).

### **Invalidity and prohibitions after the fact**

#### *Section 12*

A transfer in contravention of a prohibition under Section 11 is invalid.

If a transfer has been undertaken without consultation under Section 9 or 10 and the conditions for a prohibition under Section 11 are fulfilled, the consultation authority may impose such a prohibition after the fact. The transfer is then invalid.

### **Injunctions in case of invalidity**

#### *Section 13*

If a transfer is invalid under Section 12, the consultation authority may impose any injunctions against the transferor and the transferee that are necessary in order to prevent damage to Sweden's security.

A decision to impose injunctions may be combined with a financial penalty.

### **Appeals**

#### *Section 16*

Decisions to impose injunctions under Section 9 may be appealed to the Stockholm Administrative Court. When such a decision is appealed, the consultation authority is the opposite party. Leave to appeal is required for an appeal to the administrative court of appeal.

Decisions to impose prohibitions under Section 11 or Section 12, second paragraph or to issue injunctions under Section 13 may be appealed to the Government.

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