

Unclassified**English text only****4 March 2020****DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
INVESTMENT COMMITTEE****Investment policy related to national security****Notification by Norway**

On 28 February 2020, Norway 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 Norway

1. Scope and objective of the new Norwegian Security Act

A new National Security Act¹ was adopted by the Norwegian Parliament on 6 March 2018. The Act entered into force on 1 January 2019, and replaces the Security Act of 1998 in order to meet new and emerging security challenges.

The overall scope of the new Act is to safeguard national security interests.

The applicability of the Act is broader than the act of 1998. The Act applies to the public sector as well as to parts of the private sector regarding the interests of national security.

The objective of the new Act is threefold:

- to safeguard Norway's sovereignty, territorial integrity and democratic form of government and other national security interests;
- to prevent, detect and counteract security-threatening activities; and
- that security measures are implemented in accordance with fundamental legal principles and the values of a democratic society.

2. Regulation of acquisitions

The Act stipulates a compulsory notification mechanism in cases where investors seek to acquire control of Norwegian businesses that have a crucial role in supporting or delivering critical national services, and will apply to both domestic and foreign investors. Each ministry decides, within their responsibility, which businesses are subject to the Act.

Chapter 10 (Sections 10-1 through 10-3) sets out notification requirements and procedural rules. Anyone who wants to acquire a qualified ownership in a business that is subject to the Act, is obliged to notify the relevant ministry. When the business is not covered by any ministry's area of responsibility, the notification shall be addressed to the Norwegian National Security Authority. A qualified ownership means that the acquisition directly or indirectly will result in the acquirer achieving:

- at least one-third of the share capital, shares or votes in the business;
- the right to become the owner of at least one-third of the share capital or shares; or
- significant influence over the management of the company in other ways.

The relevant ministry or the National Security Authority shall take a position on the notification as soon as possible after receipt of a notification.

The addressee of a notification may ask relevant bodies to comment on the risk potential of the acquisition and the acquirer's security reliability. Such relevant bodies in this context

¹ The Act in Norwegian: «Lov om nasjonal sikkerhet». For reference: <https://lovdata.no/dokument/NL/lov/2018-06-01-24?q=sikkerhetsloven>

will often be the Norwegian Police Security Service, the Norwegian Intelligence Service and/or the National Security Authority.

Within 60 working days, as a general rule, the relevant ministry or the National Security Authority shall inform the notifier of whether the acquisition has been approved, or whether the case shall be dealt with by the King in Council.² If the King in Council considers that an acquisition under Section 10-1 may entail a not insignificant threat to national security interests, the King in Council may deny the execution of the acquisition, or determine criteria for the execution.

The King in Council may issue regulations relating to Chapter 10. The regulation regarding the responsibility of entities to ensure preventive security³ specifies the content requirements for a notification pursuant to Section 10-1 of the National Security Act.

In addition, with reference to Section 2-5, the King in Council is authorised to make the necessary decisions to prevent security-threatening activities or other planned or ongoing activity that may entail a not insignificant threat to national security interests.

3. Rationale

Norway has noted that increased foreign investment, especially in infrastructure projects, seems to be a trend internationally, and that there is growing concern that some of these investments may pose national security risks.

National strategic interests in this respect are to maintain necessary control over businesses vital to national security interests.

4. Expected outcome

Norway does not expect the notification mechanism to have significant negative effects on future foreign investments in Norway. Governmental decisions to deny or restrict acquisitions of businesses by foreign entities, will be limited to exceptional cases where it is considered necessary in the interests of national security and where such an action is considered proportional to the aim pursued.

In general, Norway regards foreign investment as beneficial to its economy. Such investment contributes to growth and creates jobs, as well as increased transfer of knowledge. Norway wants to continue being an attractive destination for foreign direct investment, without compromising on its national security interests.

² The King in Council is a legal term which means meetings of the Council of State that makes formal decisions and are moderated by the King. For reference: <https://www.regjeringen.no/en/the-government/the-government-at-work/the-council-of-state/id270325/>

³ The regulation in Norwegian: «Forskrift om virksomheters arbeid med forebyggende sikkerhet». For reference: <https://lovdata.no/dokument/SF/forskrift/2018-12-20-2053>

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

Norway proposes that the following entry replace the current entry under item A. of the list of measures reported for transparency under the National Treatment instrument:

“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

Under the National Security Act in force since 1 January 2019, anyone who seeks to acquire a qualified ownership stake in a business that is subject to the Act, is obliged to notify the relevant ministry and obtain approval of the transaction.

Authority: National Security Act, Chapter 10.

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