



# The Danish Investment Screening Act – Latest Developments

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# Agenda

- **Introduction:** Purpose, scope, and threats to national security and public order.
- **The first two years of FDI-screening in Denmark:** Facts and figures on numbers of cases, sectors and case handling time.
- **Introduction of the phased case handling approach in July 2023:** Lessons learned so far.
- **Amendments to the Act:** The Energy Island in the North Sea (2023) and earlier screening in relation to certain offshore wind tenders and other larger public energy projects (amendment proposed in April 2024).
- **Evaluation of the Act:** Public hearing, status, and next steps.

# Purpose

- The **Danish Investment Screening Act** entered into force 1 July 2021. The Act does not apply to investments completed before 1 September 2021.
- The purpose of the Investment Screening Act is to **prevent** foreign direct investments and special financial agreements from posing a **threat to national security or public order** in Denmark.
- The Danish Business Authority **can only intervene against investments and agreements that pose a threat** to national security or public order. A concrete and individual assessment of whether an investment or agreement may affect national security or public order will always be made.

## National security

Denmark's territorial integrity and the survival of the population.

## Public order

Denmark's ability to maintain an independent, democratic and secure society, without conditions thereby affecting national security.

# Scope

- **Mandatory** screening mechanism for certain foreign investments in **sensitive sectors**
- **Voluntary cross-sectoral notification mechanism** for certain foreign investments in all other sectors
- **Special financial agreements** are also covered by the law if they lead to **decisive control or significant influence** on the target company
- Foreign investments and agreements not notified can be subject to **ex officio screening up to 5 years** after completion of the investment/agreement

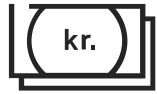
## Mandatory screening mechanism

- Defense
  - Dual-use
  - IT-security and processing of classified information
  - Critical technology
  - Critical infrastructure
- Investors outside of Denmark
- Threshold 10%
- Also includes certain “special financial arrangements” (Investors from EU/EFTA exempted unless the investor is controlled by third countries)

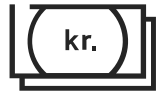
## Voluntary cross-sectoral notification mechanism

- All other sectors – investments that may threaten national security or public order
- Investors outside the EU/EFTA (unless the investor located in EU/EFTA is controlled by third countries)
- Threshold 25%
- Also covers certain special financial arrangements

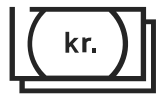
# Activities covered by screening



Direct and indirect investment



Greenfield investments



Asset deals



Longterm irrevocable loans



“special financial agreements” – supplier, operating and service agreements that entail control or influence over the Danish target



R&D joint ventures

# Decisions

When assessing whether a foreign direct investment or special financial agreement constitutes a threat to national security or public order the following three aspects will be taken into account by the DBA:

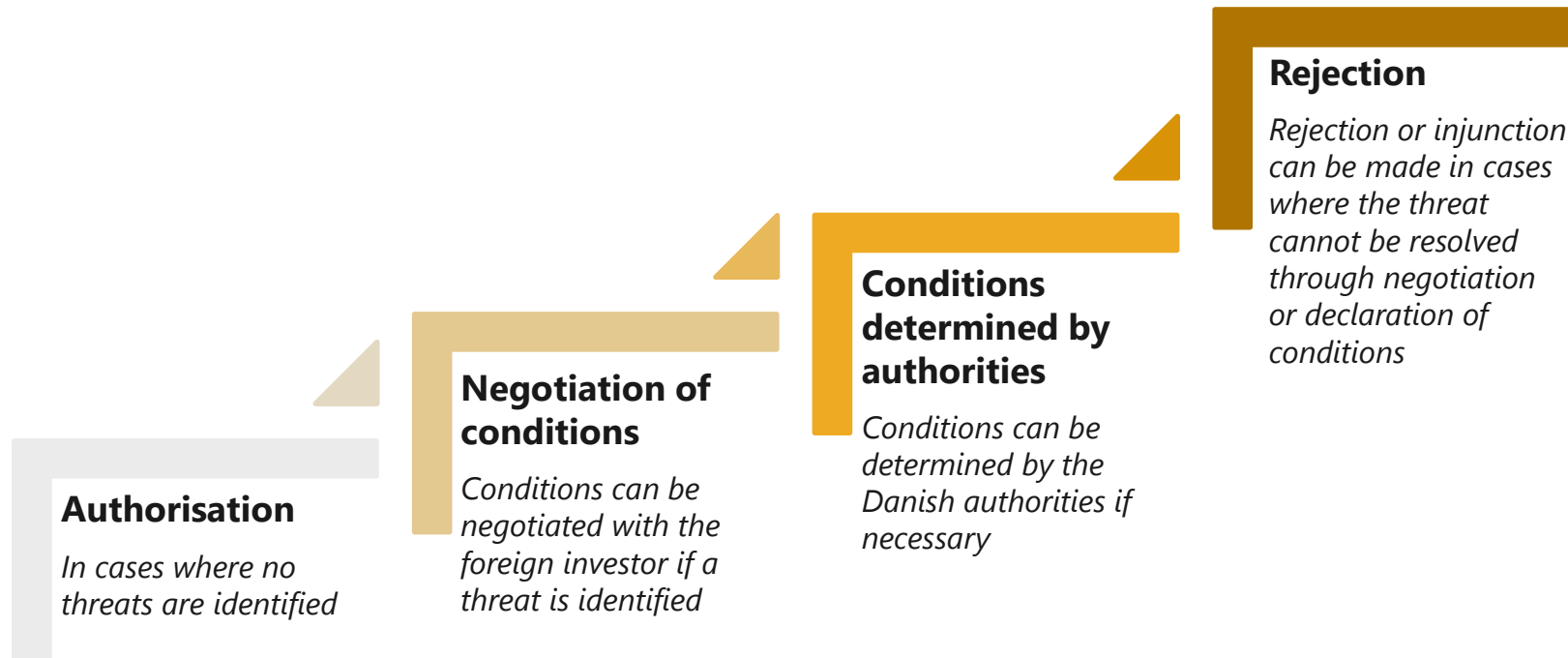
1. the Danish target company/entity,
2. the investment in question, and
3. the foreign investor.

**All relevant circumstances** will be taken into account when assessing whether a foreign direct investment constitutes a threat to national security or public order. In all cases, the DBA will make a **specific assessment** of all three risk factors.

The DBA will **consult** with relevant **Danish authorities, EU COM** and other **EU MS**.

Complex cases will be referred to the **Minister for Industry, Business and Financial Affairs**. The minister will make the final decision after negotiations with other key ministers.

# Intervention options





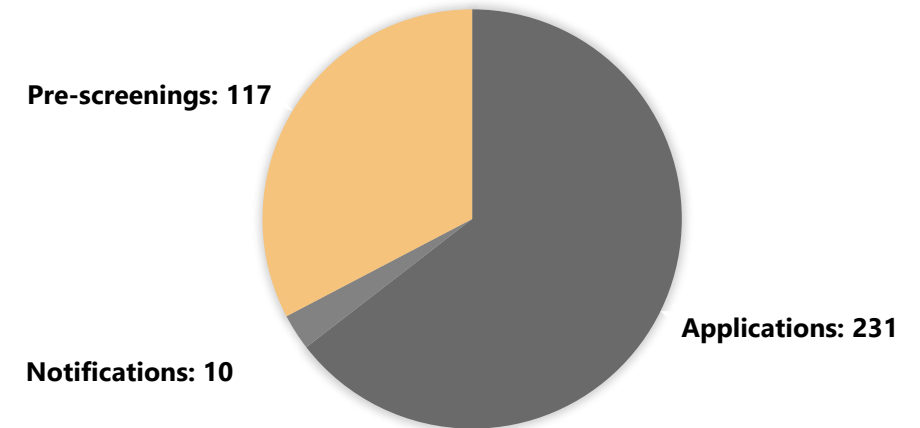
## | The first two years of FDI-screening in Denmark – Facts and Figures



# Total case volume

- The Danish Business Authority received **358 cases** during the period 1 July 2021 to 30 June 2023.

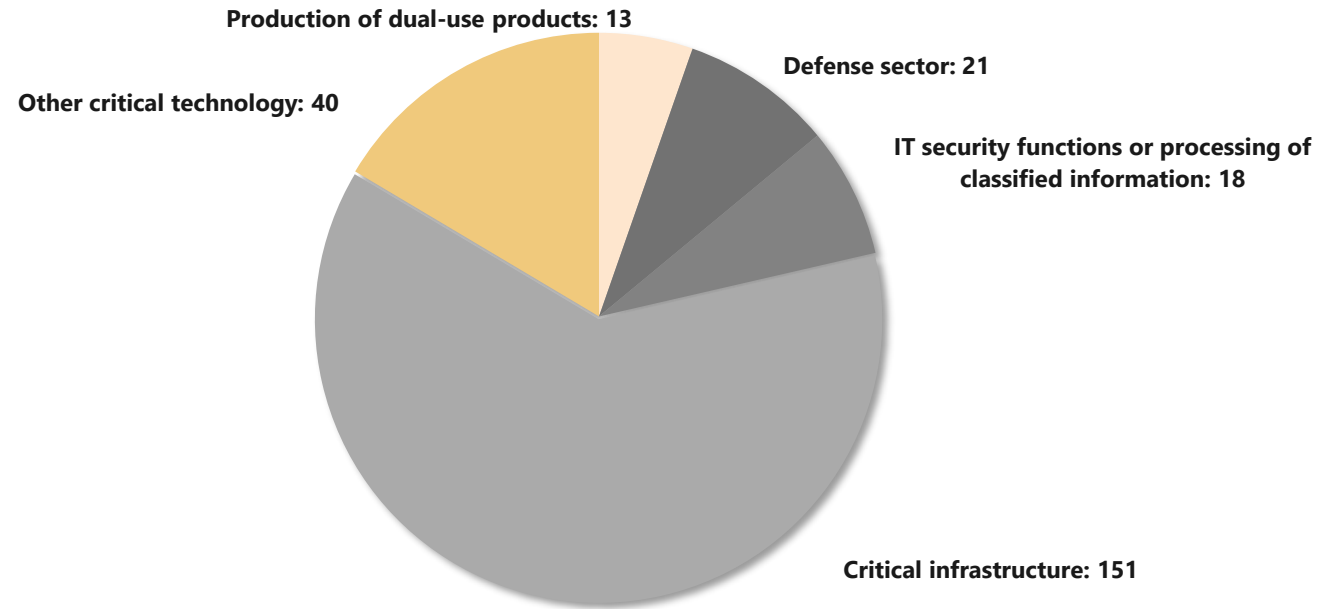
	Investments	Special Financial Agreements
Application for authorization	206	25
Voluntary notification	9	1
Request for pre-screening	99	18



- Interventions in **2 cases**:
  - The Danish Business Authority issued an authorization for an investment subject to further agreed conditions.
  - The Minister for Industry, Business and Financial Affairs prohibited the implementation of an investment.
- In addition, since the EU FDI-regulation entered into force in October 2022, the Danish Business Authority has processed over **1000** cases on investment screening, notified by other EU member states pursuant to the FDI-regulation.

# Screening of investments

- **206 applications** for authorisation for investments within particularly sensitive sectors and activities.



- **9 voluntary notifications** of investments in Danish companies within other sectors (primarily in relation to ICT, transportation, healthcare and energy).
- **99 requests for pre-screening:** In 49% of the cases, the Danish Business Authority issued a confirmation that the investment *did not* relate to critical infrastructure or critical technology.

# Screening of special financial agreements

- **25 applications** for authorisation to enter into special financial agreements – most commonly in relation to critical infrastructure (84% of the cases).
- **1 notification** of a special financial agreement.
- **18 requests for pre-screening** of special financial agreements: In 44% of the cases, the Danish Business Authority issued a confirmation that the special financial agreement *did not* relate to critical infrastructure or critical technology.



- | Introduction of the phased case handling approach in 2023
  - Lessons Learned

# Application proces – Phase 1 and Phase 2



For more information  
please visit:

[businessindenmark.virk.dk/topics/Economy/Investments](https://businessindenmark.virk.dk/topics/Economy/Investments)



## Application

The foreign investor files an application with the Danish Business Authority

Phase 1: 45 calendar days

### Case procedure

- Application can be rejected on basis of formal deficiencies
- The deadline is calculated from the time when the Danish Business Authority has received a fully informed and completed application
- The Danish Business Authority will forward the application to relevant Danish authorities for consultation

Within 45 calendar days the Danish Business Authority must inform the foreign investor of whether permission to complete the investment is granted **or** if there is a need for further investigations in phase 2.



## Request for pre-screening

Foreign investors and Danish companies may apply for a prescreening to assess if the investment does not relate to **critical infrastructure** or **critical technologies**.

Phase 2: 125 calendar days

### Further assesments



The Danish Business Authority continues assessment of whether the investment can pose a threat to national security or public order.

Within 125 calendar days the Danish Business Authority must inform the foreign investor of whether:

- Permission to complete the investment is granted
- The investment poses a threat that can be mitigated though negotiated conditions **or**
- The case is referred to the Minister for Industry, Business and Financial Affairs.

# Phased case processing since 1 July 2023 – *preliminary experiences*

## **Fewer information requirements in phase 1:**

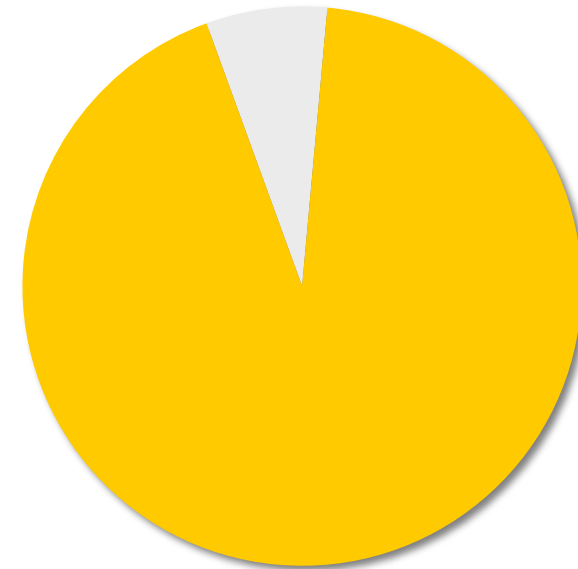
- Applications regarding investments can be submitted earlier in the process

## **The vast majority of the cases are settled in phase 1:**

- 93 % of cases settled in phase 1
- 7 % of cases transferred to phase 2

## **Faster case processing time for uncritical cases:**

- Average case processing time in phase 1 = 24 calendar days



# When is an application complete for Phase 1-screening?

- ✓ The application form must be completed – all relevant items must be filled out
- ✓ All required documents must be attached – e.g. diagram of the target company's ownership structure *after* the investment (must include all individuals/companies that own directly or indirectly at least 10% of the target company)

## Common deficiencies

### Applications regarding investments

- The application is submitted too soon: The foreign investor is not specified. Unknowns (companies yet-to-be established, undefined ownership shares, etc.)
- Control by other means than acquisition of shareholding or voting rights not specified – e.g. right to appoint and remove board members, management agreements.
- Activities of the Target company not specified – which particularly sensitive sectors?

### Applications regarding special financial agreements

- The type of agreement (Supplier agreement? Operating or service agreement?) is not specified
- Does the agreement entail control or significant influence over the Target?
  - The length of the validity of the agreement
  - Is it irrevocable for a period over 12 months?
  - Terms and conditions: Right to make decisions? Control over or access to buildings, plants, installations or systems in the Target?
- How does the agreement relate to the particularly sensitive sectors?



## | Amendments to the Act



# Amendment in 2023: The Energy Island in the North Sea

- Extended screening of contracts relating to the Energy Island in the North Sea entered into force 1 July 2023.

*"**Any contracting party**, regardless of the registered office or organizational form, shall apply for authorization to enter into a contract, if the contract pertains to procurement of the **establishment, co-ownership and operation** of the energy island in the North Sea."*

- In addition, the Minister for Industry, Business and Financial Affairs may, upon request from the Ministry of Climate, Energy and Utilities, decide that **all participants** in the contract tender, shall be subject to screening.
- The Danish Business Authority may, as part of the case handling, screen **subcontractors** to be used in connection with the contracts pertaining to the establishment, co-ownership and operation of the energy island in the North Sea.

# Proposal for amendment (2024)

- Proposal submitted to the Danish Parliament on 30 April 2024 (L 181).
- The proposal includes a minor adjustment that advances the time of screening for certain special financial agreements (offshore wind tenders and other large public energy projects) by allowing earlier submission of applications.
- **The purpose of the proposal is to ensure increased parallelism between *Foreign Subsidies Regulation* screening and investment screening** in relation to offshore wind tenders and other large public energy projects in order to as much as possible eliminate delays in the upcoming tenders and shorten the bid validity periods.
- *If adopted* – will enter into force on 1 July 2024.



## | Evaluation of the Act

# Evaluation of the Act initiated in March 2024

- Evaluation initiated in March 2024. A report will be submitted to Parliament.

 Public hearing

 Is the law working as intended?

 Need for further amendments?

***Thank you for all the remarks!***

**We are currently assessing the remarks and all the identified challenges**

- Need for more guidance on the scope of application!
- Phased case processing approach = more efficient.
- Pre-screening is an important tool.
- The government is considering whether the law is working as intended in relation to critical infrastructure and critical technology.



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