



SWEDEN SET TO INTRODUCE AN FDI REGIME AS OF DECEMBER 1, 2023

KEY TAKE-AWAYS

- Investments made by investors from third countries and EU member states (incl. Sweden) will be subject to a mandatory pre-closing notification obligation.
- The proposal covers investments in several areas, including essential services, security sensitive activities, personal and location data, critical inputs or raw materials, emerging or strategic protected technologies as well as military equipment and dual-use products.
- The proposed legislation covers investments in Swedish companies, assets and applies to the acquisition of minority shareholdings.
- The legislation is set to enter into force on December 1, but the notification application will apply to investments closing as of January 1, 2024.

The legislation will apply to a large number of transactions with Swedish nexus and there are many uncertainties at this stage in relation to which investments that will be notifiable. The filings will also be examined by a screening authority that lacks M&A experience and will need to handle a significant number of filings. For this reason, we expect a bumpy ride in the early stages of the incorporation of the legislation.

The draft bill has been submitted to the Swedish Council of Legislation. The Council will now consider whether the bill is compatible with the constitution and general legal principles. Once the Council has reviewed the draft, the government will present the bill to the Swedish parliament which will likely vote on the bill after the summer.

There is broad support for the legislation and we do not expect significant comments from the Council. For this reason, the draft bill presented today provides a good picture of what to expect from the coming Swedish FDI legislation.

OVERVIEW OF THE PROPOSAL

A wide range of activities may trigger a filing

The proposal lists several areas that will be covered by the new legislation. The Swedish Government will designate certain government agencies to provide further guidance in relation to each of these areas. The following areas are included:

- **Essential services.** Services or infrastructure that maintains or assures societal functions that are vital to society's basic needs, values or safety.
- **Security sensitive activities.** Activities covered by the Protective Security Act.
- **Inputs or raw materials that are critical to the EU and Sweden.** Investments made in companies that prospect, extract, enrich, or sell critical raw materials, metals or minerals that are of strategically importance to Sweden.
- **Activities whose principal purpose is the processing of sensitive personal or location data.** Refers to personal data as defined in Article 9(1) of the General Data Protection Regulation and location data.
- **Activities related to emerging or strategic protected technologies.** An ordinance is to identify the type of technologies covered by the legislation.
- **Activities related to dual-use products.** Refers to products listed in Annex I to Regulation (EU) 2021/821 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items.
- **Activities related to military equipment.** Refers to investments in relation to military equipment and technical assistance as defined in the Military Equipment Act (1992:1300).



The scope of the proposal is wide

The screening mechanism will cover:

- Investments made by investors from third countries, EU Member States and Sweden.
- Investments made in Swedish entities as well as asset purchases regardless of whether these are greenfield and brownfield investments
- Minority shareholdings. In fact, a new notification will be required each time shares exceeding 10, 20, 30, 50, 65 or 90 percent of the voting rights in a target company are acquired.
- Investments that give the investor influence in other ways than through a share in ownership, must also be notified.

The screening authority may also request a notification not fulfilling the thresholds if there is reason to believe that the investment could harm Sweden's security or public order or security in Sweden.

The proposal suggests a two-stage procedure

- In stage one of the procedure, the screening authority needs to decide within 25 working days whether to initiate an in-depth examination or take no further action.
- In case of an in-depth examination, a final decision must be made within three months of the decision to initiate such an examination.
- There is a possibility to extend the deadline to six months.

The screening authority may decide to approve the investment subject to conditions or prohibit the investment

In situations where the screening authority believes that certain aspects of an investment may need to be regulated, it may clear the investment subject to conditions. An investment may also be prohibited if it affects Sweden's security or public order and security in Sweden.

The legal effect of a prohibition is that the legal transaction which constitutes part of the investment or whose purpose is to implement the investment would be void.

The screening authority's prohibition decision or approval under conditions may only be appealed to the Swedish Government.



There is a standstill obligation - The seller may not close the transaction until the review has been completed

The screening authority decides when the seller can proceed with the transaction by formally deciding on the matter.

An investor may be fined if it fails to notify an investment that is subject to a notification requirement, or when the investor implements an investment before or contrary to a final decision or acts contrary to conditions. The administrative fine may be set at no less than SEK 25,000 (around €2,500) and no more than SEK 100 million (around €10 million).

The screening authority will have broad powers to collect information and sanction non-compliance with the regime.

The screening authority will be able to request information from the investor and investee and impose an administrative fine if these do not provide the information or provide false information. The screening authority will also be able to issue injunctions to gain access to sites, premises and other spaces at the investor or the investee. Such injunctions may be accompanied by a fine for non-compliance.

Imposed injunctions and administrative fines may be appealed to the Administrative Court in Stockholm.

Investors receive a short amnesty period.

Although the legislation is proposed to enter into force on December 1, the notification obligation will not apply to investments closing within one month of December 1. Thus, in practice, the legislation will apply to investments closing as of January 1.

The filing obligation in the Protective Security Act will remain in force

The Swedish Protective Security Act entered into force in 2018 to ensure that companies engaged in security sensitive activities continuously assess the need for protection of these activities. The rules were reinforced in January, 2021 by the introduction of a notification obligation when companies with security sensitive activities transfer these activities.

These transactions will now also be subject to notification under the new regime. Such transfers could also fall under the proposed screening mechanism. This overlap has been acknowledged by the government that holds that the two sets of legislation have different aims and some-what different areas of application. As a consequence, there may be transactions that will require approval from two different Swedish agencies for national security reasons before closing.

CONCLUDING REMARKS

As the last country in the Nordics and one of the last in the EU, the Swedish government has finally presented a draft FDI bill. The proposal appears to be well-considered but there are some issues that raise concerns and could risk making the life of companies difficult.

- **The scope of the proposal is broad and will require significant resources at the screening authority.** The proposed screening authority has estimated that around 2 000 investments may be filed per year. That is a significant number of filings for any authority to handle and it is particularly concerning that the proposed authority currently lacks M&A experience.
- **There are uncertainties in relation to which investments that will be notifiable.** Several types of activities may trigger a filing but the definition of these activities have been delegated to several authorities. These authorities will not have much time to work on these guidelines considering that the legislation is to enter into force in a few months. If they do not make it in time, this will likely lead to significant delays and costs for companies.
- **Sweden will be one of few countries requiring two types of filings for national security reasons.** An investment may need to be notified both under the proposal and the Swedish Protective Security Act meaning that a screening could be examined by different authorities. This could lead to situations where two authorities arrive at two different decisions.

On this basis, we expect a bumpy in the early stages of the incorporation of the act. This will affect the risk exposure for individual companies and it will be of particular importance to follow all developments to ensure that notifications are handled as smoothly as possible.

If you have any questions, please contact:



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