



# The Finnish Act on the Screening of Foreign Corporate Acquisitions to be updated



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*The Ministry of Economic Affairs and Employment in Finland (the "Ministry") has on 28 February 2020 published a draft government proposal for amendment of the Finnish Act on the Screening of Foreign Corporate Acquisitions (172/2012, as amended, the "Act"). The Act will be amended to meet the requirements of the EU Regulation (2019/452, the "EU Regulation"), establishing a common framework for the screening of foreign direct investments ("FDI") into Member States on the grounds of security and public order and a cooperation mechanism to improve the exchange of information between the EU member states and Commission. In addition, national needs for amendments that have arisen when implementing the Act will be assessed.*

## **Current legislation**

The Act enables the restriction of shifting the corporate control to foreign owners in companies that are covered by the monitoring, if there is an overriding national interest, such as national defence, security of supply or functions vital to society. In general, the Ministry must approve the corporate acquisition, unless it potentially conflicts with a key national interest. If the corporate acquisition may conflict with a key national interest, the Ministry must refer the matter for consideration at a government plenary session.

All corporate acquisitions concerning the defence and dual-use sector always require *advance approval* by the authorities (application). In the non-military sector, the monitoring is targeted to Finnish enterprises considered critical for securing vital functions of society.

In non-military corporate acquisitions that come under the scope of application of the Act, the foreign owner may also submit the acquisition for advance approval of the Ministry if the acquisition has reached the stage immediately preceding the final completion (notification).

As regards the defence material industry, monitoring covers all foreign owners. In other sectors, monitoring only applies to foreign owners residing or domiciled outside the EU or EFTA.

### **The EU Regulation**

The EU Regulation will be applied in its entirety as of 11 October 2020. The Member States and Commission will *exchange information on FDI's related to security and public order*, regardless of whether FDI's are being screened in the country where they are being made. The applicability of the EU Regulation does not depend on acquisition of certain percentage of shares (no threshold). So called green field investments belong to the scope of the EU Regulation, but not to the scope of the Act.

Member States are required to notify and provide the Commission and other Member States with information on any FDI undergoing screening as soon as possible. Thereafter, the Member States may give comments and issue further information requests to the monitoring Member State, and Commission may issue an opinion within set timelines. The monitoring Member State shall give consideration to the comments and take into account the opinion of Commission.

### **Proposed amendments to the Finnish Act**

The purpose of updating of the Act is not to widen the scope but to complement the national legislation in order to implement the cooperation mechanism of the EU Regulation and to clarify the practical applicability of the Act. According to the Government Proposal, the following amendments, among others, are proposed:

- clarification of legal definitions in the Act: a key national interest, target of monitoring, defence industry company;
- corporate acquisitions in the security sector would be subject to advance approval by the authorities (currently voluntary notification);
- new provisions regarding the circumvention of the Act and the disclosure of confidential documents and information to national authorities from which the Ministry requests opinions and in the context of the framework for monitoring foreign direct investment in the EU; and
- a new provision on setting conditions in the approval decision of acquisition

The Ministry has requested comments to the draft government proposal by 3 April 2020 at the latest. The final government proposal is to be submitted to Parliament in June 2020 and the amendments of the Act are intended to come into force on 11 October 2020.

### **About possible practical implications of the proposed amendments**

- more information than is currently required shall be submitted to the Ministry on FDI's as part of the screening process under the scope of the Act due to the EU Regulation;
- the deadlines set in the EU Regulation for commenting by other Member States and Commission can be expected to slightly extend the processing times of the authorities under the Act; and

- corporate acquisitions in the security sector would be subject to advance approval by the authorities instead of current voluntary notification.

DLA Piper follows closely the amendments process in Finland and posts updates on the effects of the new rules on foreign corporations.