

QUESTIONS AND ANSWERS ABOUT THE ACT ON THE MONITORING OF FOREIGN CORPORATE ACQUISITIONS

What are the objectives of the Act?

The objective of the Act is to promote foreign investments and adopt a positive attitude to foreign ownership. Primarily, the Act is intended as a tool for screening and monitoring foreign corporate acquisitions.

In practice, the Act aims to secure key national interests, i.e. national defence, the security of supply and functions vital to society, in particular.

The Act enables to restrict the shift of corporate control to foreign owners in the companies within the scope of monitoring, should an overriding national interest so require. The Ministry of Economic Affairs and Employment can also set conditions for the confirmation of corporate acquisitions.

Through the implementation of Regulation EU 2019/452 of the European Parliament and of the Council (screening regulation), many other EU Member States have revised and updated their legislation on foreign investments. The Member States have the right to restrict the freedom of providing services and the right of placement by adopting measures that are justified on the grounds of “security or public order”.

The Ministry of Economic Affairs and Employment acts as the national contact point required in the EU screening regulation. The role of the national contact point is to strengthen communication and cooperation between the EU Member States and the European Commission. Starting from 11 October 2020, information about cases subject to the confirmation procedure laid down in the Finnish Act on the Monitoring of Foreign Corporate Acquisitions and within the scope of the EU screening regulation must be disclosed to other Member States and the European Commission.

What does ‘foreign owner’ mean?

Foreign owners include foreign natural persons that have no place of residence in the EU or EFTA Member States, and foreign organisations and foundations that have no domicile in the EU or EFTA Member States.

Foreign owners also include organisations and foundations that have a domicile in an EU or EFTA Member State, but in which another foreign owner holds at least one tenth of the total votes of all shares in a limited liability company or holds comparable actual control in the organisation.

With regard to corporate acquisitions in the defence sector (including dual-use goods), foreign owners include parties that have a domicile in an EU or EFTA member state.

What companies can be considered critical for functions vital to society?

Considering functions vital to society, criticality may vary depending on the security policy in force at the time in Finland. As a rule, safeguarding the security of supply is key whatever the situation.

The Act does not specify the private or public sectors or functions in which companies are not subject to the screening. This is because it is impossible to predict what sectors and functions will be critical for functions vital to the society in the future. Ultimately, the needs of national defence, public order and security, as well as other functions vital to society, are determined according to the conditions that prevail at each time. However, the operations of a company in a field important to the security of supply or other vital functions does not necessarily mean that it would be subject to screening pursuant to the Act. For example, a number of companies that are not critical for the security of supply operate in the fields of food supply or logistics.

Guidance on the scope of application of the Act is available, for example, in the Government's public guidance documents on the security of supply and national security.

[Government Decision on the Objectives of Security of Supply \(1048/2018\)](#)

[The Security Strategy for Society \(Government Resolution 2 November 2017\)](#)

What is a 'defence and security sector company'?

A defence sector company refers to a company that produces or supplies defence material or other products or services vital to national defence within the meaning of the Act on the export of defence materiel (282/2012) to, for example, the Ministry of Defence, the Defence Forces or the Finnish Border Guard.

In practice, the importance of these products or services is assessed case by case based on existing contracts with the Defence Forces, for example. For example, software, cyber applications, cloud services or other similar products or services can be deemed a vital product or service. The target company maintaining or supporting a critical infrastructure or, for example, providing the Defence Forces with key equipment can also be deemed as a vital function in terms on national security. Other examples of the aforementioned vital products or services include encryption products, civil protection material, products for protection against chemical or biological weapons, radiation and explosives (CBRNE products), and space technology products. In addition, products and services related to securing infrastructure vital to national military defence, such as providing support for construction related to military readiness or supplying fuel to the Defence Forces, can be deemed vital products or services.

A company producing dual-use goods within the meaning of the Act on the Control of Exports of Dual-Use Goods (562/1996) is also regarded as a defence sector company. Among others, a limited liability company operating in the civilian sector that imports

dual-use goods requiring authorisation to third countries, transferring sensitive goods within the EU or that has otherwise been granted authorisation or a notification or decision from an authority for the export of dual-use goods, is considered a defence sector company. Similarly, a civilian sector company using, developing or otherwise handling dual-use technology, such as competence or other technical information, in its operations, such as production or product development, is considered a defence sector company.

A defence sector company is a company that supplies or produces products or services critical for security in society to Finland's key authorities in relation to their statutory duties. These security authorities include the Finnish Defence Forces, the Finnish Border Guard, the Police of Finland, Finnish Customs, the National Emergency Supply Agency, the National Security Authority (NSA) and the Finnish Transport and Communications Agency (Traficom).

Products or services whose provision to key Finnish authorities can be considered as critical include software (e.g. encryption software), cyber security applications, certification services, cloud services, data centre services and other products and services related to maintaining these. In addition, for example, personal protective equipment and their provision to key security authorities can be considered critical products or services. However, software for regular office use that has not been tailored for the use of a security authority does not fall under the scope of critical products or services within the meaning of the Act.

Amendments on acquisitions of security sector companies entered into force in the Act on 11 October 2020.

When must the application for/notification of a corporate acquisition required by the Act be submitted?

If a corporate acquisition concerns a defence or security sector company, the application is mandatory, and it must always be submitted to the Ministry of Economic Affairs and Employment beforehand. The Act does not specify any time limits on when the Ministry of Economic Affairs and Employment can intervene in an acquisition of a defence or security sector company if no application has been submitted to the ministry.

If the acquisition concerns a company other than a defence or security sector company, the notification is voluntary, and it may also be submitted beforehand. However, an advance notification can only be submitted during the phase directly preceding the final conclusion of the business arrangement (e.g. a letter of intent, binding on the parties, has already been signed for the planned acquisition).

The Ministry of Economic Affairs and Employment, together with its network of authorities, monitors implemented corporate acquisitions regarding companies subject to screening. Based on screening, the ministry may also independently request information about corporate acquisitions that may be subject to screening pursuant to the Act.

If an applicant deems that the target company may potentially be critical considering functions vital to society, it is recommended that a notification be submitted to the Ministry of Economic Affairs and Employment.

What are the ownership limits laid down in the Act, based on which corporate acquisitions need to be confirmed by the Ministry of Economic Affairs and Employment?

If a foreign owner acquires at least one tenth, at least one third or at least half of the total votes of all shares or comparable actual control in a company within the scope of screening, an application/notification must be submitted.

For specific reasons, the buyer can be obligated to also submit an application/notification for measures that increase control implemented after processing and that would not result in these limits to be exceeded.

Amendments on the definition of a corporate acquisition entered into force in the Act on 1 July 2014.

Is there a ready-made application/notification template? What information must be included in the application?

There is no fixed format for the application/notification, but it must include key information about the entity being monitored, foreign owner and corporate acquisition necessary for confirming the corporate acquisition.

The Ministry of Economic Affairs and Employment may request any additional information required for the processing of the case, until the information provided in the application/notification can be considered to be sufficient for a decision. For corporate acquisitions in the defence and security sectors falling under Section 5 of the Act, the additional information must be requested within three months from the date on which the Ministry receives the application/notification on the acquisition.

For an indicative check list of the information to be included in an application/notification, visit the [website of the MEAE](#).

Other Member States and the Commission must be notified of cases in the process of confirmation under the Act starting from 11 October 2020. A separate filled-in form must be attached to applications and notifications submitted to the Ministry of Economic Affairs and Employment.

[Form to be attached to an application/notification](#)

The Ministry of Economic Affairs and Employment's decision can include conditions. What does this mean in practice?

The conditions are set only in certain situations. They are necessary mitigation measures that are aimed at restricting the critical security effects of a foreign corporate

acquisition instead of the authorisation for the acquisition being entirely denied in a Government plenary session.

The Ministry of Economic Affairs and Employment can include conditions in their decision to secure a critical national interest. Authorisation can only be denied in a Government plenary session. Conditions can only be set if both parties to the acquisition agree to observe them. The conditions are defined in negotiations between the acquisition parties and the competent authorities.

The content of the conditions varies depending on the case. For example, they can require the exclusion of a certain business function or share from the acquisition or an obligation to ensure the continuation of services under related production and supply agreements.

Has the coronavirus crisis and the state of emergency affected corporate acquisition screening?

In its Communication (C(2020) 1981), the European Commission issued guidance to EU Member States concerning foreign direct investment and free movement of capital. The Commission called for vigilance from the Member States on any foreign corporate acquisitions involving third countries that could form risks amidst the COVID-19 crisis to the security and public order within the EU. In accordance with the Communication, the Ministry of Economic Affairs and Employment pays particular attention to healthcare businesses that produce medicinal products, personal protective equipment or vaccines, for example. The assessment under the Finnish Act on the Monitoring of Foreign Corporate Acquisitions is time-critical and case-specific. Target companies vital to Finland's security of supply and functions critical to society automatically fall under the scope of the Act when investments or buyers from outside EU/EFTA are involved.

How long does the confirmation process take in the Ministry of Economic Affairs and Employment?

Applications/notifications will always be processed urgently in the ministry.

The processing time varies on a case-by-case basis, depending on the extent of the case. When preparing a corporate acquisition case, the ministry will also acquire comments from other authorities as necessary, in which case the process will also take more time. A round of comments usually takes three to four weeks, including a round of comments in the network of authorities and an analysis by the ministry.

In acquisitions not concerning defence or security sector companies, the Ministry of Economic Affairs and Employment must initiate further investigations within six weeks, and the decision to refer the case forward must be made within three months. All above mentioned time periods begin to run only after the Ministry deems that it has received all information relevant for processing the case from the applicant.

Are the decisions of the Ministry of Economic Affairs and Employment free of charge?

No. From 1 January 2020 onwards, the fee for processing an authorisation application related to a foreign corporate acquisition is EUR 5,000/decision and decisions for non-investigation are EUR 1,000/decision. This decision is in force until 31 March 2022 ([The Ministry of Economic Affairs and Employment's decree on services subject to a fee](#)).