



Proposal for control of foreign ownership in Norway

A legislative proposal calls for the introduction of control of ownership in Norway

A recent proposal for a revised Norwegian Security Act which was put forward by the legislative committee (Traavikutvalget) on 12 October 2016, includes a new provision on governmental control of ownership. Norwegian legislation has not contained a general control of ownership mechanism since the Business Acquisitions Act ("ervervsloven") was repealed in 2002.

According to Section 10-1 of the proposed Act, foreign buyers (legal or physical) wishing to acquire a certain stake in a Norwegian company deemed essential for fundamental national functions, will be required to file a notification with Norwegian authorities. Depending on the circumstances, notification shall be made either to the responsible ministry or the Norwegian National Security Authority (NSM).

The duty to notify will be triggered where the acquisition directly or indirectly leads to a situation where the buyer either (i) obtains at least a third of the share capital, shares or votes, (ii) obtains a right to become owner of at least a third of the share capital or shares, where such right must be regarded as de facto ownership, or (iii) otherwise obtains a significant influence over the management of the company.

The provision is a consequence of the Committee's findings that the existing set of rules does not provide sufficient means to control companies which handles information, technology and/or tangible assets significant for fundamental national functions, and furthermore that public considerations relating to reliability of supply and preparedness justify control of ownership in such cases.

In its report, the Committee addresses the question of whether it would be contrary to Norway's obligations under the EEA Agreement to implement the proposed control mechanism, in particular whether it would be contrary to the right of establishment and/or free movement of capital. The Committee acknowledges that control of foreign (EEA) ownership is, in general, contrary to the fundamental freedoms of the Agreement. However, pursuant to Article 123 of the Agreement (which corresponds to Article 346 TFEU), it is the Contracting Parties' prerogative to define their essential security interests and their duty to protect them.

According to the proposal, decisions to block an acquisition or to approve it subject to conditions shall be made by the King in Council (i.e. the Norwegian Government). The Government may only intervene if there is a not insignificant risk that the acquisition will be harmful to fundamental national functions.

The Committee underlines that the provision shall be interpreted narrowly and that the intervention powers shall only be used in exceptional cases where control of ownership is imperative in order to safeguard certain vital functions of society. Statistics from countries where similar measures have been implemented, such as Great Britain, the US, Finland and France, show that the actual number of interventions is generally very low. Furthermore, any interventions outside the situations as specified in the Security Act will not be permitted.

It still remains to be seen whether the majority of the Norwegian Parliament agrees with the view of the Committee and passes the proposed legislation. If so, it will be contrary to the general trend in Norway, where the conservative/liberalist government in the latest years has taken steps away from political intervention in business transactions. On the other hand, the new provision will be in line with an international trend towards more political intervention and stronger emphasis on public interest considerations.



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