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MANAGEMENT

# **Challenges and Compliance in Sweden's New FDI Law**

The Impact on Foreign Investors and Swedish  
Sellers

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# Contents

<b>Abstract</b> .....	<b>5</b>
<b>Abbreviations</b> .....	<b>6</b>
<b>1 Introduction</b> .....	<b>7</b>
1.1 Background.....	7
1.2 Purpose and Research Questions.....	8
1.3 Delimitations .....	8
1.4 Method and Materials.....	9
1.5 Outline .....	10
<b>2 Legal Framework and Literature Review</b> .....	<b>11</b>
2.1 Overview of the Swedish Foreign Direct Investment Law in Sweden.....	11
2.2 Purpose and Scope of the Legislation.....	12
2.2.1 Economic Security and Protection of Critical Assets.....	13
2.2.2 National Security and Defense .....	13
2.2.3 Protection of Intellectual Property and Technology.....	13
2.2.4 Promotion of Reciprocity and Fair Competition.....	14
2.2.5 Compliance with International Obligations .....	14
2.3 Definitions and Key Concepts of FDI and Critical Sectors.....	14
2.3.1 Critical Sectors .....	14
2.3.2 Foreign Direct Investment.....	15
2.4 Foreign Investment Screening Mechanisms in the EU.....	16
2.4.1 Alignment with EU Directives and Regulations .....	17
2.4.2 Compatibility with International Treaties and Obligations .....	18
2.4.3 Lessons Learned from European Union Member States' FDI Screening Practices .....	18
2.4.4 Implications for Cross-Border Investments within the EU .....	19
2.5 Scholarly Discourse on Legal and Policy Implications of FDI Screening	20
<b>3 Analysis of Legal Challenges and Compliance Issues</b> .....	<b>22</b>
3.1 Legal Challenges for Foreign Investors.....	22
3.1.1 Compliance Obligations and Notification Requirements.....	22
3.1.2 Criteria for Triggering Mandatory Notifications.....	23
3.1.3 Review Process and Timelines.....	24
3.1.4 Grounds for Prohibiting or Approving Investments.....	26
3.1.5 Recourse Mechanisms and Judicial Review .....	27
3.2 Compliance Issues for Swedish Sellers .....	28

3.2.1	Due Diligence Obligations and Pre-Transaction Assessment .....	28
3.2.2	Disclosure Requirements and Documentation Standards.....	29
3.2.3	Strategies for Mitigating Regulatory Risks .....	30
3.2.4	Impact on Transaction Structuring and Negotiations.....	32
3.3	Obligations and Responsibilities under the New Law.....	33
3.3.1	Foreign Investors.....	33
3.3.2	Swedish Sellers .....	33
<b>4</b>	<b>Conclusions.....</b>	<b>34</b>
4.1	Summary of Key Findings and Insights .....	34
4.2	Policy Implications and Recommendations.....	34
4.3	Contributions to Existing Knowledge .....	36
4.4	Future Research Directions .....	37
	<b>References.....</b>	<b>38</b>

# Abstract

The enactment of the new Swedish foreign direct investment law, "Lag (2023:560) om granskning av utländska direktinvesteringar", is a major step taken by the Swedish government in order to safeguard its strategic interests against foreign investors. This thesis will evaluate the legal challenges and compliance issues that foreign investors and Swedish sellers face under the new law. The research questions are: What are the legal challenges and compliance issues arising from Sweden's new FDI law for foreign investors? What are the legal challenges and compliance issues arising from Sweden's new FDI law for Swedish sellers?

To answer these questions this thesis will use a legal dogmatic analysis. This method will be used to examine the intricate legal framework introduced by the law and put it in the overall context of the European Union (EU) legislation. The study discusses whether the foreign direct investment law of Sweden complies with the EU standards. Further, this paper will cover the legal ramifications of the newly introduced Swedish foreign direct investment law affecting sellers of the assets traded under scrutiny.

Several legal challenges and compliance issues for both foreign investors and Swedish sellers are shown in the study. This includes notification requirements, procedural difficulties and legal uncertainties. While the new law aims to protect national security it also introduces legal challenges and compliance issues that can cause problems for both the foreign investors and the Swedish sellers.

This thesis contributes to giving clarity and understanding of Sweden's new law on foreign direct investments as well as giving policy recommendations for effective enforcement of the new law.

**Keywords:** Foreign Direct Investment, FDI, Legal Challenges, Compliance Issues, Investment Screening, National Security, Swedish Law, EU Law

# Abbreviations

CJEU	Court of Justice of the European Union
ECJ	European Court of Justice
EU	European Union
FDI	Foreign Direct Investments
MiFID II	Markets in Financial Instruments Directive II
MiFIR	Markets in Financial Instruments Regulation
MNC	Multinational Corporations
OECD	Organisation for Economic Co-operation and Development
TFEU	Treaty on the Functioning of the European Union
WTO	World Trade Organisation

# 1 Introduction

## 1.1 Background

During the period of modernization provided by global increase in connections and interrelations an important part of it is foreign direct investments (FDI), which provide gains in the development of country economies worldwide.<sup>1</sup> Sweden, supported by its open and liberal economic principles, is an attractive destination for foreign investors who want to take advantage of the state to stimulate innovation, provide more jobs and generate sustainable economic growth. However, against the background of evolving geopolitical dynamics and growing concerns over national security, the Swedish government has taken decisive steps to safeguard its strategic interests through the enactment of the new Swedish foreign direct Investment law, "Lag (2023:560) om granskning av utländska direktinvesteringar."<sup>2</sup>

The traction of this legislation is because the government of this country is attempting to maintain the stability between the attraction of capital from abroad and the blocking of some economic sectors from foreign entities, which may pose a risk to this country's economy.<sup>3</sup> It is based on the fact that Sweden will continue to protect an open business environment in this period of geopolitics issues and advanced technologies while also realising that the implementation of common sense mechanisms of scrutinizing some categories of foreign investment needs to be done.

Sweden is one of the countries that have championed free trade and investments. It has an excellent reputation as a business-friendly and stable nation, thus attracting multinational corporations (MNC) and investors worldwide. Conversely, the dynamic, changing character of security threats such as cyberattacks, espionage and economic coercion, in the view of the Swedish policymakers, has forced a review of the regulations that help get to the bottom of the newly emerging challenges to national security and sovereignty.

Moreover, there is a vast spread of these respective dimensions, coupled with the vulnerability of foreign meddling. Therefore, the modern trend has emphasized the sophistication of foreign investment regulation.<sup>4</sup> This legislation prescribes particular requirements and standards of criteria for establishing foreign investment's impact on the security of nations and this law proposes a clear definition to the

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<sup>1</sup> Magnus Blomström, Gunnar Fors and Robert E. Lipsey. "Foreign Direct Investment and Employment: Home Country Experience in the United States and Sweden." *The Economic Journal* 107, no. 445 (1997): 1787-1797.

<sup>2</sup> *Lag (2023:560) om granskning av utländska direktinvesteringar.*

<sup>3</sup> Olga Golubeva. (2016). Determinants of Swedish Foreign Direct Investments (FDI): How Important Is Profitability?. *Economics and Finance Review*, 4(10), 1-19.

<sup>4</sup> Magnus Blomström, Ari Kokko and Jean-Louis Mucchielli. "The Economics of Foreign Direct Investment Incentives." in *Foreign Direct Investment in the Real and Financial Sector of Industrial Countries*, pp. 37-60. Berlin, Heidelberg: Springer Berlin Heidelberg, 2003.

investors while developing the capacity of the government to protect valuable goods and service agencies. Furthermore, the imposition of the Swedish foreign direct investment law is clear evidence of the trend being experienced in the European Union and other international jurisdictions where governments are in the process of re-addressing their political frameworks to counter the risks arising from the unfolding global investment landscape. Amid recent geopolitical conflicts and rising competition for strategically essential assets, the EU has called for greater cooperation and joint involvement to put a uniform approach to FDI screening and protection of strategically important assets into practice.<sup>5</sup>

This thesis, motivated against such a background, will critically examine the constitutional and policy implications of Sweden's new FDI screening regulations. The analysis will deal with the rights and responsibilities of foreign investors, Swedish sellers and the country's economic conditions. This paper attempts to shed some light on the reasons, objectives and complexities of enacting this legislation, thus aiming to contribute to a more profound comprehension of the ongoing transformations at play within the interrelations between foreign investment and national security in countries like Sweden.

## **1.2 Purpose and Research Questions**

The enactment of Sweden's new Foreign Direct Investment law is a major step by which Sweden changes the legal approach to foreign investments in order to safeguard national security on one hand while fostering an open economy on the other. This thesis is intended to analyse the multifaceted legal challenges and compliance issues stemming from this new legislation. Thus, this study attempts to disclose, via a thorough legal analysis, the necessary operational changes and adjustments to strategies in business practices as a result of the new law. This leads us to the two following questions.

- What are the legal challenges and compliance issues arising from Sweden's new FDI law for foreign investors?
- What are the legal challenges and compliance issues arising from Sweden's new FDI law for Swedish sellers?

## **1.3 Delimitations**

This thesis aims to identify and examine the legal challenges and compliance issues arising from Sweden's new Foreign Direct Investment law. In order to carry out a focused analysis we need to establish several delimitations.

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<sup>5</sup> Olafur Margeirsson. "Foreign Direct Investment: A Focused Literature Review." *Binzagr Institute for Sustainable Prosperity* (2015): 1-32.



The focus of the thesis is on the legal challenges and compliance issues arising from the new law in Sweden. The main focus is on the legal framework within Sweden with references to EU regulations and international laws to provide context and for comparison. Detailed analysis of similar laws in other countries will not be within the scope for the thesis. These delimitations guarantee a focused analysis with a clear legal perspective throughout the thesis.

Only foreign direct investments that might threaten the national security of Sweden are covered in the thesis. Other types of investments, such as indirect investments are not included in this thesis since they are not relevant to the study.

The thesis examines the impact on foreign investors and Swedish sellers since they are the stakeholders that could be disadvantaged by the new law. Other potential stakeholders are not focused on.

These delimitations help to exclude those parameters that may be out of the scope of the analysis and are not relevant in order to answer the research questions.

#### **1.4 Method and Materials**

This thesis employs an adequate method in order to analyse the legal challenges and compliance issues stemming from the enactment of Sweden's new foreign direct investment law.

At the core of the methodological approach lies the legal dogmatic analysis. This is a traditional legal scholarly method that systematically examines legal texts.<sup>6</sup> Statutory provisions and regulatory frameworks will be thoroughly analysed and deciphered in this study so that the legal norms that governs foreign direct investments in Sweden can be uncovered and interpreted. This analysis aims to provide clarity on the legal implications and procedural requirements introduced by the new FDI law.

Through the examination of the interplay between Swedish law and the EU law, such as the EU Screening Regulation, it will be possible to see the level of the coherence of Sweden's new FDI law with the internal market and if it complies with the free movement of capital under the Treaty on the Functioning of the European Union TFEU.

Moreover, a qualitative research approach will be used to examine and select expert opinions in order to reach depth and context regarding the impacts of Sweden's new FDI law. This approach ensures that it is not just a theoretical debate, but one that also provides a factual background by looking at the law's practical aspect.

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<sup>6</sup> Jan Smits. "What Is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research" in Rob van Gestel, Hans Micklitz, and Edward L Rubin (eds), *Rethinking Legal Scholarship: A Transatlantic Dialogue*, Cambridge University Press, 2017, p. 5.

Lastly, the thesis will also include detailed literature reviews of legal scholar texts. The research will analyse legal doctrine and law journals. This will make sure that the thesis is informed by the most recent and relevant viewpoints in legal thought.

## **1.5 Outline**

The thesis aims to offer a thorough picture of the new FDI law in Sweden and the implications of this new legal wall. The Introduction starts with an outlook that reveals the background of the enactment of such a law. It also entails the key motives that gave rise to such a law and how it connects with national security and economic policy. The chapter on legal framework and literature review surveys the papers describing the screening mechanisms, the national defense issues and the legislation framework governing foreign investment in Sweden and other EU Member States.

The following part, Legal Analysis, dives into the essential parts of the Swedish FDI law including its scope, criteria for the scrutiny, requirements related to the procedure and enforcement mechanisms. Through a detailed look at principles, treaties, directives and regulations this piece of writing shall focus on the importance of this legislation. Last but not least, the Conclusion brings up the main findings, points out the research outcomes digested into scholarly research and policy discussion and provides actions for future research and policy development.

## 2 Legal Framework and Literature Review

### 2.1 Overview of the Swedish Foreign Direct Investment Law in Sweden

The Swedish foreign direct investment law, introduced in 2023 as Lag (2023:560), a new legislation adopted by the Swedish Parliament, represents a major change in the country's attitude towards regulating foreign investment.<sup>7</sup> This section is devoted to describing the main principles and the legal base applied in the regimes of FDI screening in Sweden through legislative documents, scientific sources and policy documents to determine the scope and objectives and their potential consequences.<sup>8</sup>

The main objective of the FDI law is to increase national security and protect assets and technologies through control and influence by foreign countries. The Swedish government, inspired by foreign powers' interventions and the European Union's precedent, developed its legal framework<sup>9</sup> to address the increasing concerns about the possible conflicts in national security and social order.<sup>10</sup> Sweden aims to prevent foreign acquisitions and investments that could empower hostile actors and exacerbate security challenges by implementing a formalized screening process.

Fundamental constituents of the Swedish FDI screening regime encompass the scope of scrutiny transactions, rules for assessing threats and risks and the procedures required for notifying and reviewing investment proposals.<sup>11</sup> If a certain type of investment, under the FDI law, is labelled as mandatory screening, that investment could be in, for instance, critical infrastructure or sensitive technology such as defense-related industries. The law confers upon the Swedish government a right to assess possible repercussions that investment from outside can have on national

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<sup>7</sup>Lag (2023:560) om granskning av utländska direktinvesteringar.

<sup>8</sup> Ana Catarina Gandra de Carvalho. "The Impact of Foreign Direct Investment on Regional Economy: A Brazilian Investigation." (2023).

<sup>9</sup> Elfie Ekegren Franzetti. "Foreign Direct Investments Into the European Union: The Effect of Regulation (EU) 2019/452 on Foreign Investors." (2020).

<sup>10</sup> Diana A.A. Reisman. "The EU and FDI: What to Expect from the New Screening Regulation." *IRSEM Research Paper* 104 (2020): 13.

<sup>11</sup> Robert Volterra and Angela Ha. *EU Investment Protection Law: Chapter Eight of CETA, the Vietnam and Singapore Free Trade Agreements and EU Regulations 1219/2012, 912/2014 and 2019/452. Article-by-Article Commentary*. UK: Oxford University Press, 2024.

security and public order, bearing in mind the type of investor, the branch of industry to be affected and the strategic nature of the target asset or technology.<sup>12,13</sup>

Furthermore, the FDI Law constitutes the regulatory guidelines for notifying and assessing investment tenders, leading to transparency, predictability and responsibility in the decision-taking procedure. When foreign investors are in a position where they have to submit notifications to the Swedish investment screening authority for all those transactions that fall within the scope of the law, they must be apprised of the relevant information and every document they may need to facilitate the screening process.<sup>14</sup>

The legal basis of the screening of Sweden procedures was inspired by international laws, EU directives and regional cooperation aimed at facilitating the harmonization of the investment procedures and the information exchange among member nations. The Swedish government's screening procedure strategy is to coordinate EU standards and guidelines.<sup>15</sup>

The scholarly debate around the legal background of Sweden's FDI screening provides researchers with knowledge of the legislation's performance, difficulties and effects. Swedish researchers assessed the compatibility of levels of screening in light of the EU law, bringing to attention that the ultimate goal should be the way forward in applying and implementing the FDI screening across the EU Member States.<sup>16</sup> Furthermore, the calibration of screening measures in relation to the magnitude of security risks and the investigation and evaluation of foreign investors has been a topic of examinations due to the need for risk-based approaches and targeted interventions.

## 2.2 Purpose and Scope of the Legislation

The purpose and scope of legislation embracing foreign investment screening mechanisms involve the country's economic safety, security and strategic aspects. These three aspects are complex and highly connected.<sup>17</sup> The entry of the worldwide

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<sup>12</sup>Lag (2023:560) om granskning av utländska direktinvesteringar, Sections 1-3 and 17-18.

<sup>13</sup> Fabian Maximilian Teichmann and Chiara Wittmann. "Whistleblowing: Procedural and Dogmatic Problems in the Implementation of Directive (EU) 2019/1937." *Journal of Financial Regulation and Compliance* 30, no. 5 (2022): 553-566.

<sup>14</sup> Jonas Hallberg. "Foreign Investment Screening in Finland, Norway, Sweden and Denmark." *YSEC Yearbook of Socio-Economic Constitutions 2020: A Common European Law on Investment Screening (CELIS)* (2021): 209-226.

<sup>15</sup> Jonathan Zeitlin. "Conclusion: The Open Method of Coordination in Action: Theoretical Promise, Empirical Realities, Reform Strategy." *The Open Method of Co-ordination in Action: The European Employment and Social Inclusion Strategies* (2005): 447-503.

<sup>16</sup> Maja Kristiansson-Gran. "Screening of Foreign Direct Investments in Sweden: And its compatibility with European Union Law." (2024).

<sup>17</sup> Jovan Abdulrahman and Likun Sun. "The Potential Effects of the New FDI Screening Mechanism on Chinese FDI in Sweden." (2023).

FDI screening laws, as in the case of Sweden through its foreign direct investment law is usually informed by various objectives and considerations. These objectives are derived from the relevant legal frameworks, academic studies and national interests.

### **2.2.1 Economic Security and Protection of Critical Assets**

The main goal of national screening legislation on the FDI is to ensure the economic independence of the country and the protection of crucial assets from foreign ownership or modernization. This concern becomes an even more pressing matter in the sectors that are deemed to be indispensable for national infrastructures, technology, as well as innovation, where an acquisition or investment made by foreigners may lead to damages to competitiveness, resilience and strategic autonomy.<sup>18</sup> Protective measures for critical assets and technology are vital to ensuring long-term security and economic development.

### **2.2.2 National Security and Defense**

Laws regulating FDI screening address national security and defense aspects through which foreign businesses are not allowed to assume or take undue control over strategic information and technologies. Foreign investors and their country's influence may target the sectors, i.e., national defense, telecommunications, energy and critical infrastructure.<sup>19</sup> By screening and potentially blocking investments that pose security risks, countries seek to mitigate threats to sovereignty, territorial integrity and strategic interests.

### **2.2.3 Protection of Intellectual Property and Technology**

Among the core objectives of the FDI screening legislation is the intellectual property protection right against any outflow and an unauthorized copy of the technology by investors. One of the most important aspects of foreign direct investment regulation is that in the period of fast technological advancement and digital transformation, the issue of intellectual property rights theft, espionage and cyber threats has been crucial. So the importance of regulation of foreign investment in strategic sectors has been boosted; for example Directive 2014/65/EU.<sup>20</sup>

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<sup>18</sup> Steffen Hindelang and Andreas Moberg. "A Complex Setting of Cooperation and (Potential) Conflict: Regulation (EU) 2019/452 in a Doctrinal Perspective." *YSEC Yearbook of Socio-Economic Constitutions 2020: A Common European Law on Investment Screening (CELIS)* (2021): 837-852.

<sup>19</sup> Fabian Maximilian Teichmann and Chiara Wittmann. "Whistleblowing: Procedural and Dogmatic Problems in the Implementation of Directive (EU) 2019/1937." *Journal of Financial Regulation and Compliance* 30, no. 5 (2022): 553-566.

<sup>20</sup> A. M. Kriger. "Review of Changes in the Regulation of Derivatives in Compliance with the Directive No. 2014/65/EC the Markets in Financial Instruments Directive." *Actual Probs. Econ. & L.* (2017): 145.

## **2.2.4 Promotion of Reciprocity and Fair Competition**

Additionally, the FDI screening bill adopts the concept of reciprocity that aims to avoid unfairness and provide a level playing field that encourages domestic and foreign companies to compete. This entails the examination of investment initiatives for the risk of discriminatory acts, market distortions and extra advantages given to foreign corporate entities/governments by their national governments by introducing regulation (EU) No 600 in 2014. Treaties and agreements ensure transparency principles and promote non-discrimination and reciprocity, which are a conducive environment for sustainable economic growth and innovation.<sup>21</sup>

## **2.2.5 Compliance with International Obligations**

Similarly, FDI screening legislation is introduced to fulfil international convention duties alongside commitments at different levels, like treaty obligations, EU directives and regional cooperation agreements. Some countries, such as Sweden, follow the EU standards and guidelines and try to ensure that their investment screening is consistent with Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union.<sup>22</sup> International law and norms further consolidate the confidence of FDI screening mechanisms in their ability to carry out their functions, creating a credible and legitimate framework that investors and trading partners can trust.<sup>23</sup>

## **2.3 Definitions and Key Concepts of FDI and Critical Sectors**

### **2.3.1 Critical Sectors**

Critical sectors (industries, infrastructure, or objective areas of national security, economy, or public welfare) represent the main elements of the country's national security, economy, or public welfare.<sup>24</sup> If we sought to delineate the sphere of foreign investment scrutiny, it would be meaningful to correlate sectoral characteristics with risks and vulnerabilities that might intensify regulatory scrutiny. Vital sectors are usually assigned to industries essential to a country because they provide crucial governance services, data security or national defense.

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<sup>21</sup> Jon Bergman. "Concentrations in the EU Pharmaceutical Sector: The Protection of Effective Competition under Council Regulation No 139/2004 on the Control of Concentrations Between Undertakings." PhD diss., Department of Law, Uppsala University, 2018.

<sup>22</sup> Steffen Hindelang and Andreas Moberg. "A Complex Setting of Cooperation and (Potential) Conflict: Regulation (EU) 2019/452 in a Doctrinal Perspective." *YSEC Yearbook of Socio-Economic Constitutions 2020: A Common European Law on Investment Screening (CELIS)* (2021): 837-852.

<sup>23</sup> European Parliament Resolution of 14 September 2022 on the proposal for a regulation of the European Parliament and of the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials (2022/0382(COD)) [2022] OJ C107/1.

<sup>24</sup> Carlos Esplugues Mota. "A More Targeted Approach to Foreign Direct Investment: the Establishment of Screening Systems on National Security Grounds." *Braz. J. Int'l L.* 15 (2018): 440.

The idea of vital participation at the scientific level has been intensely debated in many academic articles and particular documents referring to national security, economic reliability and risk analysis. For instance, detecting and safeguarding vital areas like electricity, telecoms or movement from foreign interferences or attack attempts is of utmost importance.<sup>25</sup> The EU statutes and laws serve as tools in defining critical industries and identifying appropriate criteria to identify the shares and strategic investments that can be considered important. Regulation (EU) 2019/452 is the first instrument that sets clear rules on screening foreign direct investments in the EU.<sup>26</sup> In particular, the focus is on safeguarding critical infrastructures important to the Member States, namely critical technologies and sensitive information systems. Setting about harmonization of national provisions corresponding to the EU regulations, Member State representatives aspire to increase the level of cooperation and coordination in matters of security in the European Union.

### 2.3.2 Foreign Direct Investment

Foreign direct investment refers to the acquisition or establishment by a foreign investor in an enterprise in another country.<sup>27</sup> Unlike portfolio investment, which involves purchasing securities or financial assets without gaining control or influence over the underlying business, FDI entails an acquisition of significant degree of ownership and therefore also control and long-term involvement in the operations of the invested enterprise. FDI can take various forms including mergers and acquisitions, joint ventures and strategic partnerships and it plays a crucial role in promoting cross-border economic integration, technology transfer and capital flows.

Scholarly discourse on foreign direct investment includes various topics, such as economic implications, policy considerations and regulatory frameworks. Existing literature offers insights into the drivers and consequences of FDI and its impact on host countries' economic development, industrial competitiveness and innovation capacity.<sup>28</sup> For instance, Directive 2014/65/EU on markets in financial instruments addresses the regulatory framework for FDI in the context of financial markets, aiming to ensure transparency, investor protection and market integrity. Similarly, Council Regulation (EC) No 139/2004 focuses on controlling concentrations between undertakings, including mergers and acquisitions involving foreign investors, to prevent anti-competitive practices and safeguard consumer welfare.

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<sup>25</sup> Kristijan Poljanec and Tomislav Jakšić. "Safeguarding Croatian Strategic Industries Within the Scope of the EU Foreign Direct Investment Regime." *Central European Journal of Comparative Law* 1, no. 2 (2020): 123-149.

<sup>26</sup> Steffen Hindelang and Andreas Moberg. "A Complex Setting of Cooperation and (Potential) Conflict: Regulation (EU) 2019/452 in a Doctrinal Perspective." *YSEC Yearbook of Socio-Economic Constitutions 2020: A Common European Law on Investment Screening (CELIS)* (2021): 837-852.

<sup>27</sup> Maitena Duce and B. de España. "Definitions of Foreign Direct Investment (FDI): A Methodological Note." *Banco de Espana* 6, no. 2 (2003): 43-49.

<sup>28</sup> I. A. Moosa. (2004). "Foreign Direct Investment." in *International Financial Operations: Arbitrage, Hedging, Speculation, Financing and Investment* (pp. 318-340). London: Palgrave Macmillan UK.

## 2.4 Foreign Investment Screening Mechanisms in the EU

The analysis of FDI screening mechanisms in the European Union (EU) gives a chance to discover different methods of regulating foreign investments and protecting national interests utilized by members of this union.<sup>29</sup> The review pertains to the legal setting, institutional mechanisms and goals of investment screening regulations in the EU, noting shared characteristics, contrasting elements and new patterns among the Member States in this field. Firstly, it is essential to understand the legal authority's background in screening foreign investment at the EU level.<sup>30</sup> The (EU) Regulation of 2019/452 introduced a framework for screening foreign investments into the Union.<sup>31</sup> The directive's purpose is to encourage coordination and exchange of information among the EU Member States on the review, scrutiny and screening dimension of FDI, keeping at the same time open the option to maintain national security and public order among its Member States at their level.

The EU FDI Screening Regulation suggests such practice along with regulatory powers for each Member State without creating a single feedback corridor or imposing uniform screening criteria for each Member State.<sup>32</sup> Rather than stipulating the same thing among the members, harbouring information and experiences on each induces a climate of coordination and cooperation. This conception follows the EU's principle of recognizing the sovereignty of the Member States and pooling their efforts together to lead a harmonized approach to security matters.<sup>33</sup> While the location is crucial, analysing foreign investment screening mechanisms in the European Union (EU) is complicated because different countries apply different criteria regarding scope, procedures and institutional arrangements. Some Member States, for example, France, Germany and Italy have well-established screening processes; significant latitude is given to the government when reviewing foreign investment in strategic areas like defense, critical infrastructure and technology.

Foreign Trade and Payments Act from Germany, which in turn gives the government the privilege to assess and inevitably cease foreign investments if those investments are likely to threaten public order or security.<sup>34</sup> Similar to France, there is a law

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<sup>29</sup> Thilo Hanemann, Mikko Huotari and Agatha Kratz. "Chinese FDI in Europe: 2018 Trends and Impact of New Screening Policies." *MERICIS Papers on China* (2019): 7.

<sup>30</sup> Elfie Ekegren Franzetti. "Foreign Direct Investments Into the European Union: The Effect of Regulation (EU) 2019/452 on Foreign Investors." (2020).

<sup>31</sup> Steffen Hindelang and Andreas Moberg. (2021). A Complex Setting of Cooperation and (Potential) Conflict: Regulation (EU) 2019/452 in a Doctrinal Perspective. *YSEC Yearbook of Socio-Economic Constitutions 2020: A Common European Law on Investment Screening (CELIS)*, 837-852.

<sup>32</sup> Sebastian Seelmann-Eggebert. "EU Investment Protection Law: Chapter Eight of CETA, the Vietnam and Singapore Free Trade Agreements and EU Regulations 1219/2012, 912/2014 and 2019/452. Article-by-Article Commentary edited by Moritz Keller." (2023): 449-453.

<sup>33</sup> Stephan W Schill. "The European Union's Foreign Direct Investment Screening Paradox: Tightening Inward Investment Control to Further External Investment Liberalization." *Legal Issues of Economic Integration* 46, no. 2 (2019).

<sup>34</sup> Julia Hörnig, Stefan Kirwitzke and Falk Schöning. "Foreign Direct Investment Screening in Germany." in *National Security in International and Domestic Investment Law*, pp. 155-175. Routledge, 2024.



permitting the government to scrutinize foreign investments in the most important sectors considered national security.<sup>35</sup> Such measures may be seen as preferring an indeed cautious foreign investment attraction driven by the sense of thoughtfulness about the risks of disclosing secrets and young technologies, unlike other EU members, who take the whole-blocking approach and liberal policies, comparable with the Netherlands and the UK (pre-Brexit), which allow the inflow of foreign investments, while also making sure to manage certain national security issues.<sup>36</sup> These nations strive to be candid, transparent and predictable in the screening process, especially regarding how well they can get foreign investment into their countries, which will enhance the advancement and development of their economies.

As a major player, the European Court of Justice (ECJ), with its rulings, has also actively shaped the legal infrastructure of Foreign Investment screening in the EU.<sup>37</sup> With its ECJ judgment in Case C-106/22 - Xella Magyarország<sup>38</sup>, the principle of proportionality in revising new Member States' screening measures was confirmed, as they are discordant with EU legal order. This principle settled that the EU members were not bound to adopt regulations to protect legitimate public interests unless they did so without hindering the free movement of capital within the EU single market.<sup>39</sup> In addition, EU legislation relating to finance, telecommunications, energy, etc., is applied in member countries and thus also affects other countries. As an example, Directive 2014/65/EU stipulating the markets in financial instruments and Regulation (EU) No 600/2014 on markets in financial instruments solve transparency and regulatory issues on cross-border investments in the financial sector, leading to the reduction of the status and applicability of the national screening mechanisms.<sup>40</sup>

#### **2.4.1 Alignment with EU Directives and Regulations**

One of the Swedish FDI law principles adheres to several European Union directives and regulations for foreign investments and the protection of national security interests in the EU. The Directive 2014/65/ EU on markets in financial instruments

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<sup>35</sup> Philipp Stompfe. "Foreign Investment Screening in Germany and France." *YSEC Yearbook of Socio-Economic Constitutions 2020: A Common European Law on Investment Screening (CELIS)* (2021): 79-115.

<sup>36</sup> Philipp Stompfe. "Foreign Investment Screening in Germany and France." *YSEC Yearbook of Socio-Economic Constitutions 2020: A Common European Law on Investment Screening (CELIS)* (2021): 79-115.

<sup>37</sup> Alexandra Vacaru and Dan Virgil Pascu. "Member States' Margin of Appreciation in Examining Intra-European Foreign Investment in Relation to EU Fundamental Freedoms - The Xella Magyarország Case." *Rom. Competition J.* (2023): 44.

<sup>38</sup>Case C-106/22, Xella Magyarország, ECLI:EU:C:2023:568

<sup>39</sup> Fechter, Jonas. "Next-level Screening? The Case of Outbound Investment Screening." 2023.

<sup>40</sup> A. M. Kriger. "Review of Changes in the Regulation of Derivatives in Compliance with the Directive No. 2014/65/EC the Markets in Financial Instruments Directive." *Actual Probs. Econ. & L.* (2017): 145.

and Regulation (EU) No 600/2014 on markets in financial instruments is supplemented by the new law being herewith demonstrated as coherent.<sup>41</sup>

Directive 2014/65/EU, the MiFID II and Regulation (EU) No 600/2014, the MiFIR, constitute the framework that focus on setting up the generally accepted legal basis of financial markets within the EU.<sup>42</sup> These regulations will encourage transparency and promote investor protection and market integrity, synchronizing them across EU countries. The harmonization of the Swedish FDI law with MiFID II and MiFIR shows an openness to align regulatory standards and promote full cooperation between regulators in the EU regulating foreign investments that have the potential to affect the financial market and financial stability. Along with taking over these principles, Sweden is determined to keep all EU regulations and standards to protect investors and maintain the financial markets' integrity.

#### **2.4.2 Compatibility with International Treaties and Obligations**

Alongside aligning with EU regulations and directives, the Swedish FDI Law guarantees compliance with international treaties and commitments that oblige foreign investment and trade.<sup>43</sup> On the one hand, the country sticks to international norms and obligations. Still, on the other, it intends to form a ground for foreign investment facilitation while the national interests are protected from security threats and regulative flow.

The Swedish government's respect for international treaties and agreements, including WTO agreements covering trade, BITs and other free trade liberalization tools, all illustrate its commitment to non-discrimination, transparency and reciprocity when managing foreign investments. Through international convention matches, Sweden confirms the validity and thus the safety and confidence of foreign investors and provides a welcoming atmosphere for cross-border investments.

#### **2.4.3 Lessons Learned from European Union Member States' FDI Screening Practices**

Adopting the Swedish FDI law provides an opportunity to share knowledge of the FDI screening methods under the EU in which these other states are engaged. By analysing the histories and lessons learned by these countries, Sweden can identify its policy's plusses and minuses and implement its mechanism to be better informed. Several key lessons emerge from the FDI screening practices of EU Member States: A lot of EU member countries either put in place FDI screening

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<sup>41</sup> Petr Tomčíak. "MiFIR Review Proposal: Americanization of EU Financial Markets?" in *Perspectives of Law in Business and Finance. Conference Proceedings: 14th International Scientific Conference "Law in Business of Selected Member States of the European Union"*, November 3-4, 2022, Prague, Czech Republic, pp. 180-189. Societatea de Stiinte Juridice si Administrative.

<sup>42</sup> Iłona Przybojewska and Michał Pyka. "EU Carbon Emission Allowances as Environmental and Financial Instruments – Is It Possible to Kill Two Birds with One Stone?." *Journal of Energy & Natural Resources Law* 42, no. 1 (2024): 1-26.

<sup>43</sup> Jacek Dybiński and Krzysztof Oplustil. "Defining 'Securities' in the European Capital Markets Code." *Regulating EU Capital Markets Union: Volume I: Fundamentals of a European Code* (2024): 263.

procedures or plan to introduce them so as not to compromise national security interests.<sup>44</sup> Yet, there is also a developing understanding that coordination and cooperation at the EU level are important to achieve this objective and guarantee an efficient and coherent screening system across EU Member States. FDI screening mechanisms have a very fragile duty to safeguard national security and create a predictable and welcoming investment environment for all.<sup>45</sup> This stands widespread as an EU Member State's goal by instigating target-aimed screening procedures with the absolute minimization of hurtful restrictions for foreign investing.

The transparent and open rules regarding the screening in FDI are necessary to bring an element of certainty for the investors and promote the uniform use of the screening mechanism. The fact that EU member countries are more focused on transparency and predictability aspects of their FDI screening processes gives investors more confidence and facilitates the proper implementation of policies. Meaningful consultation with stakeholders, such as industry leaders, state institutions and non-government organizations, is necessary for creating and enrolling FDI screening systems that are task-oriented to the issues of security concerns but with a negative impact on bona fide enterprises and cause no harm.

#### **2.4.4 Implications for Cross-Border Investments within the EU**

Implementing FDI screening instruments by the EU Member States entails considerable impacts on investments that cross the borders within the EU. The area of free movement of capital and non-discrimination marked the function of the EU Single Market at its inception.<sup>46</sup> Still, the advent of the national FDI screening regimes has brought some new issues for investors operating across borders to light. The maturation of FDI screening mechanisms at the national level reintroduces the complexity perspective of regulations for those making cross-border investments within the EU. A company might deal with the dissimilar procedures of the Member States that use different screening criteria, thus maybe causing delays and uncertainties in investors' decisions.

Divergent FDI screening procedures implemented in EU Member States engender doubts about regulatory arbitrage, where foreign investors could benefit from different standards and poor screening practices in some jurisdictions.<sup>47</sup> They could use this to evade more stringent controls that exist in others. The correlation of FDI screening criteria at the EU level would be preferable to other options, allowing free trading between all member countries to continue.

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<sup>44</sup> Jovan Abdulrahman and Likun Sun. "The Potential Effects of the New FDI Screening Mechanism on Chinese FDI in Sweden." (2023).

<sup>45</sup> Sarah Bauerle Danzman and Sophie Meunier. "Naïve No More: Foreign Direct Investment Screening in the European Union." *Global Policy* 14 (2023): 40-53.

<sup>46</sup> Iona Elzbieta Serwicka, Jonathan Jones and Colin Wren. "Economic Integration and FDI Location: Is there a Border Effect within the Enlarged EU?" *The Annals of Regional Science* 72, no. 1 (2024): 85-106.

<sup>47</sup> Anna Vlasjuk Nibe, Sophie Meunier and Christilla Roederer-Rynning. "Pre-emptive Depoliticisation: The European Commission and the EU Foreign Investment Screening Regulation." *Journal of European Public Policy* 31, no. 1 (2024): 182-211.

In their wide range, the EU FDI screenings stress the need for strengthened cooperation and information exchanges between the Member States.<sup>48</sup> The cooperation in shared oversight will promote the exchange of best practices, standardization of screening mechanisms and joint structure of assessing and handling investment risks, thereby strengthening the EU's readiness for security risks.

## 2.5 Scholarly Discourse on Legal and Policy Implications of FDI Screening

Academic studies on foreign direct investment screening have a broad range of directions from different disciplines used, applied frameworks and employed empirical methodologies.<sup>49</sup> Some key topics and issues in the academic studies include national security, economic development and international trade. In the first place, researchers draw their attention to the advantages of the procedure of FDI screening. They account for the contradiction between the need to provide an open investment environment and maintaining national security. Governments frequently explain FDI screening based on protecting key infrastructure, important technologies and industries of national significance from the negative consequences of foreign influence or leverage.<sup>50</sup> However, opponents believe that the very rigorous and restrictive screening mechanisms may reduce investment from abroad, lessen innovation and sap growth economically. This debate accentuates the necessity of balancing national political security concerns with developing and maintaining a free and holding investment atmosphere.

The second topic researchers have been studying is what legal frameworks regulate FDI screening nationally and whether they comply with domestic laws, trade agreements and EU regulations.<sup>51</sup> The EU Court of Justice (CJEU) has resolved several disputes regarding the acceptability of national screening mechanisms under EU law and precisely explaining the legitimate scope of the government's intervention in foreign investment.<sup>52</sup> Another study subject is the factorization of the investment agreements into the FDI screening, giving this issue a lot of attention because it is very problematic and intricate.

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<sup>48</sup> Sarah Bauerle Danzman and Sophie Meunier. "Naïve No More: Foreign Direct Investment Screening in the European Union." *Global Policy* 14 (2023): 40-53.

<sup>49</sup> Justin Paul and Gurmeet Singh. "The 45 Years of Foreign Direct Investment Research: Approaches, Advances and Analytical Areas." *The World Economy* 40, no. 11 (2017): 2512-2527.

<sup>50</sup> Imad A Moosa. "Theories of Foreign Direct Investment: Diversity and Implications for Empirical Testing." *Transnational Corporations Review* 7, no. 3 (2015): 297-315.

<sup>51</sup> Saskia K. S. Wilhelms and Morgan Stanley Dean Witter. *Foreign Direct Investment and Its Determinants in Emerging Economies*. Washington DC: United States Agency for International Development, Bureau for Africa, Office of Sustainable Development, 1998.

<sup>52</sup> Carlos Esplugues. "Towards a Common Screening System of Foreign Direct Investment on National Interests Grounds in the European Union." *Culture, Media and Entertainment Law* 11, no. 2 (2018).

In the meantime, researchers have extensively analysed the economic effects of FDI screening technologies for host countries, foreign investors and global financial assets. Empirical studies prescribe that a stringent correction procedure may disrupt FDI inflow and raise transaction costs for foreign firms operating in distinctive industries.<sup>53</sup> Sweden, the effect of FDI screening, in turn, on the long-term and economic performance pattern remains a subject of debate, with some scholars querying the efficacy of such measures in delivering its stipulated goals.<sup>54</sup> Consequently, experts have studied the establishment and working regulatory procedures in which the process of screening FDI is the subject matter. They have delved into the role that government agencies, regulatory bodies and inter-agency coordination mechanisms play in evaluating proposals. Countries have generally mostly drawn on comparative studies of different national screening programs, revealing differences in transparency, accountability and decision-making processes between the countries.<sup>55</sup> The latter is a collection of institutional factors that modulate how efficient and legit the FDI screening regimes work regarding investor perceptions and market dynamics.

Furthermore, geospatial aspects of FDI screening are gaining significance, with researchers looking into the strategic implications of foreign investment for national sovereignty, geopolitical rivalry and geopolitical power balances. China's soaring investment in strategic parts of the advanced economies has raised serious questions about directional investment flows, technology transfer and industrial espionage, with governments opting to strengthen the review processes and deal size scope.<sup>56</sup> In this geopolitical environment, which showcases the interconnectedness of economic and security concerns in formulating policies, enhancing FDI and fashioning regulatory responses becomes evident.

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<sup>53</sup> John A. Doukas. and Larry HP Lang. "Foreign Direct Investment, Diversification and Firm Performance." *Journal of International Business Studies* 34 (2003): 153-172.

<sup>54</sup> Abdullah Emre Caglar. "The Importance of Renewable Energy Consumption and FDI Inflows in Reducing Environmental Degradation: Bootstrap ARDL Bound Test in Selected 9 Countries." *Journal of Cleaner Production* 264 (2020): 121663.

<sup>55</sup> Mohammad Amin Almfraji and Mahmoud Khalid Almsafir. "Foreign Direct Investment and Economic Growth Literature Review from 1994 to 2012." *Procedia-Social and Behavioral Sciences* 129 (2014): 206-213.

<sup>56</sup> Wen Jun, Muhammad Zakaria, Syed Jawad Hussain Shahzad and Hamid Mahmood. "Effect of FDI on Pollution in China: New Insights Based on Wavelet Approach." *Sustainability* 10, no. 11 (2018): 3859.

## 3 Analysis of Legal Challenges and Compliance Issues

### 3.1 Legal Challenges for Foreign Investors

#### 3.1.1 Compliance Obligations and Notification Requirements

Foreign investors engaging in direct investments in Sweden encounter various compliance obligations and notification requirements under the new Swedish foreign direct investment law.<sup>57</sup> It should be mentioned that strategic level environmental can encompass management of climate change factors, biodiversity conservation, renewable energies, sustainability initiatives, greenhouse gas emissions, deforestation, air and water pollution and resource scarcity challenges. These duties are a fundamental component for ensuring transparency, compliance with any regulations and limited political risk in the investment market.<sup>58</sup> This section deals with the legal obstacles, incorporating the observance obligations and notification rule for the investment made by non-resident investors, which are underpinned by the relevant provisions of the law.

The law, however, brings many complexities concerning investments that foreign investors hold through imposing strict compliance and requirements obligations to protect national interest and security. Foreign investors are subject to strict governmental regulation, a share of which involves providing truthful and complete documents and working in the best interests of the authority conducting the review. The perpetration of these duties is an obligatory course of action. So, just like in other violations of the trade rules, punishment can be in the form of fines imposed or even a ban on the investment.<sup>59</sup>

The law demands detailed declaration by foreign investors at least three months before acquiring an investment into a strategic sector.<sup>60,61</sup> These rules cover a wide range of scenarios corresponding to such operations as the acquisition of shares, establishment of joint-stock companies and partnership investments.<sup>62</sup> This notification system becomes the most effective means to ensure that the regulatory

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<sup>57</sup> Lag (2023:560) om granskning av utländska direktinvesteringar, Section 7 and 25-27.

<sup>58</sup> Imad A. Moosa. "Foreign Direct Investment." in *International Financial Operations: Arbitrage, Hedging, Speculation, Financing and Investment*, pp. 318-340. London: Palgrave Macmillan UK, 2004.

<sup>59</sup> Lag (2023:560) om granskning av utländska direktinvesteringar, Section 7, 25-27 and 31-36.

<sup>60</sup> Imad A. Moosa. "Foreign Direct Investment." in *International Financial Operations: Arbitrage, Hedging, Speculation, Financing and Investment*, pp. 318-340. London: Palgrave Macmillan UK, 2004.

<sup>61</sup> Lag (2023:560) om granskning av utländska direktinvesteringar, Section 15.

<sup>62</sup> Ricardo Crescenzi, Marco Di Cataldo and Mara Giua. "FDI Inflows in Europe: Does Investment Promotion Work?" *Journal of International Economics* 132 (2021): 103497.

authority evaluates the limit on foreign investments and imposes a suitable regulatory rule if necessary.

Settling within conditions of aggravated notification necessity and strict compliance demands is one of the chief obstacles foreign investors face in Sweden. The immense regulatory framework that stationary applications work with and disorientation within the processes and cultural realizations usually delay the proper and efficient investments.<sup>63</sup> Moreover, language barriers or legal system inconsistencies could add to the challenge of the often complex international investment review process. Consequently, this could result in a delay or a misinterpretation of the investment review process. To overcome the problems involving legal requirements, dependence on notification and disclosure obligations and recommended takeover rules, foreign investors are advised to work proactively, obtain appropriate legal help from experienced professionals and undertake the required due diligence. Communicating effectively, keeping a record of all the documents transparently and demonstrating the moral right to regulatory compliance can help shorten the investment review process and maintain good communication.

### **3.1.2 Criteria for Triggering Mandatory Notifications**

In navigating the legal landscape of foreign direct investments in Sweden, understanding the criteria for triggering mandatory notifications under the new Swedish FDI law is crucial.<sup>64</sup> This section delves into the criteria outlined in the law that mandate foreign investors to notify the reviewing authority, highlighting their implications and potential challenges.

The FDI law ascertains specifically what makes them appear strategically vital for the radar, which, in return, demands from investors a mandatory notification to remain on the legal side. They include industries focused on critical national safety, strategic stability and applied security sectors.<sup>65</sup> Possibly, some of these include crucial offices, the data of sensitive personal information, the production of war materials and the exploration of emerging technologies. Submitting such applications by foreign investors to the evaluation instance would directly or indirectly lead to the overall security and public order review to prevent possible risks for Sweden.

The law sets out reporting thresholds beyond which transactions have to be notified and scenarios that require the transactions to be reported. It is imperative to notify the reviewing authority of a foreign investor if this investor obtains control of a certain percentage of votes after an investment in a Swedish company, an economic association in Sweden or a joint-stock company that is partly Swedish-owned and

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<sup>63</sup> Paul Brenton, Francesca Di Mauro and Matthias Lücke. "Economic Integration and FDI: An Empirical Analysis of Foreign Investment in the EU and in Central and Eastern Europe." *Empirica* 26 (1999): 95-121.

<sup>64</sup> *Lag (2023:560) om granskning av utländska direktinvesteringar, Sections 7,9 and 10.*

<sup>65</sup> Flora Rencz. "The Determinants of Chinese Foreign Direct Investment in the European Union." *Asia Europe Journal* 21, no. 3 (2023): 331-349.

engaged in strategic activity.<sup>66</sup> Thus, implementing the same business units justifies a declaration after registration as a partnership or sole proprietorship. These are the boundaries beyond which jurisdictional authorities and the security committees come into play to control any ventures that may potentially have national security-related implications.

Foreign investors must notify the authority under the review if the very investment will overrule the management or activity of entities dealing with national businesses of critical importance.<sup>67</sup> This criterion affects, for instance, cases of control of the management or operations functions by the owners even though the ownership threshold may not be met. Whereby the FDI law carefully scrutinizes foreign investors, this is the mechanism in which the possibility of unfair control or bias interference in critical sectors will be averted.

Balancing the requirements for mandatory notifications triggers foreign investors in strategically critical activities to face unpleasant issues.<sup>68</sup> Setting control thresholds, finding zones of decision-making and understanding the number of activities of interest to the law are very complex legal subjects that need special attention and prudence. Furthermore, the importance of filing notices should not be underestimated, since associated resource consuming procedures may slow implementation and create additional complications.

### 3.1.3 Review Process and Timelines

Navigating the review process and adhering to timelines stipulated in the new Swedish FDI law presents many obstacles which if foreign investors were to experience, they would consequently worry and will be unsure of how to advance their business in a foreign land.<sup>69</sup> This section looks into the law's review process and the timelines, which outline the procedural steps and their consequences for foreign investors.

When receiving a complete notification, the review authority commences the review process as per the time stipulated. The law, through this, provides a timeframe of about 25 working days to decide on the line of action, which either entails the authority declining the notification without action or examining the investment.<sup>70,71</sup> This initial phase is vital because it establishes the sense of the

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<sup>66</sup> Maja Kristiansson-Gran. "Screening of Foreign Direct Investments in Sweden: And Its Compatibility with European Union Law." (2024).

<sup>67</sup> Bettina Meinhart. "How EU Membership Affects Foreign Direct Investment: Differences between EU15 and CEE countries." *The World Economy* (2023).

<sup>68</sup> Sarah Bauerle Danzman and Sophie Meunier. "Naïve No More: Foreign Direct Investment Screening in the European Union." *Global Policy* 14 (2023): 40-53.

<sup>69</sup> *Lag (2023:560) om granskning av utländska direktinvesteringar, Sections 14 and 15.*

<sup>70</sup> *Lag (2023:560) om granskning av utländska direktinvesteringar, Section 14.*

<sup>71</sup> Ismar Velić and Igor Cvečić. "Monetary Integration Effects on Foreign Direct Investments in New EU Member States." *Journal of Economic Integration* 39, no. 1 (2024): 55-85.



following audits, thereby emphasizing that there should be competent and viable notifications to speed up the ordering process.

When pursuing an investigation, the ombudsman is supposed to resolve all violations within a specific timeframe. The law describes a maximum period three months from the time when the examination procedure is finally settled for the review authority to decide whether the investment is prohibited.<sup>72,73</sup> Yet, in exceptional cases, the duration may be protracted to 6 months, warranted by a specific purpose. The examination period is when the review authority can collect data and analyse the likelihood for the investment to affect Sweden's security or public order. The review authority should carefully study the material.

Foreign investors can face intense limits throughout the review process because they can't implement their investment until the review authority has given the final green light. Under the terms of the law, investments not requiring the commitment of capital concerning the notification requirement are not permitted for evaluation unless the decision is agreed upon during the examination period. This restriction calls for the processional obtaining of regulatory approvals before progressing with the investing activity's risk reduction mechanisms and minimizing the possibility of violating legal requirements. At the end of the review period, the review authority gives either a bar or permitting decision, according to the assessment of the project's environmental effect.<sup>74</sup> Weapons dealing activities or prohibiting acts that are hazardous to Sweden's security or public order might be banned to avoid being implemented. On the contrary, assets that are (still) in compliance with the desired specifications are approved – possibly subject to conditions that pertain to the necessary risk mitigation. These decisions shape the regulatory landscape for foreign investment in Sweden; therefore, they directly influence investors and are one of the primary considerations for their strategic making.

With the stipulated FDI law timelines, the multi-step process applicable to foreign investors in Sweden poses challenges and implications for doing business there.<sup>75</sup> While they are subject to rigid notification and experiencing an inspection period, they have to do everything possible to work towards their plans and question the related agencies. Delays in the review process of foreign investment can impact realization time and strategic targets, discouraging investors' flows. Additionally, the subjective nature of security evaluations and the broad discretionary powers granted to the review authority reveal the need for transparent and predictable regulatory frameworks to boost confidence among investors and make the investment flow smooth.

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<sup>72</sup> Flora Rencz. "The Determinants of Chinese Foreign Direct Investment in the European Union." *Asia Europe Journal* 21, no. 3 (2023): 331-349.

<sup>73</sup> *Lag (2023:560) om granskning av utländska direktinvesteringar, Section 15.*

<sup>74</sup> Flora Rencz. "The Determinants of Chinese Foreign Direct Investment in the European Union." *Asia Europe Journal* 21, no. 3 (2023): 331-349.

<sup>75</sup> Seungjun Kim. "Protecting Home: How Firms' Investment Plans Affect the Formation of Bilateral Investment Treaties." *The Review of International Organizations* 18, no. 4 (2023): 667-692.

### 3.1.4 Grounds for Prohibiting or Approving Investments

Determining the grounds for either prohibiting or approving foreign investments under the new Swedish FDI law represents part of the regulatory framework.<sup>76</sup> Here, the law enunciates the points that underpin investment permission application in some specific aspects and draws directions from the relevant parts of the law.

One of the main causes of the prohibition of investments under the FDI law would be their likelihood of causing a hindrance to Sweden's security, peace and public safety. The FDI law confers the review authority with the decision-making rights to review the investments through the potential effects of such investments on critical national interests. The investments that are found to be relied upon much due to the formulation of strategies in these domains may, however, be barred from protecting the mental health of the Swedish citizens and its state entities. The development of these criteria shows a solid readiness to anticipate and manage foreign investments to prevent possible dangers and liabilities.

The law also calls for the review authority to consider the prior conduct and fame of an investor or any entity held in ownership structures of the legal entity being reviewed. Investor issues or entities affiliated with such activities that might cause a threat to Sweden's public order or security or investors might affect the quality of political decision-making.<sup>77</sup> The law is targeted at those who manage strategic enterprises as investors. Such people must have their trust verified and reported to prevent a potential problem of individuals of doubtful integrity taking over activities of strategic importance. This factor confirms the role of good standing due diligence in considering questions related to foreign investors' merit.

In investments that might be viewed as controversial but not impaired, the FDI law has provisions for the attachment of conditions to ameliorate perceived and identified risks. The regulatory bodies enable the condition restrictions provided in the approvals based on specific circumstances and interventions, conveying concerns while allowing investments under the precautions laid down.<sup>78</sup> Such an approach, to some degree, reconciles the interests of foreign investors and those of the nation-state, which ensures the possibility of developing appropriate regulations in a situation with many changing influences and threats.

The criteria included in the FDI law for ruling out FDIIs or approving approvals for foreign investors making strategic investment decisions in Sweden introduces complexities and uncertainties.<sup>79</sup> The situation's complexity is exacerbated by the fact that security prerequisites and the review authority's power to make decisions are based on subjective evidence in assessments. Therefore, for this situation to be taken care of, proper due diligence must be done, considering the regulatory bodies

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<sup>76</sup>Lag (2023:560) om granskning av utländska direktinvesteringar, Sections 17-18 and 20-21.

<sup>77</sup>Lag (2023:560) om granskning av utländska direktinvesteringar, Section 18.

<sup>78</sup> Maja Kristiansson-Gran. "Screening of Foreign Direct Investments in Sweden: And Its Compatibility with European Union Law." (2024).

<sup>79</sup> Jovan Abdulrahman and Likun Sun. "The Potential Effects of the New FDI Screening Mechanism on Chinese FDI in Sweden." (2023).

that will give recommendations on regulatory requirements. Furthermore, the chance of conditional approval complicates the process and necessitates realizing market conditions, which may hinder its progress.

### 3.1.5 Recourse Mechanisms and Judicial Review

Recourse mechanisms and avenues for judicial review are crucial in ensuring transparency, accountability and fairness in implementing foreign direct investment screening regulations. In the context of Sweden's new FDI law, this section examines the provisions related to recourse mechanisms and judicial review, exploring how they contribute to the overall effectiveness and legitimacy of the regulatory framework.<sup>80</sup>

The FDI law sets up the administration appeals system, enabling any party interested in these kinds of decisions by the Review Authority to appeal against orders, sanctions and penalties.<sup>81</sup> Instances of wrongdoing, bias or overregulation can be addressed through administrative appeals and this body of justice is an administrative court in Stockholm. Such a mechanism proves its accountability and procedural properties by submitting the regulatory decisions to independent parties related to judicial control and the legal standards and due process that must be fulfilled.

Administrative appeals and judicial review processes are based on the high application of legal standards and principles for which one can challenge decisions. Such principles may reflect respect for legislation, provision of process fairness, availability of proper procedures and adherence to national security considerations. If a party must show their legal right to make claims and an argument based on facts and supported by evidence to be entitled to restitution, they are not entitled to do so.<sup>82</sup> Judicial revision proceedings that validate the regulatory decisions render it possible for the stakeholders to appeal the administrative decisions alleging violations of the rules of law, fact, or procedural regularity. As a result, decisions can be equitable, rational and law-abiding.

While the mechanisms of recourse and legal reviewing processes mean that the complainants can oppose decisions and lay their grievances, there are also downsides. This is a perception that faces every actor or affected party. Administrative appeals and judicial review requisitions consume time, cost and resources, thus acting as the length enhancer and a step stifling investment outcomes. Also, in appeals and judicial review, decisions may be changed or have different outcomes and parties may face inherent uncertainty about the final determination. Although recourse mechanisms are significant in maintaining the law, helping to create certainty of the law and protecting the rights and interests of the parties in the FDI screening process, they play a critical role in ensuring legal

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<sup>80</sup>Lag (2023:560) om granskning av utländska direktinvesteringar, Sections 31-39.

<sup>81</sup>Jovan Abdulrahman and Likun Sun. "The Potential Effects of the New FDI Screening Mechanism on Chinese FDI in Sweden." (2023).

<sup>82</sup>Manuela Tvaronavičienė, Agnė Šimelytė and Gerda Stirblytė. "The Impact of Foreign Direct Investment from the Nordic Countries on the Structure of Lithuania's economy." *Marketing and management of innovations*. 14, no. 4 (2023): 112-127.

predictability, law observance and parties' interests in the foreign direct investment screening process.

## **3.2 Compliance Issues for Swedish Sellers**

### **3.2.1 Due Diligence Obligations and Pre-Transaction Assessment**

Ensuring compliance with Sweden's new FDI law is essential for Swedish sellers engaging in transactions involving strategically important activities.<sup>83</sup> The law imposes due diligence obligations and mandates pre-transaction assessments to mitigate risks and ensure adherence to regulatory requirements.

Regarding perception safety, the FDI law serves as the first round of compliance for businesses mindful of FDI.<sup>84</sup> It is the total of the assessments and general observations of interested people, their backgrounds, links and intentions about the country's national security and general stability. By doing diligence, the sellers from Sweden will be able to detect and evaluate the possibility of risks and come to an informed conclusion about concrete deals with the investments. Owing to due diligence, the sellers have moral reinforcement as they can demonstrate their tactfulness, practicality and responsibility toward appealing to the national interests while attracting foreign investors.

Before proceeding to the investment transactions, Swedish sellers are to go through pre-transaction assessments to identify the potential impacts of the investment that could eventually be detrimental to national security and public peace. This appraisal is the achievement of the comprehensive analysis of the kind, size and varied assets that will be investing in and the effect they will have on strategic assets, critical infrastructure and sensitive industries. Swedish sellers must be sure that the decision agrees with the economic policy goals, that the investment provides an innovative environment and that it positively influences competitiveness by assessing the risks coming from foreign control or influence.

To comply with the FDI law, one must stick to the legal and regulatory prescriptions on the investing arrangements. Sellers in Sweden have to adapt to the provisions of the law, the implementation of which includes notification obligations, the categories of triggers for obligatory notifications, review processes and terms.<sup>85</sup> The legal obligations of the Swedish sellers will be well comprehended and they will take proactive action to deal with compliance problems and regulatory traps and be consistent with the law in future investing.

To deal with compliance problems efficiently, Swedish sellers need to put in place tailor-made mitigation solutions corresponding to the kind and peculiarity of the

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<sup>83</sup> Pietari Keskinen. "Cross-border M&A between Finland and Russia: Success after the Subprime Crisis." (2020).

<sup>84</sup> Simon J. Evenett. "What Caused the Resurgence in FDI Screening." *SUERF Policy Note* 240 (2021): 1-20.

<sup>85</sup> Ha-Joon Chang. "Regulation of Foreign Investment in Historical Perspective." in *Understanding FDI-Assisted Economic Development*, pp. 241-269. Routledge, 2013.

transactions they participate in and the sector in the industry.<sup>86</sup> Among others, forecast activities may involve the establishment of internal controls, implementing compliance programs and FDI law. Experts may be sought after for legal advice. The risk for these can be reduced through the application of risk reduction measures and the transparency, accountability and integrity of their investment activities can be enhanced. In contrast, risks, such as legal, reputation and financial are minimized.

Positive communication and collaboration with regulator bodies are interim factors determining the compliance of FDI law.<sup>87</sup> Swedish sellers should continue to use the communication routes that the regulatory authority will assign and ask for clarification on what criteria should be met and act according to the answers to possible questions related to the transactions being made. Through developing a coordinated relationship with the regulators the sellers can assist with speeding up the review and approval process, which simultaneously demonstrate that they are in compliance with regulations and have patriotic interests at heart.

### **3.2.2 Disclosure Requirements and Documentation Standards**

The implementation of the recent FDI law in Sweden implies that the Swedish sellers will go through the complete disclosure requirements and documentation standards.<sup>88</sup> These obligations are introduced to improve energy, transportation and communication sectors, which are considered strategically important. They ensure transparency, competitive neutrality and tailored provisions for these sectors.

Disclosure requirements are a pillar for transparency and assistance when exercising third-party participation in FDI transactions. Sellers based in Sweden must present the relevant data in a detailed, complete and accurate manner in case the authority inspecting them asks for such information, which they have the right to do.<sup>89</sup> This shall involve revealing details on the intended investment, the parties involved, the deal mechanism, debt instruments of debt instruments and any issues on Sweden's national security or internal peace that may occur. Swedish sellers uphold the adherence to disclosures, encapsulating the commitment to regulatory compliance and informed decision-making by regulatory authorities.

Besides disclosure requirements, Swedish sellers are subject to stringent documentation regulations, which require them to keep precise communication records with customers and their investment operations.<sup>90,91</sup> Documentation

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<sup>86</sup> Dani Rodrik. "What Do Trade Agreements Really Do?." *Journal of Economic Perspectives* 32, no. 2 (2018): 73-90.

<sup>87</sup> Henk Kox and Hildegunn Kyvik Nordås. "Services Trade and Domestic Regulation." (2007).

<sup>88</sup> Maja Kristiansson-Gran. "Screening of Foreign Direct Investments in Sweden: And Its Compatibility with European Union Law." (2024).

<sup>89</sup> Jonas Hallberg. "Foreign Investment Screening in Finland, Norway, Sweden and Denmark." *YSEC Yearbook of Socio-Economic Constitutions 2020: A Common European Law on Investment Screening (CELIS)* (2021): 209-226.

<sup>90</sup> *Lag (2023:560) om granskning av utländska direktinvesteringar, Sections 25-27.*

<sup>91</sup> Jonas Hallberg. "Foreign Investment Screening in Finland, Norway, Sweden and Denmark." *YSEC Yearbook of Socio-Economic Constitutions 2020: A Common European Law on Investment Screening (CELIS)* (2021): 209-226.

standards involve preparing, filing and retrieving records, including contracts, agreements, audits, applications for licensing and communications with regulatory authorities. Swedish sellers can always enjoy a legal and regulatory risk-free environment and ensure full compliance with the FDI law if they always maintain accurate and organized record-keeping. This is because they show high care, transparency and accountability to the public through their investment activities.

Meeting the standards of disclosure and documentation is under the best international practices in financial accounting transparency and corporate governance. Via agencies, such as the Organisation for Economic Cooperation and Development (OECD) and the International of Chambers Commerce (ICC), which emphasize the significance of detailed disclosure frameworks and general documentation practices to sustain confidence, protect stakeholders' interests and ensure compliance with the regulations.<sup>92</sup> By practicing the best practices, Swedish sellers can add credibility, goodwill and robustness to their international offer in the investment scene.

Legal advisers often guide Swedish sellers with respect to various disclosure requirements and document preparation standards associated with the FDI law.<sup>93</sup> A senior lawyer with expertise in legal matters will be able to help write documents for the disclosure, meet the requirements of regulatory bodies and meet the documentation standards. Beyond that, law firms are in the position to provide useful strategic tips regarding risk management, dispute resolutions, or compliance strategies that are based on the given goals and requirements of Swedish businesses. Entrusting legal counsel is one of the ways for Swedish sellers to come across experts and resources while exploiting regulatory complexities and addressing legal and reputational risks faced in investment deals.

### **3.2.3 Strategies for Mitigating Regulatory Risks**

The new Swedish FDI law's principal challenge is obtaining regulatory permits.<sup>94</sup> However, the condemning issue is that the sellers must be prepared for myriad regulatory risks, necessitating strategic mitigation measures to close the gaps in the existing regulatory system or take over the activity by contracting third-party companies. Through the implementation of preventive measures, the sellers from Sweden can conduct risk management successfully and comply with the regulations of the FDI law, which, in turn, poses no threat to their companies' interests and the regulatory balance.

Risk evaluation is cited as one of the critical strategies through which the impact of regulatory risks on the transaction process can be managed.<sup>95</sup> Risk evaluation is done by conducting comprehensive risk assessments and due diligence before engaging

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<sup>92</sup> Dominic Kelly. "The International Chamber of Commerce." *New Political Economy* 10, no. 2 (2005): 259-271.

<sup>93</sup> Niklas Egels-Zandén. "Suppliers' Compliance with MNCs' Codes of Conduct: Behind the Scenes at Chinese Toy Suppliers." *Journal of Business Ethics* 75 (2007): 45-62.

<sup>94</sup> *Lag (2023:560) om granskning av utländska direktinvesteringar, Sections 16 and 19-21.*

<sup>95</sup> Liisa Kauppila and Björn Cappelín. "The China Dilemma in Foreign Direct Investment Screening: Comparing the Finnish and Swedish Approaches."

in FDI activities. The examined market participants of the Swedish sellers should consider the national security, public order and public safety effects of making investments under the criteria defined in the FDI law. Swedish sellers would reduce risk and navigate the market effectively by appraising all the possible risks they can encounter with upcoming investments, pre-empting any regulatory bottlenecks, foreseeing compliance challenges and devising risk containment strategies that will be proactive in their implementation as appropriate.

Communication and good engagement with state regulatory bodies are always at the heart of any procedures designed to reduce the regulatory risks attendant with an inward foreign direct investment.<sup>96</sup> Swedish sellers must proactively interact with the written-off-mentioned reviewing body via the FDI law, unravel legal requirements, relieve any concerns and satisfy whatever specifics could interest the proposed investors. Through lively cooperation with regulatory authorities, Swedish sellers can demonstrate that they are not putting compliance with the legislation at risk and trust and minimizing the risk of regulatory enforcement actions or the country's sanctions are built subsequently.

Sellers from Sweden should introduce effective control systems and compliance guidelines to verify the correspondence with the FDI law's terms and successfully stand up to the regulatory risk. A compliance framework consists of the policies, procedures and systems on the organizations' side to maintain the required transparency, accountability and regulatory compliance during the investment-owned and managed life cycle.<sup>97</sup> Through compliance frameworks that appropriately meet the requirements of the FDI laws, Swedish sellers facilitate the more stringently regulated due diligence and scrutinize regulatory compliance to minimize the risk of non-compliance and enforcement by regulators.

To overcome regulatory hurdles to FDI and to be able to manage the risks successfully, Swedish sellers ought to consult and rely on legal attribution as well as on professional advisers who are specialists in FDI regulations and compliance issues. Legal advisors could perform this role by providing expert analysis on interpreting and applying the relevant provisions of the FDI law, assessing the legal implications of planned investments and offering strategic recommendations regarding compliance strategy and risk mitigation.<sup>98</sup> With legal advice and assistance from legal counsel and advisory professionals, Swedish sellers can protect their compliance efforts, including legal exposure and interest safeguard measures during and after the FDI transaction.

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<sup>96</sup> Raj Aggarwal and Pervez N. Ghauri. "The Evolution of Multinationals from a Small Economy: A Study of Swedish Firms in Asia." in *Multinational Enterprises in Less Developed Countries*, pp. 248-269. London: Palgrave Macmillan UK, 1991.

<sup>97</sup> Carolina Dackö. "Navigating between Openness and Protectionism: EU Investment Screening in 25 years' time." *YSEC Yearbook of Socio-Economic Constitutions 2020: A Common European Law on Investment Screening (CELIS)* (2021): 605-635.

<sup>98</sup> Carolina Dackö. "Navigating between Openness and Protectionism: EU Investment Screening in 25 years' time." *YSEC Yearbook of Socio-Economic Constitutions 2020: A Common European Law on Investment Screening (CELIS)* (2021): 605-635.

### 3.2.4 Impact on Transaction Structuring and Negotiations

The enactment of the new Swedish FDI law has significant implications for transaction structuring and negotiations, necessitating careful consideration of regulatory requirements and compliance obligations throughout the deal-making process.<sup>99</sup> Swedish sellers must navigate the complexities of the FDI law to mitigate legal and regulatory risks effectively while optimizing transaction outcomes.

According to the FDI law, it is mandatory to notify specific transactions during which foreign buyers obtain ownership or control important activities. Sellers must structure mergers or acquisitions accordingly to comply with relevant regulations. Transaction structuring means weighing the prospective impediments that may emerge to a deal, including those on national security and public safety and structuring the transactional flows, paying due regard to regulatory risks. Swedish sellers need to consider who they own, the control structure, or the structure of the target business, to name a few, because it is necessary to comply with the provisions of the FDI law.

To generate vital negotiations with prospective investors and within the framework of the FDI law, Swedish sellers must address compliance mechanisms and regulatory provisions and ensure their framing effectively.<sup>100</sup> Significant factors are consent for the owner to sign representation and the warrantees' clause that relate to the discharge of regulatory obligations and approval by the regulatory parties, provisions for reimbursement of breaches and contractual mechanisms for obtaining regulatory approvals. Establishing regulations (laws and regulations on foreign investment in Sweden) would require continuous and precise consideration of the consequences of violating the laws and how this could affect the transaction results.

Before the start of negotiations of any transaction, it is a requirement for the Swedish sellers to conduct research and evaluation of all risks involved in the structuring and execution process to minimize the negative impact of the regulatory rules.<sup>101</sup> The due diligence process should be directed towards detecting regulatory risks, assessing if the target complies with the FDI law and how regulatory non-compliance can affect transaction outcomes. As a result, the Swedish sellers can do instances where they should assess the compliance level by conducting thorough due diligence and risk assessments at the onset of the transaction process and develop strategies to address the regulatory hurdles effectively.

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<sup>99</sup>Lag (2023:560) om granskning av utländska direktinvesteringar, Section 7-11 and 25-27.

<sup>100</sup> Carolina Dackö. "Navigating between Openness and Protectionism: EU Investment Screening in 25 Years' Time." *YSEC Yearbook of Socio-Economic Constitutions 2020: A Common European Law on Investment Screening (CELIS)* (2021): 605-635.

<sup>101</sup> Maja Kristiansson-Gran. "Screening of Foreign Direct Investments in Sweden: And Its Compatibility with European Union Law." (2024).



### **3.3 Obligations and Responsibilities under the New Law**

The Swedish FDI law specifies the obligations of foreign investors and Swedish sellers. It aims to regulate the strategic industries' security and public order investments.<sup>102</sup>

#### **3.3.1 Foreign Investors**

Investments from abroad coming to Sweden in the form of direct investments must fulfil these requirements of the law. The notification of any investment deemed to be within the parameters specified in the FDI law is obligatory for any foreign investor, as purposefully designated by the government.<sup>103</sup> Therefore, making it mandatory for companies to give advanced government warnings about the investment empowers authorities to assess if it threatens national security or public order. Upon notification, the foreign investor must fully assist the reviewing body and provide all the relevant info and the necessary documents to permit consideration of the planned investment. Breach of law with the consistent monitoring and review process may be punished by administrative penalties according to §§ 31-36 of the law.<sup>104</sup> By providing the reviewing authority with the ability to consider the investment's characteristics and its possible effect on national security and public order, the law arms it with an array of tools needed to perform its duties responsibly. Other factors implicated while making a decision include the investor's background, the related affiliations and the specific history at the time of scrutiny, which are provided in §§ 17-18.<sup>105</sup>

#### **3.3.2 Swedish Sellers**

Similarly, Swedish retailers, in line with foreign investors, have some obligations and constraints considered crucial. These commitments cover taking appropriate actions and ensuring transparency in reporting and carrying out outreach activities.

This duty of Swedish sellers extends beyond mere profit maximization and includes a thorough risk assessment of paramount attributes such as transactions with foreign countries. On top of that, they should notify the foreign investors about the obligations of the foreign investors, including the requirement to notify the authority. Swedish sellers must render all the supporting documents and information requested by the reviewing authority as quickly as possible during negotiations. In essence, the requirement consists of conveying important information, granting access to premier premises or documentation to be reviewed and acting in compliance with the conditions under which the review process will be conducted, as mentioned in §§ 25-27.<sup>106</sup>

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<sup>102</sup>Lag (2023:560) om granskning av utländska direktinvesteringar, Sections 1-3, 7-11 and 25-27.

<sup>103</sup>Lag (2023:560) om granskning av utländska direktinvesteringar, Sections 7-11.

<sup>104</sup>Lag (2023:560) om granskning av utländska direktinvesteringar, sections 31-36.

<sup>105</sup> Lag (2023:560) om granskning av utländska direktinvesteringar, sections 17-18.

<sup>106</sup>Lag (2023:560) om granskning av utländska direktinvesteringar, sections 25-27.

## **4 Conclusions**

### **4.1 Summary of Key Findings and Insights**

The analysis of the FDI law of Sweden emphasizes an extensive regulatory mechanism comprising mixed interests of the country in strategic development and foreign investor promotion. Under this analysis three main points can be useful to understand that the law seeks to achieve its purpose of setting out all provisions, including criteria for invoking mandatory opportunities for notifications, process for review and acceptable grounds for tentative prohibition or approval. As explained in chapter 2.1 and chapter 2.2, the law aims to give the Swedish government the power to block foreign investors from strategically important areas to avoid the possibility of further different security or safety of people.

Chapter 3.1 demonstrates legal challenges and compliance issues for the foreign investors such as notification requirements and transparency and compliance obligations. Chapter 3.1 and chapter 3.3.1 further explains what consequences can be put on the foreign investors if they don't follow the law, such as fines or even a complete block of the investment. Besides that, it is shown through the entire chapter 3 how the law lays down the procedures and deadlines so that the investor can go through and see what the payment decision process looks like and the timelines for the decisions.

Throughout chapter 3.2 and its sub-chapters, as well as in chapter 3.3.2, it is explained how the new FDI law will affect the Swedish sellers. Swedish sellers must comply with the law in several ways, including informing the foreign investors about their notifying requirements and other obligation as well as performing their own due diligence and assessments in order to identify risks with the investment deal. They should value the national security when doing this, but also their own interests since they can lose money on a blocked investment deal. As highlighted in chapter 3.2 the Swedish sellers must take measures to ensure transparency and make sure they have precise and honest communication with both the review authority and the foreign investors. Since these things will bring about administration costs it is imperative for the Swedish sellers to carefully choose who they are trying to enter into an investment deal with.

### **4.2 Policy Implications and Recommendations**

Targeted and effective regulatory enforcement and establishing a monitoring body are the key elements of applying the new FDI law in Sweden. Ultimately, this envisages establishing resolute mechanisms for compliance with the law's provisions and protecting the Swedish interests from security threats. Several critical policy implications and recommendations emerge: The Swedish government must

be prepared to allocate yearly firm budgets and well-trained personnel to the independent body that oversees the mentioned FDI screening system. This covers appointing qualified specialists responsible for processing and examining the investment submissions, reviewing investigations and providing for ensuring conformity to the law provisions.

The bilateral reviews state that clarity in remedy mechanisms is required so that the breaches in the FDI law are remedied well and quickly. The law should prescribe specific charges for transgression, including fines for failure to inform investments or provide mandatory data collection. Next are the provisions addressing the entity's involvement in unintentional violations of the law, such as sanctioning them, prohibiting investments and imposing conditions on remaining ones.

Through a risk-based approach for FDI screening, regulators can direct their efforts only to investments with the highest security risk and avoid unnecessary resource diversion.<sup>107</sup> Through data analytics and intelligence-sharing channels, authorities can efficiently identify and evaluate priorities referencing critical sectors and the growing interest of actors with ties to adverse powers.

While enhancing awareness of the FDI law and its influence are the most significant, they are also essential to developing compliance and accountability. The government can develop an outreach program to make all those concerned with security interests, such as investors, businesses and citizens aware of their obligations under the law and the importance of protecting national security interests.

Coming to the essence of present-day threats to the territorial safety of the nation, Sweden has to be involved in international cooperation activities aimed at sharing information and experience in FDI control regulation. By working with other EU Member States, the United States and other international partners Sweden can significantly expand the security capacity and the ability to rapidly address new security challenges.

Stakeholder engagement, transparency and collaboration are necessary to sustain and legitimize foreign investment screening. The introduction and execution of commensurate notification guidelines, administrative mechanisms and decision-making criteria can build as much understanding and compliance as desired among investors and other stakeholders.

To increase openness the Swedish government needs to create a period for conversing with the various relevant parties, such as industry associations, trade unions, academic experts and civil society organizations. Through the provision of feedback channels and the infusion of diverse viewpoints into the policymaking process the authorities can choose the route that broadens political security concerns but simultaneously make an FDI screening regime that creates the minimum degrees of impediments for legitimate investment activities.

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<sup>107</sup> Vaidyanathan R. Iyer, Kishore Babu and Vignesh Ram Guruswamy. "Cyber Security Frameworks through the Lens of Foreign Direct Investment (FDI): A Systematic Literature Review." *International Journal of Intelligent Systems and Applications in Engineering* 12, no. 4s (2024): 279-291.

Achieving the balance between protecting the interests of the country nation and letting foreign investment in becomes a complicated task. The main objective of the FDI law is to safeguard Sweden's national strategic interests, but this attribute should not be viewed as being in contradiction to the development of economic competitiveness and attractiveness to foreign investors.

To maintain the balance, the law should include the elements of price capability and comprehensive risk assessments. Investments can be evaluated to determine the potential risks and their benefits. This way the authorities can use the information to make well-informed decisions that mitigate the threat while at the same time minimizing the negative effect that it might have on economic growth and innovation. Besides fostering transparency and predictability in the FDI screening procedure it is crucial to instil the confidence that the process will not impede genuine deals. A transparent disclosure of the government's screening framework and the principles for decision-making can improve investor confidence and clarify Sweden's intention to preserve its open-door investment policy.

The Swedish FDI law, as with every new regulatory framework, contains some potential legal bumps, such as gaps, ambiguities and other refinements that should be clarified for further improvement in the future. Prompt identification and solution of the mentioned issues represent the first step to the truth that the law's effectiveness and not inconsistency will be preserved.

The government should institute ongoing oversight and assessment of the law's performance mechanism to address the identified loopholes and clarification the law provides. Such actions could include regular evaluations, listening to the legal experts and stakeholders' advice and inviting those affected to contribute their experience.<sup>108</sup> Further, the government should envision interpretative guidelines or supplementary regulations that will resolve elements of the regulations that may be ambiguous or enhance uniform performance in different court applications. Policy-makers should try to consolidate legal certainty and predictability in regulating FDI when such a regime is reasonably likely to be successfully applied and there will be no concerns about unintended consequences or legal challenges.

### **4.3 Contributions to Existing Knowledge**

A study of Sweden's laws for filtering incoming investors reveals important findings in foreign investment law, national security and the place of economic policy in the sphere of security issues. This research that focuses on the analysis of the law's provisions in direct and in a wider perspective based on the international framework of the application of FDI screening mechanisms will increase the knowledge about such regulatory approaches and their ways of controlling foreign investment flows in sectors that matter. Besides that, dealing with the lapses of foreign investors and local sellers indicate how the FDI law is implemented and the issues associated with regulations observance. Investors will be better able to evaluate the risk associated

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<sup>108</sup> Bálint Kovács. "Facilitating and Scrutinizing National Security Measures: Analysis of an Investment Screening Case in the European Union." 2024.

with an investment before making the deal by concentrating on the discourse of due diligence, disclosure and documentation rules mentioned in the study. The need for thorough risk assessment and transparency for investment transactions is emphasized.

Additionally, the contrastive analyses of EU regulations and international standards give significant information about the consistency of the Swedish FDI screening regulations with general international norms and practices. By spotting the congruence and divergences, the paper advises policymakers to solicit the national bodies to adopt international norms and preserve the uniqueness and integrity of the nation while foreseeing possible breaches.

#### **4.4 Future Research Directions**

While this study has brought about some crucial points concerning the law of Sweden for foreign direct investments, factors that are still to be researched are equally important in increasing our understanding of the larger landscape and its implications. While further research should consist of conducting longitudinal studies to evaluate the impact of the Swedish FDI law on foreign capital inflows, economic outcomes and national security, exploring other nations' experiences would also provide important knowledge. Through a review of empirical data over time, researchers can evaluate the productivity of the FDI law to meet the envisioned changes and potentially notice some undesirable impacts or provide insights for improvement.

Comparing Sweden's governance model with other countries will help investigators unearth approaches, experiences and joint projects for transfer. By appointing different actors, such as government representatives, business representatives, legal specialists and civil society organizations, we can see the consequences in their daily lives, find out the goals and whether the measures work and are fair. Research approaches such as interviews, focus groups and qualitative surveys may capture stakeholders' ideas, preferences and experiences.

As future research digs further into the legal implications of the law, scholars can pay greater attention to its compatibility with international trade agreements, human rights norms and EU law. Through a careful examination of the law and analysis, researchers can identify the areas that are uncertain or in conflict and give possible ways to make legislative alterations or policy changes. Considering the various sectors it regulates, future studies may study each in more depth, including their implications and challenges. Analysts can supply a tailored description, reviews, instructions and recommendations for best policy practices and risk management in the individual sectors by looking into the separate features of very sensitive fields like telecommunications, vital energy and defense.

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Case C-106/22, Xella Magyarország, ECLI:EU:C:2023:568