FDI SCREENING AND NATIONAL SECURITY IN CROSS-BORDER M&A: BALANCING OPENNESS WITH SOVEREIGNTY

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Synopsis

This study examines the growing role of FDI screening in cross-border mergers and acquisitions and its connection with national security. It analyses global regulatory developments, challenges in defining national security, and major case studies to understand how states balance foreign investment openness with the protection of sovereignty and strategic interests.

Introduction

Foreign Direct Investment (FDI) through cross-border mergers and acquisitions (M&A) plays a major role in today's global economy, helping ideas, money, and technology move around the world. Many countries have various policies to exercise their sovereign rights to regulate the entry or establishment of foreign investment in their region, which also includes business registration, approval requirements and full or partial restrictions on foreign investment in certain sectors of the economy. However, while FDI brings many economic benefits, it also raises concerns about national security.

Since 2019, national security authorities have become more cautious about allowing foreigners to buy companies in domestic strategic industries and critical infrastructure, including telecommunications, energy, artificial intelligence, robotics, biotechnology, satellites/aerospace, and critical data systems. To address these concerns, many countries have put in place or strengthened rules to review foreign investments that might affect their national interests.

Recently, security-related screening procedures have also been introduced or are under consideration to limit the access of foreign investors to sensitive data of domestic citizens. This ongoing push and pull between welcoming global investment and protecting national sovereignty is at the centre of the debate over cross-border M&A.

The Rationale Behind FDI Screening

FDI screening primarily reflects the state's duty to safeguard national security, economic security, and protection against foreign government influence. This was formerly limited to the apparent issues of essential infrastructure, military technology, and the defence industry. However, the idea of "security" has broadened to encompass financial systems, sensitive data, and high technologies with multiple use potential. For instance, concerns about the possibility of genetic data misuse rather than imminent military application may arise from a foreign takeover of a biotech company.

Governments are also concerned about foreign investors, especially those with state support, acquiring excessive economic or political power, which can create opportunities for foreign governments to engage in espionage or sabotage. Foreign companies that have access to sensitive personal or government data are scrutinised due to concerns about misuse or surveillance by a nemesis state. Many countries are using FDI screening to favour investments from allies and restrict those from geopolitical rivals. As a result, FDI screening procedures act as a gatekeeper, guaranteeing that cross-border M&A does not jeopardise public order or sovereignty.

Recent data and new rules by region:

FDI screening regulations have been evolving due to the rise in geopolitical fragmentation, trade tensions, and economic volatility. Governments all over the world are tightening the FDI screening rules by regulating investment flows and extending their jurisdiction. FDI inflow rate fell by 11% in 2024, especially in developed regions by 22%, whereas developing regions have seen a significant rise by 0.2%.

1. **European Union:** The EU has been at the forefront of strengthening FDI screening. In 2024, the European Commission adopted its initial proposal to strengthen the FDI screening mechanisms, and the European Parliament approved the proposal in May 2025, which mandates that all EU Member States implement a national screening mechanism. The new rules/amendments will require screening for a mandatory list of sectors, including critical infrastructure, raw materials, energy, defence, transport,

media, and key technologies like AI, semiconductors and quantum computing. The revised regulation strengthens the European Commission's power to examine transactions, intervene in cases involving multiple member states and issue binding opinions in instances of disagreement. FDI inflows fell by 58% in Europe with sharp declines in Germany (-89%), Spain (-39%), Italy (-24%) and France (-20%). Germany and Italy are likely to reshape their regulations to maintain a balance between economic openness and national security.

- **Singapore:** Singapore is the second-highest destination of FDI inflows in 2024, with $143 billion, posing a high risk to national security due to opaque foreign investment transactions. In January 2024, Singapore introduced the Significant Investment Review Bill (SIRB), which sets a new screening regime for both domestic and foreign investors to scrutinise the national security risks posed by transactions regardless of the investor's nationality.

- **India:** India has consistently sought to attract FDI while also liberalising its policies, though some sectors remain subject to stringent government approval. In 2024, India amended the Income Tax Act to simplify tax compliance for foreign investors and startups. Following a series of reforms since 2019, India proposed increasing the FDI limit in its insurance sector from 74% to 100% in 2025. The amendment, if passed, aims to streamline regulations and attract more capital. FDI from countries sharing a land border with India (e.g., China) requires government approval, a rule implemented in 2020.

- **Poland:** In July 2025, Poland's temporary FDI screening regime, first introduced in 2020, was made permanent. The authority for reviewing foreign investments was transferred from the Polish Competition Authority (UOKiK) to the Ministry of Finance and Economy. The changes also extend to all the transactions initiated before the change, which will now be examined by the new ministry.

- **Spain:** In September 2023, Spain made the FDI screening mechanism permanent through Royal Decree 571/2023. In 2025, the Government of Spain issued another Royal Decree 1/2025 to extend the requirement for prior authorisation of FDI by EU and EFTA investors until 31 December 2026. This requirement applies to investments exceeding €500 million or those involved in listed companies in Spain. This measure aims to protect public order, security and health.

- **United States:** The U.S. has used a combination of new tariffs and trade deals in 2025 to influence investment flows. The U.S. saw a significant increase in greenfield FDI in the semiconductor industry in 2024 and 2025. The Committee on Foreign Investment in the United States (CFIUS) has enforced and proposed new rules, particularly in areas targeting investments linked to foreign adversaries and strategic technology sectors. CFIUS dramatically increased monetary penalties for violations, raising the maximum fine for material misstatements or non-compliance from $250,000 to $5 million or the value of the transaction, whichever is greater. The committee has also increased investigations into non-notified transactions and site visits to monitor compliance with mitigation agreements. In 2024, CFIUS expanded its jurisdiction over real estate transactions near additional military bases and other sensitive government locations. This enables the committee to review transactions, particularly concerning potential foreign surveillance. Under the Trump administration's "America First Investment Policy" memo issued in February 2025, CFIUS was directed to specifically restrict investments from "foreign adversaries," including China, Russia, Iran, and others, in strategic sectors like technology, critical infrastructure, and agriculture.

Other jurisdictions, such as Australia, Canada, and Japan, also maintain robust screening processes, reflecting a global trend toward closer scrutiny of foreign acquisitions.

Challenges in Defining "National Security"

A persistent challenge in FDI screening is the lack of a universally accepted definition of "national security." Some states adopt a narrow approach, focusing only on defence-related sectors. Others interpret security broadly, extending to food safety, supply chain resilience, and even media ownership. This flexibility allows governments to respond to emerging threats, but also creates uncertainty for investors. Critics argue that excessive discretion risks transforming legitimate security concerns into tools of economic protectionism. For example, while blocking acquisitions in critical infrastructure may be justified, using national security rhetoric to shield domestic companies from competition undermines the credibility of screening systems. Thus, striking the right balance remains essential.

Case Studies in Cross-Border M&A

There are several high-profile cases that support the claim that national security concerns intersect with foreign acquisitions:

i. **Kuka's 2016 acquisition by Midea:** Kuka was top-tier German industrial robot maker company which was acquired by a Chinese home appliances and automation group Midea. This triggered European debates on technology transfer and industrial sovereignty.

ii. **ByteDance's ownership of TikTok:** TikTok is a social media platform that is owned by a Chinese company named ByteDance, which raised national security concerns in the United States. This could allow data surveillance risk by the Chinese authorities, algorithm influence and content shaping. U.S. officials worry that this could subtly manoeuvre political narratives, suppress media topics, and increase foreign influence content in the United States. In 2026, the U.S. structured a joint venture among ByteDance, Oracle, Silver Lake, and MGX to reduce those risks, but ByteDance still holds 19.9% of the shares, which does not eliminate the risk completely.

iii. **Broadcom-Qualcomm 2018:** Donald Trump blocked the deal between Broadcom and Qualcomm, relying on a recommendation from the CFIUS and also issued an executive order citing credible evidence that Broadcom might threaten national security by taking over the 5G standards and infrastructure.

iv. **Carlyle Group's stake in HDFC:** In India, the Carlyle Group held a minority stake in HDFC, which raised questions about foreign participation in financial institutions, underscoring the sensitivity of banking and data-driven sectors. Critics say this could induce a discussion about how much foreign capital is needed to influence India's financial sectors.

These cases highlight how national security risks are no longer limited to defence contractors, but increasingly involve digital platforms, financial services, and advanced manufacturing.

Conclusion

FDI screening in cross-border M&A reflects the evolving intersection of economics and security. While attracting foreign investment remains vital for economic growth, states cannot ignore the risks posed by strategic acquisitions. The challenge lies in designing transparent, predictable, and proportionate screening mechanisms that protect legitimate national interests without sliding into protectionism. As globalisation continues to reshape economic power dynamics, balancing openness with sovereignty will remain the defining question for policymakers and businesses alike.