Nordic Investment Screening Law 1906-2024

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Investment screening–an administrative process through which governments restrict the sale of domestic companies to foreign investors–has emerged as a key domain of international economic governance over the past decade. Like many other advanced economies, the Nordic countries are also reassessing their investment screening laws and policies. Unlike many other states, however, investment controls in place in the Nordic countries lay claim to a particularly long history, with screening legislation dating back over a century. This article deploys a comparative analysis of the evolutionary trajectories of investment screening law in Norway, Sweden, Finland and Denmark. Taking a long view, the article delineates four distinctive eras of Nordic investment screening law–resource nationalism, embedded liberalism, liberalization and securitization–that characterize its instruments, regulatory rationales and legal techniques. The Nordic experience further illustrates the significance of historically informed and geographically varied analysis of FDI regimes law to understanding contemporary convergence in the global investment screening landscape.

1. INTRODUCTION

Investment screening has emerged as a key area of international economic governance. Over the past decade, governments across the world have expanded their powers to review and restrict foreign direct investment (FDI) and control the acquisition of domestic companies. The surge in investment screening is increasingly framed as a way to address potential national security risks embedded in foreign investment, and it is viewed as a major component in rising economic nationalism, the securitization of economic relations and, ultimately, the formation of the new 'geoeconomic order' (Roberts, Moraes & Ferguson 2019).

The expansion of investment screening has already generated a vibrant field of research spanning, among others, finance, management and political science (Lenihan 2018; Frattaroli 2020; Shi & Li 2023). Legal scholarship, including analysis of domestic, regional and international developments, has also proliferated (Fraedrich, Kaniecki & Rafferty 2018; Schill 2019; Voon & Merriman 2022). Much of the burgeoning literature, however, focuses on recent developments in a few large economies such as Australia, China, the European Union (EU) and the United States (US). Despite the many political and financial reasons for this focus, the limited historical and geographical approach impedes a comprehensive understanding of the evolution, operation and impact of investment screening law as well as the complex relationship between FDI and national security.

Against this backdrop, this article provides an in-depth view on the evolution of four national FDI screening regimes that have rarely featured in international legal discourse. The article focuses on the Nordic countries–Denmark, Finland, Norway and Sweden–which, amidst global trends, begun to reassess their screening policies to limit security-sensitive foreign investments in the late 2010s. The shift in policy is substantial, because the Nordic countries have been portrayed as prime examples of small, open and FDI-friendly economies committed to free movement of capital at least since the early 1990s. However, the landscape of Nordic investment screening is more complex, and unlike many other states, most Nordic countries lay claim to a particularly long history with FDI controls.

By deploying a comparative analysis, based on domestic sources, of Nordic FDI legislation dating back to the early 1900s, the article seeks to introduce historically informed and geographically varied analysis to the current debates on global FDI regulation. The article identifies several major trends in the used regulatory instruments as well as their timing and rationale. Emphasizing the legislative switch points, the article delineates four distinctive eras of Nordic investment screening law–resource nationalism, embedded liberalism, liberalization and securitization–that approximate its legal operationalization. Based on this, the article makes several contributions. On the one hand, thick description of the evolving Nordic law and policy landscape diversifies our understanding of the roots, trends and techniques of FDI regulation both regionally and internationally. On the other hand, the historical analysis highlights the deep links and symmetries that exist between the past and present investment screening systems and, by doing so, helps examine the regulatory diffusion and dynamics of investment screening mechanisms as well as potential alternatives for their legal deployment, such as the joint operation of administrative controls and corporate law.

The article is structured as follows. Section 2 provides a brief overview of investment screening by identifying its key developmental phases and regulatory techniques. Section 3, which forms the core the article, analyzes investment screening in Norway, Sweden, Finland and Denmark by tracing and synthesizing the evolution of its primary legal instruments, regulatory rationales and legal techniques from the early 1900s onwards. Section 4 identifies and discusses three broader themes–regulatory diffusion, regulatory dynamics and legal operationalization–where the Nordic experience may have wider lessons and implications also for contemporary FDI policy. Section 5 concludes.

2. INVESTMENT SCREENING: PRESENT AND PAST

2.1. WHAT IS INVESTMENT SCREENING?

Investment screening is an established administrative procedure through which governments exercise control over foreign acquisitions and foreign economic activity in general (OECD 2020a). A corollary to the sovereign prerogative to control the entry of foreign persons into the country and a part of a larger policy bundle spanning from exchange controls to sectoral regulation, investment screening has historically formed a key component in securing national ownership over key assets and industries (Chang 2004). Investment screening can be understood either as a subset of overarching capital controls or as species of more focused FDI regulation (Pandya 2014). Currently, the core features of investment screening relate to individualized operation whereby proposed foreign investments, such as corporate takeovers, are subjected to case-by-case review by the host state. The targeted approach differentiates investment screening from more drastic restrictions, including blanket foreign ownership bans in certain sectors of the economy, and also brings its operational tools close to competition law, given that both focus on merger review (Muchlinski 2021; OECD 2022).

Contemporary investment screening is usually organized through standalone legal frameworks that enable governments to intervene in cross-border transactions on limited grounds to protect essential or public security interests (OECD 2020a). In practice, investment screening mechanisms usually operate through either mandatory or voluntary notices submitted to a government body by the parties to the transaction. If a transaction is considered to entail security concerns, many domestic systems allow the government to prohibit the transaction or subject it to special conditions. Some governments screen foreign investments only in certain sectors such as defense, real estate, telecommunications or energy, but cross-sectoral screening mechanisms have become more prevalent (Sitaraman 2022). Following this, the qualities of the foreign investors, such as their nationality and ownership structure, have become more central in the review procedure. Deals that have either bypassed or otherwise transgressed screening can often be declared null and void, thus threatening parties with significant unwinding costs (OECD 2023).

The practical significance of investment screening has grown over the past decade, and particularly after the Covid-19 pandemic (OECD 2020b). Precise numbers are hard to obtain, but the UN data suggests that in 2022 alone, roughly 5.4 % of total global FDI failed due to government intervention in investment review (UNCTAD 2023). Unease over Chinese FDI is often identified as the driver of policy responses in Europe, Asia and the US, but the growing hesitance to allow the sale of key domestic companies to foreign buyers also covers transactions proposed or completed within the same security communities, such as between companies from two NATO member states (Lenihan 2018; Mattlin & Rajavuori 2023).

Three major regulatory developments have characterized investment screening law and policy in recent years. First, the number of states hosting a dedicated investment screening mechanism has increased. Considering its longstanding pro-capital movement policy, perhaps the most drastic measure has been the adoption of the EU FDI Regulation, which established a Union-wide co-operation and information sharing framework for assessing the security implications of foreign investment and takeovers (Schill 2019). Second, the competence of investment screening bodies has extended to cover a greater share of cross-border transactions as well as completely new sectors and industries such as quantum computing, personal data, food security and health technologies. The most discussed legislative change is quite likely the US Foreign Investment Risk Review Modernization Act of 2018, but several other states, including Australia, Germany and Japan, have either redesigned or greatly expanded the coverage of their investment screening legislation (OECD 2023). Third, investment screening mechanisms increasingly encompass assets beyond

corporate equity. The UK National Security and Investment Act, for example, enumerates individual trade secrets and databases–essentially intellectual property–as qualifying assets also covered by the screening mechanism, likely as an additional safety net regarding emerging technologies (OECD 2024). Together, the geographical and substantive expansion of investment screening law, as well as growing intervention frequency, suggest that FDI controls are an increasingly important component in global economic governance.

2.2. INVESTMENT SCREENING: HISTORICAL ANTECEDENTS

Its contemporary relevance notwithstanding, investment screening is not new. On the contrary, various mechanisms for controlling foreign acquisitions, establishment and economic activity in general have been used throughout the 1900s. However, the form, restrictiveness, rationale and operation of investment screening have evolved drastically over time.

The late 1800s and early 1900s, for example, were characterized by only a few limits on FDI inflows, whereas investment screening was standard policy in the post-war economic architecture that was explicitly tailored to allow governments to control the movement of capital across borders (Reich 1989). FDI restrictions peaked both in developing and developed countries in the 1960s and 1970s, but from the 1980s onwards progressive liberalization efforts limited the desirability and scope of barriers to capital movements, investment screening included (Wint 1992; Bakker 1996). By contrast, the early decades of the 21st century have been marked by the re-emergence of security-driven investment screening across the developed economies (OECD 2020a; 2023).

This rough periodization helps to make sense of the ebb and flow of investment controls over time, but it also masks substantial variance in their rationale and geographical spread. For one example, many early foreign ownership restrictions, such as the US and UK Trading with the Enemy Acts, were driven by the demands of the war economy (Mulder 2020). After World War II, investment controls were motivated by more varied goals such as industrial and innovation policy. Developing economies, in particular, utilized FDI regulation aggressively to nurture domestic industries (Lall & Streeten 1977), while advanced economies were more focused on maintaining technological competitiveness and employment policy (Safarian 1983). The shift towards a narrower focus on the security implications of FDI was already underway in the early 1980s (OECD 1985), but it emerged as the touchstone of investment screening law and policy only in the late 2010s (OECD 2020a).

The evolving policy rationales are often embedded in broader economic trends. For instance, the mid-1900s screening procedures were usually linked to macroeconomic policy and to exchange regulations that sought to limit uncontrolled flows of speculative short-term capital (Jones 1990). The fusion of financial and political concerns has also been a key policy driver. As an example, the postwar flow of American investment into Europe triggered enhanced investment screening legislation, particularly in France (Torem & Craig 1971), and the rapid expansion of Japanese investment resulted in the adoption of the first comprehensive investment screening regime in the US in the late 1980s (Alvarez 1989).

Evolution of policy rationales is closely reflected in the legal operationalization of investment screening (Wallace 2002). In the postwar context, for instance, all capital flows–whether in the form of savings, investment or dividends–could be subjected to governmental authorization under stringent exchange control regimes, as was the case with the 1947 UK Exchange Control Act and the 1973 Indian Foreign Exchange Regulation Act (Chaudhuri 1979). Although long-term FDI, such as acquiring significant stakes in domestic companies, was addressed in a more lenient fashion than speculative 'hot money' ventures, authorization schemes were also regularly employed in relation to corporate acquisitions.

The majority of these control mechanisms were sectoral, covering industries such as defense and energy, but cross-sectoral ownership and acquisition restrictions were also used (Bailey, Harte & Sugden 1994; Sitaraman 2022). In the 1970s, many large economies, including Australia, Canada and the US, started to base their foreign investment frameworks on loose concepts such as 'national interest', which enabled flexible, if overtly protectionist, regulation of inward FDI (Calvet & Crener 1979). Numerous post-entry performance obligations, such as mandatory technology transfer, were also used as preconditions for FDI, particularly if the investor was a multinational company (Wallace 1982).

Over time, however, authorization procedures became more institutionalized and their legal bases less diffuse. Economic integration, whether through bilateral investment treaties or regional integration, was a key driver in narrowing down the ubiquitous 'public' or 'national interest' grounds for screening intervention (Vandevelde 1998; Pandya 2014). Towards the end of the 1900s, most investment screening mechanisms were either sectoral (Kudrle 1993; Sitaraman 2022) or, in the case of cross-sectoral controls, confined to limited exceptions on public, essential or national security grounds, analyzed case-by-case (Heinemann 2012). In general, blanket bans on foreign ownership were usually replaced by targeted interventions focusing on the qualities of either the acquired asset or the acquiring entity. The recent surge in investment controls builds on similar exceptions, but often increases their reach in various ways, including by lowering financial thresholds triggering review, defining 'critical' companies expansively by referring to concepts such as 'national security' and 'enabling technologies' or adopting new techniques for identifying foreign control and protected assets (OECD 2020a).

Given how the concrete techniques through which investment controls operate have evolved along the shifting ideologies, politics and economics of foreign investment, it is unsurprising that investment screening law has been extensively discussed in previous legal scholarship. Detailed treatises on the various national regulatory models and the international frameworks that structure the global FDI governance have been a staple in legal commentary for decades (Friedmann & Pugh 1959; Dagon 1965; Gillespie 1972; Wallace 1982; Bailey, Harte & Sugden 1994; Sherif 2002; Wehrlé & Pohl 2016; Hindelang & Moberg 2021). Scholarship is, however, mostly limited to certain key jurisdictions, such as Australia, China, France, Germany, Japan, the UK and the US, and in general we know a great deal about the histories, regulatory strategies and practices of a few highly industrialized states but less about others.

While the focus on industrial powers is quite natural due to their economic and regulatory weight, it also leads to an incomplete account of the past and present investment screening. Investment screening was, especially in the 1900s, greatly influenced by domestic economic and legal institutions, and FDI regulation came in many shapes and sizes. Even though the past decades have been characterized by a convergence in global screening practices, the analysis of less-explored regulatory models may help understand, among others, the complex relationship between administrative investment screening controls and more discreet forms of economic nationalism, such as the operation of domestic corporate law. In this way, studying past and present investment screening frameworks may also unearth potential lessons for administrative practice, corporate strategy and legal scholarship to better accommodate and understand the implications of securitization of economic policy. In short, a more diverse examination will likely help in putting contemporary regulatory developments in their proper context. This is the task for the remainder of this article.

3. NORDIC INVESTMENT SCREENING LAW: A COMPARISON

This section examines the evolution of investment screening legislation in the Nordic countries from the early 1900s onwards. First, this section describes the objectives of the comparative

analysis. It then analyzes the origins, evolution and operation of FDI regulation in Norway, Sweden, Finland and Denmark. The section closes with a brief synthesis of the developmental timeline of the Nordic FDI controls and its compatibility with global regulatory trends.

3.1. Comparative Analysis: Aims, Sources and Limitations

The Nordic countries have a long history of investment screening. The first overarching control regimes were adopted in Norway and Sweden in the 1910s and in Finland in 1930s. Except for Denmark, which came to adopt a comprehensive screening system only in 2010s, the scope of FDI controls expanded steadily until the 1980s, when the accelerating European integration prompted drastic liberalization of investment rules. Finland was the only Nordic country to retain cross-sectoral investment screening throughout the 2000s, and it was also the first to start modernizing the regime in early 2010s. More recently, all Nordic countries adopted or updated new investment screening legislation between 2018–2023, enabling governments to intervene in a broad range of foreign acquisitions and other investments in ways that were unconceivable only a few years prior.

The long history and the two phases of extreme policy convergences–the early 1900s and early 2020s–make Nordic investment screening law a unique target for analyzing the constitution, rationales and operation of FDI controls over time. Domestic legal commentary and economic history aside, however, the Nordic investment screening law has rarely featured in international policy and legal discourse (Knudsen & Landmark 1979; Dugstad Sanders, Sandvik & Storli 2016; Mattlin & Rajavuori 2023). The recent resurgence of investment controls has prompted comparative studies on the current state of FDI regulation both in individual jurisdictions and in the Nordic region as a whole (Hallberg 2021), but none of these prior examinations provide an overarching account on the legal evolution and operation of the Nordic investment screening mechanisms from inception to heyday, subsequent abandonment and, ultimately, to their reappearance.

The following sections trace the development of FDI regulation in the Nordic countries from the early 1900s onwards. Specifically, the sections deploy a comparative analysis of the evolution of investment screening legislation in Norway, Sweden, Finland and Denmark with a focus on the cross-sectoral investment screening and acquisition controls. The analysis is based on relevant historical and contemporary legislation, including their extensive preparatory materials and parliamentary committee reports, as well as secondary legal and historical literature in four Nordic languages. While bulk of the country studies consist of a detailed exploration of the main instruments, regulatory rationales and legal techniques used to administer foreign ownership and acquisitions, the analysis attempts to weave together a coherent narrative that emphasizes the embeddedness and dependency of FDI regulation in domestic contexts, thus also stepping outside black-letter law.

It should be noted, however, that the article does not attempt to provide a complete history of the political or economic drivers of Nordic investment controls. Given the sizeable differences in domestic economic conditions both between individual countries (e.g. Danish integration with European consumer markets versus Finnish reliance on raw materials in the early 1900s) and over time (e.g. the transformation of Norwegian economy after the discovery of oil and gas reserves), this would certainly be a too formidable task. Instead, the article's analysis is limited to a distinctive 'foreign investment narrative' that emerges from official sources and legal commentary. Similarly, simultaneous examination of four jurisdictions precludes an in-depth analysis of all relevant rules, exceptions and doctrines, and forces the article to focus on rationales of law and policy at critical junctures. Finally, the analysis does not attempt to give an accurate description of the regulation currently in force, as there are more appropriate forums for this type of legal commentary. Rather,

the purpose of the comparison performed in this article is to explore the broader evolutionary paths of Nordic investment screening law, to underscore the legal dynamics in its development and diffusion and, ultimately, to provide a rich historical backdrop to better understand the trajectories and practices of FDI regimes, both past and present.

The country studies proceed chronologically, and they track the development of domestic FDI legislation with regard to form, timing, key legal concepts, regulatory triggers and sanctions that have given shape to the domestic screening regimes. Based on the rough periodization discussed in the previous section, each country study is organized into four distinctive eras: 1900-1950 (resource nationalism), 1950-1980 (embedded liberalism), 1980-2010 (liberalization) and 2010- (securitization). These eras serve to approximate the legal techniques and policy rationales underpinning different iterations of Nordic FDI regulation. While individual country studies are complex and contain numerous legal instruments, the main findings are summarized in Tables 1 to 4 in the Annex. Moreover, the section closes with a brief synthesis, which emphasizes both the regulatory chronology and the key legislative switch points that expose the changing FDI policy drivers.

It should be noted, however, that the chosen eras, as well as their exact periodization, are somewhat arbitrary. For example, the 1982 Swedish Acquisition Act should, due to its year of passing, be listed under the 'liberalization' era, but as a restrictive piece of FDI legislation, it is placed under the 'embedded liberalism' era. Similarly, the periodization breaks down in the Danish case, given that Denmark lacked cross-sectoral FDI legislation until 2010s. These shortcomings notwithstanding, the periodization provides necessary economic, political and regulatory backdrop for understanding the dynamics behind FDI rules as well as their evolution over time.

3.2. NORWAY

3.2.1. 1900-1950

Norway was the first Nordic country to adopt robust investment regulation mechanisms targeted directly at foreign nationals. Norway's FDI framework is also the best-known Nordic regulatory system, and its origins, operation and impact have been widely discussed across disciplines including economic history and developmental economics. This is mostly due to the Norwegian economy's unique trajectory, whereby one of the poorest European states was able to leverage its natural resources become one of the wealthiest states in the world over the course of the 20th century. Restrictions on foreign nationals' rights to acquire Norwegian real estate and companies were a key part of the developmental and industrial policies that enabled this transformation (Lange 1977).

The development of early FDI regulation was under way already in the years of the 1900s as a response to the growing influence of foreign nationals in the Norwegian economy. It was noted that British and German nationals, in particular, were securing control over significant hydroelectric plants (Einarsen 1910). To counter this development, Norway first passed the 1906 'Panic Act'–drafted, proposed and approved in less than month–restricting the sale of waterfalls, followed by a series of acts that became known as the concession system over the 1910s (Amundsen 1918). The early concession system matured with the passing of the 1917 Act on concessions for rights to waterfalls etc. ('Concession Act'), which created a complex system whereby acquisition of Norwegian natural resources, real estate and domestic companies owning such property was subjected to governmental approval and conditions (Lov 14. desember 1917 nr. 16). Overall, the concession framework set the stage for resource nationalism as the primary driver of early Nordic investment controls as Sweden and Finland also came to emulate its policy rationales.

From the outset, the concession system operated through a case-by-case authorization system that applied to both domestic and foreign operators. While the different Concession Acts handled different resources and different acquirers in different ways, permits were generally granted unless they went against public interest, which was often guaranteed by including conditions, for example on the procurement of local machinery or supplying cheap electricity to nearby cities. In contemporary analysis, the broad range of conditions was considered robust enough to maintain at least a minimum level of legal certainty while guaranteeing a steady influx of investment into the country (Stonehill 1965).

The concession framework covered share purchases indirectly, as the legislator presupposed that most foreign buyers would acquire Norwegian companies to gain ownership of real estate and natural resources. Thus, corporate acquisitions were also likely to trigger the concession legislation and fall within the ambit of government pre-approval procedures. For example, the Concession Act included strict limitations regarding the nationality of shareholders and company directors, the majority of which was to be in Norwegian hands (Amundsen 1918). Corporate acquisitions were also regularly accompanied by conditions.

Initially, only foreign corporate acquisitions exceeding 50% of share capital were contingent on government approval, but this threshold was lowered to 35% in 1931 and augmented with a hard foreign ownership cap of 20% of total stock. The sanctions ranged from deeming non-approved acquisitions null and void to giving the government the option to auction non-cleared assets. Due to strict penalties companies could face, the 1931 amendment to the Concession Act also gave the boards of Norwegian companies the right to deny share transfers that would impinge on or contravene the company's existing concessions (Ot. prp. nr. 31 (1931)). Thus, the concession framework was operationalized both through administrative oversight and company-centric, private enforcement strategies. As will be demonstrated below, while Sweden and Finland did not utilize similar board-driven control mechanism, they also relied on the joint operation of administrative investment controls and corporate law, which was widely considered a Nordic specialty (Ohlsson 1949).

3.2.2. 1950-1980

The Concession Act remained in force for the whole century but was amended on numerous occasions. The 35% threshold laid down in the 1931 amendment was followed by lowering the general acquisition threshold to 20% in 1969 and ultimately to 10% in 1972. In the process, the objectives of the concession system started to diversify from the protection of natural resources to industrial policy, including stringent performance obligations and obligatory technology transfer from foreign to Norwegian companies (Falkanger 1980). Various mandatory conditions and requirements were included in the original Concession Act, but in general the legislation gave the authorities wide competencies–a 'carte blanche in prescribing requirements'–to intervene (Eckhoff & Rikheim 1959). For foreign acquisitions, typical conditions required the foreign acquirers and owners to establish a Norwegian subsidiary as a nexus for in-country operations, impose stricter nationality requirements on board members, give the regulator a veto on amending the corporate bylaws and set company-specific conditions in relation to the production process (Knudsen & Landmark 1979). The Corporation Act of 1957 imposed further restrictions on the establishment of Norwegian subsidiaries (Eckhoff & Rikheim 1959).

The benefits of FDI regulation came under increasing scrutiny from the 1960s onwards, mainly due to complexity of the concession framework which made it difficult to conclude acquisitions. In practice, the same acquisition could come under multiple regulatory regimes, and the legal effects of concession approvals or dismissals for the parties to the transaction were unclear as was the competence of the company board to block share transfers to foreign nationals (Falkanger 1969). Similarly, the effects of the Concession Act on general corporate law system were not

systematized in a comprehensive way. The Corporations Act of 1976, for example, merely stipulated that the free transferability of shares could be limited in company bylaws but only in a few cases, one which hinged on the characteristics of the shareholder, including nationality (Lov av 4 juni 1976 nr 59; NOU 1980:19). The board's competence to block share transfers to guard against the company triggering a concession review remained in the Concession Act and thus separate from the Corporations Act (Andenæs 1981).

Despite increasing criticism towards FDI restrictions, no major regulatory overhauls took place. Instead, the Concession Act was supplemented by the Act on concession and public pre-emption in respect of the acquisition of real property in 1974 (Lov av 31. mai 1974 nr 19). Together, these slightly overlapping instruments continued to operationalize Norwegian investment regulation to focus primarily on real estate transactions for the following decades (Falkanger 1969; Knudsen & Landmark 1979). Towards the end of the 1970s, however, the permit procedure and conditions entailed with it started to gravitate more towards industrial policy goals, such as technology transfer in mining and oil extraction (Knudsen 1980).

3.2.3. 1980-2000

The pressure for amending the concession system mounted in the 1980s (Nyfløt 1989). The legislation was considered a regulatory patchwork with many uncertainties both in relation to concession practice and private arrangements (Andenæs 1988). Share acquisitions were particularly problematic, and it was often hard to establish whether the acquirer needed a license or not (Falkanger 1989). For a while, the government considered instituting a system similar to Sweden and Finland where a company's stock was divided into 'free' shares–a special class of shares emitted within the limits of foreign ownership restrictions–and 'restricted' shares that could not be transferred to foreign nationals (Ot.prp. nr. 5 (1988–89); NOU 1992:29). Ultimately, this option was not pursued but many companies transformed their stock into a dual-class structure and enabled foreign nationals to trade the free shares (Falkanger 1989).

The first radical redesign of FDI regulation took place in 1994 with the adoption of the Act on the acquisition of business enterprises ('Acquisition Act',) (Lov 23. desember 1994 nr. 79) which detached foreign corporate acquisitions from the concession system (Ot. prp. nr. 88 (1993-1994)). Two factors were identified as the primary drivers of the regulatory change. First, in light of accelerating European integration, the concession system was viewed as running counter to Norway's new international obligations, such as free movement of capital and freedom of establishment (Ot. prp. nr. 88 (1993-1994)). Second, current regulation of corporate acquisitions was considered burdensome and a risk to Norway's position in the 'competition for international capital' (Ot.prp. nr. 88 (1993-1994)). As a consequence, the FDI regulation moved away from a heavy pre-approval system and instituted a leaner notification system that enabled the government to intervene only in exceptional cases where the acquisition could have adverse effects on the business in question, the industry, employees or society at large (Innst. O. nr. 16 (1994-1995)).

The Acquisition Act retained many of the concession system's operational tools and concepts. For example, transactions were to be approved unless they were contrary to public interest and permits could include a range of conditions. However, regulation only covered Norwegian companies whose turnover, number of employees or public R&D support exceeded certain thresholds. The largest and most influential Norwegian companies remained subject to governmental oversight. Another significant change involved the available sanctions. Unlike the Concession Act system, which made it possible to declare a transaction void, the Acquisition Act relied on criminal sanctions and fines (Søyland 1995). Even though the new legislation drastically downscaled FDI intervention powers and thus put forward the first Norwegian investment screening framework that resembles their modern functions, its key policy rationales were employment and industrial policy goals, such as protection of Norwegian companies from relocation and asset stripping

(Innst. O. nr. 16 (1994-1995)). Security aspects, such as ensuring that domestic production capacity remained in Norwegian hands in times of crisis, were discussed but not included in the final legislation (Ot.prp. nr. 88 (1993-1994)). In this sense, the operation of Norwegian investment screening continued to deviate from many other developed states, where public order and essential security interests were, at least formally, the key policy driver.

Despite creating a more light-touch investment regulation regime, the burden the Acquisition Act placed on M&A processes attracted both foreign and domestic criticism (OECD 1995b; Hugo-Sørensen 1996). This led to the Act being repealed in 2002 after only seven years in force (LOV-2002-06-21-38). Citing the minimal use of the new system and its adverse effects on the capital costs for Norwegian companies, the government viewed the cross-sectoral screening system as a curious national specialty and prime target for reducing regulatory red tape (Ot. prp. nr. 62 (2001-2002)). The most vigorous criticism was voiced by the Ministry of Defense, which considered the repeal to reduce the government's ability to guard against potentially dangerous takeovers (Innst. O. nr. 72 (2001-2002)). After repealing the Acquisition Act Norway had no systemic investment control mechanism in place.

3.2.4. 2010-

Norway reintroduced an investment screening mechanism with the 2018 Act on national security ('National Security Act'), which became applicable at the beginning of 2019 (LOV-2018-06-01-24). Embedding the foreign ownership restrictions in a broader national security framework was a significant change from the previous FDI control regimes, which had been designed from resource nationalism or industrial policy perspectives. In particular, the investment screening chapter of the National Security Act was driven by a limited set of goals that included, most importantly, the protection of sensitive information, security of supply and strategic production of goods and services (NOU 2016:19), but rationales such as limiting foreign infrastructure investments and the protection of strategic technology were also expressed during drafting (Innst. 103 L 2017-2018; Sverdrup-Thygeson & Mathy 2020).

The National Security Act created a compulsory notification mechanism for investors, whether foreign or domestic, who sought to acquire control of Norwegian businesses that had a crucial role in supporting or delivering critical national services. Investment screening only applied to companies that relevant ministries designated as critical, and the controls were thus severely more limited than what Norway had maintained in the past and what many other developed economies had adopted over the past decade (Wehrlé & Pohl 2016). The intervention threshold was initially set at one-third of the share capital or where there is other significant influence over the management of the company, but the thresholds were relaxed with the 2023 amendment to 10% of share capital (LOV-2023-06-20-77). In addition, the amendment expanded the definition critical companies, and also imposed a notification obligation to target companies. The acquisition, which could also include conditions, was to be permitted unless the transaction entailed 'not insignificant risk' to national security interests (Prop. 153 L (2016–2017)).

The new investment screening mechanism was first used to block a deal in 2021, when the sale of Bergen Engines AS to the Russian TMH Group on undisclosed security grounds was prohibited. Crucially, however, the intervention was not made under the investment chapter of the National Security Act because the acquired company had not been designated as a critical company. Instead, the government relied on the Act's general emergency powers (Justis-og Beredskapsdepartementet 2021). In another known case, the government approved, albeit with conditions, an investment into communication provider GlobalConnect's parent company by a United Arab Emirates' sovereign wealth fund (Regjeringen 2023).

In late 2023, a comprehensive reform of the FDI system was proposed by a government committee (NOU 2023:28). According to the committee report, the current system had several critical flaws, including the lack of systematic detection mechanisms and, in many cases, unstable legal basis for intervention. To modernize the system, the committee suggested separating investment controls from the National Security Act to a separate act with more robust notification obligations and expansive scope. In addition, foreign ownership restrictions were to be aligned with obligations in other statutes, such as the Petroleum Activities Act, and all FDI-related cases delegated to a new government overseeing body (NOU 2023:28). However, no legislative action has been taken at the time of writing.

In sum, Norway set the pace for much of the early development in Nordic investment screening law. Not only was Norway the first Nordic country to institute significant foreign investment controls to limit European investors' influence over its natural resources, it pioneered the shift away from real property to industrial policy as the driver of the screening system. Abandoning the acquisition controls system in the early 2000s as an outdated national peculiarity can be seen as a crucial legislative switch point that is now superseded by the adoption of explicit but narrow national security-orientated screening system. Compared to other Nordic countries whose policies have been influenced by the EU FDI Regulation, it is important to note that recalibration of Norwegian investment controls is clearly a domestic initiative, and thus a firm indication of a more radical shift in global regulatory landscape.

3.3. SWEDEN

3.3.1. 1900-1950

Sweden followed Norway as the second Nordic country to have standalone foreign investment legislation in the mid-1910s. As in Norway, Swedish legislation was the product of a protracted political struggle characterized by sharp disagreement over the advantages and disadvantages of foreign ownership, particularly in relation to real estate (Nordlund 1989). Initially, limited restrictions in foreign acquisition of land, forests and mineral resources were adopted, mostly as a response to the increasing investment in the Swedish ore industry by British and German companies (Lagen den 4 maj 1906). However, regulation was easy to evade by channeling foreign investments through Swedish companies which were not covered by acquisition restrictions.

The first company-centric reaction to the ineffective acquisition controls was the amendment of the Swedish Corporations Act in 1910 that enabled companies to restrict transferability of shares to foreign nationals in their bylaws (Prop. 1910:54). This private law mechanism formed a key element in the overarching investment controls that were introduced in 1916 with the passing of the Act on certain restrictions on the right to acquire real estate or shares in certain companies ('Restriction Act', Lagen (1916:156)). The Restriction Act was inspired by the perceived positive experiences of the emerging Norwegian concession system, but many continued to view the proposed system as being overly intrusive and likely to stifle business opportunities for Swedish entrepreneurs (Nordlund 1989).

Under the Restriction Act, real estate and mineral resource purchases and the acquisitions of Swedish companies owning real property by foreign nationals were made contingent on government authorization. To guarantee the effectiveness of the law, private companies were also incentivized to include a 'foreigner clause', which limited the transferability of shares to foreigners, in their bylaws. During the drafting phase, the foreigner clause was proposed to cover all stock purchases, but the final legislation adopted a more relaxed approach. Thus, Swedish companies that did not limit foreign ownership to 20% of their shares were also required to obtain a government permit for the covered transactions. If a company adopted a foreigner clause, the

company bylaws could not be amended without government approval. While much of the legal operationalization and enforcement of investment controls were transferred to the private domain, the Restriction Act also provided public methods of enforcement, such as voiding share acquisition that did not conform with the foreigner clause and imposing fines for various violations (Kôersner 1916). However, the extensive use of company bylaws to restrict foreign ownership was clear regulatory strategy that emphasized the close connection between administrative investment controls and corporate law. While the strategy characterized the Nordic FDI regulation until the early 1990s, and was used as a direct example for the Finnish investment regulation, it also created practical difficulties in squaring transfer restrictions with the competencies of different corporate bodies (Nial 1936).

In the early years, the operation and reach of the Restriction Act system were constantly expanded for instance by enacting special legislation prohibiting the use of intermediary buyers in corporate acquisitions first in 1925 and later in 1934 (Lagen (1934:239)). The most material change took place in 1934 with the adoption of an amendment to the Restriction Act–known as *Lex Boliden* as it was triggered by controversies surrounding the acquisition of Boliden, a major Swedish mining company–whereby the coverage of the legislation was extended to better accommodate the growing use of a dual class share structure that occasionally gave foreign owners a disproportionate voice in corporate decision-making (Lagen (1934:238)). The Corporations Act was also amended. The most significant amendment was done in the mid-1940s, when the concise rules laid down in the 1910 Corporations Act were replaced by more detailed prescriptions centered on 'free' shares–traded within the limits of foreign ownership restrictions–and 'restricted' shares that could not be transferred to foreign nationals (Prop. 1944:5; Nial 1948).

In sum, the Restriction Act quickly created a ubiquitous regime covering the whole of the Swedish economy. In the early 1940s, the government noted that approximately half of all Swedish companies had included the foreigner clause in their bylaws, although the percentage was considerably lower in the case of smaller companies (SOU 1941:9).

3.3.2. 1950-1980

Sweden continued to introduce new legislation that limited foreigners' influence over its economy throughout the 1950s and 1960s (Lagen (1968:557); Nial 1959). The first major change to the underlying logic of the Restriction Act, however, took place only in 1973 when the conditions for approving the acquisition were detached from real estate and mineral resources transactions. The amendment was motivated by changes in Swedish industry as new technologies and intellectual property, as well as large companies in general, were considered as assets in greater need of protection from foreign influence than natural resources, which were the linchpin of the original Restriction Act system (Prop. 1973:72). While the Swedish FDI amendments predated the Norwegian changes, it is clear that the 1970s were a key regulatory infliction point towards innovation and industrial policy as the drivers of investment screening across the Nordic region.

The amendment expanded the reach of investment regulation and was operationalized by including in the Restriction Act a new concept of 'essential public interest' on which the permission system pivoted. Accordingly, new acquisitions or amendments to the existing bylaws containing foreigner clauses were to be approved unless they were contrary to an essential public interest, which was construed narrowly (Prop. 1973:72). Contemporary analyses supported this view as acquisition permits were regularly approved (Knudsen & Landmark 1979). The general corporate law framework also evolved and, in particular, the new Corporations Act of 1975 included a number of rules on free and restricted shares as well as on the technical implications of the foreign transfer restrictions (Prop. 1975:103; Nial 1976).

A more substantive legislative overhaul was initiated in the early 1970s in response to the increasing financial significance of multinational companies, but the drafting committees failed to reach consensus both on the general approach and the concrete aims of future legislation. The committee submitted three options ranging from exceedingly restrictive to a very liberal investment regulation, all of which primarily focused on the growing influence of multinational companies in the Swedish economy in areas such as employment and R&D, and also on their cultural influence especially in relation to ownership of the Swedish press (SOU 1978:73). It is clear, however, that FDI regulation remained subject to deep political contestation and there was no consensus on its driving rationales or legal strategies.

The regulatory framework was finally overhauled in 1982 when the Restriction Act was repealed and the Act on the foreign acquisition of Swedish companies ('Acquisition Act') adopted (Lagen (1982:617)). In the travaux préparatoires, the drafters analyzed the pros and cons of inward investment, eventually considering extensive foreign influence over the economy to bring about various risks related to losing decision-making power over corporate strategy, technology transfer and domestic production capabilities (Prop. 181/82:135). Corporate and real estate acquisitions were also divided between different regulatory instruments, a move that Finland emulated in the early 1990s (for real estate, see lag (1982:618)). Notwithstanding that the Acquisition Act focused more clearly on transactions involving large companies, it retained much of the original Restriction Act's characteristics, including the reliance on private operationalization (Förordning (1982:878); Rodhe 1990).

The Acquisition Act's key legal innovation was the adoption of the concept of a 'control subject', which was used as an umbrella term for all actors – such as foreign persons and Swedish companies, foundations or other economic organizations – that did not have mechanisms to limit foreign influence in place (Rahman 1983). More extreme forms of investment control were also considered but ultimately left outside the remit of the Act. Among these were numerous restrictions on greenfield investments and a formalized system for imposing special conditions on the transaction. Acquisition permits had already been approved conditionally, but the procedure had no firm legal basis. The drafters decided against regulating these conditions, mainly because it was considered to bring about a severe risk for continuing micromanagement of acquired companies and thus an impediment to their future operation (Prop. 181/82:135). Instead, the Acquisition Act introduced staggered intervention thresholds, as transactions exceeding 10%, 20%, 40% or 50% of total stock could all trigger permit review (Prop. 181/82:135). The preparatory materials for the acquisition law were also the first to comprehensively review domestic investment regulation against Sweden's international obligations under the developing OECD and European rules (Prop. 181/82:135).

3.3.3. 1980-2010

Experiences with the new Acquisition Act were mixed, and towards the end of the 1980s Swedish industry voiced sharp criticism over the burdensome administrative proceedings and their often long and unpredictable handling times (SOU 1989:37). A combination of internal developments, especially in the capital markets, and the perceived external regulatory requirements imposed in the context of European integration were also the key drivers for ultimately abandoning investment regulation in the early 1990s (Prop. 1991/92:7; Svernlov 1992).

Despite being enacted only ten years earlier, the Acquisition Act was repealed in 1991 with further amendments to the sprawling foreign ownership regulatory framework following in the coming years. Removing the classifications of 'free' and 'restricted' shares from the Corporations Act in 1993 was one of the most significant changes that took place (Prop. 1992/93:68). By 1991, almost 90% of all Swedish companies had subscribed into 'foreigner clause' driven private FDI restriction mechanism, which the Corporations Act amendment essentially rendered void (SOU 1992:13).

Afterwards, only very limited investment screening regulation was retained, mostly in the defense industry (SOU 1992:13).

3.3.4. 2010-

Discussion on the security implications of FDI, and particularly on the need to intervene in transactions involving sensitive information or critical infrastructure and technology, re-emerged in Sweden in the mid-2010s, approximately 25 years after disbanding the cross-sectoral investment screening mechanism (SOU 2018:82; SOU 2020:11). In a mainly domestically driven legislative process, Sweden augmented the 2018 Protective Security Act with new rules on the transfer of security-sensitive entities in late 2020 (Lagen (2020:1007)). The new amendments were passed in haste and with a sense of urgency, and they mandated the designated operator–i.e. the company itself or its owner–to report and consult with the government on any acquisition attempts. In another process, an institutional framework was created for meeting the requirements of the EU FDI Regulation's information sharing obligations (Lagen (2020:826)).

A more substantial overhaul was finalized in late 2023, when the Act on Screening Foreign Direct Investments ("Screening Act") was passed (Lagen (2023:560)). According to the Screening Act, all direct investments (including greenfield) above 10%, whether by Swedish, EU or non-EU investors, in sectors as diverse as critical societal functions, critical raw resources, personal data and emerging technologies were to be notified. The Screening Act also covered greenfield investments, and a violation of the notification requirements rendered the transaction null and void in addition to substantial fines (Prop. 2022/23:116).

In sum, the Swedish experience showcases the most radical shifts in FDI regulation in the Nordic countries. Sweden was quick to establish investment controls to limit the exposure of its ore resources to foreign investor and the first Nordic country to discontinue its existing ownership controls amidst the European integration, but it also acted decisively to bring restrictions, also including innovation policy goals, back in the early 2020s. The inclusion of natural resources as a protected activity requiring mandatory notification further highlights the symmetries between the early 1900s FDI controls and their modern counterparts.

3.4. FINLAND

3.4.1. 1900-1950

Finland has maintained dedicated foreign investment regulation from the late 1930s onwards and, unlike in Norway and Sweden, cross-sectoral investment controls have never been fully repealed. Comprehensive investment regulation system on the rights of foreigners to acquire real estate and mineral resources was first proposed in the mid-1920s (HE 45/1928 vp). The bill was modeled on the Swedish Restriction Act and operationalized by extending ownership restrictions on Finnish companies more than 25% of their share capital of which was in foreign hands. Unlike in Norway and Sweden, however, the bill did not pass. This was mostly due to the opposition of the parliament's law committee, which considered the restrictions on domestic companies likely to hamper economic development (LtVM 3/1929 vp). Regulatory initiatives stalled until 1939 when the Act on the rights of foreigners and specific societies to own and control real estate and shares ('Restriction Act') was finally adopted (219/1939). The Restriction Act was primarily motivated by unwillingness to yield control over mineral and forest resources as well as strategic companies and sectors to foreign nationals (HE 102/1938 vp). Contemporary legal commentary viewed the Restriction Act as politically motivated but also necessary for 'economic self-preservation' (Kivimäki 1938).

In practice, the Restriction Act prohibited foreign persons or companies from acquiring or renting for more than five years real estate in Finland without a government permit. The same applied to domestic companies that were deemed 'dangerous', meaning companies that had not restricted the transferability of their shares to foreign buyers. Unlike in other Nordic countries, however, the Act also stipulated that foreign buyers could not acquire more than 20% of the shares in certain other Finnish companies, most notably domestic defense and armaments producers. Finnish companies that wanted to avoid the burdensome permit procedure were required to include in their bylaws a foreigner clause, modeled on the Swedish example, that limited the transferability of their shares to foreign nationals. Although the expectation was that most would restrict the transferability of their shares, subscription to such a private enforcement system was portrayed as a choice that companies could freely take after their own cost-benefit analysis (Cederberg 1940a).

The government, which at the time was required to authorize the establishment of new companies, also had the power to prohibit the transfer of company stock to foreigners altogether if 'public interest' so required. In addition, the government permits could include any conditions necessary to guarantee public interest. As in Norway and Sweden, non-approved transactions could be declared null and void, but the Act also included financial penalties. Major operational changes were also made to the 1895 Corporations Act. The most significant amendments concerned the competence to limit the transferability of shares to foreign nationals through company bylaws and imposed obligations on company boards to monitor the nationality of shareholders. The operationalization of the Restriction Act system through corporate law quickly spurred active debates on the difficulties involved in registering bylaws, amending different types of foreigner clauses, board members' duties and other practical issues such as the issuance of new shares (Kuuskoski 1941). In general, however, the foreigner clause was considered to be interpreted as narrowly as possible (Caselius & Heikonen 1955).

At the time, the Finnish Restriction Act was the most modern investment regulation system in the Nordic countries. In addition to detaching the foreign corporate acquisition regulation from real estate transactions, the legislator carefully analyzed earlier Nordic experiences with foreign ownership regulation and weighed different legislative alternatives. Citing Swedish experiences, for example, the government acknowledged the many opportunities for domestic and foreign companies to circumvent regulation and responded with a separate Act on the use of fronted transactions when acquiring company shares (HE 102/1938 vp). The Norwegian concession model was, by contrast, considered too drastic an alternative (Cederberg 1939).

Other regulatory strategies were also considered. Most importantly, it was suggested that ownership restrictions would explicitly cover all companies and not only those whose operation was of 'significant national interest' (Cederberg 1939). This strikingly modern route was not followed, however, because it was viewed as being too difficult to translate into concrete legal obligations. Instead, the Restriction Act limited itself, after a late-stage intervention by the parliamentary law committee, to companies producing defense goods and armaments (LtVM 31/1939 vp; Cederberg 1940b). This category was expanded as early as 1942, when all companies that could potentially produce defense-related goods were brough under the ambit of the ownership restrictions, along with the imposition of a hard 25% voting cap for freely-traded shares (HE 97/1942 vp). Accordingly, the Restriction Act covered from the outset a large proportion of Finnish companies regardless of their size or the types of property they owned. By late 1940s, almost 80% of Finnish company bylaws contained a foreigner clause (Ohlsson 1949).

3.4.2. 1950-1980

The Restriction Act remained in force until 1992. It was amended numerous times, usually to expand its scope and close loopholes, but its overarching aims did not change (Sillanpää 1988). Thus, as late as 1974 the government still emphasized the significance of investment regulation to

keep Finland's 'natural resources in national hands and to protect its industries from excessive foreign influence' (HE 18/1974 vp). Restrictions faced increasing criticism from legal commentators as outdated structural impediments to further economic development from the 1960s onwards (Drockila 1961).

The Restriction Act continued to be operationalized through a combination of administrative controls and company practice. Most Finnish companies adopted foreigner clauses that prohibited all stock transfers to foreigners, mainly because this approach was easier for company management than maintaining two classes of shares (Caselius & Heikonen 1955). On the corporate law front, the most significant change was the passing of the new Corporations Act in the late 1970s, where foreigner clauses were specified as one of three permitted restrictions on the free transferability of shares (HE 27/1977 vp). Compared with the exhaustive rules on 'free' and 'restricted' shares contained in the Swedish 1975 Corporations Act, regulation was light-touch.

As in Norway and Sweden, Finnish screening policy evolved over time. At least from the 1960s onwards, acquisition permits were liberally approved. This policy was based on a political decision by the Prime Minister's office, and there was no clear legal basis or guidelines for the permit procedure. In the early 1970s, various parliamentary committees requested the inclusion of binding conditions or guidelines in the Restriction Act in order to establish limits on governmental discretion in approving acquisitions, but this never came to pass (LaVm 8/1974 vp). Accordingly, the government continued to process over a thousand permit applications annually, including permissions to amend existing company bylaws, until the end of the 1980s (Ulkomaalaisomistuskomitea 1991:23).

3.4.3. 1980-2010

In the early 1980s, the Restriction Act system was considered due for an overhaul, and from the mid-1980s onwards investment policy and regulation were gradually relaxed (HE 82/1982 vp; Ulkomaansijoitustoimikunta 1985:49). The first major amendment was to allow companies to request special permission to raise the maximum share of foreign ownership to 40% of total stock. Amending company bylaws in this way was subject to governmental approval, the criteria for which reflected how the change sought to improve the international competitiveness of Finnish companies and their access to foreign capital. Approval was made subject to various conditions, relating for example to the identity of the acquirer or the effects of the transfer on employment, R&D spending and supply of critical inputs (Ulkomaalaisomistuskomitea 1991:23). In some cases, even more comprehensive economic cost-benefit analysis was required. Any potential for downsizing domestic operations, for example, was considered to render the acquisition against the public interest, thus highlighting the close relationship between screening practice and industrial and employment policy (HE 73/1986 vp).

A major policy shift took place in 1989, when the Prime Minister's Office allowed the entirety of company stock to be transferred to foreign nationals and effectively raised the bar for government intervention to block such transfer to 'important public interest'. Only real estate acquisitions, and particularly large-scale forest acquisitions, were approached more cautiously. These policy changes were, however, considered too modest (Ojanen & Eriksson 1990). The reform of the Restriction Act system culminated in the adoption of the Act on the screening of foreign acquisitions in 1992 ('Screening Act') (1612/1992). Although the Screening Act was designed around the new European rules, Finland–unlike Sweden or Norway–retained the competence to screen and block foreign acquisitions that were considered to run counter to any 'important national interest', which was further narrowed down to issues of national defense, prevention of severe adverse economic, social or environmental impacts and guaranteeing public order and safety. Along with limiting the scope of investment screening, the Screening Act opted for an entirely new operational logic. Rather than affecting all foreign acquisitions and all Finnish companies, the Screening Act only

required governmental approval of acquisitions of more than a third of total stock in the defense industry or if the target company exceeded certain financial thresholds. The earlier requirements concerning company bylaws were also abolished and the remaining foreigner clauses declared void. Finally, foreign acquisitions could no longer be approved conditionally (HE 120/1992 vp; Timonen 1992). While the screening of real estate transactions continued, the procedure was separated from corporate acquisitions and governed under another statute, which was eventually repealed in 1999 (1613/1992).

The 1992 screening law remained in force until 2012, when the current Act on the screening of foreign acquisitions ('New Screening Act') was adopted (172/2012). Over its 20-year tenure, the 1992 Screening Act was used rarely and only in respect of acquisitions in the defense industry (HE 42/2011 vp).

3.4.4. 2010-

Towards the late 2000s, the coverage of companies beyond a certain size was considered to unduly limit the government's options in relation to protecting essential companies and facilities that nevertheless did not exceed the set financial thresholds. Against this backdrop, the New Screening Act removed all financial criteria as triggers for review and raised the bar for intervention to guaranteeing a 'vital national interest', which was construed narrowly to cover national defense and security or public order. The most significant operational change was to separate the screening of defense sector companies–which continued to require a notification and an approval for acquisition–from acquisitions of other companies considered critical for the vital functions of Finnish society, where a notification was entirely voluntary. In both cases, the threshold triggering a potential intervention was set at 10% of total stock (HE 42/2011 vp). The New Screening Act, along its minor 2014 amendment (HE 73/2014 vp), greatly reduced the number of companies subjected to investment screening but also allowed the government more flexibility in determining the risks involved in the transaction.

The adoption of the 2012 New Screening Act coincided with global trends towards expanding investment screening law and policy, but the Finnish legislation was not tightened to the same extent as in many other countries. Instead, the toughening of investment policy became apparent only with the 2020 amendment to the New Screening Act (HE 103/2020 vp). This was partly prompted by the EU FDI Screening Regulation's information sharing requirements, but it was also used to broaden the coverage of the national investment screening mechanism. Driven by the new dynamics in the overall 'security landscape', as the bill put it, the definition of the 'vital national interest' was widened and the government's margin of appreciation in assessing potential acquisition risks further relaxed. Unlike in Swedish or Danish FDI regulation that were adopted later, however, the Finnish investment screening regulation did not mention the likes of critical raw materials or technology as protected assets. Instead, the focus was on more narrowly-defined security risks.

Overall, the Finnish investment screening legislation has a remarkably long pedigree, and while it has undergone substantial changes, it is a likely candidate as the country with the oldest functioning cross-sectoral investment screening mechanism in the world. Compared to its Nordic peers, Finland stands out because it immediately augmented the real estate-focus with the protection of other critical companies. The heavy emphasis on security and defense policy has also been a staple feature of the Finnish investment screening framework, and it may offer one explanation as to why the system was retained during a period of rapid liberalization when other Nordic countries disbanded their screening mechanisms. While the Finnish New Screening Act was an important model for other Nordic countries' FDI controls, their fast development has left the Finnish investment screening legislation look rather outdated and limited in its scope.

3.5. DENMARK

3.5.1. 1900-1950

Denmark is the only Nordic country that did not maintain comprehensive investment controls in the 20th century. A broader shift to wide-ranging investment controls beyond real estate was widely debated around the same time as Sweden and Norway introduced their foreign investment legislation, but ultimately the Danish model took a markedly more lenient approach to foreign acquisitions (Sanders, Sandvik & Storli 2016). While the lack of cross-sectoral FDI controls in Denmark means that the distinctive eras identified in this article are necessarily of limited use, the following sections nevertheless rely on this organizational typology to establish a regulatory timeline.

Outside a few sectoral controls, such as limiting the operation of banks and foreign insurance companies, the most severe restrictions related to company registration and nationality requirements for board members as laid down in the 1917 Companies Act (Loven af 29. September 1917; Herschend 1917) and the 1930 Companies Act (Loven nr. 123 af 15. april 1930). Restrictions were also in place in relation to buying farmland and limiting the manufacture of war material to wholly Danish-owned companies (Loven nr. 139 af 7. maj 1937).

In the 1930s, a series of emergency rules and regulations were passed to counter economic instability, giving the Danish central bank powers to approve inward foreign investment in the context of exchange controls. Danish investment policy was characterized as liberal notwithstanding robust currency regulations allowing the control of foreign investment remaining in place (Philip 1959). Only a few inward investment applications were rejected, usually due to being unproductive investments or contrary to national economic policy (Skovgaard, Sørensen & Pedersen 2008). Compared to the strict screening systems used in the other Nordic countries particularly with regard to the protection of natural resources, the Danish model was both exceedingly liberal and also less institutionalized.

3.5.2. 1950-1980

Regulation of foreign investment became more topical in the 1950s. Echoing popular sentiment to the effect that multinational companies were abusing their host countries, a major parliamentary committee report analyzed Denmark's overall economic policy report lamented the limited options the government had at its disposal to restrict foreign investment (Finansministeren 1956). At the same time, however, the government launched a major campaign to attract capital to Denmark with an emphasis on the liberal authorization practice for any type of foreign investments (Udenrigsministeriet 1957). From the early 1960s onwards, Denmark was also actively involved in negotiations to join the European Community, and it ultimately became the first Nordic country to fully embrace European integration, alongside its developing rules on the free movement of capital, in the early 1970s (Bakker 1996).

Although no overarching acquisition or ownership restriction system was put in place, in the late 1950s Denmark adopted an Act on buying real estate, which prohibited non-Danish persons or companies from acquiring real estate (Loven nr. 344 af 23.12.1959). This legislation was primarily motivated by the desire to keep the majority of summer houses in Danish ownership, although it mentioned that the same restriction system could also be used for the purposes of foreign or economic policy (Forslag til Lov om erhvervelse af fast ejendom 1959). From the 1970s onwards, Denmark also set up complex licensing schemes in certain sensitive sectors such as electricity (Loven nr. 54 af 25.2.1976), natural gas supply (Loven nr. 294 af 07.6.1972) and exploitation of the continental shelf (Loven nr. 259 af 9.6.1971).

3.5.3. 1980-2010

The liberalization of the Danish foreign investment framework, particularly exchange controls, continued as an aspect of deepening European integration in the 1980s. The country's general openness to foreign capital meant that there was no need for the policy discussions on discontinuing foreign investment controls of the kind that had taken place in the other Nordic countries (Bakker 1996). Instead, the contentious issues related to less direct ownership restrictions, such as state ownership. By the mid-1990s, many sectoral concession systems were further liberalized (OECD 1995a). Even the most restrictive sectoral legislation, the War Materials Act, was gradually relaxed from a total ban on foreign ownership in munitions manufacturing companies first to 20% of share capital and finally to 40% (Loven nr. 400 af 13.6.1990).

3.5.4. 2010-

Danish policy discussions on foreign investment took a sharp turn in the 2010s. Driven largely by substantial investment in communications networks and natural resources as well as infrastructure in Greenland by Chinese state-owned and private companies, the lack of FDI controls was increasingly seen as a structural security concern (Jiang 2020). After comprehensive review, the Act on screening of certain foreign direct investments, etc. in Denmark ('Screening Act') was passed in 2021 (Lov nr 842 af 10/05/2021), with further amendments in 2023. The system was first used to block a cross-border merger in 2023, when the sale of NKT Photonics, a Danish fibre laser manufacturer, to a Japanese Hamamatsu Photonics was denied.

Modeled on the Finnish and German examples, the Screening Act adopted a mandatory notification scheme for particularly sensitive sectors and a cross-sectoral voluntary notification system for other acquisitions. The mandatory scheme covered national security concerns in sectors such as defense and in relation to likes of critical technology and critical infrastructure. The intervention threshold was set at 10% of total stock, with subsequent financial thresholds triggering further interventions, and the notification requirement extended to all foreign nationals. In 2023, the Energy Island–a novel green energy hub in the North Sea–was brought into the Act's material scope, along with mandatory notification requirement for even domestic operators (Loven nr 736 af 13/06/2023). The voluntary notification mechanism was triggered on acquisition of an ownership stake of more than 25% of total stock, with exemptions for EU nationals. A transaction could be prohibited or a non-notified transaction reversed if it posed a risk to national security or public order. Acquisition permission could also be granted conditionally. Compared to Finnish and Norwegian FDI mechanisms, the Danish Act's coverage was explicitly extended to novel forms of control, such as certain 'economic contracts', research collaboration and greenfield investments (2020/1 LSF 191).

In sum, Denmark was a clear outlier in the Nordic investment regulation landscape in the 1900s as it did not introduce general investment screening either on resource, industrial or security policy grounds. Against this backdrop, the developments that took place in Danish foreign investment regulation in the early 2020s stand out as the most drastic policy change in the Nordic region in a century. Given its extensive coverage of greenfield investments, technology and even contracts, the Danish legislation now puts forward perhaps the most stringent screening system in the Nordic countries.

3.6. SYNTHESIS: NORDIC COUNTRIES AS A BELLWETHER OF FDI REGULATION?

As discussed above, investment screening has been a standard feature of Nordic legal systems for over a century. Crucially, their developmental timeline illuminates key similarities and differences both within the Nordic countries and between them as a group and many other states. While the

Nordic countries can be seen to have pioneered extensive investment and acquisition controls in the early 1900s, they started aligning with global developments after the expansion of the post-war FDI regulation. The gradual phasing-out of investment controls in the 1980s and 1990s, as well as their re-introduction over the past few years, similarly suggests the Nordic legislation not only to track the ebb and flow of global FDI control trends, but also function as a bellwether of their undergirding policy rationales, whether resource and industrial policy, free flow of capital or security. However, with the most recent 'geoeconomic' turn in investment controls, the Nordic countries have mostly been rule-takers, aligning their screening systems with the global regulatory developments. This notwithstanding, the evolving practices of small, open Nordic economies provide an underutilized view of into the dynamic changes of FDI regulation over the past century.

To recapitulate the timeline, the early restrictions on foreign acquisitions of natural resources were principally driven by the activity of German and British companies in the Norwegian hydropower sector, the Swedish mining industry and Finnish forestry sector. The restrictive FDI policy manifested in regulation in Norway and Sweden in the early 1900s, and in Finland in the late 1930s, and it constituted an enduring regulatory model for limiting inward investment in real estate and, as corollary, corporate equity. While many other countries started to roll-out FDI regulation as a response to the World War I, the scale of the Nordic investment controls clearly predates the global adoption of investment and acquisition controls. Put simply, early 1900s Nordic foreign ownership restrictions closely resemble the foreign investment regimes that were mostly established only after World War II. Recently, a major OECD report suggested that the earliest cross-sectoral investment screening laws and policies for purposes including essential security interests were introduced in New Zealand in the 1960s, but the Nordic investment controls predate these by a fair margin (OECD 2020a).

Except for Denmark, the Nordic countries constantly iterated and increased the reach of their screening regulation in the following decades. Norway was often a first mover, and towards the 1970s, the uses of the concession system formally diversified from natural resources to industrial policy. Other Nordic countries followed suit, primarily as a response to the rise of multinational companies. In Sweden, for example, the regulatory focus shifted even more clearly towards the protection of technology development capacities and intellectual property amidst fears of foreign control and asset stripping. The timing of regulatory changes thus coincides with evolving policy rationales. While the early Nordic investment screening regulation was firmly rooted in resource nationalism, the post-war legislative developments reflected the very same debates and policy responses, including employment, competition and development policy goals, that were adopted in many developed or developing economies throughout the New International Economic Order era.

By the mid-1970s, the limits that accelerating European integration imposed on foreign investment restrictions were increasingly recognized and, in the late 1980s, all Nordic countries were prepared to relax their investment controls. Although the FDI regimes retained many former operational concepts, such as the focus on large companies exceeding certain financial thresholds on industrial policy grounds, the domestic controls were increasingly portrayed as limited exceptions to otherwise liberal acquisition and ownership regimes. This liberalization finally took place in the early 1990s and 2000s, when Sweden discontinued and both Norway and Finland radically redesigned their cross-sectoral investment screening frameworks, with Denmark following suit by downscaling its sectoral regulation.

Finland remained the only Nordic country to keep in place a dedicated cross-sectoral investment screening mechanism throughout the 2000s and most of the 2010s, until the second period of rapid policy convergence aligned Nordic FDI frameworks with global security-driven FDI control trends. Despite its more limited scope, the resurgence of modern investment screening law is a strong indication of the 'securitization' of economic relations, which can also be seen to reflect the

international conditions in projecting economic power. Thus, in the early 1900s, Nordic FDI restrictions were squarely focused on the expansion of British and German companies, then on footloose multinational enterprises and, most recently, on Chinese investment. The same applies to the effects of the EU's regulatory harmonization, as the current domestic FDI regimes conditioned by EU law. The rapid proliferation of rationales such as the EU-driven notions of 'strategic competition' or 'technological sovereignty' in the current Nordic investment screening landscape reaffirm the natural connection between internal FDI regime changes and external pressures, whether real or perceived (Mattlin & Rajavuori 2023). Unlike the initial roll-out of investment controls in the early 1900s, however, the convergence of 2010s and early 2020s was less of a Nordic-driven initiative and more clearly embedded in regional and global developments.

4. Dynamics and Implications of the Nordic Investment Screening Law

Previous sections have documented the evolution of Nordic investment screening legislation. Building on this, this section discusses broader dynamics of regulatory change, embedding and contrasting the Nordic experience with the overarching development of FDI controls. The section, first, examines the diffusion of FDI regulation across Nordics and over time, and, second, identifies lessons for the regulatory dynamics. Finally, the section discusses the legal operationalization of Nordic investment controls, particularly regarding its private enforcement. While the discussion remains rooted in the trajectories of legal change in the Nordic countries, the section also highlights their potential lessons for global investment screening practices.

4.1. Regulatory diffusion

Investment screening models, and FDI controls in general, are shaped by the conditions of domestic legal systems. Thus, the modes and grounds for intervening in cross-border acquisitions have, historically, varied from to state to state, with no clear international standard emerging. This applies also to the contemporary screening mechanisms, where national variation remains substantial. The most recent empirical research, however, indicates an on-going convergence in regulatory design and intervention practice, at least among the most developed economies (Danzman & Meunier 2023). The experience with the history of Nordic FDI controls has two broad lessons for the dynamics of this process. First, the constant regulatory benchmarking pursued in the Nordic countries from the early 1900s onwards provides a long-term data set of regulatory diffusion and emulation in FDI control legislation. Second, the Nordic countries showcase the gradual encroachment of global rules on domestic FDI regimes.

As discussed in the previous sections, the evolution of Nordic FDI regulation was often conditioned and influenced by mutual learning and adaptation between the national regimes. For a long time, the regulatory diffusion, and subsequent development, was limited to the Nordic region, which is natural given the well-documented close legal cooperation between Nordic countries (Letto-Vanamo & Tamm 2019). Due to their geographical and cultural proximity, in many areas of law, such as family law, it was vital to guarantee roughly a similar treatment across Nordic state lines. The alignment was needed particularly in civil law, and it was achieved in different ways, including joint law drafting committees that were used in the early-mid 1900s (e.g. law of obligations, corporate law) or, at the very least, constant references between domestic drafting committees (Blomstrand 2000).

Investment screening legislation was not drafted in the same way, but best legislative practices spread quickly. Early on, the adoption of the Swedish Restriction Act was heavily influenced by experiences drawn from the Norwegian concession system, and the Finnish model emulated the Swedish example. Naturally, the transplantation was not always smooth or even desired. For

example, the drafter of the Finnish Restriction Act, a prominent corporate law scholar, considered the Norwegian concession system too draconian and thus alien to Finnish legal culture (Cederberg 1939). On the whole, however, the development and operability of other Nordic investment controls was frequently used to improve and justify further amendments and regulatory overhauls. Most recently, this process has culminated in the introduction of new investment screening legislation in Norway, and especially Denmark and Sweden, where the Finnish Screening Act has served as an important template for domestic reforms (2020/1 LSF 191; SOU 2021:87).

Accordingly, the long arc of the Nordic approach highlights recurring symmetries in the logic of FDI regulation. To get a sense of the similarities, one only needs to contrast the rushed passing of the Norwegian 1906 'panic law'–which ultimately evolved into a sprawling concession framework– with the haste that all Nordic countries have amended their investment screening regimes between 2018-2023. It is questionable whether the on-going policy convergence will amount to the scale and longevity of its predecessor, but it is hard to downplay the significance of the emergent regulatory consensus for future FDI law and policy.

At the same time, the Nordic experience also exposes the increasing penetration of global rules into domestic FDI regimes. Regional and international integration started to encroach on Nordic legislative work on FDI from the 1960s onwards. The OECD's budding treaty system, for example, was increasingly registered by governments, most of which made the necessary reservations to preserve the legality of control mechanisms, as were the limits posed by the accelerating European integration on domestic capital controls in the 1980s and 1990s when most ownership restrictions were abolished.

None of the earlier effects, however, compare to the current resurgence of Nordic investment screening, which is brought about by the EU-wide harmonization efforts. Even though Finnish and Norwegian foreign ownership controls predated the most recent EU policies, the influence the EU FDI Screening Regulation exerts on Nordic screening mechanisms is palpable not only in the case of information sharing obligations but also substantive issues, including the indicative listings of key protected technologies adopted in Denmark and Sweden. Thus, whereas the early investment controls put forward a distinctive 'Nordic' investment screening paradigm, the realignment of Nordic investment screening institutions over the past few years hints at further global convergence and replication in the concrete legal techniques through which the securitization of FDI is managed. Thus, domestic and 'mini-regional' development of regulatory solutions increasingly gives space to regional and global FDI control standards formation.

4.2. REGULATORY DYNAMICS

As discussed above, the majority of global FDI controls were dismantled in the 1980s and 1990s. The remaining investment screening mechanisms were usually organized as exceptions that enabled governments to intervene in cross-border transactions on limited grounds to protect essential or public security interests, usually in certain key sectors, such as defence or critical technologies. Over the past decade, however, this logic has at least partly reversed. The expanding personal and material scope of domestic investment screening legislation, whether through more extensive listings of critical sectors or inclusion of assets beyond corporate equity, has started to nudge global FDI rules towards a more restrictive paradigm, leading to concerns over regulatory overreach and legal certainty, which also characterized the regulatory dynamics of Nordic FDI regimes.

From a regulatory perspective, the Nordic FDI legislation put forth essentially an economy-wide restriction system from its inception until 1990s. Thus, all Nordic FDI regimes featured an administrative authorization procedure laden with post-entry performance conditions, financial triggers based on acquisition of a varying percentage of corporate equity and sanctions that pivoted

on declaring a transaction null and void. From a contemporary view, the personal and substantive reach of investment screening mechanisms was extremely wide, covering virtually the whole economy.

This approach was not without critics. As early as 1873, the opponents of early Swedish ownership controls likened the restrictions to erecting a harmful financial 'Chinese Wall' around the country, whereas the Finnish parliament struck down their first bill in the 1920s (Nordlund 1989). Overall, domestic law-making process were constantly laden with divergent views on risks and benefits of FDI controls, and several attempts to limit the restrictions were made over the decades. For example, a more targeted approach akin to modern investment screening procedures was planned and introduced in Finland between 1939 and 1941, but in general defining certain critical sectors or industries beyond defence was considered an inadequate tool for limiting foreign exposure to domestic companies. Instead, the scope of FDI restrictions grew steadily.

In general, the evolution of the Nordic investment screening legislation clearly displays the propensity of FDI controls to become a complex legal patchwork requiring constant quality control. Foreign ownership restrictions were the focus of numerous complex legislative amendments throughout the 1900s, with any attempt at a financial 'bright-line' test rendered moot by the porous 'public interest' criteria underpinning domestic FDI regimes. Similar contemporary developments can be identified in many jurisdictions. In the United Kingdom, for example, a parliamentary committee recently called for a more dynamic definition of the key operative concepts in the National Security and Investment Act, alongside requesting the government to review the legislation's scope annually to keep pace e.g. with technological development and associated risks (Business and Trade Select Committee 2024).

Similarly, more robust FDI rules tend to burden companies and officials alike. In Norway, for example, the Concession Act spurred legal uncertainty when concluding acquisitions, whereas the Swedish system was constantly criticized for the delays in approving deals. The administrative bureaucracy required to run FDI controls was similarly massive, as it required thousands of investment reviews annually in Finland alone (compare with 34 reviews in 2022, the latest available data, TEM 2023). It is thus no surprise that scaling down the administrative controls was singled out as the key domestic driver for FDI liberalization across the Nordics in the 1980s and 1990s.

The evolution of the Nordic FDI legislation also attests to the longevity of regulatory solutions. The formative years of Nordic FDI controls in the early 1900s, in particular, came to frame the Nordic policy approach and legal techniques for approximately 50-70 years. Even with accelerating liberalization and new European rules, disbanding entrenched FDI regimes was a large effort with significant differences in the scope and timing: Sweden quickly disbanded its acquisition controls, but Norway abandoned them in an effort to reduce administrative red tape only in the early 2000s. Given the drive towards more restrictive FDI rules both regionally and globally, the Nordic experience thus suggests that the adoption of FDI controls may prove surprisingly sticky even if the current 'geoeconomic' turn subsides.

4.3. Legal operationalization

Even though the pre-liberalization era FDI controls in the Nordic countries resembled screening mechanisms used in other countries following the Second World War, their most distinctive feature–the joint operation of administrative investment controls and corporate law–was a Nordic specialty. While disbanded, this system offers a pertinent example of 'national security corporate governance' that increasingly characterizes global M&A markets (Verstein 2018; Gordon & Milhaupt 2019).

Corporate law has naturally been a standard tool and determinant in securing domestic ownership of the economy across the world. In the early 1900s, for example, multi-voting share structures

and tenure-voting were used to fend off foreign takeovers, and more recently, state-held golden shares have been extensively utilized to curb the sale of privatized companies (Pargendler 2020). Compared to these strategies, however, the Nordic FDI control model operated by incentivizing companies to divide their share capital into freely tradable shares and restricted shares that could not be transferred to a non-national. The corporate law-centered regulatory strategy was legislated in the greatest detail in Sweden, but the use of 'free' shares was the norm also in Finland and, to some extent, in Norway.

The company-centric FDI control system had several implications. First, significant parts of the investment screening systems in the Nordic countries were formally blind to acquirer nationality as domestic operators were subjected to similar conditions as foreign companies. A striking symmetry remains with modern FDI control mechanisms, for example in the United Kingdom, but also with new screening legislation in Norway and Sweden that increasingly steer towards nationality-agnostic screening procedure.

Second, foreigner clause-driven ownership restrictions were obviously operationalized at company level and boards were given responsibility for their supervision. Even though Norway did not institutionalize a similar system, companies played a crucial role in enforcement of the Concession Act from the mid-1930s onwards. Contrary to the Swedish and Finnish practices, the Norwegian legislation enabled corporate boards to restrict the transfer of shares between private shareholders if sale would trigger a government review under the Concession Act. The distinctive model of private enforcement of FDI controls did not go unnoticed as the regulatory strategy was often identified as unique to the Nordic region.

Although the Nordic experience with 'national security poison pills'–the foreigner clauses–predates the emergence of global financial markets, this regulatory strategy resonates with current examples of domestic investment screening institutions impinging broadly on the market for corporate control. In the US, for example, the growing powers of the Committee on Foreign Investment in the United States are increasingly framed as strategic anti-takeover tools, but 'national security creep' has not yet seeped directly into the constitution of private companies (Westbrook 2019; Eichensehr & Hwang 2023). While instituting governance structures similar to Nordic foreigner clauses carries obvious risks of economic nationalism, companies and regulators could also use them to pre-emptively alleviate risk for negative screening decisions as the authorities' powers to call-in transactions grow (Pohl & Hindelang 2021).

5 CONCLUSION

This article has analyzed the evolution of Nordic investment screening legislation from the early 1900s to this day. Motivated by the recent surge of investment screening around the world, it has traced the changing constitution, rationale and operation of Nordic FDI regulation, sketching a narrative that seeks to diversify understanding of the geographical and historical origins and operation of cross-sectoral investment controls. Although much of the policy rationales and regulatory strategies discussed in the article already belong to legal history, several characteristics distinctive to the development of Nordic investment regime, such the reliance on private enforcement of ownership restrictions and the dynamics in the diffusion of regulatory strategies, have relevance even in the contemporary investment screening landscape.

As this article has sought to stress, the on-going adoption of tougher investment controls is not unprecedented either globally or in the Nordic countries. Here, however, the long view on the Nordic approach highlights recurring symmetries in the logic of FDI regulation. When governments, companies and scholars attempt to understand and navigate the present investment screening mechanisms in a world characterized by globalized finance and integrated supply chains,

they may still learn a great deal from the histories of prior institutional arrangements, including those pursued in smaller and less-studied jurisdictions.

Annex

Table 1: Resource nationalism 1900-1950				
	Norway	**Sweden**	**Finland**	**Denmark**
Legal instrument	Concession Act (1917, 1931)	Restriction Act (1916, 1934)	Restriction Act (1939, 1942)	x
Protected asset	Natural resources and real estate	Natural resources and real estate	Natural resources and real estate Key companies, esp. defense sector	x
Regulated entity	Domestic and foreign nationals	Foreign nationals Domestic companies with inadequate bylaws	Foreign nationals Domestic companies with inadequate bylaws	x
Ground for intervention	Public interest	Public interest	Public interest	x
Financial threshold	50 % (1917), 35 % (1931), max 20 % foreign ownership (1931)	20 %	20 %	x
Regulatory technique	Concession Performance conditions Board may limit transfer of shares	Acquisition permit 'Foreigner clause' in company bylaws Control of frontman buyers	Acquisition permit 'Foreigner clause' in company bylaws Control of frontman buyers	x
Sanctions	Non-approved transaction null and void Non-approved assets auctioned	Non-approved transaction null and void Fine	Non-approved transaction null and void Criminal sanctions	x

Table 2: Embedded liberalism 1950-1980				
	Norway	**Sweden**	**Finland**	**Denmark**
Legal instrument	Concession Act (1972) Public pre-emption Act (1974)	Restriction Act (1973) Acquisition Act (1982) Real estate acquistion Act (1982)	Restriction Act (1974, 1982)	x
Protected asset	Natural resources and real estate	Technology and production capacity Employment and culture Defense and security (real estate)	Natural resources and real estate Key companies, esp. defense sector	x
Regulated entity	Domestic and foreign nationals	Control subject', ie. foreign nationals and domestic entities without sufficent ownership controls	Foreign nationals Domestic companies with inadequate bylaws	x
Ground for intervention	Public interest	Essential public interest	Public interest	x
Financial threshold	20 % (1969), 10 % (1972), 20 % (1983)	Staggered 10 %, 20 %, 40 %, 50 %	20 %	x
Regulatory technique	Concession Performance conditions Board may limit transfer of shares	Acquisition permit 'Foreigner clause' in company bylaws	Acquisition permit 'Foreigner clause' in company bylaws	x
Sanctions	Forced transfer or auction Fine	Non-approved transaction null and void	Non-approved transaction null and void	x

Table 3: Liberalization 1980-2010				
	Norway	**Sweden**	**Finland**	**Denmark**
Legal instrument	Concession Act Acquisition Act (1994, repealed 2002)	Acquisition Act (repealed 1991)	Screening Act (1992) Real estate screening Act (1992, repealed 1999)	x
Protected asset	Industrial policy R&D Technology transfer	x	National defense Public order and security Adverse economic and environmental impacts	x
Regulated entity	Domestic and foreign nationals	x	Foreign national	x
Ground for intervention	Public interest	x	Important national interest	x
Financial threshold	Staggered 33%, 50 %, 67 %	x	33 %	x
Regulatory technique	Notification if acquired company exceeds certain financial thresholds	x	Notification if acquired company operates in defense industry or exceeds certain financial thresholds	x
Sanctions	Criminal penalty Fine	x	Prohibition Voting cap Fine	x

Table 4: Securitization 2010-				
	Norway	**Sweden**	**Finland**	**Denmark**
Legal instrument	National Security Act (2018, amended 2023)	Investment Screening Act (2023) Protective Security Act (amended 2020 & 2021) Act on Supplementary Provisions to the EU FDI Screening Regulation (2020) FDI Regulation (2020)	Screening Act (2012, amended 2014 & 2020) Real estate restriction Act (2019) FDI Regulation (2020)	Screening Act (2021, amended 2023) FDI Regulation (2020)
Protected asset	Sovereignty, democracy and basic national functions Security of supply Strategic production of goods and services	Security and public order	National defense Security and public order Foreign and security policy (2020)	National security Public order
Regulated entity	Domestic and foreign nationals Target company	Domestic and foreign nationals	Foreign national (defense sector) Non-EU national (other sectors)	Foreign national (sensitive sectors) Non-EU national (other sectors) All investors (contracts regarding North Sea Energy Island)
Ground for intervention	"Not insignificant risk" for national security interests	Investment in protected societal functions, including security sensitive activities, critical resources, munitions and critical technologies	Vital national interest	National security and public order, detailed asset and acquirer specifications
Financial threshold	Staggered 10%, 33%, 50%, 67%, 90% or significant influence through other means	Staggered 10%, 20%, 30%, 50%, 5%, 90% Establishment of new companies	Staggered 10%, 33%, 50% or significant influence through other means (defense sector and critical companies) 10% (other sectors)	Staggered 10%, 20%, 33%, 50%, 67%, 100% or significant influence through other means (sensitive sectors) Greenfield investment (sensitive sectors) 25% (other sectors) Certain economic contracts
Regulatory technique	Administrative listing of designated companies Mandatory notification Conditions	Mandatory notification Conditions	Mandatory notification (defense sector and critical companies) Voluntary notification (other sectors) Conditions	Mandatory notification (sensitive sectors) Voluntary notification (cross-sectoral) Conditions
Sanctions	Transaction reversed Fine Criminal sanctions	Prohibition, violating transaction null and void Fine	Prohibition Voting cap Fine Criminal sanctions	Prohibition, violating transaction null and void Liquidation Fine

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PRIMARY LEGAL SOURCES

Norway

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Lov av 31. mai 1974 nr 19 om konsesjon og om forkjöpsrett for det offentlige ved erverv av fast eiendom.

Lov av 4 juni 1976 nr 59 om aksjeselskaper.

Lov 23. desember 1994 nr. 79 om erverv av næringsvirksomhet.

LOV-2002-06-21-38. Lov om oppheving av lov om erverv av næringsverksemd.

LOV-2018-06-01-24. Lov om nasjonal sikkerhet.

LOV-2023-06-20-77. Lov om endringer i sikkerhetsloven (eierskapskontroll og lovens virkeområde).

Innst. O. nr. 16 (1994-1995) innstilling fra næringskomiteen om lov om erverv av næringsvirksomhet.

Innst. O. nr. 72 (2001–2002) innstilling frå næringskomiteen om lov om oppheving av lov om erverv av næringsverksemd.

Innst. 103 L (2017–2018) innstilling fra utenriks- og forsvarskomiteen om Lov om nasjonal sikkerhet (sikkerhetsloven).

Ot. prp. nr. 31 (1931) om forandringer i konsesjonslovene.

Ot. prp. nr. 69 (1966-67) revisjon av den alminnelige konsesjonslov av 14. desember 1917 m. v.

Ot. prp. nr. 5 (1988–89) om lov om statstilskott til ordninger for avtalefestet pensjon.

Ot. prp. nr. 88 (1993–94) om lov om erverv av næringsvirksomhet.

Ot. prp. nr. 62 (2001–2002) om lov om oppheving av lov om erverv av næringsverksemd.

Prop. 153 L (2016–2017) Lov om nasjonal sikkerhet (sikkerhetsloven).

Sweden

Lagen den 4 maj 1906 om förbud i visst fall för bolag att förvärva fast egendom måtte tillämpas även i vissa delar av Värmlands län.

Lagen (1916:156) om vissa inskränkningar i rätten att förvärva fast egendom eller gruva eller aktier i vissa bolag, m.m.

Lag (1934:238) angående ändrad lydelse av 2 § lagen den 30 maj 1916 (nr 156) örn vissa inskränkningar i rätten att förvärvafast gendom eller gruva eller aktier i vissa bolag, m. m.

Lagen (1934:239) om bulvanförhållande i fråga om aktier i vissa bolag.

Lagen (1968:557) om vissa inskränkningar i rätten att sluta svenskt handelsbolag m. m.

Lagen (1982:617) om utländska förvärv av svenska företag m.m.

Lag (1982:618) om utländska förvärv av fast egendom m.m.

Förordning (1982:878) om utländska förvärv av svenska företag m.m.

Lag med (2020:826) kompletterande bestämmelser till EU:s förordning om utländska direktinvesteringar.

Lag om ändring i säkerhetsskyddslagen (2020:1007).

Lag (2023:560) om granskning av utländska direktinvesteringar.

Prop. 1910:54 med förslag till lag om aktiebolag och till lag om vissa ändringar i lagen om handelsbolag och enkla bolag den 28 juni 1895.

Prop. 1944:5 med förslag till lag om aktiebolag, m. m.

Prop. 1973:72 förslag till ändring i lagen (1916:156) om vissa inskränkningar i rätten att förvärva fast egendom eller gruva eller aktier i vissa bolag, m.m.

Prop. 1975:103 med förslag till ny aktiebolagslag, m.m.

Prop. 181/82:135 med förslag till ny lagstiftning om utländska förvärv av svenska företag m.m.

Prop. 1991/92:7 om upphävande av regler om utländska företagsförvärv m.m.

Prop. 1992/93:68 om ändring i aktiebolagslagen m.m.

Prop. 2022/23:116 ett granskningssystem för utländska direktinvesteringar till skydd för svenska säkerhetsintressen.

Finland

Laki ulkomaalaisten sekä eräiden yhteisöjen oikeudesta omistaa ja hallita kiinteätä omaisuutta ja osakkeita (219/1939).

Laki ulkomaalaisten yritysostojen seurannasta (1612/1992).

Laki ulkomailla asuvien ja ulkomaisten yhteisöjen kiinteistönhankintojen valvonnasta (1613/1992).

Laki ulkomaalaisten yritysostojen seurannasta (172/2012).

LtVM 3/1929 vp.

LtVM 31/1939 vp.

LaVm 18/1974 vp. Hallituksen esitys eduskunnalle laiksi ulkomaalaisten sekä eräiden yhteisöjen oikeudesta omistaa ja hallita kiinteätä omaisuutta ja osakkeita annetun lain muuttamisesta

HE 45/1928 vp. Hallituksen esitys eduskunnalle lainsäädännöksi ulkomaalaisten oikeudesta kiinteistöjen ja kivennäislöydösten hankkimiseen.

HE 102/1938 vp. Hallituksen esitys n:o 102 (1938vp) laiksi ulkomaalaisten ja eräiden yhteisöjen oikeudesta omistaa ja hallita kiinteätä omaisuutta ja osakkeita.

HE 97/1942 vp. Hallituksen esitys n:o 97 (1942vp) laiksi ulkomaalaisten sekä eräiden yhteisöjen oikeudesta omistaa ja hallita kiinteätä omaisuutta ja osakkeita annetun lain muuttamisesta.

HE 18/1974 vp. Hallituksen esitys eduskunnalle laiksi ulkomaalaisten sekä eräiden yhteisöjen oikeudesta omistaa ja hallita kiinteätä omaisuutta ja osakkeita annetun lain muuttamisesta.

HE 27/1977 vp. Hallituksen esitys eduskunnalle uudeksi osakeyhtiölainsäädännöksi.

HE 82/1982 vp. Hallituksen esitys eduskunnalle laeiksi ulkomaalaisten sekä eräiden yhteisöjen oikeudesta omistaa ja hallita kiinteätä omaisuutta ja osakkeita annetun lain ja eräiden siihen liittyvien lakien muuttamisesta.

HE 73/1986 vp. Hallituksen esitys eduskunnalle laeiksi ulkomaalaisten sekä eräiden yhteisöjen oikeudesta omistaa ja hallita kiinteätä omaisuutta ja osakkeita annetun lain 3 ja 19 §:n, kaupparekisterilain 9 §:n sekä leimaverolain 10 §:n muuttamisesta.

HE 120/1992 vp. Hallituksen esitys eduskunnalle ulkomaalaisten yritysostoja ja kiinteistönhankintaa koskevaksi lainsäädännöksi.

HE 42/2011 vp. Hallituksen esitys eduskunnalle laiksi ulkomaalaisten yritysostojen seurannasta.

HE 73/2014 vp. Hallituksen esitys eduskunnalle laiksi ulkomaalaisten yritysostojen seurannasta annetun lain muuttamisesta

HE 103/2020 vp. Hallituksen esitys eduskunnalle laiksi ulkomaalaisten yritysostojen seurannasta annetun lain muuttamisesta.

Denmark

Lov om aktieselskaber af 29. September 1917.

Lov nr. 123 af 15. april 1930 om aktieselskaber.

Lov nr. 139 af 7. maj 1937 om Kontrol med tilvirkning af krigsmateriel m.m.

Loven nr. 344 af 23.12.1959 om erhvervelse af fast ejendom.

Loven nr. 259 af 9.6.1971 om kontinentalsolden.

Loven nr. 294 af 07.6.1972 om naturgasforsyning.

Loven nr. 54 af 25.2.1976 om elforsyning.

Loven nr. 400 af 13.6.1990 om krigsmateriel m.v.

Lov nr 842 af 10/05/2021 om screening af visse udenlandske direkte investeringer m.v. i Danmark.

Lov nr 736 af 13/06/2023 om ændring af investeringsscreeningsloven og lov om Klagenævnet for Udbud.

2020/1 LSF 191. Forslag til lov om screening af visse udenlandske direkte investeringer m.v. i Danmark.

EU

Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L79 I/1).

USA

Foreign Investment Risk Review and Modernization Act of 2018 (FIRRMA), Pub. L. No. 115-232, Title XVII Sub. A

UK

National Security and Investment Act 2021 (c. 25).