



MANNHEIMER SWARTLING

CELIS

How can EU business concerns be addressed in an EU screening mechanism?

Carolina Dackö

Concerns implementing Framework

The free trade approach

- The Swedish backdrop – a harsh awakening
 - National media scandals
 - Other jurisdictions and EU framework
- “Living in a free (trade) world”, no or very limited restrictions
 - Protective Security Act
 - Export control rules

Recent events:

- Swedish Transport Agency
- Investments in automotive sector
- Sensitive export control cases

Staten sålde spjutspetsbolag till Kina – under radarn

Trots militära kopplingar har tre av Sveriges mest avancerade halvledarbolag sålts till Kina, kan SvD Näringsliv avslöja. Bakom försäljningen av två av spjutspetsbolagen ligger den svenska staten.

General business observations

- *Transparency and predictability*
- Timeframes:
 - 15 months post-closing
- Information collection:
 - ownership structure
 - ultimate investor and participation in capital
 - products, services and operation
 - funding and source (best info)
- Circumvention rules
 - Acquisition by foreign-owned EU companies?
- Publically traded companies?
 - Excluded from Swedish rules

Security – FDI's part of the puzzle



Models for security screening

National Security Screenings ICT supply chain

France:

- Legal justification: privacy rights /criminalisation
- Authorisations required for equipment which may be used for interception
- One authority, ANSSI, reviews security and grants authorisation

Australia:

- Legal justification: security in public administration
- General national security concerns
- All government activity may be reviewed
- One authority – ASIO – issues recommendations

National screening ICT – Model concept

Suggested Model	Key features
Legal justification / hierarchy	Fundamental legal interest
Autonomous assessments	Detach from political influence
Scope: What is covered by the law	Clear framework, both public and private
Mandatory assessments	At minimum mandatory for specific sectors
Authority	One central authority with full competence
Effects	Enforceable and definitive measures, sanctions

Objective criteria for security screening

Criteria	Difference Inherent and Introduced vulnerabilities
Technical security	Inherent vulnerabilities, quality, standards etc
Supply chain security	Risk of introduced vulnerability, back doors, services, updates
Geographic location and legal regimes	Risk of introduced vulnerability, e.g. laws requiring cooperation in intelligence gathering
Personnel	Risk of introduced vulnerability, nationality of persons with influence or access
Supply chain transparency	Ownership, influence and control

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