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Is international investment threatening or under threat?*

by
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Three recent *Perspectives* have opined on how openness to international investment can be reconciled with growing concerns over host countries' national security resulting from such investment. The *Perspectives* cover ongoing reforms in the world's two largest economies, the United States and the European Union, and concerns around investment by state-owned enterprises, often associated with the third-largest world economy, China.[1] All three *Perspectives* express worries that new policies to manage threats may unduly restrict international investment. Is international investment under threat or is it threatening national security?

Over the past two years, nine of the ten largest economies have changed their rules on foreign takeovers to fend off risks for their national security, as have many smaller economies, both advanced and emerging.[2] Many governments are concerned about the circumvention of existing rules; acquisitions of smaller stakes in target enterprises; new threats in emerging sectors (e.g., artificial intelligence, robotics, networks, quantum computing) and in relation to sensitive personal information; new risks in more established sectors (e.g., real estate); insufficient sanctions for breaches of obligations; and unduly short time frames for conducting a thorough review of proposed transactions. This comes on top of many perceived shortcomings of existing policies, revealed by policy practice and the apprehension of new threats, most often related to digital activities. The recent proliferation of restrictive policies and reforms suggests broader perceptions that foreign investment may threaten national security.

But governments' responsibility to manage threats to national security should not become a threat to international investment, or international economic transactions more generally.

How can risk-management be reconciled with openness, and how can the impact of legitimate policies on international investment be minimized?

The main threat to international investment does not stem predominantly from the stringency of regimes in individual countries—so far, there are no signs of manifest overreach. A veritable problem may, however, result from the growing number of countries that screen investment for threats independently from each other, aggravated by different criteria and procedures in each jurisdiction. A single proposed acquisition involving an MNE may trigger reviews in each of the jurisdictions where it has operations, which may delay or derail the transaction.

Two remedies should be considered cumulatively:

- Governments harmonize the criteria and procedures they use to evaluate the risk of transactions so that investors face a single set of rules in all jurisdictions in which they must obtain approval. Governments could develop jointly common guidelines that would be reflected in domestic rules and practice. Harmonized assessment criteria, such as transparency about ultimate beneficial ownership, would likely require or entice investors to adapt their corporate governance and behavior to lower their risk profile, similar to steps sovereign wealth funds took when agreeing on the Santiago Principles a decade ago.[3]

- Governments work toward mutual recognition, either in part or in full, of the assessment that their peers have made of individual investment proposals. They could take inspiration from other areas where multiple jurisdictions are competent and efficiency considerations call for a concentration of procedures or decisions. Collaboration among competition authorities, the recognition of judicial decisions abroad and product standard recognition are among the many examples where this approach has been successful. Common standards on combating anti-money laundering and terrorism financing, developed by the Financial Action Task Force, show that cooperation can succeed in sensitive policy areas related to national security.

While examples for successful international standard-setting and mutual recognition abound, such co-operation in the investment area is still at infant stages. However, recent US legislation and EU efforts (as outlined in other *Perspectives*) call for co-operation, without specifying the form that it should take. The OECD has spearheaded endeavors to balance openness and national security risk management for decades. With 59 advanced and developing economies around the table, the OECD is well placed to catalyze agreement on common standards and rules and to foster harmonization in this area so that threats from investment do not threaten investment.

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[1] Carlos Esplugues, "A future European FDI screening system: solution or problem?," *Columbia FDI Perspectives*, No. 245, February 11, 2018; Alvaro Cuervo-Cazurra, "Host country concerns and policies toward state-owned MNEs," *Columbia FDI Perspectives*, no. 237, October 22, 2018; Theodore H. Moran, "CFIUS reforms must be reformed," *Columbia FDI Perspectives*, no. 231, July 30, 2018.

[2] Notifications to the OECD of new policies, mandatory under its instruments, are available at http://oe.cd/natsec.

[3] Frédéric Wehrlé and Hans Christiansen, "State-owned enterprises, international investment and national security: the way forward," *OECD on the level*, October 4, 2017.

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