

**BELGIUM**



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| <b>1.</b> | <b>Relevant legislation (foreign investment legislation in force)</b>  |
|           | <p>Cooperation Agreement of 30 November 2022 between the Federal State, the Flemish Region, the Walloon Region, the Brussels-Capital Region, the Flemish Community, the French Community, the German-speaking Community, the French Community Commission and the Joint Community Commission on the establishment of a screening mechanism for foreign direct investments (the “Cooperation Agreement”).</p> <p>This Cooperation Agreement is a political compromise resulting from Belgium’s constitutionally complex structure and remains ambiguous concerning many issues. Moreover, the screening mechanism only entered into force on 1 July 2023 and therefore no decisions have been issued to date.</p> <p>Given these ambiguities, draft guidelines have been issued on 30 June 2023 by the ISC to clarify the interpretation of the Cooperation Agreement (the “Draft Guidelines” are available on the ISC’s website and are regularly updated; Flemish and French only).</p> <p>Cooperation Agreement in Flemish and French only: <a href="#">sceening-samenwerkingsakkoord-filtrage-accord-cooperation.pdf (fgov.be)</a></p> <p>Draft Guidelines in Flemish and French only:</p> <ul style="list-style-type: none"> <li>• Flemish version: <a href="#">Voorstel van richtlijnen voor buitenlandse directe investeringen - versie 30 juni 2023 (fgov.be)</a></li> <li>• French version: <a href="#">Proposition de lignes directrices des investissements directs étrangers - version 30 juin 2023 (fgov.be)</a></li> </ul> |
| <b>2.</b> | <b>Relevant authority (foreign investment regulator)</b>   |
|           | <p>Interfederal Screening Commission (“ISC”)</p> <p>Website: <a href="https://economie.fgov.be/nl/themas/handelsbeleid/interfederale">https://economie.fgov.be/nl/themas/handelsbeleid/interfederale</a></p>   |
| <b>3.</b> | <b>Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)</b>  |
|           | <p>It should be noted that the sectors are very widely described and that no guidance on their interpretation has yet been given. Moreover, it is only required that the Belgian undertaking’s activities “touch upon/relate to” these sectors and so undertakings that are also not directly active in these sectors but, for example, are a key supplier to undertakings with activities in these sectors may also be caught.</p>  |

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| <p>The sectors covered include:</p> <ul style="list-style-type: none"> <li>• defence (including dual use goods)</li> <li>• healthcare,</li> <li>• energy,</li> <li>• telecoms,</li> <li>• transport,</li> <li>• critical technology and raw materials,</li> <li>• critical infrastructure, whether physical or virtual, as well as land and real estate crucial for the use of such infrastructure,</li> <li>• food security,</li> <li>• private security,</li> <li>• media,</li> <li>• cybersecurity and access to sensitive information and personal data, and</li> <li>• biotechnology.</li> </ul>  |  |
| <b>4.</b>  | <p><b>Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold – e.g. % of votes in the target triggering the notification)</b></p> |
| <p><b>Types of transactions to be notified:</b></p> <ul style="list-style-type: none"> <li>• Acquisition of shares: <ul style="list-style-type: none"> <li>✓ Direct or indirect acquisition of at least 10% of the voting rights in undertakings in Belgium active in the most sensitive sectors (defence, energy, cybersecurity, electronic communications or digital infrastructure) and whose annual turnover in the financial year preceding the acquisition of at least 10% of the voting rights exceeded EUR 100 million; or</li> <li>✓ Direct or indirect acquisition of at least 25% of the voting rights in undertakings in certain less-sensitive sectors. For foreign direct investments in the biotechnology sector only, an additional turnover threshold of EUR 25 million in the financial year preceding the investment is required.</li> </ul> </li> <li>• Acquisition of control by other means (e.g. a shareholders agreement).</li> <li>• Although not explicit mentioned in the Cooperation Agreement, it can be deduced from the draft notification form that also the acquisition of assets of an entity active in these sectors will fall within the scope of the FDI screening.</li> <li>• Intra-group restructurings.</li> </ul> <p><b>Definition of a Foreign investor:</b></p> <ul style="list-style-type: none"> <li>• Any natural person having his/her principal place of residence outside the European Union (hereafter referred to as "EU");</li> <li>• Any undertaking from a third country, incorporated or organised under the laws of a non-EU jurisdiction, with a registered office or principal place of business outside the EU; or</li> <li>• Any undertaking in which one of its ultimate beneficial owners ("UBO") has its/his/her principal place of residence outside the EU.</li> <li>• Not only private institutions and undertakings, but also foreign governments and public institutions are covered.</li> </ul> |  |
| <b>5.</b>  | <p><b>Parties to be included in the foreign investment assessment (notifying parties and protected entities)</b></p>   |
| <p>The parties to be included in the foreign investment assessment are all the entities that are part of the group of the investing entity and the protected entities.</p>   |  |

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| Detailed information must be provided on the ownership structure and economic activities of the investors and on the target's activities.   |  |
| <b>6.</b>   | <b>Exceptions</b>  |
| Greenfield investments are excluded.  |  |
| <b>7.</b>   | <b>Notification / review type (e.g. mandatory, pre-closing, suspensory)</b>                                      |
| The notification obligation is <b>mandatory</b> and <b>suspensory</b> (with a standstill obligation pending review) until the ISC has approved the transaction.   |  |
| <b>8.</b>   | <b>Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)</b> |
| There is no procedure provided for third parties to intervene in the review process.  |  |
| <b>9.</b>   | <b>Filing fee</b>  |
| There is no filing fee.   |  |
| <b>10.</b>  | <b>Submission deadline / stand-still obligation</b>  |
| <p><b>Submission deadlines:</b> After the conclusion and before the completion of the agreement, the publication of the purchase or exchange offer, or the acquisition of a controlling interest. A notification can also be made based on a draft agreement provided the parties declare their intention to conclude an agreement that does not materially differ on any relevant aspect from the notified draft.</p> <p><b>Standstill obligation:</b> The transaction cannot be implemented or closed until the FDI clearance has been obtained. Failure to respect this standstill obligation may give rise to an administrative fine of up to 30% of the investment's value.</p>  |  |
| <b>11.</b>  | <b>Availability of pre-notification / informal consultation</b>  |
| <p>To date, the ISC has not engaged in any informal consultation or pre-notification contacts. In case of doubt, the ISC recommends that the parties submit a precautionary filing.</p> <p>Upon notification, the ISC will analyse the filing to check the completeness and can request additional information. The statutory time limits for the decision only start running when the notification has been declared to be complete.</p>   |  |
| <b>12.</b>  | <b>Scope of information / documents required for filing</b>  |
| <p>The detailed information to be submitted with the notification includes:</p> <ul style="list-style-type: none"> <li>• the ownership structure of the foreign investor and of the undertaking(s) in which the foreign direct investment is being made, including information on the identity of the investor, the shareholding, and the ultimate beneficiary.</li> <li>• the approximate value of the foreign direct investment and how this value has been determined.</li> <li>• the products, services and business operations of the foreign investor and its controlling entities, including entities under the control of the latter, on the one hand, and the undertaking in which the foreign direct investment is made, on the other (including</li> </ul> |  |

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|            | <p>turnover, profit, market share data, IP, access to personal and sensitive data, workforce, customers and competitors, etc.);</p> <ul style="list-style-type: none"> <li>• member states of the EU and third countries in which, the foreign investor (and its controlling entities including entities under their control) and the undertaking in which the foreign direct investment is made have carried out relevant business activities;</li> <li>• the intended investment and the investor's strategy relating to the investment;</li> <li>• the financing of the investment and its source;</li> <li>• other conditions precedent and the date or expected date of the investment's completion.</li> </ul>   |
| <b>13.</b> | <b>Proceedings timetable (timing for review)</b>   |
|            | <p>The timeline for the review is divided into two phases:</p> <ul style="list-style-type: none"> <li>• Phase 1: The Assessment phase lasts a maximum of 30 calendar days, which starts from the receipt of the full file. However, a “stop-the-clock” mechanism applies, for example, if an ISC member requests additional information;</li> <li>• Phase 2: The Screening phase lasts at least 28 calendar days and can be extended by several months in the case of written comments, oral hearings, RFIs remedies, and exceptional circumstances.</li> </ul>  |
| <b>14.</b> | <b>Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)</b>   |
|            | <p>The decision can result in an unconditional clearance, a conditional clearance, or a prohibition. Failure to take a decision within the statutory deadlines results in a tacit unconditional approval. The Cooperation Agreement contains an indicative non-exhaustive list of potential remedies, including the establishing of a code of conduct for the provision or exchange of sensitive information; the appointment of a compliance officer, the obligation to deposit technology or know-how with a third party, limiting the size of the foreign investment, prohibiting the acquisition of certain parts of an entity or certain entities, limiting the number of shares to be acquired, etc.</p>   |
| <b>15.</b> | <b>Publicity of the decision and confidentiality of the information provided</b>   |
|            | <p>The decision is only notified to the notifying parties by registered mail, and if electronic, via an electronic registered mail service within two days of receipt of the provisional decisions from the ISC's ministers and members.</p> <p>According to the Guidelines, the provided information's treatment will comply with the GDPR, and will be disseminated exclusively in strict compliance with the "need-to-know" principle. An undertaking's data will only be processed to the extent necessary for the screening of foreign direct investment and to ensure the effectiveness of the international cooperation described in Article 13 of Regulation 2019/452.</p> <p>Moreover, during the screening process, no confidential information is available to the notifying parties or the public. Each year, the ISC publishes an annual report of the FDI notified and screened that may only contain non-confidential information.</p> <p>It is still unclear whether the decisions or a related press release will be published.</p> |
| <b>16.</b> | <b>Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)</b>   |

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| <p>A final decision allowing (whether or not subject to remedies) or prohibiting the foreign direct investment can be appealed by the foreign direct investor or the target to the Market Court (a part of the Brussels Court of Appeal) within 30 days of the notification of the challenged decision. The appeal has in principle no suspensory effect.</p> <p>The Market Court may only partially or fully annul the decisions and in the case of an annulment it will send the file back to the ISC, where a new Screening phase will be launched. The Market Court only has full jurisdiction for fines.</p> |   |
| <b>17.</b>  | <b>Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)</b> |
| <p>Either a failure to notify in time or a breach of the standstill obligation may give rise to administrative fines of up to 30% of the investment's value.</p>  |   |
| <b>18.</b>  | <b>Other national security review distinct from FDI rules</b>   |
| <p>A Flemish Decree of 7 December 2018 on governance (Article III.60) has a more restricted scope.</p> <p>Belgian and EU merger control applies in parallel.</p>  |   |
| <b>19.</b>  | <b>Significant legislative/regulatory developments in the past year and possible proposals for reform</b>                                   |
| <p>The FDI screening regime only entered into force on 1 July 2023 and many ambiguities still remain. It is expected that the ISC's Guidelines will be updated regularly.</p>   |   |
| <b>20.</b>  | <b>Helpful links</b>  |
| <p>Interfederal Screening Commission:<br/> <a href="#">Comité de filtrage interfédéral   SPF Economie (fgov.be)</a></p> <p>FAQs:<br/> <a href="#">Voorstel van Richtlijnen - versie 30.06.2023 - Proposition de lignes directrices - version 30.056.2023 (fgov.be)</a></p> <p>Cooperation Agreement:<br/> <a href="#">screening-samenwerkingsakkoord-filtrage-accord-cooperation.pdf (fgov.be) (Flemish and French only)</a></p>  |   |