

# Foreign Direct Investment (FDI) screening in Belgium: two years in and the upcoming change of the EU framework

As of 1 July 2023, foreign direct investment (“FDI”) screening has become an essential checkpoint for transactions involving foreign (non-EU) investors. With the European Parliament recently voting in favour of a reform of the European FDI framework aimed at strengthening and harmonising Member State regimes, it is an opportune moment to reflect on the Belgian FDI mechanism’s first two years of operation. While the framework is already broadly aligned with the forthcoming EU rules, the past two years have highlighted both its strengths and practical challenges, particularly in terms of timing.

Belgium introduced its foreign investment screening mechanism in July 2023 targeting investments by foreign investors in sensitive or strategic sectors. Grounded in the Cooperation Agreement of 30 November 2022, a notification is required when specific thresholds of control are met - typically as from 10% or 25% of voting rights - depending on the sector and turnover of the target company.

In practice, most transactions are cleared in the assessment phase (phase 1), and no investment has been blocked to date (as per 23 April 2025). However, delays arising from the European level and procedural suspensions have created timing challenges. Now, with the upcoming revision at an EU level set to make screening mandatory across all Member States and expand its scope, Belgium’s relatively mature regime may require only limited adjustments. Yet, the FDI screening in a challenging environment of wars, tariffs and protectionist measures means businesses and legal advisers must increasingly factor these procedures into their timelines and risk assessments.

Below, a snapshot of the current Belgian rules, a couple of lessons learned from recent practice, key elements of the upcoming EU reform, and practical recommendations for navigating through this evolving framework.

## 1. When is a notification required?

A notification to the Interfederal Screening Committee (“ISC”) is required where a non-EU investor, or an EU entity controlled by a non-EU ultimate beneficial owner (UBO), intends to acquire:

- 25% or more of the voting rights in a Belgian company active in a relevant sector, or
- 10% or more of the voting rights in a Belgian company active in a strategic or critical sector, provided the company has an annual turnover of at least EUR 100 million.

The notification must be made before the transaction is completed. Closing is only permitted once the ISC has issued an approval, a no-objection decision is taken, or no decision within the applicable legal time frame, which also leads to permissibility. Failure to notify the investment may lead to administrative sanctions. It is unclear if it would lead to the nullity of the transaction.

## 2. Lessons from nearly two years of FDI screening in Belgium

Since the introduction of the Belgian screening mechanism (and as per 23 April 2025) :

- No foreign investment has been blocked.
- Out of all notifications, only 13 cases advanced to a screening phase.
- Only in a few cases, approval was subject to corrective conditions.

Once a case enters the screening phase (phase 2), timing can become challenging. The duration of the procedure can vary significantly, depending on different factors, such as when additional information is requested, both at EU level and/or at national level. At the EU level, other EU-Member States of the European Commission may provide comments, issue an opinion or have the possibility to request further information resulting in a stop-the-clock mechanism until the answer is provided. Likewise, Members of the ISC may also request further information.

Practice shows that transaction parties tend to underestimate these potential delays, leading to optimistic closing schedules.

### **3. Key elements of the EU reform**

The proposed revision of FDI Regulation (EU) 2019/452 brings the following key changes:

- Mandatory screening mechanisms in all Member States within 15 months;
- Explicit inclusion of greenfield investments under the screening regime;
- A stronger role for the European Commission, with its opinions becoming binding upon the screening Member State;
- Shorter and harmonised deadlines for interinstitutional cooperation;
- Expanded scope to include indirect control, e.g. through intermediary structures or third countries;
- Increased transparency, requiring Member States to report on the use of suspensions and extensions.

Many of these changes are already reflected in Belgium's existing screening mechanism which was established by the Cooperation Agreement of 30 November 2022. While some adjustments will still be required to fully align with the revised EU framework, only limited modifications are to be expected.

### **4. Practical recommendations**

The broad scope of the screening mechanism and forthcoming EU changes make it clear that FDI screening is becoming more prominent than ever. To navigate this, businesses should consider the following recommendations:

- Assess early on in a transaction whether FDI screening is required in every EU Member State involved individually - focus on control, beneficial ownership, and sectoral activity;
- Build flexibility into transaction timelines to accommodate a possible lengthy screening phase;
- Monitor EU legislative developments, particularly in the lead-up to the revised regulation's entry into force;
- Incorporate FDI screening into standard due diligence and closing checklists.

By embedding these considerations into workflows, legal teams can ensure compliance, avoid unforeseen delays or last-minute surprises in the execution of cross-border deals.

The ISC has demonstrated a proactive and constructive attitude, showing genuine interest in the consequences of the screening process and the timing constraints of the parties involved.

We are keeping close track of any ongoing and upcoming developments and are keen to advise in all FDI related questions and filings.

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