

## CELIS Briefing Note on Switzerland, 23 May 2022

### Swiss Federal Council initiates consultation on legislation to screen foreign investment

by

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On 18 May 2022, the Swiss Federal Council initiated the consultation on legislation to screen foreign direct investment in Switzerland. The Federal Council has been instructed by the Swiss parliament to draft the necessary legislative basis. However, the Federal Council still advises against introducing new legislation as it considers the cost/benefit ratio to be unfavorable and the existing regulations to be sufficient.

The purpose of the new legislation is to prevent takeovers of domestic companies by foreign investors that endanger or threaten public order or security. According to the preliminary draft, the new “Investment Review Act” (IRA) is to apply to takeovers of domestic companies under private and public law by foreign investors. Takeovers by foreign state or quasi-state investors are to be subject to approval in all sectors. In addition, the preliminary draft of the IRA defines critical areas in which all acquisitions by foreign investors - state or private - must be approved. Therefore, approval is to be obtained in particular for the takeover of companies that operate in certain specified functions in the armaments, electricity, financial, health care, food distribution, telecommunication, transport or water supply sector. By setting a de minimis threshold small businesses are to be exempted from the screening process.

Pursuant to the preliminary draft of the IRA, the State Secretariat for Economic Affairs (SECO) shall approve the takeover if there is no reason to believe that public order or safety is endangered or threatened by the takeover. In doing so, it is to take into account in particular whether the foreign investor is or was involved in espionage activities, whether the products and infrastructure of the domestic company can be replaced within a reasonable period of time, whether the foreign investor gains access to central security-relevant information as a result of the takeover or whether the takeover will result in significant distortions of competition. Approval may also be granted subject to conditions and requirements.

The State Secretariat for Economic Affairs (SECO) is to be responsible for carrying out the investment review and coordinating it with the administrative bodies involved. A two-stage approval procedure is planned. A decision is to be made within one month as to whether the takeover can be approved or whether a review procedure is to be initiated. A review procedure would take a maximum of a further three months. If no decision has been taken within these time limits, a takeover shall in principle be deemed to have been approved. The decision whether or not to conduct a screening process is to be made by consensus among the administrative bodies involved (i.e. SECO and the co-interested administrative units). If there



is disagreement, or if the relevant administrative bodies find that an acquisition should be prohibited, the Federal Council will make the final decision.

According to the preliminary draft of the IRA, if a takeover requiring approval is executed without approval, the Federal Council may impose the measures necessary to restore the lawful state of affairs (in particular divestment of the acquisition). Further, disregard of the approval requirement, a takeover falsely approved on the basis of intentionally made false statements, as well as the failure to implement a measure to restore the lawful state are to be sanctioned with up to ten percent of the transaction value.

The consultation process will take until 9 September 2022. The documentation is available (in German, French or Italian) at <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-88884.html>.