

## CELIS Briefing Note: Republic of Cyprus' FDIS Bill: Interim Update

(CELIS Institute Country Reporters for the Republic of Cyprus Dr. Thomas Papadopoulos and Mr. Pantelis Christofides<sup>1</sup>)

The Republic of Cyprus House of Representatives' Parliamentary Committee on Finance and Budget (**the Parliamentary Committee**) continued the FDIS Bill related ongoing discussion before the Parliamentary Committee on Monday 17/10/2022.

A brief description of the discussion which took place during the said debate session before the Parliamentary Committee has been published by Mrs. Eleni Charalambous, in Greek, in an article of Cypriot online financial news website **Stockwatch.com.cy** on Tuesday 18/10/2022 under the title '*They would have voted for lacunae and uncertainties for 'Lone Star'*' (in Greek '*Θα ψήφιζαν κενά και ασάφειες για «Lone Star»*')<sup>2</sup>.

To that effect, the revised – updated FDIS Bill, presented prior and, discussed during, the above – mentioned debate session before the Parliamentary Committee, had effectively adopted the Cyprus International Businesses' Association (CIBA)<sup>3</sup> suggestions regarding (a) the deletion of the power of the Minister of Finance to amend unilaterally the grounds and areas of Foreign Direct Investment Screening under the Bill via an Order issued by the Minister of Finance of the Republic of Cyprus, and (b) the limitation of liability regarding infringement of FDIS Law to any person directly or indirectly exercising control over the existing or proposed investment and not to any person in general connected/related to the said existing or proposed investment.

During the 17/10/2022 debate session, CIBA (a) repeated the previous suggestions thereof including, foremost, the establishment of an independent (*unrelated to the attraction of FDI or the enlargement of the taxpayers' basis in the Republic of Cyprus*) FDIS Committee modelled upon the Commission for the Protection of Competition (CPC) of the Republic of Cyprus with a distinct Service comprised by independent and knowledgeable personnel with expertise in areas which include EU Trade Law and Economics as well as knowledge of the EU and International FDIS scene, (b) presented specific features of the FDIS regime in Italy, Spain and France, including (i) the definition of 'foreign investor' and the option to mention non – EEA or non – EFTA origin as part of the said definition, not merely proceed to referring in the FDIS Bill text that the EU FDIS Regulation definitions are applicable, (ii) the presence and content FDIS Notification Forms and (ii) publication requirements as to the fact of the Notification's submission and the content of the resulting Decision on the Notification, subject to business secrecy legal requirements, and (c) suggested that, for reasons of upholding the Principle of Transparency, and by way of analogy with the Republic of Cyprus Concentration Control Law, the fact of the submission of the Application with the names of the parties involved and the

---

<sup>1</sup> Dr. Thomas Papadopoulos, Assistant Professor – University of Cyprus (CELIS Fellow) and Pantelis Christofides, Advocate – Director, L. PAPAPHILIPPOU & CO LLC Advocates & Legal Consultants (CELIS Fellow). The views expressed in the present Briefing Note are strictly personal and represent the state of play as at 30th October 2022.

<sup>2</sup> The said Stockwatch.com.cy article is publicly accessible at <https://www.stockwatch.com.cy/el/article/voyli-trapezes/tha-psifizan-kena-kai-asafeies-gia-lone-star> (last accessed on 30/10/2022).

<sup>3</sup> In upholding the Transparency Principle, it is noted that Pantelis Christofides, acting as Advocate – Director of L. PAPAPHILIPPOU & CO LLC, CIBA Legal Consultants, participated, as part of the CIBA Team, during the relevant discussion and submission of suggestions before the Parliamentary Committee regarding the FDIS Bill.

nature of the investment (existing or proposed) as well as the Decision to be issued by the Competent Authority ought to be published in the Official Gazette of the Republic of Cyprus as well as on the website of the FDIS Competent Authority, not disclosing any sensitive business information which are protected by the relevant Legislation.

As also mentioned in the above stated 18/10/2022 Stockwatch.com.cy article, the Cyprus Bar Association (CBA) representative, stated, amongst other that (a) the FDIS Bill presents shortcomings and lacunae and it does not appear that it protects the State from corruption phenomena but contrarily opens a way towards the opposite direction, (b) the CBA position is that the FDIS Competent Authority role must not be entrusted to the Ministry of Finance of the Republic of Cyprus but to an independent committee which must be established for that specific purpose, and (c) the FDIS jurisdictional threshold of 10% must be increased to 25%, also taking into account the FDIS evaluation factors.

Regarding the above arguments, we would like to note that, as CELIS Institute Country Reporters, we have not traced any corruption related possibility from the FDIS Bill content, but solely an issue of lack of independence and impartiality of the proposed FDIS Competent Authority, which could lead to the annulment of any content Decision thereof before the competent Courts of the Republic of Cyprus, those being the Administrative Court, and, on Appeal, the Supreme Court of Cyprus.

Further, the representative of the Institute of Certified Public Accountants of Cyprus (ICPAC) noted, amongst other, that (a) the enactment of the FDIS Bill constitutes a well pre – existing obligation and expressed concern regarding the criteria and the procedure for the Notification's submission as well as taking into account the narrow time margin for the Notification's examination by the Competent Authority.

The Parliamentary Committee, as a result of the discussion taken place, called upon the Ministry of Finance, to proceed to a new round of consultation with the Stakeholders and to revert in a few weeks with the agreed text of the FDIS Bill.

As CELIS Institute Country Reporters for the Republic of Cyprus, we will be providing an update on the FDIS Bill on the basis of any further developments in the Parliamentary process.