



CELIS

CELIS Country Note

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by

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Abstract

The Belgian cross-sectoral Investment Screening Mechanism (ISM) has recently entered into force. The objective of this mechanism is to identify and mitigate risks related to Foreign Direct Investments in Belgian critical infrastructure and strategic assets. The journey towards creating this mechanism was made difficult by obstacles resulting from Belgium's complicated institutional framework. First, this Country Note provides background by elaborating on the economic and political context of inbound foreign investment in Belgium. Second, this Country Note provides a timeline of the legislative process. From the cases that triggered the debate to the agreement on the current mechanism, this note demonstrates how the design of the mechanism evolved in a country that has fragmented governance. Third, this Country Note sheds light on a few of the most important features of the Belgian screening mechanism. The text delves into the scope of the mechanism, the role of the Inter-federal Screening Commission, and the screening process. Finally, the effectiveness and efficiency of the Belgian screening mechanism is yet undetermined. Only practical application can show whether it achieves its objective, namely the protection of Belgium's strategic assets and infrastructure.

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1. Political and Economic Background

1.1. FDI in Belgium: trends and characteristics

BELGIUM AS AN INVESTMENT DESTINATION – Belgium’s economy is no stranger to Foreign Direct Investment (FDI). Over the past decades, foreign investors have slowly but steadily found their way to the Belgian market. The particular elements that contribute to the attractiveness of Belgium as a destination for FDI are its central location and its well-educated and multilingual workforce.¹ After the Covid-19 pandemic that led to a global stagnation in investment flows, Belgium recovered fairly well. Nevertheless, the number of investments in 2021 and 2022 have not been similar to what they were before the pandemic. According to the Ernst and Young (EY) Attractiveness Survey 2023, Belgium registered 245 projects in 2021 and 234 projects in 2022.²

CHARACTERISTICS OF INBOUND FDI IN BELGIUM – Where does foreign capital come from? In Belgium as a whole, the most prominent countries of origin are the United States, the United Kingdom, Germany, France, and the Netherlands. Japanese investors and investors from other European states were present as well, although in smaller numbers. China remains the largest “emerging markets” investor and is especially active in Wallonia.³ In Flanders, where a large chunk of the country’s economic capacity is located, more or less the same trends can be observed. The main countries of origin are the United States, the United Kingdom, the Netherlands, France and Germany. Belgium has been home to greenfield investments, mergers and acquisitions, as well as expansions of existing business operations. In 2021, these types of investment respectively accounted for 51%, 32% and 16% of total inbound investment. In 2022, these numbers changed to 53%, 26% and 20%, respectively. The

¹ Duprez C, Van Nieuwenhuyze C (2016) Foreign direct investment in and from Belgium, Journal of Economics (National Bank of Belgium), <https://www.nbb.be/nl/artikels/de-buitenlandse-directe-investeringen-en-van-belgie>.

² EY (2023) Attractiveness Survey 2023, https://www.ey.com/en_be/attractiveness.

³ EY (2022) Attractiveness Survey 2022, https://www.ey.com/en_be/attractiveness/22/6-main-trends-from-the-belgian-attractiveness-survey-2022; Ernst and Young (2023) Attractiveness Survey 2023, https://www.ey.com/en_be/attractiveness.

economic activities that were the largest recipients of foreign investment were sales and marketing, transportation and logistics, production and Research and Development (R&D). The sectors that receive a large share of inbound FDI are the pharmaceutical, climate technology and chemical sector. The latter is an important recipient given the presence of major industrial players in the port of Antwerp such as BASF and Ineos.⁴

CRITICISM AND CONCERNS – Notwithstanding the inflow of foreign capital in the Belgian economy, foreign investors also point to the need for improvement in certain areas of Belgium's governmental and economic infrastructure. On the one hand, the main concerns for investors are related to the high costs of operating in Belgium. The high tax rates and high cost of labour are seen as elements that disadvantage Belgium over other European economies. On the other hand, Belgium has a history of complex and bureaucratic public governance. Indeed, the division of competences between the different levels of government (federal, regional, communal, local) create an administrative maze which increases the burden for the investor to comply with relevant regulations. Ineos, for example, had its environmental authorization for a new ethane cracker revoked in July 2023 by the Council of State, the highest administrative court. The project's impact on the environment was deemed problematic in light of current standards. This incident elicited diverse comments, ranging from praise for the annulment as beneficial to the environment and public health to worry about the future of Belgian heavy industry.⁵ Nonetheless, the fact that the Flemish government granted Ineos a permit for such a large project, which was later revoked, does not inspire confidence in the Belgian authorities.

1.2. The political dimension: the long road to the adoption of a screening mechanism

A WELCOMING ATTITUDE – As a small country with few natural resources, Belgium has historically been open to economic interaction with the outside world. Hence, FDI has generally received a welcoming treatment by the various governments over time on all levels. On the federal level, tax rulings and certain measures to promote research and development have

⁴ Flanders Investment and Trade, Foreign Investments (2022), <https://corporate.flandersinvestmentandtrade.com/nl/nieuws/buitenlandse-investeringen-2022>.

⁵ The Brussels Times, Environment permit for controversial ethane cracker Ineos overturned, <https://www.brusselstimes.com/610725/environment-permit-for-controversial-ethane-cracker-ineos-overturned>.

been introduced to support foreign capital.⁶ Furthermore, regional agencies to attract foreign investors have been established, such as Flanders Investment and Trade, Hub.Brussels, and the Walloon Export and Foreign Investment Agency.

SHIFTING PERSPECTIVES ON FDI – In light of the altered perspective on foreign capital, especially over the past years, the discussion on the possibility of state control over foreign investment flows has also surfaced in Belgium. However, there was no intention of adopting a legal framework that allows for state scrutiny over private transactions until the issue received attention on the European level. Only in the context the preparation and adoption of EU regulation 2019/452 did the Belgian government begin seriously discussing the introduction of a screening mechanism consistent with the philosophy of the EU screening regulation.

INCREASED ATTENTION TO THE NEGATIVE EFFECTS OF FDI – The above does not imply that Belgium has not been subjected to circumstances in which foreign investment in one of its assets was deemed problematic. Indeed, the concerns with FDI have been discussed publicly in certain cases. For example, the reactions to the establishment of a distribution centre of China's Alibaba in Liège were not unanimously positive.⁷ On the contrary, there were voices that warned for the role that the distribution centre could play in creating more trade asymmetry between Belgium – and Europe in general – and China. A recent research paper showed that the distribution centre is indeed problematic in that the business-to-consumer traffic consists almost exclusively of imports from China.⁸

CHINA STATE GRID AND EANDIS – Furthermore, there was a case in 2016 where China State Grid wanted to invest in “superintercommunal” Eandis Assets, which is in fact a network of Belgian gas and electricity distributors. Eandis was structured as an intercommunal entity. The decision to allow China State Grid to invest was thus primarily in the hands of the municipalities, as members of the relevant intermunicipal distribution system operators. Eventually, the Chinese energy giant's entry into Eandis was thwarted due to the failure to meet a number of conditions foregoing the merger of the seven Eandis intercommunal entities

⁶ Duprez C, Van Nieuwenhuyze C (2016) Foreign direct investment in and from Belgium, Journal of Economics (National Bank of Belgium), <https://www.nbb.be/nl/artikels/de-buitenlandse-directe-investeringen-en-van-belgie>.

⁷ The Guardian (2021) Open sesame: Alibaba's push into Europe a mixed blessing for Liège, <https://www.theguardian.com/business/2021/feb/14/open-sesame-alibabas-push-into-europe-a-mixed-blessing-for-liege>

⁸ Holslag J (2023) Worse than Cocaine: Assessing the Impact of Alibaba's Mega-Hub in Liege, Belgium, <https://www.jonathanholslag.be/papers/>.

into the superintercommunal Eandis Assets.⁹ Thus, China State Grid was not able to invest mainly due to problems within the process of establishing a new superintercommunal. Hence, the main reason the investment did not happen had little to do with concerns vis-à-vis the Chinese investor, and its links to the Chinese state apparatus. However, it is said that at the time of the process certain Ministers received anonymous letters, which later turned out to be issued by the Belgian intelligence agencies that warned of the risks associated with State Grid's entry in the gas and electricity distribution network. The perception of State Grid as a reliable partner was therefore tormented, rendering future attempts for an acquisition pointless.

IMPACT OF THE EANDIS CASE: THE LIMITED FLEMISH SCREENING MECHANISM – The China State Grid and Eandis saga had an impact on the perception of role of the state in securing key infrastructure from outside meddling. It led to the introduction of an investment provision on the Flemish level to limit and reverse the control over a public body by a foreign investor when the risk exists of jeopardization of strategic interests and the continuity of vital processes of the Flemish Community or Region.¹⁰ The most remarkable aspect of this instrument is that it is an ex-post screening mechanism. This instrument, however, is very limited in scope and has not been used since its adoption.

THE UNDESIRABILITY OF AN ADVANCED FLEMISH SCREENING MECHANISM – Further talks were held in 2019 regarding the potential development of a Flemish screening mechanism that would give powers to scrutinize private transactions. Quite rapidly, it became clear that this was undesirable and unrealistic given that a screening mechanism on the Flemish level only allows for screening in light of economic arguments. Indeed, the regions are competent for economic affairs. This did not conform with the spirit of the EU screening regulation, that aims to mitigate FDI-related concerns for public security and order. The competences related to national security and public order are located at the federal level.¹¹

FIRST STEPS TOWARDS A BELGIAN SCREENING MECHANISM – If a potent screening mechanism was to be implemented, it should ideally be done at the federal level. In 2019, the first talks were held between the different levels of government.¹² The adoption of the EU screening

⁹ Flemish Social and Economic Council (2020) Report on the Screening of Foreign Direct Investments, 13-14.

¹⁰ Art. III.60, Decree of the Flemish government of 7 December 2018.

¹¹ Flemish Social and Economic Council (2020) Report on the Screening of Foreign Direct Investments, 14, https://www.serv.be/sites/default/files/documenten/SERV_20200507_Screening_BDI_RAP.pdf.

¹² Flemish Social and Economic Council (2020) Report on the Screening of Foreign Direct Investments, 15, https://www.serv.be/sites/default/files/documenten/SERV_20200507_Screening_BDI_RAP.pdf.

regulation in 2019 definitely increased the sense of urgency related to the matter. Furthermore, because of the Covid-19 outbreak and the subsequent supply chain trouble, the importance establishing a screening procedure became increasingly clear to Belgian lawmakers.¹³ The problem was, that in Belgium there was no legislative structure in place to organise this screening at the time, despite the fact that many other European and non-European countries had formed and held the requisite parliamentary debates on the matter.¹⁴

THE 2021 PROPOSAL – In 2021, a first rudimentary legislative proposal was introduced in the Chamber of Representatives of the Belgian federal parliament that aimed at introducing a screening mechanism in line with the requirements of the EU screening regulation.

DESIGNING A SCREENING MECHANISM: PROBLEMS OF STRATIFICATION – The development of the mechanism was far from a walk in the park due to the federal structure of Belgium. During the legislative preparations, the review by the Council of State¹⁵ of the 2021 proposal for a screening mechanism already made it apparent that difficulties could arise with respect to the division of competences between the different levels of government.¹⁶ In its opinion, the Council of State already pointed out the possible jurisdictional issue, as it concerns a federal screening mechanism that should not violate the principle of proportionality. In principle, the federal government is responsible for national security interests and public order, including the protection of critical infrastructure. However, the federal government must not interfere in the exercise of the powers of the federated entities when they wish to safeguard their (security) interests. The initial idea to guarantee the interests of the federated entities was to represent them in an inter-federal screening commission on the basis of a cooperation agreement, where they would enjoy far-reaching advisory powers. This seemed all the more justified given the powers of the regions with respect to economic development and the impact that a screening mechanism can have on the investment climate. The inter-federal screening commission was

¹³ See for example: Belgian Chamber of Representatives, General Policy Paper: Economy, 4 November 2020, Doc 54 1580/ (2020/2021), p. 19-20.

¹⁴ Legislative proposal to amend the Code of Economic Law, as regards the introduction concerning a screening mechanism for foreign direct investments that have an impact on our security interests and strategic sectors, *Belgian official Gazette* 23 February 2021.

¹⁵ The Council of State, as the highest administrative authority, provides reasoned legal opinions on preliminary drafts and proposed laws. It looks whether the proposals are in conformity with higher norms of law, and whether the initiating government is competent to enact the proposal.

¹⁶ Adv.CoS, nr. 68.976/1 for the legislative proposal to amend the Code of Economic Law, as regards the introduction concerning a screening mechanism for foreign direct investments that have an impact on our security interests and strategic sectors, *Belgian official Gazette* 11 May 2021.

maintained throughout the rest of the legislative development; however, its role has been altered.

COOPERATING BETWEEN GOVERNMENT LEVELS – Considering the comments of the Council of State and other stakeholders, the 2021 proposal was used as a basis for further development. Nonetheless, the focus changed dramatically. Important in this regard is the fact that the competences with respect to economic affairs (including investment) are divided between the federal government and the regions.¹⁷ As a result, the 2021 proposal already recommended that a potential federal screening commission should carry out its duties in close collaboration with the relevant regions. A means to cooperate between the federal government and all of the regions (Wallonia, Brussels, Flanders) had to be found. To that end, a cooperation agreement between the regions and the federal government was to be reached that outlines the features of a future mechanism.¹⁸

THE JUNE 2022 COOPERATION AGREEMENT – That was the idea at the time. However, the cooperation agreement as agreed upon in June 2022 painted a whole different picture. Essentially, this was an agreement between the different levels of government on a preliminary draft of an investment screening law. The main point of discussion to be resolved was: which government has authority over the decision to allow or deny a non-European investment? The answer found in the cooperation agreement of June 2022: nine different levels of government. These are the federal state¹⁹, the three Regions, the three Communities²⁰, as well as the French and Common Community Commissions. The administrative stratification in Belgium forced the legislature to create an Inter-federal Screening Commission (ISC), consisting of ten representatives at the time. Each level of government could assign one representative, with

¹⁷ The regions have considerable powers in areas pertaining to their region or territory. Among their competences are: economy, employment, agriculture, water policy, housing, public works, energy, transport and foreign trade (for more information, please consult: https://www.belgium.be/en/about_belgium/government/regions/competence).

¹⁸ Art. 8, Legislative proposal to amend the Code of Economic Law, as regards the introduction concerning a screening mechanism for foreign direct investments that have an impact on our security interests and strategic sectors, *Belgian official Gazette* 23 February 2021.

¹⁹ The powers of the federal government extend to everything that does not specifically fall under the jurisdiction of the Communities or Regions. Furthermore, the federal government has extensive competences with respect to the protection of the public interest, foreign affairs, monetary policy, nuclear energy, etc. (for more information, please consult: https://www.belgium.be/en/about_belgium/government/federal_authorities/competence_federal_government).

²⁰ The communities are responsible for person-related matters (e.g., culture and education) as well as health policy (for more information, please consult: https://www.belgium.be/en/about_belgium/government/communities/competence).

the exception that the federal government could assign three representatives and the French and Common Community Commissions none. This cooperation agreement forms the basis for the Belgian screening mechanism, although amendments had to be made to the June 2022 version.

ISSUES WITH THE 2022 AGREEMENT: REVIEW BY THE COUNCIL OF STATE – In turn, this cooperation agreement that included a draft law on the establishment of a screening mechanism in Belgium had to be assessed by the Council of State. The comments on the cooperation agreement were twofold. First, a set of comments related to the division of competences. In this context, the Council of State emphasized that a government that is a party to a cooperation agreement cannot, under that agreement, relinquish the exercise of its powers. Each party to the cooperation agreement should be able to participate fully in the positive or negative decision on the admission of a foreign direct investment when it relates to the powers of that party. Especially the place of the French Community Commission and the Common Community Commission in the agreement at hand was seen as problematic, as they were deemed not to have ample opportunity to protect their interests when a foreign investment could have a potential impact on their material competences. The main reason for this was, according to the Council of State, that the French Community Commission and the Common Community Commission were not represented in the inter-federal screening commission. Furthermore, the Council of State again highlighted that the principle of proportionality has to be considered. This was particularly relevant given the fact that the federal government is competent for security and public order, including the protection of critical infrastructure. However, the latter should not undermine the competences of the communities and regions to, within their material powers, protect certain categories of security interests.

Second, comments were given that address the role of the ISC. The ISC mainly performs administrative tasks, while the actual power to admit or refuse a foreign investment lies with the Ministers of the governmental entity on who's material competences the investment could have an impact. Nonetheless, a detailed reading of the cooperation agreement reveals that the ISC has more than only administrative competences. For example, the ISC can decide to fine a party, without explicit consent of the Ministers.²¹

²¹ Adv.CoS, nr. 71.881/VR on a preliminary draft law 'approving the cooperation agreement of June 1, 2022 between the Federal State, the Flemish Region, the Walloon Region, the Brussels Capital Region, the Flemish Community, the French Community and the German-speaking Community to establish a mechanism for the screening of foreign direct investment', 19 October 2022.

AMENDED COOPERATION AGREEMENT OF NOVEMBER 2022 – The cooperation agreement was amended following the opinion of the Council of State, which led to an updated cooperation agreement on the establishment of a mechanism for the screening of foreign direct investment of November 30th, 2022. There are now twelve representatives in the ISC, as the representatives of the French Community Commission and the Common Community Commission have been included in the composition of the commission, in line with the opinion of the Council of State. On July 1st, 2023, the screening mechanism will finally come into effect. With the entry into force of this law, Belgium joins the other 19 European member states that have adopted or modified a screening mechanism under the impetus of a 2019 European regulation. In what follows, the screening mechanism as proposed in the November 2022 agreement will be discussed.

2. Domestic framework

THE SCREENING MECHANISM – The functioning of the Belgian FDI screening mechanism will in no way fundamentally differ from similar mechanisms in other EU member states, notwithstanding the important factor that is the complex ISC. Upon analysis of the mechanism, one can clearly identify the philosophy of EU FDI Screening Regulation 2019/452, as well as conceptual elements from other member states' mechanisms. The flow of operation is that certain investments that fall within the personal, material, and sectoral scope of the mechanism will have to be notified with the ISC, after which a security screening can commence. In what follows, some core elements of the mechanism will be discussed.

2.1. Scope of the mechanism

NATURE OF THE MECHANISM – The purpose of screening mechanism is purely to safeguard national security, public order, and strategic interests of the parties to the cooperation agreement. The future Belgian mechanism will be a cross-sectoral mechanism. It only applies to foreign direct investments in existing entities. Greenfield investments where a new economic activity is built from the ground up do not fall within the scope of the screening mechanism.²²

²² Art. 4, § 4, 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 Common

Furthermore, the scope of the investment screening mechanism is narrowed in multiple ways: by the nature of the investor, investment and the targeted asset.

COVERED INVESTORS – In principle, only “foreign investors” fall under the scope of the mechanism. The law considers foreign investors to be:

- any natural person whose principal residence is outside the European Union, or
- any company from a third country, being a company incorporated under the law of a non-EU state incorporated or otherwise organized enterprise in which the registered office of the enterprise or the principal activity is located in a non-EU state.
- any undertaking in which one of the beneficial owners has its main residence outside the EU.

The foreign investor can be a government, government agency, public corporation, as well as private companies and institutions, whenever they seek to acquire a controlling interest in an entity established in Belgium or whose principal place of business is in Belgium.²³

COVERED INVESTMENTS – Only foreign direct investments are covered by the mechanism. These are defined as “any type of investment by a foreign investor aimed at establishing or maintaining of lasting direct relations between the foreign investor and the entrepreneur or enterprise, including investments that enable the effective participation in the management of or enable the control of that enterprise”. Consequently, the investments must allow for some sort of control over the target company. The cooperation agreement defines control over an entity as the ability to directly or indirectly, in fact or in law, exercise a decisive influence on the activity of an undertaking through, in particular:

- rights of ownership or use of the assets of the undertaking or parts thereof;
- the composition, voting or decisions of one or several corporate bodies.

Such control over an undertaking is ought to be in the hands of natural or legal persons who are right holders or, when they are not direct holders of the rights that grant control, have the competence or ability to exercise those rights.²⁴

Community Commission Establishing a mechanism for the screening of foreign direct investment. (Hereafter: Cooperation agreement of 30 November 2022).

²³ Art. 2, Cooperation agreement of 30 November 2022.

²⁴ Art. 2, °1, Cooperation agreement of 30 November 2022.

COVERED SECTORS: NOTIFICATION DUTY – Belgium will employ a system of ex-ante notification. A foreign investor who, through investment or the passive acquisition of control, acquires directly and/or indirectly cumulatively 10% or 25% of the voting rights within the Belgian target entity is under the duty to notify this transaction.²⁵ However, the notification obligation is only required when the investment takes place in one of the specific sectors or activities as indicated by the law.

THE 10% THRESHOLD – The 10% threshold applies for sectors and economic activities related to 1) defence, including dual-use items, 2) energy, 3) cybersecurity, 4) electronic communications or digital infrastructures. Furthermore, the annual sales in the fiscal year preceding the acquisition of at least 10% of the voting rights should exceed 100 million euros.²⁶

THE 25% THRESHOLD – The 25% threshold applies for 3 different sectors and economic activities. First, there are the vital infrastructures, both physical and virtual, for energy transportation, water, health, electronic communications and digital infrastructures, media, data processing or storage, aerospace, and defence, electoral or financial infrastructure, and sensitive facilities, whether or not part of an existing business, as well as land and real estate property critical to the use of such infrastructure.

Second, there are the technologies and raw materials essential for security (including health safety), national defence or the maintenance of public order, military equipment, dual-use items, technologies of strategic importance (and related intellectual property) such as artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, energy storage, quantum and nuclear technologies, and nanotechnologies.

Third, the 25% threshold applies to investment in entities that concern the supply of critical inputs, including energy or raw materials, as well as food security, access to sensitive information, the private security sector, the freedom, and pluralism of the media. Lastly, the threshold applies to investment in technologies of strategic importance in the biotechnology sector, provided that the turnover of the company, in the financial year preceding the acquisition of at least 25% of voting rights exceeded EUR 25 million.²⁷

²⁵ The law provides the opportunity to alter the thresholds for the designated sectors. The parties to cooperation agreement may decide to lower the 25% threshold to 10% for sectors subject to the 25% threshold as well as to increase the threshold from 10% to a maximum of 25% for sectors to which the 10% threshold applies.

²⁶ Art. 4, § 2, °1, Cooperation agreement of 30 November 2022.

²⁷ Art. 4, § 2, °2, Cooperation agreement of 30 November 2022.

2.2. Inter-federal Screening Commission and the Screening Process

COMPOSITION AND ROLE OF THE ISC – Central to the screening process is the ISC. As previously mentioned, the inter-federal screening committee consists of twelve representatives. Each signatory to the cooperation agreement can appoint one representative, with the exception of the federal state, which can appoint three. The competence of the members of the ISC to analyse an investment is determined by a territorial link or potential impact on its material competence. It is therefore perfectly possible that several authorities have to decide on the investment. The representatives in the ISC are then simultaneously competent if a non-European investment – which falls within the scope of the mechanism – affects their separate territorial or substantive competence. The main task of the ISC representatives is to conduct the review and screening procedure and prepare opinions to the relevant competent Ministers.

THE TWOFOLD SCREENING PROCEDURE – There are two stages in the screening process. After notification of the investment, the authorised members of the ISC will each separately assess whether the proposed investment could have a potential impact on public order, national security, or other strategic interests. If one of the authorised representatives considers that there is a risk, the actual screening process starts. During this phase, the representatives concerned separately prepare an opinion to submit to their respective competent Ministers. The latter then each take a preliminary decision separately. This may consist of an admission, a conditional admission, or a refusal. These separate decisions then become a combined decision by the ISC as a collegiate acting body. If several levels of government are competent, a negative combined decision can only happen if there is unanimity on the refusal. Thus, Flanders will never be able to unilaterally block an investment in Wallonia, and vice versa. It is worth noting that the federal government does have a de facto veto right and can therefore unilaterally decide on a refusal.

THOUGHTS ON THE CURRENT PROCEDURE – One problem is the fact that the core concepts (such as "public order" or "of strategic importance") on the basis of which the screening mechanism works can be fleshed out in different ways by the levels of government. In a country where the main political dividing lines run parallel to those of the federated entities, it is rather optimistic to think that there is consensus on our international economic relations. Furthermore, it is not unreasonable to ask whether the current Belgian approach as envisioned in the November 2022 cooperation agreement is the most efficient and effective method to design a screening mechanism. Carrying out parallel procedures by each competent level of government seems

unnecessarily decentralised and does not give more assurance of actually identifying security risks.

3. Developments to follow

THE PROOF IS IN THE PUDDING – The Belgian investment screening mechanism started operating on 1 July 2023 after all the parliaments or meetings of the different governing levels in Belgium have implemented the screening mechanism. The members of the ISC have been assigned by each level, as well as the Ministers who are competent. The fluidity with which the mechanism will function is still a question mark. With this screening mechanism, Belgium is already heading for another gold medal for complexity. The question now is whether this will affect our attractiveness as an investment destination. Only practical application will show whether the Belgian mechanism is a sufficiently well-oiled machine.

Annex 1: Relevant laws, ordinances, regulatory guidelines

- 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 Common Community Commission Establishing a mechanism for the screening of foreign direct investment
- Adv.CoS, nr. 71.881/VR on a preliminary draft law 'approving the cooperation agreement of 1 June 2022 between the Federal State, the Flemish Region, the Walloon Region, the Brussels Capital Region, the Flemish Community, the French Community and the German-speaking Community to establish a mechanism for the screening of foreign direct investment', 19 October 2022.
- Adv.CoS, nr. 68.976/1 for the legislative proposal to amend the Code of Economic Law, as regards the introduction concerning a screening mechanism for foreign direct investments that have an impact on our security interests and strategic sectors, *Belgian official Gazette* 11 May 2021.

Annex 2: Relevant administrative and court cases

None

Annex 3: Relevant literature

- Delvoie J, Fornovill C (2022) FDI Screening in Belgium: It Is Complicated. *Erasmus Law Review* 2022(4):253-265.

About the CELIS Institute

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