

Belgian FDI Screening Fact Sheet

Belgium has introduced a **new screening regime for foreign direct investments (FDI)** in certain sensitive sectors, intended to safeguard **national security, public order, and strategic interests**.



As of 1 July 2023, **acquisitions of voting rights** in Belgian companies by investors from outside the EU have to be **notified** to a newly created body, the **Interfederal Screening Commission (ISC)**. However, Greenfield investments (i.e. transactions whereby a foreign investor starts a new venture in Belgium) are out of scope of the new rules.

Transactions will be subject to the FDI rules if:

✦ The **investor** belongs to one of the following categories:



Natural persons based outside the EU



Companies based outside the EU



Companies with **ultimate beneficiary owners (UBOs)** from outside the EU. *

✦ And the **target** is a Belgian-based company, with activities in certain sensitive sectors (such as telecommunications, media, energy, dual-use technologies, etc., but also including any company controlling critical infrastructures, vital raw materials or technologies of strategic importance).

*This potentially includes EU- or even Belgian-based companies.

There are two filing thresholds:

(1) a base filing threshold of **25% of the voting rights** of the target; and

(2) for some very sensitive sectors, such as defense, energy and telecommunications, a lower threshold of only **10% of the voting rights**.

The 10% threshold is combined with an annual turnover threshold of 100 million, whereas the 25% threshold applies without additional turnover threshold, except in the biotech sector, where there is an annual turnover threshold of 25 million.

🔍 The **ISC**, a body composed of representatives of the Belgian federal government and the governments of the federated entities (the Communities and the Regions), is set up as a **one-stop-shop** for all notifications that meet these thresholds, regardless of whether the activities of the target touch upon the competences of the federal State and/or one or more Communities or Regions.

- The notification is **mandatory and suspensive**, meaning there is a **standstill obligation** pending review.
- The ISC can also open **ex officio reviews** of non-notifiable transactions and already consummated transactions going back two years (or five years in case of bad faith), with the risk that the transaction has to be rescinded.

The procedure comprises two phases:

- A preliminary review.
- A screening procedure.

During the **preliminary review**, the ISC members assess whether the transaction has a potential impact on public order, national security or strategic interests. If at least one of the competent members considers that this is the case, a **screening procedure** is opened. The screening procedure itself involves a concrete risk assessment of the transaction.



30 days is the standard duration of the preliminary review.

28 days is the standard duration of the screening procedure.

However, there are various factors that can cause these terms to be suspended or extended.

It is estimated that for 70% of notified transactions, the procedure will end at the preliminary review stage on the grounds that no significant concerns have been raised.

The clearance of a transaction can be made subject to **corrective measures**, which may include divestments, ring-fencing of sensitive technologies, mandatory licensing, etc.

Following a screening procedure, the final decision will result in either:

(1) approval of the foreign direct investment, **with or without corrective measures**, or;

(2) prohibition of the investment if the transaction is liable to have an impact on national security, public order or strategic interests that cannot be addressed with corrective measures.

Failure to notify, “gun jumping” (i.e, implementing the transaction before the end of the standstill) or providing false or misleading information may attract **finest** of up to 30% of the value of the investment. Lack of cooperation with the investigation may lead to fines of up to 10% of the value of the investment.



The new FDI screening mechanism will have an **impact on deal timing and deal certainty**. Given the standstill obligation, it will not be possible to close a transaction before the end of the screening procedure. This could cause a delay of several months between the signing and closing of a transaction.

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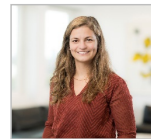
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