

Foreign Direct Investment screening in Belgium

Investments, timing & rationale	Equity investments in scope	Sanctions & takeaways
<p>What - “an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom - or the company to which - the capital is made available in order to carry on an economic activity, ...”</p> <p>Who - any private individual with its main residence outside of the EU, an undertaking established under the laws of a non-EU country or an undertaking which has an ultimate beneficial owner (UBO) with main residence outside of the EU</p> <p>When - Expected entry into force on 1 July 2023</p> <p>Why - (i) to protect national security and strategic interests and (ii) obtain a better view on foreign participation in the Belgian economy</p>	<p>Acquisition of:</p> <ol style="list-style-type: none">I. 25% of the voting rights in critical infrastructure (energy, transport, water, health, defence, ...), technology & resources essential for security, national defence or public order, supply of critical input including energy or raw materials, access to sensitive information, personal data or possibility to control the data, private security, freedom of media, technology of strategic importance in the biotech sector (min. turnover of €25m)II. 10% of the voting rights of a company with a turnover exceeding €100m in defence, energy, cybersecurity, e-communication, digital infrastructure <p>→ notification duty, standstill and possibility of mitigating measures or prohibition altogether</p>	<p>Non-compliance leads to:</p> <ul style="list-style-type: none">• Fine of up to 10% (or in some cases even 30%) of deal value for non-compliance• Possibility of post-closing screening by the Interfederal Screening Commission (2 years as of closing or 5 years in case of bad faith) <p>Main takeaways:</p> <ul style="list-style-type: none">• Uncertainty in the first years is expected (grey zone deals, new screening body, etc.)• To be taken into account when drafting of transaction docs (CPs, longstop, etc.) & disadvantage in auction process• Potentially also intragroup transactions !

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How can PwC Legal help you?

Next to providing strategic and hands-on legal M&A assistance from A to Z, we can assist you in the managing of any FDI aspects in your investment:

Applicability assessment / study

- Analysing whether the Belgian FDI regime is applicable to your envisaged transaction;
- Country-by-country analysis of the applicability of FDI screening in the relevant countries in your envisaged transaction, in cooperation with the PwC (Legal) network firms.

Notification / investigation assistance

- Preparation of the notification and related documentation to the FDI screening commission;
- Advice on which information to disclose and relevant actions to take during the screening procedure;
- Coordination of the process with the FDI screening commission.

FDI Aspects in transaction documentation

- Advice on the most appropriate way to mitigate any identified FDI risks in your transaction agreements
- Drafting/reviewing of the relevant contractual arrangements with respect to FDI, such as conditions precedent, representations and warranties, cooperation obligations, etc., also taking into account the intended timing of your transaction