THIS IS NOT AN OFFICIAL VERSION OF THE COOPERATION AGREEMENT.

IN CASE OF DISCREPANCIES BETWEEN THIS TRANSLATION AND THE OFFICIAL COOPERATION AGREEMENT (IN DUTCH, FRENCH AND GERMAN), THE LATTER WILL PREVAIL.

KINGDOM OF BELGIUM

FEDERAL PUBLIC SERVICE ECONOMY, SMES, MIDDLE CLASSES, AND ENERGY

Cooperation agreement of 30 November 2022 establishing a foreign direct investment screening mechanism

Having regard to the Constitution, articles 39 and 167;

Having regard to the special law of 8 August 1980 on institutional reforms, article 92bis, §1 (hereinafter referred to as the "special law");

Having regard to the law of 23 January 1989 on the court referred to in articles 92bis, §5 and §6, and 94, §3, of the special law of 8 August 1980 on institutional reforms;

Having regard to the agreement of 1st June 2022 in concertation Committee regarding the establishment of a foreign direct investment screening mechanism;

Having regard to Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union;

Considering that the introduction of a screening mechanism enables the parties to preserve public order, national security and their strategic interests and to obtain a better overview of incoming foreign investment flows;

BETWEEN the Federal State, the Flemish Region, the Walloon Region, the Brussels-Capital Region, the Flemish Community, the French Community, the German Community, the French Community Commission and the Common Community Commission,

IT IS AGREED AS FOLLOWS:

Chapter 1. General provisions

Article 1. § 1. This cooperation agreement is part of the implementation of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (hereinafter referred to as the "Regulation"), achieving a coordinated implementation of a foreign direct investment screening mechanism, and the establishment of the necessary institutions for this purpose.

§ 2. The sole purpose of this cooperation agreement is to safeguard national security, public order and the strategic interests of the parties to this cooperation agreement.

This agreement respects the specificities of each competent authority and the objectives pursued by each of them.

§ 3. If the parties to this cooperation agreement decide to exercise their respective competences, they must do so in compliance with this agreement. The parties may, however, decide not to exercise their competences and not to delegate representation under this agreement.

The absence of representation by one of the parties shall not prevent the implementation of this agreement.

The execution of this agreement may not give rise to any exchange, waiver or return of powers between the parties.

§ 4. The parties to this cooperation agreement may, by means of an implementing cooperation agreement as provided for in article 92bis of the special law, determine the specific procedures for implementing this agreement.

The secretariat of the Interfederal Screening Committee (hereinafter referred to as "ISC") referred to in Article 3, §2, may, by consensus of all the voting members of the ISC, draw up and publish guidelines on the operation of the screening mechanism set out in this cooperation agreement.

Art. 2. For the purposes of this agreement:

1° control: the possibility of (directly or indirectly) exercising decisive influence, in fact or in law, over the activity of an undertaking within the meaning of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings by means of, in particular:

a) the ownership or use rights on all or part of the assets of the undertaking;
b) the composition, deliberations or decisions of one or more bodies of an undertaking.

The control is acquired by the person(s) or the undertaking(s):

a) who are the holders of those rights; or
b) who, without being the holders of such rights, have the power to exercise the rights arising therefrom.

2° sensitive information: any type of information the disclosure of which is likely to undermine the defense of the inviolability of the national territory, military defense plans, the implementation of the missions of the armed forces, the internal security of the State, including the field of nuclear energy, the safeguarding of the democratic and constitutional order, the external security of the State and international relations, the country's scientific (including intellectual property) and economic potential or any other fundamental interest of the State, the safety of Belgian nationals abroad, the functioning of the State's decision-making bodies, the protection of sources, the secrecy of information or of an ongoing judicial investigation or the protection of the private life of third parties;

3° foreign direct investment: an investment of any kind made by a foreign investor with the aim of establishing or maintaining a lasting and direct relationship between the foreign investor and the entrepreneur or undertaking, including investments allowing an effective participation in the management or control of that undertaking;

4° foreign investor:

- any natural person whose principal place of residence is outside the European Union (hereinafter referred to as "EU");
- any non-EU undertaking incorporated or otherwise organized under the law of a non-EU country, whose registered office or principal place of business is in a country outside the EU; or
- any undertaking of which one of the beneficial owners pursuant to articles 1:33-1:36 of the Companies and Associations Code as well as in accordance with the law of 18 September 2017 on the prevention of money laundering and terrorist financing and the restriction of the use of cash, has his or her principal residence outside the EU;

including, but not limited to, public authorities, public institutions, public undertakings et private undertakings and institutions wishing to acquire control of an entity established in Belgium or whose head office is established in Belgium;

5° Interfederal Screening Committee (ISC): the committee created by Article 3, §2, which brings together the relevant representatives of the various government institutions in order to receive and centrally process the foreign direct investment notifications as provided for in this cooperation agreement;

6° strategic interests: the interests of the federated entities, within the framework of their material competences, in order to

a) guarantee the continuity of vital processes;
b) prevent strategic or sensitive knowledge from falling into foreign hands;
c) ensure strategic independence.

7° Coordination Committee on Intelligence and Security (CCIS): the Committee created by the Royal Decree of 22 December 2020 establishing the National Security Council, the Strategic Intelligence and Security Committee and the Coordination Committee on Intelligence and Security.

Chapter 2. Scope

Art. 3. § 1. This agreement sets out the procedures and arrangements for the screening of foreign direct investments and governs the cooperation between the parties to this cooperation agreement in the joint exercise of their own powers in this area.

§ 2. In order to implement this agreement, an Interfederal Screening Committee (hereinafter referred to as the "ISC") is set up.

The ISC is composed of members who act as representatives of:

- the Federal State;
- the Flemish Region;
- the Walloon Region;
- the Brussels-Capital Region;
- the Flemish Community;
- the French Community;
- the German Community,
- the French Community Commission;
- the Common Community Commission.

The Federal State may appoint up to three representatives and the federated entities may each appoint one representative. The Flemish Community may appoint a second representative for the files relating to the competences of the Flemish Community Commission in the Brussels-Capital Region.

The federal and federated executive authorities each appoint the representatives to the ISC. These representatives come from an administration.

The members of the ISC may be accompanied at meetings by an expert of their choice, in accordance with Article 14. These experts do not have the right to vote.

§ 3. The ISC is chaired by a representative of the Federal Public Service Economy, SMEs, Middle Classes and Energy, who does not have the right to vote.

The ISC has a secretariat within the Federal Public Service Economy, SMEs, Middle Classes and Energy to carry out the administrative tasks associated with the procedures set out in this cooperation agreement.

Art. 4. § 1. The provisions of this agreement apply to foreign direct investments which may have an impact on the security or public order in Belgium as provided for by the Regulation, or for the strategic interests of the federated entities, and with the aim of establishing or maintaining lasting direct relations between the foreign investor and the entrepreneur or undertaking to which capital is made available with a view to carrying out an economic activity in a EU Member State, including investments allowing an effective participation in the management or control of an undertaking carrying out an economic activity.

§ 2. Foreign direct investments are considered as investments within the meaning of the preceding paragraph if they:

1° give rise, directly or indirectly, to the acquisition of at least 10% of the voting rights in undertakings established in Belgium and whose activities are related to the defense, including dual-use products, energy, cybersecurity, electronic communications or digital infrastructure sectors, and whose annual sales during the financial year preceding the acquisition of at least 10% of the voting rights exceeded 100 million euros; or

2° give rise, directly or indirectly, to the acquisition of at least 25% of the voting rights in undertakings or entities established in Belgium and whose activities concern:

a) critical infrastructures, both physical and virtual, for energy, transport, water, health, electronic communications and digital infrastructures, media, data processing or storage, aerospace and defense, electoral or financial infrastructures, and sensitive facilities, whether or not they form part of an existing undertaking, as well as land and real estate essential to the use of these infrastructures, including the critical infrastructures referred to in Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of European satellite navigation systems and repealing Council Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council, in the law of 1st July 2011 on the safety and protection of critical infrastructures, and in the Royal Decree of 2 December 2011 on critical infrastructures in the air transport sub-sector;

b) technologies and raw materials that are essential for:
- security (including health security);
- defense or maintenance of public order, whose interruption, failure, loss or destruction would have a significant impact on Belgium, an EU Member State or the EU;
- military equipment subject to the “Common Military List” and national control;

- dual-use goods as defined in Article 2, 1) of Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast);
- strategically important technologies (and related intellectual property) such as artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technologies, and nanotechnologies;

c) the supply of essential inputs, such as energy or raw materials, and food security;

d) the access to or control of sensitive information and personal data;

e) the private security sector;

f) the freedom and pluralism of the media;

g) technologies of strategic importance in the biotechnology sector, provided that the undertaking's sales in the financial year preceding the acquisition of at least 25% of the voting rights exceeded 25 million euros.

§ 3. The parties to this cooperation agreement may decide, by means of an implementing cooperation agreement, to lower the 25% threshold of voting rights to 10% for sectors subject to the 25% threshold, or to increase the 10% threshold to a maximum of 25% for sectors subject to the 10% threshold.

§ 4. Investments aimed at creating new economic activities by a foreign investor, without taking over existing economic activities in the process, do not fall within the scope of this agreement.

Chapter 3. Notification

Art. 5. § 1. After signing and before completion of the agreement, publication of the purchase or exchange offer, or acquisition of a controlling interest, the foreign investor who is going to acquire control by means of an investment or passively in one of the sectors as defined in Article 4, §2, or who, directly and/or indirectly, acquires in total, as the case may be, 10% or 25% of the voting rights in that entity, notifies the secretariat of the ISC on its own initiative, either itself or through an authorized legal entity established in the EU.

The notification referred to in subparagraph 1 must be made when an agreement as referred to in subparagraph 1 has been concluded on or after 1st July 2023 or from the first day of the month following the date of publication in the Belgian Official Gazette of the last of the acts of assent of the parties to this agreement, if this publication takes place after 30 June 2023.

If the investment falls under both Article 4, §2, 1° and Article 4, §2, 2°, Article 4, §2, 1° takes precedence with regard to the notification obligation.

The notification can be made by letter, e-mail or on site.

§ 2. The parties involved in the investment may, however, notify a draft agreement, provided that they all explicitly state that they intend to enter into an agreement which does not differ significantly from the notified draft in all relevant items.

In the case of a public tender or exchange offer, the parties may also notify a draft when they have voluntarily or compulsorily announced publicly their intention to make such an offer.

§ 3. The acquisition on the stock exchange of shares in a company falling within the scope of this agreement is also subject to a notification requirement, at the latest at the time of acquisition.

With the exception of financial rights, all rights attached to such acquisition are suspended *ipso jure* until a combined decision as referred to in Article 23 is taken.

Art. 6. § 1. The notification of a foreign direct investment is made to the secretariat of the ISC which handles the file centrally.

§ 2. The information to be sent with the notification includes, among other things:

1° the ownership structure of the foreign investor and of the undertaking in which the foreign direct investment is planned or has been made, including information on the identity of the investor, the equity stake and the ultimate beneficiary;
2° the approximate value of the foreign direct investment and the manner in which this value was determined;
3° the products, services and business operations of the foreign investor and its controlling entities, including entities under the control of the latter, on the one hand, and of the undertaking in which the foreign direct investment is planned or has been made, on the other hand;
4° the EU Member States and third countries, in which, the foreign investor and its controlling entities, including entities under the control of the latter, on the one hand, and the undertaking in which the foreign direct investment is planned or has been made, on the other hand, carry out relevant business activities;
5° the financing of the investment and its origin;
6° the date or contemplated date of completion of the investment.

The information referred to in subparagraph 1 does not concern personal data other than that referred to in Article 30, §4, subparagraph 3.

§ 3. The competent members of the ISC may ask the foreign investor or any other person they deem useful, via the secretariat of the ISC, to provide all the information required to complete

the file. The foreign investor must forward the requested information to the secretariat of the ISC without delay. The information referred to in subparagraph 1 does not concern personal data other than that referred to in Article 30, §4, subparagraph 3.
§ 4. The secretariat of the ISC provides the tools needed to streamline this information-gathering process.
Art. 7. § 1. Once the secretariat of the ISC has received all the documents necessary for the investigation, it shares the file with the CCIS and with the competent members of the ISC. A party to this cooperation agreement is competent as member of the ISC when there is a territorial link and when there is a potential impact on its material competence. The territorial link may be linked, among other things, to the undertaking's head office or place of business, its economic activity or the presence of certain infrastructures.
§ 2. In addition to that, the secretariat of the ISC immediately informs the notifying parties that it has received the complete file and that the file is admissible. The time limits relating to the provisions of this cooperation agreement shall begin to run on the date of the information referred to in subparagraph 1.
§ 3. The secretariat of the ISC forwards a brief summary of the file to the members of the ISC it deems not to be competent. If one of these parties considers that it is competent, it informs the secretariat of the ISC, which forwards the complete file to such party without delay.
§ 4. In view of the law of 1 July 2011 on the security and protection of critical infrastructures, the National Crisis Center is also immediately informed by the secretariat of the ISC of any notification, in order to identify any links between the foreign direct investment and the critical infrastructures. Where appropriate, the secretariat of the ISC informs the competent members of the ISC without delay.
Chapter 4. Combined procedure
Section 1. General framework
Art. 8. § 1. Following notification, the competent authorities conduct their investigations separately and within the ISC.

§ 2. The competent authorities are bound by the limits of their own competences and restrict themselves to them in conducting the instructions provided for in this agreement.

§ 3. If a competent authority waives its right to conduct an investigation as provided for in this agreement, it shall notify the secretariat of the ISC accordingly.

Art. 9. The secretariat of the ISC coordinates the various procedures and, in consultation with the relevant authorities, handles relations with the foreign direct investors.

Art. 10. § 1. Instructions under this agreement are conducted within the ISC, but separately for each party to this agreement.

§ 2. The members of the ISC are responsible for:
1° conducting the verification and screening procedure;
2° issuing an opinion to the competent minister.

§ 3. The federal and federate executive authorities determine which ministers and members of the college are authorized to take decisions on the basis of the opinions of the members of the ISC for whom they are responsible.

Art. 11. The members of the ISC justify their opinions solely on the basis of considerations that safeguard public order and national security, on the one hand, and strategic interests, on the other.

In addition, the members of the ISC must limit their opinion to the impact of the investment on the competence of the authority represented.

Without prejudice to Article 3 of the law of 11 December 1998 on classification and security clearances, certificates and safety notices, national security and public order, on the one hand, and strategic interests, on the other, are assessed through the prevention of the following risks:

1. undermining of the continuity of vital processes listed in Article 4 which, in the event of failure or disruption, lead to serious societal disruption and constitute a threat to national security, strategic interests and the quality of life of the Belgian population;
2. undermining of the integrity and/or exclusivity of knowledge and information associated with the vital processes listed in Article 4 and the sensitive high technology required for this purpose;
3. emergence of strategic dependencies.

Section 2. Common provisions

Art. 12. For the duration of the verification and screening procedure, both the foreign investor and the concerned Belgian undertaking in which the foreign investment would take place are

required to cease the realization or completion of the foreign direct investment, as regards the elements forming part of the notified foreign direct investment, until the decision that no screening procedure will be initiated or that the investment is authorized, is served on the notifying parties.

If, during the verification or screening procedure, the concerned undertakings decide not to proceed with the investment, they inform the secretariat of the ISC as soon as possible. This notification will result in the definitive termination of the verification or screening procedure.

Art. 13. § 1. The secretariat of the ISC requests the opinion of the CCIS for each notified investment.

As part of the verification and screening procedures, the members of the ISC may request the opinion of other competent federal and federated public services, and of the sectoral regulatory and supervisory authorities that oversee the activities referred to in Article 4.

Requests for opinion are sent to the secretariat of the ISC. The secretariat of the ISC will ensure that requests are not duplicated and will send them without delay and in accordance with paragraph 4.

§ 2. The departments to which an opinion is request will receive the complete file from the secretariat of the ISC as a basis for their opinion and will give their opinion within the requested time limit.

The secretariat of the ISC, in consultation with the members of the ISC, send the request for opinion and sets a time limit for sending the opinion, which is a maximum of twenty-five days for the verification procedure and a maximum of fifteen days for the screening procedure.

When the screening procedure is extended on the basis of Article 22, §3, the CCIS may give its opinion up to a minimum of five days before the end of the time limits laid down under Article 22, §3, and new opinions may be requested from other departments, which must give their opinion within the same time limits.

§ 3. The advisory services referred to in paragraph 1 may, if they wish so, also clarify this opinion orally at meetings of the ISC.

§ 4. The request for opinion is coordinated via the secretariat of the ISC, with the content of the request for opinion adapted to any requests for opinion from other representatives of the competent members in the case in question. The relevant opinions are then shared via the secretariat of the ISC with the competent members of the ISC for such case.

Art. 14. The competent members of the ISC may appoint individuals as experts on the basis of their skills. These individuals may be called upon by the competent members of the ISC to support their work when the technicality and complexity of the case in question so require.

Art. 15. Any person who, for any reason whatsoever, acts in the application or execution of the provisions of this agreement must hold a security clearance at the "secret" level in accordance with the provisions of the law of 11 December 1998 on classification and security clearances, certificates and safety notices, and is bound, outside the performance of his/her duties, to absolute secrecy on all matters of which he/she has knowledge by reason of the performance of his/her duties.

Persons belonging to the services to which the ISC and its members have provided information are subject to the same secrecy and may not use the information obtained outside the framework of the legal provisions for the execution of which it was provided.

Art. 16. § 1. If additional information is requested from the undertakings concerned, they shall immediately make it available to the ISC at its request, under penalty of an administrative sanction as provided for in Article 28.

In this respect, the time limit for processing the verification or screening procedure is suspended from the time of the request for information until the requested information reaches the ISC.

§ 2. Any request for additional information is made through the secretariat of the ISC in consultation with the competent members of the ISC for the file concerned. This information is shared in accordance with Article 33.

Section 3. Verification procedure

Art. 17. § 1. After receiving the complete file, the competent members of the ISC verify the information obtained from the notification, in order to determine, among other things, whether:

1° the control acquired on the basis of the foreign direct investment or the resulting significant changes in the ownership structure, or
2° the main characteristics of a foreign investor

are likely to undermine public order, national security or strategic interests.

§ 2. If one of the competent members of the ISC has concrete indications that the concerned notified foreign direct investment is likely to cause a threat to public order, national security or strategic interests, a screening procedure is initiated.

In assessing whether or not to initiate a screening procedure, the competent members of the ISC may take into account:

1° the fact that the investor is controlled directly or indirectly by the government, including public bodies or the armed forces, of a third country, in particular through the ownership structure or significant financial backing;
2° the fact that the foreign investor has already been involved in activities that have an impact on national security or public order in an EU Member State or a third country; or
3° the fact that there is a serious risk that the foreign investor will engage in illegal or criminal activities.

Unless the competent members of the ISC decide by consensus before the end of the verification procedure to reject the request of the CCIS to extend the deadlines referred to in Article 22, §3, subparagraph 1, a screening procedure will also be initiated on the basis of this request. This request is justified on the basis of the complexity of the case.

§ 3. If none of the competent members of the ISC has indications as referred to in paragraph 2, subparagraph 1, the ISC will close the file and the investment will be deemed authorized.

Art. 18. § 1. The decision to conclude the verification procedure favorably and consequently that the investment is admissible as well as the decision to initiate a screening procedure must be served on the notifying parties by the secretariat of the ISC within thirty days of receipt of the complete file.

When a screening procedure is initiated, the secretariat of the ISC communicates on the same day the information, in accordance with the Regulation, to the other Member States of the EU and to the European Commission, which may submit their comments and opinions within the time limits set by the Regulation.

§ 2. Beyond the deadline referred to in paragraph 1, subparagraph 1, without prejudice to any suspension, interruption or extension of the deadlines, no further screening procedure may be initiated, and the investment is deemed admissible, unless incomplete or misleading information was the basis of the decision referred to in paragraph 1, subparagraph 1.

Section 4. Screening procedure

Art. 19. § 1. The screening procedure is based on the findings in the verification procedure and includes at least a concrete risk analysis in light of the competences of the parties to this cooperation agreement.

§ 2. The screening procedure gives rise to an opinion from the competent members of the ISC, addressed to the respective competent ministers and college members referred to in Article 10, §3.

Art. 20. § 1. As soon as one of the competent members of the ISC considers that the foreign direct investment has possible consequences for, on the one hand, public order and national

security or, on the other hand, for strategic interests, this member informs the other competent members of the ISC and communicates, through the secretariat of the ISC, a draft opinion to the foreign investor and the Belgian undertakings concerned, and gives them the opportunity to consult the file consisting of the notification, the non-confidential elements of the opinions and any other non-confidential information collected by the ISC in the course of its investigation. In preparing this draft opinion, the competent members of the ISC shall take into account the law of 11 December 1998 on classification and security clearances, certificates and safety notices, the need to protect national interest and, where applicable, the protection of trade secrets.
§ 2. The secretariat of the ISC shall notify the foreign investor and the Belgian undertakings that they may consult the file at the secretariat and obtain an electronic copy of it.
§ 3. The foreign investor and the Belgian undertakings have a period of ten days from the day on which the secretariat has made the copy available to them to submit their written comments, informing the other parties concerned on the same day. This period suspends the period provided for in paragraph 5, subparagraph 1.
§ 4. Upon receipt of the written comments and at the request of the foreign investor or the Belgian undertaking concerned, the ISC organizes without delay a meeting to which these parties are invited and heard. The ISC may also organize an ex officio meeting. The meeting takes place within ten days. This period has a suspensive effect in relation to the time limit provided for in paragraph 5, subparagraph 1.
§ 5. The competent members of the ISC provide an opinion to the competent ministers and college members of their level of government within twenty days after the decision to open a screening procedure was notified to the notifying parties. The notification referred to in Article 6.6 of the Regulation suspends the screening procedure for a maximum of twenty-five days, subject to the exception in Article 6.8 of the Regulation. A request for additional information from a Member State and/or the European Commission in accordance with Article 6.6 of the Regulation suspends the screening procedure from the day on which this information was requested until the day on which the additional information could be delivered to the Member State concerned or the European Commission, subject to the exception in Article 6.8 of the Regulation. This suspension is in addition to the suspension in the subparagraph 2.
§ 6. At the end of the screening procedure, in addition to the opinion, a report is also prepared containing only the non-confidential elements of the screening procedure for the purpose of the annual report in accordance with the obligations set out in the Regulation.

Section 5. Mitigating measures

Art. 21. § 1. In order to reach a positive opinion as referred to in Article 22, §2 in the screening procedure, competent members of the ISC may, after communication of the draft opinion referred to in Article 20, § 1, subparagraph 1, and in consultation with the other competent members of the ISC and with the notifying parties, propose mitigating measures that limit the possible impact on public order and national security, on the one hand, or on strategic interests, on the other hand, to a level acceptable to obtain a positive decision.

§ 2. The negotiations between the notifying parties and the competent members of the ISC suspend the time limits set out in this agreement for one month.

This period may be extended by one month each time by mutual agreement with the notifying parties.

§ 3. Before the foreign direct investment can be authorized, the foreign investor and the undertaking in which the foreign direct investment will take place must demonstrate, by means of a binding agreement, that they will comply with the mitigating measures drawn up in consultation with the competent members of the ISC within a set period of time.

This binding agreement is concluded under the suspensive condition of a positive decision accompanied by mitigating measures within the meaning of Article 23, § 3, 2°.

§ 4. The competent members of the ISC can propose, among other things, the following mitigating measures:

1° drawing up a complementary code of conduct for the provision or exchange of sensitive information to protect public order, national security and strategic interests;
2° appoint one or more contact person(s) or compliance officer(s) with security clearance responsible for handling sensitive information or data related to intellectual property;
3° requiring one or more administrator(s) to obtain a security clearance;
4° establishing a liaison officer or “security council” within the undertaking who can regulate access to or transfer of information and report breaches to the competent authorities;
5° requiring that certain technology, source codes and/or know-how be deposited with a third party in Belgium and only made available (temporarily) in the event of acute risks for certain vital processes or security interests;
6° imposing an updating obligation which, without prejudice to this cooperation agreement, requires the concerned undertakings to notify the government of certain transactions, to which conditions may also be attached;
7° granting a license to certain know-how protected by patents or other intellectual property rights to the State or certain undertakings in order to keep knowledge or technology available for vital Belgian companies or processes;

8° consolidating and placing vital processes in Belgium or providing services to the Belgian authorities in a separate subsidiary;
9° prohibiting the provision of certain types of services or the sale of goods by the Belgian branch of the undertaking to certain other companies or countries;
10° prohibiting certain parts or subsidiaries of the company to be acquired from being part of the transaction;
11° limiting the package of shares in the contemplated investment;
12° the certification of all shares;
13° requiring guarantees for the continuity of certain processes and/or supply of services and goods for a certain period with prior notice and consultation if the undertaking decides to discontinue certain activities that affect national security, public order and strategic interests;
14° developing security protocols for and/or reporting to the government of undertaking visits by non-EU residents to sensitive areas within the undertaking;
15° imposing periodic reports on safety aspects within the undertaking's vital processes;
16° imposing periodic on-site inspections by the ISC to monitor compliance with the mitigating measures;
17° imposing a new notification with subsequent review as determined in this cooperation agreement if there is a change of control or if the initial foreign investment is increased to more than 50% of the voting rights.

§ 5. The proposed mitigating measures must be proportionate to the objective of limiting the risk to national security, public order or strategic interests so that the investment can be considered admissible.

Section 6. Combined decision

Art. 22. § 1. The opinion of the competent members of the ISC contains the complete file, including the opinions referred to in Article 13, §1.

§ 2. Each competent member of the ISC, as representative of its level of government, adopts its own opinion, which may take the following form:

1° a positive opinion; or
2° a report containing the investor's agreement on the mitigating measures imposed giving rise to a positive opinion; or
3° a negative opinion.

§ 3. Unless the competent members of the ISC decide by consensus to reject this request, the deadline of Article 20, §5, subparagraph 1, shall be extended by a maximum of two months at the request of the CCIS, provided that this extension is justified by the complexity of the review. This extension can be requested from the start of the verification procedure.

Unless the competent members of the ISC decide by consensus to reject this request, the deadline of Article 20, §5, subparagraph 1 shall be extended by a maximum of one month at the request of the CCIS, provided that this extension is justified by the complexity of the review. This extension is in addition to the extension referred to in subparagraph 1 and can only be requested if the request referred to in subparagraph 1 has not been rejected.

Art. 23. § 1. The competent ministers and college members, within their own powers and on the basis of the opinions of the competent members of the ISC acting as representatives of their levels of government, each take a provisional decision on the possible admissibility of the notified foreign direct investment.

At the federal level, a negative decision on the admissibility of a foreign direct investment can only be taken after deliberation by the Council of Ministers.

When drawing up provisional decisions, due account is taken of comments and opinions received from other EU Member States and the European Commission in the context of the obligations arising from the Regulation, provided that they are received within the time limits set by the Regulation.

The provisional decisions referred to in subparagraph 1 shall be formally and adequately justified.

§ 2. Provisional decisions are notified to the secretariat of the ISC only within six days of receiving the opinion of the competent members of the ISC. The secretariat of the ISC then processes these provisional decisions into a combined decision.

§ 3. The provisional decisions may result in:

1° a positive decision regarding the admissibility of the foreign direct investments; or
2° a positive decision on the admissibility of the foreign direct investment subject to a binding agreement by the investor on the mitigating measures imposed, which were negotiated by the ISC; or
3° a negative decision on the admissibility of a foreign direct investment if a non-remediable impact has been identified as a result of the concrete opinions of the members of the ISC and as soon as one of the competent ministers and college members has taken a negative provisional decision to this effect, resulting in the blocking of the foreign direct investment, except as provided for in paragraph 4.

§ 4. If several federated entities are competent in the same file, they can decide on the non-admissibility of the foreign direct investment only by mutual consent, without prejudice to the possibility for the federal minister to decide on the non-admissibility within his powers.

§ 5. If only one provisional decision is issued within the applicable time limits, it shall be deemed to be the combined decision.

§ 6. The secretariat of the ISC shall notify the combined decision to the notifying parties by registered mail and, if the registered mail is electronic, via a qualified service for electronic registered delivery within the meaning of Article 3.37 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, within two days from the receipt of the provisional decisions of the competent ministers and college members.

§ 7. In the absence of a combined decision within the deadlines set out in this chapter, without prejudice to any suspension, interruption or extension of the deadlines, the investment will be deemed approved, which will be formally notified to the investor and/or his representative by the secretariat of the ISC.

Chapter 5. Ex officio procedure

Art. 24. At the request of a competent member of the ISC who deems it necessary to safeguard public order and national security, on the one hand, and strategic interests, on the other hand, a combined procedure will be initiated ex officio when a foreign investor wishes to acquire a participation through an investment referred to in Article 4.

The undertakings concerned or their representatives are notified of such an investigation only if the secretariat of the ISC suggests that they make a notification in order to formally initiate a review procedure. In case of acquired control without notification and/or without cooperation, a verification procedure may still be initiated.

Art. 25. In case of non-compliance with the notification obligation, the ISC will, at the request of a least one of its competent members, initiate a combine procedure ex officio.

Art. 26. Where an ex officio procedure is initiated, structural adjustments and mitigating measures may be imposed by the parties at the end of this combined procedure for up to two years after the acquisition of the non-notified control. In case of indications of bad faith, this period is extended to five years.

Art. 27. If, on 1st July 2023 or on the first day of the month following the day of publication in the Belgian Official Gazette of the last act of assent emanating from the parties to this agreement in the event that such publication occurs after 30 June 2023, the agreement referred to in Article 5, §1, subparagraph 1, has already been concluded, the ISC may open a combined procedure ex officio up to two years after the acquisition of the non-notified control, and up to a maximum of five years in case of indications of bad faith, if one of the competent members of the ISC deems

it necessary to safeguard public order and national security, on the one hand, and strategic interests, on the other hand.

Chapter 6. Sanctions

Art. 28. § 1. A foreign investor may be subject to an administrative fine up to a maximum of 10% of the relevant foreign direct investment if:

1° no data or incomplete data have been provided in connection with a notification or request for information on which an opinion or decision has subsequently been based;
2° the additional information was not provided within the time limit set in the request for information;
3° the spontaneous notification of a non-notified investment is made within 12 months of its completion or when the ISC, in accordance with Chapter 5, initiates an ex officio procedure within a period of less than 12 months from the date of realization of the investment.

§ 2. A foreign investor may be subject to an administrative fine up to a maximum of 30% of the relevant foreign direct investment if:

1° it fails to comply with the obligation to notify, with the exception of the cases described in paragraph 1, 3°;
2° inaccurate, misleading or deceptive information is provided in a notification or response to a request for information;
3° it disregards the obligation to cease the completion or finalization of the foreign direct investment within the meaning of Article 12;
4° the mitigating measures referred to in Article 21 are not implemented within the specified timeframe.

§ 3. The competent parties to this cooperation agreement are authorized to inflict the fines mentioned in paragraphs 1 and 2 after reviewing the file.

§ 4. Before inflicting a fine, the secretariat of the ISC informs the individual or undertaking concerned of the intention of a party to this cooperation agreement to impose a fine on them and states the reasons for doing so.

The individual or undertaking concerned has a period of one month to submit its written comments.

Within a period of one month after receiving the comments of the individual or the undertaking concerned or after the expiration of the period referred to in the preceding paragraph, the party to this cooperation agreement adopts a decision to impose a fine or not.

The secretariat of the ISC notifies the decision to the individuals or undertakings concerned and provide adequate justification.

§ 5. Half of the amount of the fine is allocated to the Treasury and the other half is allocated to the federated entity involved in the case.

If several federated entities are involved in the case, they divide the amount of the fine allocated to them equally among themselves.

Chapter 7. Legal recourse

Art. 29. § 1. A final decision regarding the admissibility or non-admissibility of a foreign direct investment in light of this cooperation agreement may only be appealed to the Market Court.

§ 2. The Market Court rules on the law and facts of the case as submitted by the parties, in accordance with the procedure for summary proceedings. The Court rules only on the contested decision, with the power to annul. However, the Court has full jurisdiction over decisions inflicting fines. It can annul, reduce or increase the fine imposed.

§ 3. The appeal does not suspend the challenged decision.

§ 4. An appeal to the Market Court may be filed by the foreign investor and the relevant Belgian undertaking or entity in which the foreign direct investment is planned or has been completed.

§ 5. The appeal is lodged against the parties to this cooperation agreement by means of a signed petition filed with the clerk's office of the Brussels Court of Appel within thirty days of notification of the contested decision, under penalty of inadmissibility, which is pronounced ex officio.

The petition shall contain under penalty of nullity:

1° day, month and year;
2° if the applicant is a natural person, his surname, first name, profession and domicile, as well as, if applicable, his company number; if the applicant is a legal entity, its name, legal form, registered office and the capacity of the person or body representing it, as well as, if applicable, its company number;
3° reference to the decision under appeal;
4° a list of the names and addresses of the parties notified of the decision;
5° a statement of grounds;
6° an indication of the place, day and time of the appearance set by the clerk's office of the Brussels Court of Appeal;
7° the signature of the applicant or his lawyer.

Within five days of filing the petition, the petitioner shall send a copy of the petition, by registered mail with acknowledgment of receipt, to the ISC as well as to the parties to whom the

contested decision has been notified, as indicated in the notification letter, failing which the appeal shall be null and void.

§ 6. Cross-appeal may be filed. It is admissible only if it is filed within one month of receiving the letter provided for in paragraph 5. However, the cross-appeal will not be admitted if the main appeal is declared void or late.

§ 7. The Market Court may request the secretariat of the ISC to provide it with the administrative file. The Market Court regulates the confidentiality of documents and data. It takes the necessary measures to protect sensitive documents and data.

To this end, it requests a non-confidential summary from the originating authority as referred to in Article 1, 2° of the Royal Decree of 24 March 2000 implementing the law of 11 December 1998 on classification and security clearances, certificates and safety notices, and provides only this non-confidential summary to the parties concerned.

In accordance with the provisions of the law of 11 December 1998 on classification and security clearances, certificates and safety notices, the parties will not have access to the classified information in the file.

§ 8. In the event that the Market Court annuls a decision in whole or in part, the case is, within the limits of the annulment, referred back to the ISC whereby the foreign investment is re-examined in accordance with the procedure set out in Articles 20 *et seq*.

The time limits for this purpose begin on the day following service of the ruling of the Market Court.

Chapter 8. Miscellaneous provisions

Art. 30. § 1. The protection of sensitive information, including business secrets, collected pursuant to the Regulation and this cooperation agreement, shall be ensured in accordance with Union law and applicable national law.

§ 2. Classified information provided or exchanged pursuant to this agreement or the Regulation may not be downgraded or declassified without the prior written consent of the originating authority.

The first subparagraph applies without prejudice to the provisions of the law of 11 December 1998 on classification and security clearances, certificates and safety notices.

§ 3. If business data is processed under this agreement, such processing will be carried out only to the extent necessary for the screening of foreign direct investments and to ensure the effectiveness of international cooperation as described in Article 13 of the Regulation.

§ 4. The ISC, composed of the members and a secretariat, is the data controller for the management of the data in their possession or made available to them under this cooperation agreement.

Personal data of individuals involved in the management, ownership or representation of entities participating in investment transactions may be processed.

The following categories of personal data may be processed:

- the names and addresses of the individuals who are foreign investors or undertakings in which the foreign direct investment is planned or has been made;
- the names and contact details of the individuals involved in the management of foreign investors or undertakings in which the foreign direct investment is planned or has been made.

The personal data collected may be communicated to the following recipients, who have an advisory role:

- the CCIS in accordance with Article 7, §1, subparagraph 1;
- the institutions asked for an opinion in accordance with Article 13, §1, subparagraph 2;
- the experts referred to in Article 14;
- the European Commission and the other EU Member States in accordance with Article 18, §1, subparagraph 2.

The personal data collected is kept for the time necessary to exercise the right of appeal provided for in Article 29 or, in the event that an appeal is filed, until a final and *res judicata* decision is available in the appeal proceedings in question.

§ 5. Personal data received and communicated on the basis of the Regulation shall be processed in compliance with paragraph 4 and in compliance with the agreement dated 28 April 2022 on joint responsibility for the processing of personal data in the context of the cooperation mechanism provided for in Article 6 to 11 of the Regulation.

The Commission and the Member States act as joint controllers of personal data in the context of the processing referred to in subparagraph 1.

In addition to the personal data of the individuals referred to in paragraph 4, subparagraph 2, personal data of individuals operating the contact points referred to in Article 11 of the Regulation and of other persons evaluating foreign direct investments in Member States and at the Commission may be processed in the context of the processing referred to in subparagraph 1.

In addition to the categories mentioned in paragraph 4, subparagraph 3, the following categories of personal data may also be processed as part of the processing referred to in subparagraph 1:

- the names and functions of the persons involved in the operation of the contact points referred to in Article 11 of the Regulation;
- the contact details of the natural persons operating the contact points referred to in Article 11 of the Regulation.

Personal data received in connection with the processing referred to in subparagraph 1 may be communicated to the recipients referred to in paragraph 4, subparagraph 4.

Without prejudice to paragraph 4, subparagraph 5, the personal data processed in the context of the processing referred to in subparagraph 1 shall be kept only for as long as is strictly necessary to achieve the objectives of the screening of foreign direct investments by the Member States and to ensure the effectiveness of the cooperation provided for in the Regulation, and within the time limits laid down in the Regulation.

Art. 31. § 1. In application of Article 11 of the Regulation, the secretariat of the ISC functions as a national contact point.

The secretariat of the ISC participates, if possible with one or more members of the ISC, to the cooperation mechanism with the other EU Member States as defined in the aforementioned Regulation. Information requested and received spontaneously within the framework of this cooperation mechanism is shared, *inter alia*, with the members of the ISC.

§ 2. In defining the State's position in the cooperation mechanism referred to in paragraph 1, a consensus is sought between all parties to this agreement.

The secretariat of the ISC participates, if possible with one or more members of the ISC, in the cooperation structures with the competent authorities of third countries on issues relating to the screening of foreign direct investments in the field of national security and public order, and exchanges information on the basis of reciprocal agreements. However, classified information may not be passed on to foreign European authorities without the prior agreement of the originating authority.

§ 3. Pursuant to the information obligation under Article 7 of the Regulation, the relevant federated entities are required to provide the ISC with information on foreign direct investments that do not fall within the scope of this agreement.

§ 4. The secretariat of the ISC, in consultation with the members of the ISC, draws up an annual report in accordance with the obligations set out in the Regulation.

This report contains, among other things, information on foreign investments that have been screened and on any measures or negative decisions that have been taken, subject to the respect for the sensitive information provided.

Art. 32. In this cooperation agreement, time periods are calculated in days, from midnight to midnight. They are calculated from the day following the act or event giving rise to them, and include all days, even Saturdays, Sundays and public holidays.

The period of time established in months or years is counted from day to day.

The due date is included in the period. However, if this day is a Saturday, a Sunday, a public holiday or a day on which the secretariat of the ISC is closed, the due date is postponed to the next working day.

In addition to official public holidays, the secretariat of the ISC is closed on 2 November, 15 November, from 26 December and 31 December, and on certain bridging days which may vary from year to year.

Chapter 9. Transversal provisions

Section 1. Circulation and transfer of files between administrations

Art. 33. § 1. The secretariat of the ISC coordinates all exchanges of information or documents between the various competent bodies in connection with the application of this agreement.

§ 2. The members of the ISC keep each other informed, via the secretariat, of any additional information relevant to their review.

§ 3. Any exchange of information or documents is made in compliance with the law of 30 July 2018 on the protection of individuals with regard to the processing of personal data and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

Section 2. Consistency of legislative and regulatory standards of the various governments - Prior formalities required for subsequent amendments to existing rules

Art. 34. The ministers, the members of the regional and community governments and the members of the colleges of the community commissions, each for what concerns him, inform each party to this agreement, of any preliminary draft law, decree, ordinance or draft regulatory orders when these drafts fall within the scope of this cooperation agreement and/or have an impact on its implementation.

Art. 35. The parties undertake to set up a working group in which the administrative authorities responsible for the application of this agreement are represented.

Taking into account the competences of the various authorities, the working group ensures the practical arrangements for the general coordination of the legal and regulatory provisions

adopted within the framework of the present agreement and examines any question concerning its application.

The working group meets at regular intervals and at the request of one or more of its members.

Section 3. Breakdown of costs

Art. 36. Within the scope of their respective areas of competence, the parties will identify the measures and resources required to carry out the tasks entrusted to them.

Section 4. Settlement of disputes arising from the interpretation or performance of this agreement

Art. 37. This agreement is governed by Belgian law. Disputes between the parties to this agreement concerning the interpretation and execution of this cooperation agreement shall be submitted to a court within the meaning of article 92bis, §6 of the special law.

The court reflects the composition of the ISC and consists of a chairperson and a member appointed by each party.

The members of the court are appointed respectively by the federal government and the governments or colleges of 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.

The court's operating costs are shared equally 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.

Chapter 10. Final provisions

Art. 38. Each party undertakes to submit an act of assent to its Parliament or Assembly.

The agreement is concluded for an indefinite period of time and enters into force on the day of publication in the Belgian Official Gazette of the last act of assent of the parties.

The federal and federated executive authorities shall, each insofar as it is competent, lay down the specific procedures for implementing the present agreement.

Art. 39. Termination of this agreement required one year's written notice. In this case, the parties undertake to negotiate a new agreement within the notice period.

Art. 40. The procedure set out in this cooperation agreement will be evaluated every two years by the secretariat and members of the ISC on the basis of the ISC's annual reports and an opinion from the CCIS.

In particular, the evaluation will take into account the principles identified by the OECD, namely non-discrimination, transparency of policies and predictability of results, proportionality of measures and accountability of the authorities responsible for their implementation.