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# International Trade 2024

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**Belgium: Law & Practice**

Nikolay Mizulin, Paulette Vander Schueren, Edouard Gergondet, Dylan Geraets and Agnieszka Nosowicz
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# BELGIUM


## Law and Practice

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## Contents

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**Mayer Brown LLP** has one of the most highly regarded international trade teams in Europe. The team offers strategic advice, advocacy and litigation services to leading multinational companies, governments, and trade associations seeking to take advantage of opportunities while mitigating risks in an increasingly complex regulatory environment. The team's lawyers have expertise on a broad range of trade, customs and regulatory issues and vast experience in proceedings before national and international institutions, including the European Commission, the Court of Justice of the European Union, the World Customs Organization and the World Trade Organization. Our team has the technical skills and practical knowledge to advise on EU and, where applicable, EU Member States' regulations in the area of trade defence instruments, customs, sanctions, export controls, FDI screening, CBAM, deforestation, forced labour, and critical raw materials. The 50+ global international trade team has lawyers in many of the firm's 27 offices. Both individual lawyers and trade subgroups are annually ranked in global and regional Chambers guides.

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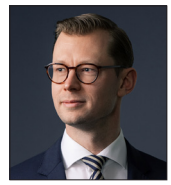

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## 1. Trade Agreements

### 1.1 World Trade Organization Membership or Plurilateral Agreements

As an EU Member State, Belgium's trade policy is shaped through the EU's common commercial policy on the basis of Article 207 of the Treaty on the Functioning of the European Union (TFEU). Accordingly, the relevant jurisdiction is the EU, inasmuch as Belgium is subject to the EU's trade policy.

The EU as well as its Member States are Members of the WTO. The EU and its Member States are also party to the Agreement on Government Procurement (GPA) and other plurilateral agreements, such as the Information Technology Agreement (ITA), and the Agreement on Trade in Civil Aircraft. The EU has also ratified the TFA, via the adoption of a Council Decision on 1 October 2015.

### 1.2 Free Trade Agreements

The EU and its Member States are party to 42 free or regional trade agreements (FTAs and RTAs, respectively), covering 74 partners (Source: 2023 WTO EU trade policy review, document WT/TPR/G/442).

The European Commission lists the FTAs to which the EU is party, while the WTO's RTA database lists the RTAs that the EU has notified to the WTO.

The following adoption and ratification processes are ongoing:

- Mercosur Association Agreement;
- the EU-West Africa Economic Partnership Agreement (EPA);
- the EU-East African Community (EAC) EPA;
- the EU-CARIFORUM EPA; and
- the EU-New Zealand FTA.

Negotiations are currently ongoing with:

- Australia (FTA);
- China (investment);
- India (FTA, Investment Protection and Geographical Indications);
- Indonesia (FTA);
- Korea (Digital Trade Agreement);
- Philippines (FTA);
- Singapore (Digital Trade Agreement); and
- Thailand (FTA).

Negotiations were initiated, but currently suspended, with:

- the Gulf Cooperation Council (GCC) (FTA);
- Central Africa (EPA);
- Eastern and Southern Africa (EPA);

- Malaysia (FTA); and
- Myanmar (Investment Protection).

### 1.3 Other Trade Agreements

See **1.2 Free Trade Agreements**. In addition, the EU maintains a Generalised Scheme of Preferences, comprising Standard GSP, GSP+ and Everything but Arms (EBA). More information can be found here.

### 1.4 Future Trade Agreements

See **1.1 World Trade Organization Membership or Plurilateral Agreements**.

Negotiations are currently ongoing with:

- Australia (FTA);
- China (investment);
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- Indonesia (FTA);
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- Thailand (FTA).

Negotiations were initiated, but currently suspended, with:

- the Gulf Cooperation Council (GCC) (FTA);
- Central Africa (EPA);
- Eastern and Southern Africa (EPA);
- Malaysia (FTA); and
- Myanmar (Investment Protection).

### 1.5 Key Developments Regarding Trade Agreements

The key developments regarding trade agreements are outlined below:

- 31 October 2023: launch of negotiations for an EU-Korea digital trade agreement;
- 30 October 2023: EU and Australia fail to conclude FTA negotiations;
- 28 October 2023: EU and Japan conclude landmark deal on cross-border data flows;
- 20 July 2023: launch of negotiations for an EU-Singapore digital trade agreement;
- 9 July 2023: EU and New Zealand sign FTA;
- 19 June 2023: EU and Kenya conclude negotiations for EPA; and
- 15 March 2023: EU and Thailand re-launch trade negotiations.

Outside of the realm of RTAs, the following developments involving the EU took place in the WTO:

- On 18 September 2023, Ukraine requested consultations with the Slovak Republic, Hungary and Poland in respect of measures concerning agricultural products.
- On 11 August 2023, Indonesia filed a request for consultations against the EU in a dispute on Countervailing Duties on imports of Biodiesel from Indonesia. Indonesia requested the establishment of a Panel in October 2023.
- On 24 January 2023, Indonesia filed a request for consultations against the EU in a dispute on Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia. A Panel was established in September 2023.

### 1.6 Pending Changes to Trade Agreements

Negotiations on the agreements and initiatives outlined in **1.1 World Trade Organization Membership or Plurilateral Agreements** will continue over the next 12 months. As 2024 is an election year, no major new initiatives are to be expected until the new Commission takes office in late 2024/early 2025.

## 2. Customs

### 2.1 Authorities Governing Customs

The relevant authority is the General Administration of Customs and Excise (*Algemene Administratie Douane en Accijnzen/Administration Générale des Douanes et Accises,* AADA) under the Ministry of Finance. It has a number of departments at central level in Brussels as well as regional offices responsible for the day-to-day implementation of customs and excise legislation.

The main Belgian legislation on customs and excise is the General Law on Customs and Excise (*Algemene wet inzake douane en accijnzen*) dated 18 July 1977 (as amended). It complements the Union Customs Code and its Implementing and Delegated Acts that are directly applicable in Belgium.

### 2.2 Enforcement Agencies Enforcing Customs Regulations

As mentioned in **2.1 Authorities Governing Customs**, it is the AADA that administers and enforces customs and excise legislation at regional and central levels.

In case of disputes, when a regional office of the AADA decides to follow an administrative procedure, it first sends a letter of intent and invites the importer to submit its comments. The regional office of the AADA shall then issue a decision against which an administrative appeal can be lodged. If the outcome of the administrative appeal is unfavourable, the matter needs to be brought on appeal before the Belgian courts and might eventually be submitted for a preliminary ruling on interpretation or validity before the European Court of Justice.

The AADA can, and often does, initiate criminal procedures and impose fines. The issues in these disputes are brought before, and heard by, the criminal courts unless a settlement is offered by the AADA and accepted.

In the process of implementing customs legislation, discussions can also take place at the EU level within the customs expert groups, for example on tariff classification or customs valuation for interpretative guidance (eg, the Compendium on Customs Valuation texts) or mandatory provisions (eg, regulations on the tariff classification of specific products).

### 2.3 Legal Instruments

Belgium does not have a separate Trade Barrier Regulation-like instrument to address negative impacts of trade practices in other jurisdictions. Commercial policy and trade instruments are a matter of EU law and implementation. Therefore, where Belgian companies wish to address the negative impacts of trade practices, they must follow and apply the requirements of the EU Trade Barriers Regulation or other EU trade remedy instruments.

### 2.4 Key Developments in Customs Measures

There is increased enforcement of customs provisions in Belgium and throughout the EU with regard to customs valuation, tariff classification and origin rules. This is partially the result of additional “encouragement” by the EU authorities because EU Member States may be held liable for the enforcement.

Another significant development is the role of the European Public Prosecutor Office (EPPO) in determining the initiation of criminal procedures surrounding violations of customs provisions. The EPPO has the power to initiate criminal

proceedings and give instructions to national authorities, including customs authorities. Nevertheless, the EU provisions on the EPPO refer to national law for several matters. Consequently, despite being an EU body, the EPPO's functioning is, in part, governed by national criminal procedure. As a result, in Belgium, the customs administration retains its own investigative and prosecution powers in EPPO cases, but will exercise them under the authority of the EPPO.

In the field of customs valuation, whether at EU or Belgian level, the following matters have been the subject of recent attention:

- the determination of the sale for export as the basis for customs valuation determination in case of successive sales;
- whether and to what extent royalties are part of customs value;
- how to handle transfer pricing adjustments; and
- whether and how to use reference prices in order to assess a transaction value for customs valuation purposes.

### 2.5 Pending Changes to Customs Measures

The most significant issue on the horizon is the contemplated overhaul of the Union Customs Code and its implementing and delegated acts. Indeed, on 17 May 2023 the EU Commission published a Proposal for a regulation of the European Parliament and of the Council establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013, (COM(2023)258; the "Proposal" or MUCC).

It provides, inter alia, for the creation of an EU Customs Authority (the "Authority") that will act in a central, operational capacity for the co-ordinated governance of the Customs Union in specific areas. The Authority will conduct various risk management tasks, as well as perform IT systems development, data management and data processing tasks. It will also aim to improve the operational management of the Customs Union through capacity-building activities, providing operational support and co-ordinating customs authorities.

Still, the Authority will not function as a centralised EU customs authority. The Authority primarily fulfils a co-ordination function to facilitate enforcement of EU legislation by national customs authorities and does not go so far as to ensure the uniform application of customs legislation. In particular, the proposal provides for:

- the creation of an EU Customs Data Hub that will provide a modern, integrated set of interoperable electronic services for collecting, processing and exchanging information relevant to implementing customs legislation;
- the simplification of customs procedures in e-commerce transactions through the creation of the "deemed importer" concept and simplified tariff treatment for distance business-to-consumer transactions (these will apply beginning in 2028, whereby the EU will eliminate the EUR150 de minimis threshold on imports);
- the creation of the "Trust and Check" trader scheme to replace the Authorised Economic Operator (AEO) programme, whereby Trust and Check traders will enjoy additional customs simplifications and facilitations; and
- the establishment of a minimum core of customs infringements and non-criminal sanctions, which Member States may decide to go beyond.

## 3. Sanctions

### 3.1 Sanctions Regime

Belgium implements sanctions, also known as restrictive measures, adopted by the UN and the EU, as well as its own national sanctions regime.

### 3.2 Legal or Administrative Authorities Imposing Sanctions

The legal and administrative authorities through which sanctions are implemented in Belgium depend on the regime being implemented.

UN sanctions are not directly applicable and implemented either through EU legislative instruments or national measures. In particular, the Law of 2 May 2019 relating to various financial provisions provides for the immediate application in Belgium, as from their adoption, of new UN-mandated designations (Article 236).

EU sanctions are adopted by decisions and regulations of the Council of the European Union (the "Council"). Most sanctions are contained in regulations that are directly applicable in Belgium, whereas national legislation may be required to implement sanctions that are only covered by decisions. This is due to the allocation of competences between the EU and its Member States; and typically concerns travel bans and arms embargoes. In any event, as enforcement of EU sanctions lies with Member States, provisions to that effect are set forth in the Law of 11 May 2003, relating to the implementation of restrictive measures adopted by the Council of the European Union against States, certain persons and entities. Additional national measures may be adopted, such as the Royal Decree of 14 July 2022 concerning restrictive measures with regard to public procurement and concession contracts in view of Russia's actions destabilising the situation in Ukraine.

National sanctions are adopted on the basis of the Law of 11 May 1995 regarding the implementation of UN Security Council decisions and the Royal decree of 28 December 2006 relating to specific restrictive measures against some individuals and entities within the framework of the fight against terrorism financing.

Finally, specific requirements apply to obliged entities that are subject to anti-money laundering and counterterrorism financing obligations under the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash (the "AML Law"). Supervisory authorities may therefore adopt various hard or soft law measures in relation to sanctions, such as the National Bank of Belgium's Anti-Money Laundering Regulation (Article 23), as well as its comments and recommendations on financial embargoes and asset freeze measures.

### 3.3 Government Agencies Enforcing the Sanctions Regime

The Belgian government agencies in charge of administering sanctions depend on the nature of the relevant sanctions. Primarily, the General Administration of the Treasury of the Federal Public Service Finance ("FPS Finance") is responsible for the administration of financial sanctions. The administration of trade control measures is split between several authorities, with regional authorities being generally competent in relation to sanctions targeting military, paramilitary and dual-use items, namely the Brussels Regional Public Service (Licensing Unit), the Walloon Public Service DGO6 (Weapons Licensing Department) and the Department of Foreign Affairs of the Government of Flanders (Strategic Goods Control Unit), while other controlled items fall within the jurisdiction of a federal administration – the Directorate General of

Economic Analysis and International Economics (Licensing Department). However, other authorities also have sanctions-related jurisdiction.

Enforcement of sanctions is split between the police, customs, administrative agents and public prosecutors, with penalties being imposed either by Belgian criminal courts (where criminal) or competent ministers (where administrative).

Supervisory authorities under the AML Law also have the power to oversee, control, and impose penalties on, supervised obliged entities, in case of failure to comply with sanctions-related requirements under the AML Law.

### 3.4 Persons Subject to Sanctions Laws and Regulations

Sanctions implemented in Belgium typically apply within the territory of Belgium, on aircrafts or vessels under the jurisdiction of Belgium, to Belgian citizens, to entities incorporated or constituted under Belgian laws and to any person in respect of business done in Belgium.

Specific requirements under the AML only apply to obliged entities within the meaning of Article 5 thereof, including both financial undertakings, such as banks or insurers, but also non-financial professionals, such as notaries, lawyers or realtors.

### 3.5 List of Sanctioned Persons

In addition to the United Nations Security Council Consolidated List and the EU's Consolidated Financial Sanctions List, Belgium maintains a National Consolidated List of persons and entities whose assets or economic resources are frozen as part of the fight against the financing of terrorism.

The Belgian national list targets persons and entities that commit, attempt, facilitate or participate in terrorist offences, but are not subject to UN or EU sanctions. The Belgian national list is drawn up by the National Security Council, based on an assessment conducted by the Coordination Unit for Threat Analysis, in co-ordination with the competent judicial authority, and approved by the Council of Ministers.

### 3.6 Sanctions Against Countries/Regions

Belgium does not maintain comprehensive sanctions or embargoes, but rather opts for "smart sanctions" that target specific persons, entities or vessels, as well as specific activities involving or related to targeted jurisdictions or territories.

### 3.7 Other Types of Sanctions

Belgium maintains sanctions imposed by the UN and EU, which consist of various sanctions programmes targeting either specific persons, entities or vessels or specific activities involving or related to targeted jurisdictions or territories. Each sanctions programme has its own sanctions toolbox, with various financial, economic, trade and other restrictions coexisting. The scope of sanctions imposed under each particular programme will generally depend on the foreign policy objectives pursued by such programme and associated considerations.

National sanctions maintained by Belgium consist of asset freeze measures targeting certain persons and entities associated with terrorist offences.

### 3.8 Secondary Sanctions

The EU typically refrains from adopting legislative instruments having extra-territorial application, which it considers to be in breach of international law (paragraph 52 of the Council's Sanctions Guidelines). Accordingly, Belgium

does not formally apply or threaten sanctions in connection with transactions that have no nexus to that jurisdiction.

Nevertheless, there are limited instances where the EU has designated parties involved in sanctions evasion or circumvention efforts as subject to asset freeze measures, in a way that is comparable (although not identical) to US secondary sanction mechanisms. Precedents to that effect can notably be found in the programmes targeting North Korea, Iran and Russia. In particular, EU sanctions against Russia were recently amended to permit the imposition of asset freeze/trade control measures against parties/territories involved in sanctions circumvention activities (Article 3(1)(h) of Regulation (EU) 269/2014 and Article 12f of Regulation (EU) 833/2014).

### 3.9 Penalties for Violations

Sanction violations carry risks of both criminal and administrative penalties.

Criminal penalties consist of prison sentences (from eight days to five years) and fines (up to EUR25,000 for natural persons and up to EUR120,000 for legal persons, which have to be multiplied by the so-called *décimes additionnels* – ie, currently by 8). Additional penalties may be ordered in accordance with Belgian criminal law.

Administrative penalties consist of fines between EUR250 and EUR2,500,000. In addition, under the AML Law, each supervisory authority is empowered to impose measures and penalties vis-à-vis the obliged entities they supervise, such as injunctions or fines.

### 3.10 Sanctions Licences

Exemptions and derogations, as well as their scope and conditions, are defined in each sanctions programme, for each type of sanctions imposed. For instance, derogations from asset freeze measures are generally available for basic needs, legal fees, frozen assets maintenance fees or extraordinary expenses.

Exemptions can be equated to general licenses, which are available to any operator that fulfills the conditions thereof, without requiring express authorisation from the competent licensing authority (although notification and/or reporting obligations may apply). Derogations can be equated to specific licenses, which must be requested in advance from the competent licensing authority, after establishing that the specific grounds for licensing are met.

### 3.11 Compliance

Outside of guidance published by AML supervisory authorities, Belgium has not published any specific guidance outlining sanctions compliance expectations (although Flemish authorities have published guidance on internal compliance programmes for exports, which can be relied on by analogy). Guidance documents published at the EU level indicate that operators are expected to adopt a risk-based approach to due diligence, taking into account the specificities of their business and the related risk exposure.

While reference is often made to a strict liability principle, EU sanctions provide for non-liability clauses, according to which actions may not give rise to liability if the person or entity did not known or did not have reasonable cause to suspect that they would infringe EU sanctions. In addition, the imposition of criminal penalties must comply with the standard of liability under the Belgian Criminal Code, meaning, inter alia, that intent has to be proven.

### 3.12 Sanction Reporting Requirements

Belgium laws require (i) blocking funds and economic resources belonging to, owned, held or controlled by persons or entities subject to asset freeze measures; and (ii) reporting to the competent authority on the implementation of EU or national sanctions.

Additional sectoral sanctions may require further blocking of assets and related reporting requirements in different scenarios. For instance, Article 5a of Regulation (EU) 833/2014 prohibits transactions related to the management of the reserves and assets of the Central Bank of Russia, along with reporting obligations relating to such reserves and assets.

### 3.13 Adherence to Third-Country Sanctions

Belgium implements the EU Blocking Statute set forth in Regulation (EC) 2271/96, which:

- prohibits compliance with certain US sanctions targeting Cuba and Iran;
- imposes reporting obligations in case the economic and/or financial interests of EU operators are affected by such sanctions or actions based thereon or resulting therefrom;
- prohibits the recognition or enforcement of judgments or decisions giving effect to such sanctions; and
- entitles EU operators to claim damages caused by the application of such sanctions or actions based thereon or resulting therefrom.

Specific enforcement rules exist under Articles 230 to 234 of the Law of 2 May 2019 relating to various financial provisions.

### 3.14 Key Developments regarding Sanctions

Over the past 12 months, the EU has imposed numerous, successive and increasingly complex sanction packages primarily in response to, but not only, Russia's war in Ukraine. Nevertheless, additional sanctions were also imposed outside that context, in response to various foreign policy developments, notably with new sanctions being imposed against Iran, Sudan and Niger. Of note, the EU has also increasingly used its powers to impose sanctions under its Global Human Rights programme.

Enforcement and fighting the circumvention of sanctions have also been key topics in the EU. The EU has conducted numerous outreach activities with private stakeholders and third countries, established a Sanctions Whistleblower Tool in March 2022, appointed – for the first time – an EU Sanctions Envoy in January 2023, and increased co-ordination with like-minded partners, in various forums such as the G7, the Russian Elites, Proxies and Oligarchs Task Force, and the EU "Freeze and Seize" Task Force.

There have also been additional efforts by Member State authorities to vigorously enforce sanctions. Belgium, which is home to major financial sector players, has been at the forefront of Russian sanctions enforcement, with reportedly EUR249 billion of frozen and immobilised assets, including EUR191 billion of immobilised assets of the Central Bank of Russia. Accordingly, Belgian authorities have received thousands of license applications to authorise the use of these assets.

### 3.15 Pending Changes to Sanction Regulations

New sanction packages are expected to be adopted in response to ongoing or future foreign policy developments. Of particular relevance to Belgium, the EU is currently in the process of adopting a 12th package of sanctions against Russia that would target, amongst others, diamonds.

The EU is also in the process of harmonising the definition of criminal offences and penalties for violation of EU sanctions, with a proposal tabled by the European Commission (the "Commission") on 2 December 2022 and currently subject to the ordinary legislative process. Of note, and in parallel, the Commission has also put forward a proposal to revise the Directive on the freezing and confiscation of the proceeds of crime on 25 May 2022, with a view, inter alia, to covering the violation of EU sanctions. Discussions are also ongoing with regard to the potential extension of the powers of the European Public Prosecutor's Office to investigate and prosecute violations of EU sanctions, although no legislative proposal has been put forward yet.

Additional enforcement efforts on the part of Member States, including Belgium, can also be expected due to the large number of prosecutions and pending court cases. The large number of pending court cases regarding the validity or interpretation of EU sanctions is also likely to shed further light and facilitate their coherent application throughout all Member States, including Belgium.

Finally, following the European Council's Summit of 26 and 27 October 2023, the Commission confirmed that it was working on a proposal to use profits generated by immobilised assets of the Central Bank of Russia for Ukraine reconstruction. This will be critical for Belgium, given that most of these assets are currently immobilised there.

## 4. Exports

### 4.1 Export Controls

The primary export control regimes maintained by Belgium, based on various international arrangements and EU legislative acts, concern (i) dual-use items; (ii) firearms, parts and ammunition; and (iii) military items ("Strategic Goods").

Additional forms of export control restrictions may also apply, either as part of product-specific legislation or in the context of sanctions regimes implemented by Belgium.

### 4.2 Administrative Authorities for Export Controls

Since 2003, the three Belgian regions are generally competent to legislate in relation to the import, export and transit of Strategic Goods (defined in **4.1 Export Controls**). As an exception, transactions involving the armed forces and police, as well as the brokering of Strategic Goods, fall under federal jurisdiction (with some legal uncertainties regarding the brokering of dual-use items), while trade in nuclear dual-use items involves the Ministry of Energy. Accordingly, Belgian export controls on Strategic Goods are derived from EU, national and regional legal instruments.

The competent authorities are:

- the Brussels Regional Public Service (Licensing Unit);
- the Walloon Public Service DGO6 (Weapons Licensing Department);

- the Department of Foreign Affairs of the Government of Flanders (Strategic Goods Control Unit); and
- at the federal level:
  (a) the Directorate General for Economic Potential of the Federal Public Service of Economy (Licensing Service); and
  (b) the Ministry of Justice (for the brokering of Strategic Goods, excluding dual-use items).

### 4.3 Government Agencies Enforcing Export Controls

As noted in **4.2 Administrative Authorities for Export Controls**, export control licensing in Belgium is administered by different federal or regional authorities.

Enforcement is split between the police, customs, administrative agents and public prosecutors, with penalties being imposed either by Belgian criminal courts (where criminal) or competent ministers or authorities (where administrative).

### 4.4 Persons Subject to Export Controls

Belgian export controls on Strategic Goods cover the export (ie, outside the EU) and transfer (ie, within the EU) of such goods from, as well as their transit through, Belgium. In addition, controls on brokering services and technical assistance can apply where such services are provided by Belgian citizens, residents, or entities, and/or from Belgium.

The scope of application of export controls imposed as part of sanctions regimes implemented by Belgium may be broader.

### 4.5 Restricted Persons

Belgium does not maintain lists of restricted persons for export control purposes, although a list of restricted persons adopted under the sanctions regimes implemented by Belgium must be considered.

### 4.6 Sensitive Exports

Lists of Strategic Goods are maintained at both federal and regional levels. Although these lists are largely based on corresponding EU lists (notably, Common Military List and Regulation 258/2012/EC), some differences may exist. For instance, Flanders maintains a specific list of items subject to military export controls (Annex 3 of the Government of Flanders Decree of 20 July 2012 implementing the Flemish Parliament Arms Trade Act of 15 June 2012). Additions to the lists depend on the specific list at issue, with different mechanisms foreseen at each regional and federal level.

### 4.7 Other Export Controls

Belgium implements the EU's Dual-Use Regulation (Regulation (EU) 2021/821) and correspondingly applies catch-all controls on non-listed dual-use items and non-listed cyber-surveillance items that are or may be intended for certain controlled end uses.

Furthermore, the Brussels Capital and Flemish Regions impose catch-all export controls on "other material for military use", defined as "goods which, alone or in combination with each other, or other goods, substances or organisms, are likely to cause serious damage to persons or property and which may be used as a means of violence in an armed conflict or a similar situation of violence."

### 4.8 Penalties

Region and federal export control legislations provide for criminal and/or administrative penalties. These penalties vary depending on the enacting authority and the nature of the violation,

and may include imprisonment, fines, or temporary restrictions on engaging in export, transit or transfer activities.

### 4.9 Export Licences

Belgian export control laws on Strategic Goods provide for general, global and individual licenses, the scope and availability of which is defined by the competent authorities at federal or regional levels. Notably, transfers to Luxembourg and the Netherlands are not subject to Belgian export controls on Strategic Goods (the so-called Benelux exception).

### 4.10 Compliance

In terms of compliance expectations, Belgian authorities frequently refer to the European Commission's recommendations on internal compliance programmes for dual-use trade controls, which encourage operators to implement risk-tailored policies and procedures, structured around seven illustrative core elements:

- top-level commitment;
- organisation;
- training and awareness raising;
- transaction screening;
- monitoring;
- recordkeeping; and
- security.

The Flemish authorities have, in addition, published their own compliance guidelines, which build on these recommendations. Accordingly, operators are expected to understand which of their activities may be subject to export control requirements and to implement policies and procedures to ensure compliance.

Regarding implementing rules in Belgium, the imposition of criminal penalties must comply with the standard of liability under the Belgian Criminal Code, meaning, inter alia, that intent has to be proven. Administrative penalties may be based on strict liability principles.

### 4.11 Export Reporting Requirements

Various reporting requirements may apply in accordance with federal or regional requirements. Primarily, operators are expected to comply with reporting conditions that are attached to any export control license issued by federal or regional authorities. Certain additional reporting requirements may nevertheless apply and should be considered on a case-by-case basis. For instance, the Walloon Decree of 21 June 2012 on the Import, Export, Transit and Transfer of Civilian Arms and Defence-Related Products requires certain export transactions to be notified prior to concluding contracts and starting production (Article 17).

### 4.12 Key Developments Regarding Exports

Over the past 12 months, export control authorities have played a key role in the design and enforcement of sanctions targeting Belarus and Russia. Lists of controlled items are regularly updated, with, notably, two updates in 2023 to the list of dual-use items at the EU level. Furthermore, the European Commission has published a compilation of national control lists that can be relied on by other Member States to impose specific controls under the EU Dual-Use Regulation. Notably, in February 2023, Walloon Region implemented the eLicensing system for dual-use items developed by the European Commission.

### 4.13 Pending Changes to Export Regulations

While continuous updates to control lists can be expected, export controls are also expected to play a prominent role in the context of increased geopolitical tensions and accelerated techno-

logical shifts. In its European Economic Security Strategy published on 20 June 2023, the European Commission emphasised the need to fully implement EU export controls and announced a proposal to revise the existing framework to ensure its effectiveness and efficiency.

## 5. Anti-dumping and Countervailing (AD/CVD)

### 5.1 Authorities Governing AD/CVD

The European Commission conducts anti-dumping, anti-subsidy and safeguard investigations in the EU and imposes respective trade defence measures, subject to control by the EU Member States of the Commission's exercise of implementing powers.

### 5.2 Government Agencies Enforcing AD/CVD Measures

Anti-dumping and anti-subsidies duties are collected by the EU Member States' customs authorities. Safeguard measures are equally enforced by these authorities.

### 5.3 Petitioning for a Review

EU producers are entitled to request an expiry review of anti-dumping or anti-subsidy measures if they possess sufficient evidence that the expiry of the measures would likely result in a continuation or recurrence of dumping/subsidisation and injury. In addition, EU producers are entitled to request an interim review of the measures concerned if they have sufficient evidence that the existing measures are not, or are no longer, sufficient to counteract the dumping or subsidisation that is causing injury.

### 5.4 Ad Hoc and Regular Reviews

EU producers can request an interim review on an ad hoc basis, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure. An expiry review request should be lodged no later than three months before the end of the five-year period of validity of the measure.

### 5.5 Non-domestic Company Participation

All interested parties, such as exporting producers, domestic producers, importers and users of the product concerned, have in principle a right to participate in the reviews of the underlying anti-dumping or anti-subsidy measures.

### 5.6 Investigation and Imposition of Duties and Safeguards

From the moment of initiation of an anti-dumping/anti-subsidy investigation, the Commission has a maximum of eight months to impose provisional anti-dumping duties and a maximum of nine months to impose provisional anti-subsidy duties, if any. An anti-dumping investigation shall be completed within 14 months of initiation; an anti-subsidy investigation within 13 months.

As far as safeguard investigations are concerned, the European Commission has a maximum of 11 months to impose definitive safeguard measures. It can also impose provisional safeguard measures at any time. The duration of provisional safeguard measures shall not exceed 200 days.

### 5.7 Publishing Reports

The European Commission publishes regulations imposing provisional and definitive trade defence measures in the Official Journal of the European Union. These regulations describe the findings that justify the imposition of the measures or termination of the proceedings.

### 5.8 Jurisdictions with No Imposition of Duties and Safeguards

The European Commission is entitled to terminate anti-dumping, anti-subsidy and safeguard proceedings on the basis of EU interest considerations. Furthermore, anti-dumping and anti-subsidy measures can be suspended for a period of nine months when market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension.

As far as safeguard measures are concerned, they do not cover any product originating in a developing country member of the WTO as long as its share of imports does not exceed 3%, provided that developing country members of the WTO with less than a 3% import share collectively account for not more than 9% of total EU imports of the product concerned. Furthermore, under certain conditions, safeguard measures may not extend to imports from parties to the European Economic Area agreement, as well as certain Economic Partnership Agreements.

### 5.9 Frequency of Reviews

As a matter of principle, anti-dumping and anti-subsidy measures are imposed for five years while the duration of safeguard measures must not exceed four years, including the duration of provisional measures. Any further extension of those measures requires an expiry review.

### 5.10 Review Process

Expiry reviews of anti-dumping or anti-subsidy duties, as well as of safeguard measures, replicate the process of original investigations that led to the imposition of initial measures. They should be completed within 15 months following initiation in case of anti-dumping or anti-subsidy duties and 11 months in case of safeguard measures.

### 5.11 Appeal Process

Under certain conditions, regulations imposing anti-dumping, anti-subsidy or safeguard measures can be challenged before the EU's General Court.

### 5.12 Key Developments Regarding AD/CVD Measures

The past 12 months have witnessed several important developments in terms of the law and practice of EU's trade remedies:

- In October 2023, the Commission initiated the first ever ex officio anti-subsidy proceeding targeting imports of electric vehicles from China.
- In August 2023, the Commission initiated three anti-circumvention investigations, demonstrating the importance of proper enforcement of existing trade defence measures.
- In March 2023, the EU's General Court upheld the Commission's decision to countervail transnational subsidies – ie, subsidies effectively granted to a producer of the product concerned by a government of a third country.
- In January 2023, the Commission imposed, for the first time, anti-dumping measures in spite of the withdrawal of the complaint by the domestic industry.

### 5.13 Pending Changes to AD/CVD Measures

The key topic for the next 12 months is the extent to which the European Commission will continue using ex officio investigations to target imports from China and possibly other countries allegedly responsible for the EU's growing trade deficit. The outcome of the ongoing investigation into imports of electric vehicles from China will also be closely watched, as it affects a strategic and fast-growing sector of the EU's economy.

## 6. Investment Security

### 6.1 Investment Security Mechanisms

Belgium, as an EU Member State, is bound by the EU's Foreign Direct Investment (FDI) Screening Regulation (2019/452), which lays down a framework for the screening of FDIs into the EU.

The basis for Belgium's FDI Screening Mechanism is a co-operation agreement between the Federal Government and the regions in Belgium (the "Co-operation Agreement"). The Co-operation Agreement applies to direct and indirect investments by non-EU investors seeking to "establish or maintain lasting and direct links" in an undertaking or entity established in Belgium (irrespective of whether the Belgian legal entity is the parent company or only a subsidiary of the group in which the investment is made) whose activities relate to certain sectors exhaustively listed in the Co-operation Agreement.

### 6.2 Agencies Enforcing Investment Security Measures

Whereas communications and decisions are co-ordinated through an inter-federal screening commission (*Interfederale Screeningscommissie*, ISC), actual decisions on transactions will be taken independently by competent authorities at federal, regional and/or community levels. Accordingly, depending on where the FDI into Belgium is supposed to take place, the relevant competent authority will need to be identified.

The Co-ordinating Committee on Intelligence and Security (*Coördinatiecomité Inlichtingen en Veiligheid*, CCIV) will be involved in every filing.

As an example, for Flanders, the designated governmental website stipulates as follows:

"The ISC is a body that unites all federated states in Belgium alongside the federal state. Each entity acts and makes decisions within the scope of its competences, ensuring a global and coherent position on foreign investment. Flanders has two seats (for the Flemish Community and for the Flemish Region) and will participate in the screening mechanism through its own internal procedure by screening investments under the scope that have a territorial link to Flanders, in the context of a potential impact on Flanders' strategic interests. The Flanders Chancellery and Foreign Office and the Flemish Department of Economy, Science and Innovation will play a key role in this, with broad coordination and input from other agencies (Flanders Investment & Trade, Flanders Innovation & Entrepreneurship (VLAIO), etc.) and policy areas."

### 6.3 Transactions Subject to Investment Security Measures

The scope of the Belgian FDI screening mechanism is as follows.

In terms of investors, it covers only investments by non-EU investors; ie, the regime applies to:

- natural persons that have their main residence outside the EU;
- companies that are established outside the EU; and
- companies where the main residence of the ultimate beneficial owner is outside the EU.

In terms of targets, the FDI screening mechanisms cover direct or indirect acquisitions of 25% of voting rights in entities incorporated in Belgium and active in one of the following sensitive sectors:

- critical infrastructure, whether physical or virtual, including energy, transport, water, health,

electronic communications and digital infrastructure, 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 crucial for the use of such infrastructure;
- technologies and raw materials that are essential to:
  (a) security (including health security);
  (b) national defence or the maintenance of public order, the disruption, failure, loss or destruction of which would have a significant impact on Belgium, an EU Member State or the EU;
  (c) military equipment subject to the Common Military List and national control;
  (d) dual-use goods, which include software and technology which can be used for both civil and military purposes; or
  (e) technologies of strategic importance (and related intellectual property), including artificial intelligence (AI), robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies, as well as nanotechnologies;
- supply of critical inputs, including energy or raw materials, as well as food security;
- access to sensitive information, as well as personal data, or the ability to control such information;
- the private security sector;
- the freedom and pluralism of the media; and
- technologies of strategic importance in the biotechnology sector where the Belgian company's global turnover exceeds EUR25 million in the financial year preceding the investment.

Notification is also required for acquisitions of 10% or more of a Belgian undertaking or entity whose activities relate to certain strategic sectors of defence (including dual-use items), energy, cybersecurity, electronic communications or digital infrastructures in Belgium, provided it realised a global turnover exceeding EUR100 million in the financial year preceding the investment.

### 6.4 Mandated Filings/Notifications

Belgium's FDI screening mechanism is mandatory and suspensory. Transactions that are within scope (see **6.3 Transactions Subject to Investment Security Measures**) will need to be notified.

### 6.5 Exemptions

There are no items and/or parties that are exempt from review, other than those not within the scope of the Co-operation Agreement.

### 6.6 Penalties and Consequences

Parties to a transaction may not close a deal whilst FDI screening is pending. Foreign investors that fail to comply with the requirements of Belgium's FDI regime may face an administrative fine of up to 10% of the value of the planned FDI or, in certain circumstances, 30% of the value of the relevant investment. Currently, no criminal penalties are foreseen under the Co-operation Agreement.

### 6.7 Fees

Notifications can currently be submitted via the ISC Secretariat without payment of a filing fee.

An English manual on how to submit FDI filings in Belgium can be consulted here.

### 6.8 Key Developments Regarding Investment Security

In Belgium, given the screening mechanism entered into force on 1 July 2023, there are no

relevant additional legal developments as of this time.

At the EU level, following the entry into force of the FDI Screening, the number of screening mechanisms in the EU has increased significantly. An up-to-date list of notified screening mechanisms was published by the European Commission on 17 August 2023 and can be accessed here.

In terms of relevant case law, on 13 July 2023, the Court of Justice of the EU (CJEU) issued its judgment in the Xella case, clarifying for the first time the scope of the EU FDI Screening Regulation. In particular, the CJEU clarified that the definition of "foreign investor" is to be interpreted restrictively, and this definition does not extend to entities registered in the EU that have foreign entities in their chain of control. As a result, an investment made by an undertaking registered in an EU Member State, regardless of the shareholders in its chain of control, falls outside the scope of the EU FDI Regulation.

In addition, on 19 October 2023, the European Commission published its third annual report on the screening of FDI into the EU.

In the report, the Commission notes that it is evaluating the current framework and will propose a revision of the FDI Screening Regulation before the end of 2023.

Finally, also at the EU level, and in the context of outbound investment, the first meeting of the Commission Expert Group (CEG) on Outbound Investment was held on 22 September 2023. The minutes of that meeting, published on 27 October 2023, indicate that the Commission and Member States will work on identifying the data needed for assessment, risks that need to be addressed, and sectors that need to be covered in an eventual outbound investment screening mechanism. Discussions in the CEG will continue.

### 6.9 Pending Changes to Investment Security Measures

See **6.8 Key Developments Regarding Investment Security**.

## 7. Other Measures Affecting Production and Trade

### 7.1 Subsidy and Incentive Programmes for Domestic Production

None of the EU's subsidy and incentive programmes for domestic production are explicitly aimed at reducing imports and/or encouraging domestic production.

A list of all EU funding programmes for 2021-2027 can be consulted here.

The EU has also adopted the Foreign Subsidies Regulation (EU) 2022/2560. As described in the EU's latest Trade Policy Review Report, it "aims to close a legislative gap and restore the level playing field in concentrations, public procurement and other market situations."

### 7.2 Standards and Technical Requirements

None of the EU's standards and technical requirements are explicitly aimed at reducing imports and/or encouraging domestic production.

Of course, some standards and technical requirements may have a limiting effect on imports, but, generally speaking, the EU aims to

devise its standards and technical requirements in an origin-neutral manner.

A list of EU product standards and harmonised standards may be consulted here.

### 7.3 Sanitary and Phytosanitary Requirements

None of the EU's SPS requirements are explicitly aimed at reducing imports and/or encouraging domestic production.

Of course, some SPS requirements may have a limiting effect on imports, but, generally speaking, the EU aims to devise its standards and technical requirements in an origin-neutral manner.

The EU's Food Safety/SPS requirements may be found here.

The WTO Secretariat's Report on the EU prepared in the context of its 2023 TPR stipulates as follows:

"The EU SPS legal framework comprises legislation of general application, as well as of product- and issue-specific, for food safety, and animal and plant health. The main SPS regulations of general application are (i) Regulation (EC) 178/2002 (General Food Law); (ii) Regulation (EU) 2016/429 (Animal Health Law); (iii) Regulation (EU) 2016/2031 (Plant Health Law); and (iv) Regulation (EU) 2017/625 on Official Controls. During the review period, and as part of the reform process, the European Union completed the implementation of the Plant Health Law, the Animal Health Law, and the Regulation on Official Controls, all three adopted during the period 2016-19."

The EU notified 368 SPS measures to the WTO during the review period (October 2019-December 2022).

### 7.4 Policy and Price Controls

There is no applicable information in this jurisdiction.

### 7.5 State and Privatisation Measures

There is no applicable information in this jurisdiction.

### 7.6 "Buy Local" Requirements

At present, there are no formal "buy European" or "buy Belgian" requirements in government procurement policies. That being said, the proposed Net Zero Industry Act (NZIA) contains the notion that the contribution of certain projects to the EU's security of supply will be taken into account, which has given rise to some commentators opining that this may be a "buy European" clause in disguise. Note that the linked article is based on an earlier leaked draft of the NZIA, and it appears that the Commission subsequently reduced the number of references to security of supply in the final proposal.

In addition, some Member States, notably France, are pushing for a broader "Buy European Act". So far, these proposals do not appear to have gained sufficient traction.

### 7.7 Geographical Protections

The EU maintains a wide system of geographical indications (GIs). Products that are under consideration or have been granted GI recognition are listed in geographical indication registers. The registers also include information on the geographical and production specifications for each product. Recognised as intellectual property, geographical indications play an important

role in trade negotiations between the EU and other countries.

On 24 October 2023, the Council and the European Parliament reached political agreement to review and strengthen the GI system for wine, spirit drinks and agricultural products. In 2022, the European Commission issued a proposal in that regard.

According to the European Commission:

"On 1 October 2023, 3,552 names were registered: 1,656 wine names, 1,634 food and agricultural foodstuff names, and 262 spirit drinks. In February 2023, the Commission registered the 3,500th geographical indication. Famous geographical indications include, for example, Bayerisches Bier, Champagne, Irish Whiskey, Kalamata olives, Parmigiano Reggiano, Polish Vodka, Queso Manchego, Roquefort. Names of products registered as GIs are legally protected against imitation, misuse and evocation within the EU and in non-EU countries where a specific protection agreement has been signed. The Geneva Act related to geographical indications represents an additional, multilateral framework for their protection."

## 8. Other Significant Issues

### 8.1 Other Issues or Developments

#### "Unilateral" Trade Instruments

The EU has, in the past five years, adopted or proposed a wide range of "unilateral" trade instruments that will have a significant impact on trade, as detailed below.

#### *The Carbon Border Adjustment Mechanism (CBAM) Regulation*

The CBAM is centred around a requirement to surrender "CBAM certificates" that reflect the carbon price of the embedded emissions in the covered products that are imported into the EU. As such, CBAM works in parallel with the EU Emissions Trading Scheme (EU ETS) by applying a carbon price to imported goods that is equivalent to the carbon price applied to goods manufactured in the EU as a result of the EU ETS. CBAM applies to imports of cement, electricity, certain fertilisers, and certain iron, steel and aluminium products, as well as hydrogen, some "precursors" (such as cathode active materials) and a limited number of so-called downstream products, such as screws and bolts and similar articles of iron or steel.

#### *The Deforestation Regulation (EUDR)*

The Deforestation Regulation is aimed at:

- minimising the Union's contribution to deforestation and forest degradation worldwide, thereby contributing to a reduction in global deforestation; and
- reducing the EU's contribution to greenhouse gas emissions and global biodiversity loss.

The Deforestation Regulation covers seven commodities representing the largest share of EU-driven deforestation and certain products that contain, have been fed with, or have been made using commodities listed in Annex I ("relevant commodities and products"): palm oil, soya, wood, cocoa, coffee, cattle, and rubber. By 30 June 2025, the Commission will also determine whether it is appropriate to amend or extend the list of relevant products in Annex I, particularly with respect to biofuels (HS code 382600).

The Deforestation Regulation prohibits, as of 30 December 2024, placing or making available on the EU market, as well as exporting from the EU, the relevant commodities and products listed in Annex I unless:

- they are deforestation-free, meaning:
  (a) the relevant products contain, have been fed with or have been made using, commodities produced on land that has not been subject to deforestation after 31 December 2020; and
  (b) in case of the relevant products that contain or have been made using wood, such wood has been harvested from the forest without inducing forest degradation after 31 December 2020;
- they have been produced in accordance with the laws applicable in the country of production concerning the legal status of the area of production in terms of land use rights; environmental protection; forest-related rules, including forest management and biodiversity conservation, where directly related to wood harvesting; third parties' rights; labour rights; human rights protected under international law; the principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples; tax, anti-corruption, trade and customs regulations; and
- they are covered by a due diligence statement confirming that due diligence was carried out and that no risk, or only a negligible risk, was found that the relevant products do not comply with the requirements set out in (i) and (ii) above; operators, traders or their authorised representatives will need to submit these due diligence statements through an information system.

### *The Forced Labour Regulation (EUFLR)*

On 14 September 2022, the Commission published its proposal for a regulation introducing a ban on placing and making available products made using forced labour on the EU market. Under the proposed EUFLR, products found to be made using forced labour can neither be sold in the EU, nor exported from the EU. Where products are already on the EU market, they must be withdrawn. The proposed EUFLR does not target specific companies, industries or countries, but applies broadly and generally in respect of all products, whether made in the EU for domestic consumption or export, as well as imports. Enforcement of the EUFLR at Member State level will be in the hands of (i) national competent authorities (NCAs) competent to withdraw products made using forced labour from the market; and (ii) customs authorities designated with the task to identify and block products made using forced labour at the border.

The proposed EUFLR is currently being discussed by the European Parliament and the Council of the European Union (the "Council"). Progress in the Council is relatively slow, meaning the final text is unlikely to be adopted before Q3 2024. The Commission's proposal foresees that the EUFLR will start to apply two years after its entry into force – ie, as of late 2025 at the very earliest, with 2026 being more likely.

### *The Anti-Coercion Instrument (ACI)*

On 8 December 2021, the European Commission responded to increasing third-country interference in the EU's and/or EU Member States' policy choices by presenting a legislative proposal for the ACI. It provides a framework for the EU to react to specific situations of economic coercion by taking, as a last resort, countermeasures towards the third countries exerting the pressure.

On 3 October 2023, the European Parliament adopted in the first reading the proposal for the ACI. On 23 October 2023, the Council approved the European Parliament's position, paving the way for the entry into force of the ACI. The ACI was signed on 22 November 2023 and will enter into force 20 days after its publication in the Official Journal of the European Union (OJEU).

The ACI will apply in cases of economic coercion by a third country, namely when the following two cumulative conditions are fulfilled:

- a third country applies or threatens to apply a measure affecting trade or investment in order to prevent or obtain the cessation, modification or adoption of a particular act by the EU or an EU Member State; and
- such measure interferes with the legitimate sovereign choices of the EU or an EU Member State.

### *The Critical Raw Materials Act (CRMA)*

On 16 March 2023, the Commission put forward a European critical raw materials act. The CRMA aims to:

- increase and diversify the EU's critical raw materials supply;
- strengthen circularity, including recycling; and
- support research and innovation on resource efficiency and the development of substitutes.

The CRMA is currently being negotiated by the Council and the European Parliament.

## Summary

These instruments share a common feature: by using trade and access to its market as leverage, the EU seeks to obtain other societal objectives, such as the pursuit of biodiversity protection, climate change mitigation, or human rights protection, typically in jurisdictions other than its own. In simple terms, by imposing due diligence and other requirements on economic operators, or by subjecting imports to the payment of a carbon price, the EU seeks to attain non-trade objectives by using trade instruments.

With regard to the ACI and CRMA, these are not due diligence-based, yet still signal a unilateral approach by the EU. Through the ACI, the EU intends to counter economic coercion by third states. Through the CRMA, the EU seeks to ensure a steady and stable supply of critical raw materials that it itself does not have in sufficient quantities to satisfy demand, in particular as these materials and minerals are needed for the deployment of technologies that lie at the centre of the energy transition and efforts to move away from a fossil fuel-based society to net zero.

These approaches may be questionable from the perspective of WTO consistency, but are a reflection of the prevailing geopolitical climate that is no longer primarily focused on trade liberalisation and the opening of markets, but rather on the protection of economic and security interests.

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