ASSET DEALS, DATA ACCESS AND FDI SCREENING: LEGAL GREY ZONES FOR TECH INVESTMENTS IN BELGIUM

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This article examines the legal grey zones that arise in applying FDI screening to technology investments in Belgium. The article highlights two particularly thorny issues: when asset deals—especially those involving intellectual property—trigger notification obligations, and how data access and control should be treated within the scope of screening regimes. The authors demonstrate that broad and sometimes ambiguous definitions of control and sensitive data create significant uncertainty for investors, increasing both compliance burdens and enforcement risks. They argue that clearer guidance is needed to reconcile the EU's dual objectives of safeguarding security interests while maintaining an open and predictable investment environment.

01
INTRODUCTION

Foreign direct investments ("FDI")[2] are a crucial driver of economic growth in Europe and Belgium. However, geopolitical developments have sparked concerns about the potential impact of such investments on national security, public order, and strategic interests. Foreign direct investment screening is therefore rapidly becoming one of the primary elements through which the European Union ("EU") is giving shape to its strategic autonomy and economic security, especially in emerging strategic sectors with innovative potential where Union entities are not at or near the global innovation frontier.[3] The result of this is that FDI screening will be included in the scope of the Industrial Accelerator Act, as appears from the proposal adopted by the Commission in March 2026 ("IAA Proposal").[4]

While most members states have an FDI screening mechanism,[5] there is currently no obligation to do so. This is set to change; the EU will likely adopt a mandatory screening mechanism in the near future, as well as a minimum scope for investments that have to be screened in all member states, as appears from the latest provisional agreement between the Council and the European Parliament for a new FDI regulation ("FDI Regulation Proposal").[6] At the same time, the IAA Proposal includes a condition that non-EU investors hold no more than 49% of voting rights in EU target companies or joint ventures with EU companies in certain emerging strategic sectors if the investment exceeds EUR 100 million.[7]

Despite this growing importance of FDI screening, there remain significant interpretation issues in the scope of application of FDI screening mechanisms. While it is one of the main goals of the FDI Regulation Proposal to close national loopholes that allow malicious foreign investors to enter the internal market, not all questions of scope are addressed, some of which also merit the attention of the Union legislator. This is more than a missed opportunity, because the FDI Regulation Proposal and IAA Proposal also aim to ensure that foreign investments continue to add value to the EU's economy and society and to maintain an open investment environment. However, for foreign investors, filing obligations and the potential subsequent screening add costs and uncertainty about their investment. Knowing when an investment must be filed is therefore essential.

This uncertainty also applies to investments in the technology sector. The Belgian and the EU legislative frameworks contain multiple relevant provisions for technology investments, especially regarding critical infrastructure and technologies, such as electronic communication, digital infrastructure, artificial intelligence, robotics, semiconductors, cybersecurity, and quantum-, nano- and biotechnologies.

2 The main legislative framework in Belgium and the European Union are: Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 Mar. 2019 establishing a framework for the screening of foreign direct investments into the Union, 2019 O.J. (L 79I) 1 [hereinafter FDI Regulation]; Samenwerkingsakkoord van 30 november 2022 tussen de Federale Staat, het Vlaamse Gewest, het Waals Gewest, het Brussels Hoofdstedelijk Gewest, de Vlaamse Gemeenschap, de Franse Gemeenschap, de Duitstalige Gemeenschap, de Franse Gemeenschapscommissie en de Gemeenschappelijke Gemeenschapscommissie tot het invoeren van een mechanisme voor de screening van buitenlandse directe investeringen [Cooperation Agreement of 30 Nov. 2022 Establishing a Mechanism for the Screening of Foreign Direct Investments], B.S., Jun. 7, 2023, http://www.staatsblad.be [hereinafter Cooperation Agreement]. An unofficial English translation is available online at https://economie.fgov.be/sites/default/files/Files/Commercial-policy/Cooperation-agreementof-30-November-2022-establishing-a-foreign-direct-investment-screening-mechanism-unofficial-translation.pdf (last visited Feb. 25, 2026).

3 Proposal for a Regulation of the European Parliament and of the Council on Establishing a Framework of Measures for Accelerating Industrial Capacity and Decarbonisation in Strategic Sectors and Amending Regulation (EU) 2018/1724, Regulation (EU) 2024/1735 & Regulation (EU) 2024/, 2026/0068 (COD), at recitals 28-29 (Mar. 04, 2026) [hereinafter Industrial Accelerator Act proposal]; Joint Communication to the European Parliament and the Council, JOIN(2025) 977 final, *Strengthening EU Economic Security* (2025).

4 Industrial Accelerator Act proposal, *supra* note 3. This article was written before the Commission's adoption of the Proposed IAA and therefore only refer to it sporadically. Nevertheless, the Proposed IAA applies to foreign investments with a value of over EUR 100 million regarding critical raw materials, batteries, electric vehicles and solar panels.

5 FDI Regulation, *supra* note 2, art. 3(7), which states that Member States must notify the Commission no later than 30 days after the introduction or amendment of a screening mechanism. On the basis of these notifications, the Commission keeps, pursuant to Article 3(8) of the Regulation, a list of national screening mechanisms. According to the most recent version of that list, 25 out of 27 members states now have a screening mechanism for foreign direct investments, European Commission, *List of Screening Mechanisms Notified by Member States*, DG Trade & Economic Security (Feb. 9, 2026), https://circabc.europa.eu/rest/download/7e72cdb4-65d4-4eb1-910b-bed119c45d47 (last visited Feb. 25, 2026).

6 Proposal for a Regulation of the European Parliament and of the Council on the Screening of Foreign Investments in the Union and Repealing Regulation (EU) 2019/452, COM(2024) 17 final, 2024/0017 (COD) (Feb. 10, 2026) [hereinafter FDI Regulation Proposal]. See in draft arts. 3(1), 4(4).

7 Industrial Accelerator Act proposal, *supra note 3, draft art. 18(2)(a)-(b). However, draft art. 18(2) says that foreign investments should only meet four out of six conditions listed, meaning that an investment where a foreign investor holding more than 49% in the EU target company can still be approved if it meets the other conditions listed.*

However, technology investments inevitably also involve intangible property, such as large data sets and intellectual property ("IP") rights. Interpretation problems have arisen especially regarding these two aspects. We therefore focus in this article on two questions that have appeared to be particularly thorny in practice:

- first, when the acquisition of assets (such as IP rights) creates a notification obligation under the Belgian FDI regime, and
- second, the obligation to notify investments in a target company that controls or has access to personal data.

02
REGULATORY FRAMEWORK FOR FDI SCREENING IN THE EU AND BELGIUM

A. The Evolving EU Framework: From Coordination to Mandatory Screening

Because common commercial policy is an exclusive competence of the European Union[8] but national security remains within the purview of the members states,[9] both EU and national legislation are relevant to consider. In the EU, Regulation (EU) 2019/452 of 19 March 2019 ("FDI Regulation")[10] aims to protect from risks to security and public order while leaving flexibility to the member states to address national security concerns that are specific to the national context. Therefore, the current FDI Regulation does not impose a mandatory screening mechanism.[11] Instead the FDI Regulation only aims to ensure a minimum level of information and coordination as well as requires member states to cooperate with other member states and the European Commission.

The FDI Regulation Proposal is set to upend the EU framework for FDI screening. While not the focus of this article, the new EU FDI screening framework will also heavily impact technology investments. The minimum scope of the mandatory FDI screening in the FDI Regulation Proposal now requires prior authorization for foreign investments in an EU target entity that produces, researches or develops semiconductor, quantum or artificial intelligence technologies listed in Annex I of the FDI Regulation Proposal.

B. Belgium's FDI Screening Mechanism: When to File a Transaction

However, the exact scope of the obligation to notify screening authorities remains for now a matter of national law. Under Belgian law, the Cooperation Agreement between the Belgian Federal State and its federated entities[12] ("CA") sets the ground rules for the Belgian FDI screening mechanism. Additionally, the Interfederal Screening Commission ("ISC"), the Belgian authority for FDI screening, has published answers to frequently asked questions on the FDI screening mechanism ("ISC Guidelines") that help interpret the CA.[13] Importantly, however, is that this interpretation is only the administration's own interpretation of the legislative framework. In a court proceeding, this would have no special authoritative status compared to the investor's interpretation of the CA.

The purpose of the CA is to safeguard national security, public order, and strategic interests and to coordinate the jurisdiction of the Belgian Federal State and its federated entities in relation to FDI screening.[14] The CA works in three stages to safeguard this goal. First, there is a pre-notification stage, in which an investor assesses for itself whether a transaction falls in the scope of the CA and must be notified and the investor prepares the notification. If the transaction is notified, the second stage is a verification phase where the ISC examines if there are concrete indications that the investment is likely to cause a threat to public order, national security or strategic interests. If not, the transaction is approved. If yes, there is a screening phase in which the ISC gives an advice in which the transaction can be approved, approved with mitigating measures, or disproved.

8 See Consolidated Version of the Treaty on the Functioning of the European Union art. 3(1)(e), art. 207(1) [hereinafter TFEU].

9 *Ibid*. art. 207(6) in conjunction with art. 4(2).

10 FDI Regulation, *supra* note 2.

11 *Ibid*. arts. 1(2)-(3), 3(1).

12 Cooperation Agreement, *supra* note 2.

13 FPS Economy, SMEs, *Self-employed and Energy, Richtlijnen voor de screening van directe Buitenlandse Investeringen [Guidelines for the screening of foreign direct investments]*, Belgian Interfederal Screening Committee (ISC) (Apr. 4, 2024) [hereinafter *ISC Guidelines*] An English translation is available online at https://economie.fgov.be/sites/default/files/Files/Commercial-policy/Guidelines-Screening-Foreign-Investment.pdf (last visited Feb. 25, 2026).

14 Cooperation Agreement, art. 1, § 2.

For most investors, the pre-notification stage and knowing when to file will be the most important. Under the Belgian FDI framework, a filing is required when a "foreign investor" directly or indirectly acquires control over or 10 or 25% of voting rights in a Belgian entity active in one of the specific sectors listed in the CA.

The scope of the Belgian screening mechanism can be briefly described as follows. Whether a transaction falls within the *personal scope* of the CA, requires looking at the investor. The definition of "foreign investor" under the CA includes:

- any natural person whose main residence is outside the European Union;
- any third-country undertaking, which is incorporated or otherwise organized under the law of a third non-EU member state where the registered office of the undertaking or its principal activity is in a non-EU country; and
- any undertaking of which one of the ultimate beneficial owners has its main residence outside the EU.

The last category is the broadest and also captures EU-based investors of which at least one of the ultimate beneficial owners is located outside of the EU.

Regarding the *material scope*, the CA applies to FDIs that aim at establishing or maintaining durable and direct relations between the foreign investor and the entrepreneur or the undertaking to which funds are made available to exercise an economic activity in an EU member state.[15] This includes investments which allow for an effective direct participation in the management and/or control in an undertaking exercising an economic activity. Additionally, the CA states that it applies to investments that *may* have an impact on security or public order, or on the strategic interests of Belgium's federated entities. While the actual impact of an investment on public order or the strategic interests is only assessed after the notification is made, the scope of the CA should also be interpreted in light of the overall aims of the CA.[16]

The CA has two different threshold and accompanying sectors of activity.[17] First, foreign investments resulting in control or ownership of at least 10% of the voting rights in Belgian targets having activities that touch upon the sectors, including:

- Defense (including dual use items);
- Energy;
- Cybersecurity;
- Electronic communication; and
- Digital infrastructure;

and provided that the annual turnover of the Belgian entity exceeded 100 million euros in the financial year preceding the acquisition.

Second, foreign investments resulting in control or ownership of at least 25% of the voting rights in Belgian targets having activities that touch upon one or more of the following sectors:

- Critical infrastructure, whether physical or virtual, for energy, transport, water, health, electronical communication, digital infrastructures, media, data processing or storage, aerospace, defense, electoral infrastructure, financial infrastructure or sensitive installations;
- The technologies or raw materials of essential importance to safety (including health safety), national defense, public order maintenance, military equipment, dual-use products, and technologies of strategic importance such as AI, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum technologies, nuclear technologies, and nanotechnologies;
- The provision of critical inputs, including energy or raw materials, as well as food security;
- Access to sensitive information (including personal data) or the ability to control such information;
- Private security;
- Freedom and pluralism of the media;
- Technologies of strategic importance in the biotech sector, provided that the annual turnover of the Belgian entity exceeded 25 million euros in the financial year preceding the acquisition.

C. An Overly Broad Scope? Practical Impacts and Enforcement Trends in Belgium

The Belgian CA describes when foreign investments should be notified, but the net is cast very widely. Under the CA, it is sufficient that the activities of the Belgian target "touch upon" (in Dutch: "*raken aan*"; in French, either "*lié à*" or "*concerne*") the sectors mentioned in the CA. Besides this rather vague language, one consistent critique of the in-scope sectors of activity is that they are very broadly formu-

15 *Ibid*. art. 4, § 1.

16 This is also confirmed in the ISC Guidelines, which say in the answer to question 36 that "the sectors and activities must be interpreted on the basis of the purpose of the screening mechanism, namely to safeguard national security, public order and strategic interests," ISC Guidelines, *supra* note 13.

17 Cooperation Agreement, *supra* note 2, art. 4, § 2.

lated.[18] The CA nor the ISC Guidelines contain any further guidance regarding the sectors, other than that they must be interpreted on the basis of the purpose of the screening mechanism,[19] and that the ISC "recommends to notify an investment in case of doubt."[20]

Yet, national statistics on FDI screening in Belgium confirm that certainty about the filing obligation is not a luxury.[21] In the second year after the creation of the Belgian FDI screening mechanism, notifications increased with 50% (to 100, up from 68 the year before), which might indicate broader awareness among investors but also potentially that the scope is too wide, with too many low-risk transactions clogging the mechanism. Some indication can be found in the fact that only 5 out 100 notifications resulted in the opening of a screening procedure. More importantly, the ISC has become much more proactive in going after non-notified investments. In 16 cases where investors had not spontaneously notified the investment, the ISC on its own initiative requested information on transactions to assess whether a notification should have been made, or whether national security, public order or strategic interests are affected.

Lastly, the risks of not filing are potentially high. First, the ISC can go after non-notified investments through an *ex officio* procedure and impose measures up to five years after the transaction in case of bad faith (and otherwise two years).[22] This *ex officio* procedure is now also included in the FDI Regulation Proposal, providing that authorities can go after in-scope investments that may affect security or public order up to 5 years after completion of the investment.[23] Moreover, under the Belgian screening mechanism, all rights connected to the acquisition of voting rights (excluding financial rights) are suspended until the authorities have taken a decision regarding the transaction.[24] This suspension of rights potentially also applies to the ex officio procedure, and, in any case, the investor and the target company are required to refrain from further implementing or closing the transaction during the screening.[25] Third, the ISC can impose penalties of 10 to 30% of the value of the Belgian part of the investment if, among other situations, the investor fails to provide complete or accurate information, or fails to notify the transaction altogether.[26]

03

NOTIFYING ASSET TRANSFERS: DEFINING CONTROL IN TECHNOLOGY INVESTMENTS

A. The Concept of Control in Asset Deals

Companies active in the technology sector often hold valuable IP related to the technologies they research, develop or market. For startups, IP rights might be their most valuable business assets. Therefore, one particularly salient problem for the technology sector is the potential application of the

18 V. De Boe, J.-B. Lemaire & R. Demoutiez, Het FDIscreeningsmechanisme gescreend: twee jaar buitenlandse directe investeringsscreening in België, in *De bedrijfsjurist als businesspartner / Les juristes d'entreprise comme business partners* 318-19 (N. Istas ed., Intersentia 2025); M. Wyckaert & T. De Cuyper, Buitenlandse investeringen in België onder het vergrootglas van de overheid: inzichten uit een zich vormende praktijk, in *Recht in Beweging VRGAlumnidag 57*, no. 26 (Gompel & Svacina 2025); S. Van Besien & C. Jansen, De eerste verjaardag van het Belgische screeningsmechanisme voor buitenlandse directe investeringen, *Competitio* 2024/3, 200, 208; T. Oeyen & M. De Crane d'Heysselaer, Het Belgische screeningsmechanisme voor directe buitenlandse investeringen, *RDC–TBH* 2024/2, 143, nos. 6 & 15; I. Claessens, Buitenlandse directe investeringen in België na Verordening 2019/452, *RPS–TRV* 2024/6, 471, 482; M. Mylle, Forum – First Anniversary of FDI Screening in Belgium – Conference Report, FSP Economy, *Competitio* 2024/3, 223, 224; J. Delvoie & C. Fornoville, FDI Screening in Belgium: It Is Complicated, *Erasmus L. Rev.* 2022/4, 256-58.

19

20 ISC Guidelines, *supra* note 13, answer to question 53.

21 The ISC publishes an annual report with statistics on the Belgian FDI-screening mechanism. The latest report covers the period 2024-2025, FPS Economy, SMEs, Self-employed and Energy, *Screening of Foreign Direct Investment - Annual Report 2024-2025*, Belgian Interfederal Screening Committee (Sept. 12, 2025), available in English at https://economie.fgov.be/en/publication/screening-foreign-direct-0 (last visited Feb. 25, 2026) [hereinafter ISC, *Annual Report 2024-2025*].

22 Cooperation Agreement, *supra* note 2, art. 26 CA.

23 FDI Regulation Proposal, *supra* note 6, draft arts. 3(1), 4(4).

24 Cooperation Agreement, *supra* note 2, art. 5, § 3, para. 2.

25 Cooperation Agreement, *supra* note 2, art. 12, para. 1.

26 *Ibid.* art. 28, §§ 1 and 2.

FDI regime to a transfer of assets, in particular IP rights.[27] The acquisition of assets is indeed relevant under the Belgian FDI framework to meet the acquisition thresholds under the CA. The material scope does not only cover the 10% and 25% thresholds mentioned in the previous section but also the acquisition of control of an undertaking. The ISC Guidelines also state that "[A]sset deals may have to be notified if they result in a change of control."[28] No further guidance exists in Belgium.

What is then the threshold for an asset, such as IP rights, to result in a "change of control"? We can infer, first, from the CA that the acquisition of assets should result in a change of control of the (Belgian) target entity or undertaking. Second, the CA also states that it applies to foreign investments:

- first, "which may have an impact on the security or public order in Belgium as provided for by the [FDI-] Regulation, or for the strategic interests of the federated entities," and
- second, "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."[29]

The first indent confirms what is also stated in the ISC Guidelines, namely that the scope of application of the CA should be interpreted in light of its purpose. The second indent establishes a more precise definition of control. The notion of control is also defined in the CA as follows:

> "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."[30]

The definition of control in the CA under paragraph 1, a) refers back to the acquisition or use of assets. We therefore have to look beyond the CA itself to gain more meaningful insight into the question. Belgian corporate and labor law, EU competition law and the Dutch FDI-framework all give authoritative or useful guidance. The main question under all these regimes is whether the assets can exist independently as an undertaking or a business unit.

B. When Do Assets Constitute `n Undertaking? Looking Across Legal Regimes

Under Belgian corporate law, a business unit is a unit of assets and liabilities that can independently carry out an economic activity.[31] Although it could be argued that transferring IP rights without the personnel does not constitute a business, one must take into account the potential impact of mandatory labor law. Council Directive 2001/23/EC of 12 March 2001 ("TUPE Directive")[32] protects employees in the event of a transfer of an undertaking ("TUPE-transfer") and is transposed into Belgian law via Collective Bargaining Agreement 32bis ("CBA 32bis")[33]. The regime of TUPE-transfers applies when there is a transfer of a business or undertaking via an asset deal and where the economic entity retains its identity, meaning an organized grouping of resources which has the objective of pursuing an econom-

27 The FDI Regulation Proposal underscores this importance of IP and other intangible assets when it states in draft consideration 35a that Member States should assess the impact of a foreign investment on "the protection and availability of intellectual property or other intangible assets such as trade secrets, databases, algorithms, processes, since the leakage or inaccessibility of such technologies or assets could undermine security." Similarly, FDI Regulation Proposal, draft art. 19(1)(a) states that member states should consider a foreign investment's effects on the protection and availability of intellectual property or other intangible assets.

28 ISC Guidelines, *supra* note 13, answer to question 7.

29 Cooperation Agreement, *supra* note 2, art. 4, § 1.

30 Cooperation Agreement, *supra* note 2, Art. 2, 1°.

31 Wetboek van vennootschappen en verenigingen (Belgian Code of Companies and Associations), B.S., Apr. 4, 2019, art. 12:10 and 12:11 B [hereinafter BCCA].

32 Council Directive 2001/23/EC of 12 Mar. 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, 2001 O.J. (L 82) 16 [hereinafter TUPE Directive].

33 Collective Bargaining Agreement No. 32bis of 7 June 1985 concerning the safeguarding of employees' rights in the event of a change of employer resulting from the transfer of undertakings pursuant to an agreement and regulating the rights of employees taken over in the event of an acquisition of assets following bankruptcy, B.S., Aug. 9, 1985, at 11528 [hereinafter CBA 32bis].

ic activity.[34] *In that case, personnel that is mainly linked to that business must be transferred together with the business or undertaking. Therefore, if an IP right has dedicated personnel working on it, for example, for research and development, production or sales, then a single IP right can constitute an independent business, and it might arguably be in scope of the CA.*

EU competition law, and in particular Council Regulation (EC) No 139/2004 of 20 January 2004 ("Merger Regulation")[35] and Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 ("Merger Regulation Notice")[36] are particularly relevant to interpret the CA because the CA does not only explicitly refer to these instruments, but its language also mirrors the language or the Merger Regulation and the Merger Regulation Notice. Under EU competition law, the notion of undertaking is broad and applies as soon as there is turnover that can be allocated to the asset, for example a portfolio of insurances, but also "intangible assets such as brands, patents or copyrights," "if those assets constitute a business with a market turnover."[37] If this is not possible, it is considered as a single asset, such as a machine without employees or clients.

In the Netherlands, some more detailed guidance is available on the notion of an undertaking that is helpful to shed light on the meaning of the terms in the Belgian CA. The Dutch FDI-authorities regularly publish guidance to interpret the relevant legislation. Such guidance also exists for the notion of "assets".[38] For the Dutch FDI regime to apply, it is required that, prior to the acquisition, there exists a part of an existing undertaking that can be continued as a separate undertaking. The possibilities for separate continuation depend on the circumstances of the specific case, in particular the degree of interconnection and dependence between the part in question and the remainder of the business activities of the disposing party.

The following are indications that lead the authorities to qualify assets as a target undertaking under the Dutch FDI screening regime:

- The business unit to be acquired already reports independently.
- The business unit to be acquired has its own customers or supplies products or services independently of the rest of the undertaking.
- The business unit to be acquired has employees who are primarily engaged in that unit.
- The activities of the unit are carried out under a separate license, patent, or comparable right.
- The unit operates from separate premises or if its physical assets are segregated from the other business activities of the disposing party.
- If know-how is acquired that enables the acquirer to establish its own production in the field of sensitive technology or to further develop such production.
- If, as part of the acquired assets, a concession for a specific territory is transferred or granted that enables the acquirer to generate revenue.

As under EU competition law, the Dutch regime requires for an undertaking that it is able to generate revenue. Specifically in relation to IP rights, this would require that the IP rights are exploitable. Therefore, a transfer of IP rights would not be caught if it is not possible, on the basis of the transferred IP rights alone, to plausibly start or continue an economic activity aimed at generating revenue.

The analysis also makes clear that the notion of control of assets could be broader than control over the target company itself via an acquisition of voting rights. In that case, under normal conditions, control only exists if the investor acquires more than 50% of voting rights in the company. However, for asset deals, it suffices that they constitute an independently operable undertaking that is then transferred.

04
WHEN ARE DATA ACTIVITIES IN SCOPE?

A. Data Access Or Control: Catch-all for FDI Screening?

Another important interpretation question relates to the in-scope sector of "access to sensitive information, including personal data, or the ability to control such information".

34 TUPE Directive, *supra* note 32, art. 1(a) and (b) and CBA 32bis, *supra* note 33, art. 6, para. 2.

35 Council Regulation (EC) No 139/2004 of 20 Jan. 2004 on the control of concentrations between undertakings, 2004 O.J. (L 24) 1 [hereinafter Merger Control Regulation].

36 Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, 2008 O.J. (C 95) 1 [hereinafter Merger Regulation Notice].

37 *Ibid*. at recital 24.

38 Available in Dutch at https://www.bureautoetsinginvesteringen.nl/documenten/2023/12/13/handleidingen (last visited Feb. 25, 2026).

Personal information is defined in the CA, but personal data is not. The sector is also listed in the FDI Regulation as a relevant factor that screening authorities can consider when assessing the impacts on security and public order but does not define or explain it either.

This sector therefore potentially encompasses a very wide range of businesses, as practically every company processes, stores or controls personal data relating to employees, customers, suppliers and other business contacts, without however any particular level of sensitivity involved. This uncertainty also appears from the statistics on FDI screening in Belgium. During the two years of existence of the Belgian screening mechanism, personal data and sensitive information has been the most notified sector of activities, with 15% of filings in 2023-2024[39] and 21% of filings involving that sector in 2024-2025[40].

In light of this overly broad scope, it seems reasonable to infer that the activities of the target company must go beyond "standard" activities that any company conducts regarding personal data, to fall within this FDI category as a separate "sector". Otherwise, this sector would serve as a catch all under which the authorities can always claim that a filing obligation exists, regardless of the sensitivity of the actual business activities of the target. In our view, companies that process personal data of their employees, or of contact persons of their customers and suppliers as part of normal operational activities (without engaging in a personal data-driven business model) are therefore excluded.

However, what if the activities of the target company go beyond this, especially in B2C businesses? Would this, for instance, cover retailers who also have a customer loyalty program for which more extensive customer personal data is processed? Would it matter, for instance, if data access or control is central or merely peripheral to the company's business activities? Do we draw the line where personal data is used to generate revenue or to grow the company's business? Or should we apply an even higher threshold – drawing the parallel with the "sensitive" information category – and only look at targets processing special categories of personal data as defined in Article 9 or 10 GDPR (commonly referred to as "sensitive" personal data) as part of their business operations? [41]

One important limitation on the definition of the "sector" of personal data is in our view that the scope of the CA should be interpreted in light of its goal, namely, to safeguard national security, public order, and strategic interests. Therefore, a more relevant criterion than the relation of data access or control to the company's business activities is the actual risk posed to the rights and freedoms of natural persons, including because of the (large) scale of the personal data processing. If only a small number of customers' personal data are accessed or controlled, it is reasonable to say that this would not affect national security or public order, whereas a large database of sensitive personal data would.[42]

B. Anonymizing Personal Data

Technology investments may involve such large data sets, which are often also central to the target's business, especially if the technology involves the hosting of data for customers, profiling or training artificial intelligence on personal data sets. Here, it will be relevant if the data the target company has access to was anonymized before being processed. If so, there is no longer access to or control over 'personal' data and the sector is not in play. To this effect, the sector as drafted in the FDI Regulation Proposal now explicitly refers to the definition of personal data in the EU General Data Protection Regulation ("GDPR")[43]. The new sector is now as follows:

> [T]he protection of sensitive information, including personal data as defined in Article 4, point (1), of Regulation (EU) 2016/67931, in particular with regard to the ability of the foreign investor to access, control, and otherwise process such information.[44]

39 FPS Economy, SMEs, Self-employed and Energy, *Screening Buitenlandse Directe Investeringen. Jaarverslag 2023-2024*, Belgian Interfederal Screening Committee (Sept. 30, 2024), at 11, available in Dutch at https://economie.fgov.be/nl/publicaties/screening-buitenlandse-directe (last visited Feb. 25, 2026).

40 ISC, *Annual Report 2024-2025*, supra note 21, at 11.

41 I.e. Personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation, as well as personal data relating to criminal convictions or offences.

42 The FDI Regulation Proposal also hints at this, when it considers that screening authorities "should also consider the potential effects of foreign investments on sensitive information, including personal data, in particular where large-scale data sets are concerned, due to the risk of misuse or strategic exploitation of such data," FDI Regulation Proposal , supra note 6, draft recital 35a.

43 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 Apr. 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, 2016 O.J. (L 119) 1. [hereinafter GDPR].

44 FDI Regulation Proposal, supra note 6, draft art. 19(e).

> Note that the proposed text no longer mentions only access and control, but also the broader (catch-all) notion of "processing" personal data, which makes sense as this is the only notion clearly defined by GDPR.[45] The activity of "data processing and storage" is currently covered under the sector of (physical or virtual) critical infrastructure under both the EU FDI Regulation and the Belgian CA but has been removed under the FDI Regulation Proposal. The GDPR defines personal data as follows:
>
> 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.[46]

This explicit reference to personal data under the GDPR confirms that anonymizing data prior to their access, control or processing by the target company would exclude this sector from applying. In practice, most companies work with non-anonymized data sets and full anonymization is hard to achieve. Simple de-identification or pseudonymization is not sufficient in this respect. As the debate on anonymization of personal data is in full development at EU law (following recent case law from the CJEU and proposals for amendment of the GDPR notably on this topic), it remains however an important topic to watch.

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CONCLUSION: CLEARER GUIDANCE FOR TECHNOLOGY INVESTMENTS

Technology investments cover a wide array of activities, from physical infrastructures and products to software solutions and artificial intelligence, their applications spanning all possible markets. Moreover, technology investments almost per definition operate on the cutting edge of the technology frontier, making them especially relevant for the objectives of strategic autonomy and economic security. Because of the entanglement of technology in almost every business, such investments also have unique disruptive potential for security and public order, if held by a malicious actor.

Technology investments are therefore very relevant for the application of FDI screening. In this article, we looked at two aspects of FDI screening of technology investments that appear to be especially thorny in practice: when asset deals should be notified and when a business falls into the sector of control or access to personal data.

Due to the lack of good guidance on either the EU or Belgian level, we can only make reasonable interpretations of those terms. We have tried to do this mainly by looking at other areas of law which cover the same terminology. However, the better solution to solve the uncertainty over these concepts would be explicit guidance from the screening authorities that is rooted in past experience.

Technology investments cover a wide array of activities, from physical infrastructures and products to software solutions and artificial intelligence, their applications spanning all possible markets

45 GDPR, *supra* note 43, art. 4(2): 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

46 *Ibid.* art. 4(1).

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