

THE NETHERLANDS



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1.	Relevant legislation (foreign investment legislation in force)
<p>Wet veiligheidstoets investeringen, fusies en overnames (Dutch only) (Investments, Mergers and Acquisitions Security Screening Act), abbreviated in Dutch as the “<i>Wet Vifo</i>” or “<i>Vifo Act</i>”.</p>	
2.	Relevant authority (foreign investment regulator)
<p>Formally, the minister of Economic Affairs and Climate is the relevant authority. In fact, the Bureau Toetsing Investerings (the Bureau for Verification of Investment) abbreviated in Dutch as the “<i>BTI</i>” leads the relevant processes.</p>	
3.	Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)
<p>Sectors covered are:</p> <ul style="list-style-type: none"> • <u>vital providers</u> in the sectors of heat transport, nuclear energy, air transport and ground handling, port area, banking, financial market infrastructure, extractable energy, gas storage; • <u>providers of sensitive technology</u> including: dual-use products (the definition of which is aligned with Regulation 2021/821), military goods and technologies included in the EU Common Military List; and • <u>managers of corporate campuses</u>. 	
4.	Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)
<p>Transactions fall within the scope of the Vifo Act if the target company has an actual connection with the Netherlands. This concerns the factual connecting factors: is the company managed from the Netherlands and is production or research carried out in the Netherlands?</p> <p>In addition, it is important to note that all acquirers fall within the scope of the Vifo Act. It is irrelevant whether the acquirer is from the Netherlands, Europe or another country. Even if the acquirer is a Dutch company, the transaction could fall within the scope of the Vifo Act and the parties must report the transaction to the BTI.</p> <p>A transaction must be reported in case of so called acquisition activities relating to the abovementioned sectors. This includes investments, mergers, acquisitions and demergers that give a buyer control over a company.</p>	

<p>For target companies providing sensitive technology (as mentioned above), a transaction falls within the scope of the Vifo Act if the buyer/investor acquires significant influence. A buyer/investor may be deemed to have acquired significant influence if he has 10% of the voting rights in the general meeting of shareholders of the target company.</p>	
5.	Parties to be included in the foreign investment assessment (notifying parties and protected entities)
<p>Notifying parties:</p> <ul style="list-style-type: none"> • the acquirer of: <ul style="list-style-type: none"> ✓ control or ✓ significant influence in the target company, and • target company. 	
6.	Exceptions
<p>There are multiple exceptions to the Fivo Act control regime. These are applicable to situations wherein:</p> <ul style="list-style-type: none"> • it is only possible for the State of the Netherlands, provinces, municipalities or other public bodies, on the basis of a statutory provision, to be the acquirer of a certain acquisition activity, either directly or indirectly; • another law makes the acquisition activity subject to a specific national security test, regardless of the content of that specific test; • another law is applicable that provides for a specific test on national security grounds, but that test only does not apply to a target company because the acquisition activity does not meet a minimum scope of acquisition activity set out in the other law or is of a different nature from that prescribed by the other law for review. • the acquirer is a legal entity that is independent of a listed target company, if the purpose of such acquirer is to promote the interests of such target company, and a company affiliated with it, which acquires control or significant influence after the announcement of a public offer for the duration of up to two years to protect such target company; • the acquirer is the State of the Netherlands, a province or a municipality located in the Netherlands or another public body under Dutch law; or • the acquirer is a legal entity whose statutory objective is to promote the interests of the financial system involved in an orderly and controlled manner in the resolution of a vital banking provider, for which it has been determined by De Nederlandsche Bank or, depending on the division of competences under Article 7 of Regulation 806/2014, the resolution board referred to in Article 42 of that Regulation, that the conditions for resolution of that target company have been met. 	
7.	Notification / review type (e.g. mandatory, pre-closing, suspensory)
<p>Any intention to carry out an acquisition activity that falls within the scope of the Vifo Act must be notified by the intended Target or the acquirer to the BTI. In principle, an acquisition activity does not take place until:</p> <ul style="list-style-type: none"> • the BTI (on behalf of the Minister) has notified that no review decision is required; or • a positive review decision has been made. 	
8.	Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)

<p>Any third party that is a so called "<i>belanghebbende</i>" or "<i>interested party/stakeholder</i>" has the right to object to a decision by the BTI. In order to be an interested party, the party must have his own personal, objectively determinable, actual and sufficiently certain, as well as a directly 'affected' interest.</p> <p>Such a party has the same rights as the party that filed the initial notification of the acquisition activities, such as the right to be heard, the right to a motivated decision and the right to file supporting evidence.</p>	
9.	Filing fee
None.	
10.	Submission deadline / stand-still obligation
<p>There is a standstill obligation. The concerned parties are not allowed to effectuate the acquisition activity until:</p> <ul style="list-style-type: none"> • the BTI (on behalf of the Minister) has notified that no review decision is required; or • a positive review decision has been made. <p>The BTI (on behalf of the Minister) can grant an exception to this standstill obligation. Exemption can only be granted if the public interest is at stake, with a risk of economic, physical or social harm to society or parts thereof or adverse effects on financial stability, if the exemption is not granted.</p>	
11.	Availability of pre-notification / informal consultation
It is possible to (anonymously) engage informally with the BTI.	
12.	Scope of information / documents required for filing
<ul style="list-style-type: none"> • Description of the acquisition activities • Information about the acquirer, the group companies of the acquirer, the representative of the acquirer and documents to prove his/her capacity • Information about the target company (including the EU-states wherein the company is active, the sectors in which the company is involved and the sensitive technology involved (if any)) • The nature of the acquisition activities • Answers to questions that are relevant to national safety • Financing and motives for the transaction • Copies of the most recent transaction documentation • Whether or not the acquisition is also notified to other anti-trust authorities in different member states • Whether or not the acquisition activities will likely have an effect on Projects of Common Interest 	
13.	Proceedings timetable (timing for review)
Action	Timing

Notification of envisaged acquisition activities by the acquirer and/or the target	Before the acquisition takes place, or in case of an acquisition as a result of inheritance, within 2 weeks after the stake has been inherited
Notification by the BTI (on behalf of the Minister) whether or not a review decision is necessary	Within 8 weeks after receiving the notification of the envisaged acquisition, or if suspended by the BTI (on behalf of the Minister), within a maximum of 6 months
If the BTI (on behalf of the Minister) has decided that a review decision is necessary, a request for this review decision has to be filed in order to proceed	N/A
Review decision by the BTI (on behalf of the Minister)	Within 8 weeks after receiving the request, or if suspended by the BTI (on behalf of the Minister), within a maximum of 6 months (taking into account and subtracting earlier extension of the review period for the notification)
<p>Please take into account that any time the BTI (on behalf of the Minister) requests for additional information, the term is suspended until said information has been provided.</p> <p>If, following a notification, it appears that there is a foreign direct investment that falls within the scope of Regulation (EU) 2019/452, the periods of 6 months mentioned above can be extended with another 3 months.</p>	
14.	Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)
<p>The BTI (on behalf of the Minister) can give full clearance to an acquisition activity if it decides that the activity does not constitute a risk to national safety. If it decides that it does in principle cause a risk to national safety, it can forbid giving effect to the acquisition activity.</p> <p>However, it can also attach conditions to the approval, including but not limited to:</p> <ul style="list-style-type: none"> • adhering to additional safety and usage requirements regarding the usage of sensitive information; • establishing a security commission or appointing a security official; • prohibiting the sale of certain products or the rendering of services to certain companies or countries; • establishing a supervisory board; and/or • mandatory certification of shares through a trust fund. <p>If the target company is active with sensitive technologies, additional conditions can be attached, such as:</p> <ul style="list-style-type: none"> • giving certain technology or (genetical) code to the state for safekeeping; • mandatory sharing of information with the BTI (on behalf of the Minister) before the termination of certain activities or the moving of certain activities to a third party country 	
15.	Publicity of the decision and confidentiality of the information provided

The decision is not made public.	
16.	Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)
<p>Interested parties may object against the decision to impose requirements or regulations on an acquisition activity or impose a ban. They have to object within 6 weeks after the decision is made. The BTI (on behalf of the Minister) will have to decide on the objection within 12 weeks after the initial decision was made. The decision on objection can be appealed through an administrative procedure with the court of Rotterdam if the appeal is filed within 6 weeks after the decision on objection. A decision from the court of Rotterdam can be appealed within 6 weeks at the "<i>College van Beroep voor het bedrijfsleven</i>" or the "<i>Trade and Industry Appeals Tribunal</i>".</p>	
17.	Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)
<p>The consequences for failure to notify can be:</p> <p><u>Administrative sanctions</u></p> <ul style="list-style-type: none"> • A fine of up to a maximum of EUR 900,000 or a fine not exceeding 10% of the company's annual turnover (for functionally offending natural persons or legal persons), • the BTI (on behalf of the Minister) can order the acquirer or the target company to do what is necessary to resolve the undesirable consequences of the acquisition activities. <p><u>Criminal (breach of the Vifo Act is an economic crime)</u></p> <p><i>For intentional breaches:</i></p> <ul style="list-style-type: none"> • fines of up to EUR 90,000, • imprisonment for a maximum of six years. <p><i>For unintentional breaches:</i></p> <ul style="list-style-type: none"> • fines of up to EUR 22,500, • imprisonment for a maximum of one year. <p><u>Civil law consequences</u> are (depending on the manner of acquisition) the effect that the acquisition is:</p> <ul style="list-style-type: none"> • deemed to be null and void, or • voidable by a judge. 	
18.	Other national security review distinct from FDI rules
<ul style="list-style-type: none"> • Elektriciteitswet 1998 (Electricity Act 1998) and Gaswet (Gas Act) <p>Based on the Electricity Act 1998, any change must be notified in relation to control in a generating plant with a nominal electrical capacity exceeding 250 MW or a company operating a generating plant with a nominal electrical capacity exceeding 250 MW. The change must be notified with the Minister.</p> <p>Under the Gas Act, any change relating to control in an LNG facility or an LNG company must be reported to the Minister by one of the parties involved in the change.</p>	

The Minister may impose further requirements on the proposed change of control relating to the qualifying generating plant or LNG facility. The Minister may also decide to prohibit the change. The Minister will do so if he or she considers that risks to public safety, security of supply or security of delivery arise because of the change of control.

- [Telecommunicatiewet](#) (Telecommunications Act) i.e. the Wet ongewenste zeggenschap telecommunicatie (Unwanted control of telecommunications act) which has been inserted into the Telecommunicatiewet

Based on the Telecommunications Act, the minister has the power to prohibit the acquisition and holding of 'predominant control' in a telecommunications party if, in the minister's opinion, such control leads to a threat to the public interest. In order to keep track of qualifying takeovers in the telecommunications sector, the Telecommunications Act provides for a notification requirement. The notification obligation under the Telecommunications Act applies if (i) predominant control is acquired in (ii) a 'telecommunications party' and (iii) this leads to 'relevant influence' in the telecommunications sector.

Predominant control exists when effective control over the telecommunications party is conferred. This occurs, inter alia, when a party (i) alone or in concert, directly or indirectly, holds at least 30% of the votes in the general meeting, (ii) can appoint or dismiss more than half of the directors or supervisory board members, or (iii) is a priority shareholder.

A telecommunications party is a branch office, a Dutch legal person, a sole proprietorship or a partnership, being a provider or holder of a controlling interest in a provider of (i) an electronic communications network or electronic communications service, (ii) a hosting service, internet node, trust service or data centre (excluding data centres mainly for own use), or (iii) a category of networks or services designated as such by the Dutch government.

The question of whether predominant control results in relevant influence in the telecommunications sector determines what the consequences would be if this control would be used to cause harm. For this purpose, it is not important whether the acquirer or holder of control actually has the intention to cause harm.

19.	Significant legislative/regulatory developments in the past year and possible proposals for reform
The Vifo Act has only entered into force on 1 June 2023.	
20.	Helpful links
<ul style="list-style-type: none"> • https://business.gov.nl/amendment/checking-investments-national-security-risk/ • https://www.bureautoetsinginvesteringen.nl/ • Critical Infrastructure (protection) 	