

FDI Screening in the Netherlands

As a matter of national security, more and more countries implement a system of foreign direct investment (FDI) screening. The Netherlands recently introduced two FDI-screening mechanisms that apply to both domestic and foreign investors.

1. General

General FDI screening mechanism

- Not yet into force
- Partially retroactive as of 8 September 2020
- Still subject to parliamentary debate

2. Telecom

Act Undue Influence Telecommunications

- Entered into force as of 1 October 2020



FDI Screening

- The investment gives **control** over (a part of) **vital providers** or companies active in **sensitive technology**.
- As a result of the investment, **significant influence** is acquired or increased in companies that are active in **sensitive technology**.

As a result of the investment:

- a **controlling interest** is acquired in
- a **telecommunications party**, and
- this leads to **relevant influence** in the telecom sector.

Notification to the Minister of Economic Affairs and Climate is required if

- **Vital providers:** companies whose continuity is vital to society.
- **Sensitive technology:** technology with military as well as "dual-use" use (civil/military use).
- **Control:** decisive influence over a company.
- **Significant influence:** lower threshold than control; can be established for specific categories of companies.

- **Controlling interest:** actual control over the telecommunications party, e.g., possession of at least 30% of the shares, the power to appoint or dismiss more than 50% of management, or considered priority shareholder.
- **Telecommunications party:** traditional telecom companies, but also for example datacenter providers.
- **Relevant influence:** determined by how society would be endangered if a malignant party had control.

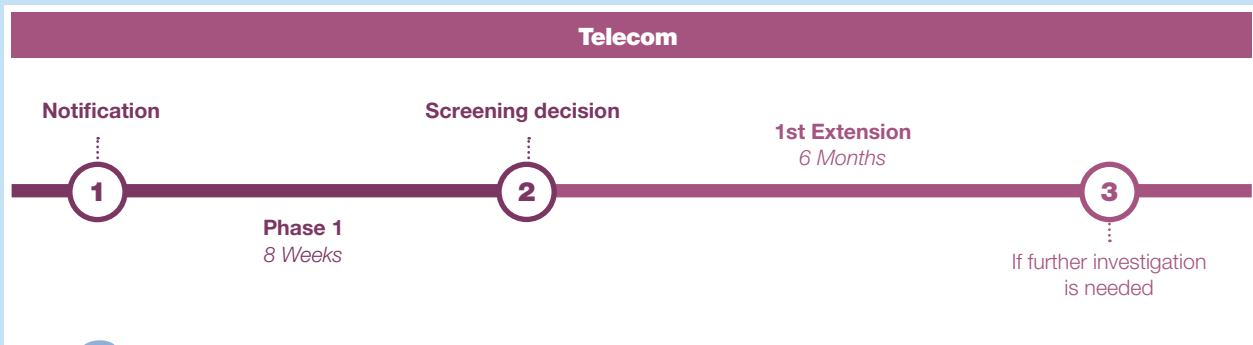
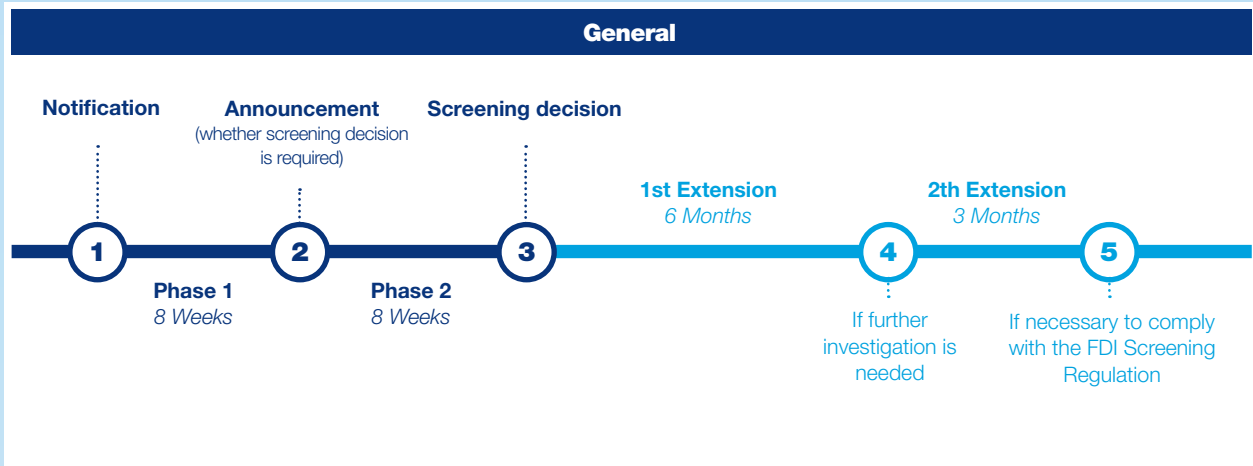




On what screening criteria does the Minister assess a notification?

1. The ownership structure of the investor
2. The (direct and indirect) geopolitical situation in the country of origin
3. Pending sanctions against the investor
4. The investor's track record

Timeline



Stop the clock! If the Minister requests additional information during the procedure, “the clock” is stopped until the Minister has received that information.

Legal consequences

General

- Investments made despite a prohibition by the Minister are, in principle, void.
- (Unnotified) investments may have to be reversed upon a decision of the Minister.
- The Minister may also impose an administrative fine of up to 10% of the turnover of the companies concerned.

Telecom

- Investments made despite a prohibition issued by the Minister are, in principle, void.
- (Unnotified) investments may have to be reversed upon a decision of the Minister.
- A maximum administrative fine of € 900,000 may be imposed for failure to report, or late reporting of, investments that do fall within the scope of the notification obligation.



For more information, please do not hesitate to contact us.

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