FOREIGN DIRECT INVESTMENT

Law Over Borders Comparative Guide 2026

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NETHERLANDS

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Introduction

International trade, free capital flows and foreign direct investments (FDI) have historically been key pillars of the Dutch economy. The Netherlands is positioned as an open and attractive jurisdiction for inbound investment, supported by its strategic geographic location, highly developed infrastructure, stable legal system and strong international orientation.

While this openness remains a defining feature, the Dutch approach to foreign investment has evolved in response to a rapidly changing geopolitical and national security landscape. Globalisation, digitalisation and the growing strategic importance of advanced technologies have increasingly linked investment activity to issues of national security. These developments, reinforced by the COVID-19 pandemic and heightened geopolitical tensions, have prompted greater attention to the potential risks associated with certain foreign investments.

Against this background, the Netherlands has adopted a more structured and risk-based approach to FDI, aimed at safeguarding national security while preserving an attractive investment climate. These developments resulted in the introduction of the Investments, Mergers and Acquisitions Security Screening Act (*Wet veiligheidstoets investeringen, fusies en overnames*; "Vifo Act"), which entered into force in June 2023. The Vifo Act established a general screening mechanism, operating alongside existing sector-specific foreign investment screening regimes (including telecommunications and energy). Where a sector-specific national-security screening regime applies, it takes precedence over the Vifo Act. Importantly, the Vifo Act applies not only to transactions taking place after its entry into force but also has retroactive effect for certain transactions completed between 8 September 2020 and 1 June 2023.

Enforcement practice under the Dutch FDI regime demonstrates a risk-based and proportionate approach. While notification volumes and substantive reviews have increased, most transactions continue to be cleared without conditions and within relatively efficient timeframes, with prohibitions and formal remedies remaining exceptional. Overall, the Netherlands remains firmly open to foreign investment but does so with greater strategic awareness and a more explicit integration of geopolitical and security considerations into investment review.

1. What is the legal framework in force that regulates foreign investment?

The Dutch foreign investment control regime consists of a general investment screening framework alongside several sector-specific screening regimes. At the centre of the current system is the Vifo Act, which entered into force on 1 June 2023. This general regime operates in parallel with pre-existing sector-specific legislation. Where a sector-specific national-security screening regime applies, that regime takes full precedence and the Vifo Act does not apply, irrespective of any overlap in scope or thresholds. Importantly, the scope of these regimes is not determined by the nationality of the investor, but by the nature of the activities carried out by the target undertaking.

The Dutch foreign investment screening framework applies only to specifically designated categories and sectors. The general regime under the Vifo Act covers

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certain investments in vital providers, managers of business campuses, and companies active in sensitive and/or highly sensitive technology. In addition, sector-specific regimes apply to the telecommunications sector (providers of electronic communications networks and services, data centres, hosting services, internet hubs and trust services) and, to the energy sector, covering liquefied natural gas (LNG) infrastructure and operators and electricity production installations or operators exceeding an aggregate capacity of 100 MW. Transactions outside these defined sectors fall outside the scope of Dutch FDI screening.

The Vifo Act is designed to protect three core interests relating to national security, as understood under Article 4(2) of the Treaty on European Union, Articles 45(3), 52(1) and 65(1)(b) of the Treaty on the Functioning of the European Union (TFEU), and Article 346(1)(a) of the TFEU, aimed at safeguarding interests that are essential within the Netherlands for the preservation of the democratic legal order, security or other important state interests, and the maintenance of social stability, in so far as these relate to the interface between the economy and security. First, it aims to safeguard the continuity of vital processes that are essential for the functioning of Dutch society. Second, it seeks to ensure the protection and control of sensitive knowledge, information and technology, preventing unauthorised access or misuse. Third, the Vifo Act is intended to avoid the creation of undesirable strategic dependencies, particularly where such dependencies could undermine economic resilience or national autonomy.

The authority responsible for the review and coordination of foreign investment screenings is the Bureau for Investment Screening (*Bureau Toetsing Investeringen*; BTI), which operates under the responsibility of the Minister of Economic Affairs. The BTI acts as a central point for notifications, advises the Minister on risk mitigating measures and oversees enforcement, while certain sector-specific authorities remain competent in their respective fields.

In recent years, the BTI has adopted a more active and substantive approach to foreign investment screening. Practice shows an increase in the number of notifications and indepth reviews, together with a greater attention to geopolitical risks, ownership structures and strategic dependencies.

This trend has resulted in clearer guidance and more intensive scrutiny. Legislative and policy developments further indicate a continued expansion of the regime to additional sensitive technologies and defence-related sectors.

2. When does the regime apply?

General regime (Vifo Act)

The applicability of the Dutch foreign investment screening regime is assessed on a case-by-case basis. Whether a filing is required depends on: the type of transaction and level of influence acquired; whether the target is active in in-scope sectors; and whether there is a sufficient Dutch nexus, as summarised below.

The Vifo Act applies to transactions that result in a change of control over: vital providers; administrators of business campuses; or companies active in the field of sensitive technology. In addition, the regime also covers the acquisition of a part of the assets of a target company where those assets are essential for the target to function as a vital provider, business campus manager or company

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active in sensitive technology. The Vifo Act further applies to the acquisition or increase of significant influence in companies active in highly sensitive technology.

Level of influence

The concept of control is aligned with Dutch competition law and refers to the ability, on the basis of factual or legal circumstances, to exercise decisive influence over the activities of an undertaking.

With regard to significant influence, the Vifo Act allows notification thresholds to be set by secondary legislation. For companies active in highly sensitive technology, significant influence is currently deemed to be acquired or increased at 10%, 20% and 25% of the voting rights, each triggering a separate notification obligation. These notification thresholds may be amended or supplemented by secondary legislation for specific categories of highly sensitive technology. This graduated approach reflects the legislator's view that incremental shareholdings can be used strategically to gain influence over a company's direction and therefore warrant renewed national-security assessment at each threshold. Significant influence may also exist where an investor obtains contractual rights relating to the appointment or removal of board members.

Sectors

Vital providers are companies that operate, manage or provide a service, the continuity of which is of vital importance to Dutch society. The category of vital providers is defined exhaustively by law and consists of clearly delineated categories, which in many cases are linked to specific statutory designations, licences or regulatory qualifications. The categories include certain providers of transport of heat, operators of nuclear facilities, gas storage providers, air transport services, port operations, significant institutions such as systemically important banks, infrastructure for the financial markets and extractable energy.

A company active in the field of sensitive technology is a company whose activities involve technologies that are considered critical from a national security perspective. This includes, in any event, companies active in dual-use goods subject to EU export control rules, companies active in military goods as listed on the EU Common Military List, and companies active in specifically designated sensitive technologies such as quantum technology, photonics, semiconductor technology and high-assurance technology.

With effect from 1 January 2027, five additional technology areas will be designated: biotechnology (in part, including stem cell technology and seed breeding), artificial intelligence, advanced materials and nanotechnology, sensor and navigation technology, and nuclear technology for medical applications.

The BTI has published informal guidance on what "being active in" sensitive technology entails. In practice, this focuses on whether a company conducts research, development, production or substantive processing of the relevant technology with a view to commercial exploitation. Mere use, distribution, resale or installation of products containing sensitive technology, without access to or use of the underlying technical know-how, will generally not qualify as being "active in" within the meaning of the Dutch FDI regime. In order to fall within

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the scope of the Vifo Act, the relevant production, research, processing and/or development activities must take place in the Netherlands.

Managers (or administrators) of business campuses are undertakings that manage and operate a campus where multiple public and private parties collaborate on the development, research or application of technologies that are of vital economic and strategic importance to the Netherlands, and where the campus manager exercises a degree of influence over the security and functioning of that campus.

Nexus

The Vifo Act applies to undertakings established in the Netherlands. For the purpose of establishing a Dutch nexus, the Vifo Act focuses on the economic reality rather than the formal legal structure. By referring to a "target undertaking", the assessment centres on whether the business is factually carried out in the Netherlands, regardless of its legal form or statutory seat. A target qualifies as being established in the Netherlands where its substantive activities and effective management are located in the Netherlands, as these elements are decisive for determining the place of establishment.

The Vifo Act may also apply to indirect acquisitions involving foreign-established entities where control is obtained over an undertaking that carries out relevant activities in the Netherlands, or where significant influence is obtained over such an undertaking that is active in the field of (highly) sensitive technology.

Telecommunications

Under the Telecommunications Sector (Undesirable Influence) Act (WOZT), acquisitions that result in the acquisition or maintenance of: (i) a controlling interest in a (ii) Dutch telecommunications undertaking must be notified where such control may lead to (iii) relevant influence in the telecommunications sector.

Level of influence

Controlling interest exists, for example, where an acquirer holds at least 30% of the voting rights, can appoint a majority of board or supervisory board members, or exercises decisive influence through priority or comparable rights.

Sectors

The telecommunication regime applies to Dutch telecommunications undertakings, defined as entities established in the Netherlands that provide, or hold controlling interest in a provider of: electronic communications networks or services (including internet access and telephony), hosting services, internet hubs, trust services, or data centres (excluding data centres used primarily for own internal use). The regime also covers services or infrastructure used by security-critical public authorities, such as defence, intelligence, law enforcement or emergency services.

Relevant influence

Relevant influence is assessed objectively, focusing on whether the acquired control could enable disruption of the confidentiality, availability or reliability

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of telecommunications services, including services used by a large number of end users or by security-critical public authorities such as defence, intelligence or emergency services. The Telecommunications Sector (Undesirable Influence) Decree (*Besluit ongewenste zeggenschap telecommunicatie*) specifies when a telecommunications undertaking is deemed to have relevant influence within the telecommunications sector, including by reference to quantitative thresholds relating to end users and the provision of services to security-critical public authorities.

Nexus
A sufficient Dutch nexus exists where the target telecommunications undertaking is established in the Netherlands. The regime may also apply indirectly where a foreign parent company of a Dutch telecommunications undertaking is acquired, if that transaction results in a change of control over the Dutch entity. Sales into the Netherlands without an established Dutch telecommunications undertaking are insufficient to trigger a filing under the WOZT.

Energy

As from 1 January 2026, the Energy Act has replaced the Gas Act and the Electricity Act 1998 and introduced a modernised foreign investment screening framework for the energy sector. The regime is transaction based and sector specific and is intended to support the energy transition while safeguarding the security, reliability and affordability of energy supply.

Level of influence
The Energy Act applies to transactions resulting in a change of control over in scope energy infrastructure or operators. The concept of control is aligned with Dutch competition law and refers to the ability, on the basis of factual or legal circumstances, to exercise decisive influence over the activities of an undertaking.

Sectors
The regime covers LNG infrastructure and operators, including LNG installations, LNG operators and companies managing LNG systems. It also applies to electricity production installations with an aggregate nominal capacity exceeding 100 MW, as well as companies that operate one or more production plants whose combined capacity exceeds that threshold. Unlike the former Electricity Act 1998, the Energy Act explicitly takes into account the aggregation of capacity, meaning that multiple smaller installations or entities must be assessed jointly where control is acquired by the same party.

Nexus
A sufficient Dutch nexus exists where the relevant energy installations or operations are located in the Netherlands. The notification obligation applies irrespective of whether control is acquired through a direct or indirect transaction, provided that decisive influence over the Dutch energy assets or operators is obtained.

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3. What is considered a foreign investor?

The Dutch foreign investment screening regime does not provide a separate or autonomous definition of a "foreign investor". The applicability of the regime does not depend on the nationality, place of incorporation or residence of the investor, but on the activities of the target undertaking and the nature of the transaction. Domestic and foreign investors are therefore treated equally and may be subject to notification obligations if the statutory criteria are met.

4. What is the notification process?

Notification is mandatory where a transaction falls within the scope of the applicable foreign investment screening regime (the Vifo Act or other relevant sector-specific regimes). Notification must be made prior to the implementation of the transaction.

In practice, notifications are commonly filed between signing and completion, although filings prior to signing are permissible where the transaction is sufficiently concrete. Under the Vifo Act, the investor and the target are responsible for making the notification.

Under the Vifo Act, a standstill obligation applies and the transaction may not be implemented before clearance. The Minister may grant an exemption from this standstill obligation where a compelling general interest so requires, and the absence of an exemption would risk serious economic, physical or societal harm. Any exemption may be made subject to conditions or restrictions.

A notification must include information on the transaction structure and timing, the identity, ownership and control structure of the acquirer (including ultimate beneficial owners), and detailed information on the target company's activities in the Netherlands. In addition, the filing requires information relevant to national security, such as the investor's background, governance, financing, sanctions exposure and, where applicable, the nature and use of vital processes or sensitive technologies. Supporting transaction documents and organisational charts must be provided.

There is no filing fee or administrative charge for submitting the notification to the BTI, nor for the substantive assessment or the issuance of a clearance or permit under the Vifo Act.

The notification and review process before the BTI is confidential. The information provided is used exclusively for the handling of the notification and is protected under applicable Dutch administrative law and confidentiality rules. The information will not be shared with external parties, as notifications are directly submitted to the BTI, and the notifications, assessments and decisions are not published.

5. How are notifications reviewed?

The review is conducted by the BTI, under responsibility of the Minister of Economic Affairs.

All notifications are reviewed against a risk-based national security, the precise focus of which depends on the applicable regime.

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Under the Vifo Act, the Minister assesses whether an investment poses risks to national security, understood in line with EU law and covering the continuity of vital processes, the protection of critical or strategic knowledge and information, and the prevention of undesirable strategic dependencies. The assessment takes into account factors such as the transparency of the ownership structure, the geopolitical context and situation in the country of origin of the investor, any applicable sanctions, and the investor's track record in operating vital processes or safeguarding sensitive technology. Where risks are identified, the Minister will first seek to impose mitigating measures; prohibition is a measure of last resort.

Under the WOZT, the review focuses on whether the acquisition of control could lead to a threat to the public interest, in particular the confidentiality, availability and reliability of telecommunications services. The assessment considers ownership transparency, geopolitical exposure, sanctions, and the investor's conduct and track record, irrespective of the investor's intent.

Under the Energy Act, transactions are assessed on the basis of risks to public order and security of energy supply. Relevant factors include the financial reliability, governance and control structure of the acquirer, operational expertise, and the ability to ensure the continuity and safety of energy infrastructure. Any restrictive measures must be proportionate, EU-law compliant, and justified, with the burden of proof resting on the Minister.

The review process under the Vifo Act consists of two phases. Phase I is the initial assessment to determine whether the transaction raises potential risks. Phase II consists of the in-depth investigation if risks cannot be excluded in Phase I. The review periods of these phases can be suspended if additional information is requested or if the EU FDI cooperation is triggered. The review under the WOZT and Energy Act do not distinguish between two phases.

Following its review under the Vifo Act, the BTI may issue one of three types of decisions. First, it may clear the transaction unconditionally where no national-security or public-interest concerns are identified. Second, it may approve the transaction subject to conditions or commitments designed to mitigate identified risks (such as governance safeguards, restrictions on information access, continuity obligations or security measures). Third, where risks cannot be sufficiently mitigated, the authority may prohibit the transaction. Following its review under the WOZT, the Minister may confirm that no intervention is required, impose mitigating measures, or prohibit the acquisition or continued holding of controlling interest where public-interest risks cannot be adequately addressed. Following its review under the Energy Act, the Minister may either confirm in writing that no formal decision is required, impose remedial measures, or prohibit the change of control if risks to public safety or security of supply are identified. In the Netherlands, prohibitions are rare and are treated as a measure of last resort.

In 2025, Dutch foreign investment screening practice was characterised by a pragmatic and efficient approach. While the number of notifications remained relatively high, with approximately 90 filings submitted, the authorities handled cases without unnecessary procedural escalation and focused on substantive risk assessment only where warranted, in particular in transactions involving sensitive technologies, potential strategic dependencies or geopolitical considerations. No

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transactions were prohibited and no formal remedies were imposed; instead, two cases were cleared subject to targeted commitments, reflecting a proportionate and workable use of mitigation tools. No cases were referred to Phase II, around half of all notifications were cleared within 25 days, and administrative burdens under both the Vifo Act and the Telecommunications Act were considered manageable. At the same time, the BTI gained further practical experience with gun-jumping issues, confirming its focus on effective enforcement without undermining transactional efficiency.

On 26 May 2026, the Dutch government prohibited Kyndryl's proposed acquisition of Solvinity under the WOZT.

6. What are the timescales for notification?

When a transaction falls within the scope of the Vifo Act, the deadline for notification is before the transaction is implemented. This aligns with the standstill obligation, meaning that the transaction may not be completed prior to clearance. For sector-specific regimes different rules apply: the deadline under the WOZT for telecommunications notification is at least eight weeks before the intended implementation date, and the deadline for energy is no later than four months before the expected change of control.

Following notification under the Vifo Act, the Minister must within eight weeks decide whether a formal screening decision is required. This period may be extended by up to six months. If a screening decision is required, the Minister must take that decision within a further eight weeks, again subject to extension up to six months (taking into account any earlier extension). The review timetable may be suspended ("stop the clock") while additional information is requested and may be extended by up to three additional months to accommodate the EU FDI cooperation procedure. For sector-specific regimes different review periods apply.

Under the Energy Act, notification must be filed at least four months before closing. The review period may be extended by up to three months for EU FDI coordination and is suspended ("stop the clock") while additional information is requested. In practice, non-sensitive transactions typically receive clarity within around two months.

Under the WOZT, notification must be filed at least eight weeks before closing (or, for listed companies, no later than the announcement of a public bid). The Minister decides within eight weeks, extendable by up to six months, with the clock paused for information requests

7. What are the effects of and penalties for failure to file?

Under the Vifo Act, failure to file a notifiable transaction or implementing a transaction in breach of a standstill obligation constitutes a violation of the foreign investment screening regime. When no notification has been made of a notifiable transaction, the BTI may review the transaction *ex officio*. If the transaction has already been completed, the BTI may require the transaction to be partially or fully unwound if it is prohibited or approved subject to conditions that are not

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met. Only acquisitions completed in breach of a formal prohibition decision are void. In addition, pending clearance or compliance with imposed measures, the exercise of voting and control rights may be suspended, with the exception of purely financial rights. Violations may also be subject to criminal enforcement under the Economic Offences Act, including measures such as the suspension of business activities.

Under the WOZT, legal nullity is also limited to situations where a controlling interest is acquired in violation of a prohibition. An exception applies to acquisitions effected through a stock exchange, in which case the law provides for reversal rather than nullity. In addition, failure to notify does not shield an investment from intervention, as non-notified transactions may still be reviewed by the BTI and, where appropriate, prohibited.

Under the Vifo Act, failure to notify, premature implementation or providing incorrect or misleading information may result in administrative fines of up to EUR 1,100,000 or 10% of worldwide turnover. Fines within the energy sector have the same maximum amount, with the possibility of annulment by the court. For telecommunications, fines may rise up to EUR 900,000.

Failure to submit a notification in a timely manner under the Energy Act may give rise to administrative fines of up to EUR 1,030,000 or 10% of the undertaking's worldwide turnover. In addition, the BTI may order the annulment of the transaction.

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Marc Wiggers is a partner and attorney-at-law in the Competition Team of Loyens & Loeff's Corporate/M&A Expertise Group in Amsterdam. He advises on European and Dutch competition law, with particular expertise in merger control, cartel enforcement, abuse of dominance, state aid, and regulatory matters in the healthcare and technology sectors. Marc also has a strong focus on foreign direct investment (FDI) screening and foreign subsidies. He has extensive litigation experience, including cartel proceedings and follow-on damages actions, and regularly advises clients on complex regulatory frameworks affecting regulated industries. Marc is a member of the Competition Litigation Team, Corporate Investigations Team and Digital Economy Team. He acted as (head) lecturer at the Grotius Academy, teaches at universities, publishes widely in professional journals, and is the author of Digital Competition Law in Europe (Kluwer). He also serves on the board of the Dutch Association for Foreign Investment Screening.

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