

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 has several FDI-screening mechanisms that apply to both domestic and foreign investors.

Special regime

1. Energy

Gas Act and Electricity Act

- Entry into force as of 13 September 2012



- **Any change of control** in an **LNG company or facility** in the Netherlands (Gas Act).
- Any **change of control** in (i) a **generating plant** with an electrical capacity exceeding 250 MW or (ii) an **undertaking operating a generating plant** with an electrical capacity exceeding 250 MW (Electricity Act).

- **Control:** decisive influence over a company
- **LNG company or facility:** a plant used for liquefying gas, or for importing, offloading, or the regasification of liquefied gas.
- **Generating plant:** an installation consisting of one or more generating units for the generation of electricity.

2. Telecom

Act Undue Influence Telecommunications

- Entered into force as of 1 October 2020



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.

- **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.

General regime

3. General

General FDI screening mechanism

- Investments, Mergers and Acquisitions Security Screening Act
- Entry into force as of 1 June 2023
- Partially retroactive as of 8 September 2020

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

- **Vital providers*:** companies whose continuity is vital to society.
- **Operator of a business campus:** a high-tech campus where public-private cooperation takes place to work on technologies that are of vital economic and strategic importance.
- **Sensitive technology*:** technology with military as well as “dual-use” use (civil/military use).
- **Control:** decisive influence over a company.
- **Significant influence:** > 10% or > 20% or > 25% of the voting rights or the ability to appoint or dismiss directors.
- **Highly sensitive technology:** technologies that may lead to a higher risk for national security.

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



* See Annex 1 for more detail on the material scope.

Screening criteria

Energy

1. Financial integrity
2. Company's management
3. Degree of transparency
4. Track record
5. Technical expertise

Telecom and General

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

Legal consequences

Energy

- The change of control may be annulled by a court decision.
- Claim for annulment may be submitted by the Minister or any other third party.

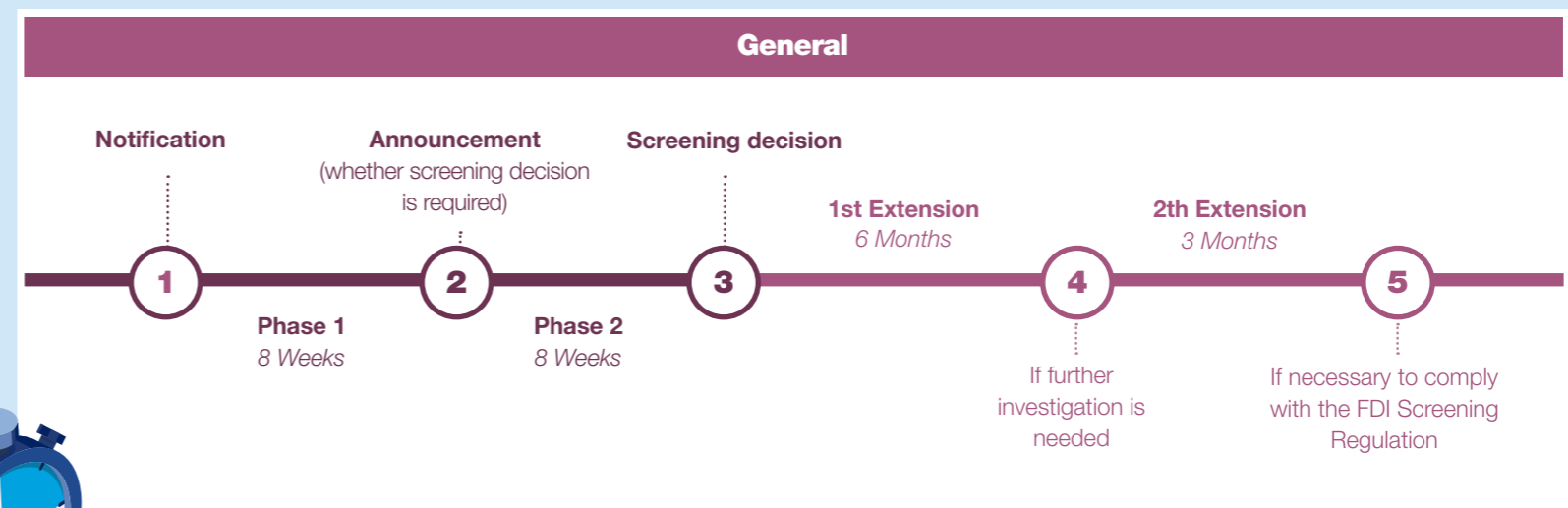
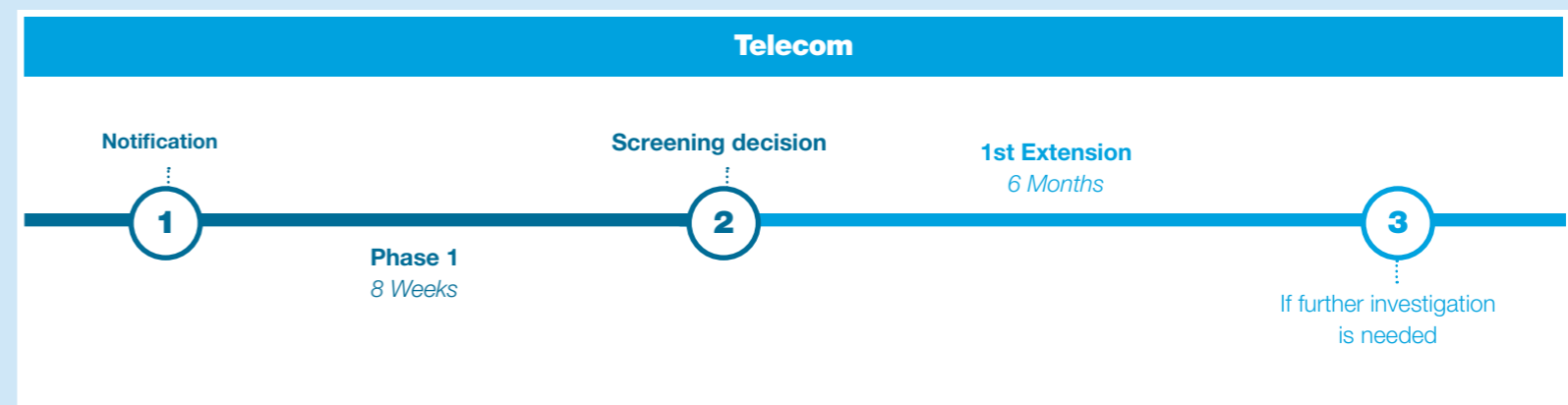
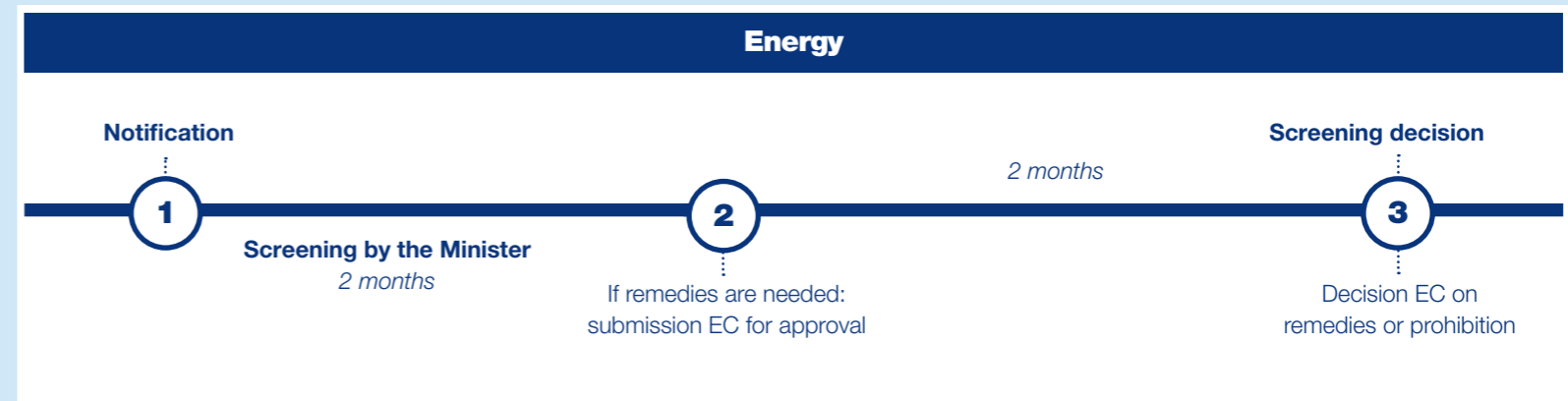
Telecom

- 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.

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.

Timeline



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

For more information, please do not hesitate to contact us

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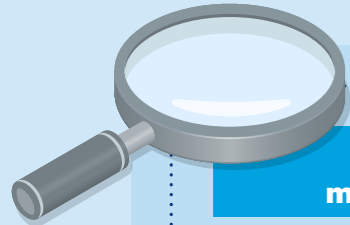
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Annex 1




High-level overview of the material scope of the telecom regime

Telecommunications party

-  Internet access services
-  Telephone services
-  Internet access
-  Electronic communication network
-  Internet hub
-  Datacenter services
-  Hosting services
-  Qualified trust services

High-level overview of the material scope of the general regime

Vital providers

-  Nuclear energy
-  Air transport
-  Vital providers in the port area
-  Banking
-  Infrastructure for the financial market
-  Gas storage
-  Manager of a corporate campus
-  Extractable energy

Companies active in sensitive technology

-  Dual-use items
-  Military goods
-  Quantum technology
-  Photonics Technology
-  High Assurance
-  Semiconductor technology