

**FDI Guide
Netherlands**

Contacts

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Foreword: A specific chapter is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former.

	Topic	Explanation/Description of what is expected	Netherlands
1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p>Regime by exception</p> <ul style="list-style-type: none"> • The FDI regime in the Netherlands is based on an exception to the principle of free movement of capital between Member States, as laid out in the Maastricht Treaty. • In accordance with Article 65 of the Treaty on the Functioning of the EU (TFEU), exceptions nevertheless exist, including, inter alia, measures grounded on public policy or public security. • Based on this exception principle, the Netherlands has implemented a screening procedure regarding investments in Dutch target companies in a number of sectors.
2.	Legal regime Authority(ies) in charge	Describe source(s). Name of authority in charge of applying the FDI rules (Minister/Agency/...).	<p>Currently the Dutch foreign investment screening rules are laid down in:</p> <ul style="list-style-type: none"> • Article 86f of the Electricity Act (<i>Elektriciteitswet</i>); • Article 66e of the Gas Act (<i>Gaswet</i>); and • chapter 14a of the Telecom Act (<i>Telecommunicatiewet</i>).

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			<p>A broader screening regime on grounds of national security has been adopted and is expected to enter into force at the beginning of 2023. These rules are set out in the National Security Screening Regime (<i>Wet veiligheidstoets investeringen, fusies en overnames</i>). Separate draft decrees have been published for consultation. One specifies what constitutes sensitive technology and another includes some technical information (eg, on the information to be submitted in a filing).</p> <p>FDI filings must be submitted to the Minister of Economic Affairs and Climate Policy (the ‘Minister’) by mail or electronic means. In practice, the notifications are processed by the Investment Screening Desk of the Ministry of Economic Affairs (<i>Bureau Toetsing Investerings</i>).</p>
3.	<p>Transactions that may be subject to FDI</p> <ul style="list-style-type: none"> • Type • Materiality thresholds • Rights of evocation 	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p>Electricity Act</p> <p>The nature of the transactions that may be subject to FDI rules is as follows: any change of control in the competition law sense at a production plant with a nominal electrical capacity of more than 250 megawatts located in the Netherlands or a company managing/operating a production plant with a nominal electrical capacity of more than 250 megawatts located in the Netherlands. The definition of control is laid out in Article 26 of the Dutch Competition Act. ‘Control’ means the possibility of exercising decisive influence on the activities of an enterprise on the basis of factual or legal circumstances. For example, holding a majority of the voting rights at a company’s shareholders meeting or holding certain veto rights.</p> <p>Gas Act</p> <p>The nature of the transactions that may be subject to FDI rules is as follows: any change of control in the competition law sense in a liquefied natural gas (LNG) facility or LNG company. The definition of control is laid out in Article 26 of the Dutch Competition Act, see above under the Electricity Act.</p> <p>Telecom Act</p> <p>The nature of the transactions that may be subject to FDI rules is as follows: the acquisition of (1) predominant control in a telecom party shall be notified to the Minister if this interest leads to (2) relevant influence in the telecom sector.</p> <ol style="list-style-type: none"> 1. Predominant control is acquired when the buyer:

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			<ul style="list-style-type: none"> • directly or indirectly holds at least 30 per cent of the voting rights at the company’s general meeting; • obtains the right to appoint or dismiss more than half the company’s managing or supervisory directors; • holds one or more shares with special statutory rights related to control of the company being acquired, regardless of how much power those rights give to the holder; • becomes a fully liable partner in a partnership; or • disposes of a branch office. <p>2. Relevant influence exists if, following the transaction, the investor offers:</p> <ul style="list-style-type: none"> (i) telephone services, internet access services or electronic communications network access to more than 100,000 end users; (ii) an internet node with over 300 autonomous systems connected to it; (iii) data centre services with a power capacity exceeding 50 megawatts; (iv) hosting services for more than 400,000 domain names with a .nl-extension; (v) a qualified trust service; (vi) one of the services mentioned under (i)–(iv) to national military or national security; or (vii) a combination of services referred to under (i)–(iv) together exceeds a certain threshold value. <p>Future National Security Screening</p> <p>The text below reflects information included in a separate decree that has been published for consultation and specifies what is considered to be sensitive technology; however, this decree may still be subject to change:</p> <ul style="list-style-type: none"> • any type of ‘investment activities’, such as takeovers, mergers, joint ventures, demergers and acquisition of assets by which effective control is acquired (eg, by means of a minority stake or preferred stock);

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			<ul style="list-style-type: none"> • a filing must be made if there is ‘investment activity’ in a company that operates in the Netherlands if: <ul style="list-style-type: none"> – the transaction leads (directly or indirectly) to an acquisition of control over a vital provider or companies active in sensitive technology; or – the transaction leads (directly or indirectly) to an <i>acquisition of control</i> – and/or the acquisition or increase in <i>significant influence</i> over companies active in <i>very</i> sensitive technology – over the target; • control is defined as the possibility, based on factual or legal circumstances, of exercising decisive influence over the activities of a target company; • significant influence is obtained with the acquisition of minority shareholdings of ten per cent, 20 per cent and 25 per cent; the right to appoint one or more board members; or an agreement between shareholders that a shareholder can exercise significant influence. A notification obligation always exists upon reaching successively higher or different thresholds (than ten per cent) to prevent stake building. The target is a (company having control over): (i) vital provider; or the target is a (company having control or significant influence over) (ii) company that is active in the field of sensitive technology (for further details about the scope of vital providers or (very) sensitive technologies refer to item 4). <p>Defence</p> <p>Currently, a law introducing a separate FDI regime for the defence sector is being drafted. It is expected to be published for consultation at the end of this year or early next year.</p>
		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are share transfers involving a group company internal restructuring covered?</p>	<ul style="list-style-type: none"> • The four FDI regimes apply equally to direct and indirect acquisitions of assets or shares. • Intra-group restructurings are not covered by any of the four FDI regimes.

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		Are greenfield investments covered?	<ul style="list-style-type: none"> Greenfield investments are not covered by any of the four FDI regimes.
		Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.	<p>Under the Gas and Electricity Acts, the Minister does not have any power of evocation/ex officio/call-in powers.</p> <p>Telecom Act</p> <p>The Minister may call in a transaction based on a threat to public interest due to changed facts or circumstances, including the situation in which a telecoms party, after some time, expands its activities as a result of which the ‘holder’ obtains relevant influence in the telecoms sector (ie, not due to the acquisition itself and without obtaining further control). In such a case, it would not prohibit acquiring but holding predominant control. Such a prohibition must be imposed within eight months after the Minister becomes aware of these changed facts or circumstances.</p> <p>Future National Security Screening</p> <p>The Minister may call in a transaction if it had not been notified, following changed facts or circumstances, or based the retroactive effect of the future regime. Under the retroactive effect of the regime, the Minister may, within eight months after the entry into force, call in all activities carried out between 9 September and the entry into force of the regime if there is a reasonable suspicion that they pose a threat to national security.</p> <p>A failure to request a screening decision after Phase I or II (if required) will lead to the Minister taking an ex officio screening decision within eight weeks after the activity has become known to him/her.</p>
4.	Sectors falling under the FDI scope	<p>Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.</p> <p>Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or</p>	<p>Currently, there are specific FDI regimes for the <i>electricity</i> sector, <i>gas</i> sector and <i>telecom</i> sector (which includes providers of electronic communications networks or services, or hosting services, internet nodes, trust services or data centres, with the exception of data centres used exclusively or primarily for their own purposes).</p> <p>The future National Security Screening contains rules on the following sectors:</p> <p>Suppliers of (very) sensitive technology</p> <p>Sensitive technologies are all technologies included in the EU export control lists (namely dual use goods and military goods). A separate decree specifies which dual-use products and military products are identified as (very) sensitive. A number of technologies (which are important for</p>

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		sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?	<p>an export test but not for national security) are excluded, and a number of additional technologies (namely technologies for quantum, photonics and semiconductors and high assurance products) are added:</p> <ul style="list-style-type: none"> • dual-use products; and • military products. <p>Vital providers</p> <p>Vital providers in a number of industries including:</p> <ul style="list-style-type: none"> • heat transport; • nuclear power; • air transport; • port area; • banking; • financial market infrastructure; • extractable energy; and • gas storage. <p>Business campuses</p> <p>Business campuses (companies that operate premises on which cooperation between public and private actors takes place with regard to technologies and applications that are of economic and strategic importance to the Netherlands). Currently, it is being considered whether biotech and the agricultural sector should be covered as well.</p>
5.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	None of the regimes make a distinction between national/foreign investors, or outside or inside the EU.

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6.	Procedure 6.1 Before or post-closing filing		<p>In principle, if a planned investment falls within the scope of the FDI rules, notification must be made <i>before the filing</i>.</p> <p>For the Gas Act, Electricity Act and Telecommunications Act, there is no standstill obligation. It is possible to make the investment before the decision. However, if the Minister prohibits the acquisition/investment, it has to be reversed.</p> <p>For the future National Security Screening, there is a standstill obligation, so the parties must await clearance (which may be subject to conditions)</p>
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	It is <i>mandatory</i> to file a notification if the planned investment falls within the scope of an FDI regime.
8.	6.3 In the case of post-closing, what are the powers of the authority?		Ex ante filings are required. Ex post filings are only required if the Minister makes use of its call-in powers (see item 3).
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	There is no formal possibility to obtain a pre-ruling. It is possible to obtain informal guidance from the Investment Screening Desk.
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	<p>Gas Act</p> <ul style="list-style-type: none"> Notification of change of control must be provided at least four months before completion. <p>Electricity Act</p> <ul style="list-style-type: none"> Notification of change of control must be provided at least four months before completion.

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			<p>Telecom Act</p> <ul style="list-style-type: none"> Notification of transactions must be provided at least eight weeks before completion or, if through a public offer, notification must coincide with the public announcement of the offer. <p>Future National Security Screening</p> <ul style="list-style-type: none"> There is no deadline before which notification of the intended investment activity must be provided. There is, however, a standstill obligation before the intended investment may be implemented.
11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist <i>de facto</i> or <i>de jure</i> .	<p>Gas Act</p> <p>One of the parties involved must report a change of control to the Ministry of Economic Affairs and Climate Policy at least four months before completion.</p> <p>Electricity Act</p> <p>One of the parties involved must report a change of control to the Ministry of Economic Affairs and Climate Policy at least four months before completion.</p> <p>Telecom Act</p> <ul style="list-style-type: none"> Phase I: eight weeks; after Phase I, the Minister announces a screening decision, or whether an in-depth review will take place; Phase II: maximum six months; and the review period may be longer due to ‘stop the clock’ provisions applying to information requests and/or if the EU FDI mechanism is triggered. <p>Future National Security Screening</p> <ul style="list-style-type: none"> Phase I: eight weeks plus six months; and Phase II: eight weeks plus six months (minus additional time used in Phase I).

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			The review period may be longer due to ‘stop the clock’ provisions applying to information requests and/or if the EU FDI mechanism is triggered.
12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	<p>The process is interactive, and there is room for the applicants and their lawyers to discuss both the content and drafting of the commitments required with the Investment Screening Desk of the Ministry.</p> <p>It is not unusual to meet several times with the teams in charge of the review of the request, and to make proposals and present arguments to try to negotiate the scope and content of these commitments.</p>
		Are there any guidelines issued by the authority?	No, but it is said that some guidance will be made available (on a no-names basis)
		Are there any guidelines issued by the authority?	No, but it is said that some guidance will be made available (on a no-names basis)
13.	(iv) Filing fees	Is there a filing fee?	No.
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	<p>Gas Act</p> <p>Information required: the notification must include information on:</p> <ul style="list-style-type: none"> • installations and parties involved; • intended change of control; • financial position of the acquirer; and • strategic intentions and past performance of the acquirer. <p>Electricity Act</p> <p>Information required: the notification must include information on:</p> <ul style="list-style-type: none"> • installations and parties involved; • intended change of control;

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			<ul style="list-style-type: none"> • financial position of the acquirer; and • strategic intentions and past performance of the acquirer. <p>Telecom Act</p> <p>Information required: the notification must include information on:</p> <ul style="list-style-type: none"> • <i>brief summary</i> of the acquisition of control, including specification of the investor(s), the telecom party concerned, the nature of the acquisition of control, and the form in which control is acquired; • <i>detailed information</i> on the investor, group and telecom party, including name, address, contact persons, EU Member States in which they are active, other telecom parties within the group to which the investor belongs, and types of services offered by the telecom party or parties; • <i>detailed information on the intended acquisition of control</i>, including a description of the structure of the intended acquisition, the envisaged ownership and control structure and timing of (key events of) completion; • <i>detailed information on public interests</i>, including: (1) information on international sanctions, criminal sanctions, country of origin, privacy breaches, foreign state control or influence and so on, with respect to the investor, any parent company (directly or indirectly) acquiring control, executive officers and ultimate beneficial owner(s) (UBO(s)); and (2) deal information related to, inter alia, (supervisory) board support, value of the transaction, financing and business reasons for the acquisition; • <i>documents to be submitted</i>, including the final or most recent version of transaction documentation and, if through a public bid, a copy of the public bid, and (supervisory) board documents showing the reasons for the acquisitions; and • <i>information on EU aspects</i>: whether the acquisition will be notified in other EU Member States, and information on EU projects or programmes and EU funding (if any).

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			<p>Future National Security Screening</p> <p>A separate decree has been published that specifies what information will be required. It is currently open for consultation and may be subject to change. The draft decree includes the following information requirements:</p> <ul style="list-style-type: none"> • the parties and their representatives, such as names and contact details; • the acquisition of control or significant influence, such as the structure of ownership of the acquirer and target, including information on the eventual acquirer and their participation in the capital; • the value (by approximation) of the investment activity; • the products, services and business activities of the acquirer and target; • the country in which the board of the acquirer is located; • the financing of the investment activity and its source; • the date or planned date of the completion of the investment activity; • the facts and circumstances that may play a role in the assessment of the risks to national security of the investment activities, such as criminal, financial or fiscal-administrative information; it may also include information from supervisors or previously conducted analyses; and • earlier notifications made to the <i>Autoriteit Consument & Markt</i> (ACM – Dutch Competition Authority).
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	<p>Gas Act</p> <p>According to the explanatory memorandum, if the Minister has not responded to the notification within four months, this means that the proposed transaction can take place.</p> <p>Electricity Act</p> <p>According to the explanatory memorandum, if the Minister has not responded to the notification within four months, this means that the proposed transaction can take place.</p>

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			<p>Telecom Act</p> <p>Should the Minister fail to adopt a decision within the eight-week or extended period, the activity is automatically cleared</p> <p>Future National Security Screening</p> <p>Should the Minister fail to issue an announcement intending to adopt a screening decision within Phase I (including the extended period), the activity is automatically cleared.</p>
16.	<p>Conditionality of approval</p> <p>(i) Type of conditions or commitments</p>	<p>Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.</p>	<p>Gas Act</p> <p>Conditions may be imposed, but what kind or the duration is not specified.</p> <p>Electricity Act</p> <p>Conditions may be imposed, but what kind or the duration is not specified.</p> <p>Telecom Act</p> <p>Conditions may be imposed but what kind or the duration is not specified.</p> <p>Future National Security Screening</p> <p>Conditions may be imposed. These include:</p> <ul style="list-style-type: none"> • compliance with additional security and usage requirements for the handling of sensitive information; • the establishment and application of a security and integrity policy for the recruitment and appointment of persons with access to sensitive information; • the creation of a security committee that can limit the transmission of information, give advice on security and integrity risks and report to the Minister; • bundling and accommodating certain parts of the company that form part of vital processes in the Netherlands or provide services to the Dutch Government in the Netherlands in a separate Dutch subsidiary; • prohibiting the contracting of certain types of services or the sale of certain goods from the Dutch branch of the company to certain other companies or certain countries;

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			<ul style="list-style-type: none"> • instituting a separate supervisory board for the Dutch subsidiary; • prohibiting certain assets, parts or subsidiaries of the company from forming part of the transaction; • the imposition of a maximum shareholding that is lower than the intended investment; • certification of (part of the) shares of the acquirer; • requiring the Minister's consent for the termination of trading in the shares of a listed target company using a securities settlement system at any time after the proposed transaction; • an obligation that certain technology, source code, genetic code or knowledge be deposited with the state or a third party in the Netherlands and only be made available, possibly temporarily, in the event of acute risks to certain vital processes or security interests; • an information obligation towards the Minister before terminating or transferring a business activity to a third country and allowing the Minister to impose further mitigating measures or to acquire (parts of) the undertaking for a reasonable and market-based price before terminating or transferring a business activity concerning (very) sensitive technology; and • granting a licence on fair, reasonable and non-discriminatory grounds for certain knowledge protected by patents or other intellectual property rights to one or more third parties established in the EU to keep knowledge or technology available in the Netherlands or EU.
17.	Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	<p>No. There is no discretion to review transactions that would not meet the conditions set by Dutch Law.</p> <p>The Minister must respect the legal framework. Its decisions are subject to appeal, should this not be the case.</p> <p>That said, the Minister has wide discretionary assessment power to accept, conditionally accept or reject a request for clearance – as long as it does not violate EU treaty rules.</p>

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18.	(iii) Risk of veto	Describe a topical case. Statistics	No veto decision has been published yet. A veto should, according to the legislator, really be a last resort measure.
19.	Role of other national Authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	There is significant involvement of any relevant Ministry in the assessment (eg, the Ministry of Defence) as the Investment Screening Desk only has a limited number of employees. Member States and the European Commission may also get involved. ¹
20.	Sanctions	Describe the type of sanctions that may be imposed by the authority in the case of: <ul style="list-style-type: none"> • breach of conditions and/or commitments attached to the approval; and 	<p>Gas Act</p> <p>Legal acts that trigger a change of control without reporting it to the Ministry are voidable and can therefore be annulled.</p> <p>Electricity Act</p> <p>Legal acts that trigger a change of control without reporting it to the Ministry are voidable and can therefore be annulled.</p> <p>Telecom Act</p> <p>A change of control taking place against the conditions imposed can cause the investment to be null and void, and a fine of up to EUR 900,000.</p> <p>Future National Security Screening</p> <ul style="list-style-type: none"> • <i>Failure to comply with the measures imposed</i> suspends all acquired rights and can lead to the prohibition (or reversal) of the investment activity or of maintaining control or significant influence. Alternatively, further measures or an administrative fine may be imposed.

¹ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 (the ‘Regulation’) provides a framework for screening FDI in the EU. It contains various provisions designed to strengthen cooperation between the Member States, such as the implementation of an alert mechanism between Member States and the possibility of requesting opinions from the European Commission and from other European competent authorities. As of 1 January 2022, the application documents in the various relevant Member States shall include the notification form required under the Regulation, where an entity in the investor’s chain of control is a national of a non-EU state.

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			<p><i>Failure to comply with a prohibition decision</i> renders the legal acts null and void, and suspends all acquired rights.</p>
		<ul style="list-style-type: none"> investment carried out without prior approval. 	<p>Gas Act It can be subject to annulment</p> <p>Electricity Act It can be subject to annulment</p> <p>Telecom Act</p> <ul style="list-style-type: none"> There is no standstill obligation but implementing a transaction while the review periods are still running bears the risk of the transaction being null and void (except where control is acquired through public stock exchange transactions (although the Minister may then prohibit the acquirer from exercising its predominant control)). Failure to notify (in a timely manner) may lead to a fine of up to EUR 900,000 <p>Future National Security Screening <i>Failure to notify</i> may lead to the Minister:</p> <ul style="list-style-type: none"> announcing ex officio that no screening decision is required or taking a screening decision within eight weeks after the activity has become known to him/her; ordering a notification to be provided within three months after the activity has become known to him/her, suspending all acquired rights; appointing one or more persons who may issue orders to the target or appointing one or more persons to take over the management of the target to ensure the effectiveness of the suspension of rights; or imposing an administrative fine of a maximum of ten per cent of the turnover of the undertaking concerned.
21.	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic.	There are no specific rules that are applicable in light of the Covid-19 pandemic.

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