

An overview of foreign investment and merger control laws and regulations

The table on the following pages provides an overview of the various EU, Dutch and Belgian foreign investment and merger control laws and regulations that companies may have to deal with when making acquisitions and investments. The overview distinguishes between screening mechanisms aimed at protecting public order and national security, and the more economically oriented rules that apply under competition law and the Foreign Subsidies Regulation. It also identifies which rules impose a "standstill obligation" that prohibits companies from carrying out the proposed transaction until the reviewing authority has made a decision.

Do not hesitate to contact any of our experts to discuss the applicability of these laws and regulations to your individual situation.

Contacts



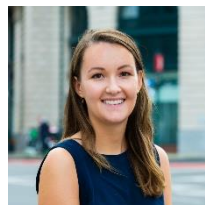
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Checklist of potential notification requirements in acquisitions & investments		
	Notification threshold	Standstill obligation
Concentration control <ul style="list-style-type: none"> • EU: Regulation 139/2004 • NL: Dutch Competition Act • BE: Book IV WER 	Duty to notify concentrations (mergers, acquisitions of control, or establishment of full-function joint ventures) in the Netherlands if: <p><i>EU - Threshold 1</i></p> a. the combined worldwide turnover of all the undertakings concerned exceeds EUR 5 billion; and b. at least 2 of the undertakings concerned each has an aggregate turnover within the EU of more than EUR 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within the same Member State. OR <p><i>EU - Threshold 2</i></p> a. the combined aggregate worldwide turnover of all the undertakings concerned exceeds EUR 2.5 billion; b. the combined aggregate turnover achieved by all the undertakings concerned in each of at least 3 Member States exceeds EUR 100 million; c. in each of the three Member States included for the purpose of point (b) at least two of the undertakings concerned achieved an aggregate turnover of more than EUR 25 million; and d. at least two of the undertakings concerned individually have an aggregate turnover within the EU of more than EUR 100 million; unless each of the undertakings concerned achieves more than two-thirds of its total turnover within the same Member State. OR <p><i>NL - Threshold 3a</i></p> <ul style="list-style-type: none"> • the combined aggregate worldwide turnover of all the undertakings concerned exceeds EUR 150 million; and • at least 2 of the undertakings concerned each individually has a combined aggregate turnover within the Netherlands of at least EUR 30 million. 	Yes

	Notification threshold	Standstill obligation
	<p>OR</p> <p><i>BE - Threshold 3b</i></p> <ul style="list-style-type: none"> the companies concerned achieve a combined turnover in Belgium of more than EUR 100 million; and at least two of the companies concerned each achieves a turnover in Belgium of at least EUR 40 million. 	
<p>Foreign subsidies</p> <ul style="list-style-type: none"> EU: Foreign Subsidies Regulation 	<p>Notification requirement for concentrations (mergers, acquisitions of control or establishment of full-function joint ventures) if:</p> <ul style="list-style-type: none"> one of the undertakings concerned is established in the EU; at least one of the undertakings concerned has an EU turnover of at least EUR 500 million; and the foreign financial contribution provided to the undertakings concerned jointly exceeded EUR 50 million. 	Yes
Sector-specific screening		
<p>Telecommunication</p> <ul style="list-style-type: none"> NL: Telecommunications Act (Section 14a) NL: Decree Undesirable Control Telecommunications Sector 	<p>Duty to notify the acquisition of (i) predominant control in a telecommunications party leading to (ii) relevant influence in the telecommunications sector.</p> <p><i>Threshold 1 - Predominant control</i></p> <p>Predominant control exists if, after the acquisition, the acquirer of that control, individually or jointly:</p> <ul style="list-style-type: none"> can directly or indirectly cast at least 30% of the votes at the general meeting of a legal entity; obtains the right to appoint or remove from office more than half of the company's directors or supervisory directors; holds one or more shares with a special statutory right related to control of the company being acquired, regardless of the powers that those rights give to the holder; becomes a fully liable partner in a partnership; or disposes of a branch office. <p>AND</p> <p><i>Threshold 2 - Relevant influence</i></p> <p>Relevant influence in a telecommunications party is deemed to exist if, after the transaction, the investor offers:</p>	No

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	<ul style="list-style-type: none"> • an internet access service or telephone service to more than 100,000 end users in the Netherlands, where, with regard to: <ul style="list-style-type: none"> i. the fixed internet access or telephone service, except for the fixed Internet access service to business end users, 2 end users per connection are assumed; ii. the fixed Internet access service to business users is assumed to be 8 end users per connection; and iii. mobile internet access service is assumed to be 1 end user per connection; • telephone services, internet access services or electronic communications network access to more than 100,000 end users; • an internet node with over 300 autonomous systems connected to it; • data centre services with a power capacity exceeding 50 Mw; • hosting services for more than 400,000 domain names with a .nl-extension; • a qualified trust service; • one of the services mentioned in (a) to (d) to national military or national security; • a combination of services referred to in (a) to (d) jointly exceeds a certain threshold value; or • a combination of services as above, if the above thresholds are not reached, which add up to a threshold value of 1 or higher, where for the calculation of the threshold value: <ul style="list-style-type: none"> i. the number of end users to which an internet access service or telephone service is provided both directly and indirectly through its electronic communications network is divided by 100,000; ii. the number of autonomous systems connected to an internet node is divided by 300; iii. the annual consumption of data centres is divided by 50; and iv. the number of .nl domain names on behalf of which hosting services are offered is divided by 400,000. 	

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<p>Electricity</p> <ul style="list-style-type: none"> NL: Electricity Act BE: Royal Decree of 11 October 2000 	<p>The Netherlands</p> <p>Notification requirement for any change of control in:</p> <ul style="list-style-type: none"> a power plant with a nominal electrical capacity exceeding 250 MW; or a company operating a power plant with a nominal electrical capacity exceeding 250 MW. <p>N.B. A proposed new Energy Act will lower the threshold by requiring notification of a change in control in relation to an electricity generating facility with a total rated capacity of more than 100 megawatts or a company operating one or more generating plants with a total rated capacity of more than 100 megawatts.</p> <p>Belgium</p> <p>Notification requirement for the holder of a production licence (required for production facilities with a net developable capacity exceeding 25 MW) in the event of a change of control, merger or demerger.</p>	No
<p>Gas</p> <ul style="list-style-type: none"> NL: Gas Act 	<p>Notification requirement for any change of control in:</p> <ul style="list-style-type: none"> an LNG company or facility in the Netherlands. 	No
<p>Public Takeover Bids</p> <ul style="list-style-type: none"> BE: Act of 1 April 2007 BE: Royal Decree of 27 April 2007 	<p>Notification requirement for a public takeover bid resulting from an acquisition of more than 30% of the securities of a Belgian listed company</p>	Yes

	Notification threshold	Standstill obligation
Overarching screening mechanisms		
<p>Vital providers/ operators of business campuses/ sensitive technology*</p> <ul style="list-style-type: none"> NL: National security screening review (Vifo Act)* NL: Decree on security test for investments, mergers and acquisitions* NL: Decree on the scope of application of sensitive technology* <p>Foreign investments that may affect the security, public order and strategic interests of concerned governments</p> <ul style="list-style-type: none"> BE: Draft cooperation agreement to establish foreign direct investment screening mechanism* 	<p>The Netherlands</p> <p>Notification requirement for (i) acquisition of new control in vital providers, companies active in sensitive technologies and operators of business campuses; or (ii) acquisition of new (or increase of existing) significant influence in undertakings active in very sensitive technologies.</p> <p><i>Threshold 1 - Acquisition of new control in:</i></p> <ul style="list-style-type: none"> vital provider: company operating, managing or providing a service whose continuity is vital to Dutch society (e.g. in the field of heat transport, nuclear energy, air transport, port area, banking, financial infrastructure, extractable energy or gas storage); company active in the field of sensitive technologies: (a) dual-use items whose export is subject to an authorization requirement under Regulation 2021/821 for export control, brokering, technical assistance, transit and transfer of dual-use items; and (b) military goods included in the EU Common Military List (the draft Decree on the scope of application of sensitive technology excludes some technologies and adds some additional technologies); or operator of business campus: a company that manages a site on which a collection of companies operates and where public-private cooperation takes place on technologies and applications that are of economic and strategic importance to the Netherlands. <p>OR</p> <p><i>Threshold 2 - New or increase of existing significant influence in companies active in very sensitive technologies</i></p> <ul style="list-style-type: none"> significant influence: Significant influence exists if: <ul style="list-style-type: none"> a. a person can cast or arrange for the casting of at least one-tenth of the votes at the general meeting of a target company; b. a person can cast or arrange for the casting of at least one-fifth of the votes at the general meeting of a target company; c. a person can cast or arrange for the casting of at least one-fourth of the votes at the general meeting of a target company; 	<p>Yes</p>

	Notification threshold	Standstill obligation
	<p>d. the company undertakes or has undertaken towards a third party to encourage the competent bodies of a target company to appoint or remove from office one or more directors nominated by that third party; or</p> <p>e. it has been agreed between shareholders that a shareholder acquires or increases the significant influence through one of the possibilities mentioned in parts (a) to (c).</p> <ul style="list-style-type: none"> companies active in the field of very sensitive technologies: See Annexes 2 and 3 of the draft Decree on the scope of application of sensitive technology* (including technologies for nuclear goods, sensors and lasers, navigation and avionics, quantum technology, photonics technology, semiconductor technology, high assurance technology). <p>Belgium</p> <p>Notification requirement for investments made by a third-country investor above certain thresholds (representing 10% or 25% (depending on activity) of a company's shares) in a Belgian company operating in a highly sensitive sector or in a sector affecting security or public order.</p> <p><i>Threshold 1. Investments that directly or indirectly result in the acquisition of at least 25% of the voting rights in companies or entities established in Belgium and whose activities touch on:</i></p> <ul style="list-style-type: none"> vital infrastructures, both physical and virtual, related to energy, transport, water, health, electronic communications and digital infrastructures, media, data processing or storage, aerospace, defence, electoral infrastructure, financial infrastructure, sensitive installations, etc.; technologies and raw materials essential for security (including health security), national defence or maintenance of public order, certain military equipment, dual-use products, technologies of strategic importance (e.g. artificial intelligence, robotics, semiconductors), etc.; 	

	Notification threshold	Standstill obligation
	<ul style="list-style-type: none"> • the supply of critical inputs, including energy or raw materials, as well as food security; • access to or control of sensitive information, including personal data; • sector of private security; • freedom and pluralism of the media; or • technologies of strategic importance in the biotechnology sector (provided that the company's turnover, in the tax year preceding the acquisition of at least 25% of the voting rights exceeded EUR 25 million. <p><i>Threshold 2. Investments resulting directly or indirectly in the acquisition of at least 10% of the voting rights in companies or entities established in Belgium with an annual turnover of at least EUR 100 million during the financial year preceding the acquisition of the voting rights and whose activities touch on the sectors of:</i></p> <ul style="list-style-type: none"> • defence (including dual-use goods); • energy; • cybersecurity; • electronic communications; or • digital infrastructure. 	

*= not yet entered into force. Is expected June 1 2023.

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