

Stibbe | Corporate Update | July 2023



Recent developments: Dutch corporate law

This is our biannual newsletter about certain main developments in Dutch corporate law.

Vifo Act

The Investments, Mergers and Acquisitions (Security Screening) Act (*Wet Vifo* – the **Vifo Act**) came into force on 1 June 2023. The purpose of the Vifo Act is to manage risks to national security. For this purpose it introduces a notification requirement and an investment test for ‘acquisition activities’ such as investments, mergers, acquisitions, joint ventures and asset transfers in certain critical sectors. These critical sectors include providers of critical infrastructure, companies active in sensitive technologies and highly sensitive technologies, and managers of corporate campuses. The newly established Investment Screening Agency (*BTI*) assesses notifications and may impose measures to mitigate risks to national security. In certain cases, an acquisition activity may even be prohibited. The Vifo Act also sets out specific rules for listed companies and retroactively applies to certain specific acquisition activities completed between 8 September 2020 and 1 June 2023.

For more information, please see our [Newsletter](#) of 1 June 2023.

The FSR

On 12 January 2023, the European Foreign Subsidies Regulation (FSR) entered into force, giving the European Commission (the **Commission**) tools to act against foreign subsidies that distort the internal market. The Commission has three tools at its disposal to prevent distortions of the internal market caused by foreign subsidies: *ex ante* merger control, *ex ante* public procurement control and general *ex officio* monitoring. No general ban applies to foreign subsidies, but the Commission will assess on a case-by-case basis whether such a subsidy distorts the internal market.

Concentrations must be notified under the FSR if they meet certain turnover thresholds and thresholds for financial contributions from third countries. Participants in public tenders must report foreign financial contributions if the contract value of the tender exceeds a certain threshold and if certain thresholds for financial contributions from third

countries are exceeded. Finally, the *ex officio* monitoring mechanism allows the Commission to investigate other (also smaller) distorting foreign subsidies on its own initiative. If the Commission finds that a foreign subsidy distorts the internal market, it may decide to prohibit the concentration or prohibit the award of the tendered contract. The Commission may also take other measures, such as requiring the repayment of subsidies received or the divestment of certain assets.

The FSR has implications for M&A practice, as parties must consider the FSR in their planning and transaction documentation. Parties may also want to start collecting information on financial contributions received from non-EU governments in order to comply with reporting obligations under the FSR, if required.

For more information, please see our [Newsletter](#) of 5 July 2023.

Fast-Track Liquidation Transparency (Temporary Amendment) Act

The *Tijdelijke wet transparantie turboliquidatie* (Fast-Track Liquidation Transparency (Temporary Amendment) Act – the **Act**) contains temporary amendments to the regulations regarding dissolution with fast-track liquidation under Dutch law. The Act was published in the Dutch Government Gazette on 5 July 2023 and will enter into force on 15 November 2023. The Act aims to protect the position of creditors, increase transparency and counter abuse. It imposes additional obligations on a company envisaging a dissolution with fast-track liquidation to secure the aforementioned objective of the Act. In principle, the Act will apply for only two years, but it provides for an option to extend that period.

European Mobility Directive Implementation Act

On 27 June 2023, the Dutch Upper House adopted the bill implementing the European Mobility Directive (the **Act**, after it enters into force). The Act will enter

into force on 1 September 2023 and will amend Book 2 of the Dutch Civil Code and the *Wet op het notarisambt* (Civil-Law Notaries Act). The Act increases the mobility of capital companies within the EU, as it amends existing rules on cross-border mergers and introduces new regulations on cross-border conversions and demergers, with corresponding protection provisions for shareholders, employees and creditors. The Netherlands does not yet have a statutory regime for cross-border conversions and demergers. In practice, however, these are already taking place, based on case law of the European Court of Justice. A transitional arrangement provides that the moment of filing of the proposal for the relevant cross-border transaction determines the law applicable to that transaction (i.e., if the proposal was filed before the date on which the Act enters into force, the current law applies, while any proposal filed after the Act enters into force will be governed by the new rules under the Act).

Key contacts

If you would like to receive more information on the legislation and proposals discussed above, please consult the following key contacts.



Manon Cremers
Partner Amsterdam
+31 20 546 04 08
+31 6 260 184 74
Manon.Cremers@Stibbe.com



Fons Leijten
Partner Amsterdam
+31 20 546 04 09
+31 6 531 467 95
Fons.Leijten@Stibbe.com



Duco de Boer
Partner Amsterdam
+31 20 546 09 43
+31 6 211 670 75
Duco.deBoer@Stibbe.com



Heleen Kersten
Partner Amsterdam
+31 20 546 03 70
+31 6 533 594 50
Heleen.Kersten@Stibbe.com