UNCTAD Compendium of **Investment Laws**

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Netherlands

Act of 18 May 2022, laying down rules introducing a test on acquisition activities which may pose a risk to national security in view of their impact on the providers, business campus managers or companies that are actively involved in the in the field of sensitive technology (Investment Safety Assessment Act, mergers and acquisitions) (2022)

Contents

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We, Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc.

etc. etc. To all who shall see or hear these presents, greetings! Be it known:
Since We have considered that it is desirable to establish a review concerning acquisition activities that may pose a risk to national security, given their effect on vital providers, managers of business campuses, or companies active in the field of sensitive technology;
Thus it is that We, the Advisory Division of the Council of State, after hearing and with common consultation of the States-General, have approved and understood, as We approve and hereby understand:

CHAPTER 1. GENERAL

Article 1

For the purposes of this Law and the provisions based thereon, the following definitions shall apply:
share: as referred to in:
a. Article 5:33, first paragraph, part b, of the Financial Supervision Act, in the case of a listed company; or
b. Article 82, first paragraph, of Book 2 of the Dutch Civil Code in the case of a public limited company, other than a listed company as referred to in subparagraph (a), or
c. Article 175 of Book 2 of the Civil Code in the case of a private limited company, not being a listed company as referred to in subparagraph a;
Shareholding: a certain quantity of shares, which also includes a credit in respect of a quantity of shares that is held by a party within the custody chain;
Manager of a business campus: a company that manages a site where a collection of undertakings is active, and where public-private collaboration takes place on technologies and applications that are of economic and strategic importance to the Netherlands;
Listed target company: a target company that is also a listed company;
Listed company: company whose shares are traded using a securities settlement system;
Central Institute: a central securities depository as referred to in Article 2 of Regulation (EU) No Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on the improving securities settlement in the European Union, concerning central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ 2014 L 257);
Target company:
a. the company established in the Netherlands in which an acquirer makes an investment, party to a merger or division referred to in subparagraphs (b) and (d), or involved in the establishment of a joint undertaking;
b. the undertaking resulting from a merger between two or more previously independent companies of which at least one is established in the Netherlands;
c. the joint venture established in the Netherlands;
d. the undertaking which, following a division as referred to in Article 2(d) or Article 3, (b) is a company established in the Netherlands;
e. the company established in the Netherlands or the person acting on behalf of the company established in the Netherlands that has ceased to exist, whose assets are being disposed of; or
f. the company established in the Netherlands that is, in whole or in part, the subject of an acquisition by universal succession;
Securities Settlement System: a securities settlement system referred to in point 3 of Section A of the Annex Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 2014 on improving securities settlement in the European Union, on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ 2014 L 257) or a similar system operated by an institution outside the European Economic Area with a function similar to that of a central securities depository as a referred to in Article 2 of that Regulation;
Investment: the acquisition of shares in the capital or assets, by one or more persons, by agreement or in any other manner, directly or indirectly, over one or more businesses or parts thereof;
Notifier:
a. Acquirer;
b. target undertaking;
National security: the national security as referred to in Article 4, second paragraph, of the Treaty on European Union, public security as referred to in Articles 45, third paragraph, 52, first paragraph, and 65, first paragraph, point b, of the Treaty on the Functioning of the European Union, or the essential interests of the security of the state as referred to in Article 346, first paragraph, point a, of the Treaty on the Functioning of the European Union, aimed at protecting the interests that are essential within the Netherlands for the survival of the democratic legal order, for security or other important interests of the state, or for the maintenance of social stability, insofar as these relate to the intersection between economy and security, namely:"
i. maintaining the continuity of vital processes;

ii. preserving the integrity and exclusivity of knowledge and information with critical or strategic significance for the Netherlands; or
iii. preventing undesirable strategic dependencies of the Netherlands on other land;
enterprise: within the meaning of Article 101(1) of the Treaty on the Functioning of the European Union the functioning of the European Union;
Our Minister: Our Minister of Economic Affairs and Climate;
vote:
a. In a publicly listed company, not belonging to a private limited company as referred to in section b: votes as referred to in Article 5:33, first paragraph, section d, of the Financial Supervision Act, including votes that a person has or is deemed to have pursuant to Article 5:45, first to eleventh paragraphs, of the Financial Supervision Act;
b. In a private limited company to which Article 187 of Book 2 of the Civil Code applies: votes that can be cast on shares, where Articles 5:33, first paragraph, section d, and 5:45, first to eleventh paragraphs, of the Financial Supervision Act apply mutatis mutandis;
c. In a non-listed company: votes that can be cast on shares, where Articles 5:33, first paragraph, section d, and 5:45, first to eleventh paragraphs, of the Financial Supervision Act apply mutatis mutandis;
d. in the case of an association or cooperative: votes that can be cast in the general Meeting, whereby Articles 5:45, fifth, sixth and ninth paragraphs, of the Law on financial supervision shall apply mutatis mutandis;
Sensitive Technology: sensitive technology referred to in Article 8;
Significant influence: significant influence as referred to in Article 4, paragraphs 1 to 4;
Review decision: a decision in which it is determined that:
a. an acquisition activity is:
1°. permitted on the condition that certain requirements or further regulations as referred to in Article 23 or Article 24 are met; or
2°. prohibited
b. It is prohibited for control or significant influence to be held if there is an acquisition activity as referred to in Article 2, section g, or Article 3, section d
Regulation 806/2014: Regulation (EU) No. 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms within the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No. 1093/2010 of the European Parliament and of the Council (OJ 2014, L 225);
Acquirer:
a. The investor or investors who, through an investment in the target company, seek to obtain control or to acquire or increase significant influence;
b. the parties that wish to merge, thereby creating the target company;
c. the parties that wish to establish a joint venture that permanently fulfills all functions of an independent economic entity;
d. the party or parties that wish to split, thereby creating a target company after the split;
e. the party or parties that wish to acquire the assets of a target company, if these are essential for the target company to function as a vital provider or in the field of sensitive technology;
f. the party or parties that, through other legal actions than those mentioned under a to e, obtain or increase control or significant influence in the target company;
g. the party that, under universal succession as referred to in Article 80, second paragraph, of Book 3 of the Civil Code, with the exception of a merger or split, wishes to acquire goods in the target company as referred to in Article 1 of that code, in order to obtain or increase control or significant influence in the target company;
Acquisition activity: an activity as described in Article 2 or Article 3, involving an acquirer;
Vital provider: a company that operates, manages, or provides a service whose continuity is of vital importance to Dutch society;
Control: control as referred to in Article 26 of the Competition Act.

CHAPTER 2. SCOPE

§ 2.1. Acquisition activities

Article 2

This law applies to the following acquisition activities, if they relate to a target company that is a vital provider, manager of a business campus, or a company active in the field of sensitive technology:
a. Investments in a target company by an acquirer that lead to obtaining control in that company;
b. The merger of two or more previously independent companies into a target company;
c. The establishment of a joint venture that permanently fulfills all functions of an independent economic

entity, if this company will be a target company;
d. the division of an undertaking, if:
1°. the company that is being split is a company that is a vital provider or is a manager of a corporate campus or active in the field of sensitive technology is; and
2°. the demerger is accompanied by an acquisition of control of the undertaking which is a target undertaking after the demerger;
e. The acquisition of part of the assets of a target company, if these are essential for its functioning as a vital provider, manager of a business campus, or as a company active in the field of sensitive technology.
f. Other legal actions than those referred to under a to e, which result in one or more persons, or one or more companies, acquiring control in a target company; and
g. The acquisition of assets as referred to in Article 1 of Book 3 of the Civil Code under universal succession as referred to in Article 80, second paragraph, of Book 3 of that Code, with the exception of a merger or division, from a target company.

Article 3

This law also applies to the following acquisition activities, if they relate to a target company that is active in the field of sensitive technology:
a. Investments aimed at acquiring or increasing significant influence by an acquirer over a target company;
b. the division of an undertaking, if:
1°. The company being divided is a target company; and
2°. The division results in the acquisition or increase of significant influence over a company that, after the division, is active in the field of sensitive technology.
c. Other legal actions than those referred to under a and b, which result in one or more persons, or one or more companies, acquiring or increasing significant influence over a target company;
d. The acquisition of assets as referred to in Article 1 of Book 3 of the Civil Code under universal succession as referred to in Article 80, second paragraph, of Book 3 of that Code, with the exception of a merger or division, through which significant influence over a target company is obtained.

Article 4

1. Unless provided for in a general administrative measure as referred to in the third paragraph, the acquisition or increase of significant influence in a target company in the field of sensitive technology occurs when:
a. A person can exercise or have exercised at least one-tenth of the votes at the general meeting of a target company;
b. A person can exercise or have exercised at least one-fifth of the votes at the general meeting of a target company;
c. A person can exercise or have exercised at least one-quarter of the votes at the general meeting of a target company;
d. The company commits or has committed itself to a third party to promote that the competent bodies of a target company appoint or dismiss one or more directors nominated by this third party; or
e. It has been agreed between shareholders that a shareholder will acquire or increase significant influence through one of the possibilities mentioned in parts a to c.
2. No significant influence as referred to in the first paragraph is present if there is control.
3. By general administrative order, specific categories of target companies may be designated, for which, based on the nature of the activities or the structure of the target companies falling under a category, it will be determined which of the sections mentioned in the first paragraph apply.
4. If a general administrative order as referred to in the third paragraph is provided, the acquisition or increase of significant influence in a target company in the field of sensitive technology only occurs if one or more of the sections referred to in the first paragraph, which are declared applicable by the general administrative order to a specified category of target companies to which the relevant target company belongs, are met.
5. When determining the percentage of votes in the general meeting of a target company that an acquirer will hold after completing an acquisition activity, the votes of natural persons, legal entities, or companies with whom or with which cooperation takes place based on an agreement or coordinated factual behavior are included.

Article 5

1. By way of derogation from Articles 2 and 3, this Law shall not apply if:
a. In a specific acquisition activity, it is only possible for the State of the Netherlands, provinces, municipalities, or other public bodies to be the acquirer, either directly or indirectly, based on a legal provision;
b. A specific review based on national security applies to the acquisition activity under another law, regardless of the content of that specific review;

regardless of the content of that specific review;
c. Another law is applicable that provides for a specific review based on national security, but this review does not apply to a target company because the acquisition activity does not meet the minimum size requirements set by the other law or is of a different nature than prescribed for review under the other law.
d. The acquirer is a legal entity that is independent of a publicly listed target company, provided the acquirer's objective is to protect the interests of the target company and its affiliated business, and the acquirer obtains control or significant influence for a maximum period of two years following the announcement of a public offer, in order to protect the target company.
e. The acquirer is the State of the Netherlands, a province, or a municipality located in the Netherlands, or another public body under Dutch law; or
f. The acquirer is a legal entity whose statutory objective is to serve the interests of the financial system involved in the orderly and controlled resolution of an entity as referred to in Article 7, paragraphs 5 to 8, for which it has been determined by De Nederlandsche Bank, or depending on the division of powers under Article 7 of Regulation 806/2014, the resolution board referred to in Article 42 of that regulation, that the conditions for the resolution of that target company have been met.
2. The acquirer referred to in the first paragraph, section f, shall in any case be considered to include a bridge institution as referred to in Article 7b of the Decree on Special Prudential Measures, Investor Compensation, and Deposit Guarantee Wft, a bridge company as referred to in Article 7c of that decree, and an asset and liability management entity as referred to in Article 7d of that decree.

Article 6

For the purposes of this law, a target company that is a vital provider or manager of a business campus also includes a target company that has control over a vital provider or manager of a business campus established in the Netherlands. A target company that is active in the field of sensitive technology also includes a target company that has control or significant influence over a company established in the Netherlands that is active in the field of sensitive technology.

§ 2.2. Vital providers and sensitive technology

Article 7

1. A company is designated as a vital provider in the field of heat transport if it operates a system of interconnected pipelines, associated installations, and other tools for the transportation of heat, which is important for regional heat supply, from the connection to the heat transport network of a heat source to the connections on the heat transport network of heat consumers and the heat transport connections of heat networks.
2. A company is designated as a vital provider in the field of nuclear energy if it:
a. holds a licence as referred to in Article 15(b) of the Nuclear Energy Act; or
b. is subject to the Secrecy Decree of the Nuclear Energy Act or the Application Decree of 24 September 1971/no.671/524 (Stcrt. 1971, no. 187 and Stcrt. 1989, no. 52).
3. A company is designated as a vital provider in the field of air transport if:
a. it is the operator of Schiphol Airport, as referred to in Article 8.1b of the Aviation Act;
b. it is a user as referred to in Article 8.1b of the Aviation Act, in relation to Schiphol Airport, and possesses:
1°. A company is designated as a vital provider in air transport if it holds an operating license issued by Our Minister of Infrastructure and Water Management, as referred to in Article 2, paragraph 1, of Regulation (EC) No. 1008/2008 of the European Parliament and the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ EU 2008, L 293), and Article 16a of the Aviation Act, and
2°. controls at least one-third of the annually available slots, as referred to in Article 2, section a, of Regulation (EEC) No. 95/93 of the Council of 18 January 1993 on common rules for the allocation of "slots" at Community airports (OJ EEC 1993, L 14); or
c. A provider of ground handling services, as referred to in Article 1, section d, of the Ground Handling Regulations for Airports, operating at Schiphol Airport who:
1°. is responsible for the setup for the storage, handling, and refueling of aircraft fuel,
2°. is subject to fire safety obligations, as referred to in Article 31, paragraph 1, of the Safety Regions Act, and
3°. has a facility as referred to in Article 1 of the Major Accident Risks Decree 2015.
4. A company is designated as a vital provider in the port area if the harbor master is mandated for nautical safety in the Port of Rotterdam based on, among other things, the Shipping Traffic Act.
5. A company is designated as a vital provider in the banking sector if it is a bank as referred to in Article 17d, section a, of the Prudential Rules Decree Wft.
6. A company is designated as a vital provider in the financial market infrastructure if it operates a trading platform in the Netherlands, where at least half of the initial listing or trading of securities as referred to in Article 1:1 of the Financial Supervision Act takes place, calculated based on the total

nominal value of the initial listing or trading of securities in the Netherlands over the past twelve months.
7. For the purposes of the sixth paragraph, the following definitions shall apply:
a. A trading platform in the Netherlands: A trading platform as referred to in Article 1:1 of the Financial Supervision Act that is managed or operated in the Netherlands by a person with a registered office in the Netherlands, who is authorized under that law to operate an organized trading facility or a multilateral trading facility as referred to in Article 1:1 of that law, or who is authorized under Articles 5:26 and 5:27 of that law to operate or manage a regulated market as referred to in Article 1:1 of that law in the Netherlands;
b. Initial listing or trading: The first time a security is admitted to trading on a regulated market or multilateral trading facility as referred to in Article 1:1 of the Financial Supervision Act, or a comparable system, or the first time a security is traded on a trading platform as referred to in Article 1:1 of the Financial Supervision Act, or a comparable system.
8. A company is further designated as a vital provider in the field of financial market infrastructure if it is:
a. a central counterparty as referred to in Article 2, point 1, of Regulation (EU) No. 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties, and trade repositories (OJ EU 2012, L 201), with its registered office in the Netherlands;
b. a clearing institution as referred to in Article 1:1 of the Financial Supervision Act, which holds a license as referred to in Article 2:4, paragraph 1, of the Financial Supervision Act and processes more than 1 billion transactions per year, both within the Netherlands and across borders;
c. a financial institution as referred to in Article 1:1 of the Financial Supervision Act, which holds a license issued by the European Central Bank or De Nederlandsche Bank as referred to in Article 2:4, paragraph 2, of the Financial Supervision Act and, in its role as a clearing institution, processes more than 1 billion transactions per year, both within the Netherlands and across borders;
d. a settlement institution as referred to in Article 1:1 in conjunction with Article 2:3.0b of the Financial Supervision Act;
e. a central institution with its registered office in the Netherlands.
9. A company is considered a vital provider in the field of extractable energy that:
a. holds the extraction license for the Groningen field, as referred to in Article 52a of the Mining Act; or
b. is designated pursuant to Article 10a, paragraph 15, of the Gas Act.
10. A company is designated as a vital provider in the field of gas storage if it:
a. is the holder of a permit referred to in Article 25 of the Mining Act;
b. has been designated as the operator of a gas storage facility on the basis of Article 9a of the Gas Act.
11. Other categories of vital providers than those mentioned in the previous paragraphs may be designated by general administrative order. The proposal for this general administrative order will not be made until four weeks after the draft has been submitted to both Houses of the States General.
12. After the publication in the Official Gazette of a general administrative order established pursuant to the eleventh paragraph, a bill regulating the relevant subject shall be submitted to the House of Representatives of the States General as soon as possible. If the proposal is withdrawn or if either of the two Houses of the States General decides not to adopt the proposal, the general administrative order will be revoked without delay. If the proposal is enacted into law, the general administrative order will be revoked at the time the law comes into force."

Article 8

1. Sensitive technology includes, unless otherwise determined under the second or third paragraph:
a. Dual-use products whose export is subject to licensing pursuant to Article 3, paragraph 1, of Regulation (EU) No. 2021/821 of the European Parliament and the Council of 20 May 2021 establishing a Union regime for the control of exports, brokering, technical assistance, transit, and transfer of dual-use products (OJ EU 2021, L 206); and
b. Military goods as referred to in Article 2 of the 2012 Strategic Goods Implementing Regulation.
2. By general administrative order, dual-use products and military goods can be exempted as sensitive technology.
3. By general administrative order, other technologies can be designated as sensitive technology if:
a. they may be of essential importance for the functioning of defense, law enforcement, intelligence, and security services in the performance of their duties;
b. the availability and presence of these technologies within the Netherlands or its allies is essential to prevent unacceptable risks to the availability of certain essential products or services; or
c. they are characterized by a broad application across various vital processes or processes related to national security.
4. The proposal for a general administrative order established under the third paragraph will not be made until four weeks after the draft has been submitted to both Houses of the States General.

Article 9

Article 9

1. Upon request, the Minister shall provide information on the application of this chapter in practice.
2. The information referred to in the first paragraph will be provided as soon as possible. Where appropriate, the information will be provided in the form of a manual.

CHAPTER 3. ADMISSIBILITY OF ACQUISITION ACTIVITIES

§ 3.1. Requirement of notification or review decision prior to acquisition activity

Article 10

1. An acquisition activity, with the exception of an acquisition activity referred to in Article 2(g) or Article 3(d) shall not take place until:
a. Our Minister has informed the reporting party that no review decision is required; or
b. A review decision has been made.
2. Our Minister makes a review decision in agreement with Our Minister of Justice and Security, and, if applicable, the Minister or Ministers concerned.
3. Our Minister may, if necessary, consult other Ministers than those referred to in the second paragraph before making a review decision or providing notification

§ 3.2. Obligation to report prior to acquisition activity taking place

Article 11

1. Any intention to carry out an acquisition activity must be reported to Our Minister by one of the parties required to make the notification.
2. By or under general administrative order, it will be determined what information the notification must contain, how the notification should be made, and regulations regarding the notification may be established.
3. A party required to make the notification, who has previously provided the same information to an administrative body, service, supervisor, or other person as referred to in or pursuant to Article 34, paragraph 4, under a legal obligation prior to the notification, may suffice by indicating that this information has already been provided, provided that this is permitted under conditions set by or under a general administrative order.
4. The information provided in the notification or referred to under paragraph 3 must be truthful and as complete as can reasonably be expected from the notifying party.
5. The notification obligation under paragraph 1 does not apply to an acquirer who, due to a confidentiality obligation from the target company, cannot know that the acquisition activity falls within the scope of this law. In that case, the target company, for which this confidentiality obligation applies, must report the intention to carry out an acquisition activity to Our Minister as soon as it becomes aware of it.
6. In deviation from paragraph 1, an acquisition activity as referred to in Article 2, section g, or Article 3, section d, must be reported by the acquirer to Our Minister within two weeks after it has taken place.

Article 12

1. Our Minister will inform within eight weeks after receiving a notification as referred to in Article 11 whether a review decision is required.
2. Our Minister determines that a review decision is required if an acquisition activity may lead to a risk to national security.
3. If further investigation is needed to make a notification as referred to in the first paragraph, Our Minister may extend the period referred to in the first paragraph by a reasonable period, but no later than six months.
4. If no notification is made within the period referred to in the first paragraph or within the extension period referred to in the third or eighth paragraphs, no review decision is required.
5. If an application for a review decision is submitted following a notification as referred to in the first paragraph, stating that a review decision is required, Our Minister will make a review decision within eight weeks after receiving the application.
6. Our Minister may extend the period for making a review decision as referred to in the fifth paragraph by a reasonable period, but no later than six months, reduced by the period that has passed for further investigation as referred to in the third paragraph.
7. Notwithstanding the applicability of Article 4:15 of the General Administrative Law Act to the making of a review decision upon application, the period for making a notification as referred to in the first paragraph is suspended from the day on which Our Minister requests additional information under Article 34, paragraph 7, until the day on which the requested information is provided.
8. If, after a notification, it appears that there is a foreign direct investment falling within the scope of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ EU 2019, L 79), the period referred to in the third or sixth paragraphs may be extended by no more than three

79), the period referred to in the third or sixth paragraphs may be extended by no more than three additional months.
9. Section 4.1.3.3 of the General Administrative Law Act applies to an application for a review decision.
10. Our Minister will not process an application for a review decision until Our Minister has made a notification as referred to in the first paragraph in response to a notification of the intention to carry out an acquisition activity.

§ 3.3. Exemption

Article 13

1. Our Minister may, upon request from the party required to notify, grant an exemption from the prohibition set in Article 10, paragraph 1, after the notifying party has informed Our Minister of the intention to carry out the acquisition activity.
2. An exemption can only be granted if the public interest is at stake, with a risk of economic, physical, or social harm to society or parts thereof, or adverse consequences for financial stability, if the exemption is not granted.
3. An exemption may be granted with certain conditions; provisions may be attached to the exemption.
4. It is prohibited to act in violation of the conditions or provisions imposed under this article.
5. A granted exemption expires as soon as Our Minister:
a. in response to a notification as referred to in the first paragraph, informs in writing that no review decision is required, or does not communicate within the deadlines referred to in Article 12, paragraph 4, that a review decision is required;
b. informs in writing that a review decision is required, and no application for a review decision is submitted within a reasonable period set by Our Minister in that notification;
c. does not process a timely submitted application as referred to under b;
d. makes a review decision.

Article 14

1. If an exemption is granted, Our Minister may appoint one or more persons with knowledge of business operations where the public interest plays a role, who can issue instructions to the target company or the acquirer.
2. Our Minister announces the decision to appoint an assigned person in the Government Gazette.
3. The appointed person issues instructions solely aimed at preventing risks to national security, and if the person is appointed to issue instructions to the acquirer, these instructions may only pertain to the business operations, knowledge, or assets over which the acquirer has gained possession, control, or significant influence through the acquisition activity for which the exemption is granted.
4. All directors, commissioners, persons in actual leadership, and other employees within the target company or acquirer must provide the appointed person with all information required for the purpose mentioned in the third paragraph, follow the instructions issued by the appointed person, and cooperate fully with the appointed person. Anyone who is obligated under the previous sentence to cooperate or provide information to the appointed person, or to follow an instruction issued by the appointed person, is not liable for any damage resulting from fulfilling that obligation.
5. Legal actions taken in violation of an instruction from an appointed person are voidable. The ground for nullification can only be invoked by the appointed person or Our Minister.
6. An administrative appeal against an instruction from an appointed person can be filed with Our Minister.
7. Our Minister may replace the appointed person with another individual.
8. An appointment expires as soon as an exemption expires, and if an exemption has not yet expired, Our Minister will revoke an appointment as referred to in the first paragraph as soon as it is no longer needed.
9. Without prejudice to the liability of the State, an appointed person is not liable for any damage resulting from the instructions they have issued

§ 3.4. Notification or review decision after acquisition activity or based on incorrect or incomplete information

Article 15

1. If, following a notification of a proposed acquisition activity, Our Minister has communicated that a review decision is required, and an acquisition activity has nevertheless taken place without a prior review decision upon application, Our Minister will, upon becoming aware of this acquisition activity, issue a review decision ex officio based on an assessment of the acquisition activity for risks to national security.
2. For the application of the first paragraph, it does not matter whether the acquisition activity took place before or after the Minister's notification that a review decision is required.
3. Our Minister will issue an ex officio review decision as referred to in the first paragraph within eight weeks after becoming aware of the acquisition activity, or within eight weeks after making the

notification that a review decision is required, if that notification had not yet been made when the Minister became aware of the acquisition activity.
4. The first paragraph does not apply if, for the acquisition activity that took place with an exemption, an application for a review decision was submitted at a time when the exemption was in effect and a review decision is made on the application. The timeline for a review decision upon application, as stated in Article 12, paragraph 5, applies, and Article 12, paragraphs 6 to 9, apply correspondingly.

Article 16

1. If an acquisition activity has taken place without prior notification of the intention to do so being submitted to Our Minister, or if the obligation referred to in Article 11, paragraph 6, has not been fulfilled, and the acquisition activity has nonetheless become known to Our Minister despite the lack of notification or failure to fulfill that obligation, Our Minister shall, based on an assessment of the risks to national security, notify the party required to notify in writing that no review decision is required or issue a review decision ex officio.
2. Before issuing a written notification or making an ex officio review decision as referred to in the first paragraph, Our Minister may, within three months after becoming aware of the acquisition activity, instruct the party required to notify to submit a notification of the acquisition activity within a reasonable period. The party required to notify must comply with the instruction, and upon submission of the notification, Article 11, paragraphs 2 to 5, first sentence, shall apply accordingly.
3. Our Minister shall issue a written notification as referred to in the first paragraph or make an ex officio review decision within eight weeks:
a. after Our Minister became aware of the execution of the acquisition activity; or
b. after the expiration of a reasonable period as referred to in the second paragraph if an instruction to submit the notification as referred to in that paragraph has been issued, regardless of whether that instruction has been complied with.

Article 17

1. If the intention of an acquisition activity has been reported to Our Minister, or if Article 11, paragraph 6, has been complied with, and it has become known to him, or there is a reasonable suspicion that incorrect or incomplete information has been provided by the party required to notify, Our Minister shall, based on an assessment of risks to national security, confirm in writing that a previous notification as referred to in Article 10, paragraph 1, section a, or a previously made review decision remains valid, or he shall issue a review decision ex officio that replaces or supplements the earlier notification or the earlier review decision.
2. Before issuing a written confirmation or making an ex officio review decision as referred to in the first paragraph, Our Minister may, within three months after becoming aware or developing a reasonable suspicion that incorrect or incomplete information has been provided by the party required to notify, instruct the party to submit a renewed notification of the intended or already executed acquisition activity within a reasonable period. The party required to notify must comply with the instruction, and upon submission of the renewed notification, Article 11, paragraphs 2 to 5, first sentence, shall apply accordingly.
3. Our Minister shall issue a written confirmation as referred to in the first paragraph or make a review decision ex officio to replace or supplement the previous review decision within eight weeks after:
a. becoming aware or developing a reasonable suspicion that incorrect or incomplete information was provided; or
b. the expiration of a set reasonable period as referred to in the second paragraph, if an instruction for a renewed notification as referred to in that paragraph has been issued, regardless of whether that instruction has been complied with.

Article 18

1. The eight-week period, referred to for making an ex officio review decision as mentioned in this paragraph, issuing a written notification as referred to in Article 16, paragraph 1, or providing a written confirmation as referred to in Article 17, paragraph 1, may be extended by Our Minister by a reasonable period, but no longer than six months. The extended period, as mentioned in the previous sentence, may be further extended by no more than three additional months if it turns out that there is a foreign direct investment as referred to in Article 12, paragraph 8.
2. The period for providing a written confirmation or issuing a written notification, or its extension, is suspended from the day on which Our Minister, under Article 34, paragraph 7, requests additional information, until the day on which the requested information is provided.
3. The grounds for and duration of the suspension, as referred to in Article 4:15, paragraph 1, section b, and paragraph 2, of the General Administrative Law Act, apply accordingly to the suspension of the period by Our Minister for making an ex officio review decision.

§ 3.5. Risk assessment for national security

Article 19

1. In the assessment by Our Minister of whether an acquisition activity may lead to a risk to national

1. In the assessment by Our Minister of whether an acquisition activity may lead to a risk to national security, the following factors are taken into account, considered in their mutual coherence:
a. The ownership structure and relationships of an acquirer are insufficiently transparent;
b. The acquirer is, or is under the influence of, a natural person, legal entity, or non-state entity that is subject to restrictive measures under:
1°. Chapter 7 of the Charter of the United Nations;
2°. Article 215 of the Treaty on the Functioning of the European Union;
3°. the Sanctions Act 1977;
c. The security situation in the country where the acquirer is a resident, in the country where the acquirer's head office is located, or in the countries of the surrounding region is uncertain or poor due to the stability of that country or the countries in that region being under great pressure or severely undermined by unwanted foreign interference or the threat thereof, military threats, cyber threats, terrorist threats, threats from armed non-state actors, or the increasing proliferation of weapons of mass destruction or the risk thereof within the region, or as a result of internal armed conflicts or the declaration of martial law or a state of emergency due to an attempt to overthrow the internationally recognized government;
d. The acquirer has committed a crime designated by ministerial regulation for the purposes of this section or is under the influence of a person or legal entity who has committed such a crime;
e. The acquirer has not, or insufficiently, cooperated with the investigation into the factors under a to d, and, where applicable, the factors mentioned in Articles 20 and 21;
f. If the assessment relates to a notification under Article 17, paragraph 2: the nature of the incorrect information provided and the motive for supplying that incorrect information.
2. A criminal offense under foreign law, which in the opinion of Our Minister is similar to a crime designated by ministerial regulation under Dutch law, is considered equivalent to a crime as referred to in paragraph 1, section d.

Article 20

In addition to the applicability of Article 19, Our Minister shall also consider the following factors when assessing whether an acquisition activity concerning a vital provider could lead to a risk to national security:
a. The acquirer does not have a good track record in the operation or management of the relevant process, the continuity of which is of vital importance to Dutch society, or in complying with legal regulations regarding this process;
b. The acquirer is a resident of, the acquirer's head office is located in, or the acquirer is under the influence of a state known to have one or more offensive programs aimed at disrupting or compromising the integrity, security, safety, or availability of a process as referred to in section a;
c. The financial solvency or otherwise financial stability of the acquirer, in relation to the necessary financial capacity to make the required investments for the continuity and resilience of a process as referred to in section a of the vital provider, is uncertain;
d. The state of which the acquirer is a resident, where the acquirer's head office is located, or under whose influence the acquirer operates, is not bound by relevant treaties and decisions of international organizations for a process as referred to in section a, or does not have a good track record in complying with these treaties.

Article 21

In addition to the applicability of Article 19, the Minister shall take into account the or an acquisition activity relating to an undertaking which is active in the sensitive technology may lead to a risk to the national authorities. safety, take into account the following factors:
a. an acquirer does not have a good record of security, marketing and or the use of sensitive technology and compliance with applicable legal requirements. security, classification or export control requirements;
b. in a State in which the acquirer is resident, in which the central administration of the acquirer or under whose influence the acquirer is located, there is no export control policy or does not have a good export control record, or is not are bound by relevant treaties or decisions of international organisations in the field of security, classification or export control or does not have a good track record in compliance with these conventions;
c. the acquirer is resident in, the central administration of the acquirer is located in, whether an acquirer is under the influence of a State of which it is known or for which there are grounds for suspect that they do not have a separation or that they do not have an inadequate or non-transparent between civilian and military research and development programmes;
d. the acquirer has motives for carrying out the acquisition activity, which are not are part of customary commercial motives, in which such a motive is In any case, gaining access to the sensitive technology is for other purposes other than commercial exploitation;
e. the acquirer is resident in, the central administration of the acquirer is located in, whether the

acquirer is under the influence of a State of which it is known or for which there are grounds for suspect that it has an offensive programme aimed at acquiring sensitive technology in order to establish a technological or strategic dominant position. acquire;
f. the acquirer has a track record or is pursuing a programme that makes it plausible to is that, after gaining access to or control over the sensitive technology, he or she and the means of production required for that purpose, will exercise a strategic dominant position with regard to the availability, pricing or further development of this technology which does not belong to usual economic motives and practices.

Article 22

The Minister shall lay down by ministerial regulation the offences which may be committed on the basis of Article 19(1)(d) may affect the assessment of the risk to national security.

§ 3.6. Requirements and regulations or prohibitions to be included in the review decision

Article 23

1. In the case of an acquisition activity that, according to the Minister's assessment based on paragraph 3.5, poses a risk to national security, the Minister may impose the following requirements or attach the following conditions in the review decision, if necessary to prevent or mitigate the associated risks to national security to an acceptable level:
a. Compliance with additional safety and usage regulations related to the handling of sensitive information from customers of goods and services provided by the target company, beyond what is already mandated by current laws and regulations.
b. The establishment and implementation of a security and integrity policy by the acquirer and the target company regarding the recruitment and appointment of directors and employees for key positions that have access to sensitive information or business processes.
c. The creation of a security committee or the appointment of a security officer to protect sensitive information and business processes, with the authority to:
1°. Restrict or prohibit access to or the transfer of information, and access to business processes.
2°. Provide advice on security and integrity risks, or the absence thereof, regarding the recruitment and appointment of directors and employees for key positions that have access to sensitive information or business processes.
3°. Report breaches or potential breaches of restrictions or prohibitions concerning access to or the transfer of information or business processes to the Minister without prior approval from any manager or director, and if necessary, accompany the report with an enforcement request directed at the supervisory officials referred to in Article 46, to protect against such breaches.
d. The consolidation and relocation of specific parts of the company that are part of vital processes in the Netherlands or that provide sensitive services related to national security to the Dutch government into a separate subsidiary located in the Netherlands.
e. The prohibition of certain types of services or the sale of certain goods from the Dutch branch of the company to specific other companies or countries.
f. The establishment of a separate board of supervisors for a Dutch subsidiary.
g. The prohibition of certain assets, components, or subsidiaries of the target company from being part of the transaction.
h. The imposition of a maximum shareholding that is lower than the intended investment.
i. The requirement that all or part of the acquirer's shares be certified through a foundation. These certificates shall not be considered as issued with the company's cooperation.
j. The attachment of the Minister's approval to the termination of the trading of shares of a listed target company using a securities settlement system, at any point after the proposed investment, where the granting of such approval is subject to an assessment in accordance with Articles 19 to 21.
2. Additional rules may be established by general administrative order regarding how to meet the requirements or conditions that may be imposed or attached to an acquisition activity in a review decision.
3. If the Minister imposes conditions as referred to in paragraph 1, sections b and c together, the condition for the establishment of an integrity policy must be determined with the approval of the security committee or the appointed security officer.
4. If the Minister imposes the condition referred to in paragraph 1, section i, no power of attorney is granted to the certificate holder under Article 118a of Book 2 of the Dutch Civil Code.

Article 24

In addition to the applicability of Article 23, the Minister may impose the following requirements or attach the following conditions to an acquisition activity involving a company active in the field of sensitive technology, if necessary to prevent or mitigate the associated risks to national security to an acceptable level:

a. The obligation to deposit certain technology, source code, genetic code, or knowledge with the State or a third party in the Netherlands and to allow it to be made available by the State or a third party for non-commercial purposes in the event of acute risks to certain vital processes or security interests, for as long as those risks persist;
b. The requirement to share information with the Minister before terminating or relocating business activities to a third country, and to allow the Minister, within a reasonable timeframe prior to such termination or relocation, to:
1.° Impose additional requirements or conditions as referred to in this article or Article 23;
2.° Acquire the company, parts of the company, or certain assets, including intellectual property rights, at a reasonable and market-conform price at that time;
c. The requirement to offer a license for certain knowledge, protected by patents or other intellectual property rights, to one or more third parties established in the European Union under fair, reasonable, and non-discriminatory terms, in order to keep the knowledge or technology available for the Netherlands or the European Union.

Article 25

1. If an acquirer or target company fails to comply with a requirement or condition from a review decision related to an acquisition activity, the Minister shall order the relevant parties to comply within a reasonable timeframe.
2. If the acquirer has not complied with the imposed order within the timeframe referred to in paragraph 1, the Minister may:
a. Impose other requirements or conditions on the acquisition activity, different from those referred to in paragraph 1; or
b. Prohibit the acquisition activity.
3. If the Minister determines that the acquisition activity poses a risk to national security that cannot be sufficiently mitigated by the requirements or conditions referred to in Article 23(1) or Article 24, the Minister shall:
a. Prohibit the acquisition activity; or
b. Prohibit the retention of control or significant influence if the acquisition activity is as described in Article 2(g) or Article 3(d).

Article 26

1. It is prohibited to act in violation of any requirement, condition, order, or prohibition imposed under Articles 23 to 25.
2. The Minister is authorized, where requirements are imposed or conditions are attached to an acquisition activity, to enter into an implementation agreement with the target company regarding the appointment by the target company of an independent person. This person will gather information on the compliance with certain imposed requirements or conditions and periodically report to the supervisory officials referred to in Article 46.

§ 3.7. Review decision based on reassessment

Article 27

1. The Minister may reassess an acquisition activity for which a notification as referred to in Article 10(1)(a) or Article 16(1) has been issued, or for which a review decision has been made, whether proactively or not, if facts arising after the initial review decision result in:
a. A potential societal disruption with economic, social, or physical consequences; or
b. A direct increased real threat to Dutch sovereignty.
2. A new assessment as referred to in paragraph 1 shall be conducted within six months after the risk has become known to the Minister, and based on this, the Minister shall confirm a previous notification that no review decision is required or may, on his own initiative, make a review decision despite the earlier notification that no such decision was required or to replace the earlier review decision.
3. The Minister shall make the decision for reassessment in accordance with the opinion of the Council of Ministers.
4. If the Minister requests information under Article 34(8)(b), the period referred to in paragraph 1 shall be suspended from the day the Minister made the information request until the requested information is provided.
5. The Minister shall, upon request, grant compensation to the acquirer or target company for damage caused as a result of a review decision made on the Minister’s own initiative, as referred to in paragraph 1, which exceeds normal societal risk and disproportionately affects the injured party compared to other vital providers as referred to in Article 7 or companies active in sensitive technology as referred to in or under Article 8, or managers of other business campuses.

CHAPTER 4. CONSEQUENCES OF CONDUCTING UNAUTHORIZED ACQUISITION ACTIVITIES

§ 4.1. Nullity, voidability, imposition and execution of an order

Article 28

1. The execution of an acquisition activity as referred to in Article 2(a), in violation of a prohibition under Article 25(3)(a), is void, unless the settlement of this activity takes place through the use of a securities settlement system.
2. If the execution of an acquisition activity is not settled through a securities settlement system, while at the time of or after the execution a prohibition under Article 25(2)(b) or Article 25(3)(a) exists, the Minister may order the acquirer or target company to take the necessary actions within a reasonable timeframe set by the Minister to prevent the undesired effects of the acquisition activity or to undo the acquisition activity.
3. Without prejudice to the applicability of paragraph 2, the following are voidable by court ruling :
a. Mergers, with the exception of cross-border mergers as referred to in Article 333b(1) of Book 2 of the Dutch Civil Code;
b. Other acquisition activities referred to in paragraph 2, which are not void under paragraph 1.
4. If the Minister has imposed a prohibition as referred to in Article 25(3)(b), the Minister shall order the acquirer, within a reasonable timeframe set by the Minister, to reduce or terminate the control or significant influence obtained through the acquisition activity to ensure compliance with the imposed prohibition.
5. The acquirer or target company shall comply with the order imposed under paragraphs 2 or 4.
6. The acquirer or target company shall immediately notify the Minister of the manner in which the order has been fulfilled.
7. The Minister shall inform other obligated parties involved in the acquisition activity of an order imposed as referred to in paragraphs 2 or 4.
8. Further rules may be set by or pursuant to a general administrative order regarding the manner and period within which an order as referred to in paragraphs 2 or 4 must be executed.

Article 29

1. If, after the expiration of the period referred to in Article 28(2) or (4), control or significant influence has not been reduced in accordance with the order, the Minister is exclusively and irrevocably authorized to dispose of the shares on behalf of and at the expense of the acquirer or target company, in accordance with the order, or to otherwise enforce the order, and is required to remit any potential proceeds to the benefit of the acquirer.
2. Further rules may be set by or pursuant to a general administrative order regarding:
a. The period within which the first paragraph is executed; and
b. The manner in which, where applicable, proceeds are remitted to or benefit the acquirer.

§ 4.2. Suspension of the exercise of acquired rights

Article 30

The rights acquired by an acquirer or target company through an acquisition activity cannot be exercised, except for, where applicable, the right to the proceeds of a company, dividends, and the receipt of distributions from reserves, if:
a. An acquisition activity has been carried out in violation of Article 10(1);
b. The requirements or further regulations imposed on an acquisition activity under Article 23(1), Article 24, or Article 25(2)(a) are not or are not properly fulfilled;
c. There is a prohibition under Article 25(2)(b) or Article 25(3)(a), and the violation of the prohibition has not yet been resolved;
d. There is a prohibition under Article 25(3)(b), and the violation of the prohibition has not yet been resolved;
e. The Minister has imposed an order as referred to in Article 16(2), and no written notification or review decision as referred to in that article has been made or taken yet, or an order as referred to in Article 17(2) has been imposed, and no written confirmation or review decision as referred to in that article has been made or taken yet;
f. The Minister uses the authority referred to in Article 27(1) from the moment it is determined, in accordance with the opinion of the Council of Ministers, that one of the circumstances referred to in that article is occurring, until it is communicated that no review decision is necessary, the review decision remains in effect, or a new review decision has been made.

Article 31

A target company that itself has not acquired rights as referred to in Article 30 shall, to the extent possible, comply with the suspension referred to in that article.

Article 32

1. If, in the opinion of the Minister, it is necessary to ensure the effectiveness of the suspension referred to in Article 30, the Minister may designate one or more persons with knowledge and experience in the area of regulatory compliance to issue instructions to the target company. These instructions are solely

intended to ensure the cooperation of the acquirer or the target company with the effectiveness of the suspension.
2. The Minister shall announce the decision to appoint a designated person in the Government Gazette.
3. All directors, supervisory board members, individuals in actual control, and other employees of the target company shall provide the designated person with all information required to achieve the purpose referred to in the first paragraph. They shall follow the instructions provided by the designated person and fully cooperate. Individuals who are required to cooperate or provide information to the designated person, or to follow an instruction provided by the designated person, shall not be held liable for any damages resulting from fulfilling that obligation.
4. Legal acts in violation of an instruction from a designated person are voidable. The ground for annulment can only be invoked by the designated person or the Minister.
5. An administrative appeal against an instruction from a designated person can be lodged with the Minister.
6. The Minister may replace the designated person with another individual.
7. The Minister shall revoke a designation as referred to in the first paragraph as soon as it is no longer necessary, but in any case no later than when the suspension of rights, as referred to in Article 30, is no longer applicable.
8. Notwithstanding the liability of the state, a designated person shall not be held liable for damages resulting from the instructions they provide.

Article 33

1. The Minister may appoint one or more persons to replace the management or leadership of a target company that is a vital provider if:
a. there is a suspension of rights as referred to in Article 30; and
b. there is a risk of abuse or failure of the target company.
2. The Minister shall announce the decision to appoint a designated person in the Government Gazette.
3. The duties of the appointed replacement are aimed at:
a. ensuring that the company complies with this law; and
b. preventing any disruption to the continuity of the vital process.
4. To the extent compatible with the objectives mentioned in paragraph 3, the appointed replacement shall act in the best interest of the target company.
5. Article 32, paragraphs 3 and 7, shall apply mutatis mutandis, with the understanding that the purpose referred to in Article 32, paragraph 3, shall be interpreted as the purpose of the work of the appointed replacement as described in paragraph 3.

CHAPTER 5 DATA PROCESSING

Article 34

1. The Ministers involved under Article 10, paragraphs 2 and 3, and the parties referred to in paragraphs 3 through 6, may process personal data only to the extent necessary for assessing, identifying, and protecting against risks to national security that may arise from the execution of an acquisition activity concerning a target company subject to this law.
2. The processing of personal data mentioned in paragraph 1 is allowed to the extent necessary for:
a. issuing a notification or making a decision if required, making an on-the-spot or automatic decision, providing a written confirmation as referred to in Article 17, paragraph 1, or imposing other requirements or conditions as referred to in Article 25, paragraph 2, on a decision;
b. granting an exemption;
c. appointing one or more persons who can issue instructions to the target company or acquirer or replace the management or leadership of a target company that is a vital provider, notifying the same in the Government Gazette, and revoking an appointment;
d. replacing an appointed person as referred to in subparagraph c;
e. imposing a mandate and notifying it;
f. authorizing under Article 29 or Article 43, paragraph 1, subparagraph a;
g. issuing an order as referred to in Article 44, paragraph 2;
h. performing activities necessary for the execution of parts a to g, including the assessment of an acquisition activity for risks to national security;
i. identifying persons based on data obtained under or pursuant to paragraph 3.6 for implementing this law;
j. applying Chapter 7 and Article 56 of this law.
3. For implementing this law, the Minister may use data provided by the reporting party under Article 11 or data derived from:
a. the Commercial Register;
b. the Land Registry Database and the public registers referred to in the first paragraph of Article 1 of the Land Registry Act;

c. other public registers established by law; and
d. public information.
4. The following government bodies, services, supervisors, or other persons must, upon request, provide the Minister with all information necessary for implementing this law:
a. The Minister for Foreign Trade and Development Cooperation, as far as data processed in the context of the Strategic Services Act, the Strategic Goods Decree, and Regulation (EU) No. 2021/821 of May 20, 2021, for the control of the export, brokering, technical assistance, transit, and transfer of dual-use items (OJ EU 2021, L 206);
b. The Minister of Finance, as far as data processed by the Tax Authority;
c. The Minister of Justice and Security, in compliance with the Judicial and Criminal Data Act, as far as judicial data concerning the acquirer or executives, leaders, or key personnel within the acquirer;
d. The Consumer and Market Authority, as far as data processed in the context of Chapter 5 of the Competition Act;
e. The security committee or security officer as referred to in Article 23, regarding data on breaches or potential breaches concerning access to sensitive information or business processes;
f. Government bodies, services, supervisors, or other persons to be designated by general administrative order.
5. The Minister may also request the Minister of the Interior and Kingdom Relations to make a notification as referred to in Article 8, paragraph 2, subparagraph f, of the 2017 Intelligence and Security Services Act, or the Minister of Defense to make a notification as referred to in Article 10, paragraph 2, subparagraph g, of that law.
6. A notary shall, upon request, provide the Minister with copies of certificates of inheritance from their protocol, as far as necessary for the implementation of this law. Article 49b of the Notary Act shall apply accordingly.
7. If the data provided by the reporting party in a notification and the data collection or provision referred to in paragraphs 3 to 6 have not provided the necessary data, the reporting parties shall, upon request, provide all necessary information to the Minister for implementing this law.
8. The Minister shall request information in the following cases:
a. For assessing whether a new notification must be made under Article 17, paragraph 2, only if the Minister has reasonable grounds to believe that incorrect or incomplete information was provided by the reporting party;
b. For assessing whether the facts referred to in Article 27, paragraph 1, have occurred only if there is agreement with the Council of Ministers referred to in Article 27, paragraph 3.
9. For complying with the obligation referred to in paragraph 6, the notary and those working under their responsibility are not bound by the confidentiality obligation referred to in Article 22 of the Notary Act.
10. The provision of data under paragraph 3, subparagraph c, and paragraphs 4 to 8 is free of charge.
11. The Minister is responsible for processing personal data under this law.
12. The Minister shall share data obtained under this law with the Minister of Justice and Security and, where applicable, with other involved Ministers as referred to in Article 10, paragraphs 2 and 3, to the extent necessary for implementing this law.
13. Detailed rules on the data used under paragraph 3, subparagraphs c and d, will be established by ministerial regulation.
14. Detailed rules on the information provided under paragraph 4 and the retention periods of personal data obtained under this law shall be established by or pursuant to a general administrative order.

Article 35

1. If, after a notification under this law, there is uncertainty about the ownership structure and relationships within the acquirer (if it is a company) or the target company, the company shall provide the Minister with a free extract from the company's register regarding a right to a share, as referred to in Articles 85 and 194 of Book 2 of the Dutch Civil Code.
2. Paragraph 1 applies only to acquirers that are not publicly traded companies or target companies that are not publicly listed.

CHAPTER 6. Additional Regulations for Acquisition Activities Involving a Publicly Listed (Target) Company

§ 6.1. General

Article 36

For the purposes of this Chapter, the following definitions shall apply:
Custodian: A custodian as referred to in Article 1:1 of the Financial Supervision Act.
Depot: An account with a shareholding or an account in which a shareholding is reflected, which is professionally administered or held, other than as a shareholder. This includes a collective depot or a giro depot as defined in the Securities Giro Act, a depot of an institution abroad, or a depot of a foreign

institution with a role similar to that of a central institution.
Securities with share characteristics:
1°. Tradable shares as referred to in Article 79, paragraph 1, of Book 2 of the Dutch Civil Code, or shares of a private company as referred to in Article 187 of Book 2 of the Dutch Civil Code;
2°. Tradable shares issued by a legal entity established under the law of another member state as referred to in Article 1:1 of the Financial Supervision Act other than the Netherlands, which are equivalent to the shares mentioned under point 1;
3°. Certificates of shares or other tradable securities equivalent to share certificates.
Institution Abroad: An institution based abroad that, under the applicable law governing the institution, is permitted to administer or hold accounts in securities on behalf of clients.
Party in the Custody Chain: A central institution, a legal entity admitted as a connected institution by a central institution, an investment firm, or a bank as referred to in Article 1:1 of the Financial Supervision Act, which is permitted under that law to provide investment services or to operate as a bank, a custodian, or a foreign institution or institution outside the European Economic Area with a role similar to that of a central institution.

§ 6.2. Notification Requirement and Public Offer

Article 37

1. If the notification requirement under Article 11, paragraph 1, concerns a public offer for a publicly listed target company, the notification must be made simultaneously with the announcement of the public offer as referred to in Article 5:70, paragraph 1, of the Financial Supervision Act or an announcement as referred to in Article 5, paragraphs 1 to 3, of the Public Bids Decree (Besluit openbare biedingen Wft).
2. A mandatory offer as referred to in Article 5:70, paragraph 1, of the Financial Supervision Act will not be executed in accordance with Article 16 of the Public Bids Decree (Besluit Openbare Biedingen Wft) until the Minister has notified the reporting party that no screening decision is required, a screening decision has been made, or a screening decision has been established in accordance with Article 25, paragraph 3, part a.

§ 6.3. Identity investigation and verification

Article 38

1. If the Minister, either following a notification under this law or independently, has uncertainties about the ownership structure and relationships within the acquirer, insofar as it involves a publicly listed company, or within the publicly listed target company, the acquirer or target company, upon request of the Minister, must conduct an investigation at no cost to determine the identity of a holder of control or significant influence and the connections they have with third parties.
2. If the identity of the holder(s) of a shareholding cannot be definitively established, it will be assumed that the acquirer, and the control or significant influence associated with the acquirer in a publicly listed target company, is exercised by the natural person or legal entity who, according to the investigation mentioned in the first paragraph or by other means, is identified as the last party involved in a depository or as the client for whom the shareholding is being held, administered, or maintained. This provision applies to the entire shareholding that the identified natural or legal person holds in the concerned party.
3. Any party in the custody chain must cooperate with the publicly listed target company during the investigation referred to in the first paragraph.
4. Cooperation by a party referred to in the third paragraph, which is an institution based outside the European Economic Area (EEA) or an institution with a function comparable to that of a central depository located outside the EEA, will only be provided if the legislation of the respective country does not oppose such cooperation.
5. If, despite the investigation mentioned in the first paragraph, the identity of the holder(s) of a shareholding cannot be definitively determined, the acquirer, in the case of a publicly listed target company, will be considered as the natural person or legal entity presumed to be the acquirer as per the second paragraph. The application of this paragraph must be actively communicated when applying Articles 12, 23, 24, 25, 30, 31, and 42 to the acquirer identified accordingly.

Article 39

1. The investigation referred to in Article 38, paragraph 1, involves obtaining information from parties in the custody chain.
2. The investigation mentioned in the first paragraph is subject to the provisions of Articles 49a, 49b (paragraphs 1, 2, 4, and 5), 49d, and 49e of the Securities Giro Transfer Act, with the following modifications:
a. In addition to Article 49a, part d, of the Securities Giro Transfer Act, a publicly listed company is also considered an issuing institution.
b. In addition to Article 49b, paragraph 1, part d, of the Securities Giro Transfer Act, an issuing

institution can also request a custodian to provide information about the manager of an investment fund as defined in Article 1.1 of the Financial Supervision Act or a UCITS (Undertaking for Collective Investment in Transferable Securities) as defined in Article 1.1 of the Financial Supervision Act.
c. Contrary to Article 49d of the Securities Giro Transfer Act, a publicly listed company must report the results of the investigation to the Minister.
3. By ministerial regulation, rules may be established regarding the manner in which information is collected, as referred to in the first paragraph, based on Article 49b, paragraph 1, of the Securities Giro Transfer Act, read in conjunction with the previous paragraph, and how it is responded to.

Article 40

1. A publicly listed company, during the execution of an investigation as referred to in Article 38, paragraph 1, will inform the last identified natural person or legal entity, who is not the acquirer, that they are considered the acquirer as defined in Article 38, paragraph 2, and explain the consequences associated with this under the law.
2. The last identified natural person or legal entity during the investigation, referred to in Article 38, paragraph 1, who is a party in the custody chain and who does not disclose the identity of a co-owner in a deposit held by them or a client for whom they hold, administer, or store shares of the publicly listed company, will immediately forward a written message from the publicly listed company with a request for identity verification to the co-owners or clients for whom they directly or indirectly hold, store, or administer shares.
3. The information requested in a forwarded message as mentioned in paragraph 2 includes:
a. For a co-owner in a central institution's deposit, the information referred to in Article 49b, paragraph 1, subparagraph a, of the Securities Giro Act.
b. For a co-owner in an intermediary deposit as defined in Article 1 of the Securities Giro Act, the information referred to in Article 49b, paragraph 1, subparagraph b, of the Securities Giro Act.
c. For a client for whom a foreign institution, including an institution outside the European Economic Area with a function similar to that of a central institution, holds, administers, or stores shares issued by the publicly listed company, the information referred to in Article 49b, paragraph 1, subparagraph c, of the Securities Giro Act.
4. A forwarded message as referred to in paragraph 2 shall state:
a. The address and contact email of the publicly listed company.
b. That the request is aimed at enabling the recipient of the message to promptly provide the requested information to the publicly listed company.
c. The consequences of not promptly providing the requested information for the shares held, stored, administered, or maintained by the recipient of the message, directly or indirectly.
d. That the information received will only be used to implement this law and that the obtained information is subject to confidentiality according to the law.
5. The publicly listed company shall inform the last identified natural person or legal entity, who is also a party in the custody chain as referred to in paragraph 2, if the status of the last identified party has transferred to another as a result of the information exchange under paragraphs 2 through 4.
6. Upon completing the investigation referred to in Article 38, paragraph 1, the publicly listed company will notify the last identified natural person or legal entity.
7. The publicly listed company will promptly provide the data obtained under this article to the Minister and inform the natural person or legal entity referred to in paragraph 2, who forwarded the message, or a designated third party, that the requested data has been obtained.

Article 41

1. A publicly listed company:
a. Is required to maintain the confidentiality of the information referred to in Article 40, paragraph 3, of which it becomes aware.
b. Does not grant any power of attorney to receive the information referred to in Article 40, paragraph 3, on its behalf.
c. Processes the information referred to in Article 40, paragraph 3, only to the extent necessary for the implementation of this law.
2. Legal entities have the right to correct information regarding their identity obtained by the publicly listed company after the forwarding of a message as referred to in Article 40, paragraph 2, if that information is found to be incomplete or inaccurate.
3. Rules regarding the processing of the information referred to in Article 40, paragraph 3, and the retention periods for such information by the target company and by the Minister, who obtained this information in the implementation of this law, will be established by or under a general administrative order.

§ 6.4. Reducing prohibited control or significant influence

Article 42

1. If an acquisition activity has been carried out while, at the time of or after the execution, a prohibition

1. If an acquisition activity has been carried out while, at the time of or after the execution, a prohibition under Article 25, second paragraph, part b, or Article 25, third paragraph, part a, is in place, and the settlement of the acquisition activity has taken place using a securities settlement system, the Minister shall order the acquirer, within a reasonable period determined by the Minister, to reduce or terminate the control or significant influence obtained through this acquisition activity so that the prohibition is no longer violated.
2. The acquirer or target company shall comply with the order issued under the first paragraph
3. The acquirer or target company shall promptly notify the Minister of the manner in which the order has been complied with.
4. The Minister shall notify the other obligated parties involved in the acquisition activity of an imposed order as referred to in the first paragraph. The publicly listed target company, if applicable, shall inform the custodian of a depot.
5. Rules may be established by or pursuant to a general administrative measure regarding the manner and period within which an order as referred to in the first paragraph must be implemented.

Article 43

1. If, after the period referred to in Article 42, first paragraph, the control or significant influence in a publicly listed target company has not been reduced in accordance with the order referred to in Article 42, first paragraph:
a. The publicly listed target company is exclusively and irrevocably authorized to completely dispose of or reduce the control or shareholding on behalf of and at the expense of the acquirer; and
b. The publicly listed target company is obligated to dispose of or reduce the shareholding or control on behalf of and at the expense of the acquirer.
2. If the acquirer is a participant in a depot or a client of a custodian, the publicly listed target company, in fulfillment of the obligation referred to in the first paragraph, part b, instructs the holder of that depot or the custodian to dispose of or reduce the shareholding on behalf of and at the expense of the acquirer.
3. If a party as the holder of a depot or custodian does not cooperate in executing an order to dispose of or reduce a shareholding traceable to the target company, the publicly listed target company, in fulfillment of the obligation referred to in the first paragraph, part b, issues the order to dispose of or reduce the shareholding to the next:
a. Depot holder who holds a shareholding in a depot for this party that is traceable to the publicly listed target company, or
b. Custodian who holds, administers, or maintains a shareholding for this party.
The application of the previous sentence is repeated until the order is executed by a party in the custody chain.
4. A holder of a depot or custodian who has been issued an order to dispose of or reduce, as referred to in the second or third paragraph, reduces the balance in the relevant depot by an amount for which the acquirer, with their shareholding, directly or indirectly participates in that depot. The reduction only takes place at the expense of the acquirer who directly or indirectly participates in the depot or is a client of a custodian, and any proceeds are given to or benefit the acquirer.
5. The person to whom an order from a publicly listed target company, as referred to in the second or third paragraph, is addressed provides as much cooperation as possible in the execution thereof.
6. By or pursuant to a general administrative measure, additional rules may be established regarding:
a. The period within which the first paragraph is to be executed, and
b. The manner in which, where applicable, proceeds are given to or benefit the acquirer.
7. Articles 26, third and fourth paragraph, and 45, third and fourth paragraph, of the Securities Giro Transactions Act are not applicable to the execution of an order as referred to in the second or third paragraph.

Article 44

1. If, despite an order provided by the publicly listed target company as referred to in Article 43, second and third paragraphs, no party executes or can execute the order, the publicly listed target company reports this to Our Minister.
2. After making a report as referred to in the first paragraph, Our Minister instructs the publicly listed target company to deliver the shareholding for which the acquirer is directly or indirectly a participant in a depot held by a central institution or institution to the acquirer, to the exclusion of others, by performing the following actions:
a. Entering this shareholding in the shareholders' register, as referred to in Article 85 of Book 2 of the Dutch Civil Code, in the name of the acquirer;
b. Proportionately reducing the shareholding registered in this shareholders' register in the name of a central institution or institution outside the European Economic Area with a function similar to that of a central institution, in accordance with the shareholding registered in the name of the acquirer; and
c. Requesting the central institution or institution outside the European Economic Area with a function

similar to that of a central institution to proportionately reduce the depot held by that institution to reflect the balance corresponding to the shareholding registered in the name of the acquirer.
3. In the request referred to in the second paragraph, part c, the publicly listed target company provides the identity of the acquirer and, if available, the details of the next party in the custody chain.
4. A central institution or institution outside the European Economic Area with a function similar to that of a central institution cooperates with the execution of the order for delivery given by a publicly listed target company, as referred to in the second paragraph.
5. A party in the custody chain who directly or indirectly holds a shareholding in a depot for the acquirer, or who holds, administers, or maintains a shareholding for the acquirer as a direct or indirect participant, reduces the shareholding present, administered, or maintained for the acquirer in the depot by the number of shares registered in the name of the acquirer as referred to in the second paragraph.
6. The fifth paragraph does not apply to the party in the custody chain for whom a change in registration as referred to in the second paragraph has taken place.
7. The registration and change of name in the shareholders' register can be invoked against anyone who became a participant in a depot after the date of the order for registration, as referred to in the second paragraph, or for whom a shareholding is held, administered, or maintained after that date.
8. After the publicly listed target company has modified the shareholders' register as referred to in the second paragraph, the publicly listed target company fulfills the obligation referred to in Article 43, first paragraph, and any proceeds are given to or benefit the acquirer.
9. The provisions of Articles 26, third and fourth paragraphs, and 45, third and fourth paragraphs, of the Securities Giro Transactions Act do not apply to the execution of an order as referred to in the second paragraph.

§ 6.5. Notification to Acquirer of Suspension of Rights

Article 45

1. A party in the custody chain must refrain from actions that it knows, or reasonably should know, would cause the acquirer or the publicly listed target company to act in violation of Article 30.
2. In the case of a suspension as referred to in Article 30, the publicly listed target company requests a party in the custody chain to forward a notice to the acquirer, which must include the following:
a. The address details of the publicly listed target company and the email address where this company can be reached;
b. The notification that, by order of Our Minister, the acquirer is suspended from all its rights except for the right to company proceeds, dividends, and the receipt of distributions from reserves;
c. The address details of Our Minister.
3. A party in the custody chain cooperates with the publicly listed target company in complying with the request referred to in the second paragraph.
4. If cooperation is not provided, the publicly listed target company must report this to Our Minister.
5. By or pursuant to a general administrative order, rules may be established regarding how the obligation in Article 31 should be fulfilled by the target company. These rules must at least cover how:
a. The acquirer's participation in the general meeting is prevented;
b. The provision of relevant information to the acquirer is limited, without compromising the information obligations to other stakeholders;
c. The management of the publicly listed target company does not act on the acquirer's instructions or directives, to the extent they are statutorily possible; and
d. The publicly listed target company implements other measures to prevent the acquirer from accessing the target company’s information systems, premises, and the data and production resources therein.

CHAPTER 7. SUPERVISION AND ENFORCEMENT

Article 46

The officials designated by Our Minister are responsible for supervising compliance with this law.

Article 47

1. The officials designated under Article 46 are, in deviation from Article 5:15, first paragraph of the General Administrative Law Act, authorized to enter and search a residence without the resident's consent, provided that:
a. This is reasonably necessary for the exercise of the powers referred to in Article 5:17 of the General Administrative Law Act; and
b. It concerns:
1.° A residence of the acquirer, director, manager, or key official of the acquirer or the target company; or
2.° A residence where the acquirer or target company is established.
2. If necessary, they exercise the authority to enter and search with the assistance of law enforcement.

Article 48

1. For the entry and search referred to in Article 47, first paragraph, prior authorization is required from the examining magistrate responsible for criminal matters at the Rotterdam District Court, based on a request from an official designated under Article 46. This authorization may be requested as a precautionary measure and should be shown when possible.
2. Article 171 of the Dutch Code of Criminal Procedure applies accordingly. The examining magistrate may consult the public prosecutor before making a decision.
3. If the request for authorization is not granted, the officials designated under Article 46 may appeal the decision to the Rotterdam District Court within fourteen days.
4. Entry and search will take place under the supervision of the examining magistrate.
5. The examining magistrate who granted the authorization may accompany the authorized person conducting the entry and search.
6. This article deviates from Articles 2, 3, and 8 of the General Act on Entering Premises.

Article 49

1. An authorization as referred to in Article 48, first paragraph, must be reasoned, signed, and must include:
a. The name of the examining magistrate who granted the authorization;
b. The name or identification number and the capacity of the person to whom the authorization is granted;
c. The legal provision on which the search is based and the purpose for which the search is conducted;
d. The date of issuance.
2. If the urgency of the search is such that the authorization cannot be written down in advance, the examining magistrate ensures that the authorization is put in writing as soon as possible.
3. The authorization is valid for a maximum of three days from the day it was granted.
4. This article deviates from Article 6 of the General Act on Entering Premises.

Article 50

1. The official who conducted a search as referred to in Article 47, first paragraph, must prepare a written report under oath or affirmation regarding the search.
2. The report must include:
a. The official’s name or identification number and capacity;
b. The date of the authorization and the name of the examining magistrate who granted it;
c. The legal provision on which the search is based;
d. The location of the search and the name of the person where the search was conducted;
e. The start and end time of the search;
f. The actions taken during the search and any other notable occurrences;
g. The names or identification numbers and capacities of other individuals who participated in the search.
3. The report must be sent to the examining magistrate who granted the authorization no later than the fourth day after the search was completed.
4. A copy of the report must be provided or sent to the person at whose premises the search was conducted no later than the fourth day after the search was completed. If necessary for the purpose of the search, the delivery or sending of the copy may be delayed. In that case, delivery or sending will take place as soon as the purpose allows. If it is not possible to deliver or send the copy, the examining magistrate or the official who conducted the search will keep the copy available for the person for six months.

Article 51

1. In case of violation of Articles 13, fourth paragraph; 14, fourth paragraph, first sentence; 16, second paragraph, second sentence; 17, second paragraph, second sentence; 28, sixth paragraph; 31; 32, third paragraph, first sentence; 34, sixth paragraph, seventh paragraph, and eighth paragraph; 35, first paragraph; 38, third paragraph; 40, first paragraph, second paragraph, fifth paragraph; 42, second paragraph; 43, first paragraph, part b, second paragraph, third paragraph, fourth paragraph, fifth paragraph; 44, fourth paragraph, fifth paragraph, eighth paragraph; 45, first paragraph, second paragraph, and third paragraph, Our Minister may:
a. Impose an administrative enforcement order; and
b. impose an administrative fine.
2. In case of violation of Articles 10, first paragraph; 26, first paragraph; 28, fifth paragraph; 30; 37, second paragraph; 40, sixth paragraph and seventh paragraph; 41, first paragraph and second paragraph; 42, third paragraph; 44, first paragraph; 45, fourth paragraph; 58, second paragraph, Our Minister may impose an administrative fine on the violator.
3. The administrative fine referred to in the first and second paragraphs shall be no more than a fine of the amount corresponding to the sixth category, as mentioned in Article 23, fourth paragraph, of the Dutch Penal Code, or if the sixth category does not allow for appropriate punishment, a maximum of 10% of the turnover of the respective enterprise.

10% of the turnover of the respective enterprise.

4. In case of violation of Articles 38, third paragraph; 40, second paragraph; 43, fourth paragraph; 44, fourth paragraph and fifth paragraph; 45, first paragraph, and 45, third paragraph, Our Minister may impose an administrative fine of up to 10% of the turnover of the group to which the respective party in the custodial chain belongs.

CHAPTER 8. AMENDMENT OF OTHER LAWS

Article 52

The General Administrative Law Act is amended as follows:

A

In Article 7 of Appendix 2, the following is inserted in alphabetical order: Investment, Mergers, and Acquisitions Security Assessment Act

B

In Article 11 of Appendix 2, the following is inserted in alphabetical order: Investment, Mergers, and Acquisitions Security Assessment Act.

Article 53

Upon the entry into force of Article I, Section A, of the Compensation for Disadvantages and Damages for Unlawful Decisions Act, Article 27, Paragraph 5, of this law will be repealed.

Article 54

In Article 28, Paragraph 4, of the Trade Register Act 2007, the following subsection n is added, replacing the period at the end of the paragraph with a semicolon:

n. Our Minister of Economic Affairs and Climate, for the implementation of the Investment, Mergers, and Acquisitions Security Assessment Act.

Article 55

After Article 14a.15 of the Telecommunications Act, a new article is inserted, which reads as follows:

Article 14a.16

Article 34, Paragraph 1, Subsections 3 through 7, 9 through 11, and 13 and 14, of the Investment, Mergers, and Acquisitions Security Assessment Act, shall apply correspondingly to this chapter.

Article 56

Article 4, Paragraph 4, of the Implementation Act for the Screening Regulation of Foreign Direct Investments is amended to read:

4. Our responsible Minister may, to the extent necessary for the implementation of this Act, also request the Minister of the Interior and Kingdom Relations to make a notification as referred to in Article 8, Paragraph 2, Subsection f, of the Intelligence and Security Services Act 2017 or request the Minister of Defense to make a notification as referred to in Article 10, Paragraph 2, Subsection g, of that Act.

Article 57

In Article 1, subsection 1°, of the Economic Offenses Act, the following is inserted in alphabetical order: The Investment, Mergers, and Acquisitions Security Screening Act, Articles 10, first paragraph, 13, fourth paragraph, 14, fourth paragraph, first sentence, 16, second paragraph, second sentence, 17, second paragraph, second sentence, 26, first paragraph, 28, fifth paragraph, sixth paragraph, 30, 31, 32, third paragraph, first sentence, 34, sixth paragraph, seventh paragraph, and eighth paragraph, 35, first paragraph, 37, second paragraph, 38, third paragraph, 40, first paragraph, second paragraph, fifth paragraph, sixth paragraph, and seventh paragraph, 41, first and second paragraph, 42, second and third paragraph, 43, first paragraph, subsection b, second paragraph, third paragraph, fourth paragraph, fifth paragraph, 44, first paragraph, fourth paragraph, fifth paragraph, eighth paragraph, 45, first paragraph, second paragraph, third and fourth paragraph, 58, second paragraph.

CHAPTER 9. FINAL PROVISIONS

Article 58

1. If Our Minister has a reasonable suspicion that an acquisition activity, which occurred prior to the entry into force of this law but after September 8, 2020, could pose a risk to national security, Our Minister may, within eight months of the entry into force of this law, order the parties involved in the acquisition to submit a notification. Following this, Our Minister may assess the acquisition for risks to national security and, based on this assessment, either make a notification as referred to in Article 10, first paragraph, subsection a, or issue an ex officio screening decision.

2. The parties involved must comply with the order to submit a notification under the first paragraph, to which Article 11, second to fifth paragraphs, first sentence, applies accordingly.

3. For making an ex officio screening decision, Article 16, third paragraph, and Article 18, first and third paragraphs, apply accordingly.

4. The first paragraph does not apply to an acquisition activity concerning a target enterprise that:

a. Is active in the field of sensitive technology, as designated under Article 8, third paragraph;

b. by exercising control or significant influence over a target undertaking referred to in subparagraph (a); or

c. Is a manager of a business campus.

Article 59

Our Minister shall send a report to the States General five years after the entry into force of this law, outlining the effectiveness and practical impact of this law.

Article 60

This law shall enter into force at a time to be determined by royal decree, which may be set differently for various articles or parts thereof.

Article 61

This law shall be cited as the "Wet veiligheidstoets investeringen, fusies en overnames" (Investment, Mergers, and Acquisitions Security Review Act).

Mandate and order that this law be published in the Staatsblad (Official Gazette) and that all ministries, authorities, bodies, and officials concerned shall strictly ensure its execution.

Given at The Hague, 18 May 2022

Willem-Alexander

The Minister of Economic Affairs and Climate Policy,

M.A.M. Adriaansens

The Minister of Justice and Security,

D. Yeşilgöz-Zegerius

Issued the tenth of June, 2022

The Minister of Justice and Security, D. Yeşilgöz-Zegerius