

Frequently asked questions about the Investment, Mergers and Acquisitions Security Screening Act (Wet Vifo)

1. Do I have to report my investment/merger/acquisition to the BTI?

The reporting obligation applies to acquisition activities that lead to a change of 'control' in (parts of) vital sectors, managers of a business campus or companies active in the field of sensitive technologies ('**the target companies**'). In addition, the reporting obligation also applies to the acquisition or increase of 'significant influence' in target companies that are active in the field of highly sensitive technologies.

Vital sectors include companies that are essential to national security, such as energy supplies, transportation and financial infrastructure. Sensitive technologies include dual-use technologies, which are technologies that can be used for both civil and military applications, such as quantum and photonics technology. The examples mentioned are not limited to this list, see for completeness.

The Wet Vifo (**the law**) distinguishes between **control** and **significant influence**. **Control** means that an acquirer can exercise a very significant degree of control over the strategy of the company, for example by acquiring more than 50% of the shares. Control can be obtained, in addition to investment, through mergers, demergers, the establishment of a joint venture or the transfer of essential assets of the target company. In the case of vital providers, managers of a business campus or companies active in the field of sensitive technology, the reporting obligation applies if the acquisition activities lead to control.

In addition, the reporting obligation applies when obtaining or increasing **significant influence** in target companies that are active in the field of highly sensitive technology. The law offers the possibility to establish different threshold values by means of a general administrative measure (AMvB), which can already be achieved by acquiring 10%, 20%, or 25% of the number of votes to be cast at the annual general meeting (AvA) of the target company. If 10% of the votes at the AvA are obtained, notification must be made. Subsequently, a notification is required again when increasing the interest to 20% and then to 25%. The gradual increase of the shareholding may be a deliberate strategy of the acquirer to gradually obtain a dominant position and thus influence the strategy of the company. There may also be significant influence if the target company undertakes to a third party to ensure that one or more directors or one or more directors nominated by this third party are appointed or dismissed.

In summary, this means that when a target company is involved in sensitive technology, the reporting obligation only applies when control is acquired. However, when the target company is active in highly sensitive technologies, the reporting obligation applies both when there is a change or acquisition of significant influence and when there is an acquisition of control. In practice, this may mean that even small investments in highly sensitive technologies, which give rise to significant influence, must be reported.

To avoid uncertainty, you can request an informal opinion from the BTI in advance. This only provides an indication on an informal basis and cannot be considered a definitive judgment.

2. When should I file a report?

A notification can be submitted once the documents in agreed form have been drawn up and the cap table and governance are final. The BTI has indicated that the cap table may not be changed at the time of notification.

- In investment rounds this means that the **SHA (Shareholders' Agreement)** and the **SA (Subscription Agreement)** have been drawn up.
- In the event of a takeover, this is when the **SPA (Share Purchase Agreement)** is drawn up.

Experience shows that the BTI also often wants to see draft notarial deeds.

It is important that the notification is made in a timely manner, namely before the transaction is completed (i.e. before the notary passes the notarial deeds), in order to await legal approval and to prevent the transaction from being in conflict with the notification obligation. [Click for more information](#).

3. Who must submit the notification?

The reporting obligation applies to the **acquirer** and the **target company**, because both parties are involved in the proposed activity and have essential information for the assessment.

In practice, the **acquirer** will be responsible for filing the notification and will need to support the company by providing company-specific information. As a result, investors and the company often jointly prepare the documentation, recording both the investment structure and the relevant company information. The **notification template (NL)(ENG)** helps by clearly indicating who is responsible for providing which information.

The acquirer may be exempted from the reporting obligation if he could not have been aware of the obligation, for example because of a confidentiality obligation of the target company.

4. If multiple investors have a significant interest, can they report jointly?

Yes, it is possible to report jointly, provided that it is clear which interest each investor receives.

5. Do only foreign investors have to report?

No, the law is country neutral. Both domestic and foreign investors must report if they fall within the scope of the law, see question 1.

6. Do public investors have to report?

Yes, public investors are also subject to the reporting obligation if they fall within the scope of the law. Discussions are currently underway with the BTI on the question of whether funds that consist entirely of public capital are also subject to this obligation.

7. Is there a format for my report?

Yes, there are [guidelines](#) that need to be met available on the BTI website. In the **notification format (NL)(ENG)** all required components are shown schematically.

8. How long does the safety assessment take?

The initial assessment takes up to 8 weeks. In complex cases or additional investigations, the procedure can be extended by another 6 months.

In certain cases, the BTI may temporarily pause the procedure, for example if the required documents have not been submitted in full. In such a case, the BTI will request the missing information, after which the waiting period will be suspended until the data has been received. This may extend the duration of the initial assessment.

Finally, the term can be extended again, with a maximum of 3 months, if this is necessary to comply with the FDI screening.

9. Are there any costs associated with filing a report?

No, there are no direct costs associated with filing a report, but costs may be incurred when adjusting a deal after a negative assessment.

10. Is there a contact person within the BTI for my sector?

No, the BTI does not assign specific contacts per sector. Instead, sectoral teams with expertise in specific areas work together to assess reports.

11. What are the consequences of not reporting an acquisition activity?

Failure to report an investment, merger or acquisition that falls under the reporting obligation of the law may have the following consequences:

- Suspension of shareholder rights: Certain rights, such as voting and information rights, are suspended. Only the right to income, such as dividends, remains intact.
- Unwinding or annulling the transaction: The parties involved may be required to unwind the transaction. If the transaction took place via the stock exchange, the investment must be reversed in another way.
- Fines: Administrative fines may be imposed, amounting to up to €870,000 or, if this is not appropriate, up to a maximum of 10% of the annual turnover of the company concerned.

Contact

Do you need further knowledge exchange about Wet Vifo and would you like to stay informed of further developments? Send an e-mail to info@nvp.nl.

Also visit our website for more information: www.nvp.nl

About the Dutch Association for Private Equity and Venture Capital (NVP)

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