

FDI-Facelift

How the planned IPG will change deal practice in Germany

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The German Federal Ministry for Economic Affairs and Energy (BMWE) is working on a new Foreign Investment Screening Act (Investitionsprüfungsgesetz – IPG). It is intended to reorganise Germany's foreign investment screening framework and, at the same time, to introduce a number of substantive changes. While the envisaged reform does not represent a major departure from the existing regime, it does, however, introduce a number of changes that will matter in practice. This includes revised screening thresholds, new and expanded case groups, additional acquisition scenarios capable of triggering a mandatory notification or right to review, and changes to deadlines and procedural rules. As a result, foreign investment screening risks are to become relevant for a broader range of transactions. At the same time, the reform promises targeted simplifications and greater procedural consistency, which are likely to be particularly relevant for deal timing.

Pressure for reform and guidelines

With the planned reform, the legislator is responding to current developments in investment screening, which has long since become a standard instrument of economic and security policy. Geopolitical risks, technological dependencies and the protection of strategic capabilities are coming more into focus; at the same time, Germany wishes to remain open to foreign investments. The IPG-draft thus seeks to strike a balance: greater scrutiny in security-relevant cases – less friction in non-critical transactions. Added to this is the European impetus: the revised EU Screening Regulation (Regulation (EU) 2026/1386) introduces binding minimum standards and requires Germany to make specific adjustments from January 2028 at the latest.

Changes to the scope of investment screening

Three types of procedure – one approval process

In addition to the two existing categories – the sector-specific procedure and the cross-sectoral procedure, subject to a mandatory filing obligation in case the relevant thresholds are met – the future framework will introduce a third category of case groups, the case-group-specific procedure. The future framework will therefore comprise:

- the **sector-specific procedure** (including defence, military technology, IT security),

- the new **case-group-specific procedure** – previously part of the cross-sectoral procedure – (including critical infrastructure) and
- the **cross-sectoral procedure** as a fallback provision.

Where the relevant thresholds are met, acquisitions falling within the sector-specific procedure or the case-group-specific procedure will be subject to a mandatory filing obligation, while acquisitions falling within the cross-sectoral procedure will be subject to the BMWV's review powers.

In principle, uniform procedural rules and time limits apply to all three types of procedure. At the conclusion of each procedure, the BMWV will issue a clearance. As a result, the current distinction between a clearance decision and a certificate of non-objection will be abolished.

New thresholds for initiating a review

The following thresholds are proposed to apply to foreign acquisitions:

- **10 per cent** of voting rights in the sector-specific procedure and in the case-group-specific procedure for sectors of particular security relevance;
- **25 per cent** of voting rights in the cross-sectoral procedure and in the case-group-specific procedure for certain other security-relevant sectors;
- **15 per cent** of voting rights in listed target companies, where the 25 per cent threshold would otherwise apply.

An increase of the voting rights above the review trigger threshold also remain subject to review. In future, where the initial threshold is 10 per cent, the thresholds of 25, 50, 75 and, newly, 100 per cent will apply; where the initial threshold is 25 per cent, the thresholds of 50, 75 and, newly, 100 per cent will apply. The previous additional acquisition threshold of 40 per cent is abolished. For listed target companies, an additional threshold of 30 per cent is introduced.

More target companies covered

The case groups previously set out in the Foreign Trade and Payments Ordinance will be transferred into a standalone Investment Screening Ordinance (*Investitionsprüfungsverordnung – IPV*). The planned reform extends the scope of investment screening in several technologically and economically sensitive areas. As the legislative process is still ongoing the scope and wording of individual case groups may still change.

- **Critical infrastructure (KRITIS) case group:** In future, the KRITIS case group will also cover companies that, while not themselves operators of a critical facility, exercise actual control over such a facility and therefore have, or are able to obtain, actual access to it.
- **Medicines critical to the supply chain:** The previous term ‘essential medicines’ is replaced by a reference to an exhaustive list of active substances critical to the supply chain.
- **Artificial intelligence:** The existing AI case group is being significantly expanded. In particular, it will also cover general-purpose AI models suitable for defence or space applications, as well as AI models posing a systemic risk within the meaning of Regulation (EU) 2024/1689 (AI Regulation).
- **Semiconductor technologies:** The scope is extended to cover key parts of the semiconductor value chain. This includes, amongst other things, chip design, electronic design automation software, front-end and back-end manufacturing, packaging technologies, and materials such as speciality chemicals and wafers.
- **Aerospace:** Dual-use goods are removed from the previous case group for specific dual-use products and will in future be covered by a separate case group (see below). In particular, the case group retains air carriers with operating licences as well as goods for space and space infrastructure systems.
- **Quantum technologies:** The previous restriction to development and manufacture no longer applies; in future, research into quantum technologies alone will suffice.
- **Raw materials:** The existing raw materials case group will be aligned with the EU lists of critical and strategic raw materials under Regulation (EU) 2024/1252 (Critical Raw Materials Act) and will thus be dynamically linked to future amendments.
- **Dual-use goods:** One of the most significant practical changes is the introduction of a separate case group for goods listed in Annex I to Regulation (EU) 2021/821 (Dual-Use Regulation). In our opinion, because of Germany’s broad industrial base, this will massively widen the number of FDI procedures. Many target companies, in particular those exclusively selling within the EU, currently are not aware that they in fact produce goods listed in the Dual-Use Regulation. This will require an even deeper analysis in future transactions.
- **Electoral systems:** A new case group has also been introduced for systems used to conduct elections, as well as associated information and IT systems. The aim is to protect the integrity of democratic processes.

Narrower definition of “national” and end of EFTA privileges

In future, natural persons will only be regarded as German nationals if they hold exclusively German nationality; they will only be regarded as EU nationals if they hold exclusively the nationality of one EU Member State or the nationalities of two or more EU Member States. In both cases, a domicile or habitual residence in Germany or in the European Union, respectively, is also required. Holding dual nationality may therefore lead to a filing requirement.

For legal entities, the existing rules remain unchanged: whether it qualifies as domestic continues to depend on whether its registered office or place of management is located in Germany. At the same time, the previous preferential treatment afforded to EFTA states (Iceland, Liechtenstein, Norway and Switzerland) no longer applies.

Intra-group restructurings significantly simplified

The exemption for intra-group restructurings is extended to the three types of procedures. In future, the only decisive factor will be that no new acquirer enters the ownership chain whose registered office or place of management is in a state other than that of the existing acquirers. This also covers restructuring where the controlling company itself acts as the acquirer or seller.

Atypical influence and circumvention expanded

The existing concept of an “atypical acquisition of control” will be replaced by the broader concept of an atypical acquisition of “influence”. Going forward, the granting of certain special rights (specific veto rights, additional seats on supervisory bodies or information rights) may trigger a filing obligation under the sector-specific and case group-specific regimes, or give rise to review powers under the cross-sectoral regime, even where no voting rights at all are acquired.

The definition of circumvention is being extended in line with competition law. In future, an intention to circumvent the rules will no longer be required. It will suffice that the specific structure of a transaction objectively leads to the circumvention of the investment screening in the individual case.

Procedures and time limits

Shortened review periods

- **Phase I** is shortened from two months to 45 days (with no possibility of an extension). The time limit does not commence until all necessary information and documents have been received in full.

- Phase II will in future last 120 days. The BMWG may unilaterally extend this by up to 90 days. A further extension is only possible with the consent of the direct acquirer. The consent of the seller, which was previously also required, is no longer necessary.

In future, the BMWG may only review a transaction *ex officio* within three years of the contract being concluded. Previously, the time limit was five years.

Greater importance of provisional measures and a stricter sanctions framework

A new provision enables the BMWG, for the first time, to order provisional measures before the conclusion of the review procedure. Under current law, a standstill obligation already applies to notifiable acquisitions, so the practical significance of the new power is likely to be limited in such cases. It is, however, relevant for cross-sectoral procedures, where no automatic standstill obligation currently applies. Furthermore, the planned reform expressly provides, for the first time, for the possibility of temporarily transferring voting rights to an independent third party.

For the first time, breaches of the notification requirement can be expressly punished with a fine. The same applies if third parties fail to respond to a request for information. Depending on the nature of the breach, fines of up to one million euros may be imposed. The existing criminal provisions remain unchanged.

EU-wide coordination of parallel notifications and simplified prohibitions

A new coordination requirement is being introduced for transactions that must be reviewed in several EU Member States: the notification in Germany should be made on the same day as the notifications in the other Member States concerned.

The conditions for a prohibition are being standardised across all types of procedure. In future, the approval of the entire Federal Government will no longer be required. Agreement with the Federal Chancellery, the Federal Foreign Office and the Federal Ministries of the Interior, Defence and Finance will suffice. In the past, the entire government's approval has led to political and legal controversies.

Publication of decisions and legal remedies

The proposed IPG establishes a legal basis for the publication of prohibitions on the BMWG's website. In individual cases, mitigation measures set out in orders and public-law contracts may also be published. The trade and business secrets of the parties involved will be protected in the process.

For disputes under the IPG, the Higher Administrative Court is to have jurisdiction at first instance. This is intended to ensure that issues relating to investment screening law are resolved more quickly and that legal certainty is established without delay.

Outlook: What companies should keep in mind now

The planned IPG broadens the scope of foreign investment screening in several areas. In the case of planned transactions, the composition of the acquirers, ownership structures and the specific activities of the target company must continue to be assessed at an early stage to determine their relevance under foreign investment screening law. At the same time, it remains to be seen to what extent the legislator will actually extend the scope of application in the course of further proceedings – particularly with regard to specific categories of cases, intra-EU investments and greenfield investments. The IPG is currently expected to come into force in spring 2027.

BLOMSTEIN will closely monitor further developments and keep you informed. If you have any questions on European and national investment control, [Roland M. Stein](#), [Leonard von Rummel](#), [Elisa Steinhöfel](#) and the entire team are ready to assist you.

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