

## GERMANY TIGHTENS FOREIGN DIRECT INVESTMENT CONTROLS WITH PARTICULAR FOCUS ON HEALTHCARE SECTOR

The German Ministry for Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie*, "BMWi") published an amendment to the German Foreign Direct Investment Regulation (*Außenwirtschaftsverordnung*, "AWV"). The amendment particularly aims at expanding the FDI scrutiny on further parts of the healthcare sector. Other industries are caught by the draft legislation as well.

### WIDER SCOPE OF APPLICABILITY OF THE AWV

Under the AWV, the BMWi can scrutinise direct and indirect acquisitions of at least 10% of the voting rights by non-EU investors in German target companies which are active in certain sectors.

Against the background of the Corona crisis, the scope of the AWV will be expanded to German targets from the healthcare sector which develop, manufacture or distribute essential pharmaceuticals, medical products and in-vitro diagnostics, in particular for the treatment of highly infectious diseases. Furthermore, German companies which develop or manufacture certain medical personal protective equipment in the sense of the EU regulation 2016/425, which is designed for protection against health or safety risks, will be subject to the FDI scrutiny as well.

In addition, the scope of AWV's application will include German companies which provide certain services in the context of digital communication services for public authorities (namely security agencies) as well as suppliers of specific raw materials, as defined by the EU Commission in the respective communication (COM(2017) 490) which currently includes 27 raw materials, *inter alia* natural rubber, natural graphite, heavy and lights rare earth elements.

### ALIGNMENT WITH THE EU SCREENING REGULATION

Further changes aim at aligning the AWV with the EU Screening Regulation 2019/452. In particular, state-owned investors from outside the EU will be subject to closer scrutiny. The same also applies if transactions are financed by third countries from outside the EU.

#### Key issues

- Closer focus of the German FDI regime on target companies active in the healthcare sector due to the Corona crisis
- Further industries, e.g. critical raw materials, are caught as well
- Further significant changes to the German FDI regime to be expected soon

## **BACKGROUND AND OUTLOOK**

The latest amendment to the AWV is mainly a reaction to the current Corona crisis and reflects the EU Commission's recommendation in its guidance to the EU Screening Regulation 2019/452. The BMWi announced that the new rules will not be time-limited, i.e. they will continue to apply after the current crisis. Therefore, it can be expected that transactions in the healthcare sector will be subject to the German investment control much more frequently than in the past.

The amendment to the AWV is just the beginning of a series of further legislative initiatives which will further tighten the German investment control. Further changes, which are currently subject to the legislative process, aim at (i) lowering the substantive test to a mere "probable adverse effect", (ii) introducing a closing prohibition, criminal sanctions for infringements of the closing prohibition and (iii) expanding the AWV's scope of application to additional technological industries.

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For further background information on the German FDI regime please refer to our further newsletter under the link <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2018/12/germany-follows-through-with-tighter-controls-on-foreign-direct-investment.pdf>.

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