

Germany rewrites the rules on investment screening

The draft Investment Screening Act (IPG-E)

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The German Federal Ministry for Economic Affairs and Energy (BMWE) has recently presented the draft bill for a standalone Investment Screening Act (IPG-E). This briefing outlines the key changes compared with the current German foreign direct investment screening provisions, assesses their impact on transactions and sets out our conclusions.

Key changes

- 1 The voting right thresholds are amended and new thresholds apply to listed targets and additional acquisitions.
- 2 A separate ordinance adds sensitive technologies, the full EU dual-use list and a control-based test for critical infrastructure.
- 3 The intra-group exemption extends to all procedures, but remains limited to wholly owned structures that introduce no new jurisdiction into the ownership chain.
- 4 A broader influence test captures special rights without voting rights; objective circumvention and additional asset deals, including certain licences, also fall within scope.
- 5 Greenfield investment are, as of now, outside the scope of the IPG-E
- 6 The review timelines are streamlined and the period for initiating an ex officio review is shortened.
- 7 EFTA investors lose preferential treatment and will be treated as non-EU investors.
- 8 Only natural persons holding exclusively German or EU citizenship qualify as German or EU investors.
- 9 The BMWE may impose pre-proceeding interim measures and publish information on prohibitions and restrictive orders.
- 10 A single "approval" replaces both clearance and a certificate of no objection.

The draft bill is of considerable significance for transactional practice generally, and particularly for foreign undertakings involved in M&A and private equity transactions: it broadens the scope of application of the German foreign direct investment regime in several respects. The key points are set out below, alongside our conclusions of their impact on transactions.

Key developments

- Phase 1 review is cut from two months to a non-extendable 45 calendar days.
- The limitation period for an ex officio review decreases from five to three years.
- The circumvention test shifts to an objective standard, and a new 'atypical acquisition of influence' test catches special rights even without any transfer of voting rights, widening the net for deal structuring.
- The intra-group exemption is broadened, while EFTA investors will generally be treated like other non-EU investors.

Context and background

The IPG-E replaces the provisions on the screening of foreign direct investment, previously scattered across the Foreign Trade Act (AWG) and the Foreign Trade Ordinance (AWV), with a single, unified law, whilst also implementing the new EU Screening Regulation (EU) 2026/1386.

First, the IPG-E responds to the obligation under EU law to align with Regulation (EU) 2026/1386, which requires Member States for the first time to establish an investment screening regime meeting certain minimum requirements. German law is already, in many respects, stricter than these future EU minimum requirements – for example, with regard to sectors subject to notification and thresholds for initiating a review – and the IPG-E expressly retains this higher level of protection. Second, the German MoE is drawing lessons from six years of practical experience with the existing German FDI regime.

The IPG-E is still undergoing inter-ministerial consultation. Hence, further amendments are to be expected before the law enters into force.

Old and new thresholds

The IPG-E retains the fundamental three-way division of investment screening procedures: the sector-specific procedure (previously governed by Section 60 AWV), the new case-group-specific procedure (picking up the case groups previously listed in Section 55a(1) AWV, which formed part of the former cross-sectoral procedure), and the cross-sectoral procedure as the remaining catch-all (previously governed by Section 55(1) AWV).

Investments in domestic target companies active in areas falling either within the scope of the sector-specific procedure (e.g. defence and military equipment) or the case-group-specific procedure (e.g. critical infrastructure, artificial intelligence) remain subject to mandatory notification, with a standstill application applying while the authority's review is ongoing.

The initial review threshold for acquisitions of voting rights remains at 10% for target companies active within the scope of the sector-specific procedure and within the critical infrastructure area of the case-group-specific procedure. For the remaining security-relevant sectors, the threshold is raised from the previous 20% to 25%. For other critical sectors falling within the scope of the case-group-specific procedure, and the cross-sectoral procedure, the initial threshold remains unchanged at 25%. For listed targets within the scope of the 25% case-group-specific procedure, a reduced threshold of 15% is introduced, since a lower share

of voting rights can, from the BMW's perspective, already amount to a blocking minority given typical attendance levels at general meetings.

For additional acquisitions, the previous 40% threshold (which was aimed particularly at listed companies but applied generally) is abolished and replaced by a 30% threshold modelled on Section 29(2) German Securities Acquisition and Takeover Act.

The existing additional-acquisition thresholds of 25%, 50% and 75% of voting rights are retained unchanged. For all companies, an additional acquisition up to 100% of voting rights becomes newly reportable. For existing investors building up a stake gradually, this means further notification points later in the life of an investment.

New and expanded sectors (IPV)

The new IPG will be flanked by an Investment Screening Ordinance (IPV), which will set out the sectors falling within the scope of application of investment screening. Regulating this sector list separately by way of an ordinance will make it easier for the BMW to amend the sector list in the future, adapting it to new circumstances. The current draft IPV retains the existing categories from Section 55a AWW and adds several additional categories as contained in the new EU Screening Regulation, including extension of the current categories of critical raw materials, artificial intelligence, semiconductor technologies, or quantum technologies, and as a new addition systems for conducting elections and voter registration.

In particular regarding dual-use goods – a category becoming increasingly relevant given current geopolitical developments – the IPG-E broadens the scope of application of the FDI regime. Dual-use goods are already captured to some extent under the current regime. However, the new Section 3 no. 19 IPV, implementing Article 4(15)(g) of the new EU Screening Regulation, requires notification of transactions relating to the full list of dual-use items in Annex I of the EU Dual-Use Regulation (EU) 2021/821. This is a far more extensive and technically detailed catalogue than the narrower dual-use-adjacent case groups previously contained in Section 55a(1) no. 18 and no. 19 AWW, of which only parts are carried forward into the new provision. In practice, this means that developing, manufacturing or distributing any good on the EU dual-use list becomes an independently notifiable case group, materially widening the range of technology and industrial companies brought within the scope of the regime.

For critical infrastructure, the focus shifts from legal operator status alone to actual control as well – an extension likely to generate more demarcation questions in practice.

Intra-group restructuring: broader exemption

The exemption for intra-group restructuring, previously limited to the cross-sectoral procedure, is extended to all procedure types. The exemption continues to require that the restructuring takes place exclusively between entities whose shares are each wholly (100%) owned

by the same controlling (parent) undertaking. Whether the exemption applies depends on whether the restructuring adds a new entity between the parent company and the domestic subsidiary that is incorporated in a jurisdiction not previously present in the ownership chain. Where that is the case, the intra-group restructuring exemption cannot be relied upon.

Acquisition criteria and anti-circumvention rules

Section 6(2) IPG-E replaces the "atypical acquisition of control" test with a broader "atypical acquisition of influence" test. This is more than a terminological change: special rights alone – without any accompanying acquisition of voting rights – can now trigger a notifiable acquisition, provided they confer an influence equivalent to voting rights above the relevant threshold. Under the previous regime, the grant of such special rights on its own fell outside the scope of review, even where it conferred very substantial influence over an investee's operative business; investors relying on that gap will no longer be able to do so. The draft also broadens the circumvention test, modelled on Section 1 ARC (*Act Against Restraints of Competition, Gesetz gegen Wettbewerbsbeschränkungen*) and Article 101(1) TFEU (*Treaty of the Functioning of the EU*). An objective circumvention effect is now sufficient, regardless of intent. This could apply, for example, where coordinated acquisitions of the same domestic target each remain below the notification thresholds in Section 7 IPG-E when viewed separately.

At the same time, the definition of an "asset deal" is broadened. It will in future expressly cover the grant of a licence to a non-EU or foreign national, where the assets concerned form a significant part of the undertaking's assets. Pure greenfield investments, however, are as of now not subject to mandatory German FDI.

Procedure and deadlines

Going forward, Phase 1 will be limited to a non-extendable period of 45 calendar days. It remains to be seen whether, in practice, the BMWV will respond to this tighter timeframe by opening Phase 2 more often if it cannot complete its review within Phase 1. Moreover, the period will no longer begin upon the BMWV becoming aware of the transaction, but only upon receipt of a complete notification.

The Phase 2 period expires after 120 calendar days. An extension of Phase 2 by up to 90 days remains possible ("up to" rather than a set period) and is tied to more precise requirements (significant effort or high complexity of the case). The additional one-month extension previously available in defence-related cases is abolished on the grounds that it has proven to be of limited practical relevance.

The time limit for initiating an ex officio review is reduced from five to three years after signing. This could contribute to deal certainty to some extent, although its practical significance will depend on further clarification, including of the sectors and activities subject to mandatory German FDI review.

EFTA states lose their special status

Under the current German FDI regime, acquirers from EFTA states (Iceland, Liechtenstein, Norway, Switzerland) are accorded preferential treatment in several respects. Implementing the requirements of the new EU Screening Regulation, the IPG-E instead subjects all third-country nationals uniformly to the regime for "non-EU nationals". It remains to be seen whether, in practice, EFTA investors will be subject to a level of scrutiny similar to that applied to EU investors (which is generally lower than for non-EU investors) or whether they will instead be treated like other non-EU investors.

New criteria for determining EU/non-EU investor status

The IPG-E also tightens the criteria for determining whether a natural person qualifies as German or EU for these purposes. Going forward, a person must exclusively hold German citizenship. A person who also holds a third-country citizenship alongside their German will no longer be treated as a domestic investor. Parallel rules will apply to EU investors: Going forward, an individual will only be considered as falling within this category where that individual exclusively holds one or more EU citizenships. This is a change from the current regime, which looks only to residence or habitual abode.

Provisional measures and transparency

The IPG-E allows the BMWF, to issue interim measures before formal proceedings are opened, as soon as it becomes aware of an impending signing – including in cross-sector proceedings, where no standstill previously applied.

Under the IPG-E, the BMWF also gains an explicit power to publish press-releases regarding prohibitions and restrictive orders, with the public interest in information being considered as generally taking precedence over the parties' interest in confidentiality.

Administrative changes

The notice opening Phase 2 will in future only need to be served on the direct acquirer, not the target company – a consequence of the shift in the trigger date to receipt of the review documents. For listed targets and hostile takeovers, this considerably simplifies the conduct of proceedings but removes the target company's independent procedural position.

The previous distinction between a "*Freigabe*" (clearance) in the sector-specific procedure and in the cross-sectoral procedure where one of the Section 55a(1) AWV case groups applied, on the one hand, and a certificate of no objection ("*Unbedenklichkeitsbescheinigung*") in the residual cross-sectoral procedure, on the other, is abolished. Going forward, the BMWF issues a single, uniform "*Genehmigung*" (approval) across all three procedure types.

Our conclusions

- Several new or enhanced review categories (AI, raw materials, semiconductors, quantum technologies, and now the full EU dual-use goods list) materially broaden the scope of the FDI regime. Since the final IPV sector list is not yet settled, uncertainty about its ultimate reach remains.
- The broader exemption for intra-group restructurings facilitates pure restructurings that do not change economic control.
- The extension of circumvention to an objective effect (without intent) and the new, voting-rights-independent "atypical acquisition of influence" test materially widen the BMW's scope for review and create interpretative uncertainty when structuring deals involving special rights (e.g. veto, information or appointment rights).
- The shortened, non-extendable 45-day Phase 1 deadline increases preparation pressure since completeness of the filing itself triggers the clock; incomplete filings delay the start of the period, which is not always easy for investors to control.
- The limitation period is reduced from five to three years, and its commencement is no longer tied to official awareness of the transaction. This could contribute to deal certainty to some extent, although its practical significance will depend on further clarification, including of the sectors and activities subject to mandatory German FDI review.
- The loss of EFTA's special status effectively broadens the pool of acquirers subject to notification and is likely to generate additional reviews for investors with Swiss or Liechtenstein holding structures.
- The BMW's new publication power could increase reputational risk in instances where an investment is prohibited.
- Standardised terminology (a single "approval" instead of clearance/certificate of no objection) reduces complexity, particularly for groups with recurring filings.



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