

New Rules for Foreign Direct Investments: BMW E Presents Draft Act



Economic
Security

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On 13 October 2026, the German Federal Ministry for Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie* – “**BMWE**”) presented its draft act for a standalone Foreign Direct Investment Screening Act (*Investitionsprüfungsgesetz* – “**IPG**”) and a new Foreign Direct Investment Screening Ordinance (*Investitionsprüfungsverordnung* – “**IPV**”). The most comprehensive reform of German foreign direct investment (“**FDI**”) screening law since the 2021 aims at consolidating the provisions scattered across the Foreign Trade and Payments Act (AWG) and the Foreign Trade and Payments Ordinance (AWV), streamlining the process, and at the same time implementing the requirements of the EU Screening Regulation (EU) 2026/1386 (“**EU Screening Regulation**”).

The proposed reform is highly relevant to M&A practice: On the one hand, FDI screening law’s scope of application is expanded, and failure to notify transactions will be subject to a fine; on the other hand, the draft provides for simplifications in several areas.

We outline the key provisions of the draft act below:

1. Procedural Amendments

1.1. Three Types of Procedures in the Future

Until now, FDI screening law distinguishes only between the sector-specific and cross-sectoral screening procedures. Under the IPG, this will be abandoned and replaced by three types of procedures:

- In the sector-specific procedure, a notification obligation will continue to apply in the case of acquisitions of German target companies by foreign investors if the German target company operates in a listed security-relevant sector in the areas of war weapons, military items, or IT security.
 - Under the case-group-specific procedure (*fallgruppenspezifisches Verfahren*), a reporting obligation is triggered in the event of the acquisition of a German target company by a non-EU investor if the German target company operates in a listed security-relevant sector, with additional security-relevant sectors being added compared to the current legal situation (see below).
 - The cross-sectoral procedure is a catch-all provision that grants the BMWE the authority to review acquisitions of German target companies by non-EU investors in all other sectors; in this respect, no notification obligation applies.
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1.2. Acceleration of Screening Procedures

To implement the EU Screening Regulation, the draft IPG contains several measures to accelerate the proceedings:

- Phase 1 screening is to be shortened from the current two months to 45 calendar days in the future. At the same time, the option extend this phase on mutual agreement – which is still possible under current law – will be deleted. The BMWE must therefore decide more quickly whether to initiate an in-depth Phase 2 screening.
- A period of 120 days is allocated for the in-depth screening in Phase 2. It will be possible to extend this period by up to 90 days, provided that the screening involves a particularly high level of effort or difficulty. In addition, a mutually agreed extension of Phase 2 is possible.
- In addition, the deadline for screening unreported transactions *ex officio* will be reduced from five to three years from the date of signing. This will provide the parties with legal certainty sooner.

1.3. Elimination of the Certificate of Non-Objection

Under current law, it is possible to obtain a certificate of non-objection in the cross-sectoral procedure, whereby the BMWE certifies to the acquirer that it does not object to a transaction and thus provides legal certainty. However, a certificate of non-objection cannot be issued if the German target company operates in a listed sector and the transaction is therefore subject to a notification obligation. In such a case, an approval is required.

This distinction will be eliminated under the IPG. In the future, every review process is to conclude with a license if the outcome is positive. The rationale is that this will eliminate the need for the BMWE to review whether the German target company operates in listed security-relevant sector, if the acquisition does not raise concerns.

1.4. Further Procedural Changes

The IPG also provides for the following further procedural changes:

- The BMWE's powers of intervention are to be expanded. For the first time, it will be granted explicit authority to issue provisional measures even while the screening procedure is ongoing. In addition, its powers to request information and obtain disclosures will be expanded. Even third parties, such as the target company's customers or competitors, may be asked in the future to provide input.
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- Multi-jurisdictional filings must, as required by the EU Screening Regulation, be submitted in all jurisdictions on the same day.
 - In the future, prohibitions will be possible without a cabinet decision. Instead, a prohibition may be issued by agreement between the BMWF and the Federal Chancellery (*Bundeskanzleramt*), the Federal Foreign Office (*Auswärtiges Amt*), the Federal Ministry of the Interior (*Bundesministerium des Innern*), the Federal Ministry of Defence (*Bundesministerium der Verteidigung*), and the Federal Ministry of Finance (*Bundesministerium der Finanzen*).
 - The BMWF is to publish the issuance of prohibitions on its website. The issuance of orders or the conclusion of contracts under public law may also be published on the BMWF's website.
 - In the future, the Higher Administrative Court (*Oberverwaltungsgericht*) rather than the Administrative Court (*Verwaltungsgericht*) will have jurisdiction in the first instance over disputes concerning FDI screening law.

2. Scope of Application

2.1. Additional Notification Obligations

Arguably the most significant practical expansion results from the introduction of new sectors subject to notification obligations, which was primarily due to implementation of the EU Screening Regulation. Under the (new) case-group-specific procedure, acquisitions by non-EU investors are now also subject to a notification obligation if the German target company engages in, for example, one of the following business activities:

- Exercising actual control over a critical facility in the area of critical infrastructure. This business activity supplements the operation of critical facilities, which is already covered;
 - Development, manufacture, or distribution of goods listed in Annex I of the Dual-Use Regulation (EU) 2021/821;
 - Research or development of items in the field of artificial intelligence technologies;
 - The development, manufacture, or research of items in the field of semiconductor technologies;
 - Development, production, or research of items or essential components in the field of quantum technologies;
 - Exploration, extraction, processing, recycling, recovery, or stockpiling of strategic or critical raw materials as defined by the Critical Raw Materials Act;
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- Ownership, development, or operation of systems for conducting elections, voter registration databases, and other information systems specifically designed for the administration of electoral processes, such as the counting, verification, and display of election results, as well as for the confirmation and validation of election results;

2.2. Revision of the Definition of “Acquisition”

There will also be a significant change regarding atypical acquisitions of control. Under current law, in order to be subject to FDI screening law, an atypical acquisition of control always requires that the investor acquire voting rights in the German target company. Under the IPG, an atypical acquisition will also be deemed to exist even if the investor does not acquire voting rights. The requirement in this regard remains that the investor, through the atypical acquisition, gains influence over the target company comparable to an acquisition of voting rights that would be subject to FDI screening law.

The scope of application is also being expanded in the area of asset deals. In addition to the acquisition of a definable part of the operations of a German company, the scope will in the future also include the acquisition of a significant portion of the assets of a German company or the assets of a foreign company located in Germany. In this regard, it is of particular practical relevance that even the granting of a license to a foreign party may trigger FDI screening.

2.3. Adjustment of Voting Rights Thresholds

Furthermore, the voting rights thresholds will partially be increased and the certain voting rights thresholds for acquisitions of further voting rights eliminated.

In both the sector-specific procedure and the case-group-specific procedure, the existing 10% threshold remains in effect. Under the (new) cross-sector procedure, however, the threshold is to be raised to 25%, up from the previous 20%. An exception applies if the German target company is publicly traded. In this case, the screening threshold is 15%, since even voting rights shares lower than 25% can, in practice, already constitute a blocking minority when attendance rates at the annual general meeting are taken into account.

The 20% and 40% thresholds for acquisitions of further voting rights are being eliminated; in their place, an additional 100% threshold is being introduced to account for the fact that increasing voting rights to 100% can result in the loss of any veto rights held by other shareholders, thereby making rights of influence and control absolute. For publicly traded companies, a 30% threshold for acquisitions of further voting rights will apply in the future.

2.4. Clarification Regarding Intra-Group Reorganizations

Until now, intra-group reorganizations were only excluded from the scope of the cross-sectoral procedure. This exception is to be expanded in the future to apply to all procures. What will be decisive for the exception's application is that the beneficial owner does not change (as has been the case to date) and that no further jurisdiction enters the chain of acquirers. It is to be welcomed that it will now also be clarified that the exception for intra-group reorganizations applies even if the controlling company itself participates in the transaction as the acquirer or seller.

3. Personal Scope of Application

Until now, acquirers from Switzerland, Norway, Iceland, and Liechtenstein have been treated largely the same as EU investors under FDI screening law. This preferential treatment is set to be eliminated under the IPG. In the future, EFTA acquirers will be treated as non-EU investors.

The definitions of the terms “resident” and “EU resident” will also be adjusted – with potentially far-reaching consequences for natural persons who, for example, are the ultimate beneficial owner of the direct investor. Until now, natural persons have been considered residents if they are resident or habitually resident in Germany. Likewise, “EU residents” are natural persons who are resident or habitually resident in the EU.

In the future, however, citizenship will also be a determining factor. The IPG defines “residents” as natural persons with exclusively German citizenship who are resident or habitually resident in Germany. “EU residents” are natural persons with exclusively one or more citizenships of an EU Member State who are resident or habitually resident in the EU.

This means that natural persons with foreign citizenship will be treated as foreign investors, even if they are resident or habitually resident in Germany. Furthermore, German citizens who also hold another citizenship will be treated as foreign investors.

4. Conclusion

The draft IPG takes a balanced approach by not only expanding the scope of application of FDI screening law but also providing practical simplifications and clarifications while closing existing loopholes.

For M&A practice, the IPG is likely to mean that thorough reviews under FDI screening law will become even more important. Violations of notification obligations will in the future be prosecuted as administrative offenses and punished with a fine of up to EUR 100,000. Also, assessing whether

a reporting obligation applies will become even more complex, particularly due to the introduction of new security-relevant sectors and the relevance of the citizenship of the (indirect) investor.

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