



NEWSLETTER

Investment Screening Reform in Germany – A balance between freedom of investment and security interests

Germany is fundamentally overhauling its investment screening law. The German Federal Ministry for Economic Affairs and Energy („BMWE“) has prepared draft legislation for a stand-alone Investment Screening Act (*Investitionsprüfungsgesetz*, „IPG“) and Investment Screening Ordinance (*Investitionsprüfungsverordnung*, „IPV“), both of which have been undergoing inter-ministerial consultation since the end of September 2026. The Act is expected to enter into force in spring 2027.

The new IPG is intended to capture those security-relevant risks which, in light of heightened geopolitical tensions, are not adequately addressed by current law. At the same time, the BMWE is aligning German law with the new EU Screening Regulation (EU) 2026/1386, which will apply in all Member States from 17 January 2028. This is intended to accelerate screening procedures and reduce the burden on businesses and government.

Farewell to AWG/AWV and division into three types of procedures

The regulations previously scattered across the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*, „AWG“) and the Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung*, „AWV“), as well as the administrative practice relating to investment screening, are to be consolidated in a single, stand-alone act. In future, there will be three types of procedures:

- the *sector-specific procedure* for acquisitions by non-German investors in the areas of war weapons, military equipment, the German Export List or certain IT security products;
- a new *case-group-specific procedure* for acquisitions by non-EU investors in other security-relevant areas, e.g. critical infrastructure within the meaning of the German KRITIS Umbrella Act (*KRITIS-Dachgesetz*), which also includes software; and
- the *cross-sectoral procedure* as a catch-all for acquisitions by non-EU investors in all other sectors.

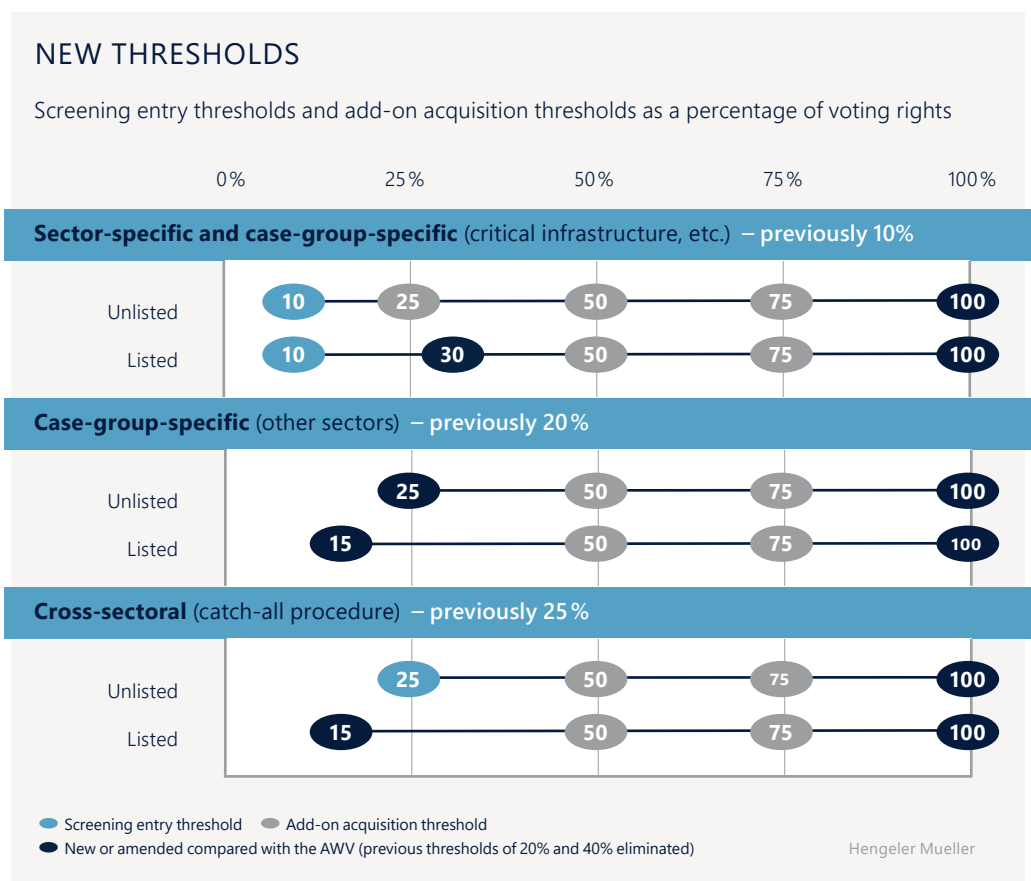
The Investment Screening Ordinance specifies the case groups in further detail. Where the outcome is positive, all procedures conclude with an „approval“ or a deemed approval. The distinction between clearance and a certificate of non-objection will be done away with.



Revised thresholds and acquirer factors

The draft modifies the voting rights thresholds. In the sector-specific procedure and in the critical infrastructure, cloud computing, media and telecommunications case groups, the threshold remains at 10%. The entry and add-on acquisition thresholds of 20% and 40% are eliminated. For the first time, an increase to 100% becomes subject to screening and, where applicable, to a notification requirement. The rationale given is that the step from 75% to full ownership can eliminate minority veto rights and render control absolute.

New special rules apply to listed target companies: in the 25% sectors, an acquisition of as little as 15% of the voting rights already triggers investment screening; the previous 40% add-on acquisition threshold is replaced by a 30% threshold, modelled on the Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*). For transaction practice, this creates new review points in public M&A transactions, full takeovers and squeeze-out procedures.



The rules on the attribution of voting rights are largely retained. However, voting rights held by a third party for the account of the acquirer will now be attributed in full – the explanatory memorandum cites trust and fund structures as examples. The concept of state „control“ is replaced by „effective influence“ of a government of a third country, „including other state bodies or armed forces“. In the case of indirect shareholdings, voting rights continue to be examined at every level of the holding chain, meaning that look-through dilution is irrelevant.



Expanded case groups and scope of application

The draft supplements the catalogue of security-relevant sectors with the case groups prescribed by the EU Screening Regulation. In future, acquisitions of German target companies that develop, manufacture or distribute goods listed anywhere in Annex I to the EU Dual-Use Regulation will also be subject to notification once the relevant thresholds (25% or 15%) are reached. This is likely to result in a significantly higher number of notifiable acquisitions. Electoral systems and voter databases are also newly covered. Independently of the EU requirements, the IPG draft defines artificial intelligence and semiconductor technologies more broadly than before and will in future cover quantum technologies in their entirety. In addition, the BMWG is expanding the critical infrastructure case group. It is no longer intended to cover only operators in the legal sense, but also entities that exercise actual control over a critical facility.

Asset deals remain subject to screening. The provision covers assets of a domestic company, provided that they constitute a substantial part of that company's assets. According to the explanatory memorandum, this may now also extend to the acquisition of a licence. In future, assets located in Germany belonging to a foreign company will also be relevant, provided that those assets constitute a substantial part of the foreign company's total assets.

The personal scope of application is also changing. The EFTA privilege is being eliminated: previously, investors from Switzerland, Norway, Iceland and Liechtenstein were treated in the same way as EU investors; however, this German special rule conflicts with the new EU Screening Regulation, which classifies every non-EU territory as a third country. In future, the BMWG will therefore also be able to review acquisitions by EFTA investors under the case-group-specific and cross-sectoral procedures.

The nationality of natural persons in the acquisition chain up to the ultimate beneficial owner (UBO) will also have to be examined closely in future. A person is deemed to be German only if they hold German nationality exclusively and reside in Germany. The same applies accordingly to EU citizens. Dual nationals holding a third-country nationality are therefore always treated as foreign or non-EU investors, even if they reside in Germany or the EU. This affects founder, management and family office structures. It also affects the beneficial owners in fund and holding structures.

A welcome development is that the previously narrow exemption for intra-group restructurings is extended to all types of procedure, including the sector-specific procedure.

Expanded review powers for atypical acquisitions

Up to now, the BMWG could review security-relevant influence over a domestic company only if the investor also acquired voting rights. In future, an „atypical acquisition“ of influence will suffice, even without voting rights. To this end, the investor must obtain influence comparable to an acquisition of voting rights that is subject to screening. Minority shareholdings, co-investments and governance rights under shareholder agreements should therefore be reviewed carefully.



Greenfield investments remain out of scope (for now)

At present, the draft only covers the acquisition of existing companies. Start-ups typically do not entail the risks associated with a company acquisition. Moreover, for critical areas, there are also specific statutory authorisation procedures. However, the German federal government is continuing to discuss whether to bring certain greenfield cases within scope and separately also whether to include EU investors in the critical infrastructure area. Investors who prefer to structure transactions through newly established vehicles should monitor further developments.

Standardised review periods and further procedural changes

In future, standardised time limits, calculated in calendar days, will apply to all three types of procedure:

- Phase 1 will be shortened from two months to 45 days, with no possibility of extension. The review period will only begin upon confirmed receipt of complete filing documents by the BMWG, and no longer from the date on which the BMWG becomes aware of the acquisition or signing of the agreement; complete documentation will therefore become the decisive factor in terms of timing.
- Phase 2 lasts 120 days and may be extended by up to 90 days where the review is particularly complex or demanding. If the BMWG fails to act, the acquisition is deemed approved.
- The call-in period for non-notified acquisitions is reduced from five to three years from the signing of the agreement.
- Where an acquisition is notifiable in several EU Member States, the acquirer is to submit the notification in all of those Member States on the same day and refer to the other notifications. This is a requirement of the EU Screening Regulation.
- A cabinet decision is no longer required for prohibitions. In future, consent of the Federal Chancellery, the Federal Foreign Office, the Federal Ministry of the Interior, the Federal Ministry of Defence and the Federal Ministry of Finance will suffice.
- Legal challenges to investment screening proceedings will in future be brought directly before the Higher Administrative Court (*Oberverwaltungsgericht*), which is intended to expedite judicial review and bring the process in line with competition law.
- Greater transparency: for the first time, the law provides for the publication of procedural outcomes. Prohibitions will in future be announced on the BMWG's website. Orders and public-law contracts may be published at the BMWG's discretion, in each case naming the parties involved but safeguarding business secrets.

Practical implications for M&A transactions

Although the reform is being presented as a measure to reduce burdens, transaction parties should be prepared not only for simplifications but also for additional complexity:

- **Timing:** In straightforward cases, the 45-day Phase 1 allows for faster approval. However, the period begins only once the documentation is complete. The preparation of the notification and the BMWG's completeness review therefore become critical. Deal teams



should thus compile structure charts, information on (ultimate) beneficial owners and their nationalities, as well as data on the target company, before signing. In addition, the parties are to file in all affected EU Member States on the same day and must therefore coordinate their filings at an early stage.

- **Reassessing notification triggers:** As a result of the higher 25% threshold, notification requirements will no longer apply to certain minority shareholdings. Other changes, by contrast, capture additional transactions. These include the new dual-use case group, the treatment of EFTA investors in the same way as other non-EU investors, the 15% and 30% thresholds for listed target companies and the new 100% threshold for add-on shareholdings.
- **Minority and governance rights, as well as fund and trust structures:** Seats on supervisory or advisory boards, veto rights and information rights may in future trigger screening even in the absence of voting rights. This primarily affects financial sponsors structuring co-investments and growth equity transactions. Investors should therefore also review shareholder agreements and side letters from an investment screening perspective. Furthermore, voting rights held „for the account of“ an investor are attributed to that investor. Funds, co-investment vehicles and trust structures should therefore be analysed carefully.
- **Carve-outs, licences and asset deals:** In the case of IP licences and carve-outs, parties should examine whether these concern a „substantial part“ of the assets of a German company. This also applies to German assets of foreign groups.
- **Transaction certainty:** The call-in period is reduced to three years. In addition, the draft extends the exemption for intra-group restructurings. Both changes create greater legal certainty.

The IPG draft is likely to undergo further amendments during the inter-ministerial consultation and subsequent parliamentary process. Input for the legislative process could also come from other EU Member States, which must likewise align their regimes with the new EU Screening Regulation.



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