

Insights

GERMANY'S INVESTMENT SCREENING SHAKE-UP: WHAT THE LEAKED DRAFT MEANS FOR DEALMAKERS

Oct 07, 2026

Summary

A leaked draft of a new, standalone German Investment Screening Act (*Investitionsprüfungsgesetz*, the “IPG”) is now circulating in Berlin. The text is an early-stage draft and will still need to work its way through the German legislative process but it gives the first real indication of how the government intends to restructure Germany’s FDI screening regime. Below we highlight the key takeaways for clients with existing or planned investments in German companies.

Background

Germany’s current FDI screening rules are split between the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz* - *AWG*) and its implementing ordinance, the Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung* - *AWV*) with the Federal Ministry for Economic Affairs and Energy (“**BMWE**”) as the competent authority. Under the draft IPG, this two-tier structure would be replaced by a single, self-contained statute enacted directly by Parliament. The new act is also the vehicle for transposing the requirements of the EU FDI Regulation 2026/1386 (the “**EU FDI Regulation**”), which sets binding minimum standards for national screening regimes across the 27 Member States effective on 17 January 2028.

Key takeaways

1. More investors would be caught

Currently, investors from EFTA states - Switzerland, Norway, Liechtenstein and Iceland – are treated the same as EU Member States for screening purposes, which means that they fall out of scope of the cross-sectoral investment screening. Under the draft IPG and in line with the requirements of the EU FDI Regulation, this position would change and investors from those countries would be classified as third-country (non-EU) acquirers. This reclassification could result

in more investors being caught under the regime, unless the EU and EFTA agree on an equivalence arrangement before the rules take effect.

2. Nationality, not just residence, would decide who counts as domestic

Under the new statute, an individual would only qualify as a “domestic” or “EU-resident” investor if they hold exclusively German or exclusively EU citizenship and live in Germany or the EU respectively. Dual nationals would fall outside this favourable treatment. The BMW’s stated rationale is that a dual national may still owe civic duties to the third country whose passport they also hold, which in the BMW’s view justifies treating them differently from single-nationality German or EU citizens for screening purposes.

3. Threshold structure changed

The current 20% and 40% thresholds would disappear but the 10% threshold (for defence, armaments, IT security and critical infrastructure) and the 25% threshold (for other security-relevant sectors and the general cross-sector regime) remain unchanged. Listed companies in the 25% sectors would be subject to a lower 15% entry threshold, with the former 40% step-up threshold being replaced by a 30% threshold. A further threshold at 100% of voting rights would be added – reflecting that the move to sole ownership can create a new quality of control. The revised thresholds are set out in the table below.

Sector	Threshold
Defence, armaments, IT security	10%
Other security-relevant sectors	25%
General cross-sector regime	25%
Listed companies (25% sectors)	15%

4. Expanded sectors

The relevant sectors would move out of the AWV and into the new ordinance accompanying the IPG. While the current sectors remain almost unchanged, what changes is the overlay of new EU-mandated common minimum sectors under the EU FDI Regulation. This would include:

- a detailed semiconductor cluster spanning design, EDA software, fabrication, assembly and testing, equipment and specialty materials;
- artificial intelligence tied to general-purpose and systemic-risk AI models;
- quantum computing, communications and sensing technologies;
- strategic and critical raw materials; and

- large agricultural holdings above 10,000 hectares.

Perhaps most significantly for industrial clients, the full Annex I of the EU Dual-Use Regulation would also be pulled into scope, extending screening to many conventional industrial transactions that currently fall outside the regime.

5. Influence short of voting control could now trigger a filing on its own

Even where a transaction does not involve the acquisition of voting rights, a board or supervisory seat, veto rights over strategic decisions, or enhanced information rights could independently trigger a screening requirement if they amount to a comparable degree of influence. For minority investments and co-investment structures, this is arguably the most far-reaching change in the draft.

6. A few welcome exemptions would stay or even widen

Greenfield projects would remain outside the regime entirely. In addition, routine commercial licencing would also stay out of scope, unless the agreement is structured in a way that effectively amounts to an asset sale. Intra-group reorganisations would benefit from a broader exemption applying across all procedural tracks, including the defence sector, provided the ultimate beneficial owner stays the same and no new jurisdiction is introduced into the group chain, which would be a much welcome development.

7. Deal timelines would become shorter and more predictable

The first review phase (Phase 1) would shrink from two months to a strict 45 calendar days from receipt of the complete filing, with no scope for extension. The second phase (Phase 2) would keep its 120 calendar day baseline but gain a more flexible extension of up to 90 days for complex cases. The clock would only start running once a complete filing has been submitted, and the ex-officio call-in window for calling in non-notified deals would shorten from five years to three years from signing. Overall, the reforms appear designed to accelerate the review of straightforward cases while preserving flexibility to conduct a thorough assessment of more complex transactions. The quid pro quo is likely to be increased scrutiny of filing completeness at the outset, with a greater proportion of the engagement between the parties and the authority taking place before the statutory review clock starts to run.

8. More efficient framework for mitigation measures and prohibition decisions

Mitigation measures that the BMWE has in practice already been attaching to clearances – changes to board composition, restrictions on access to sensitive technology or data, continuity of supply commitments, cybersecurity requirements, keeping data within the EU, independent monitoring trustees, and reporting obligations even below the usual thresholds – would now be listed directly in the statute rather than left to administrative practice. The internal approval route

for a prohibition would also be shortened: instead of requiring sign-off from the full Cabinet, it would be enough for the Chancellery and the foreign affairs, interior, defence and finance ministries to agree, which should also mean prohibitions are less likely to become public knowledge before a final decision is reached.

9. Enforcement would get tougher

Deliberate breaches of the standstill rule, or of binding conditions or prohibition orders, could result in up to five years' imprisonment or a fine. Negligent breaches and filing failures would instead attract administrative fines of up to EUR 1 million and EUR 100,000 respectively.

10. More transparency

Prohibition decisions would in the future be published as a matter of course on the BMW's website and the BMW would have discretion to publish conditions and mitigation agreements as well. There is no provision for publishing all notified transactions.

What this means in practice

While the IPG is very much an early draft, and not likely to become law before the first half of 2027, parties to transactions should start reflecting on the likely direction of travel and consider whether it makes sense to engage in the formal industry consultation that will form part of the legislative process.

The BCLP FDI team will continue to monitor the situation closely and provide updates over the coming months.

Related capabilities

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