

CLIENT ALERT

Germany's Investment Screening Overhaul Takes Shape

Long-awaited drafts of the Investment Screening Act and Ordinance propose far-reaching changes to Germany's FDI screening regime

October 28, 2026

AUTHORS

Dr. Georg Weidenbach | Aurel Hille | Jan Vollkammer | Dr. Andreas Mildner

On October 22, 2026, the German Federal Ministry for Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie*, BMWF) published draft legislation for a new standalone Investment Screening Act (*Investitionsprüfungsgesetz*, IPG) and accompanying Investment Screening Ordinance (*Investitionsprüfungsverordnung*, IPV). The drafts are intended to replace the current German foreign direct investment (FDI) screening framework under the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*) and Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung*, AWV). The IPG will consolidate the core substantive and procedural rules in a standalone statute, while the IPV will principally specify the security-relevant sectors that determine the applicable review regime. The reform will further align procedural and substantive rules with the revised European Union FDI Screening Regulation (EU) 2026/1386.

While the drafts remain subject to the legislative process, significant changes are not expected. The new rules will apply only to transactions signed on or after a date yet to be determined in 2027, without retroactive effect.

Key Changes Under the IPG

The proposed changes broadly fall into three categories: (1) comprehensive reform of screening procedures, (2) revisions to the scope of application and substantive rules, and (3) changes to sanctions and judicial review.

1. Comprehensive Procedural Reform

- Three-track structure. The IPG will establish three screening procedures: (i) sector-specific screening of acquisitions of German businesses active in certain defense and IT-security sectors by foreign investors; (ii) case-group-specific screening of acquisitions of German businesses operating in other security-sensitive sectors, including critical infrastructure, by non-EU investors; and (iii) cross-sectoral screening of acquisitions of German businesses operating in other sectors by non-EU investors. The sectors covered by the first two procedures will be specified in the IPV. While the sector-specific and case-group-specific procedures will entail mandatory filing and standstill obligations, the cross-sectoral procedure will be subject to the BMWV's discretionary review powers, without mandatory filing requirements. Greenfield investments will remain outside the German investment-screening regime.
- Simplified voting-rights thresholds. The initial screening thresholds will generally be set at 10% or 25% of voting rights, eliminating the current 20% threshold. The 10% threshold will apply to sector-specific screening and particularly sensitive activities covered by case-group-specific screening, including certain critical infrastructure activities. The 25% threshold will apply to the remaining case groups and the residual cross-sectoral procedure. For listed targets subject to the 25% threshold under the case-group-specific and cross-sectoral procedures, the threshold will be reduced to 15%.
- Follow-on acquisitions. Subsequent acquisitions of voting rights will be separately reviewable when an investor reaches or exceeds 25% (where the initial threshold is 10%), 50%, 75%, or 100% of the voting rights. According to the explanatory memorandum, the increase from 75% to 100% can render an investor's influence and control rights "absolute." In the sector-specific and case-group-specific procedures, such acquisitions will also trigger a new mandatory filing. A separate 30% threshold will apply to follow-on acquisitions of listed targets.
- Governance rights alone may constitute an acquisition. The IPG will replace the current concept of "atypical control" with one of "atypical influence." Board representation, veto rights over strategic business or personnel decisions, and access to sensitive information may constitute an acquisition either on their own or together with voting rights; provided that they confer influence comparable to the applicable voting-rights threshold. This will broaden the BMWV's review jurisdiction, but will not, under the current draft, make atypical influence subject to mandatory notification.
- Narrower definitions of German and EU investors. For natural persons, German status will require both exclusive German citizenship and a German residence or habitual abode. EU status will similarly require

exclusive citizenship of one or more EU Member States and residence or habitual abode in the EU. Dual nationals who also hold a third-country citizenship will therefore not qualify as German or EU investors under these definitions.

Additionally, investors from European Free Trade Association (EFTA) member states—Switzerland, Norway, Iceland, and Liechtenstein—will no longer benefit from their equal treatment with EU investors.

- Interim measures. The BMWV will be able to take interim action once it becomes aware of a signed or imminent transaction where such action is necessary to preserve an effective review. Available measures will include restricting voting rights or access to information, placing voting rights with an independent third party, and temporarily prohibiting closing. These powers will also be available in cross-sectoral procedures where no automatic standstill applies.
- Relief and procedural simplification. Several changes will reduce formal burdens or provide earlier legal certainty:
 - o The period during which the BMWV may call in a transaction will be shortened from five to three years after signing.
 - o The exemption for intragroup reorganizations will be clarified and expanded to all three screening procedures, including acquisitions of sector-specific targets. Consistent with the BMWV's guidance on the current exemption, which is limited to cross-sectoral screening, the exemption will generally apply where the controlling company remains unchanged and no new jurisdiction is introduced into the ownership chain.
 - o Phase I will be shortened from two months to 45 calendar days. The review period will no longer be triggered by the BMWV's knowledge of a transaction, but will commence only upon receipt of a complete filing.
 - o Phase II will remain essentially unchanged at 120 calendar days. The BMWV will be able to extend it unilaterally by up to 90 days in high-effort or particularly complex cases.
 - o The distinction between a formal clearance (*Freigabe*) and a certificate of non-objection (*Unbedenklichkeitsbescheinigung*) will also disappear. All three procedures will conclude with a uniform clearance (*Genehmigung*) or deemed clearance. This is primarily a procedural and terminological change: The BMWV's current General Administrative Order (*Allgemeinverfügung*) already requires substantially the same core information for all types of filings.
- Same-day coordination of EU filings. Where a transaction is subject to investment screening in more than one EU Member State, the acquirer "should" submit the filings on the same day and identify the parallel

proceedings. The provision does not establish an absolute filing deadline, but it will require transaction teams to coordinate national FDI submissions closely from the outset – something parties typically already seek to achieve in multi-jurisdictional reviews.

- Publication of decisions. The BMWG will be required to announce prohibition decisions on its website and may also publicize mitigation orders and agreements. According to the explanatory memorandum, press releases will identify the parties, the target's sector, and the general nature of the measures, without disclosing the full decisions, their reasoning, or trade secrets.

2. Refined Scope of Application and Substantive Framework

- Revised mandatory filing categories. The IPV will update which security-sensitive activities are subject to mandatory filing requirements, reflecting additional sectors covered by the revised EU FDI Screening Regulation as well as refinements to existing categories:

For **critical infrastructure**, actual control over a facility will suffice even without formal operator status, while the **pharmaceuticals** category will be narrowed to supply-critical active substances under the German Medicinal Products Act (*Arzneimittelgesetz*) and medicines containing them. **Artificial intelligence** will focus on general-purpose AI models suitable for space or defense applications or posing systemic risk under the EU AI Act, while **semiconductors** will be covered in greater detail across the value chain, from chip design and software to manufacturing, equipment, and materials. Further changes concern **critical raw materials**, aligning the scope with the EU Critical Raw Materials Act to cover both strategic and critical raw materials, including stockpiling; **dual-use goods**, extending coverage beyond certain aerospace and nuclear applications; and **election infrastructure**, covering companies owning, developing, or operating election systems, voter-registration databases, or other dedicated election-management systems.

- Expanded substantive review criteria. The draft IPG will expressly require the BMWG to consider whether an acquisition could (i) undermine essential services or security of supply through the outflow of know-how or technology or substantial losses of production, processing or manufacturing capacity; (ii) result in the loss of R&D capabilities or strengthen a third country's military or intelligence capabilities through such an outflow; or (iii) jeopardize economic or technological sovereignty in a particular sector. The list is not exhaustive, allowing the BMWG to take additional factors into account. However, the considerations now expressly codified in the IPG have already featured prominently in the BMWG's existing screening practice.

In addition, the BMWG must consider the sector-specific factors set out in Article 19(1) of the revised EU FDI Screening Regulation. These broadly address risks to strategic EU interests, critical technologies, infrastructure and supply chains, the protection of sensitive information, and wider public interests such as public health, food security, and democratic processes.

- Broader investor-related assessment criteria. The IPG will broaden the investor-related factors that the BMWG must consider in its substantive assessment. Under the current regime, the relevant state nexus is whether the foreign investor is directly or indirectly controlled by a third-country government, including state bodies or armed forces. Under the draft IPG, effective influence will be sufficient. Such influence may arise from the investor's ownership structure or from more-than-minor financing by a third-country government, state body or armed forces.

The IPG will also expressly require the BMWG to consider the investor-related factors set out in Article 19(2) of the revised EU FDI Screening Regulation. These include, among other matters, links to a third country's policy objectives, military development, or internal repression; exposure to sanctions; prior involvement in activities affecting security or public order; intelligence-sharing obligations under third-country law; and opaque ownership structures. The BMWG has already considered these factors in its recent review practice; under the IPG, they will become an express statutory assessment standard.

3. Sanctions and Judicial Review

- Stricter sanctions, including for filing failures. Intentional gun-jumping – such as exercising voting rights or disclosing protected target information before clearance – and breaches of enforceable mitigation orders or prohibitions will remain criminal offenses punishable by up to five years' imprisonment or a criminal fine. Corresponding negligent violations will remain administrative offenses, but the maximum fine will double from EUR 500,000 to EUR 1 million. In addition, failure to notify an acquisition without undue delay after signing, submit required filing information and documents, or respond to information requests properly and on time will become subject to administrative fines of up to EUR 100,000.
- Appellate court as court of first instance. Currently, challenges to BMWG decisions in FDI proceedings are brought before the Berlin Administrative Court (*Verwaltungsgericht Berlin*), with further appeals potentially available. Under the draft IPG, administrative disputes will instead be heard by the Higher Administrative Court (*Oberverwaltungsgericht*) at first instance, limiting judicial proceedings to a single instance of factual review. The change is intended to expedite judicial proceedings and provide earlier legal and investment certainty. It mirrors the approach under German merger control, where challenges to Federal Cartel Office (*Bundeskartellamt*) decisions are heard directly by the Düsseldorf Higher Regional Court (*Oberlandesgericht Düsseldorf*). As under the current regime, challenges to restrictions and orders will not have suspensive effect.

Key Takeaways for Dealmakers

The IPG will establish a more coherent statutory framework and introduce meaningful procedural simplifications. Streamlined voting-rights thresholds, shorter review and call-in periods, and a broader intragroup exemption should reduce some of the compliance burden for M&A parties and financial investors. However, some uncertainties remain, e.g., regarding the regime's treatment of certain private equity fund structures and the circumstances in which limited partners are deemed to acquire voting rights.

The most significant potential source of additional filings is the inclusion of companies that develop, manufacture or distribute any dual-use goods listed in Annex I to the EU Dual-Use Regulation. The current AWW captures only a few dual-use goods, including certain aviation and space items and specified nuclear-related goods. The IPV will extend mandatory screening at the 25% threshold to the full Annex I list, and the draft IPG expressly anticipates that this may increase the number of cases. Export-control classifications will therefore become more important in German FDI diligence, including for targets without an obvious defense- or security-relevant profile.

Taken together, the draft IPG presents a mixed picture: It provides a cleaner framework and targeted procedural relief, but it also broadens the BMWV's review jurisdiction, extends scrutiny of investors' third-country links, and gives the BMWV powerful new tools to protect the review process. Despite the procedural simplifications, the trend toward stricter FDI scrutiny in Germany does not yet appear to have run its course.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Dr. Georg Weidenbach

+49 69 7930 2455

gweidenbach@willkie.com

Aurel Hille

+49 69 7930 2145

ahille@willkie.com

Jan Vollkammer

+49 69 7930 2535

jvollkammer@willkie.com

Dr. Andreas Mildner

+49 69 7930 2451

amildner@willkie.com



BRUSSELS CHICAGO DALLAS FRANKFURT HAMBURG HOUSTON LONDON LOS ANGELES
MILAN MUNICH NEW YORK PALO ALTO PARIS ROME SAN FRANCISCO WASHINGTON

Copyright © 2026 Willkie Farr & Gallagher LLP. All rights reserved.

This alert is provided for educational and informational purposes only and is not intended and should not be construed as legal advice, and it does not establish an attorney-client relationship in any form. This alert may be considered advertising under applicable state laws. Our website is: www.willkie.com.