ALERT MEMORANDUM

Germany Proposes Standalone Investment Screening Act: Familiar Foundations, New Pitfalls for Dealmakers

November 4, 2026

I. Introduction

On October 22, 2026, the German Federal Ministry for Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie*, BMWE) published the long-anticipated ministerial draft of a new, standalone Investment Screening Act (*Investitionsprüfungsgesetz*, Draft IPG) and an accompanying Investment Screening Ordinance (*Investitionsprüfungsverordnung*, Draft IPV).

Consolidating rules previously included both in the Foreign Trade and Payments Act (AWG) and the Foreign Trade and Payments Ordinance (AWV), the draft aims to implement the revised EU Foreign Investment Screening Regulation (Regulation (EU) 2026/1386, the Screening Regulation) and address the current geopolitical security landscape. While the BMWE has framed the reform as an effort to streamline and accelerate proceedings, the draft introduces a complex recalibration. It combines targeted procedural relief with significant tightening of substantive requirements that will require careful navigation by cross-border dealmakers.

The draft is currently in inter-ministerial and public consultation, with enactment targeted for 2027.

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II. Key Substantive Changes

While the Draft IPG maintains the general structure of Germany's FDI regime, differentiating between investments by (non-German) EU and non-EU investors as well as investments in companies active in different categories of sensitive sectors, it includes a number of changes worth highlighting.

a. Recalibrated Thresholds and the Novel 100% Trigger

The Draft IPG standardizes the baseline entry triggers at 10% (for defense, IT security, and critical infrastructure) and 25% (for other sensitive sectors, raised from 20%, and the general call-in/voluntary catch-all). The 40% voting rights threshold for subsequent follow-on acquisitions has been eliminated. However, the draft introduces specific changes that will impact incremental stake-building and investments in publicly listed companies:

- **Publicly Listed Targets:** Acknowledging that low attendance at annual general meetings can confer de facto blocking control at lower shareholding levels, the Draft IPG introduces lower thresholds of 15% (initial acquisition) and 30% (follow-on acquisition) for listed targets. The 30% threshold intentionally mirrors the mandatory offer threshold under the German Securities Acquisition and Takeover Act (*WpÜG*).
- **Reassessment at 100%:** An acquisition of additional voting rights resulting in 100% ownership will now act as a standalone screening trigger. While this applies to investments in private companies too, minority buyouts and statutory squeeze-outs executed by an existing 75%+ majority shareholder in a sensitive sector, in particular, will require fresh FDI clearance before completion.

Overall, and compared to international standards, the German thresholds remain low at the lower end and continue to require a reassessment upon crossing subsequent statutory thresholds. However, outside of the defense, IT security, and critical infrastructure regime, the not uncommon 24.9% minority participation should now escape review if not coupled with other control mechanisms (see Section II.c. below).

b. Broadening the Scope of Captured Asset Deals

While the current regime captures asset deals if assets that form a separable part of a German company, or are required to operate such a part, are acquired, the Draft IPG expands the scope to all assets located in Germany that belong to a domestic or foreign company, as long as the assets represent a significant part of the company. While the legislative materials state that this significance requirement applies to foreign and domestic companies alike, the wording suggests it only applies to German companies and should be clarified.

c. "Atypical Influence": Governance Trumps Equity

Under the current FDI rules, the BMWE can only assert jurisdiction over "atypical control" if the investor in parallel also acquires voting shares. The Draft IPG replaces this with a decoupled "atypical acquisition of influence" test. The BMWE will be authorized to review transactions where no voting rights are transferred, provided the investor obtains contractual rights conferring strategic influence – such as board appointment rights, veto rights over strategic business or personnel decisions, or access to sensitive information. This change will have to be particularly considered in cases involving venture capital, structured minority investments, co-investments, and any debt instruments carrying operational covenants (debt-with-governance). The decisive factor is whether the acquired rights confer an influence equivalent to that conferred by a share of voting rights exceeding the relevant thresholds.

The current regime expressly excludes "atypical control" situations from a mandatory filing – in part because they are difficult to assess – and the Draft IPG is unlikely to be intended to change this situation, even though it lacks an explicit exemption.

d. Stricter Investor Nexus: EFTA and Dual Nationals

The German FDI scope will also broaden in terms of investors becoming subject to scrutiny.

- **Elimination of EFTA Privilege:** Pursuant to the requirements of the Screening Regulation, EFTA investors will lose their privileged status and be treated in the same way as non-EU acquirers. This provision could still be subject to change given EFTA's expressed wish for more cooperation and an equivalent application of the rules to all EFTA states. Even without a formal equivalence agreement, however, it is not unlikely that EFTA investors will carry a lower risk profile in the eyes of the BMWE than other non-EU investors.
- **Strict Nationality Requirements:** A natural person will only qualify as a German or EU investor if they reside in the respective territory and hold exclusively German or EU citizenship. Dual nationals possessing a third-country passport will be classified as foreign acquirers.
- **Attribution of Shares Held "For the Account of" Third Parties:** Voting rights held by nominees or trustees will be attributed directly to the party bearing the "economic risk," directly impacting blind trusts and fund LP structures.

e. Intra-Group Privilege

The current regime already excludes a limited number of intra-group transactions from the review scope of the cross-sectoral review regime. The Draft IPG broadens this exemption to all review tracks (including in the defense sector). The proposed new exemption more broadly covers any intra-group reorganization where (i) a legal transaction relating to the acquisition of a German company is concluded exclusively between undertakings whose shares are each held in full by the same controlling entity, and (ii) no entity from a jurisdiction not already represented in the ownership chain between the ultimate parent and the German company is introduced to the direct or indirect ownership of the German company. While this means that some internal restructurings (for example, involving new jurisdictions based on tax considerations) might still have to be notified, the BMWE has acknowledged that these kinds of transactions often do not raise concerns and they are in practice often reviewed on an accelerated timeline.

f. Expanded Sectoral Scope and the Dual-Use Catch-All

While all other rules are consolidated in the Draft IPG, the list of the specific sectors falling into the different review categories will be defined in a separate ordinance, the Draft IPV. This mechanism allows the BMWE to more easily adjust the sector list if needed without having to go through a full legislative review procedure. The Draft IPV broadens the mandatory review catalog to align with European priorities and the requirements of the Screening Regulation:

- **Dual-Use Goods:** The current regime captures only selected dual-use goods. The scope of review will now be expanded to capture targets that develop, manufacture, or distribute any dual-use good, i.e., any item listed in Annex I of the EU Dual-Use Regulation. This change will complicate the filing assessment in particular for those businesses that do not have an existing export control protocol due to a lack of exports outside of the EU. Moreover, this will not only result in more FDI filings to be reviewed by the BMWE but also result in new administrative costs for German businesses because, in practice, the German targets will have to provide the information enabling this review.
- **Next-Generation Tech & Raw Materials:** The scope is broadened to capture general-purpose AI (GPAI) models with systemic risk or space and defense applicability, going beyond the current – and often difficult to handle – limitation to AI systems capable of being used for the defined nefarious purposes. The sector list has been further extended to

encompass the complete semiconductor value chain, quantum technologies, and strategic raw materials, including the mere stockpiling of these raw materials.

- **Critical Infrastructure (KRITIS):** Jurisdiction will move beyond formal "operator" status to capture any entity exercising de facto operational control over a critical facility. While this change is meant to make the sometimes complicated legal assessment of the operator status (in particular between subsidiaries and parent companies) superfluous, it might well raise new questions about who has de facto control.
- **Election Infrastructure and Ongoing Review:** An additional case group related to election infrastructure is introduced. Further case groups such as those dealing with telecommunications, personal protective equipment, and pharmaceuticals have been clarified or slightly narrowed. The Draft IPV acknowledges that the exact scope of the sector list and its specific definitions are still under review.

g. More Explicit Review Guidelines

Following the example of the Screening Regulation, the Draft IPG non-exhaustively lists the criteria the BMWE will take into account when assessing a transaction: (i) a potential outflow of know-how and technology that could weaken the provision of public services or the security of supply of important goods, cause a loss of research and development capacities, or strengthen the military or intelligence capabilities of a third country, (ii) a potential significant loss of production, processing or manufacturing capacity that endangers the provision of public services or security of supply of important goods, and (iii) a potential danger to the retention or attainment of economic or technological sovereignty in a given sector. According to the legislative materials, the BMWE must also look beyond the specific target and consider whether a significant number of other domestic businesses in the same sector are already concentrated in the hands of investors from the same jurisdiction as the acquirer to such an extent that the acquisition under review, viewed cumulatively, would result in too many German businesses in that sector being concentrated in the hands of undertakings from a single jurisdiction. The materials unfortunately do not specify when such a "security-critical mass" would be reached.

While the list is non-exhaustive, it signals a focus on economic security, which will guide the BMWE in its assessments.

III. Procedural Reforms and Enforcement

The Draft IPG slightly reorganizes the review process. While the current regime differentiates between two procedures, sector-specific review (defense and IT security) and cross-sectoral review, the new regime will differentiate between three procedures: the sector-specific procedure will remain, while the *cross-sectoral* review that was subject to mandatory filing is now included in the *case-group-specific* procedure. The cross-sectoral review will now give the BMWE the option to review all remaining cases, either as the result of a "call-in" or on the basis of a voluntary notification. This reorganization accompanies the threshold adjustments already highlighted above as well as a few procedural changes:

a. The Phase 1 "Acceleration"

While the reduction of Phase 1 from two months to 45 calendar days appears favorable, it is accompanied by a critical caveat: the 45-day clock will start only after a complete filing has been submitted. Previously, the clock started upon the BMWE's knowledge of the signed contract (and therefore in practice often with the submission of the initial notification). Although the Draft IPG foresees that the BMWE will notify the acquirer if any of the documents are incomplete "to the extent possible", it does not foresee an automatic "inform[ation of] the person who made the filing of the completeness of that filing" as envisioned by Art. 4(10) of the Screening Regulation. This might shift some discretionary power to the BMWE and increase uncertainty as to the exact review deadline. Although the BMWE will still have to publish its requirements for the information to be provided in a

notification, in light of the increased information demands based on the Screening Regulation this could mean that more time will be needed to prepare a complete notification.

Moreover, the Draft IPG no longer allows for any extension of the Phase 1 proceeding. While the BMWE explains that this change will shorten the review period, the lack of the option to even consensually extend Phase 1 could result in a practice of "pull-and-refile" maneuvers as known from merger control review if the BMWE interprets its powers to encompass considering such refilings as new proceedings. This change might also result in more Phase 2 reviews being opened due to timing constraints, rather than substantive concerns.

b. A Unified Clearance Decision

In the future, the BMWE will issue a single approval (*Genehmigung*) across all three tracks, eliminating the current distinction between full clearance (*Freigabe*) and a certificate of non-objection (*Unbedenklichkeitsbescheinigung*). While this harmonizes the procedures and simplifies terminology, it also eliminates an opportunity to learn about the BMWE's interpretation of the FDI regime: with the limited precedent due to the secrecy of the FDI proceedings, the issuance of a certificate of non-objection signaled that the BMWE did not consider the notified transaction to fall under any of the mandatory filing categories. Acquirers could previously use this information in future transactions, but will no longer be able to do so.

c. Broadened Interim Injunction Powers and Global Intelligence Sharing

The Draft IPG grants the BMWE explicit statutory authority to issue interim orders – such as voting freezes, information firewalls, or trustee mandates – as soon as it becomes aware of an impending or signed transaction, even prior to the formal initiation of proceedings. Furthermore, the BMWE will be explicitly permitted to share confidential filing data with non-EU screening authorities (e.g., CFIUS or the UK ISU), dissolving traditional regulatory silos.

d. Increased Transparency

Under the Draft IPG, the BMWE will be statutorily mandated to publish notices of formal prohibition orders on its website and will have the discretion to publish information about conditional clearances. While publication of the full decision texts is not planned, the press releases will cover general information on the parties, the target sector and potential remedies. The BMWE explains that this active information policy is meant to address (a) the increased public interest in FDI proceedings and (b) an increase in false or misleading information based on the lack of publications by the BMWE. The increased risk of reputational damage in the event of a prohibition has to be taken into account. On the other hand, the Draft IPG clarifies that the public will not have any formal access to file (for example, through the Freedom of Information Act) and that all business and trade secrets will be protected in the BMWE's publications.

IV. Key Takeaways for Deal Planning

While the consolidation of screening rules into a unified statutory code resolves certain ambiguities, the Draft IPG deepens regulatory scrutiny for cross-border deal structures. While the changes are not radical, some practical implications might include:

- **Due Diligence Expansion:** With the inclusion of the full EU Dual-Use Annex I list, targets in the mechanical engineering, optical, advanced materials, and automotive components sectors must undergo rigorous export control classification early in the due diligence phase.
- **Structuring Minority & Venture Investments:** Financial sponsors structuring minority investments, consortium buyouts, or joint ventures must be mindful when negotiating side letters and governance rights. Board seats, strategic vetoes, and special information rights must be vetted against the new uncoupled "atypical influence" and objective anti-circumvention standards to avoid triggering call-in risks.

- **Synchronized Global Filings:** Given the BMWE's new mandate to share data with non-EU authorities, substantive deal rationales, market assessments, and product classifications must be well aligned across all jurisdictions to prevent contradictions during agency cooperation. Although the Draft IPG and the Screening Regulation suggest that acquirers should submit all EU filings simultaneously, the provisions are not enforceable and appear unrealistically ambitious.
- **Buffer Your Timelines:** Long-stop dates must account for the new "complete filing" requirement. Parties should build a buffer into their timelines to accommodate preliminary BMWE completeness checks and information requests before the 45-day Phase 1 clock even begins.

In light of the broader EU process in which Member States will adapt their national regimes to the Screening Regulation, the impact on transactions involving several EU jurisdictions will have to be carefully assessed.

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