Background

New restrictions on the freedom of investment for foreign investors - a practical view

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1. Introduction

On 17 July 2020 2020, the Foreign Trade and Payments Act (Außenwirtschaftsgesetz) entered into force (AWG-Amendment)[2], resulting in further tightening of investment controls. The amendment has the aim to implement the EU-Screening-Regulation 2019/452 (EU-Screening-Regulation) and corresponds to Germany's industrial strategy 2030 (Industriestrategie 2030), which was announced in November 2019 by the Federal Minister for Economics Peter Altmaier (Bundeswirtschaftsminister). The AWG-Amendment is accompanied by an adjustment to the Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung, AWV), which was hastily initiated in the wake of the COVID-19 pandemic and has since come into force.[3] A second amendment with the aim of harmonizing the AWV with the new amendment to the Foreign Trade and Payments Act (AWG) is expected for summer 2020.

The objective of the AWG-Amendment is (i) to ensure that the ministry is informed about every relevant transaction and thus can examine for each acquisition of a company in Germany whether public safety or order may be impaired and whether the other requirements of the AWV are fulfilled, (ii) to ensure the effectiveness of the investment review by blocking legal and factual execution activities before the examination procedure is complete, and (iii) to respect the interests of other EU member states.

The amendment is a reaction of the German State to the (allegedly) growing influence of non-EU investors on systemically relevant fields. According to the Federal Ministry for Economic Affairs and Energy (BMWi), the amendment also attempts to address the weaknesses of the European system in ensuring supply security and prevention of information and technology outflow, which were highlighted by the COVID-19 crisis.[4]

For the corporate transaction industry, the further tightening of the investment review means increasing legal uncertainty. This uncertainty is caused by the absence of clear definitions and procedural regulations, which would allow the parties to reliably anticipate regulatory review processes when developing transaction structures and schedules.

The following paragraphs will discuss the individual modifications to the AWG and AWV in detail and highlight areas of remaining uncertainty, including their likely practical implications.

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1 The authors express gratitude towards Dr. Leonard von Rummel, Associate at BLOMSTEIN because of his valuable support in preparing the manuscript.

2 Adoption of the draft law of 31.03.2020 on printed matter 19/18700 in amended version (BT-Drs. 19/20144, available at http://dipbt.bundestag.de/dip21/btd/19/201/1920144.pdf).

3 Fifteenth regulation amending the AWV of 11 May 2020 available at https://www.bmwi.de/Redaktion/DE/Downloads/F/fuenfzehnte-verordnung-zur-aenderung-der-aussenwirtschaftsverordnung-regierungsentwurf.pdf?__blob=publicationFile&v=10

4 See for this the speech of the Federal Minister of Economics on 23 April 2020: https://www.bmwi.de/Redaktion/DE/Reden/2020/20200423-altmaier-plenarrede-novelle-aussenwirtschaftsgesetz-awg.html.

2. Consolidated deadline regulation in Section 14 a AWG

The introduction of a new section 14a AWG consolidates and partly modifies the previous AWV deadline provisions for both sector-specific and cross-sector investment audits. The aim of the new regulation is to shorten the examination periods in simple cases and to increase transparency in order to make it easier for those involved in an examination procedure to calculate the length of the procedure.

A decisive change concerns the preliminary examination period, which has been shortened from three months (Section 55 (3) and Section 61 AWV) to two months (Section 14a (1) no. 1 AWG). According to the legislator, reduction is intended to significantly reduce the review period for the majority of the review procedures, which can usually be terminated in the course of the preliminary review without opening the main proceeding. In contrast, the length of the main examination period will remain at four months. As opposed to the current procedure, this time period begins upon the receipt of all documents specified in the relevant general ruling and, in individual cases, documents requested in the notice of opening. An extension of the review period by requesting documents - as has frequently been the case in practice up to now - is thus no longer possible. Section 14 (2) AWG in conjunction with section 14 (1) no. 1 AWG replaces the previous provision in section 57 AWV. However, in the case of a subsequent request for documents, the main examination period is suspended, with the suspension period only ending when the party concerned has subsequently submitted the complete set of documents requested (section 14a (6) AWG). In addition, the Federal Ministry for Economic Affairs and Energy (BMWi) may in future extend the main examination period by three months. But only "if the examination procedure shows particular difficulties of a factual or legal nature" and additionally by a further month "if the defence interests of the Federal Republic of Germany are affected to a particular extent" (section 14a (4) AWG). The Federal Ministry for Economics and Energy (BMWi) shall determine whether a deadline extension is justified in an individual case. This should be determined based on particular complexity, considering all factual aspects, at its own discretion and in accordance with its purpose and duties, in consultation with the departments of agreement and other ministries that may be competent in the individual case. It remains to be seen whether the consolidated audit deadlines will in fact lead to expedited proceedings. Complex and politically controversial proceedings are unlikely to be shorter, as the additional demand for documents will lead to a suspension of the main examination period.

3. Modifications in the area of cross-sector review

a. Substantially extended examination standard

As per section 5 (2) AWG (old version), restrictions or duties requiring action in respect to the acquisition of domestic companies, or shares in such companies, by non-EU buyers can be ordered, if the acquisition poses a danger to public safety or order. To qualify for such restrictions or duties, the acquisition must have presented a genuine and sufficiently serious threat to the public interest. According to the interpretation of the European Court of Justice, an endangerment of the safety and supply of the community was required, in order to justify an intervention limiting a fundamental freedom of the EU, in this case free movement of capital as per Art. 65 TFEU (Treaty on the Functioning of the European Union) and the right of establishment as per Art. 52 TFEU.

This definition of risk is now adapted to the guidelines set by the EU-Screening-Regulation. In the future, the examination standard is a “prospective impairment” of the public safety or order

as per section 5 (2) AWG (amended version). This amended definition applies a forward-looking approach, which aims to prevent possible future harm. It also lowers the required risk threshold, making an "impairment" sufficient ground to impose restrictive measures. While this lower intervention threshold is still within the scope of the EU-Screening-Regulation, Germany's AWG-Amendment takes full advantage of the latitude given for implementation, as there is no mandatory examination standard defined, to enable a a forward-looking examination.[5]

The legislator has also made clear that while the actual test criteria of "public safety and order" remains unchanged, the focus of the investment review can go beyond (national) security, public supply and critical infrastructure. Section 5 (2) AWG (amended version) thus allows, for example, critical technologies to play a role in refusing to grant a license even without having a strong connection to the public interest. Ultimately, this means that there is no longer any limit to the discretion of the responsible ministries and therefore there is a risk that the governments political interests in economic, financial, labor and social policy can influence decision-making when it comes to potential acquisition restrictive measures.

For investors, the extended audit standard leads to legal uncertainty and time delays due to a lack of sufficient information in relation to governmental agency practice, case law or the AWV. Therefore, the result of an examination review is now less predictable than it was under the old law.

b. Recognition of the investor and his/her background

As per Art. 4 section 2 of the EU-Screening-Regulation it is possible to pay attention to the investor and his/her background during the investment review. The influence of a foreign state, a previous misconduct and the commission of illegal or criminal activities can be especially important factors. The German Regulatory body implements this under section 55 (1b) AWV (amended version). Instead of mentioning illegal or criminal activities, the AWG-Amendment refers to offences under section 123 (1) GWB (Act against Restraints of Competition), offences or administrative offences under the AWG or under the law on the control of weapons of war. For the sector-specific examination, a corresponding provision is introduced in section 60 (1b) AWV (amended version).

As a result, white-collar criminal law is becoming an even bigger factor in the area of investment control. According to the explanatory memorandum, there must be objective evidence that the acquirer was or is involved in such an act. Although the wording refers to a previous or current participation, the explanatory memorandum to the Regulation also states that it should be relevant to the examination whether there is a risk that the acquirer might be involved in corresponding criminal or regulatory activities in the future. If there are justified doubts as to the - future - legal compliance of the acquirer, this can be a factor relevant to security and therefore a decision-making factor for the audit authorities. The same applies to the persons acting on behalf of the acquirer.

Such a wide scope of the assessment is neither present in the wording of the EU-Screening-Regulation, nor does a legally inadmissible prejudgment of the investor's person justify administrative measures to restrict the acquisition. Public procurement law - to which reference is made in section 123 (1) GWB - tends to assume, with the principle of self-purification in section 125 GWB, that a restoration of reliability is possible and is also recognized by the legal

5 Draft of the amendment of the AWG, p. 21.

system. The consideration of future infringements of the law as indicated in the present amendment seems to go in the opposite direction.

However, even beyond this specific issue, there is a danger that the generally ordered review of investors may be politicized as part of broader industrial policy. It is questionable whether it is legally possible that the background of the investor alone can lead to a prohibition of an acquisition, fully detached from the activity of the company to be acquired. Although the wording of section 55 (1b) AWV as amended ("may in particular be taken into account") as well as the wording of Art. 4 (2) EU-Screening-Regulation ("may [...] in particular also take [...] into account") grant the Federal Ministry for Economic Affairs and Energy (BMWi) or the member states a broad discretion when considering individual aspects, it cannot generally be assumed that a transaction may be prohibited solely on the basis of factors relating to the person of the acquirer. By way of an overall consideration, the Federal Ministry for Economic Affairs and Energy (BMWi) will ultimately have to weigh the various aspects against each other in order to achieve a balance of interests. This is also consistent with existing practice of the Federal Ministry for Economic Affairs and Energy (BMWi). Within the framework of its investment control role, the ministry has already taken into account the origin of the investor and, in particular, his or her governmental ties. Experience indicates that investors from OECD countries were preferred, whereas investors from other countries faced greater difficulties.

Because of the codification of this administrative practice, it is expected that in the future greater emphasis will be placed on factors inherent to the person of the acquirer, making it more difficult for investors from certain countries to acquire companies in sensitive sectors.

c. Extension of the catalogue of rules in section 55 (1) AWV

The legislator has listed a catalogue of rules for the most sensitive sectors in section 55 (1) sentence 2 AWV. The acquisition of a company in such a sector is subject to an obligation to report to the Federal Ministry (section 55 (4) AWV) and is subject to a reduced acquisition threshold of 10 % (section 56 (1) No. 1 AWV). In the context of the current pandemic, the catalogue has been extended through the 15th amendment of the AVW in section 55 (1) sentence 2 AWV (amended version) to ensure the permanent maintenance of a working public health system in Germany.

As a second step, the AWV will be further amended to transfer guidelines of the EU-Screening-Regulation into German investment law and to adapt the AWV in line with the amendments to the AWG. According to the announcement of the Federal Government, the new amendment to the AWV is particularly concerned with specifying the investment review for particular critical technologies. The catalogue of rules will likely be extended to cover critical technologies, requiring both the described obligation to report and the test threshold of 10 % for such transactions. Examples of technologies covered under this extension include artificial intelligence, robotics, semiconductors, biotechnology and quantum technology.

Once the EU-Screenin-Regulation takes effect on 11 October 2020, the Federal Ministry for Economic Affairs and Energy (BMWi) will be able to refer directly to the catalogue of Art. 4 (1) EU-Screening-Regulation. This will allow review of acquisitions of companies which so far have not been mentioned in German federal law, e.g. in the food safety or data processing

sector. Due to the broad wording of the underlying European legal basis, it is a distinct possibility that these sectors will be specified in the next amendment to the AWV.[6]

In summary, the continuous expansion of the catalogue of rules leads to a considerable extension of the Federal Ministry's auditing authority into even more economic sectors. The low threshold of 10 % for covered sectors, in conjunction with the obligation to report, will lead to a significantly increased amount of investment reviews. In addition, it can be expected that the Federal Ministry for Economic Affairs and Energy's audit intensity will increase in those sectors as well.

d. Legal consequences of the pending invalidity

Finally, the amendment to section 15 AWG also introduces new legal consequences for cross-sector reviews.

aa. Pending invalidity according to section 15 (2) and (3) AWG (amended version)

An important amendment concerns the amendment of section 15 AWG according to which a comprehensive ban on the implementation of acquisitions now applies to all acquisitions subject to disclosure. Whereas previously only the acquisition of companies operating in the sector-specific area was declared pending invalid for the duration of the investment assessment, this section now also applies to reportable cross-sector transactions.

In the new version of section 15 (2) AWG, the legislator clarifies that the "Verpflichtungsgeschäft", the contractual transaction which creates the obligation, is effective in both sector-specific and cross-sector areas, but is subject to the dissolving condition of a prohibition.

In contrast, the "Verfügungsgeschäft", the material transfer agreement, for the execution of reportable legal transactions under the law of obligations is provisionally ineffective from the time of its execution until the conclusion of the review (section 15 (3) AWG). Previously, such a regulation only applied to the defense and security sector of section 15 (3) AWG (old version) and is now extended to all reportable transactions in cross-sector areas. The extension is justified by the fact that neither legal nor factual execution should present the Federal Ministry for Economic Affairs and Energy (BMWi) with a fait accompli before the end of the audit. The regulatory change is necessary to ensure that e.g. information and technology are not transferred without prior review.[7]

The civil law construct of the pending invalidity comes from the BGB (German Civil Code BGB). According to the BGB, a legal transaction can be concluded between the parties before the release, but can only become effective afterwards (according to sections 145 following BGB). In this case, the approval has an *ex tunc* effect. If the Federal Ministry for Economic Affairs and Energy (BMWi) refuses the acquisition, the transaction of disposal has never had any legal effect.

The wording of section 15 (3) sentence 2 AWG (amended version) stipulates that the Federal Ministry of Economic Affairs and Energy (BMWi) either approves the acquisition or does not prohibit it within the periods stipulated in section 14a AWG or that the approval is deemed to have been granted. The resulting alignment with the fiction of release regulated in Section 58

6 BDI remains open to foreign capital, Börsen-Zeitung no. 91, p. 7.
7 Draft law amending the Foreign Trade and Payments Act, p. 22f.

para. 2 sentence 1 AWV is to be welcomed. In this respect, doubts as to whether only the submission of an application pursuant to Section 58 AWG can justify a presumption of release in the area of cross-sectoral examination will no longer be necessary in future. According to the new wording of Section 15 (3) sentence 2 AWG (new version), the transaction is also deemed to be effective if the two-month preliminary examination period pursuant to Section 14a (1) no. 1 AWG (new version) has expired. The same applies to the application pursuant to section 58 AWG, which now also expressly refers to the deadline pursuant to section 14a (1) no. 1 AWG as amended.It is questionable whether the pending invalidity under section 15 (3) AWG (amended version) also applies if the transaction is an enforcement transaction under foreign private law. The EU-Screening-Regulation does not provide for a pending invalidity, and other legal systems may not necessarily be cognizant of such a legal construct. However, a parallel exists to cartel law (section 41 (1) sentence 2 GWB), under which legal transactions during merger control are also pending invalid. In this context, it is important whether foreign law recognizes the violation of German control as a reason for invalidity within the framework of the *ordre public*. In most cases, this is denied.[8]

In conclusion, due to the expansion of the catalogue of transactions subject to reporting requirements and the stricter legal consequences of pending invalidity in the case of a large number of company acquisitions, the respective acquiring party will be obliged to initiate an investment control procedure. As in the past, it is up to the parties to decide whether to take the route of notification under section 55 (4) AWV or the route of application under section 58 (1) AWV.

bb. Prohibition catalogue according to section 15 (4) AWG (amended version)

In order to prevent not only legal enforcement, but also de facto enforcement, the legislator has placed specific enforcement actions under a ban with a penalty clause according to newly amended section 15 (4) AWG. Section 15 (4) AWG (amended version) is not intended to restrict the scope of application of section 15 (3) AWG (amended version). Rather, it intends to criminalize particularly serious enforcement acts. In addition, however, there are also enforcement actions that the legislator does not want to prohibit through the criminal law. In these cases, invalidity under civil law is deemed sufficient.[9]

According to section 15 (4) AWG (amended version), the exercise of voting rights by the acquirer, the granting of claims to payment of profits and the disclosure of company-related, security-relevant information are prohibited. Here, too, a parallel to cartel law exists, according to which, pursuant to section 41(1) sentence 1 GWB, the requirements of the facts of a merger within the meaning of section 37 GWB are not allowed to be fulfilled. As in the amended version of section 15 (4) AWG, the aim of this section of the cartel law is not to create a complete set of facts before the official inspection is completed and to enable a detailed examination.

Such prohibitions may make it more difficult to carry out a transaction, as for example if purchase price clauses, under which profits that already attributable to the purchaser before closing can reduce the purchase price, are no longer possible. In addition, it must be possible to carry out a technical due diligence despite the prohibition on disclosure of information, without violating the prohibition on the disclosure of information pursuant to section 15 (4)

8 *Immenga/Mestmäcker/Thomas*, GWB § 41, Rn. 36; *Bechtold/Bosch*, GWB, § 41, Rn. 10; *Wiedemann*, in: *Steinvorth*, Kartellrecht, 4. Aufl. 2020, Rn. 84.

9 Draft law amending the Foreign Trade and Payments Act, p. 22 f.

sentence 1 no. 4 AWG (amended version). In this context, the question arises whether this prohibition, according to the wording, only applies to the period after the conclusion of the contract. This interpretation cannot possibly be intended, as due diligence usually takes place before the conclusion of the contract.

The legislator reacts to violations of a prohibition according to section 15 (4) sentence 1 AWG (amended version) with severe sanctions: the violation can be punished as a deliberately committed criminal offence according to section 18 (1b) AWG (amended version) or as a negligently committed administrative offence according to section 19 (1) No. 2 AWG (amended version). The criminal offence according to section 18 (1b) AWG (amended version) is punishable with a prison sentence of up to five years or a fine. By establishing a high treat of punishment, the legislator wants to ensure an effective implementation of the enforcement prohibitions.[10]

However, the infringement of a prohibition under section 15(4) sentence 1 AWG (amended version) not only affects the individual parties, but also the investor's acquisition. Since an infringement can undermine the investment review, the Federal Ministry of Economic Affairs and Energy (BMWi) may assume an impairment of public order or security, and thus can prohibit the transaction in accordance with section 5 (2) AWG (amended version). Since a probable impairment of public order or security is sufficient under section 5 (2) AWG (amended version), it is enough if the impairment of public order or security appears possible at the time of the prohibited act pursuant to section 15 (4) sentence 1 AWG (amended version) appears possible at the time of the act.[11]

In summary, it can be assumed that parties to any transaction will strictly avoid a violation of the enforcement prohibitions. Thus, the extended enforcement prohibition will certainly impact the behavior of the parties to the transaction and thus have a substantial effect.

4. Modifications in the area of cross-sector review

The AWG-Amendment also brought changes to sector-specific review, which was already subject to strict investment controls. This is specifically in regards to the extension of section 5 (3) AWG (new version). The scope of the the article has now been broadened to not only include acquisitions of companies that develop or manufacture weapons or IT-security devices, but also the acquisition of companies that modify or use such goods. This definition is not limited to the activity of the company at the time of acquisition, but also includes activities that the company has undertaken in the past and may have led to the company retaining certain knowledge or access to relevant technologies. It is sufficient if the possibility exists that individual employees of the company have retained such knowledge. “Other Access” (*Sonstiger Zugang*) exists if all employees with knowledge of the relevant technologies have left the company, but certain documents or data stores accessible to company employees can still provide information about the technologies in question.[12] In practical terms, these changes will significantly increase due diligence requirements.

10 Draft law amending the Foreign Trade and Payments Act, p. 24.
11 Draft law amending the Foreign Trade and Payments Act, p. 24.
12 Draft for the amendment of the AWG, p. 22.

5. Incorporation of EU-member state interests

The AWG-Amendment implements the EU-Screening-Regulation, which introduced a coordination mechanism for member states and the EU Commission. The primary aspect of this mechanism is to establish a single national point of contact, capable of receiving statements from other member states and from the EU commission. Subsequently, the Federal Ministry for Economic Affairs and Energy (BMWi) reviews these statements before the German Federal Government issues a formal response. This procedure ensures that investment restrictions are also for the protection of the public order and/or security of other EU member states (section 4 (1) no. 4 AWG (amended version)) as well as for the protection of Union interests with regard to certain projects and programs (section 4 (1) no. 4a AWG (amended version)).

Within the framework of this coordination, other member states and the EU Commission will play a more significant role in the future. The Commission is empowered to comment on every investment control. An opinion by the Commission is mandatory if one third of the remaining member states have expressed their views. However, the comments of the Commission and the other member states are only of an informative nature and do not bind the Federal Ministry for Economic Affairs and Energy (BMWi). Another member state could therefore not decide the outcome of the investment control if no examination procedure was initiated within the other member state's own administrative process. On the other hand, the Federal Ministry for Economic Affairs and Energy could prohibit a transaction merely on the basis of the comments by other member states or the Commission, without German interests being endangered. Since the EU-Screening-Regulation aims at improving coordination between the member states and the EU and not at harmonizing investment controls, such a case is entirely conceivable.

However, there is an EU-wide trend towards a stricter handling of foreign investments. Roughly, half of the EU member states[13] currently have a screening mechanism in place, which has been either adapted or newly introduced in recent years. France[14] and Italy[15], for example, had already tightened their regulations before the adoption of the EU-Screening-Regulation and further adapted them after the new regulation.

Other countries, such as Spain[16], are also reacting to the COVID-19 crisis by expanding the scope of their investment control, particularly in the health sector. Despite the Commission's role as mediator, it is likely that significant differences between member states will remain, due to different legal systems and political circumstances. This is an important factor to be considered in the management of future transactions.

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13 Fourteen EU member states currently have a screening mechanism (as of 15 April 2020): Denmark, Germany, Spain, France, Italy, Latvia, Lithuania, Hungary, the Netherlands, Austria, Poland, Portugal, Romania and Finland; an overview of the relevant standards can be found at https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157946.pdf (last accessed on 11 May 2020)

14 In France, investment control is in art. L. 151 ff and R. 151 ff of the Code monétaire et financier regulated. It has already been changed with the LOI n ° 2019-486 du 22 may 2019 relative à la croissance et la transformation des entreprises ("Loi PACTE"). With the arrêté du 31 décembre 2019 and the décret n ° 2019-1590 du 31 décembre In 2019 relatifs aux investissements étrangers en France, further regulations of the EU-Screening-Regulation have been implemented.

15 In Italy, Decreto Legge 148 del 16 ottobre 2017 (in particular Article 14) has tightened the control of investment.

16 Spain already had investment control with Ley 19/2003, de 4 de julio, sobre régimen jurídico de los movimientos de capitales y de las transacciones económicas con el exterior. This is modified in the fourth section of Real Decreto Ley 8/2020, de 17 de marzo, de medidas urgentes extraordinarias para hacer frente al impacto económico y social del COVID-19.

6. Effects on practice and conclusion

The new provisions of the AWG and AWV will lead to an increase in the number of test cases, as already indicated in the explanatory memorandum to the draft law.[17] Already from 2018 to 2019, the number has increased from 78 to 106. In the future, a further annual increase of 20 cases is estimated in the context of cross-sector review and another 20 notifications in the context of a sector-specific review. This can be explained by the expanding scope of application of cross-sector and sector-specific review. Investors will therefore have to act with more patience and caution when acquiring German companies. In particular, the sanctioned execution actions pursuant to section 15 (4) AWG (amended version) must be handled with caution, as an infringement can be punished as a possible administrative offence or criminal offence.

Particularly during and in the immediate aftermath of the COVID-19 crisis, the Federal Ministry for Economic Affairs and Energy (BMWi) is likely to examine closely acquisitions of companies from the health sector. The Ministry wants to prevent a "sell-out" of Germany due to lower company values. Therefore, the examination procedures will probably become more comprehensive and lead to extended review periods during which investors will not be able to complete the transaction. It remains to be seen whether the planned ramp-up in administrative personnel can mitigate this trend.

The introduction of clear deadline regulations in Section 14a of the new version of the AWG is to be welcomed as an appropriate compensation for expanding the scope of the examination and extending the catalogue of reportable transactions (which are also subject to the lowered 10% threshold). It remains to be seen, however, whether this will actually make the outcome of an examination procedure more predictable in practice for those concerned. In view of the remaining possibility for the BMWi to extend the proceedings pursuant to § 14 a (4) AWG (as amended) in particularly complex cases at its own discretion, this may be doubtful. In this respect, the legislator seems to assume that a large number of the acquisitions to be examined are particularly complex. [18]Finally, there is also a risk of sensitive and confidential information being transmitted during the coordination process between the member states and the EU. Therefore, the EU will still have to introduce a sufficiently secure and encrypted IT system. Irrespective of any IT system, there will be some investors, who will decide not to take any risk that their confidential data ends up with EU authorities, and thus will not carry out the transaction.

The amendment to the Foreign Trade and Payments Act (AWG) and the associated amendment to the Foreign Trade and Payments Ordinance (AWV) significantly extend the Federal Ministry of Economic Affairs and Energy's (BMWi) control over the acquisition activities of foreign investors in Germany. It is certainly true that a positive investment climate in Germany continues to be emphasized politically. Nevertheless, the new regulations fit into a foreign trade policy which is sometimes perceived as protectionist and which is expected to lead to even more "compartmentalization". Practice will show to what extent the Federal Ministry for Economic Affairs and Energy will exercise its new power of intervention.

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17 Draft law amending the Foreign Trade and Payments Act, p. 17.

18 German Bundestag, BT-Drs. 19/20144, p. 26