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ALERT

JUNE 2020

Germany Tightens Foreign Direct Investment Control in Light of COVID-19 Pandemic

COVID-19-related amendment expands the scope of investment review particularly in the healthcare sector.

On May 20, 2020, the German Federal government adopted the 15th amendment to the Foreign Trade and Payments Ordinance (AWV). The changes to the AWV will be effective shortly, after publication in the Federal Gazette.

Prompted by the COVID-19 pandemic, the amendment expands the scope of investment review particularly in the healthcare sector. The amendment follows the guidance from the EU Commission on a possible increased risk of attempts to acquire healthcare capacities in the wake of the COVID-19 pandemic. In the future, non-EU investors will also be required to notify acquisitions of shares of more than 10% in German companies that develop or manufacture the following products:

- Personal protective equipment (cf. Article 3 No. 1 Regulation (EU) 2016/425);
- Medications pursuant to Section 2(1) German Medicinal Products Act;
- Medical goods for life-threatening and highly contagious infectious diseases; and
- In-vitro diagnostics life-threatening and highly contagious infectious diseases.

In addition to the above products from the healthcare sector, the 10% notification threshold will in the future also apply to companies providing services necessary to ensure the functioning of government communication infrastructures of the Federal Agency for Public Safety Digital Radio.

Following the example of Art. 4 (2) of the [EU Screening-Regulation](#), the amendment further clarifies that the German Government may take investor-related factors into account when assessing transactions.

Further changes to German foreign direct investment law aimed at protecting technologies, especially in the sectors of artificial intelligence and high tech, are expected shortly. In this context, Germany will also introduce a merger-control type consummation prohibition for notifiable transactions.



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