



Germany Expands Its Powers to Block Takeovers by Foreign Investors

The German government lowered the threshold for acquisitions of German companies by non-EU and non-European Free Trade Association ("EFTA") acquirers.

Germany has expanded its powers to block takeovers of German companies by non-EU investors by lowering the applicable thresholds and expanding the definition of critical infrastructure under the German Foreign Trade and Payments Ordinance ("AWV").

Previously, the AWV authorized the German government to review acquisitions of German companies active in military goods and cryptotechnology (sector-specific review) by non-German companies or German companies active in other business areas (including "critical infrastructure") by non-EU/non-EFTA acquirers if the foreign acquirer acquired 25 percent or more of the voting rights in the German target company. Asset deals are covered if the foreign acquirer acquires "a business."

On December 19, 2018, the German government: (i) lowered the 25 percent threshold to 10 percent if the German target company is either active in military goods, cryptotechnology, or critical infrastructure; and (ii) expanded the definition of critical infrastructure (energy, water, food, information technology and telecommunication, health, banking and insurance, and transport) to include news and media companies.

[The German government enacted special rules](#) regarding critical infrastructure companies in the summer of 2017. In particular, a specific notification requirement was introduced relating to the acquisition of such companies by non-EU/non-EFTA companies. Based on statements by the ministry responsible for coordinating Germany's foreign direct investment control, the notification requirement resulted in only a limited increase of cases.

The lower threshold established for critical infrastructure companies comes in the wake of the difficulties of the German government to prevent a [Chinese investor acquiring a 20 percent minority stake in a German electrical grid company](#) earlier this year. Through its actions, the German government is signaling its desire to decide whether foreign investors may gain influence over German critical infrastructure companies. At this point, the manner in which the German government has applied the AWV does not show a particular hostility vis-à-vis a particular group of foreign investors.



Jürgen Beninca
Frankfurt



Disclaimer: Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2018 Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington D.C. 20001-2113