

# China Policy Update

大成 DENTONS



## Germany takes another step to tighten its controls on foreign direct investment

Join our Webinar

### »Changes and impact of Foreign Direct Investment regulations – a cross-border view between China and Germany«

on 28 May 2020, 10.30-11.30 CEST/16.30-17.30 CST

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In terms of level playing field engagement in international cooperation, governments are seeking different measures. The German Foreign Trade and Payments Act—to be put in place this summer—is one of these policies. Who is affected by the decision? What does it mean in detail?

Learn more in the China Policy Update provided by Dentons and China Europe International Exchange (CEINEX).

## What has happened?

On 09 April 2020, the German government introduced a draft bill in German Parliament, the Bundestag, to further tighten German controls on foreign direct investment. The draft bill was introduced earlier than planned, and it is expected that Parliament will pass the draft this summer. Once the draft has been adopted, the Government can then update respective regulations to make the new rules effective in practice.

The new German rules are designed, amongst others, to implement the new EU-wide framework for the screening of foreign direct investments in the EU. This new EU framework entered into force in April 2019 and becomes applicable as of October 2020. However, the new German rules will go beyond the EU framework and will allow the German government to restrict foreign direct investments in Germany to an even greater extent.

## What does this mean?

Germany already maintains controls for investments in the German defense and IT security sector and for investments in companies active in sensitive industries. Investments in companies from all these sectors must be notified to the German government. If the government intends to review (and potentially restrict) an investment in a company active in a sensitive industry, under the current system the government must show that the investment constitutes a real threat or an actual danger to German national security.

This threshold for investments in companies active in sensitive industries will be lowered: Once the new system becomes effective, the German government only needs to show an »expected impairment« compared to currently a »genuine and sufficiently serious threat« to German national security if it wants to review and potentially restrict a transaction. In addition, the government will be able to control investments in German companies if these may impair the national security of another EU Member State or programs of European Union interest (e.g. EU-sponsored research initiatives).

This amendment will provide the German government with a larger margin of discretion for reviewing and interfering with foreign investments in Germany. Already under the current system there is a trend to apply the rules very broadly. While the new rules will make it easier yet for the government to pursue this policy, investments even in sensitive sectors can be successful if thoroughly prepared. All in all, we still expect to see more cooperation on the global scale and especially between China and Europe.

In case of any further questions, please contact:

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