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PUBLIC LAW

THE 2018 COALITION AGREEMENT – INVESTMENT CONTROL AND FOREIGN TRADE

Following recent changes introduced in mid-2017 foreign investment in German companies is now subject to stricter controls. The coalition partners want to continue on this course and emphasise, especially with a view to China, that they will seek to ensure fair conditions for German companies investing abroad. They are in favour of the initiative for investment control at European level that was also supported by the previous government.

The coalition also intends to take a more restrictive stance on arms exports. It will be taking a close look in particular at exports to countries involved in the civil war in Yemen, but also at small arms exports to countries outside of the EU and NATO. The coalition partners intend to use multilateral and bilateral trade agreements as a way of counteracting the renewed rise in protectionism. They are aiming for high levels of employee and environmental protection, but also “forward-looking investment protection”.

Gleiss Lutz

A genuine tightening of investment controls is not really to be expected from the grand coalition: European legislation leaves very little room for additional prohibitions and restrictions. And the draft EU regulation on investment screening, which is supported by the coalition partners, is essentially limited to procedural aspects. It should be noted, however, that the Federal Ministry for Economic Affairs already made the changeover to an appreciably restrictive procedural practice in the middle of 2017, and cross-border M&A practitioners are already having to take the risks of German investment control far more seriously than was the case a year or two ago.

Limits on arms exports are more probable, on the other hand. It seems likely that a large number of companies will benefit from the planned trade agreements – also because the future German government evidently intends to adhere to the principle of using private arbitration to enforce the agreements.

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