

## **Lex China: strengthening measures to protect German firms from being taken over**

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On 19 December, the German government amended the regulation concerning the Act on Foreign Economic Relations. This will make it easier to veto the acquisition of German firms by investors from outside the EU. In cases of the acquisition of shares by non-EU entities, the new regulations reduce the minimum level of shares (from 25% to 10% of the total) required for the Ministry for Economic Affairs and Energy to be empowered to check the transaction's compliance with Germany's security and public policy. The regulations affect German companies engaged in critical infrastructure service and those linked to the arms industry (as well as IT companies).

The recent amendment is another move to tighten the government's control of takeovers. The catalogue of industries that have an influence on state security and law and order was expanded in 2017 to include firms developing software for the energy sector, the water supply, and the food production, IT, healthcare, financial, insurance, transport and logistics and media sectors. The formal requirements have also been increased: a corporation acquiring a firm must provide extensive information concerning not only the transaction but also its ownership structure. State institutions may also conduct verification proceedings to make sure that the corporation is not trying to evade the security and public policy oversight procedure by attempting to effect the transaction via its branches operating in the EU (benefiting from the EU regulations on the free flow of capital). Regardless of these changes, Chinese investors have made further efforts to take over German firms, for example, in 2018 they made two attempts to acquire a 20% stake in one of the key operators of German power supply networks, the firm 50Hertz.

### **Commentary**

- The search for new instruments for protecting domestic companies is above all a result of the fear of technology leakage from small and medium-sized firms with a high technological potential that may be easy prey for Chinese corporations. This threat was noticed in 2016, when the German government was unable to prevent the Chinese corporation Midea from taking over shares in Kuka, the German technological leader in the area of robotics.

- The German government has been reducing the possibilities of German firms being taken over despite the conciliatory messages sent by the government in Beijing which has offered slightly broader access to the Chinese market for several German corporations (BMW, BASF, Deutz, Allianz). However, this solution may be introduced at the expense of the need to increase profits on taxes which will be paid locally, thus reducing German income from exports and investments.
- Germany has made efforts to create a system which would also scrutinise Chinese investments on the EU level. The Ministry for Economic Affairs and Energy (together with its French and Italian counterparts) already in 2017 addressed a letter to the European Commission appealing for the establishment of a system for monitoring takeovers of European firms by investors from outside the EU. Advanced work on implementing such a system is underway in the commission. It may become another instrument for protecting German firms but also strengthen the possibilities of economically stronger EU member states putting pressure on the other member states to restrict Chinese investments in these countries.