



# CELIS

## **CELIS Country Note**

**on**

**Austria, 2025**

**by**

**Volker Weiss, CELIS Country Reporter for Austria**

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## Abstract

Since the Austrian Foreign Investment Control Act ("InvKG") entered into force on 25 July 2020, Austria has developed into a significant jurisdiction for foreign direct investment (FDI) within the EU. This prominence is reflected in the European Commission's third Annual Report, which lists Austria among the six countries responsible for more than 90% of all FDI notifications. The Federal Minister for Economy, Energy, and Tourism has the authority to review foreign investments in Austrian undertakings active in sectors deemed critical for national security and/or public order. Under the InvKG, a mandatory filing requirement is triggered when a foreign investor - that is, an individual or entity from outside the EU, EEA, or Switzerland - intends to invest (directly or indirectly) in an Austrian undertaking. The filing requirement covers:

- the acquisition of shares reaching/exceeding 10 %, 25 % and 50 % (voting right shares);
- the acquisition of control; and
- the acquisition of essential/all assets of such an undertaking (asset deals),
- the undertaking is active in a sector listed in an Annex to the InvKG, and
- the undertaking is Austrian, i.e. has its seat or its central administration in Austria (local nexus).

The Annex to the InvKG provides a list for (i) especially sensitive sectors (exhaustive list) and (ii) other sensitive sectors (non-exhaustive list). The sensitive sectors are broadly interpreted by the authority. Thus, parties should consider involving a local counsel to determine the filing obligation.

No approval is required for investments in undertakings with i) fewer than 10 employees and ii) an annual turnover or balance sheet of less than EUR 2m (micro-enterprise exception).

## Author

Volker Weiss is a leading FDI practitioner in Austria and Central & Eastern Europe (CEE), renowned for guiding cross-border investors through complex, high-stakes screening regimes. A partner at Schoenherr since 2008 and head of the firm's Brussels office, Volker advises on the full spectrum of foreign investment control across the EU and beyond, regularly coordinating multi-jurisdictional strategies that intersect with EU merger control, the EU Foreign Subsidies Regulation and national security considerations.

Volker spearheads Schoenherr's FDI practice and established the firm's FDI working group. He is co-editor - together with officials of the Austrian screening authority - of a leading textbook on Austrian FDI (2022) and co-organises Austria's flagship FDI conference as well as CEE FDI Roundtables in Brussels. His thought leadership is matched by hands-on experience in rare phase II reviews. He also led the development of Schoenherr's AI-based FDI Navigator and comprehensive CEE regime overviews.

Recent highlights include steering foreign investment work in transactions across strategic sectors such as industrials, financial services and healthcare. Illustrative mandates span phase II proceedings cleared with commitments, parallel reviews by multiple screening authorities, and sensitive matters involving critical raw materials and health care concerns. Recognised by market directories for its expertise, Volker blends policy-level insight with practical execution, enabling investors to de-risk timelines, calibrate remedies and close deals in FDI-intensive jurisdictions.

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Volker Weiss

## 1. Introduction and Political Background

Foreign direct investment (FDI) plays a significant role in Austria's economy. In 2024, inward direct investment transactions amounted to EUR 10.657 billion, representing approximately 2.2% of Austria's nominal GDP.<sup>1</sup> The majority of FDI into Austria between 2017 and 2023 originated from the EU-27. Over this period, investments flowed into various sectors, with the professional, scientific, and technical service activities leading (2024: 44 % of the positive inward direct investment transactions) followed by computers, electronic and optical products (2024: 3,2 % of the positive inward direct investment transactions).<sup>2</sup>

Austria maintains a positive stance toward FDI, with the government actively promoting the country as an attractive business location.<sup>3</sup> At the same time, there is a heightened awareness of the potential risks associated with rising FDI levels, particularly in relation to national security and public order. While Austria embraces FDI for its contributions to job creation and economic growth, the government is committed to protecting critical technologies and infrastructure from acquisition by investors from third countries. At the EU level, Austria supports the implementation of robust national investment screening mechanisms.<sup>4</sup>

Austria implemented its first screening mechanism for inward FDI in 2011, focusing on security and public order.<sup>5</sup> Under this framework, specific sectors such as defence, national security,

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<sup>1</sup> <https://www.oenb.at/isawebstat/stabfrage/createReport?lang=EN&report=9.3.42> (last accessed 27 May 2025).

<sup>2</sup> Statistics taken from Austrian National Bank (Oesterreichische Nationalbank), available at <https://www.oenb.at/isawebstat/stabfrage/createReport?lang=EN&report=9.3.42> (last accessed 27 May 2025).

<sup>3</sup> Foreign Trade Strategy Paper of the Austrian Ministry for Digital and Economic Affairs (current Ministry of Labour and Economy), Ministry for European and International Affairs, and Austrian Chamber of Commerce, December 2018, available at [https://www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Aussenwirtschaft/Aussenwirtschaftsstrategie.pdf](https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Aussenwirtschaft/Aussenwirtschaftsstrategie.pdf) (last accessed 27 August 2022);

Parliamentary Question No 8077/J, 2021, available at [https://www.parlament.gv.at/PAKT/VHG/XXVII/J/J\\_08077/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXVII/J/J_08077/index.shtml) (last accessed 27 August 2022).

<sup>4</sup> Austria's government programme for 2025–2029, available at <https://www.bundestkanzleramt.gv.at/bundestkanzleramt/die-bundesregierung/regierungsdokumente.html> (last accessed 27 August 2022), p 35.

<sup>5</sup> Section 25a Foreign Trade Act (Außenwirtschaftsgesetz), BGBl. I Nr. 26/2011.

hospitals, energy, water, and telecommunications triggered mandatory review when a third-country investor acquired a minimum of 25% voting share rights. However, the regime was largely ineffective given its narrow scope. In particular, it did not cover indirect investments, unless a circumvention could be demonstrated.

The current Austrian screening mechanism is applicable since July 25, 2020. The rules on the EU Cooperation Mechanism (EUCM) of the Austrian Investment Control Act (*Bundesgesetz über die Kontrolle von ausländischen Investitionen*; "InvKG") became applicable on October 11, 2020.

The InvKG was developed in response to concerns about the previous screening regime and on the back of the emerging legislative efforts on the EU-level. It aligns with the framework provided by the then recently adopted FDI-Screening Regulation, aiming to establish an effective screening regime in light of growing concerns about FDI flows while providing legal certainty to investors. To achieve this, the existing mechanism was repealed and replaced by a new act, the Investment Control Act (*Investitionskontrollgesetz*).<sup>6</sup>

## 2. Domestic Framework

### 2.1. Overview of Domestic Screening Mechanism

The primary legislative framework governing foreign investments in Austria is enshrined in the **InvKG**, as published in BGBl. I Nr. 87/2020. There are no implementation rules or (published) administrative guidelines, which would further explain the application of the screening regime. Decisions under the InvKG are not accessible to the public.

The InvKG enables the scrutiny of foreign direct investment on the basis of security or public order considerations (including crisis management and services of general interest) as defined in Article 52 and 65 of the Treaty on the Functioning of the European Union ("TFEU").

The Federal Minister for Economy, Energy and Tourism (*Bundesministerium Wirtschaft, Energie und Tourismus* "BMWET") operates as the competent authority for FDI screening under the InvKG. The screening sits with Directorate II – EU & International Market Strategies, Unit II/9 – Investment Control) (*Sektion II – EU & internationale Marktstrategien, II/9 - Investitionskontrolle*). In February 2022, this authority published its first annual report detailing

<sup>6</sup> Bundesgesetz über die Kontrolle von ausländischen Direktinvestitionen (Investitionskontrollgesetz – InvKG)

the implementation of the Investment Control Act from July 2020 to July 2021. The second report covering the period July 2021 to December 2022 was released in 2024.

The InvKG establishes an inter-institutional advisory body, the Committee for Investment Control (*Komitee für Investitionskontrolle*, "**CIC**"). The CIC is an institutionalised sounding platform for the BMWET to consult with other Federal Ministries and the Federal Provinces (*Bundesländer*) affected by a foreign direct investment.

The CIC is chaired by the BMWET. It consists, next to the BMWET, of the following permanent members:

- the Federal Minister for European and International Affairs,
- the Federal Minister for Finance,
- the Federal Minister of Innovation, Mobility and Infrastructure; and
- the Federal Minister for Labour, Social Affairs, Health, Care and Consumer Protection

The BMWET can add, on a case-by-cases basis, other Federal Ministries and Federal Provinces to the committee.

The mechanism underscores the collaborative approach taken in assessing and managing the impact of foreign direct investments in Austria. In practice, the feed-back by the members of the CIC plays a pivotal factor in the screening process.

In the course of the screening, the BMWET will (mandatorily) activate the EU Cooperation Mechanism (EUCM), which is an important element of the screening process. In practice, the BMWET activates for each notified investment the EUCM.

## 2.2. Mandatory Screening

The InvKG establishes a mandatory filing regime. An application for authorisation needs to be submitted immediately after conclusion of the legal title for the investment (e.g., share purchase agreement) or in the case of a public offer, immediately after the announcement of the intention to make an offer. Prior to the approval the investment must not be carried out (standstill requirement).

An approval requirement is triggered if:

- (i) a foreign investor, i.e., a non-EU, non-EEA, non-Swiss individual/entity,
- (ii) intends to carry out an investment (directly or indirectly)
- (iii) in an Austrian undertaking; and

- (iv) the undertaking is active in a sector listed in the Annex to the InvKG.

### 2.2.1. Foreign Investor

Foreign investors are defined as either

- (i) a natural person without a citizenship from either the EU, the EEA or Switzerland, or
- (ii) a legal entity with its seat or place of administration outside the EU, the EEA, and Switzerland.

### 2.2.2. Investment

The InvKG covers the following "direct" (*unmittelbarer Erwerbsvorgang*) and "indirect" (*mittelbarer Erwerbsvorgang*) investments (as defined in Sec 1 para 3 lit a – d icw Sec 2 para 1 InvKG):

- (a) acquisition of an Austrian undertaking (*mergers etc*), or
- (b) acquisition of voting right shares in such an undertaking (*share deals*) if the following voting rights thresholds are reached or exceeded 10 %<sup>\*)</sup> / 25 % / 50 %
- (c) acquisition of a controlling interest in such an undertaking or
- (d) acquisition of control over substantial assets from such an undertaking (*asset deals*).

<sup>\*) the 10 % threshold applies to investment in especially sensitive areas, i.e. Part 1 of the Annex, exhaustive list</sup>

The InvKG covers investments into "undertakings", which are defined by reference to Sec 1 para 2 of the Austrian Commercial Code (UGB), as any permanent organisation disposing of independent economic activity, even if it is not profit-oriented. The undertaking must have a geographic nexus to Austria by having its seat or (alternatively) its place of administration located in Austria (Sec 1 para 1 Austrian Commercial Code). Sec 1 para 3 letter d InvKG captures asset deals whereby substantial assets from an Austrian undertaking are acquired.

### 2.2.3. Covered Sectors

Under the InvKG, only investments in an Austrian undertaking, which is active in an **area** listed in the Annex of the InvKG, are covered:

Part 1 of the Annex covers "*especially sensitive areas*" and provides an exhaustive list of areas. This includes:

- (i) defence equipment and technologies,



- (ii) operating of critical energy infrastructure,
- (iii) operation of critical digital infrastructure, in particular 5G infrastructure,
- (iv) water, and
- (v) operating systems guaranteeing the data sovereignty of the Republic of Austria.

Part 2 of the Annex sets out a non-exhaustive list of sensitive areas. These include:

- (i) critical infrastructure: e.g. institutions, systems, facilities, processes, networks or parts thereof in particular (a) energy, (b) information technology, (c) traffic and transport, (d) health, (e) food, (f) telecommunications, (g) data processing or storage, (h) defence, (i) constitutional institutions, (j) finance, (k) research institutions, (l) social and distribution systems, (m) chemical industry, (n) investment in land and buildings essential for the use of the infrastructures referred to in points (a) to (m);
- (ii) critical technologies and dual-use goods, including (a) artificial intelligence, (b) robotics, (c) semiconductors, (d) cyber security, (e) defence technologies, (f) quantum and nuclear technologies, (g) nanotechnologies, (h) biotechnologies;
- (iii) security of the supply of critical resources, including (a) energy supply, (b) supply of raw materials, (c) food supply, (d) supply of medicines and vaccines, medical devices and personal protective equipment, including research and development in these areas;
- (iv) access to sensitive information, including personal data, or the ability to control such information;
- (v) freedom and plurality of the media.

As part 2 of the Annex is not exhaustive, the BMWET has jurisdiction also in other, non-explicitly mentioned areas in which a threat to security or public order including crisis management and services of general interest within the meaning of Articles 52 and 65 TFEU may arise.

#### 2.2.4. Process

The investor must submit a filing for approval immediately (*unverzüglich*) after the signing of the transaction, or in the case of a public offer, immediately after the announcement of the intention to make the offer.<sup>7</sup> However, the applicant may submit a notification earlier, provided

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<sup>7</sup> Sec 6(3) ICA.

there is a bona fide intention to conclude an agreement, supported by sufficiently detailed documentation (e.g., a Memorandum of Understanding).<sup>8</sup>

The Austrian review process consists of three phases:

- **Phase 0 (p0)** | Upon receiving the application, the BMWET will first verify whether all required information has been provided. Once the application is deemed complete, the BMWET will activate the EUCM. If the application is incomplete, the applicant will be granted an opportunity to submit the missing information before the EUCM is activated.
- **Phase 1 (p1)** | If the Member States and the European Commission do not notify their intention to issue comments or an opinion within the initial 15-day period under the EUCM,<sup>9</sup> the national one-month review period for Phase 1 (p1) will commence. The applicant will be notified that the one-month review period has started. In practice, the BMWET often frontloads the review process, including preliminary consultations with the CIC, by beginning its screening parallel to the EUCM process (i.e. parallel to p0).

Within p1, the BMWET will need to determine that (i) an authorisation procedure is not required because such procedure would be contrary to obligations under Union or international law or (ii) there are no objections to the acquisition because there is no threat to security or public order or (iii) initiate an in-depth investigation as a more detailed assessment of the impact on national security or public order is required – launching a so-called Phase 2 (p2) investigation.<sup>10</sup> In case no in-depth investigation is initiated the authorisation procedure is concluded and the transaction can be closed.

- **Phase 2 (p2)** | In p2 the BMWET has two months from the initiation to (i) approve the investment if it does not pose a risk or a threat to national security or public order or (ii) if it does pose a threat thereto, grant the authorisation subject to mitigating measures to eliminate the risk or (iii) deny the authorisation altogether. Before a decision is issued the BMWET must convene a meeting with the CIC.<sup>11</sup> In practice, the two-month period

<sup>8</sup> ErläutRV 240 Blg 27. GP 6.

<sup>9</sup> Art 6(6) EU FDI Screening Reg.

<sup>10</sup> Sec 7(2) ICA.

<sup>11</sup> Adler/Chaussee/Weiss/Zimmermann (eds) Handbuch Investitionskontrolle (2022). Chaussee, Vienna, para 7.52.

of p2 is extremely tight, in particular if mitigating measures (i.e. commitments) are needed. The BMWET's decision concludes the notification process of the investment.

In practice, the time period for approval in p1 takes up to one to two months and for an approval in p2 up to three to four months (from notification).

### *2.3. Micro Enterprise Exemption*

An exemption from the mandatory filing requirement applies to foreign investments in micro-enterprises, including start-ups, which meet both of the following criteria: (i) fewer than 10 employees, and (ii) an annual turnover or balance sheet total of less than EUR 2 million.

In accordance with Article 4 of the Commission's recommendation dated 6 May 2003,<sup>12</sup> which outlines the definition of micro, small, and medium-sized enterprises, the exemption follows a two-year phase-in/out rule. This means that the exemption is applicable when the criteria are fulfilled over two consecutive accounting periods. Conversely, the exemption becomes inapplicable if the criteria are not met during two consecutive accounting periods.

### *2.4. Greenfield Investments*

The InvKG captures only investments in an already existing undertaking or existing assets of an Austrian undertaking. Conversely, greenfield investments are not captured by the InvKG.

### *2.5. Call-in Powers (Ex Officio Screening)*

The InvKG does not vest the BMWET with the power to call-in of investments that are not subject to mandatory notification under the InvKG. However, if the BMWET becomes aware of an investment that should have been filed, it can request a filing within 3 working days from the investor.

### *2.6. Non-Jurisdiction Letter (Unbedenklichkeitsbescheinigung)*

Sec 9 InvKG allows for an application requesting the issuance of a binding non-jurisdiction letter (*Unbedenklichkeitsbescheinigung*) from the BMWET. Pursuant to Sec 9 para 1 InvKG, the investor or the target undertaking itself can file for a clearance certificate. The application must contain essentially the same information as required for an *ex-ante* notification for approval.

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<sup>12</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20.5.2003, p. 36–41.

Within two months upon receiving the complete application, the BMWET is obligated to render a binding non-jurisdiction letter if it is determined that the direct investment does not fall under any authorization requirement. Otherwise, the applicant(s) must be informed that their submission will be treated as an application for authorization. Should the BMWET fail to issue an administrative decision or provide notification within the specified two-month timeframe, it shall be presumed that the BMWET lacks jurisdiction in the matter.

### 3. Developments to Follow

The current government program envisages amending the scope of the InvKG.<sup>13</sup> Specifically, investments in the health and media sectors are expected to be reclassified as especially sensitive sectors (i.e., moving from Part 2 to Part 1). The legislative process for these amendments is anticipated to be initiated concurrently with the amendments required by the recast of the EU FDI Screening Regulation.

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<sup>13</sup> Austria's government programme for 2025–2029, available at <https://www.bundestkanzleramt.gv.at/bundestkanzleramt/die-bundesregierung/regierungsdokumente.html> (last accessed 27 August 2022), p 35.

### Annex 1: Relevant Laws, Ordinances, Regulatory Guidelines

- BGBl. I Nr. 87/2020, Austrian Investment Control Act (Bundesgesetz über die Kontrolle von ausländischen Direktinvestitionen)
- Erläuterungen der Regierungsvorlage 240 BlgNR XXVII. GP (Explanations of the Investment Control Act, in German); Cf Parliamentary Question No 8576/J, 2021, available at [https://www.parlament.gv.at/PAKT/VHG/XXVII/J/J\\_08756/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXVII/J/J_08756/index.shtml)

### Annex 2: Relevant Administrative and Court Cases

- The decisions of the BMWET are not made public.
- Jurisprudence: Federal Administrative Court (Bundesverwaltungsgericht – BVwG), GZ W177 2283132-1/2E; see also here: <https://www.celis.institute/celis-blog/the-first-court-decision-on-the-austrian-fdi-screening-regime/>

### Annex 3: Relevant Literature

- Adler, Das Investitionskontrollgesetz – Überprüfung ausländischer Direktinvestitionen in Österreich, *ecolex* 2020, 852
- Adler/Chaussee/Weiss/Zimmerman (eds), *Handbuch Investitionskontrolle*, Manz, 2022
- Barbist/Kröll/Khol, *Das neue Investitionskontrollrecht, Einführung und Kurzkomentar zum InvKG*, LexisNexis, 2020
- Chaussee, *Das Verfahren nach dem InvKG*, *ecolex* 2020, 856
- Hartung/Schönhuber, *Das Investitionskontrollgesetz*, *ÖZK* 2020, 187
- Kölbl, *Der Begriff der Gefährdung der Sicherheit oder öffentlichen Ordnung im InvKG*
- Madner/Mayr, *Das neue Investitionskontrollgesetz*, *JRP* 2020, 220
- Rastegar/Jünger, *Die Genehmigungspflicht nach dem InvKG*, *RdW* 2021/655
- Rastegar/Jünger, *Die Genehmigungspflicht nach dem InvKG*, *RdW* 2022/15
- Schmidt, *(Un)Sicherheit und (Un)Ordnung in § 3 InvKG*, *ecolex* 2022/221
- Weiss/Fladerer, *Schwerpunkt Investitionskontrolle*, *ecolex* 2020, 852
- Weiss/Fladerer, *Unionsrechtliche Schnittstellen des InvKG*, *ecolex* 2020, 867
- Winner (Hg); *Kontrolle ausländischer Direktinvestitionen in Mittel- und Osteuropa (2022)*
- Yalçın, *Investitionskontrolle in Österreich gemäß des neuen Investitionskontrollgesetzes vor dem Hintergrund der neuen EU-FDI-Screening-VO*, *StAW* 2020, 109

## About the CELIS Institute

The CELIS Institute is an independent non-profit, non-partisan research enterprise dedicated to promoting better regulation of foreign investments in the context of security, public order, and competitiveness. It produces expert analysis and fosters a continuous trusting dialogue between policymakers, the investment community, and academics. The CELIS Institute is the leading forum for studying and debating investment screening policy. More about the Institute's activities under [www.celis.insitute](http://www.celis.insitute).

## About the CELIS Country Report(er)s Project

CELIS Country Reports (hereafter "Report") are produced by leading experts for any European and select non-European jurisdiction following an elaborate model, allowing for comparison and evaluation across jurisdictions. The project's aim is to identify and suggest best practice and to propose a common European (model) law on investment screening.

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