Linklaters

9 March 2018

German Grand Coalition Reloaded.
Financial Investor Briefing

On 4 March 2018, the members of the German Social Democrats (SPD) approved the draft coalition agreement (*Koalitionsvertrag*) with Angela Merkel's Conservative Party (CDU) and its Bavarian counterpart CSU.

The agreement is the result of lengthy negotiations between the parties of last term's coalition. For the next four years, the coalition does not envisage radical change, but sees a need for reform in a number of areas, with potentially significant consequences for specific businesses. The central political project is revitalising the European Union.

This paper extracts from the 179-page coalition agreement those policy initiatives we expect to materially impact investments in Germany. You can view the coalition agreement here (in German).

Content

1 Digital Economy

The coalition sees digitisation as the underlying economical trend of our time and wants to ensure that Germany benefits from the opportunities it offers. This entails continued efforts to digitise not only the German industry ("Industry 4.0"), with microelectronics as a key element, but also the promotion of digitisation and inter-connection in all areas of the economy, public administration and public life.

There are few points which go beyond mere declarations of intent:

- **E-government**: The new government intends to spend 500 million euros to promote simple, secure and mobile-friendly access to all administrative services via a digital portal serving as a one-stop shop for all portal solutions on federal and state level.
- **Digital schools**: The government plans to support schools by spending 5 billion euros on IT equipment, cloud computing solutions and qualification of teachers in the next five years.

- **E-health**: Regulatory obstacles for telemedicine will be reduced. The coalition also plans to introduce online prescriptions of medicines without having to see a doctor in person. Patients shall be able to access their health-related data in an electronic file.

- **Privacy and data security**: The coalition sees the need to better align data protection and privacy needs with the forthcoming digitisation. On the one hand, data protection should be "innovation-friendly" according to the coalition, such as that consumers should be able to transfer their personal data swiftly from one platform to another. Despite better portability and interoperability of data, the coalition on the other hand wants to strengthen the rights of users (privacy by design/default), especially in the field of e-health (strict opt-in), automated cars and employee data protection.

- **Competition law**: The parties agreed on a stricter regulation of the digital business. This includes reconsidering the definition of digital markets, a closer monitoring of potentially dominant platform companies as well as thoughts about a new Digital Agency.

  Considering the recently introduced transaction value threshold, we expect the digital economy to continue to be a focus area for the Federal Cartel Office. Further, investors should generally keep in mind that Germany established a liability of group entities for cartel infringements and closed gaps in the area of successor liability last year.

2 Research and Development

To position Germany as a country of innovation, the coalition envisages that the federal government (Bund) will spend 3.5 per cent of the GDP on research and development together with the federal states (*Länder*) and the economy until 2025, albeit without further explaining the numbers.

Research regarding key technologies such as micro-electronics, modern techniques of communication, robotics, data science, IT-security or quantum computing is to receive "intensive support". The coalition also explicitly names research on digital innovations in the healthcare sector and on sector coupling, battery storage for e-mobility and synthetic fuels in the energy sector. Additionally, Germany wants to be a world leader in researching artificial intelligence.

The validation of research results regarding their innovation potential as well as the founding of research related start-ups is also to receive support. In this context, the government plans to review depreciation tables for goods relevant for digital innovation and to introduce tax incentives for research-based small and medium-sized enterprises.

3 Real Estate

Changes to the real estate transfer tax regime have been agreed, which we expect to be material for all investors in German real estate - please see clause 11.4 below.

Residential construction is to be promoted with the goal to build 1.5 million new apartments and homes. It is also foreseen to promote the energetic building renovation under increased environmental standards. In the affordable rental segment, tax incentives for privately financed new residential construction will be implemented. Families with an annual income of less than 75,000 euros shall be supported to build or purchase residential property for their own use. For a period of 10 years following the acquisition of the property, they shall receive an annual amount of 1,200 euros per child per year. Furthermore, families shall also be supported by the implementation of a tax-free amount for purposes of the real estate transfer tax.

The financing of public housing shall be continued after 2019 and, if necessary, the government plans to amend the German constitution in order to do so. Irrespective of that, the public housing sector shall be supported with an amount of 2 billion euros in 2020/2021.

Rent control shall be further intensified in large cities. Going forward, landlords shall be obliged to disclose the rent amounts paid by former tenants. In areas where rent increases are capped, landlords may allocate to tenants only 8 per cent of the costs for modernisation work in the next five years. Generally, tenants shall be better protected against the abuse of the announcement of modernisation work. In the future, such abuse shall be qualified as an administrative offence by the landlord and tenants shall have a claim for damages against the landlord.

4 Pharma/Healthcare

Investments in hospitals for restructuring, new technologies and digitisation will be supported by the continuation of the existing structural fund for a further four years in the amount of 1 billion euros and the continuation beyond 2019 of the innovation fund for the development of outpatient care with a volume of 200 million euros annually.

The coalition also sees the digitisation of the German healthcare sector as a major topic (see clause 1 above). It plans to further extend the telematic infrastructure and to introduce an electronic patient file as well as specific accreditation procedures for digital health treatments. The German prohibition of a treatment without any physical patient contact shall be reviewed and the implementation and reimbursement of telehealth services shall be extended.

5 Defence

In the view of existing investment backlog in the German defence forces, the coalition plans to re-organise its procurement procedures exploring opportunities to mitigate obligations to use EU-wide public procurement procedures. Here too, the coalition puts a focus on digitisation and IT-security. The agreement foresees a rise in the defence budget (including the budget for Official Development Assistance (ODA)) of 2 billion euros.

On the other hand, the coalition aims to further restrict exports of military equipment/weapons to countries outside the EU and NATO. In this regard, the relevant export guidelines are to be strengthened in the year 2018. Generally, the government strives to develop a joint European position on military exports.

6 Transport

Improving transport infrastructure is one of the main policy goals of the coalition agreement. Material investments are planned in the following areas:

- **E-mobility**: To promote e-mobility in Germany, public funding shall be extended. Among others, the development of a comprehensive charging infrastructure shall be intensified; the establishment of at least 100,000 additional charging points by the year 2020 is envisaged. Also, electric vehicles that are used for commercial purposes will profit from an accelerated depreciation of 50 per cent in the first year.

  Furthermore, the industry shall be supported in developing an entire e-mobility value chain. *Inter alia*, the production of battery cells in Germany and Europe shall be promoted.

- **Roads**: According to the coalition agreement, the level of investment in traffic infrastructure will at least be maintained in the coming years. The long-term availability of the respective budgetary resources will be ensured.

  While PPP projects will be continued (provided the economic feasibility has been verified), a privatisation of road infrastructure or of the state-run infrastructure corporation (*Verkehrsinfrastrukturgesellschaft*) remains excluded. To promote digitisation of the traffic system, large investments in traffic technology and innovation are envisaged.

- **Railways**: The coalition aims to double the number of railway passengers by the year 2030. In order to achieve this goal, it plans to invest in service, reliability and innovation. The coalition wants to establish a support programme for the electrification of railway tracks as well as the procurement of locomotives powered by hybrid fuel cells.

  Also, the coalition plans to lower the charges for track access to foster competition while, on the other hand, excluding a privatisation of the German railway system Deutsche Bahn AG and its subsidiaries.

7 Telecommunications

For the coalition partners, the "path to a gigabit society" is of the highest priority.

- **Fibre optic networks**: The coalition aims to connect each municipality to the fibre optic network by 2025. Schools, public social institutions, business parks and hospitals are to be connected by the end of 2021. For this, the coalition partners expect a public financing requirement of 10 to 12 billion euros.

  To incentivise private investments in this field, the coalition wants to introduce a concept of open-access to the network as opposed to the existing ex ante regulation for the copper grid.

- **UMTS and 5G**: The government wants to fund the expansion of the fibre optic network from the revenues generated through the tendering of UMTS and 5G licences. New frequencies shall only be awarded to those bidders who implement coverage also in less densely populated regions.

- **National roaming**: To incentivise full coverage of mobile communication also in scarcely populated areas, the government intends to allow agreements between providers by changing the laws on anti-trust and telecommunication.

8 Energy

The coalition remains committed to the German energy turn-around (*Energiewende*) focusing on better synchronising the development of renewables and of the electricity grid. The coalition agreement touches on various aspects that it considers important (grid fees, flexibility, co-generation, sector-coupling, district heating, etc.) but names only few specific policy measures:

- **Renewable energies**: Until 2030, the share of renewable energy is to rise to 65 per cent. To save additional 8 to 10 million tons of CO_2, the coalition plans additional tenders in 2019 and 2020 for financial support of electricity from onshore wind (4 GW), solar (4 GW) and offshore wind (1 GW).
- **Fossil energies**: A new commission shall be installed with the task to develop measures to fulfil Germany's goals regarding climate protection, including, *inter alia*, a plan to progressively reduce generation of electricity from coal including a final stop date.

  In this context, the coalition wants to examine the possibilities for decommissioned power plant sites to serve as sites for big thermal storage plants.
- **LNG**: The coalition agreement foresees the building of the first LNG infrastructure in Germany (without specifying the location).
- **Storage**: The coalition recognises the need to further develop electricity storage technologies and to better integrate storage solutions in the market design.
- **Electricity grids**: The coalition intends to further accelerate the modernisation and expansion of the energy grid, in particular by amendment and simplification of the Grid Expansion Acceleration Act (*Netzausbaubeschleunigungs-gesetz*) for high voltage transmission lines. Furthermore, it is planned to facilitate the use of underground cables for transmission lines with alternating current as far as technically possible.

9 Finance sector

The following material policy initiatives have been agreed upon for the finance sector:

9.1 Venture Capital and Tech Growth

The coalition aims for a comprehensive legal framework to promote start-ups and investments in high-growth companies (*Wachstums-unternehmen*). It is intended to increase the funding by state aid (e.g. EIF, INVEST-Zuschuss and EXIST) and to establish a new Tech Growth Fund and a large national Digital Fund. Flexible financial instruments to finance start-ups and the growth of new enterprises will be supported (e.g. by providing government loans as venture debt).

In addition, the volume of the venture capital market and the mobilisation of private investors (e.g. through tax incentives), the public sector, KfW financing and European financial partners are to be significantly expanded.

A further objective is to remove regulatory barriers to start-ups and to establish a one-stop shop for entrepreneurs and start-ups to obtain information on the bureaucratic and regulatory obstacles. On a European level, it is intended to implement an EU-wide definition of start-ups.

9.2 Digitisation of the financial sector

Germany is to become market leading in digitisation and FinTech hubs. This will be accompanied by the promotion of research into blockchain technology and the facilitation of a coherent regulatory framework in the area of blockchain and cryptocurrencies as well as the review of the current regulation and the promotion of cashless payment transactions.

9.3 Financing priorities

Traditional small and medium-sized enterprises (SME) financing is to be strengthened by savings banks (*Sparkassen*), national and co-operative banks (*Volks- und Genossenschaftsbanken*), private banks (*Privatbanken*), development banks (*Förderbanken*) and guarantee banks (*Bürgschaftsbanken*).

Another focus will lie on the promotion and expansion of the use of financial instruments for the shipbuilding industry. For financing aspects under Real Estate please see clause 3 above.

10 Corporate law

A number of corporate law reform policies are on the coalition's agenda:

10.1 Sanctions for businesses

The prevention of economic crime shall include a new law on sanctions for businesses. The coalition suggests new clear procedure rules to increase legal security and an extension of the current sanctions instruments for undertakings. Criminal fines shall be based on the economic power of the respective business. Furthermore, new legal regulations shall be introduced for internal investigations, in particular in view of confiscated documents and the admissibility of searches.

10.2 Gender quota

A new law on gender quotas of certain large businesses was introduced in 2016, which, *inter alia*, obliges certain companies to publish targets for the increase of the quota of women in management and supervisory boards. Now, the coalition would like to enhance the effectiveness of this law by imposing more severe sanctions on the violation of the respective publication duties.

10.3 European corporate law

In case of online registrations of companies, the coalition intends to support effective identity controls on a European level. Furthermore, a promotion of the European harmonisation of the regulations on cross-border relocation of registered offices as well as the European private company (SPE) is planned.

10.4 Stock corporation law

The rules in respect of shareholder actions challenging resolutions of general meetings shall be reviewed. In addition, court proceedings for the verification of the adequacy of indemnity offers (*Spruchverfahren*) shall be evaluated.

10.5 Partnership law reform

The coalition agreement announces a profound reform of German partnership law in order to adjust the current partnership law to modern business life. However, no further details are provided yet.

11 Tax

A principle tax policy objectives of the coalition are reducing the tax burden of individuals while maintaining a balanced federal budget is to be maintained.

11.1 International tax policy

The creation of a common consolidated tax base is still being pursued, as well as the introduction of minimum tax rates for corporate taxation. In this regard, initiatives shall be taken together with France, also to give an answer to international changes and challenges, not only in the US. Additionally, a continuation of the previous measures to combat tax evasion, tax avoidance and money laundering has been agreed. The measures of the OECD and G20 with respect to BEPS, transparency and the like shall be continued unrestrictedly. In this context, the German CFC rules as provided for in the *Außensteuergesetz (AStG)* will be totally revised, hereby also implementing provisions of the EU Anti-Avoidance Directives (ATAD 1 and ATAD 2) into national law. Further, the current provisions for hybrid instruments and the interest barrier regime shall be amended. The commitment to ensure the fairer taxation of large groups, in particular, of internet companies and the digital economy, has been reiterated. Finally, the introduction of a “substantial” financial transaction tax is further being adhered to.

11.2 (Partial) abolition of the flat tax regime

Further, the flat tax regime shall be abolished with respect to interest income of individuals given the implementation of the automated exchange of information. The flat tax regime shall, however, further apply to dividend income.

11.3 (Partial) abolition of the solidarity surcharge

The solidarity surcharge shall be abolished for 90 per cent of all individual tax-payers form 2021 onwards. An abolition for tax-payers with higher income and for corporations is not envisaged.

11.4 Real estate transfer tax

After completion of the audit work by the federal government and the federal states (*Bund und Länder*), it is intended to implement an effective and legally watertight provision in order to avoid “abusive” tax structuring schemes regarding real estate transfer tax by way of share deals. The additional taxes resulting therefrom may be used by the Federal States to reduce the tax rates.

Also, the possibility of a tax allowance for a first-time purchase of residential estate for families shall be examined. By way of background, the sale and transfer of German real estate assets under an asset deal is subject to German real estate transfer tax at rates between 3.5-6.5 per cent (the rate depending on in which Federal State the relevant asset is located – during the last few years, the Federal States constantly increased the rates and only Bavaria and Saxony still have a tax rate of 3.5 per cent).

In contrast, the sale and transfer of shares in a corporate entity which holds German real estate is generally only subject to real estate transfer tax if an acquirer acquires or, after the acquisition, holds (directly or indirectly) at least 95 per cent of the shares in the company holding real estate (please note that special rules apply in relation to partnerships holding German real estate). Hence, a disposal of 100 per cent of the shares in a company holding German real estate can – under current law – be achieved real estate transfer tax neutral by disposing the shares to (at least) two unrelated, independent co-investors where no investor holds at least 95 per cent of the shares.

Please note that it is yet unclear whether and, if so, what rules may be introduced in relation to share deal transactions, in particular, whether the 95 per cent threshold may be decreased.

11.5 VAT

Measures shall be taken in order to safeguard an appropriate taxation of the digital economy. In order to fight VAT fraud, it is intended to create provisions that impose liability on online trade platform operators who do not prevent the trade of dishonest entrepreneurs via their marketplace. Further, it is envisaged to oblige platform operators to disclose all traders on their respective platforms vis-à-vis the tax authorities. It is uncertain if the new government also plans to implement new secondary liability provisions or a joint and several liability for undeclared and unpaid VAT of the traders active on such marketplaces. Also, the current provisions for import VAT shall be revised in order to eliminate competitive disadvantages for the German industry.

11.6 Venture Capital

An entrepreneurial culture is to be promoted, e.g. by introducing tax incentives for venture capital.

12 Employment law

The proposed legislative changes in the area of labour and employment are unspecific and do little for employers. The general emphasis is on modernising the labour environment with the aim of making it more flexible.

The most noteworthy of the proposed changes are in the areas of fixed-term employment contracts and making it easier to dismiss high-earning employees in the financial services sector.

12.1 Financial services sector dismissal law

The government is keen to make Frankfurt as attractive as possible for financial institutions, especially in the current Brexit environment. Foreign investors are typically put-off by the strong levels of protection against dismissal and the reinstatement remedy.

It is proposed that employees who are both “risk takers” (defined by regulatory law) and earn at least three times the amount of the social security ceiling (i.e. for 2018, 234,000 euros in Western Germany) shall still qualify for protection against dismissal, but that the remedy of reinstatement would essentially be excluded to them. This would mean that employers in the financial services sector would be able to dismiss these employees knowing that the maximum penalty would be a court order of a severance of up to 12 months’ total compensation (in some cases 15 or 18 months). Whilst this is a welcome development, it does not go far enough and will only apply in the financial services sector to a small number of employees.

12.2 Temporary employees

At present, an employer can hire employees on a fixed-term basis without any reason for up to 24 months and extend the fixed-term contract up to three times in that 24-month period. In the context of an alleged misuse of current laws, it is being proposed to reduce the 24-month period to 18 months and the extension to once rather than three times. Perhaps more significantly, employers with more than 75 employees would be prohibited from employing more than 2.5 per cent of their staff on temporary contracts without an objective reason. These amendments would force employers to consider sooner than is currently the case whether to retain a temporary employee as a permanent employee or replace him/her once the agreement had expired and larger employers (more than 75 employees) to constantly reassess their staffing needs to ensure compliance with the quota.

12.3 Part-time rights

For companies with more than 45 employees, it is proposed that employees will be entitled to work part-time for a temporary period of between 12 months and 5 years. This would essentially allow full-time employees to reduce their working hours for periods before returning to full-time at the end of that period. This is likely to place even more pressure on employers when staffing their businesses as they will be faced with employees being able to claim part-time, full-time and other working time arrangements related to maternity and paternity leave.

12.4 Reduced employer costs

The "solidarity charge" is to be abolished by 2021 for certain lower earning employees and the employer's contribution to unemployment insurance is to be reduced by 0.3 per cent.

13 Miscellaneous

Other important proposed policy initiaves include:

13.1 Insolvency law

The aim is to reduce bureaucratic hurdles for the start-up process and make adjustments to insolvency law if necessary. The digitisation of insolvency proceedings is to be accelerated and rights of licensees are to be better protected in the event of an insolvency.

13.2 Foreign investment control

The coalition agreement underlines that Germany will continue to be an open investment area. Nevertheless, over the past months, we experienced increasing scrutiny in foreign investment filing in Germany. It is expected that the number of filings (which doubled over the past two years) as well as the number of in-depth investigations will further increase. Within this context, it should be noted that the EU proposal for an overarching framework for vetting foreign investments on grounds of security or public order is taken forward and may come into force by mid-2019. Also, it is possible – albeit not reflected in the coalition agreement – that a further reform of German foreign investment rules will take place in the coming years.

13.3 B2B Standard Business Terms

As far as the B2B context is concerned, the law on the review of standard business terms shall be evaluated with the aim to increase “legal certainty for innovative business solutions”. Small and medium-sized enterprises which enter into contracts with economically stronger partners shall not lose existing protection from the law regarding standard business terms. However, no further details are provided yet.

13.4 Model Case Act

Following discussions in the last legislative period in the wake of the diesel scandal, the parties to the coalition agreement intend to introduce a general Model Case Act (*Musterfeststellungsklagegesetz*) by November 2018. The right to file a model case under the new Model Case Act shall be limited to specific qualified organisations, which will act on behalf of the injured parties and need to a show a prima facie legal interest of at least 10 injured parties. Moreover, there would have to be at least 50 registered individuals on a claims register to execute the proceedings. Any decision shall be binding on the defendant(s) and all injured parties who had registered claims, if they had not withdrawn from the register before the first day of the oral hearing.

14 Who is who in government

Angela Merkel (CDU) will be elected chancellor by the German parliament on 14 March 2018.

According to the coalition agreement, Merkel’s Christian Democratic Party (CDU) will nominate six ministers, its Bavarian sister-party CSU three ministers and the Social Democratic Party (SPD) six ministers. Subsequently, the CSU announced that Dorothee Bär will join the Chancellery in the rank of a minister where she will concentrate on issues of digitisation.

CDU	Head of Chancellery	Helge Braun
	Economic Affairs and Energy	Peter Altmaier
	Education and Research	Anja Karliczek
	Defence	Ursula von der Leyen
	Food and Agriculture	Julia Klöckner
	Health	Jens Spahn

CSU	Chancellery (Digitisation)	Dorothee Bär
	Economic Co-operation and Development	Gerd Müller
	Interior, Building and Homeland	Horst Seehofer
	Transport and Digital Infrastructure	Andreas Scheuer
SPD	Environment, Nature Conservation and Nuclear Safety	Svenja Schulze
	Family Affairs, Senior Citizens, Women and Youth	Franziska Giffey
	Finance	Olaf Scholz
	Foreign Affairs	Heiko Maas
	Justice and Consumer Protection	Katarina Barley
	Labour and Social Affairs	Hubertus Heil

Linklaters

Your Contacts

Corporate/M&A – Hans-Ulrich Wilsing

Banking and Capital Markets – Kurt Dittrich

Tax – Andreas Schafitzl

Restructuring & Insolvency – Sven Schelo

Dispute Resolution – Rupert Bellinghausen

Competition/Antitrust – Daniela Seeliger and Carsten Grave

Real Estate – Wolfram Krüger and Carsten Loll

Public Commercial Law – Jan Endler

Employment – Matthew Devey

TMT – Daniel Pauly

Private Equity – Ralph Drebes

Regulated Markets – Kai Pritzsche

Financial Regulation Group – Andreas Steck and Frederik Winter

Investment Funds – Alexander Vogt and Markus Wollenhaupt

Authors: Alexander Vogt / Ruth Losch (ed.)

Our German offices

Berlin
Linklaters LLP
Potsdamer Platz 5
10785 Berlin

Telefon (+49) 30 21496-0
Telefax (+49) 30 21496-100

Düsseldorf
Linklaters LLP
Königsallee 49-51
40212 Düsseldorf

Telefon (+49) 21 122977-0
Telefax (+49) 211 22977-435

Frankfurt am Main
Linklaters LLP
Taunusanlage 8
60329 Frankfurt am Main

Telefon (+49) 69 71003-0
Telefax (+49) 69 71003-333

München
Linklaters LLP
Prinzregentenplatz 10
81675 München

Telefon (+49) 89 41808-0
Telefax (+49) 89 41808-100

Linklaters.com

A36083219/2.1/12 Mar 2018