

The “Construction Turbo” for armaments and national defence infrastructure

GERMANY’S RECENTLY PASSED “CONSTRUCTION TURBO” LEGISLATION FOR RESIDENTIAL CONSTRUCTION HAS RECEIVED WIDESPREAD ATTENTION FROM THE PUBLIC AND EXPERTS ALIKE. HOWEVER, WHAT WENT LARGELY UNNOTICED IN THE FINAL STAGES OF THE LEGISLATIVE PROCESS WAS THE EXTENSION OF THE NEW RULES TO COVER NATIONAL DEFENCE AND ARMAMENTS INDUSTRY PROJECTS.

BELOW, WE PROVIDE A BRIEF OVERVIEW OF THE REFORMS TO SECTION 37 (2) AS WELL AS THE NEW SECTION 37A OF THE FEDERAL BUILDING CODE AND EXPLAIN THEIR SIGNIFICANCE FOR LONG-TERM SITE DEVELOPMENTS, PARTICULARLY FOR THE DEFENCE INDUSTRY.



Executive Summary

- Section 37 (2) of the revised version of the Federal Building Code (BauGB) now covers not only projects that (directly) serve national defence purpose, but also all projects that serve official purposes of the Bundeswehr and allied armed forces.
- While Section 37 (2) BauGB continues to focus on public-sector projects, the new Section 37a BauGB is intended to facilitate the approval of projects that serve the manufacture and storage of products for national defence purposes and is also aimed specifically at private developers, i.e. companies in the defence industry. For a project to be eligible under the new legislation, a declaration must be provided by the German Federal Ministry of Defence confirming that the products being manufactured or stored are necessary for ensuring the operational capability and securing supply to the Bundeswehr.
- Such projects may be permitted in undesignated outlying areas in accordance with Section 37a (1) BauGB or exempted from the provisions of a development plan in accordance with Section 37a (4) BauGB. Whether such projects are admissible is initially decided by the higher administrative in accordance with Section 37a (2) BauGB.



- Nevertheless, certain restrictions must be observed for site developments in accordance with Section 37a BauGB. For example, only projects that are required by the Bundeswehr are eligible. Section 37a BauGB does not take the requirements of allied armed forces into account. Projects must be dismantled once the authorised use has been permanently abandoned. This means that projects may have to be dismantled as soon as the Bundeswehr no longer has a need for them – even if they could still be used to manufacture products for allied armed forces.
- For these reasons, using Section 37a BauGB for long-term site developments does not appear to be entirely practical. In certain cases, however, it may be possible to speed up the process by applying for approval under Section 37a BauGB and having a development plan drawn up in parallel to provide a permanent basis for development. Building rights based on a development plan are not restricted to the requirements of the Bundeswehr.

Starting position

When the draft bill for an “Act to Accelerate Residential Construction and Secure the Provision of Housing” (*Gesetz zur Beschleunigung des Wohnungsbaus und zur Wohnraumsicherung*) – also known as the “Bauturbo”, or “Construction Turbo” in English – was first adopted by the Federal Cabinet on 18 June 2025, the initial focus was solely on facilitating and accelerating the approval of residential construction projects. It was not until Committee Paper 21 (24) 30 dated 7 October 2025 that, in light of the dramatically evolving geopolitical landscape in recent years, the coalition parliamentary groups introduced an amendment to the Construction Turbo that included a revised version of Section 37 (2) of the Federal Building Code (BauGB) and the introduction of the entirely new Section 37a BauGB.

This amendment, proposed by the CDU/CSU and SPD parliamentary groups, was primarily intended to address the need to rapidly increase production capacities,

particularly for “battle decisive munitions”, to ensure a secure supply to the Bundeswehr. According to the proposal, there is an “urgent need to catch up and address the Bundeswehr’s equipment shortages. [...] A significant expansion of industrial capacities is required. [...] It is crucial that production facilities for defence can be put into operation as quickly as possible”¹. The new legislation was also intended to facilitate construction projects serving national and alliance defence purposes.

At its meeting on 8 October 2025, the Committee for Housing, Urban Development, Building and Local Government resolved to include the amendment of 7 October 2025 in its recommended resolution on the “Construction Turbo” Act. The Construction Turbo, including the Committee’s amendments, was adopted by the German Bundestag on 9 October 2025. The new legislation came into force on 30 October 2025.

I. Situation prior to the Construction Turbo

Section 37 BauGB (old version) already offered some relief for the approval of projects serving purposes of national or alliance defence, even if they deviated from the provisions of planning law or the municipality in question withheld its agreement. In this respect, the Construction Turbo merely further specifies and supplements an existing exemption.

The permissibility of projects for the manufacture and storage of national defence products, which are typically developed by private companies, was previously governed by the regular planning regulations. Due to the associated emissions and any safety buffer zones required under legislation on the prevention of hazardous incidents, projects for the manufacture and storage of defence products are generally located outside of built-up areas. Under German planning law, such sites located in undesignated outlying areas are assessed in accordance with Section 35 BauGB or, if a development plan has previously been drawn up, in accordance with Section 30 BauGB. The latter usually applies to the consolidation or expansion of existing plants.

¹ Committee Paper 21 (24) 30, p. 16; rationale adopted in the recommended resolution of the Committee on Housing, Urban Development, Building and Local Government dated 8 October 2025, Bundestag Paper

21/2109, and law in this version adopted by the German Bundestag on 9 October 2025.



It was therefore possible to establish a new production site in an undesignated outlying area or expand an existing plant beyond the scope of the applicable development plan under the previous legislation in accordance with Section 35 (1) no. 4 BauGB, provided that no (new) land-use planning procedure was to be carried out.

In practice, however, Section 35 (1) no. 4 BauGB has been, and continues to be, applied very restrictively. For example, a project is only granted privileged status if it is "only to be carried out in the outlying area because of the specific demands it makes on its surroundings, its harmful effect on its surroundings or because of its specific purpose". In addition to meeting one of these three criteria (specific demands on surroundings, harmful effect or specific purpose), based on the wording of Section 35 (1) no. 4 BauGB, privileged status is also subject to an evaluative consideration of whether the project "is only to be carried out in the outlying area". This evaluative consideration further narrows the scope of application in such a way that the "specific project is only to be located in this case and, accordingly, in the outlying area according to the specific circumstances and conditions in the municipality".² This criterion is generally not met if a project results in more than a single, isolated development in an outlying area and is usually designated in an urban land-use plan.³ This often rules out the creation of building rights for defence industry sites via Section 35 (1) no. 4 BauGB.

This issue was addressed by the coalition parties with their proposed amendment to the Construction Turbo draft bill, which is intended to facilitate the approval of defence projects in outlying areas that fall outside the remit of Section 35 (1) no. 4 BauGB.⁴

II. Revised Section 37 (2) BauGB

Section 37 BauGB contains a substantive exemption from planning law requirements for certain federal or state projects with a specific public purpose, which is supplemented by procedural relief for national defence and federal police projects in Section 37 (2) BauGB. In view of the current geopolitical situation, the Construction Turbo

expands the catalogue of public-sector projects covered by Section 37 (2) sentence 1 BauGB (revised version).

"(2) Where the project in question serves official purposes of the Bundeswehr or allied armed forces, including the manufacture and storage of products for national defence, official purposes of the Federal Police or in the interests of the protection of the civilian population, the higher administrative authority shall decide on whether to approve the deviation (from the regulations) after consulting the municipality. [...]"

This results in the following changes compared to the previous version:

- While the previous version was restricted to projects that served purposes of national defence, the revised version now includes all projects that serve official purposes of the Bundeswehr. This includes not only military barracks, airfields and radar stations, but also Bundeswehr service and training facilities.
- The scope of application has been extended to "projects that serve official purposes of allied armed forces", without the need to refer to the NATO Status of Forces Agreement.
- In addition, projects for the manufacture and storage of national defence products now also fall under Section 37 (2) sentence 1 BauGB, as amended (e.g. Bundeswehr munitions depots). This clarifies that Section 37 (2) BauGB applies not only to projects that serve a direct military purpose, but also to those that indirectly support the fulfilment of military duties.

Furthermore, it is no longer necessary to consult the local municipality in the case of projects that fall within the scope of Section 37 (2) BauGB, provided the municipality has already been involved at an early stage – for example as part of the consultation and agreement with the higher administrative authority. Previously, the municipality had to be consulted even if it had already refused its agreement.

² Federal Administrative Court, judgment of 14 May 1969 – IV C 19.68.

³ Federal Administrative Court, judgment of 16 June 1994 – 4 C 20.93.

⁴ Committee Paper 21 (24) 30, p. 17.





III. Introduction of Section 37a BauGB

The new Section 37a BauGB reads as follows:

(1) Projects which serve the manufacture or storage of products for purposes of national defence, in particular munitions, explosives and their precursors, the necessity of which for ensuring the operational capability and securing supply to the Bundeswehr has been confirmed by a declaration from the Federal Ministry of Defence, are permitted in undesignated outlying areas, even if they are not covered by Section 35 (1) no. 4, provided there are no conflicting public interests and public infrastructure provision can be guaranteed. The declaration pursuant to sentence 1 is incontestable; there is no entitlement to its issue. Section 35 (5) sentences 1 to 3 applies.

(2) The higher administrative authority shall decide on the permissibility of projects in accordance with paragraph 1 in agreement with the municipality. If the higher administrative authority rejects the project or if the municipality refuses to agree as required under sentence 1 or under Section 14 (2) sentence 1, the Federal Ministry of Defence shall decide in consultation with the competent supreme state authority; the municipality shall be consulted if it has not already been involved at an earlier stage. Section 36 (2) sentence 3 does not apply.

(3) Section 37 (3) applies accordingly.

(4) Paragraphs 1 to 3 also apply to the amendment or extension of projects in accordance with paragraph 1 for

which a development plan has been drawn up in the previously undesignated outlying area. In such cases, the project may also be exempt from the provisions of this development plan.

1. Eligibility criteria

Section 37a BauGB applies to projects that serve the manufacture and storage of products for purposes of national defence and for which the Federal Ministry of Defence has issued a declaration confirming their necessity for ensuring the operational capability and securing supply to the Bundeswehr.

In contrast to Section 37 BauGB, Section 37a BauGB also takes private project developers (particularly defence industry companies) into consideration. Although the wording of Section 37a BauGB does not explicitly exclude public-sector projects, Section 37 BauGB is likely to play a more significant role as it is specifically geared towards public construction projects.⁵

a. Eligible projects

The legislation lists munitions, explosives and their precursors as standard examples of “products for purposes of national defence”. However, weapons systems or equipment used for military purposes are also included.⁶

In addition to the type of product, another fundamental requirement for a project to be eligible under Section 37a BauGB is a declaration issued by the Federal Ministry of Defence (BMVg) confirming the necessity of the products for ensuring the operational capability and securing supply to the Bundeswehr. Section 37a (1) sentence 2 BauGB further clarifies that this declaration is incontestable, and project developers are not entitled to its issuance by the BMVg. As there are no statutory criteria for determining the “necessity” of the products, the BMVg has been granted a wide margin of discretion in this matter.

However, it is noteworthy that the necessity of the products is limited to the “ensuring the operational capability and securing supply to the Bundeswehr”. Unlike Section

⁵ Scheidler, NVwZ 2025, 1730-1734, 1731.

⁶ Committee Paper 21 (24) 30, p. 18.



37 (2) BauGB, which was also revised, Section 37a does not make any reference to the defence requirements of allied armed forces. Therefore, the need for armaments to support the operational capability of allied forces cannot be used to justify the privileged status of production or storage facilities for such products under Section 37a (1) sentence 1 BauGB.

This means that Section 37a BauGB is likely to fall short in one crucial respect. While the Bundeswehr's need for armaments may be particularly high at present due to the current backlog, many allied armed forces are also pursuing ambitious growth programmes, creating a corresponding need for armaments. Despite this, Section 37a BauGB does not provide any relief to accelerate projects that (also) involve production capacities for allied armed forces.

Not only does this appear questionable from a security policy standpoint, it is also contradictory from a building law perspective, as Section 37 (2) BauGB (as amended) has been revised to include "projects that serve the purposes of the Bundeswehr and allied armed forces, including the manufacture and storage of products for purposes of national defence". This effectively means that the Construction Turbo provides relief for public-sector projects for the construction of production and storage facilities, including those for allied armed forces, but not for private projects that take NATO requirements beyond the Bundeswehr into account.

b. Projects in undesignated outlying areas, Section 37a (1) BauGB

The primary intention behind Section 37a (1) sentence 1 BauGB was to introduce a *sui generis* privilege for projects in undesignated outlying areas. The provision therefore permits projects that serve the manufacture and storage of products for purposes of national defence under the aforementioned conditions in accordance with Section 37a (1) sentence 1 BauGB, even if these are not covered by Section 35 (1) no. 4 BauGB, provided that there are no conflicting public interests and the provision of public infrastructure is guaranteed.

Therefore, for Section 37a (1) sentence 1 BauGB to apply, it is irrelevant whether the project could also be approved in accordance with Section 35 (1) no. 4 BauGB. The restrictions arising from the evaluative consideration under Section 35 (1) no. 4 BauGB are thus no longer significant.

Section 37a (1) sentence 1 BauGB also incorporates the concept of "serving", which is already familiar from other relief provisions under Section 35 (1) BauGB. The assessment of whether a project is "serving" must be based on whether the project can be assigned to and is subordinate to a business operation, and whether it can be safely assumed that any reasonable business operator would also construct the project for roughly the same intended purpose, with roughly the same design and facilities, while protecting the undesignated outlying area to the greatest extent possible.⁷ This recourse to the concept of "serving" in Section 37a (1) sentence 1 BauGB is therefore likely to lead to a narrowing of possible uses. Extensive new site developments, which often involve ancillary uses, e.g. for administration or research, in addition to buildings for the production and storage of military equipment, are therefore rarely considered on the basis of Section 37a (1) sentence 1 BauGB. Such "associated uses" would only be permitted if they are subordinate to the production and storage facilities.

Finally, the wording of Section 37a (1) sentence 1 BauGB, which requires that "there are no conflicting public interests", corresponds to the regulatory catalogue of standard cases for privileged treatment under Section 35 (1) BauGB. This is intended to provide projects that serve the storage and production of military equipment with a more robust defence against the specific public interests listed in Section 35 (3) BauGB that must be observed in undesignated outlying areas.

c. Projects within the scope of a development plan in former undesignated outlying areas, Section 37a (4) BauGB

Furthermore, Section 37a (4) BauGB contains a special provision for cases in which a development plan has already been drawn up for an undesignated outlying area

⁷Cf. Federal Administrative Court, judgment of 7 May 1976 - IV C 43/74.



and projects located in this area now have to be amended or extended in accordance with Section 37a (1) BauGB. In these cases, in accordance with Section 37a (4) sentence 1 BauGB, paragraphs 1 to 3 of Section 37a BauGB apply, allowing for an extension of the previous scope of the development plan to include the outlying area. At the same time, Section 37a (4) sentence 2 BauGB permits the granting of exemptions from the provisions of the development plan in such cases.



d. Economical use of land and obligation to dismantle

Whether a project is located "purely" in an outlying area in accordance with Section 37a (1) sentence 1 BauGB or there is a pre-existing development plan in accordance with Section 37a (4) BauGB, the requirements of Section 35 (5) sentences 1 to 3 BauGB still need to be met in accordance with Section 37a (1) sentence 3 BauGB.

According to Sections 37a (1) sentence 3, 35 (5) sentence 1 BauGB, the project must be implemented in a way that makes economical use of the land and protects the undesignated land in the outlying area.

What is particularly significant is the obligation under Sections 37a (1) sentence 3 and 35 (5) sentence 2 BauGB to dismantle the structure once the permitted use has been permanently abandoned. In accordance with Sections 37a (1) sentence 3 and 35 (5) sentence 3 BauGB, the permitted use must also be secured with respect to the competent approval authority via a public easement or, in Bavaria for example, by a limited personal easement entered in the land register. The "permitted use" according to Section 37a (1) sentence 1 BauGB is the production and storage of military equipment required by the Bundeswehr. It seems likely that the dismantling obligation

will be triggered not only when the project in question no longer involves the manufacture and storage of military equipment in general terms, but also when this is no longer required by the Bundeswehr. Taking into account the above comments on the production of (non-eligible) armaments for allied armed forces, it can therefore also be assumed that facilities will have to be dismantled once the Bundeswehr's needs are met (at least for the time being), even if the equipment is still required by allied armed forces.

2. Procedure

The procedure is in all material respects based on the existing procedure under Section 37 (2) BauGB. In accordance with Section 37a (2) sentence 1 BauGB, the higher administrative authority generally decides on the permissibility of projects under Section 37a BauGB in agreement with the municipality. If the higher administrative authority rejects the project or if the municipality refuses to agree, the decision falls to the Federal Ministry of Defence in consultation with the competent state authority. Pursuant to Section 37a (2) sentence 2, half-sentence 2 BauGB, the Federal Ministry of Defence only has to consult the municipality if it was not involved in the procedure at an earlier stage – for example during the consultation and agreement with the higher administrative authority.

3. Legal consequences

If municipalities incur costs for implementing measures in accordance with Section 37a BauGB for amending urban land-use plans or expenses for compensation payments, they are entitled to compensation from the agency responsible for the measure in accordance with Sections 37a (3) and 37 (3) BauGB. This may be the case, for example, if the municipality owes compensation to property owners due to the revocation of neighbouring development plans that have not yet been implemented as a result of the approval of a project under Section 37a BauGB.

IV. Evaluation and conclusion

The revised version of Section 37 (2) BauGB provides much-needed clarifications and expands the scope of



application to align with current security policy requirements. However, the scope remains limited to public-sector projects.

The new Section 37a BauGB, on the other hand, is unlikely to accelerate the construction of new defence production facilities by private developers to the extent hoped for, and is likely to remain limited to a few isolated cases.

In particular, restricting privileged status based on the requirements of the Bundeswehr, without considering the needs of allied armed forces, is likely to be a significant drawback. This can be expected to have an impact on capacity utilisation, at least in the medium term, as well as the economic viability of sites where production is only permitted for the needs of the Bundeswehr and not for allied armed forces. In light of this, the extent to which Section 37a BauGB can contribute to the accelerated construction of munitions and weapons factories is likely to be heavily scrutinised. Given the numerous European armaments partnerships currently being advocated by policymakers, it seems doubtful it will even be possible to clearly separate armaments production for the Bundeswehr from that for allied forces. Finally, the prospect of having to dismantle the facilities further exacerbates the legal and economic uncertainties associated with Section 37a BauGB.

In addition, the other requirements of Section 37a BauGB (e.g. "serving") impose further restrictions on the development of completely new factory sites (e.g. research, development and administrative uses must be subordinate).

Ultimately, Section 37a BauGB fails to provide long-term legal certainty for new sites while preserving development opportunities. This is because only specific projects can be approved on the basis of Section 37a BauGB. This means that, if areas with protected uses end up being located closer to the site at a later date, Section 37a BauGB cannot prevent any negative effects on the usability of any expansion areas in the undesignated outlying area. The intention to expand a site alone is not eligible for legal protection; legal formalisation is required first. The

formalisation and subsequent legal protection of expansion areas can be achieved, for example, through a development plan.

Nevertheless, there are several conceivable approaches that could be taken to compensate for the limitations of Section 37a BauGB and ensure the long-term security of development sites, while avoiding restrictions on their use based on the requirements of the Bundeswehr. For example, one practical solution could be to conduct a development plan procedure in parallel with an approval procedure for an urgent project under Section 37a BauGB. This would create a long-term basis for new defence industry sites from a planning law perspective without being subject to the restrictions of Section 37a BauGB. Expansion areas can also be legally secured. Even highly complex development plan procedures do not have to take a long time and, if the local municipality cooperates, a resolution adopting the development plan can be passed within a matter of months.⁸

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