

## Germany

### Foreign Trade and Payments Act (Außenwirtschaftsgesetz - AWG) (2013)

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# **Foreign Trade and Payments Act (Außenwirtschaftsgesetz - AWG)**

Foreign Trade and Payments Act of 6 June 2013 (Federal Law Gazette I p. 1482), as last amended by Article 4 of the Act of 20 July 2017 (Federal Law Gazette I p. 2789)

# Part 1 Legal transactions and actions

[...]

## Section 2 Definitions

(1) The definitions contained in subsections 2 to 25 shall apply to this Act and the ordinances issued on the basis of this Act, unless this Act or such an ordinance stipulates otherwise.

(...)

(5) Foreigners shall mean all persons and partnerships which are not residents.

(...)

(8) Third countries shall mean the territories outside the customs territory of the European Union with the exception of Helgoland.

(...)

(15) Residents shall mean

1. natural persons resident or habitually resident in Germany,
2. legal persons and partnerships based or headquartered in Germany,
3. branches of foreign legal persons or partnerships if the headquarters of the branch are in Germany and separate accounts are kept for them, and
4. permanent establishments of foreign legal persons or partnerships in Germany if the permanent establishments are administered in Germany.

(...)

(18) EU residents shall mean

1. natural persons resident or habitually resident in the European Union,
2. legal persons or partnerships based or headquartered in the European Union,
3. branches of legal persons based or headquartered in a third country if the headquarters of the branch are in the European Union and separate accounts are kept for them, and
4. permanent establishments of legal persons from third countries if the permanent establishments are administered in the European Union.

(19) Non-EU residents are all persons and partnerships which are not EU residents.

[...]

## Section 4 Restrictions and obligations to act in order to protect public security and external interests

(1) In foreign trade and payments transactions, legal transactions and actions can be restricted and obligations to act can be imposed by ordinance, in order

1. to guarantee the essential security interests of the Federal Republic of Germany,

2. to prevent a disturbance of the peaceful coexistence of nations or
3. to prevent a substantial disturbance to the foreign relations of the Federal Republic of Germany,
4. to guarantee the public order or security of the Federal Republic of Germany within the meaning of Articles 36, 52(1) and Article 65(1) of the Treaty on the Functioning of the European Union or
5. to counteract a danger to the coverage of vital needs in Germany or in parts of Germany and thereby to protect the health and life of human beings in accordance with Article 36 of the Treaty on the Functioning of the European Union.

(2) In foreign trade and payments transactions, legal transactions and actions can be restricted and obligations to act can also be imposed by ordinance, in order

1. to implement decisions of the Council of the European Union on economic sanctions in the field of Common Foreign and Security Policy,
2. to implement obligations of the Member States of the European Union which are provided for in directly applicable legal acts of the European Union to implement economic sanctions in the field of Common Foreign and Security Policy,
3. to implement UN Security Council resolutions or
4. to implement international agreements which the legislative bodies have approved in the form of a Federal act.

(3) The ordering of licensing requirements or of prohibitions shall be regarded as a restriction pursuant to subsections 1 and 2.

(4) Restrictions and obligations to act shall be limited in nature and scope to the extent necessary to achieve the objective stated in the authorisation. They shall be framed in a manner which intervenes as little as possible in the freedom of economic activity. Restrictions and obligations to act may affect existing contracts only if the objective stated in the authorisation is in serious jeopardy. They shall be revoked as soon as and insofar as the reasons warranting their imposition no longer apply.

#### **Section 5 Subject of restrictions**

(1) Restrictions or obligations to act pursuant to Section 4 subsection 1 can particularly be imposed on legal transactions or actions with reference to

1. weapons, ammunition and other military equipment and goods for the development, manufacture or deployment of weapons, ammunition and other military equipment; this shall particularly be the case if the restriction serves to implement export controls agreed in international co-operation,
2. goods which are destined for the conduct of military actions.

(2) Restrictions or obligations to act pursuant to Section 4 subsection 1 no. 4 can particularly be imposed with reference to the acquisition of domestic companies or shares in such companies by non-EU residents if the acquisition endangers the public order or security of the Federal Republic of Germany pursuant to Section 4 subsection 1 no. 4. For this to be the case, there must be an actual and sufficiently serious danger affecting a fundamental interest of society. Non-EU acquirers from member states of the European Free Trade Association shall be equivalent to acquirers resident in the EU.

(3) Restrictions or obligations to act pursuant to Section 4 subsection 1 no. 1 can particularly be imposed with reference to the acquisition of domestic companies or shares in such companies by foreigners in order to guarantee essential security interests of the Federal Republic of Germany if the domestic companies

1. manufacture or develop war weapons or other military equipment or
2. manufacture products with IT security functions to process classified state material or components essential to the IT security function of such products or have manufactured such products and still dispose of the technology if the overall product was licensed with the knowledge of the company by the Federal IT Security Agency.

This applies in particular if the security policy interests of the Federal Republic of Germany or the military security provisions are endangered as a consequence of the acquisition.

(4) Restrictions or obligations to act pursuant to Section 4 subsection 1 no. 5 can also be imposed with regard to goods not cited in subsection 1. For this to be the case, there must be an actual and sufficiently serious danger affecting a fundamental interest of society.

(5) Restrictions or obligations to act pursuant to Section 4 subsection 1 can also be imposed with regard to legal transactions or actions of Germans abroad which refer to goods within the meaning of subsection 1 including their development and manufacture.

### **Section 6 Individual intervention**

(1) In foreign trade and payments transactions, legal transactions and actions can also be restricted or obligations to act can be imposed by administrative act in order to avert a danger pertaining in an individual case to the interests cited in Section 4 subsection 1.

(2) The order shall expire six months after its enactment unless the restriction or obligation to act is imposed by an ordinance.

(3) Section 4 subsections 3 and 4 and Section 5 subsection 5 shall apply mutatis mutandis.

[...]

## **Part 2 Supplementary provisions**

[...]

### **Section 15 Nullity**

(...)

(2) If, for a legal transaction pertaining to the law of obligations on the acquisition of a domestic company or a direct or indirect stake in a domestic company, a right of examination exists on the basis of Section 4 subsection 1 no. 4 and Section 5 subsection 2 in conjunction with an ordinance issued on the basis of these provisions and if this right of examination is coupled with an authorisation of the Federal Ministry for Economic Affairs and Energy to prohibit the acquisition with the consent of the Federal Government within a certain period, the entry into force of the legal effects of the legal transaction shall be subject to the dissolving condition until the conclusion of the entire examination procedure that the Federal Ministry for Economic Affairs and Energy prohibit the acquisition within the deadline.

(3) A legal transaction which serves the realisation of the acquisition of a domestic company or a direct or indirect stake in a domestic company shall be provisionally invalid if a reporting requirement which is linked to an authorisation for the Federal Government to prohibit the acquisition within a certain deadline exists on the basis of Section 4 subsection 1 no. 1 and Section 5 subsection 3 in conjunction with an ordinance issued on the basis of these provisions. The legal transaction shall be effective from the time of its undertaking if the Federal Ministry for Economic Affairs and Energy issues a clearance in writing or does not prohibit the acquisition within the deadline pursuant to sentence 1. Subsection 1 sentence 3 shall apply mutatis mutandis.

[...]

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