

## Germany

### Foreign Trade and Payments Act (2013)

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## Contents

- Part 1 Legal transactions and actions**
- Part 2 Supplementary provisions**
- Part 3 Provisions on penalties, fines and surveillance**
- Part 4 Final provisions**

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# Foreign Trade and Payments Act (Außenwirtschaftsgesetz - AWG)

Full citation: Foreign Trade and Payments Act of 6 June 2013 (Federal Law Gazette I p. 1482), as last amended by Article 1 of the Act of 23 May 2022 (Federal Law Gazette I p. 754)  
table of contents

## Part 1 Legal transactions and actions

### Section 1 Principles

(1) The trade in goods, services, capital, payment transactions and other types of trade with foreign territories, as well as the trade in foreign valuables and gold between residents (foreign trade and payments) is, in principle, not restricted. It is subject to the restrictions contained in this Act or prescribed by ordinances issued on the basis of this Act.

(2) This shall be without prejudice to

1. provisions in other acts and ordinances,
2. international agreements which the legislative bodies have approved in the form of a Federal act, and
3. legal provisions of the bodies of international organisations to which the Federal Republic of Germany has transferred sovereign rights.

### 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.

(2) An exporter shall mean any natural or legal person or partnership with legal personality<sup>1</sup> which holds the contract with the consignee in a third country at the time of the export and

1. has the power to determine the delivery of material goods from Germany to a third country or
2. in the case of software or technology has the power to determine its transmission from Germany to a third country, including its making available by electronic means to a third country.

If pursuant to the export contract a foreigner holds the right to dispose of the goods, the domestic contracting party shall be deemed to be the exporter. If no export contract was concluded, or if the contracting party is not acting on its own behalf, the exporter shall be deemed to be the party which actually has the power to determine the export.

(3) An export shall mean

1. the delivery of material goods from Germany to a third country and
2. the transmission of software and technology from Germany to a third country including its making available by electronic means to natural and legal persons in third countries.

(4) Export consignment shall embrace the material goods which an exporter exports simultaneously via the same customs office at the point of exit to the same country of destination.

(5) Foreigners shall mean all persons and partnerships with legal personality<sup>1</sup> which are not residents.

(6) Foreign assets shall mean

1. assets abroad,
2. claims in euro against foreigners and
3. instruments of payment denominated in currencies other than the euro, claims and securities.

(7) Country of destination shall mean the country into which the goods are to be used or consumed, treated or processed, or if this country is not known, the last known country into which the goods are to be exported.

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

(9) Transit shall mean

1. the transportation of material goods from abroad through Germany without the goods entering free circulation in Germany, and
2. the transportation of material goods in free circulation from another Member State of the European Union through Germany.

(10) Importer shall mean any natural or legal person or partnership with legal personality<sup>1</sup> which

1. delivers material goods from third countries to Germany, or has them delivered, and has the power to determine the delivery of the material goods or
2. in the case of software or technology has the power to determine its transmission from third countries to Germany, including its making available by electronic means to Germany.

If the import is based on a contract with a non-EU party on the acquisition of goods for the purposes of import, only the domestic contracting party shall be the importer.

(11) Import shall mean

1. the delivery of material goods from third countries to Germany and

2. the transmission of software and technology including its making available by electronic means to natural and legal persons in Germany.

If material goods from third countries are transferred to a procedure of a free zone, of external transit, of a customs warehouse, of temporary importation or of inward processing, import shall take place only once the material goods

1. have been used, consumed, treated or processed in the free zone or
2. have been released for free circulation.

Sentence 2 shall not apply for material goods which are subject to import prohibitions on the basis of ordinances or enforceable orders issued under this Act.

(12) Country of purchase shall mean the country in which the non-EU party from which the EU resident acquires the goods is resident. This country shall continue to be deemed the country of purchase if the goods are sold on to another EU resident. If there is no legal transaction governing the acquisition of goods between an EU resident and a non-EU party, the country of purchase shall be deemed to be the country in which the person entitled to dispose of the goods is resident who imports the goods into the customs territory of the European Union. If the person entitled to dispose of the goods who imports the goods into the customs territory of the European Union is resident in the customs territory of the European Union, the country of origin shall be deemed to be the country of purchase.

(13) Goods shall mean material goods, software and technology. Technology shall also embrace documents for the manufacture of material goods or of parts of these material goods.

(14) A trafficking and brokering transaction shall mean

1. the brokering of a contract on the acquisition or release of goods,
2. the documentation of an opportunity to conclude such a contract or
3. the conclusion of a contract on the release of goods.

A trafficking and brokering transaction shall not be the provision solely of auxiliary services. Auxiliary services are transportation, financial services, insurance or reinsurance or general advertising or sales promotion.

(15) Residents shall mean

1. natural persons resident or habitually resident in Germany,
2. legal persons and partnerships with legal personality<sup>1</sup> legally established or headquartered in Germany,
3. branches of foreign legal persons or partnerships with legal personality<sup>1</sup> if the management of the branches is in Germany and separate accounts are kept for them, and
4. permanent establishments of foreign legal persons or partnerships with legal personality<sup>1</sup> in Germany if the permanent establishments are administered in Germany.

(16) Technical support shall mean all technical assistance related to the repair, the development, the manufacture, the assembly, the testing, the maintenance or any other technical service. Technical support can take the form of instruction, training, passing on of practical knowledge or skills or the form of advisory services. It also includes support provided orally, by telephone, and by electronic means.

(17) Transit trade shall mean any transaction in which residents acquire from foreigners and sell to foreigners material goods located abroad or delivered to Germany but not cleared for importation. Legal transactions in which these material goods are sold to other residents with a view to sale to foreigners shall be equivalent to transit trade.

(18) EU residents shall mean

1. natural persons resident or habitually resident in the European Union,
2. legal persons or partnerships with legal personality<sup>1</sup> legally established or headquartered in the European Union,
3. branches of legal persons based or headquartered in a third country if the management of the branches is 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.

(20) Transferer shall mean any natural or legal person or partnership with legal personality<sup>1</sup> which has the power to determine the transfer of goods and at the time of transfer

1. in the case of subsection 21 no. 1 holds the contract with the consignee in the customs territory of the European Union or
2. in the case of subsection 21 no. 2 holds the contract with the consignee in Germany.

If pursuant to the transfer contract a foreigner has the benefit of a right to dispose of the goods, the domestic contracting party shall mean deemed to be the transferer. If no transfer contract was concluded, or if the contracting party is not acting on its own behalf, the transferer shall be deemed to be the party which actually has the power to determine the transfer.

(21) Transfer shall mean

1. the delivery of material goods or the transmission of software or technology from Germany to the remaining customs territory of the European Union including its provision by electronic means to natural and legal persons in the remaining customs territory of the European Union and
2. the delivery of material goods or the transmission of software or technology from the remaining customs territory of the European Union to Germany including its provision by electronic means to natural and legal persons in Germany.

(22) Material goods shall mean movable objects which can be the subject of trade relations, and electricity. Securities and means of payment shall not be material goods.

(23) The value of a good shall mean the fee invoiced to the consignee or, in the absence of a consignee or adeterminable fee, the statistical value within the meaning of the provisions on the statistics of cross-border trade in goods. If a legal transaction or an action forms part of a single overall economic process, the value of the overall process shall be used in the application of the value thresholds of this Act or of an ordinance based on this Act.

(24) Securities shall mean

1. securities within the meaning of Section 1 subsection 1 of the Securities Deposit Act,
2. shares in a securities depository or a collective debt register claim,
3. rights to deliver or assign securities within the meaning of nos. 1 and 2.

Domestic securities shall mean securities which a resident or, prior to 9 May 1945, a person resident or legally established in the territory of the German Reich as of 31 December 1937 has issued. Foreign securities shall mean securities which a foreigner has issued to the extent that they are not domestic securities.

(25) The customs territory of the European Union shall mean the customs territory of the Union pursuant to Article 4 of Regulation (EU) no 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 269 of 10 October 2013, p. 1; L 287 of 29 October 2013, p. 90; L 267 of 30 September 2016, p. 2), last amended by Regulation (EU) 2019/632 (OJ L 111 of 25 April 2019, p. 54), in the version applicable at the time. An ordinance can determine that the territory of Northern Ireland shall be deemed to be part of the customs territory of the European Union for certain provisions of this Act or ordinances issued on the basis of the Act.

Footnote 1: This amendment enters into force on 1 January 2024.

## **Section 3 Branches and permanent establishments**

(1) Domestic branches and permanent establishments of foreigners and foreign branches and permanent establishments of residents shall be regarded as legally independent. Several domestic branches and permanent establishments of the same foreigners shall be regarded as one domestic branch or permanent establishment.

(2) Actions taken by or towards branches or permanent establishments within the meaning of subsection 1 shall be regarded as legal transactions to the extent that such actions would be legal transactions in relations between natural or legal persons or partnerships with legal personality<sup>1</sup>.

(3) An ordinance issued on the basis of this Act or an enforceable order pursuant to Section 6 can provide that

1. several foreign branches and permanent establishments of the same resident shall be regarded as one foreigner in derogation from subsection 1 sentence 1,
2. domestic branches and permanent establishments of the same foreigner shall each be regarded as residents in derogation from subsection 1 sentence 2,

3. branches and permanent establishments shall not be regarded as foreigners or residents in derogation from Section 2 subsection 5 and 15 or

4. branches and permanent establishments shall not be regarded as EU residents or non-EU residents in derogation from Section 2 subsection 18 and 19.

Footnote 1: This amendment enters into force on 1 January 2024.

## **Section 4 Restrictions and obligations to act 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,

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 or of another Member State of the European Union,

4a. to guarantee public order or security relating to projects or programmes of Union interest within the meaning of Article 8 of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79 I of 21 March 2019, p. 1) 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 is likely to impair the public order or security of the Federal Republic of Germany or of another Member State of the European Union pursuant to Section 4 subsection 1 no. 4. In the case of Section 4 subsection 1 no. 4a, sentence 1 shall apply mutatis mutandis. Non-EU acquirers from the 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, develop, modify war weapons or other military equipment or possess actual control of such goods or have manufactured, developed, modified war weapons or other military equipment or possessed actual control of such goods in the past and still dispose of knowledge or other access to the technology on which such goods are based 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 underlying technology and the products have been licensed by the Federal Office for Information Security with the knowledge of the company.

Sentence 1 shall apply in particular if the security policy interests of the Federal Republic of Germany or the military security provisions are endangered as a result 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, also in conjunction with subsection 2. In particular,

1. the ability to dispose of money and economic resources of certain persons or partnerships with legal personality<sup>1</sup> or
2. the provision of money and economic resources to the benefit of certain persons or partnerships with legal personality<sup>1</sup> can be restricted.

(1a) An administrative act pursuant to subsection 1 may be publicly disclosed. The public disclosure shall be effected by publication of the administrative act in the Federal Gazette. The administrative act shall take effect when this publication takes place.

(2) The order shall expire six months after its enactment unless the restriction or obligation to act is imposed by an ordinance. Sentence 1 shall not apply to an administrative act pursuant to subsection 1 sentence 2 to the extent that a different period of validity is determined by supplementary provisions.

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

Footnote 1: This amendment enters into force on 1 January 2024.

## Section 7 Individual intervention in maritime transport beyond the German territorial sea

(1) In order to avert a danger existing in an individual case to the interests cited in Section 4 subsection 1 which is caused by the transportation of goods on board a maritime vessel bearing the Federal flag on the maritime side of the border of the German territorial sea, pursuant to Section 6 subsection 1 in particular necessary measures can be imposed to steer, accelerate and restrict the transportation of the goods and the handling and unloading of the goods.

(2) The measures pursuant to subsection 1 can be directed against the owner, the equipment supplier, the charterer, the master or the other possessor of actual control.

(3) The owner, the equipment supplier, the charterer, the master or the other possessor of actual control shall be obliged on demand to provide without delay details of

1. the nature and size of the load,
2. the route travelled since the last port and the intended route,
3. the expected duration of the passage and
4. the port of destination.

(4) The owner of a vessel operated in maritime shipping under a foreign flag which is entered into a German register of ships shall ensure that on demand the necessary details are transmitted without delay and to the same extent as is provided pursuant to subsection 3 for vessels under the Federal flag in order to avert a danger to the interests cited in Section 4 subsection 1.

(5) Section 4 subsections 3 and 4, Section 5 subsection 5 and Section 6 subsection 2 shall apply *mutatis mutandis*.

## **Section 8 Issuing of licences**

(1) If legal transactions or actions require a licence pursuant to a provision of this Act or an ordinance issued on the basis of this Act, the licence must be issued if it is to be expected that the undertaking of the legal transaction or action will not endanger the purpose of the provision or will do so only to a minor degree. In other cases, the licence can be issued if the national economic interest in the undertaking of the legal transaction or action will outweigh the related damage to the purpose cited in the authorisation.

(2) The issuing of the licence can be made dependent on material and personal requirements, and particularly the reliability of the applicant. The same shall apply to the issuing of certificates by the Federal Office for Economic Affairs and Export Control (BAFA) stating that an export does not require a licence.

(3) If the issuing of licences is possible only to a restricted degree in terms of the purpose served by the provision, the licences shall be issued in a manner enabling the given possibilities to be exploited in an appropriate economic manner.

(4) EU residents which are particularly affected by a restriction pursuant to subsection 3 in the exercise of their trade can be given preferential consideration.

(5) When applying for a licence pursuant to subsection 1 sentence 1 or a certificate pursuant to subsection 2 sentence 2, the applicant must provide or use full and correct data.

## **Section 9 Issuing of certificates**

An ordinance issued on the basis of this Act can provide for the issuing of certificates to the extent necessary for certification pursuant to Article 9 of Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (OJ L 146 of 10 June 2009, p. 1). Section 8 subsection 5 shall apply *mutatis mutandis*.

## **Section 9a Powers to trace money and economic assets**

(1) The competent authority can take the necessary measures to trace the money and economic assets located in the area of validity of this Act of certain persons or partnerships who are subject to a limitation of disposition under a directly applicable act of the European Communities or the European Union published in the Official Journal of the European Communities of the European Union which serves to implement an economic sanction adopted by the Council of the European Union in the field of Common Foreign and Security Policy.

(2) In particular, the competent authority can

1. demand information and the presentation of documents from natural and legal persons, partnerships and authorities,
2. summon and interview a person if facts justify the assumption that this person can provide relevant information for the tracing of money and economic assets within the meaning of subsection 1.
3. freeze or seize documents and other objects which are suitable for the purpose of tracing money and economic assets within the meaning of subsection 1,
4. enter business premises or production sites during normal business or operating hours if facts justify the assumption that these contain money or economic assets within the meaning of subsection 1 or indications of their whereabouts,
5. search business premises or production sites and dwellings in accordance with subsection 4 if facts justify the assumption that these contain money or economic assets within the meaning of subsection 1 or indications of their whereabouts,
6. access the Real Property Register and other public registers and the register of flags maintained by the Federal Maritime and Hydrographic Agency and the register of aircraft maintained by the Federal Aviation Office and request information in accordance with Section 24c subsection 3 sentence 1 number 4 of the Banking Act.

(3) In order to prevent an urgent danger to public security or order, in particular when there is a fear that controls will be circumvented, measures under subsection 2 number 4 may also be carried out outside business hours and in rooms serving residential purposes.

(4) Except in case of exigent circumstances, searches of dwellings and business premises and production sites may only be ordered by the judge. The competent court is the local court in whose district the search is to take place. The procedure is correspondingly subject to the provisions of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. The possessor of the dwelling or the business premises or production site has the right to be present during the search. If he or she is absent, a representative or an adult relative, housemate or neighbour should if possible be present. The possessor or his or her representative must be informed of the reason for the search without delay to the extent that this does not jeopardise the purpose of the measure. A written record must be made of the search. It must name the responsible agency, the reason, time and place of the search. The written record must be signed by an official carrying out the search and the possessor or the person present in his or her place. If a person refuses to sign the record, a note must be made of this. On demand, the possessor or his or her representative must be handed a copy of the record. If the making of the record or the handing over of a copy is not possible due to the special circumstances of the case, or if it would jeopardise the purpose of the search, only confirmation that the search has taken place, citing the responsible agency and the time and place of the search, is to be given in writing to the possessor or the person present in his or her place.

(5) Subsection 2 number 5 and subsection 3 restrict the fundamental right to the inviolability of the home (Article 13 paragraph 1 of the Basic Law).

## **Section 9b Measures to freeze money and economic assets**

(1) The competent authority can order the freezing in order to prevent money or economic assets of certain persons or partnerships who are subject to a limitation of disposition under a directly applicable act of the European Communities or the European Union published in the Official Journal of the European Communities or the European Union which serves to implement an economic sanction adopted by the Council of the European Union in the field of Common Foreign and Security Policy from being disposed of in violation of such an act or used contrary to such an act. The order must be revoked without delay as soon as the preconditions under sentence 1 no longer apply.

(2) If facts justify the assumption that money or economic assets of certain persons or partnerships are subject to a limitation of disposition under a directly applicable act of the European Communities or the European Union published in the Official Journal of the European Communities or the European Union which serves to implement an economic sanction adopted by the Council of the European Union in the field of Common Foreign and Security Policy, the competent authority can provisionally order the freezing until the tracing under Section 9a is completed, but at most for the period of six months. The provisional order must be revoked without delay as soon as the existence of a limitation of disposition has been finally examined. If the examination shows that a limitation of disposition exists, an order under subsection 1 sentence 1 must be examined.

(3) As soon as the freezing is revoked, the money or economic assets must be issued to the person from whom they were frozen. If it is not possible to issue them to that person, they can be issued to any other person who credibly asserts his or her entitlement. The issuance is not possible if it would result in the preconditions for freezing applying again.

## Section 9c Modalities of freezing

(1) Money or economic assets frozen under Section 9b subsection 1 or 2 must be impounded. If the nature of the physical items does not permit this, or if impounding at the competent authority does not appear appropriate, the physical items must be held or secured in another appropriate way, to the extent that the measures ordered under Section 9b appear insufficient. In the cases of sentence 2, a suitable third party can be commissioned to impound [the physical items]. For receivables and other rights to assets, the provisions of the Code of Civil Procedure on enforcement regarding receivables and other property rights apply accordingly.

(2) A written record must be made of the freezing of physical items. The owner or the possessor of actual power [over the physical item] must be informed without delay about the provisional freezing of the physical item. This does not apply if the provision of this information could jeopardise the purpose of the measure.

(3) If a frozen physical item is impounded, any reductions in value must be prevented where possible.

(4) The impounded physical items must be registered and marked in such a way that there can be no confusion about their identity.

(5) The sale of a physical item frozen under Section 9b subsection 1 is admissible if

1. there is a risk that it will decay or there will be another significant decline in value,
2. its impounding, care or maintenance entails disproportionately great effort,
3. due to its nature it cannot be impounded in a manner that excludes further dangers to public security or order,
4. it cannot be issued to an entitled party without the preconditions for the freezing applying again,
5. the entitled party does not collect it within an adequate deadline even though that party has been informed about the deadline with the information that the physical item will be sold if it is not collected within the deadline.

This is without prejudice to other statutory provisions which prevent the sale.

(6) The affected person, the owner and persons with a right to the physical item must be heard prior to the sale. They must be informed of the order and of the time and place of the sale to the extent that the circumstances and the purpose of the measures permit this.

(7) The physical item is sold by public auction; Section 979 subsection 1 of the Civil Code applies accordingly. If the auction fails, appears futile from the outset or if the costs of auctioning the physical item would probably exceed the expected revenue, the physical item can be sold directly. The proceeds take the place of the sold physical item. If no buyer is found within an appropriate period, the physical item can be given to a charitable purpose.

(8) Frozen physical items can be rendered unusable, destroyed or confiscated if

1. in the case of a sale the reasons justifying the freezing remain in place or the reasons for freezing would arise afresh,
2. the sale is not possible for other reasons.

This is without prejudice to other statutory provisions which prevent a sale.

## **Section 9d Processing of personal data in the tracing and freezing of money and economic assets**

The competent authority may process personal data to the extent that this is necessary for it to fulfil its tasks under Sections 9a and 9b. It receives the information necessary to fulfil its tasks from other authorities to the extent that this is not prevented by statutory confidentiality obligations. Section 25 of the Federal Data Protection Act applies to the transmission of personal data. The personal data which have been collected must be deleted at the latest following the end of six months after the removal of a limitation of disposition.

table of contents

## **Part 2 Supplementary provisions**

### **Section 10 Deutsche Bundesbank**

Restrictions pursuant to a provision of this Act or an ordinance or enforceable order issued on the basis of this Act shall not apply to legal transactions and actions which the Deutsche Bundesbank undertakes in its sphere of business or which are undertaken towards it.

### **Section 11 Procedural and reporting provisions**

(1) Procedural provisions can be enacted by ordinance

1. to implement this Act and ordinances issued on the basis of this Act,
2. to examine the lawfulness of legal transactions or actions in foreign trade and payments transactions and
3. to implement

- a) the provisions of the European treaties, including the related protocols,
- b) the agreements of the European Union and
- c) the legal acts of the European Union based on the treaties and agreements cited in letters a and b.

(2) It is possible to issue an ordinance requiring that legal transactions and actions in foreign trade and payments transactions, and particularly claims and obligations and assets arising therefrom and the making and receiving of payments are reported, citing the legal basis for this, so that

1. it can be ascertained whether the preconditions for the lifting, relaxation or imposition of restrictions pertain,
2. the balance of payments of the Federal Republic of Germany can be drawn up at any time,
3. the safeguarding of the interests of foreign trade and payments policy is ensured or
4. obligations from international agreements or international export control regimes can be fulfilled.

(3) In order to safeguard the intentions of subsection 2 nos. 1 to 4, it is possible to issue an ordinance requiring that the status and selected items of the composition of assets of residents abroad and of foreigners in Germany are reported. If the assets to be reported include a direct or indirect stake in a company, it can be required that the status and selected items of the composition of the assets of the company in which the stake is held are reported.

(4) It is also possible to issue an ordinance requiring obligations to document and preserve data in order to enable examination pursuant to subsection 1 no. 2 or to fulfil reporting requirements pursuant to subsections 2 and 3.

(5) Sections 9, 15 and 16 of the Federal Statistics Act shall be applied mutatis mutandis in the cases of subsections 2 and 3.

## **Section 12 Issuing of ordinances**

(1) Ordinances pursuant to this Act shall be issued by the Federal Government. In derogation from sentence 1, ordinances pursuant to Section 4 subsection 2 and Section 30 subsection 2 shall be issued by the Federal Ministry for Economic Affairs and Energy, in the case of Section 4 subsection 2 in agreement with the Federal Foreign Office and the Federal Ministry of Finance.

(2) The ordinances shall not require the approval of the Bundesrat.

(3) In the case of provisions affecting capital and payment transactions or trade in foreign valuables and gold, consultation shall be made with the Deutsche Bundesbank.

(4) The Bundestag and Bundesrat shall be informed of ordinances immediately following their promulgation. The Bundesrat can make comments to the Bundestag within four weeks. The ordinances must be revoked without delay to the extent that the Bundestag requires this within four months of their promulgation.



(5) Subsection 4 shall not be applied to ordinances whereby the Federal Government or the Federal Ministry for Economic Affairs and Energy has imposed or revoked restrictions on movements of goods, capital or payments with other countries pursuant to Section 4 subsection 2, and to ordinances in accordance with Section 30 subsection 2.

## **Section 13 Responsibilities for the issuing of administrative acts and for the receipt of reports**

(1) The Federal Office for Economic Affairs and Export Control (BAFA) shall be responsible for the issuing of administrative acts and the receipt of reports on the basis of this Act and of ordinances issued on the basis of this Act and of acts of the Council or the Commission of the European Union in the field of foreign trade and payments law to the extent that other acts, this Act or an ordinance issued on the basis of this Act does not provide otherwise.

(2) The following authorities shall have exclusive responsibility:

1. the Deutsche Bundesbank in the field of movements of capital and payments and the movement of foreign assets, including money which is subject to a limitation of disposition, and gold unless prescribed otherwise below,

2. the Federal Ministry for Economic Affairs and Energy

a) in the case of Section 6 subsection 1 in agreement with the Federal Foreign Office and the Federal Ministry of Finance; in the case of measures which affect the fields of movements of capital and payments or the movement of foreign assets and gold, consultations must be held with the Deutsche Bundesbank,

b) in the case of Section 7 in agreement with the Federal Foreign Office and the Federal Ministry of Transport and Digital Infrastructure,

c) in the case of Section 4 subsection 1 no. 4 and 4a in conjunction with Section 5 subsection 2 and an ordinance issued on the basis of these provisions,

d) in the case of Section 4 subsection 1 no. 1 in conjunction with Section 5 subsection 3 and an ordinance issued on the basis of these provisions,

e) for the exercise of tasks and powers of the contact point within the meaning of Article 11(1) of Regulation (EU) 2019/452,

3. the Federal Ministry of Transport and Digital Infrastructure for orders in the field of movements of services in the field of transport pursuant to Section 4 subsections 1 and 2 in conjunction with an ordinance issued on the basis of this provision and on the basis of legal instruments of the Council or of the Commission of the European Union in the field of foreign trade and payments law,

4. the Federal Ministry of Finance for orders in the field of movements of services in the field of insurance pursuant to Section 4 subsections 1 and 2 in conjunction with an ordinance issued on the basis of this provision and on the basis of legal instruments of the Council or of the Commission of the European Union in the field of foreign trade and payments law,

5. the Federal Office for Agriculture and Food for orders in the field of movements of goods and services pursuant to Section 4 subsections 1 and 2 in conjunction with an ordinance issued on the basis of this provision in the context of the common organisation of the markets of the European Union in food and agriculture products.

(2a) In derogation of subsection 1 and subsection 2 number 1, the authorities designated by the Länder are responsible for assuming the powers described in Sections 9a to 9d.

(3) In the case of subsection 2 no. 2 letter c, a prohibition shall require the approval of the Federal Government. Orders shall require consensus with the Federal Foreign Office, the Federal Ministry of the Interior, Building and Community and the Federal Ministry of Defence, and consultation with the Federal Ministry of Finance.

(4) In the case of subsection 2 no. 2 letter d prohibitions or orders shall require consensus with the Federal Foreign Office, the Federal Ministry of the Interior, Building and Community and the Federal Ministry of Defence.

(5) In the cases of subsection 2 nos. 3 and 4, the responsible Federal Ministry can transfer its responsibility for the tasks cited there to a higher federal authority or federal agency within its portfolio.

(6) In the case of exigent circumstances, the Federal Ministry for Economic Affairs and Energy in derogation from subsection 2 no. 2 letter a merely has to establish consultations with the Federal Foreign Office, the Federal Ministry of Finance and the Deutsche Bundesbank.

## **Section 14 Administrative acts**

(1) Administrative acts pursuant to this Act or to an ordinance issued on the basis of this Act can be furnished with ancillary provisions. The administrative acts shall not be transferable if they do not provide otherwise.

(2) Objections and actions for rescission shall not have a suspensive effect.

## **Section 14a Deadlines for restrictions and obligations to act in the case of the acquisition of domestic companies**

(1) Restrictions or obligations to act with reference to the acquisition of domestic companies pursuant to Section 4 subsection 1 no. 4 or 4a in conjunction with Section 5 subsection 2 or Section 4 subsection 1 no. 1 in conjunction with section 5 subsection 3 may be ordered only if the Federal Ministry for Economic Affairs and Energy

1. opens an assessment procedure within two months of obtaining knowledge of the conclusion of the contract governed by the law of obligations regarding the acquisition and

2. orders the restrictions or obligations to act within four months of the full receipt of the documents cited in subsection 2 sentence 2 and 4.

(1a) In cases where an offer within the meaning of the Securities Acquisition and Takeover Act is made, the deadline pursuant to sentence 1 number 1 shall commence when knowledge is acquired of the publication of the decision to submit the offer.

(2) In the case of an assessment, the direct acquirer shall be required to submit the documentation necessary for this about the acquisition to the Federal Ministry for Economic Affairs and Energy. The Federal Ministry for Economic Affairs and Energy shall determine by general administrative act the documents required for the assessment of the acquisition with a view to restrictions or obligations to act. The general administrative act shall be announced in the Federal Gazette. Further to sentence 2, the Federal Ministry for Economic Affairs and Energy can demand further information or the submission of further documentation necessary for the assessment in the notice that the proceedings are being opened pursuant to subsection 1 no. 1. Further to sentences 2 to 4, the Federal Ministry for Economic Affairs and Energy can in individual cases and via an administrative act subsequently request all entities directly or indirectly involved in the acquisition to submit additional information or additional documentation necessary for the assessment.

(3) The obtaining of knowledge pursuant to subsection 1 no. 1 shall be equivalent to the receipt of the report of an acquisition or an application for the issuing of a declaration of non-objection to the Federal Ministry for Economic Affairs and Energy. No assessment procedure can be opened if more than five years have passed since the conclusion of the contract governed by the law of obligations regarding the acquisition.

(4) The Federal Ministry for Economic Affairs and Energy can extend the deadline pursuant to subsection 1 no.2 by three months in individual cases if the assessment procedure reveals particular actual or legal difficulties. The deadline pursuant to subsection 1 no. 2 can be extended by a further month under the preconditions of sentence 1 if the acquisition particularly affects the defence interests of the Federal Republic of Germany and the Federal Ministry of Defence asserts the existence of this circumstance to the Federal Ministry for Economic Affairs and Energy within the deadline of sentence 1.

(5) The deadlines pursuant to sentence 1 can be extended with the approval of the direct acquirer and the seller.

(6) A deadline pursuant to subsection 1 no. 2, also in conjunction with subsection 4 or 5, shall be delayed if in the context of the assessment procedure pursuant to subsection 1 the Federal Ministry for Economic Affairs and Energy

1. demands additional information or documents pursuant to subsection 2 sentence 5 from an indirect or adirect acquirer, a seller or a domestic company or

2. negotiates contractual arrangements with the parties involved in the acquisition to protect the interests cited in Section 4 subsection 1 no. 1, 4 or 4a.

The delay shall end in the case of sentence 1 no. 1 when the information or documents have been fully submitted to the Federal Ministry for Economic Affairs and Energy and in the case of sentence 1 no. 2 when the negotiations end.

(7) A deadline pursuant to subsection 1 no. 2 shall start afresh if

1. a clearance or a declaration of non-objection is withdrawn, revoked or amended or

2. an order on restrictions or obligations to act or a contractual arrangement to protect the interests cited in Section 4 subsection 1 no. 1, 4 or 4a is fully or partially revoked by a court ruling.

In the case of sentence 1 no. 1 the deadline shall start afresh at the time of the announcement of the decision. In the case of sentence 1 no. 2 the deadline shall start afresh when the ruling takes effect. The legal consequence of sentence 1 shall also apply when a contractual arrangement to protect the interests cited in Section 4 subsection 1 no. 1, 4 or 4a is unilaterally terminated by a legal declaration.

(8) Further details can be stipulated by ordinance.

## Section 15 Nullity

(1) A legal transaction that is entered into without the necessary licence shall be null and void. It shall gain effect from the time of its undertaking if it is subsequently licensed or the requirement for a licence is subsequently removed. The retrospective effect shall be without prejudice to the rights of third parties which were derived from the subject of the legal transaction prior to the licensing.

(2) If, for a legal transaction governed by the law of obligations on the acquisition of a domestic company or of a direct or indirect stake in a domestic company, a right to undertake an assessment exists on the basis of Section 4 subsection 1 no. 4 and 4a and Section 5 subsection 2 or Section 4 subsection 1 number 1 and Section 5 subsection 3, in each case in conjunction with an ordinance issued on the basis of these provisions, the entry into force of the legal effects of the legal transaction shall be subject to the dissolving condition until the conclusion of the assessment procedure that the Federal Ministry for Economic Affairs and Energy prohibit the acquisition within the deadlines stipulated in Section 14a.

(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 on the basis of Section 4 subsection 1 no. 4 and 4a and Section 5 subsection 2 or of Section 4 subsection 1 no. 1 and Section 5 subsection 3, in each case in conjunction with an ordinance issued on the basis of these provisions

1. a right to undertake an assessment exists within the meaning of subsection 2 and
2. the conclusion of the legal transaction governed by the law of obligations must be notified.

The legal transaction shall be effective from the time of its undertaking if the Federal Ministry for Economic Affairs and Energy clears the acquisition pursuant to the provisions cited in sentence 1 or does not prohibit it within the deadlines stipulated under Section 14a or the clearance of the acquisition is deemed to have been issued. Subsection 1 sentence 3 shall apply *mutatis mutandis*.

(4) In cases in which a legal transaction is provisionally invalid, until the Federal Ministry for Economic Affairs and Energy clears the acquisition pursuant to the provisions cited in subsection 2 sentence 1 or does not prohibit it within the deadlines set out in Section 14a or the clearance of the acquisition is deemed to have been issued, it shall be prohibited

1. to exercise the voting rights associated with the acquisition,
2. (repealed)

3. to release to or otherwise disclose to the acquirer company-related information including data of the domestic company stored electronically or in another way to the extent that this information refers to parts of the company or assets of the company which on the basis of Section 4 subsection 1 no. 4 and 4a and Section 5 subsection 2 or of Section 4 subsection 1 no. 1 and Section 5 subsection 3, in each case in conjunction with an ordinance issued on the basis of these provisions, trigger the assessment with a view to guaranteeing the essential security interests of the Federal Republic of Germany or which must be given particular consideration in the context of the assessment of an impairment of the public order or security of the Federal Republic of Germany; or

4. to release or to disclose in another way to the acquirer company-related information, including data stored electronically or in another way, of the domestic company which is designated as being significant in an order pursuant to sentence 2.

The Federal Ministry for Economic Affairs and Energy can order that certain company-related information beyond that cited in sentence 1 no. 3, including data stored electronically or in another way, of the domestic company is deemed significant

1. for the essential security interests of the Federal Republic of Germany,

2. for the public order or security

a) of the Federal Republic of Germany,

b) of another Member State of the European Union or

c) with reference to projects or programmes of Union interest within the meaning of Article 8 of Regulation (EU)2019/452 to the extent that this is necessary in order to prevent a premature completion of a legal transaction within the meaning of subsection 2.

(5) By way of ordinances, it shall be possible

1. to regulate exceptions from subsection 3, particularly for legal transactions based on the law of obligations on the acquisition, in which the direct or indirect stake in a domestic company is acquired via a stock exchange by means of a legal transaction with securities, including securities which are convertible into other securities admitted for trading on a stock exchange or a similar market,

2. to regulate for the event of the prohibition of an acquisition that the execution of legal transactions under the law of obligations regarding the acquisition shall be reversed, and particularly that shares of voting rights which have been acquired on the basis of legal transactions within the meaning of number 1 must be resold within a certain period.

It shall also be possible to regulate in ordinances pursuant to sentence 1

1. the prohibition or the restriction of the exercise of voting rights,

2. the prohibition or the restriction of the transfer or other disclosure of company-related information within the meaning of subsection 4 sentence 1 number 3 or 4 directly or indirectly to an acquirer,

3. the handing over of shares of voting rights to a trustee,

to the extent that this is necessary to ensure the orderly implementation of an assessment procedure or the effectiveness of a prohibition.

# Section 16 Judgement and compulsory enforcement

(1) If a licence is required regarding a fulfilment of the debtor's obligation, a judgement to issue the licence can only be made if the wording of the judgement includes a reservation that the fulfilment of the debtor's obligation or compulsory enforcement may only take place once the licence has been issued. This shall apply correspondingly to other instruments permitting enforcement if the enforcement can only be realised on the basis of an enforceable copy of the instrument. Attachments and temporary injunctions which only serve to safeguard the underlying claim can be issued without reservation.

(2) If a licence is required regarding a fulfilment of the debtor's obligation, a compulsory enforcement shall only be permissible once and to the extent that the licence has been issued. To the extent that assets may only be acquired or sold with a licence, this shall also apply to the acquisition and sale by way of compulsory enforcement.

## Part 3 Provisions on penalties, fines and surveillance

### Section 17 Provisions on penalties

(1) A prison sentence between one and ten years shall be imposed on anyone who violates an ordinance issued pursuant to Section 4 subsection 1 which serves to implement an economic sanction adopted

1. by the Security Council of the United Nations in accordance with Chapter VII of the United Nations Charter, or

2. the Council of the European Union in the field of Common Foreign and Security Policy

or an enforceable order based on such an ordinance to the extent that the ordinance refers to goods of Part I Section A of the Export List and refers to this penal provision for certain circumstances.

(2) A prison sentence of not less than one year shall be imposed on anyone who in the cases of subsection 1

1. acts for the secret service of a foreign power or

2. acts for gain or as a member of a gang which has been formed to repeatedly commit such criminal acts.

(3) A prison sentence of not less than two years shall be imposed on anyone who in the cases of subsection 1 acts for gain as a member of a gang which has been formed to repeatedly commit such criminal acts.

(4) In less serious cases of subsection 1, the penalty shall be imprisonment from three months up to five years.

(5) If the offender acts recklessly in the cases specified in section 1, the penalty shall be imprisonment of up to three years or a fine.

(6) In the cases of subsection 1, an action without a licence shall be equivalent to an action on the basis of a licence obtained by threat, bribery or collusion or obtained fraudulently by means of incorrect or incomplete data.

(7) Subsections 1 to 6 shall apply, irrespective of the place of the criminal act, also to criminal acts committed abroad if the perpetrator is a German national.

## Section 18 Provisions on penalties

(1) A prison sentence from three months up to five years shall be imposed on anyone who

1. violates a

a) prohibition on export, import, transit, transfer, sale, acquisition, delivery, provision, passing on, or investment or

b) prohibition on broadcasting, transmission, dissemination or other services or

c) prohibition on the disposal of frozen money and economic assets

of a directly applicable act of the European Communities or the European Union published in the Official Journal of the European Communities or the European Union which serves to implement an economic sanction adopted by the Council of the European Union in the field of Common Foreign and Security Policy or

2. violates a licensing requirement for

a) the export, import, transit, transfer, a sale, an acquisition, a provision, a delivery, passing on, service or investment,

b) a broadcast, transmission, dissemination or other service or

c) a prohibition on the disposal of frozen money and economic assets

of a directly applicable act of the European Communities or the European Union published in the Official Journal of the European Communities or the European Union which serves to implement an economic sanction adopted by the Council of the European Union in the field of Common Foreign and Security Policy.

(1a) The same punishment shall be imposed on anyone who violates an enforceable order pursuant to Section 6 subsection 1 sentence 2.

(1b) A prison sentence up to five years or a monetary fine shall be imposed on anyone who

1. exercises a voting right in violation of Section 15 subsection 4 sentence 1 number 1,

2. transfers or discloses information cited in Section 15 subsection 4 sentence 1 number 3 or 4 in violation of that provision or

3. violates an ordinance pursuant to Section 15 subsection 5 sentence 1 number 2 or sentence 2 number 1 or 2 or an enforceable order based on such an ordinance to the extent that the ordinance refers to this penal provision for certain circumstances.

(2) The same punishment shall be imposed on anyone who violates the Foreign Trade and Payments Ordinance by

1. exporting goods cited in Section 8 subsection 1, Section 9 subsection 1 or Section 78 without a licence pursuant to those provisions,
2. exporting goods cited in Section 9 subsection 2 sentence 3 in violation of that provision,
3. transferring goods cited in Section 11 subsection 1 sentence 1 without a licence pursuant to that provision,
4. undertaking a trafficking and brokering transaction without a licence pursuant to Section 46 subsection 1, also in conjunction with Section 47 subsection 1, or without a licence pursuant to Section 47 subsection 2,
5. undertaking a trafficking and brokering transaction in violation of Section 47 subsection 3 sentence 3,
6. providing technical support without a licence in violation of Section 49 subsection 1, Section 50 subsection 1, Section 51 subsection 1 or subsection 2 or Section 52 subsection 1,
7. providing technical support in violation of Section 49 subsection 2 sentence 3, Section 50 subsection 2 sentence 3, Section 51 subsection 3 sentence 3 or Section 52 subsection 2 sentence 3 or
8. violating an enforceable order pursuant to Section 59 subsection 1 sentence 1 or subsection 3 no. 1 or Section 62 subsection 1.

(3) The same punishment shall be imposed on anyone who violates Council Regulation (EC) No. 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds (OJ L 358 of 31 December 2002, p. 28), most recently amended by Implementing Regulation (EU) 2020/2149 of 9 December 2020 (OJ L 428 of 18 December 2020), by

1. importing rough diamonds in violation of Article 3 or
2. exporting rough diamonds in violation of Article 11.

(4) The same punishment shall be imposed on anyone who violates Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (OJ L 30 of 30 January 2019, p. 1), most recently amended by the Delegated Regulation (EU) 2021/139 of 4 December 2020 (OJ L 43 of 8 February 2021, p. 5), by

1. exporting goods cited in Article 3(1) sentence 1 in violation of that provision,
2. supplying technical assistance in violation of Article 3(1) sentence 3,
3. importing goods cited in Article 4(1) sentence 1 in violation of that provision,
4. accepting technical assistance in violation of Article 4(1) sentence 2,



5. placing in transit goods cited in Article 5, Article 13 or Article 18 in violation of those provisions,
6. providing brokerage in violation of Article 6,
7. providing or offering a training measure in violation of Article 7,
8. exporting goods cited in Article 11(1) sentence 1 or Article 16(1) sentence 1 without a licence pursuant to those provisions,
9. providing technical assistance without a licence pursuant to Article 15(1) letter a or Article 19(1) letter a or
10. providing brokerage without a licence pursuant to Article 15(1) letter b or Article 19(1) letter b.

To the extent that the provisions cited in sentence 1 refer to Annexes II, III or IV of Regulation (EU) No. 2019/125, these Annexes shall apply in the version applicable at the time.

(5) The same punishment shall be imposed on anyone who violates Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (OJ L 206 of 11 June 2021, p. 1), by

1. exporting dual-use goods without a licence pursuant to Article 3(1) or Article 4(1),
2. exporting goods without a decision by the competent authority on whether a licence is necessary or without obtaining a licence from the competent authority in violation of Article 4(2) sentence 2,
3. providing a brokering service without a licence pursuant to Article 6(1) in conjunction with Article 4(1)a or
4. providing a brokering service without a decision by the competent authority on whether a licence is necessary or without obtaining a licence from the competent authority in violation of Article 6(2) sentence 2 in conjunction with Article 4(1)a.

To the extent that the provisions cited in sentence 1 refer to Annex I of Regulation (EU) 2021/821, this Annex shall apply to the version applicable at the time. In the cases of sentence 1 no. 2, the exporter shall be equivalent to a person who undertakes the export via another individual if the person is aware that the dual-use goods are wholly or partly destined for a use within the meaning of Article 4(1)a of Regulation (EU) 2021/821.

(5a) A prison sentence of up to one year or a fine shall be imposed on anyone who violates Regulation (EU) No.

2019/125 by

1. displaying or offering for sale goods cited in Article 8 in violation of that provision or
2. selling or purchasing advertising space or advertising time in violation of Article 9.

To the extent that the provisions cited in sentence 1 refer to Annex II of Regulation (EU) No. 2019/125, this Annex shall apply in the version applicable at the time.

(5b) A punishment is also imposed on anyone who contrary to Section 23a subsection 1 does not make a notification or does not make it correctly, fully, in the prescribed fashion, or in time. A punishment is not imposed on anyone who subsequently makes the notification under Section 23a subsection 1 voluntarily, fully and in the prescribed manner to the competent authority, unless the offence had already been discovered in whole or in part at the time and the offender knew this or could reasonably have expected this.

(6) Attempted perpetration shall be punishable.

(7) A prison sentence of not less than one year shall be imposed on anyone who

1. in the cases of subsection 1 or 1a acts for the secret service of a foreign power,
2. in the cases of subsections 1, 1a and 2 to 4 or subsection 5 acts for gain or as a member of a gang which has been formed to repeatedly commit such criminal acts, or
3. undertakes an action cited in subsections 1 or 1a which refers to the development, manufacture, maintenance or storage of missiles for chemical, biological or nuclear weapons.

(8) A prison sentence of not less than two years shall be imposed on anyone who in the cases of subsections 1, 1a and 2 to 4 or subsection 5 acts for gain or as a member of a gang which has been formed to repeatedly commit such criminal acts.

(9) In the cases of subsection 1 no. 2, subsection 1a, subsection 2 nos. 1, 3, 4 or no. 6, subsection 4 sentence 1 no. 5 or subsection 5 sentence 1, an action without a licence shall be equivalent to an action on the basis of a licence obtained by threat, bribery or collusion or obtained fraudulently by means of incorrect or incomplete data.

(10) Subsections 1 to 9 shall apply irrespective of the law of the place of the criminal act, also to criminal acts committed abroad if the perpetrator is a German national.

(11) No punishment shall be imposed pursuant to subsection 1, in each case also in conjunction with subsection 6, 7, 8 or subsection 10, on anyone who

1. acts before the end of the second working day following the publication of the act in the Official Journal of the European Union and
2. is not aware at the time of the criminal act of a prohibition or a licensing requirement imposed in the act pursuant to no. 1.

(12) No punishment shall be imposed pursuant to subsection 1a, in each case also in conjunction with subsections 6, 7, 8, 9 or subsection 10, on anyone who

1. contravenes a published judicial order before the end of the second working day following the publication and
2. has no knowledge of a restriction imposed by that order at the time of the offence.

## **Section 19 Provisions on fines**

(1) An administrative offence is committed by anyone who negligently undertakes an action described in

1. Section 18 subsection 1, 1a, 2 no. 1 to 7, subsection 3 to 5 or subsection 5a or
2. Section 18 subsection 1b or 2 no. 8

(2) An administrative offence is committed by anyone who provides incorrect or incomplete data or does not use the data correctly or completely in violation of Section 8 subsection 5, also in conjunction with Section 9 sentence 2.

(3) An administrative offence is committed by anyone who intentionally or negligently 1. violates an ordinance pursuant to

a) Section 4 subsection 1 or

b) Section 11 subsection 1 to 3 or subsection 4 or

an enforceable order on the basis of such an ordinance to the extent that the ordinance refers to this provision on fines for certain circumstances and the offence is not subject to punishment in Section 17 subsection 1 to 4 or subsection 5 or Section 18 subsection 2,

2. violates an enforceable order pursuant to Section 7 subsection 1, 3 or subsection 4 or Section 23 subsection 1 or subsection 4 sentence 2,

2a. contrary to Section 23a subsection 2 does not make a report or does not make it correctly, fully, in the prescribed fashion, or in time,

3. in violation of Section 27 subsection 1 sentence 1 does not present material goods or does not present them correctly, fully or in time,

4. in violation of Section 27 subsection 3 does not present a declaration or does not present it correctly, fully or in time or

5. in violation of Section 27 subsection 4 sentence 1 does not present a consignment or does not present it correctly, fully or in time.

(4) An administrative offence is committed by anyone who intentionally or negligently violates a directly applicable provision contained in acts of the European Communities or the European Union governing the restriction of foreign trade and payments transactions the substance of which corresponds to a regulation authorised by

1. subsection 3 no. 1 letter a or 2. subsection 3 no. 1 letter b

to the extent that an ordinance pursuant to sentence 2 refers to this provision on fines for certain circumstances and the criminal act is not subject to punishment in Section 18 subsection 1, 3 to 5, 7 or 8. The Federal Ministry for Economic Affairs and Energy is authorised, to the extent necessary to implement the acts of the European Communities or the European Union, to issue an ordinance without the approval of the Bundesrat defining the circumstances which can be punished as an administrative offence pursuant to sentence 1.

(5) An administrative offence is committed by anyone who intentionally or negligently violates a directly applicable provision contained in acts of the European Communities or the European Union published in the Official Journal of the European Communities or the European Union which serves to implement an economic sanction adopted by the Council of the European Union in the field of Common Foreign and Security Policy by 1. not transmitting information or not doing so correctly, fully or in time,

2. not submitting a pre-departure declaration or not submitting it correctly, fully, in the prescribed fashion, or in time,

3. not retaining a record of transactions or not retaining it for the prescribed period or not providing it or not providing it in time or

4. not informing a competent body or authority or not informing it in time.

(6) In the cases of subsections 1, 3 no. 1 letter a and subsection 4 sentence 1 no. 1, the administrative offence can be punished by a fine of up to five hundred thousand euro, in the other cases by a fine of up to thirty thousand euro.

## **Section 20 Confiscation and extended forfeiture**

(1) If a criminal offence pursuant to Section 17 or Section 18 or an administrative offence pursuant to Section 19 has been committed, the following objects can be confiscated:

1. objects to which the criminal or administrative offence is related, and
2. objects which were used or intended for the committing or preparation.

(2) Section 74a of the Criminal Code and Section 23 of the Act on Administrative Offences shall be applied.

## **Section 21 Tasks and powers of the customs authorities**

(1) In the case of criminal and administrative offences pursuant to Sections 17 and 18, with the exception of

Section 18 subsection 1b and 2 no. 8, and pursuant to Section 19, with the exception of Section 19 subsection 1 no. 2, of this Act or pursuant to Section 19 subsection 1 to 3, Section 20 subsection 1 and 2, Section 20a subsection 1 to 3, in each case also in conjunction with Section 21, or pursuant to Section 22a subsection 1 no. 4, 5 and 7 of the War Weapons Control Act, the public prosecution office can have investigations carried out pursuant to Section 161 subsection 1 sentence 1 of the Code of Criminal Procedure by the main customs offices or the customs investigation offices. The administrative authority within the meaning of Section 22

subsection 3 sentence 1 can in the cases of sentence 1 also have investigations carried out by a different main customs office or the customs investigation offices.

(1a) If the Federal Public Prosecutor General carries out the tracing, subsection 1 sentence 1 applies with the proviso that the exceptions cited there are not to be applied.

(2) Even without a request from the public prosecution office or the administrative authority, the main customs offices and the customs investigation offices and their officials must investigate and prosecute criminal and administrative offences of the nature cited in subsection 1 if these are related to the export, import, transfer or transit of material goods. The same applies to the extent that there is imminent danger. This shall be without prejudice to Section 163 of the Code of Criminal Procedure and Section 53 of the Act on Administrative Offences.

(3) In the cases of subsections 1 and 2, the officials of the main customs offices and the customs investigation offices shall have the rights and obligations of police officers pursuant to the provisions of the Code of Criminal Procedure and the Act on Administrative Offences. To this extent they are thus investigators of the public prosecution office.

(4) In the cases of subsections 1 and 2, the main customs offices and customs investigation offices and their officials can in fine proceedings undertake seizures, searches and inquiries and can take other measures pursuant to the provisions of the Code of Criminal Procedure applying to investigators of the public prosecution office. Under the preconditions of Section 111p subsection 2 sentence 2 of the Code of Criminal Procedure, also the main customs offices can order an emergency sale.

## **Section 22 Criminal and fine proceedings**

(1) To the extent that the local court has jurisdiction *ratione materiae* for criminal offences pursuant to Sections 17 and 18, the jurisdiction *ratione loci* shall rest with the local court based in the district of the regional court which has jurisdiction *ratione loci*. The government of a Land can, by way of ordinance, regulate the jurisdiction *ratione loci* of the local court differently insofar as this appears appropriate considering the economic or transport situation, the structure of the administration or other local needs. The government of a Land can transfer this authorisation to the justice authorities of the Land.

(2) In criminal proceedings Sections 49, 63 subsection 2 and 3 sentence 1 and Section 76 subsection 1 and 4 of the Act on Administrative Offences on the participation of the administrative authority in proceedings of the public prosecution office and in court proceedings shall apply *mutatis mutandis*.

(3) The main customs office shall be the administrative authority within the meaning of this Act and of Section 36 subsection 1 no. 1 of the Act on Administrative Offences. The Federal Ministry of Finance can, by way of ordinance which does not require the approval of the Bundesrat, regulate the local competence of the main customs office as the administrative authority pursuant to sentence 1 differently insofar as this appears appropriate considering the economic or transport situation, the structure of the administration or other local needs. In derogation from sentence 1, in the cases of Section 19 subsection 1 no. 2 and of Section 36 subsection 1 no. 1 of the Act on Administrative Offences, the Federal Ministry for Economic Affairs and Energy shall be the administrative authority within the meaning of this Act.

(4) Prosecution as an administrative offence shall not take place in the cases of a negligent committing of a violation within the meaning of Section 19 subsections 3 to 5 if the violation is uncovered by in-house controls and is notified to the competent authority and if appropriate measures are taken to prevent a violation due to the same reason. A notification pursuant to sentence 1 shall be deemed voluntary if the competent authority has not yet launched investigations into the violation. Apart from this, this shall be without prejudice to Section 47 of the Act on Administrative Offences.

# Section 23 General duty to provide information

- (1) The main customs office, the Deutsche Bundesbank, the Federal Office for Economic Affairs and Export Control (BAFA) and the Federal Office for Agriculture and Food can demand information needed to monitor compliance with this Act and the ordinances and orders issued on the basis of this Act and of acts of the Council or the Commission of the European Union in the field of foreign trade and payments legislation. For this purpose, they can require that the business documents are presented to them.
- (2) The main customs office and the Deutsche Bundesbank can also conduct examinations on the premises of the persons obliged to provide information for the purpose cited in subsection 1; the Federal Office for Economic Affairs and Export Control (BAFA) and the Federal Office for Agriculture and Food can send authorised persons to the examinations. In order to undertake the examinations the officials of these bodies and their authorised persons may enter the business premises of the persons obliged to provide information. To this extent, the fundamental right contained in Article 13 of the Basic Law is restricted.
- (3) The officials of the Federal Office for Economic Affairs and Export Control (BAFA) may enter the business premises of the persons obliged to provide information in order to examine the preconditions for the issuing of licences pursuant to Section 8 subsection 2 or for the issuing of certificates pursuant to Section 9. To this extent, the fundamental right contained in Article 13 of the Basic Law is restricted.
- (4) If the documents pursuant to subsection 1 have been produced using a data-processing system, the administrative authority and the Deutsche Bundesbank may access the stored data in the course of an examination and use the data-processing system to examine these documents. In the course of an examination, they can also require that the data be evaluated by computer pursuant to their requirements or that the stored documents be made available to them on a data-storage medium which can be processed by computer. To this end, it is necessary to ensure that the stored data are available throughout the statutory retention periods and that they can be rendered readable without delay and can be evaluated by computer without delay. The persons obliged to provide information must support the administrative authority and the Deutsche Bundesbank when they exercise their powers pursuant to sentences 1 and 2 and must bear the costs.
- (5) Anyone who participates directly or indirectly in foreign trade and payments transactions shall be obliged to provide information; this includes bodies to which a party obliged to provide information outsources tasks or which it uses in other ways in direct or indirect connection with participation in foreign trade and payments transactions.
- (6) The person obliged to provide information can refuse to furnish information on questions the answer to which would expose himself or a relative, as specified in Section 383 subsection 1 nos. 1 to 3 of the Code of Civil Procedure, to the danger of prosecution for a criminal or an administrative offence.

(6a) The powers pursuant to subsections 1 and 2, in each case also in conjunction with subsection 4, shall also be available to the Federal Ministry for Economic Affairs and Energy to the extent necessary to monitor compliance with restrictions or obligations to act based on ordinances pursuant to Section 4 subsection 1 no. 1 in conjunction with Section 5 subsection 3 and on the basis of ordinances pursuant to Section 4 subsection 1 no. 4 and 4a, in each case in conjunction with Section 5 subsection 2. For the purposes of sentence 1, officials of the Federal Ministry for Economic Affairs and Energy may enter the commercial premises of the obligated parties. To this extent, the fundamental right contained in Article 13 of the Basic Law is restricted.

(6b) In order to fulfil the tasks cited in subsection 6a, the Federal Ministry for Economic Affairs and Energy can make use of the services of the Federal Office for Economic Affairs and Export Control (BAFA) or commissioned third parties, to whom the powers cited in subsection 6a shall also be available to this extent. Further details, particularly with regard to the requirements to be met and tasks to be fulfilled by third parties, can be stipulated in ordinances pursuant to Section 4 subsection 1 no. 1 in conjunction with Section 5 subsection 3 and Section 4 subsection 1 no. 4 and 4a in conjunction with Section 5 subsection 2.

(7) The main customs office which has issued the administrative act shall also be responsible for the decision regarding the objection.

## **Section 23a Obligations to notify**

(1) To the extent that another obligation to notify does not already exist under a directly applicable act of the European Communities or the European Union published in the Official Journal of the European Communities or the European Union which serves to implement an economic sanction adopted by Council of the European Union in the field of Common Foreign and Security Policy, foreigners and residents whose money or economic assets within the area of validity of this Act are subject to a limitation of disposition on the basis of such an act are obliged to notify without delay this money to the Deutsche Bundesbank and these economic assets to the Federal Office for Economic Affairs and Export Control in line with the provisions of subsection 3.

(2) The obligation under subsection 1 also applies to logistics service providers within the meaning of Sections

453 and 467 of the Commercial Code who have knowledge of money or economic assets within the meaning of subsection 1 in the area of validity of this act.

(3) The notification under subsections 1 and 2 must contain the name or the company of the relevant foreigner or resident and details of the type and the value of the money and economic assets covered by the limitation of disposition. It must be written in German and enable the sender to be identified.

## **Section 24 Transmission of information**

(1) The Federal Office for Economic Affairs and Export Control (BAFA) may transmit the information, including personal data, which has come to its knowledge in the course of fulfilling its tasks

1. pursuant to this Act,
2. pursuant to the War Weapons Control Act or
3. pursuant to acts of the European Union in the field of foreign trade and payments legislation

to other public agencies of the Federation or the Länder to the extent that this is necessary to pursue the purposes of Section 4 subsection 1 and 2 or for customs clearance.

(2) In derogation from subsection 1, information about the refusal of licences may only be transmitted to the extent required to pursue the purposes of Section 4 subsection 1 and 2.

(3) The recipients may use the information transmitted pursuant to subsections 1 and 2, including personal data, only for the purpose for which it was transmitted or to the extent necessary to prosecute criminal or administrative offences pursuant to this Act or an ordinance based on this Act or pursuant to the War Weapons Control Act.

(4) The competent authorities under Section 13 may transmit information in connection with a directly applicable act of the European Communities or the European Union published in the Official Journal of the European Communities or the European Union which serves to implement an economic sanction adopted by the Council of the European Union in the field of Common Foreign and Security Policy, including personal data, to other authorities where necessary

1. to fulfil their tasks pursuant to this Act,
2. for purposes of criminal prosecution,
3. in order to avert dangers or
4. to fulfil a task assigned by law to the recipient which serves the implementation of sanctions.

The responsibility for the admissibility of the transmission is borne by the competent authorities under Section 13. If the transmission takes place at the request of the receiving body, the responsibility is borne by the receiving body. The recipient may only process the personal data transmitted to it for the purpose for which they were transmitted to it. Processing for other purposes is admissible only to the extent that the data could also have been transmitted for those purposes. This is without prejudice to rules on statistical confidentiality.

(5) The Deutsche Bundesbank transmits information, including personal data, in line with subsection 4 also to the Federal Financial Supervisory Authority and the Central Financial Transactions Investigation Agency to the extent that this is necessary to fulfil the tasks of these authorities or bodies.

table of contents

## **Section 25 Automated retrieval procedure**



(1) The Customs Criminological Office is entitled to retrieve information, including personal data, which may be transmitted pursuant to Section 24 subsection 1 and 2 in an automated procedure on a case by case basis to the extent that this is necessary for the purposes of Section 24 subsection 1 or to prevent criminal offences or to prosecute criminal or administrative offences.

(2) When the retrieval procedure is set up, the Customs Criminological Office and the Federal Office for Economic Affairs and Export Control (BAFA) shall stipulate in written or electronic form the reason and purpose for the retrieval procedure and the nature of the data to be transmitted and the technical and organisational measures required by the provisions of data protection law.

(3) The setting up of the procedure shall require the approval of the Federal Ministry of Finance and the Federal

Ministry for Economic Affairs and Energy. The Federal Commissioner for Data Protection and Freedom of Information shall be informed about the setting up of the retrieval procedure including the stipulations pursuant to subsection 2.

(4) The Customs Criminological Office shall be responsible for the admissibility of the individual information retrieval. Automated retrieval may be undertaken only by officials who have been specially authorised by the leadership of the Customs Criminological Office.

(5) The Federal Office for Economic Affairs and Export Control (BAFA) shall examine the admissibility of the information retrieval if it has cause to do so. It must ensure that the transmission of personal data can at least be ascertained and examined by suitable sampling procedures. table of contents

## **Section 26 Transmission of personal data from criminal proceedings**

(1) In criminal proceedings due to violations of this Act or of an ordinance based on this Act or of the War Weapons Control Act, courts and public prosecution offices may transmit personal data to supreme federal authorities in order to pursue the purposes of Section 4 subsection 1 and 2.

(2) The data obtained pursuant to subsection 1 may only be used for the purposes cited there.

(3) The recipients may only forward the data to a public body not cited in subsection 1 if

1. the interest in the use of the transmitted data substantially outweighs the interest of the affected party in confidentiality and

2. the investigative purpose of the criminal proceedings cannot be endangered.

## **Section 27 Surveillance of freight, postal and passenger traffic**

(1) Material goods which are exported, transferred, imported or transited must be produced on request. They can be subjected to inspection and examination.

(2) Means of transport, pieces of luggage and other containers can be examined as to whether they contain material goods, the export, import, transfer or transit of which is restricted.

(3) Anyone leaving or entering Germany must on demand declare whether he is bearing material goods, the export, import, transfer or transit of which is restricted pursuant to this Act or to an ordinance issued on the basis of this Act.

(4) Anyone intending to export material goods must present the consignment to the competent customs offices for export clearance. Further details shall be stipulated by an ordinance pursuant to Section 11. In order to facilitate postal, freight and passenger traffic, exceptions can be permitted by ordinance to the extent that this does not endanger the purpose of surveillance.

(5) The customs authorities shall survey compliance with

1. the provisions of this Act,
2. the ordinances issued relating to this Act and
3. acts of the European Union in the field of foreign trade and payments transactions

regarding export, import, transfer and transit. The Federal Ministry of the Interior, Building and Community shall stipulate the authorities of the Federal Police which are responsible for surveillance of the export of weapons and explosives; this shall be without prejudice to sentence 1.

## Section 28 Costs

(1) In implementing the provisions of this Act or of ordinances issued relating to this Act regarding the export, transfer, import or transit and the acts of the European Union in the field of foreign trade and payments transactions, the customs authorities can levy costs (fees and expenses) for

1. clearance outside the customs premises or the opening times,
2. the issuing and verification of certificates or
3. the inspection of material goods.

(2) In the cases of subsection 1, the provisions on costs levied on the basis of Section 178 of the Fiscal Code shall apply to the assessment of the costs and the procedure for their collection.

(3) In a Special Fee Ordinance of the of the Federal Ministry for Economic Affairs and Energy pursuant to Section 22 subsection 4 of the Federal Fees Act, fees shall be regulated from 1 January 2023 for individually attributable public services by the Federal Ministry for Economic Affairs and Energy and the Federal Office for Economic Affairs and Export Control pursuant to this Act or the ordinances issued on the basis of this Act.

## **Part 4 Final provisions**

### **Section 29 Promulgation of ordinances**

Notwithstanding the provisions of Section 2 (1) of the Act on the Promulgation of Ordinances, ordinances under this Act may be promulgated in the Federal Gazette.

[table of contents](#)

### **Section 30 Application of directly applicable provisions of the European Union**

(1) If a provision of a directly applicable legal instrument of the European Communities or the European Union which is cited in a provision of this Act or in an ordinance issued on the basis of this Act (domestic provision) is revoked or declared no longer applicable, the domestic provision which had been in force until then shall remain applicable for criminal and administrative offences pursuant to Sections 18 and 19 which have been committed until the time of revocation or non-application in derogation from Section 2 subsection 3 of the Criminal Code and of Section 4 subsection 3 of the Act on Administrative Offences.

(2) By means of an ordinance, the reference in a domestic provision to a provision in a legal instrument

1. of the European Communities or the European Union can be altered to the extent necessary to adapt it to a change in that provision,

2. of the European Communities or the European Union, which has been replaced by a provision of the European Union with the same substance, can be adapted by means of reference to the provision replacing the previous provision.

### **Section 31 Transitional provisions**

Section 14a must be first applied to corporate acquisitions about which the Federal Ministry for Economic Affairs and Energy obtains knowledge following 17 July 2020. For corporate acquisitions which become known before the day cited in sentence 1, Sections 55, 57, 58, 59, 61 and 62 of the Foreign Trade and Payments Ordinance in the version in force on 16 July 2020 must continue to be applied.

# **Section 32 Evaluation of the changes resulting from the First Act Amending the Foreign Trade and Payments Act and Other Acts**

The Federal Ministry for Economic Affairs and Energy shall, with the participation of the Federal Foreign Office, the Federal Ministry of Defence, the Federal Ministry of the Interior, Building and Community and the Federal Ministry of Finance, assess the application of Sections 4, 5, 13, 14a and 15 in the version of the First Act Amending the Foreign Trade and Payments Act and Other Acts of 10 July 2020 (Federal Law Gazette I p. 1637) with regard to the effectiveness of the arrangements and the compliance costs for companies and administration related to the enforcement of the arrangements. The evaluation period shall commence on 18 July 2020 and last 24 months.

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